



**DEPARTMENT OF BUILDING
UNIVERSITI TEKNOLOGI MARA
(PERAK)**

EXTENSION OF TIME

Prepared by:

**IZZAH SYAZALIANA BINTI
ZULKARNAIN**

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(PERAK)

JULY 2020

It is recommended that the report of this practical training provided

By

Izzah Syazaliana binti Zulkarnain
2019402878

entitled

Extension of Time

be accepted in partial fulfillment of requirement has for obtaining Diploma in Building.

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STUDENT'S DECLARATION

I hereby declare that this report is my own work, except for extract and summaries for which the original references stated herein, prepared during a practical training session that I underwent at Perintis Konsult Sdn Bhd for duration of 20 weeks starting from 01 September 2021 and ended on 14 January 2022. It is submitted as one of the prerequisite requirements of BGN310 and accepted as a partial fulfillment of the requirements for obtaining the Diploma in Building.

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Date : 07 January 2022

ACKNOWLEDGEMENT

Alhamdulillah, praise to Allah, the Most Merciful, the Most Graceful, for His showers of blessings throughout on completing this practical report successfully.

I would like to express my heartfelt gratitude for the guidance, advice and help rendered throughout the period of training by the following group of amazing individuals. First and foremost, I would like to thank Sr Nor Afidah Ahmad and Sr Maznah Mohd Noordin for the opportunity given, to conduct my training in their esteemed company, Perintis Konsult Sdn Bhd for the duration of 20 weeks. Their team of professionals composed of Sr Jefri Masood, En. Firdaus Abdullah, En. Aidil Imran, Pn. Nora Arni and Cik Alia Nordin, have enabled me to learn and develop my understanding, knowledge and the complexities of real time projects, involved in both consultant and construction works. I am extremely grateful for the experience that has been offered to me. It is a great privilege and honour for me to be given the opportunity to work under their guidance.

Next appreciation goes to all the UiTM lecturers that have taught and nurtured me in becoming a better student and person. I would also like to extend my deepest appreciation to the lecturers who are directly involved during my training stint. To Cik Nor Azizah Binti Talkis, Supervising Lecturer, Puan Nurhasyimah Binti Ahmad Zamri, Evaluation Lecturer, En. Anas Zafiro Bin Abdullah Halim, Supervising Lecturer Practical Report, Dr. Nor Asma Hafizah Binti Hadzaman, Practical Training Coordinator and Dr. Dzulkarnaeen Bin Ismail, Programme Coordinator, I value for the invaluable guidance, time, effort, encouragement and willingness that they have contributed towards the successful completion of my training, this report and the valuable knowledge that have been shared over the last few months. Without their help, for sure I couldn't have completed this assignment on my own.

Last but not least, my special thanks to my beloved parents for their sacrifices and support over the years. They helped me a lot.

Thank you so much.

ABSTRACT

Construction delays can be seen as a risk for the projects as it affects project success in terms of time, cost and quality. Therefore this report will discuss further on Extension of Time (EOT) for construction in Malaysia, according to the P.W.D. Form 203A (Rev.1/2010). This report was conducted based on the case study of Project Proposed Construction and Completion of Muzium Setem Negeri Selangor, located at Bandar Shah Alam, Daerah Petaling, Selangor. The objective of this report is to shed light on the provision of extension of time in construction contracts and how important it should be included in construction contracts. It will focus on the procedure to be adhered to for the application of extension of time. To determine the grounds, to focus on the eligibility of the contractor to claim for extension of time and then to evaluate how this provision can provide benefits to contractors where delays occur which are prescribed based on P.W.D. Form 203A (Rev.1/2010). This report will also look at the conditions precedent and sufficient information of the claim based on the relevant contractual provisions to ensure the S.O. to grant for extension of time and issues the Certificate of Delay and Extension of Time to the contractor.

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CHAPTER 1.0

INTRODUCTION

1.1 Background of Study

Delay occurs in most construction projects, regardless of the project complexity. A large-scale construction project will take a long time to be completed. The completion date of a construction project will be given to the contractor which is stated in the construction contract. Construction contract is a mutual or legally binding agreement based on policies and conditions between two parties referred to as the client and the contractor, recorded in the form of documents. Both parties have the right and liability under the contract until final settlement. In dealing with the unpredictable nature, there have been many unforeseen events causing delays that have become a norm in the construction field (Lew Yoke-Lain, S. Hassim, R. Muniandy, Mee-Ling;, 2012). Nevertheless, it is the contractor's obligation to complete the work within the stipulated time.

