

EFFECT OF WORK PROGRAMME IN EXTENSION OF TIME
ENTITLEMENT

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ABSTRACT

The aim of this research is to know how a construction work programme can be a tool in reducing disputes which relate to extension of time (eot). Extension of time entitlement is only granted to the successful claimant (contractor) who had fulfill certain conditions in the application and one of the condition is the claimant had successfully proved that the delay happened was not by his fault, it is either caused by employer or was one of the neutral events.

Therefore it is important for the contractor to have sufficient records and documents about a project's progress so that he is able to prove the caused of the delay occurred. Unfortunately, most of the contractors failed to do so because they are more focus to the work on site rather than doing the management and documentation work.

It is believed then that by having a proper method of work programme and updated progress of work can be so helpful in resolving the dispute, even the preparation of it are not required in any of local standard form of contract.

This research are based on literature information about work programme and it will supported by referring to court case where had considered work programme as an important document in judgment. Even there are no specifications of method in preparing a work programme but there are some important elements in the work programme which may contribute to its purpose.

Besides having credits in resolving disputes, there are still weak points in the work programme application which have to be studied and improved. It is found that it is good to have work programme requirement in document contract for the better future and quality of the industry.

ABSTRAK

Penyelidikan ini adalah bertujuan untuk mengkaji sejauh mana penggunaan perancangan kerja dapat membantu di dalam usaha mengurangkan kesulitan yang timbul daripada tuntutan lanjutan masa. Lanjutan masa hanya dianugerahkan kepada kontraktor yang berjaya membuat tuntutan dengan memenuhi beberapa kriteria, dan kriteria utama ialah membuktikan penyebab bagi kegagalan menyiapkan kerja yang memerlukan lanjutan masa adalah atas kesalahan pemilik ataupun persekitaran semulajadi, bukan atas kesalahan kontraktor.

Oleh yang demikian, kontraktor yang memohon lanjutan masa ini akan berusaha membuktikan bahawa punca kelewatan adalah bukan dari kesalahannya dan dengan ini masalah sering timbul dimana tiada dokumen, rekod atau bukti yang kukuh mengenai pihak yang sepatutnya bertanggungjawab ke atas sesuatu kelewatan aktiviti yang memberi kesan kepada tempoh penyiapan sesuatu projek. Walaubagaimanapun dipercayai bahawa perkara ini dapat diselesaikan dengan mengaplikasikan penggunaan perancangan kerja, meskipun pelaksanaan penggunaannya tidak terkandung di dalam kontrak.

Kajian ini dibuat berdasarkan beberapa kes mahkamah yang menggunakan rekod perancangan kerja ini sebagai sandaran perbicaraan. Terdapat beberapa elemen di dalam perancangan kerja yang dapat memantu dalam mengenalpasti punca kelewatan itu berlaku. Dengan itu daripada rujukan kes-kes yang berkaitan dipercayai dengan menguatkuasakan penggunaan perancangan kerja ini dapat membantu dalam perselisihan berkaitan dengan lanjutan masa. Walaubagaimanapun, masih terdapat beberapa kelemahan di dalam perancangan kerja ini dimana usaha untuk menyeragamkannya perlu untuk menjamin kualiti pelaksanaan pembinaan di negara ini.

TABLE OF CONTENTS

CHAPTER	TITLE	PAGE
1	INTRODUCTION	1
	1.0 Introduction	1
	1.1 Problem Statement	3
	1.2 Objectives	4
	1.3 Importance of the research	5
	1.4 Scope	5
	1.5 Methodology	6
 2	 EXTENSION OF TIME	 7
	2.0 Introduction	7
	2.1 Extension of time provision	8
	2.2 Delay	11
	2.2.1 Delay caused by employer	14
	2.2.2 Delay caused by neutral event	15
	2.2.3 Delay caused by contractor	15
	2.3 Basis events to establish eot entitlement	19
	2.3.1 Time provision in contract	20
	2.3.2 Due Diligence	28
	2.3.3 Notice of delay	34
	2.3.4 Construction Work Programme	37

CHAPTER	TITLE	PAGE
3	CONSTRUCTION WORK PROGRAMME	39
	3.0 Construction Planning	39
	3.1 Definition of work programme	41
	3.1.1 Who does project scheduling	42
	3.1.2 How is scheduling done?	42
	3.2 Purposed of Construction Work Programme	43
	3.3 Type of Construction Work Programme	48
	3.3.1 Gantt Chart	48
	3.3.1.1 Gantt Chart Enhancements	49
	3.3.1.2 Gantt Chart Role in Project Planning	50
	3.3.2 PERT Chart	50
	3.3.2.1 The Network Diagram	51
	3.3.2.2 Steps in the PERT Planning Process	52
	3.3.2.3 Benefits of PERT	55
	3.3.2.4 Limitations	56
	3.3.3 Critical Path Method	57
	3.3.3.1 Steps in CPM Project Planning	58
	3.3.3.2 CPM Limitations	60
	3.4 Role of Work Programme in EOT Application	61
	3.4.1 Determination EOT entitlement	61

