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**PERSPECTIVE OF CONSTRUCTION PLAYERS
TOWARD EXPERT DETERMINATION AS AN
ALTERNATIVE DISPUTE RESOLUTION IN MALAYSIA**

Dissertation submitted in partial fulfilment
of the requirement for the award of
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ABSTRACT

Disputes are inevitable elements in the construction industry that must be solved within a reasonable time. It needs dispute resolution methods to solve the disputes that arose. Alternative dispute resolution is a range of contractual dispute resolution methods for the parties to reach a negotiated settlement. ADR has also been used as an option in the Malaysian construction industry to resolve disputes as it is considered to be more private and to save costs. Dispute resolution methods are divided into two, which is traditional resolution method and alternative dispute resolution. Expert Determination is one of the alternative dispute resolutions and it is already known in Malaysia. Although it has been proven that litigation and arbitration are time-consuming and costly, but the parties still preferred to choose the traditional resolution method to compare to ADR due to the provisions provided in all standard forms of contract. Malaysian Institute of Architects introduced ED as ADR into the latest form, PAM Contract 2018 on 11 April 2018. This new provision has yet to be tested for its effectiveness in the settlement of disputes. The construction players may have their perception of the enforcement of Expert Determination in Malaysia. This study aims to identify the perception of construction players toward Expert Determination as an Alternative Dispute Resolution. This study looks into the benefits and challenges for the implementation of ED as well. The method used for this study was quantitative research to the stakeholders of the construction industry consisting of contractors, developers, and consultants in Klang Valley. The findings showed the benefits of ED which is a private and confidential procedure but it has limited opportunities for appeal once the decision has been made by an expert. ED also helps to provide fairness to the parties as it prevents bias and ED can be accepted and recognized in the Malaysian construction industry.

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CHAPTER 1

INTRODUCTION

1.1 OVERVIEW

Alternative dispute resolution is a number of techniques to resolve the contractual disputes for the parties to achieve a negotiation settlement. In Malaysian construction industry, ADR methods are used widely in order to resolve disputes more efficiently, confidentially and at a lower cost than litigation. They can also help parties to find practical, commercial solutions to disputes, allowing them to maintain ongoing business relationships. ADR is consensual and therefore an agreement must be reached between the parties as disputes will be resolved if everyone agrees to the terms of the settlement.

According to Shamsuddin, Ismail and Zafian (2019), ADR is well accepted in the Malaysian construction industry as is evidenced by the existence of ADR clauses in all major standard forms of construction contracts such as Public Works Department (P.W.D. Form 203A (Rev. 1/2010), Malaysian Institute of Architects (PAM Contract 2018) and Construction Industry Development Board (CIDB Standard Form of Contract for Building Works 2000). As for P.W.D. Form 203A (Rev. 1/2010), it is the main form of contract for all Government projects, while PAM Contract and CIDB Form of Contract are mainly used for private sector projects.

There are three most used ADR mechanism within the Malaysian construction industry apart from Litigation, namely Arbitration, Adjudication and Mediation. As for Expert Determination, it was introduced into PAM Contract 2018 in April 2018.