'... the Contractor shall complete the whole of the Works on or before the "Date for Completion" as stated in the Appendix or such extended time as may be allowed under clause 43 ...' (Clause 39.1)

Extension of Time (EOT) is the additional time that has been granted to the contractor to complete the works beyond the original date for completion (Abdullah, 2009). It allows for contractors to extend the scheduled completion date without having to pay penalties for the delay. Such delays can be due to the impact of several key parties whether it came from consultants, contractors or even the clients themselves. The provision of Extension of Time (EOT) provides benefit to the contractor as it relieves the contractor from liability of damages such as with heavy Liquidated and Ascertained Damages (LAD) for lateness (Kheng, 2003). Hence, it is essential to incorporate provisions for Extension of Time (EOT) in the contract as a precaution against such unforeseen delays. Thus, the aim of this is to discover the Extension of Time for construction in Malaysia.

1.2 Objectives

- i) to investigate the grounds for extension of time
- ii) to investigate the eligibility and time of application
- iii) to determine the procedure and conditions precedent of claim

1.3 Scope of Study

- This case study project was conducted at No. Lot Precint 213A, Seksyen 14, Bandar Shah Alam, Daerah Petaling, Selangor for Project Proposed Construction and Completion of Muzium Setem Negeri Selangor.
- The central focus of this case study report is about Extension of Time (EOT) in construction contracts.
- The relevant contractual provisions on Extension of Time are based on P.W.D. Form 203A (Rev.1/2010).
- The knowledge of the grounds, eligibility to claim, procedures and conditions related to extension of time was investigated in this study.

1.4 Methods of Study

1. Document reviews – Referred on progress report in Main File of Project Museum Negeri Selangor. All documents including progress reports will be printed in the form of hard copy for reference to facilitate the consultant in reviewing the project.
2. Interview – A semi-structured interview was set with En. Aidil who is one of the quantity surveyors at Perintis Konsult, in charge of handling Project Museum Negeri Selangor. The interview was conducted on 27 November 2021 for an hour in the office to collect and gain information needed regarding the case study project. All information related to the Extension of Time of Project Museum Negeri Selangor was obtained during the interview session.

CHAPTER 2.0

COMPANY BACKGROUND

2.1 Introduction of Company

Perintis Konsult Sdn Bhd is a partnership company that was carried out by two partners. In this form of business entity, partners are fully responsible to carry out business, share the capital, profits and losses. Perintis Konsult is a consultant-industry business that is located in seksyen 7, Shah Alam, Selangor. The company has extensive experiences and expertise in providing professional services in a wide spectrum of development over years. The firm provides a full range of professional quantity surveying and construction cost consultancy services for both building and civil engineering projects to the clients.

2.2 Company Profile

Perintis Konsult Sdn Bhd was formed in May 2006 by a group of professional quantity surveyors, experienced in various aspects of construction fields. Perintis Konsult has two main directors which are Sr. Nor Afidah Ahmad and Sr. Maznah Mohd Noordin. Both directors are professional quantity surveyors registered with the Board of Quantity Surveyors Malaysia (BQSM). Perintis Konsult is structured as a Quantity Surveying Consulting Company with a technical organizational structure, whereby the firm takes a keen interest to commit and provide the best possible services in line with clients' requirements and satisfaction.

2.3 Company Organisation Chart

Perintis Konsult Sdn Bhd have two main directors who both have qualifications in B. Sc. In Quantity Surveying. The following directors have a total 25 and 23 years experience with Jabatan Kerja Raya (JKR) before they became directors in Perintis Konsult. Through the years, they have gained vast experiences in consulting work and as such, they are able to manage the company until now. Perintis Konsult has four workers which are two quantity surveyors, a secretary and a technician. Survival for the long term in the construction field proved that, with good management from the directors, Perintis Konsult is able to survive to this day by having only a few employees.