CHAPTER	TITLE	PAGE
4	WORK PROGRAMME AS A BASIS TO ESTABLISH EOT ENTITLEMENT	67
	4.0 Introduction	67
	4.1 Work Programme in Standard form of Contract	68
	4.1.1 PAM 1998	68
	4.1.2 CIDB 2000	69
	4.2 How work programme can contribute in eot entitlement	69
	4.2.1 Logical Analysis	70
	4.2.2 Critical Path Analysis	74
	4.2.3 Causal Link	77
	4.2.4 Regularly and Diligently	78
	4.3 Weakness of Work Programme	79
	4.3.1 Variety of methods	80
	4.3.2 Contents of work programme	80
	4.3.3 Presentation of work programme	81
5	CONCLUSION AND RECOMMENDATION	83
	5.1 Introduction	83
	5.2 Contribution in dispute resolution	84
	5.3 Advantages and Disadvantages of Work Programme	85
	5.4 Recommendation	86
	5.5 Limitation	87

REFERENCES

LIST OF TABLE

TABLE NO	TITLE	PAGE
1	Summary of EOT descriptions	10
2	Contribution of delay	13

LIST OF FIGURE

FIGURE NO	TITLE	PAGE
1	Research methodology flow	6
2	Alternative emphases in construction planning	41
3	Gantt chart format	48
4	Original bar chart showing technological logic	62
5	Project with variation to building 1	63
6	Project with variation to building 2	63
7	Project with concurrent variation to the two buildings	64
8	Project with variation to building 1 only	65
9	Project evaluate by the addition method	66

LIST OF CASES

	PAGE
Amalgamated Building Contractors Ltd v Waltham Holy Cross UDC [1952] 2 All ER 452	23
Balfour Beatty Construction Limited v The Mayor and Burgess of the London Borough of Lambeth(2002)	72,77
Barque Quilpue v Brown [1904] 2 QB 264.	24
Bremer Handelsgesellschaft mbh v Vanden Avenne-Izegem (1978) 2 LLR 109	34
City Inn v Shepherd Construction Ltd [2003] ScotCS 146	36
Codelfa Construction Party Ltd v. State Rail Authority of New South Wales (1982),	16
Engineering Construction Pte Ltd v Attorney General & Anar [1997] 3 SLR 989	32
Gaymark Investments v Walter Construction (1999) Northern Territory Supreme Court 143	35
GLC v Cleveland Bridge (1984) 34 BIR 50.	29
Henry Boot Construction (UK) Ltd v. Malmaison Hotel (Manchester) Ltd. (1999)	75

	PAGE
Hiap Tian Soon Construction Pte Ltd and Another v Hola Development Pte Ltd and Another [2003] 1 SLR 667	32
Inserco Ltd v Honeywell Control Systems (1996)	27
John Barker Construction Ltd. v. London Portman Hotel Ltd (1996)	70
Jurong Engineering Ltd v Paccan Building Technology Pte Ltd [1999] 3 SLR 667	32
Leighton Contractors (Asia) v Stelux Holdings Ltd (2004)	77
London Borough of Merton v Leach (1985) 32 BLR 51	34
Mobil Chemical Co. v Blount Brothers Corp. (1987),	19
Motherwell Bridge Construction Ltd v. Micafil Vakuumtechnik (2002)	75
Peak Construction (Liverpool) Ltd v McKinney Foundations Ltd (1970) 1 BLR 111	26,35
Rapid Building Group v Ealing Family Housing (1984) 24 BLR 5	25
Sim Chio Huat v Wong Ted Fui [1983] MLJ 151	27
Sindall Ltd v Solland and others [2003] All ER (D) 95	33

	PAGE
Skanska Construction UK Limited v Egger (Barony) Limited (2004).	81
Thamesa Designs Sdn Bhd v Kuching Hotels Sdn Bhd [1993] 3 MLJ 25	27
The Royal Brompton Hospital NHS Trust v Frederick Alexander Hammond and others:	74,79
The Royal Brompton Hospital NHS v Watkins Gray International (UK) (2000)	76
Trident Engineering Company Limited v Mansion Holdings Limited	30
Turner Corporation Ltd (In Provisional Liquidation) v Co-ordinated Industries Pty Ltd & Ors 1994 NSW LEXIS	35,36
Wells v Army & Navy Co-operative Society Ltd (1902) 86 L.T. 764	28
West Faulkner v London Borough of Newham (1994) 71 BLR 1	30

CHAPTER 1

INTRODUCTION

1.0 Background of study

Delay and additional cost in a construction project are an inevitable consequence of the risk and uncertainty associated with the execution of any construction project, which is likely to be unique and prototypical in nature. Whilst the risk is reduced by certainty of design and relevant experience in the construction of similar types of project, it is sadly all too common that the project will not be completed within the agreed time of completion. Due to this scenario, it is important to determine the cause of any events which have potential to be the main cause of the delay which will affect the date of completion.

