Construction claim problems in Malaysia: from the contractors perspective

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Abstract. There is high frequency of disputes arising from construction contract claims. Even with the most expert understanding of construction contract and the most reasonable risk-allocation system, claims will continue to present problems if they are poorly managed in practice. The significantly increasing number of construction claims indicates the need for the implementation of an effective construction claim management. This research aimed at surveying the most common problems experienced by Malaysian contractors in construction project. The paper presents the survey results and main findings, which indicate that the lack of site staff awareness to proactively detect claims, inaccessibility or unavailability of relevant documents, and conflicts arising during owner/contractor negotiation are all critical problems associated with the process of claim management. The problems observed from this research could be used to solve or improve the contractors’ claim management system.

1 Introduction

Construction claims are found in almost every construction project. They have significant effect to project cost and time [1]. Claims management is the process of employing and co-ordinating resources to progress a claim from identification and analysis through preparation, and presentation, to negotiation and settlement [2]. The key objective of the claim management process is to resolve a certain problem in an effective and efficient way. Avoiding litigation and arbitration in claim settlement is a good practice that the effective and efficient way. Avoiding litigation and arbitration in claim settlement is a good practice that the

will be submitted and presented to client for assessment. According to PWD form, the claim should be submitted not later than 90 days after practical completion of the works. Upon receiving the official claim, client will assess and decide the outcome. They should act fast and avoid procrastination. The final stage is the negotiation. This process concerns the process of negotiation claim to the owner, and mutual resolution of such claim [9]. If an agreement cannot be reached and either party believes his position is correct, he should propose an alternative dispute resolution method. If this fails, the remaining choice is to take the matter to court.

2 Results

After 3 months period of inquiry, only 130 completed questionnaires returned. 110 respondents are G7 contractors registered with CIDB, 16 are G6 and 4 are G5. In order for a contractor to register with G7 grade, they need to have paid up capital of RM700,000 and can enjoy the privilege of unlimited tendering capacity. G6 contractors need to have paid up capital of RM500,000 and can enjoy the privilege of unlimited tendering capacity. G5 contractors need to have paid up capital of RM250,000 and can enjoy the privilege of tendering capacity should not exceed RM10 million. PWD 203A 2010 contract is mainly used in public project whereas PAM 2006 contract is preferred in private project. Newly introduced CIDB 2000 contract is not favoured because many contractors still unfamiliar with the contract.
2.1 Current Issues in Claim Management

Table 1 shows the most common types of claim experienced by Malaysian contractors. Top of the table is claim due to “extra work” followed by “changes in the scope of work” and claim due to the “extension of time”.

Table 1: Common types of claim in construction.

| Rank | Common Types of Claim               | Mean |
|------|-------------------------------------|------|
| 1    | Extra works                         | 4.05 |
| 2    | Changes                             | 3.98 |
| 3    | Extension of time                   | 3.82 |
| 4    | Measurement and payments            | 3.74 |
| 5    | Delay                               | 3.69 |
| 6    | Contract ambiguity                  | 3.28 |
| 7    | Error and omission                  | 3.21 |
| 8    | Site condition                      | 3.04 |
| 9    | Acceleration                        | 2.92 |
| 10   | Damages                             | 2.90 |
| 11   | Non performance                     | 2.50 |
| 12   | Suspension of works                 | 2.25 |
| 13   | Termination of contract             | 1.88 |

Table 2 shows the main reason for construction claims. The most popular reason for construction claims is due to the “design changes being introduced at the post-tender stage”. Second is due to the “project being implemented in unduly short time periods with inadequate site investigation, design work, tender and contract documentation” and the third is due to “changes in client’s requirement during the construction stage”.

Table 2: Common reasons of claim in construction.

| Rank | Common Reasons of Claim               | Mean |
|------|--------------------------------------|------|
| 1    | Lack awareness                       | 3.42 |
| 2    | Insufficient knowledge               | 3.36 |
| 3    | Insufficient time                    | 3.35 |
| 4    | High workload                        | 3.34 |
| 5    | Insufficient skilled person          | 3.34 |
| 6    | Poor communication                   | 3.29 |
| 7    | Document inaccessibility             | 3.02 |
| 8    | Ambiguous responsibility             | 2.92 |
| 9    | Ambiguous procedures                 | 2.88 |

2.2 Problems in Claim Process

2.2.1 Identification stage

As illustrated in Table 3, the major problems experienced by the contractors are: “lack of awareness of site staff to detect a claim”, “insufficient skilled personnel for detecting a claim”; and “insufficient time to identifying a claim due to high workload”. It is unsurprising that matters relating to awareness and skills of staff are the most crucial problem in the claim identification process. Site staffs are expected to fully understand contract provisions as agreed and signed by the contracting parties. The lack of awareness, skills and knowledge of site personnel caused loss of chances of the right to declare a claim. They are also burden with heavy workload and this contributes to the slow identification of claim in construction.