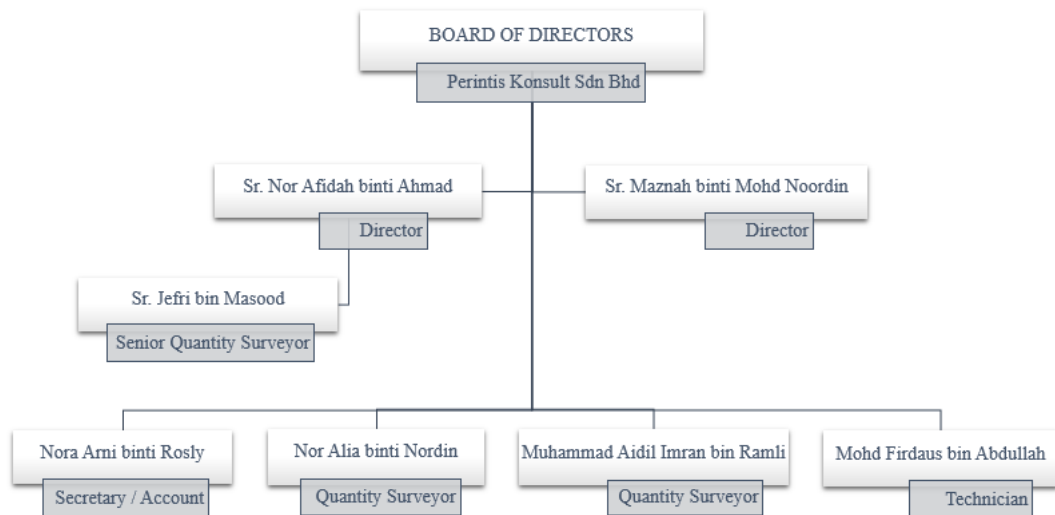


Figure 1.0: Organizational Chart of the employees.

Source: CV PKSB OCT 2021 pdf.

2.4 List of Projects

2.4.1 Completed Projects

Table 1.0: Latest completed project (within 5 years).

No.	Project Title	Client	Project Value	Year
1.	Pembinaan 9 Unit Kuarteres Dan Menaiktaraf Masjid Saidina Abu Bakar As-Siddiq, Bangsar, Kuala Lumpur.	JAWI	RM 5.40 Million	2017

2.4.2 Project in Progress

Table 2.0: List of ongoing projects.

No.	Project Title	Client	Project Value	Stage
1.	Naiktaraf Kompleks Majlis Sukan Negara.	JKR	RM 30.0 Million	98% Construction
2.	Proposed Residential At Phase R 23, Bandar Universiti Pagoh, Johor. - Phase 1 (112 Units)	Sime Darby Properties Sdn Bhd	RM 23.8 Million	96% Construction
3.	Pembinaan Baru Sekolah Menengah Kebangsaan Bandar Tun Hussein Onn, Mukim Bandar Cheras, Seksyen 001, Daerah Hulu Langat, Selangor Darul Ehsan.	KPM	RM 27.0 Million	55% Construction

No.	Project Title	Client	Project Value	Stage
4.	Merekabentuk dan Membina Loji Air 120MLD dan 2MLD Membrane, Muka Sauk, Tangki Servis, Pemasangan Retrofitting dan lain-lain Kerja yang Berkaitan Bagi Cadangan Skim Bekalan Air Kuala Terengganu Utara.	SATU	RM 797 Million	45% Construction
5.	Cadangan Membina Dan Menyiapkan Pembinaan Muzium Setem Negeri Selangor, dalam Daerah Petaling, Selangor.	JKR Selangor	RM 15.0 Million	9% Construction
6.	Cadangan Membina Mahallah LTAT di UITM Puncak Alam.	LTAT	RM 5.9 Million	13% Construction

CHAPTER 3.0

CASE STUDY (EXTENSION OF TIME)

3.1 Introduction to Case Study

Project Proposed Construction and Completion of Muzium Setem Negeri Selangor was chosen for this case study. The project is located at No. Lot Precint 213A, Seksyen 14, Bandar Shah Alam Selangor which is next to the POS Office Malaysia. The owner of this project is Jabatan Kerja Raya Negeri Selangor (JKR Selangor). This project cost RM 15.0 Million. This is an ongoing project which is still in stage 20% construction. It is still in the early stage of construction. Since the Covid-19 outbreak hit our country, construction is not allowed to continue, thus it will delay the process and the construction period has to be extended.



Figure 2.0: Front view (right side) of the project at 20% progress.

3.2 The grounds for extension of time

Construction delay may be due to the fault of the S.O., client, consultants and contractors or due to causes beyond the control of the contractor. An extension of time can only be validly granted in respect of an event which is likely to delay completion or which has delayed the completion. The S.O. is responsible for ensuring that the application submitted by the contractor is strictly in accordance with the contract provisions. The grounds for extension of time given under this clause are as shown in figure 3.2.

'... If in the opinion of the S.O. the completion of the Works is likely to be delayed or has been delayed beyond the Date of Completion ... due to any or more of the following events: ...' (Clause 43.1)



Figure 3.0: Grounds for extension of time.