The appointment of engineer or architect as Superintendent Officer (SO) or Contract Administrator (CA) is to act as an agent of the employer to administer the contract on the employer's behalf. The person who holds the CA and SO title is in charge with the responsibility of deciding whether an event is one that gives rise to an entitlement on the part of the contractor under the contract and whether that

events has caused delay and or is likely to affect the date for completion of the work.

Contract period is a period within which the contractor not only must do the work but it is also a license for the contractor to spend that time carrying out the works. In addition, he may plan and do the work in whatever order he pleases. Although he must make sufficient progress to achieve the completion date, there is nevertheless usually an express obligation for the contractor to proceed regularly and diligently with the work. In order to provide further comfort, the employer usually requires the contractor to provide a programme (construction work programme) at the commencement of the work to show the sequences and timing of the activities involved in the construction of the project in sufficient detail for the S.O or C.A to monitor the progress of the work. It is common to use this construction work programme as a basic model against which to consider the effect of delays.

Nowadays, it is believed that by having a proper construction work programme for a project is a smart way in dealing with incoming disputes, especially disputes on extension of time. In Malaysian standard form of contract, only PAM 98 and CIDB 2000 had stated the requirement of preparing work programme in document contract while PWD 203A is silent about it. It is stated under clause 3.4 of PAM 98 and also in CIDB 2000 under clause 5.1. However, the work programme requirement are debarred by clause 3.5 of the PAM 98 and clause 5.2 of the CIDB 2000 respectively from having any formal significance over contractual obligations. The said clauses dilute the significant of the work programme and its contractual effect arising from any aberrations to the programme

Rajoo (1999) stated that the effect of making the programme an express requirement without it being a contract document is that while the contractor may in breach for failure to submit a master programme, he may not be in breach if the series of events are not followed as scheduled.

1.1 Problem statement

In a construction project, if delay occurred and it is believed that the completion date will be affected, the contractor is responsible to inform the SO or CA in writing, identifying the relevant events which caused the delay. It is stated under clause 23.1 of PAM 98, clause 43 of PWD 203A and also under clause 24.2(a) of CIDB 2000 form. In practice, it was found that the contractor normally will state that the delays occurred was caused by employer or it was a neutral event. Due to this, he is entitled to be granted an extension of time and the employer has no right to liquidated damages if the delay were caused by his action. Therefore, it is important for the parties involved to have a proper documented information about the project progress, thus the question of who caused the delay will be answered. In a construction project, delay is normal, therefore it is important to identify whether the delay has the potential to affect the completion date by determining where the delay lies in the critical path or not. For example, it is the employer's fault if he failed to give instruction to the supplier to start delivering material to the site, but does this late instruction really lead to the project to be delayed? Of course there are possibilities that some delays only affect the activities and not the entire project or the critical path activities. It can be said that by having a work programme incorporating critical path analysis, parties can't simply pointing fingers to each other for causing the delay.

Nevertheless, the obligations of the employer's agent when considering the contractor's entitlement to an extension of time are usually defined in subjective terms. For example in case of the PAM 98 Standard Form, in accordance with clause 23.2, architect shall consider the relevant events causing delay and by written notice to the contractor give a fair and reasonable extension of time by fixing such later date as the date for completion. The process of forming an opinion and deciding upon what is fair and reasonable are both subjective requirement. To what based it can be said as fair and reasonable extension of time?

Updated and verified work programme (quality work programme), will be able to show the status or progress of any in contractor's plan of proceeding the

works. It will also be a strong evidence in any dispute which may arise on issues of responsibilities arising from delay to completion from changes of programme sequences and duration of activities. The words quality work programme is a subjective term which there is no specific method or requirement how a work programme suppose to look like. In Malaysian standard form of contract there are no guideline of how to prepare a work programme. Although Rajoo (1999) in *The Malaysian Standard Form of Building Contract (The PAM 1998 Form)* had stated the elements of work programme, it is not defined in any clause in any standard form of contract. He stated that,

..the elements of Work programme is not defined in clause 3.4. As such, it may take the form of a bar chart, critical path, precedence diagram, schedule, network analysis or otherwise. A good work programme should show interfaces with sub-contractors, dated, time frames, activities, stages and more..

