

**ADEQUACY OF CONTRACT PROVISION IN MANAGING
CONSTRUCTION FAILURE**

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**ADEQUACY OF CONTRACT PROVISION IN MANAGING
CONSTRUCTION FAILURE**

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A project report submitted in partial fulfillment of the
requirements for the award of the degree of
Master of Science (Construction Management)

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DECEMBER, 2010

I declare that this project entitled “*Adequacy of Contract Provision in Managing Construction Failure*” is the result of my own research except as cited in the references. This project has not been accepted for any degree and is not concurrently submitted in candidature of any other degree.

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DEDICATION

To my beloved parents Che Kamaruddin Che Hassan and Nik Hasnah Ibrahim, my siblings Naadiya, Naadilla, Naadifarin, Naadifan, Madeleyn, Nur Qamarina, Qariz Danial and Qurnia Danish.

Not forgetting, my late younger brother Allahyarham Mardief
(20 July 1996-15 May 2009).

To my love , Mohd Hanafi Bin Abdul Rashid
and to all my friends.

Thank you for the supports, encouragement, wishes, sacrifice & patience.
May Allah S.W.T shower us with His blessing.

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ABSTRACT

In managing construction failure, normally efforts are made to identify the possible cause of failure and seek for the possible solution of the problems faced. Currently, there is no clear guideline available either within existing contract documents or legislations that can be used as a guide to resolve construction failure cases. Hence, this study has been undertaken to identify the limitations of current contract provisions which related to construction failure. It is conducted to evaluate the adequacy of contractual provisions in contract documents. The methodology adopted for this study includes literature research, interviews and questionnaire surveys with selected professionals in construction industry and legal sector. The findings of the study show that the limitations in current contractual provisions are eminent. It is also found that there is a need for consideration of inclusion of new provisions to be implemented into contract document. Despite there may be a difference of ideas between the respondents from construction industry and legal sector regarding to limitations of law and contract to solve construction failure cases. This study also made some proposal of important items that should be considered for improving current contract provisions.

ABSTRAK

Dalam menguruskan kegagalan pembinaan, lazimnya terdapat usaha-usaha yang dilakukan untuk mengenalpasti punca kegagalan dan mencari penyelesaian yang sesuai bagi masalah yang dihadapi. Pada masa kini, tiada garis panduan yang jelas boleh didapati sama ada melalui dokumen kontrak sedia ada mahupun dari segi perundangan yang boleh dijadikan sebagai panduan dalam menyelesaikan kes-kes kegagalan pembinaan. Justeru itu, kajian ini telah dijalankan untuk mengenalpasti kekangan yang terdapat dalam peruntukan kontrak pada masa kini yang mempunyai kaitan dengan kegagalan pembinaan. Ia dijalankan untuk menilai tahap kecukupan pada peruntukan kontrak yang terdapat dalam dokumen kontrak. Kaedah yang digunakan dalam kajian ini merangkumi kajian literatur, temubual dan kaji selidik dengan golongan profesional daripada industri pembinaan dan sektor perundangan. Hasil daripada kajian ini menunjukkan bahawa kekangan yang terdapat dalam peruntukan kontrak merupakan punca utama kepada permasalahan ini. Selain itu juga, terdapat keperluan untuk memasukkan peruntukan baru ke dalam dokumen kontrak. Walaubagaimanapun, terdapat perbezaan pendapat di antara responden daripada industri pembinaan dan sektor perundangan terhadap kekangan tersebut. Melalui penyelidikan ini, beberapa cadangan yang penting telah dikemukakan dengan tujuan untuk memperbaiki kelemahan yang terdapat dalam peruntukan kontrak pada masa sekarang.

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Ors[1995] 2 MLJ 663

Konajaya Sdn Bhd v Perbadanan Urus Air Selangor Bhd [2009] 5
MLJ 263

Bina Puri Sdn Bhd v MUI Continental Insurance Bhd [2010] 1 MLJ
347

Raja Lob Sharuddin bin Raja Ahmad Terzali & Ors v Sri Seltra
Sendirian Bhd [2008] 2 MLJ 87

LIST OF ABBREVIATIONS

CIDB	-	Construction Industry Development Board
DLP	-	Defects Liability Period
DPM	-	Damp Proof Membrane
FIDIC	-	Fédération Internationale des Ingénieurs Conseils (International Federation of Consulting Engineers)
IEM	-	Institute of Engineers Malaysia
JKR	-	Jabatan Kerja Raya
LAD	-	Liquidated Ascertained Damages
MBB	-	Maybank Berhad
MLJ	-	Malayan Law Journal
PAM	-	Pertubuhan Arkitek Malaysia
PWD	-	Public Work Department
RI	-	Relative Index
S.O	-	Superintending Officer
U.K	-	United Kingdom

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CHAPTER 1

INTRODUCTION

1.1 Introduction

This chapter is an overview of the study which emphasis on the problem statement, specifying aims and objectives, formulating of study methodology, report outlines and scope of the study.

1.2 Background of Study

Construction failures are impossible to eliminate completely, but it can be reduced. Janney (1986) defines the construction failure as a failure that occurs during construction project and after the project completed. They are considered to be either collapse, or distress of a structural system to such a degree that it cannot safely serve its intended purpose.

Although the existing contract documents shall solve the claim cases due to construction failure, the provisions are only valid during contractual period. Currently, several statutory body and professional societies have being established their contract documents as guidelines to parties involve. There are a number of provisions that govern the quality of construction works. They also specify the role and responsibilities of parties in the contracts in respect of defects. Therefore, the party's rights and obligations to a contract are governed by the contract itself. Previous study also stated that most construction contracts specify certain extraordinary powers to a particular person. However, the effects of provisions are only limited during contractual period. Although there are governing laws to manage construction failure, the process is lengthy and costly.