The contractor's claim for extension of time must be solely on one or more of the following events as shown in figure 3.2. Based on the case study conducted for Project Proposed Construction and Completion of Muzium Setem Negeri Selangor, the application of Extension of Time (EOT) No.2 was made due to the following events:

Tuan/Puan, Per : Cadangan Membina Dan Menyiapkan Sebuah Bangunan Muzium Setem Negeri Selangor, Daerah Petaling, Shah Alam, Selangor Darul Ehsan ---“ Permohonan Lanjutan Masa No.2 (EOT No.2)” --- Adalah dengan segala hormatnya merujuk perkara di atas. 2. Kami dengan ini memohon lanjutan masa tempoh kontrak No.2 (EOT No.2) sebanyak 71 Hari atas sebab-sebab berikut : a) Kelewatan disebabkan oleh Perintah Kawalan Pergerakan 3.0 (PKP 3.0) dan, b) Kelewatan disebabkan gangguan rantaian bekalan bahan binaan semasa PKP 3.0. 3. Oleh itu, kami melampirkan kronologi kelewatan untuk semakan dan kelulusan pihak tuan. Sekian, terima kasih.

Figure 4.0: Application for extension of time No.2 (EOT No.2).

Source: Data from Perintis Konsult.

In EOT No.2, the application has stated that the delays were because of the Movement Control Order 3.0 (MCO 3.0) due to the Covid-19 outbreak. This delay falls into the category in Clause 43.1 (a) which is force majeure as provided under clause 58. Since 16 March 2020, following the Prime Minister’s announcement, Malaysia has been abuzz with the implementation of a Movement Control Order (MCO) as a measure to curb the spread of Covid-19. In line with the MCO, all premises have been ordered to close, with the exception of any premises involved in the provision of Essential Services. This project is not classified within the purview of Essential Services or be considered as critical works under the Regulations thus, construction works at this site are not allowed to operate during this period.

Moreover, Movement Control Order (MCO) has affected many production of construction materials as they are not allowed to operate. The difficulties in obtaining supplies of building materials is due to factors beyond the contractor’s control. The supplier was unable to deliver the construction materials to the site and had to be held until further notice. Hence, there will be delays in the performance obligations and resulting in a delay to the project as a whole. Force majeure is an exceptional event or overwhelming circumstances beyond the parties control that prevent the contractor from performing his obligations. The contractor’s claim for extension of time is under the force majeure category and it is provided that the suspension is not due to the fault of the contractor.

3.3 The eligibility and time of application

Each contract has its own clause relating to extension of time suitable to serve the interest of the employer. Based on P.W.D. Form 203A (Rev. 1/2020), the proper time for applying an extension is when it is apparent that the progress is delayed. The application should be made prospectively, which means it must be before the completion date. The contractor needs to submit the written notice in the event where the delay to the progress of work is continuous.

‘Upon it becoming reasonably apparent that the progress of the works is delayed ...’
(Clause 43.1)

There are provisions stating the conditions for the eligibility of the contractor to claim for extension of time. It should be used on every occasion. It is the obligation of the contractor to meet all the prescribed qualifications in order to claim for extension which are the delays are not due to the fault of the contractor or his sub-contractors. These delays may be the result of the owner, the S.O. or due to causes beyond the control of the contractor. Based on the relevant contractual provisions, it stated that the contractor can only be granted a Certificate of Delay and Extension of Time if the delay is not due to the fault of the contractor. Often it is quite challenging to determine who is responsible in the event of concurrent delays as both owners and contractors use concurrent delays as a defensive tool against each other. Hence, there are cases where the losses are shared by both parties.

Next, the contractor has taken steps to avoid delay. The contractor needs to show that they have tried their best and have taken all possible steps to complete the work on time in order to avoid delay. Project Managers play an important role in the likelihood and degree of project success. The absence of clear guidelines between the project manager and the construction workers will spark a dispute amongst them. The contractors were also asked to always keep the project on the right track, constant and effective planning to avoid any unexpected disputes arising in the project that might have caused delay on the overall project’s performance.

Lastly, instructions are not required to remedy contractor's defaults. Defaults of contractors will cause them to be charged with Liquidated and Ascertained Damages (LAD) for the extended period. The S.O. will issue a Certificate of Non-Completion to the contractor certifying that the contractor has failed to complete the works before the completion date. Therefore, they will not be entitled for extension of time and cannot also claim for loss and expense for the delay which is due to his fault.

