

THE PROFILE OF SUPPLEMENTARY AGREEMENT LAW CASES

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ABSTRACT

A contract creates a legal obligation upon the contracting parties. Generally, when parties enter into a contract, they are not locked up into its terms forever. If certain requirements are not met, change of contract can become a source of contention particularly if the parties contest the sufficiency of the change and their respective rights and obligations under the contract. However, it becomes norm in Malaysia to have Supplementary Agreement (SA) after execution of main contract. This can be seen through Malayan Law Journal where more than 200 cases of SA appeared from the year of 1915 to 2012. For this study, the profile of SA case law is developed to determine the most common reasons for the use of SA and the legal issues arose that made the case been referred to the Court. The criteria of profiling are types of contract, types of Court, number of SA appeared, the parties involved, reason for SA and the issues arose. The cases are based on the Malaysian cases from the year of 1990 to 2011. From the analysis, the most reason for the use of SA is identified which is due to new issues that arise after the execution of main contracts, followed by the inadequacy of main contract and complexity of main contract. While for the legal issues, the issue arose are in terms the of validity of SA's and implementation of SA. For the cases that has no issues or dispute regarding SA, the Court did not prompt any question of existence of SA and accept it as a legal document. Hopefully, by make this profiling, it will help people who are potentially involved in contract in future to prevent and minimize the dispute among parties.

ABSTRAK

Kontrak telah mewujudkan obligasi yang sah di antara pihak-pihak yang berkontrak. Secara amnya, apabila pihak-pihak memasuki kontrak, mereka tidak selamanya terikat dengan terma-terma kontrak tersebut. Apabila terdapat beberapa keperluan kontrak yang tidak dipenuhi, perubahan kontrak akan menjadi sumber pertikaian sekiranya pihak-pihak tersebut mempertikaikan kesempurnaan perubahan terhadap hak dan tanggungjawab masing-masing di bawah kontrak. Bagaimanapun, ia telah menjadi satu fenomena yang biasa di Malaysia untuk mengadakan Perjanjian Tambahan selepas kontrak utama berkuatkuasa. Ia telah dibuktikan melalui Lexis-Nexis di mana terdapat lebih 200 kes Perjanjian Tambahan berlaku di Malaysia bermula dari tahun 1915 hingga tahun 2012. Oleh itu, kajian ini dijalankan bagi membangunkan satu bentuk profil untuk mengenal pasti apakah sebab-sebab berlakunya Perjanjian Tambahan dan isu-isu perundangan yang telah berbangkit sehingga di bawa ke muka penghakiman. Kriteria-kriteria yang akan digunakan untuk memprofil kes-kes Perjanjian Tambahan adalah seperti jenis-jenis kontrak, jenis-jenis Mahkamah yang terlibat, pihak-pihak yang terlibat, bilangan Perjanjian Tambahan yang berlaku di dalam satu kes, sebab-sebab berlakunya Perjanjian Tambahan dan isu-isu perundangan yang berlaku. Kes-kes ini tersebut adalah berdasarkan kes-kes Malaysia bermula dari tahun 1990 hingga 2011. Daripada analisi ini, sebab-sebab berlakunya Perjanjian Tambahan berlaku kerana terdapat isu-isu baru yang timbul selepas kontrak utama dilakukan diikuti dengan sebab yang kedua iaitu, ketidaksempurnaan kontrak utama. Manakala bagi isu-isu perundangan adalah isu tentang kesahihan Perjanjian Tambahan dan isu pelaksanaan Perjanjian Tambahan. Diharapkan, dengan adanya profil kes Perjanjian Tambahan,, ia dapat member panduan dan pihak-pihak yangterlibat dapat meminimakan pertelingkahan kontrak.