Furthermore, failures in construction project mainly in building construction generate controversy and expensive argument. Hence, the urgency to overcome this failure issue has raised concerns among the practitioners in construction industry.

1.3 Problem Statement

Recently, several completed projects tend to be defective or even collapsed after the expiry of contractual period. Hence, parties involved have to seek for the relevant provisions to be referred in managing such situation. It has raised certain issues on party's liabilities. Moreover, contractual relations are not valid after the project completion. Therefore, parties have to seek for the justice to define their role and duty on failure loss and remedial cost based on the contract. These limitations of contract provisions are crucial as it will increase the number of disputes among construction practitioners. Therefore, this study has been conducted to identify those limitations in order to aid the parties in managing construction failure.

1.4 Research Objectives

This research aims to evaluate the adequacy of contractual provisions in managing construction failure. In order to achieve the aim, following objectives shall be pursued:

- i. To identify the current contractual provisions and laws available in managing construction failure.
- ii. To identify the limitations of the existing contractual provisions in managing construction failure.
- iii. To identify and proposed new provisions to be considered in addressing claim cases related to construction failure.

1.5 Scope Of Study

This study covers the investigation on the provisions in the common contract document such as PWD 203/203A, IEM1989, CIDB 2000, PAM2006 and FIDIC conditions (red book) which applicable to Malaysia construction industry. The qualitative data collected in this study was made within Kuala Lumpur and Johor Bharu area only. Case study on claims related to construction failure cases were referred to literature sources only.

1.6 Significance of the Study

This study is significant in providing information relates to contract provisions in managing construction failure.

1.7 Brief Methodology

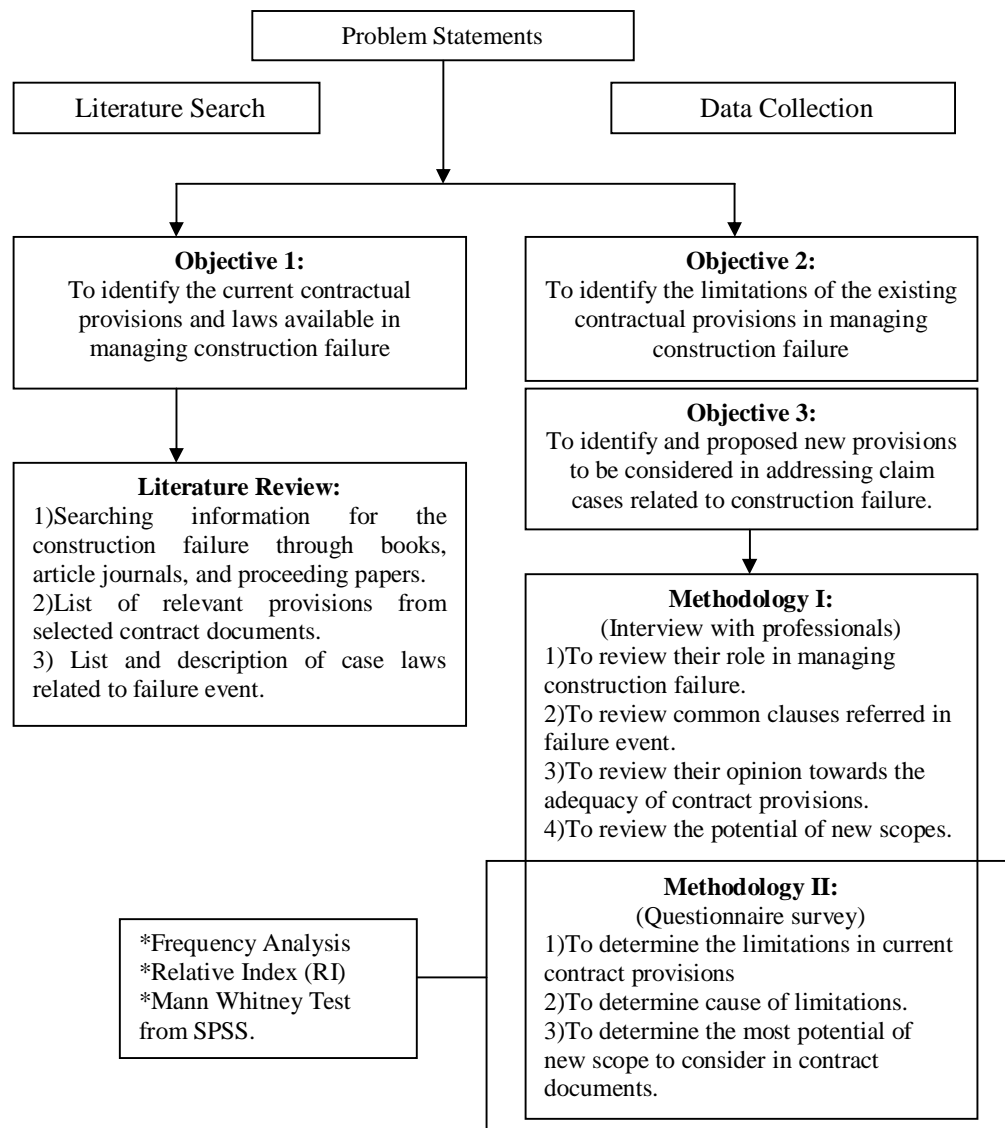


Figure 1.1: Brief Methodology