Therefore, it is still an issue in this industry the right definition of a good work programme and it had became one of the disadvantages in work programme usage where a good work programme can't be defined precisely.

1.2 Objectives

There are two objectives of this research which writer wish to achieve.

- i. To identify how a construction work programme can contribute in reducing disputes in extension of time.
- ii. To determine the advantages and disadvantages of construction work program usage in construction contract.

1.3 Importance of the research

This research is meant to highlight the importance of having a quality work programme in construction contract. From the theoretical study, by having a quality up graded and verified work programme, it can be a helpful tool in disputes resolving such as critical path analysis which is a main content in a work programme.

The data and analysis in work programme promised valuable information for identifying and modeling delays and their effect on progress and the use of computerized work programme techniques for proving delay is become a practical requirement nowadays. Nevertheless techniques are being considered by the courts and it is now almost inevitable in litigation involving disputes over the extent of project delays that a programming expert will be appointed. Therefore, it is good for the parties involved in a construction project, especially contractor to have a proper documented record such as work programme as a step to help in reducing disputes in the future, although it is still not a legal requirement in standard form of contract in Malaysia.

1.4 Scope

This research will mainly discuss on the work programme terms and provision in Malaysian standard form of contract. There are Public Work Department (PWD) 203A, Persatuan Arkitek Malaysia (PAM) 98 and Construction Industry Development Board (CIDB) 2000. The discussion also will be supported with international court cases, not only focusing on Malaysian court cases.

1.5 Methodology

This research methodology is divided into two types of methods. One is mainly referring to the literature review which found in reference books, seminar papers, articles, magazines and also from internet sources. The other method is to analyse the information gained by compare, relate and support the earlier information with standard form of contract and relevant court cases.

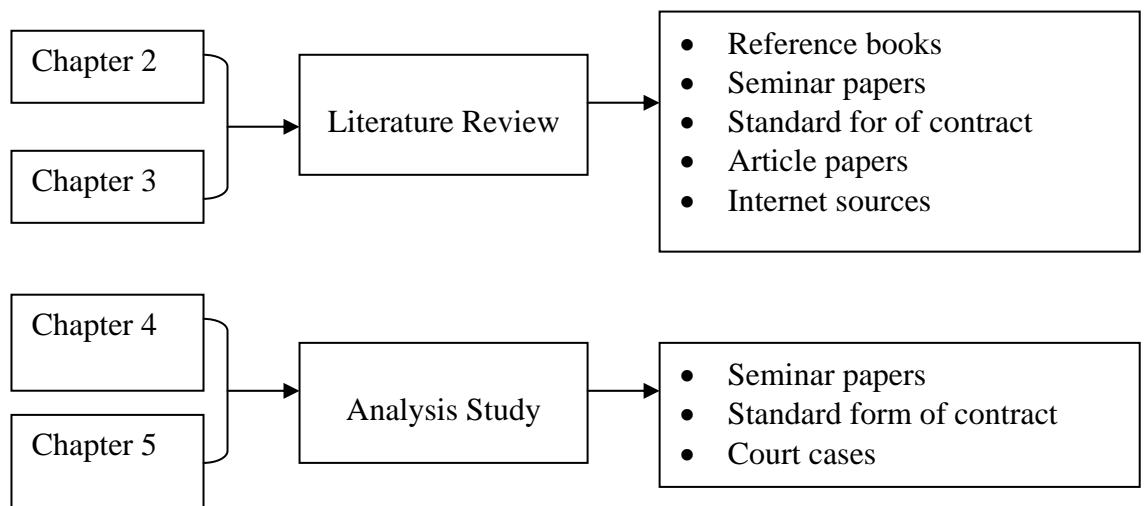


Figure 1 : Research Methodology Flow

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entitlement of the contractor to extension of time or additional payment. This paper will help contractors, consultants and public agencies better understand the fundamental principles governing FIDIC contracts and protect their contractual rights in the construction projects.

Keywords: Contract administration; International Federation of Consulting Engineers (FIDIC); Extension of time (EOT); Additional payment.

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Methods of Delay Analysis Used to Establish the Contractors Entitlement to an Extension of Time Delays not attributable to the Contractor's actions in a construction project can result a number of potential problems such as late completion, lost productivity, acceleration cost, increased costs, and contract even contract termination. The Contractor needs to realise that the Use of the impacted As-planned programme analysis method is generally restricted to the quantification of delays for contemporaneous requests for time extensions. The resulting programme demonstrates the effect of the delay event on the overall project completion date. As-Planned Versus As-Built.