3.4 The procedure and conditions precedent of claim

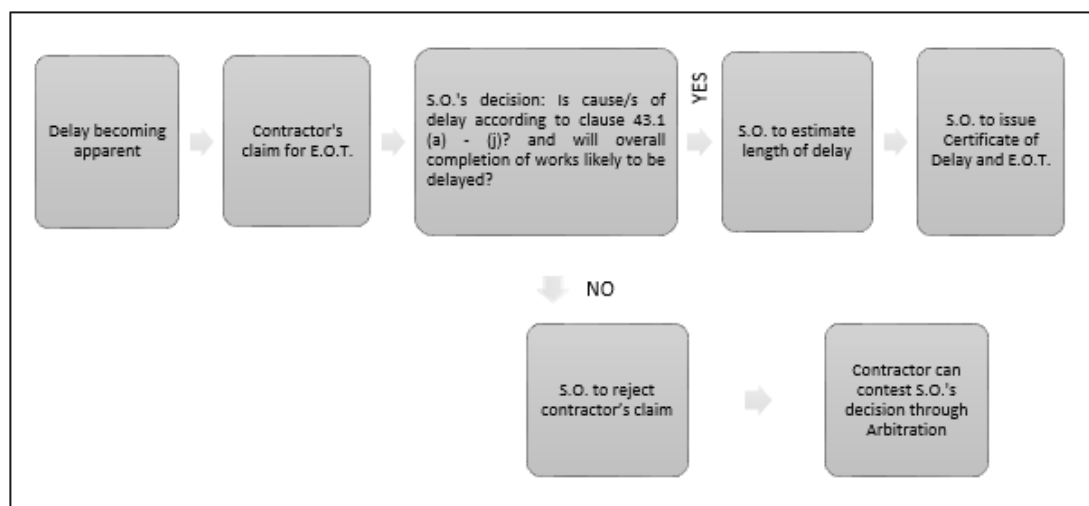


Figure 5.0: Procedure for extension of time.

In order to claim for EOT No.2, the contractor has submitted the written notice to the S.O., requesting the extension of time on 8th September 2021. Based on Clause 43.1, the notice must be submitted before the completion date, otherwise, they can be rejected. The submitted notice contains sufficient information with the supporting documents enabling the S.O. to decide on the validity of the application. Contractor's notice does state the causes of delay and the estimated length of delay.

The contractor stated there were two relevant events that caused the Museum project to be delayed which are due to the Movement Control Order 3.0 (MCO 3.0) and the difficulties in obtaining supplies of building materials due to factors beyond the contractor's control. The contractor also shows the estimated duration of delay including necessary evidence such as records of the actual chronological delays for verification by the S.O.

Next, the S.O. is responsible for evaluating and deciding on the validity of the claim submitted by the contractor. The S.O. will decide whether to approve or reject the claim based on the entitlement of the contractor. His claims should meet with both requirements which are the causes of delay need to be according to clause 43.1 (a) – (j) and will overall completion of works likely to be delayed?. If yes, then the S.O. has to estimate and ascertain the length of delay for granting extension of time to the contractor. He must inform the contractor in writing by issuing the Certificate of Delay and Extension of Time, giving a fair reasonable extension of time for completion of the Works.

However, the S.O. may reject the application that is not accompanied with sufficient information to make up his judgement. This is also to be informed in writing to the contractor. If the S.O. decides to reject the contractor's claim, the contractor can contest S.O.'s decision through Arbitration.

Based on the case study project, the S.O. (JKR Selangor) has approved the application submitted by the contractor. The contractor applied for 71 days and included all the necessary evidence for the estimated duration of delay. But in spite of that, the S.O. decides to grant 69 days only for extended time. The Certificate of Delay and Extension of Time that was issued to the contractor states the extended period of time given is for 69 days and new completion date for the contract will be on 28hb March 2023.

CHAPTER 4.0

CONCLUSION

This case study report is done to provide an overview of the consultation field works. During conducting the case study for Project Proposed Construction and Completion of Muzium Setem Negeri Selangor, it is found that Extension of Time (EOT) has relieved contractors in many ways. It enables the contractor to repudiate any liability of damages due to non-completion. In certain situations, the contractor is also entitled to claim for loss and expense due to the delay occurred. Besides that, the knowledge on procedure of claim for extension of time has been shown during conducting the case study activities. The procedure should be used on every occasion where the cause of delay occurs under the provision of P.W.D. Form 203A (Rev. 1/2010).

Furthermore, even though these seem to have small roles, it is necessary to ensure all the data and the records of any construction project are organized and be kept in a systematic way. A lot of claims have frequently been rejected by the S.O. as the contractor is unable to provide the necessary evidence required to make up his judgement. Hence, it can risk the whole process of construction to be retarded in the middle of its construction. By making a few changes, it can create a huge impact especially in the construction industry.

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