Table 3: Problems in Claim Identification

| Rank | Problems in Claim Identification | Mean |
|------|----------------------------------|------|
| 1    | Lack awareness                   | 3.42 |
| 2    | Insufficient knowledge           | 3.36 |
| 3    | Insufficient time                | 3.35 |
| 4    | High workload                    | 3.34 |
| 5    | Insufficient skilled person      | 3.34 |
| 6    | Poor communication               | 3.29 |
| 7    | Document inaccessibility         | 3.02 |
| 8    | Ambiguous responsibility         | 2.92 |
| 9    | Ambiguous procedures             | 2.88 |

2.2.2 Notification stage

As shown in Table 4 the order ranks suggests that the most serious problems during claim notification are “inaccessibility of documents to be attached along with the notice”, “ambiguous procedures in notice preparation”, and “poor communication/instruction to proceed with submitting the notice”. Time limit is a crucial aspect in notifying a valid claim. Having accurate site records is also another critical issue facing the Malaysian contractors. It is directly contributes from the factors of employing inexperienced and low skilled staff. Procedures of notice preparation need to be spelled out clearly and understand by parties involved. In addition, site staffs need to have good communication skill so that proper instruction can be given and received.

Table 4: Problems in Claim Notification

| Rank | Problems in Claim Notification | Mean |
|------|--------------------------------|------|
| 1    | Inaccessibility of documents    | 3.33 |
| 2    | Ambiguous procedures            | 3.12 |
| 3    | Poor communication              | 3.10 |
| 4    | Insufficient time               | 3.08 |
| 5    | Queries                         | 3.06 |
2.2.3 Examination stage

Claim evaluation is considered as a critical factor in winning a claim. The analysis of the contractors’ responses was summarized in Table 5. For the problems associated with claim examination, the most familiar problems are “unavailability of record used to analyze and estimate the potential recovery”, “inadequate time to thoroughly perform examination due to high workload”, and “poor communication for gathering the required information to analyze a claim”. Respondents indicated that record availability is very important in analyzing and estimating the expenses of claims. In this process, the contractors need to be aware of the need to check the required files and to estimate their claim’s cost by presenting accurate documents to the owner. Therefore, it is advisable for the contractors to examine claims recovery and support it by providing precise related documents. Insufficient time and poor communication still contribute to the problems in this stage.

Table 5: Problems in Claim Examination

| Rank | Problems in Claim Examination             | Mean |
|------|-------------------------------------------|------|
| 1    | Record unavailability                     | 3.28 |
| 2    | Insufficient time                          | 3.17 |
| 3    | Poor communication                        | 3.03 |
| 4    | Lack of legal                             | 2.98 |
| 5    | No standard formula                       | 2.96 |
| 6    | Ambiguous procedures                      | 2.95 |
| 7    | Ambiguous responsibility                   | 2.85 |
| 8    | Unrealistic formula                        | 2.72 |
| 9    | Insufficient computerised machine          | 2.43 |

2.2.4 Documentation stage

An effective documentation will prove the alleged claim and improve the chances of winning such a claim. The results shown in Table 6 suggest that not all information and instructions generated during project execution are kept in writing. Construction industry in Malaysia appears to be famous for consistently not documenting procedures and transactions properly. Verbal instructions given by the Superintending Officer and the inaccurate recorded information are ranked in the first and second positions, respectively. Furthermore ineffective record keeping will worsen the documentation process. The contractor needs to ensure that the owner gives their instructions in the form of written requests to the contractors. This would provide support and evidence (if needed) to the contractor’s claims. In general, the problem of claim documentation starts from the lack of appreciation by site staff on the importance of record keeping. This contributes to poor quality of site records which in turn impacts on the contractor’s ability to recover the compensation when making the claims.

Table 6: Problems in Claim Documentation

| Rank | Problems in Claim Documentation          | Mean |
|------|------------------------------------------|------|
| 1    | Verbal instruction                        | 3.95 |
| 2    | Inaccurate Information                    | 3.78 |
| 3    | Ineffective record                        | 3.45 |
| 4    | Inaccurate record                         | 3.39 |
| 5    | Document inaccessibility                  | 3.31 |
| 6    | Overdue                                   | 3.12 |
| 7    | No standard form                          | 2.98 |
| 8    | Documentation system                      | 2.86 |
| 9    | High cost                                 | 2.50 |

2.2.5 Presentation stage

Table 7 suggests that the most crucial problems in preparing a claim submission are: “inaccessibility of relevant documents to submit along with the claim”, “insufficient skilled staff for preparing a claim submission”, and “insufficient time to thoroughly prepare due to high workload”. Documentation is still the key problem in claim presentation requiring particular effective means to resolve. The respondents agreed that some documents are still ineffectively kept because on-site staffs do not realize the importance of recording such documents. Most respondents agreed that it is impossible to submit the relevant document during the claims presentation, especially where the contractors need to support their claims with accurate formal documentation. Presenting a claim requires a knowledgeable, skilled and experienced person to effectively organize the full detailed claim submission. Contractors face difficulties in identifying and hiring experienced staff in preparing a claim submission. This issue affects the claim presentation process, possibly causing the client to reject the claim. Due to heavy workload, they have insufficient time to fully concentrate on the preparation of claim presentation.

Table 7: Problems in Claim Presentation

| Rank | Problems in Claim                          | Mean |
|------|--------------------------------------------|------|
| 1    | Document inaccessibility                   | 3.15 |
| 2    | Insufficient skilled staff                 | 3.12 |
| 3    | Insufficient time                          | 3.08 |
| 4    | Poor communication                         | 3.02 |
| 5    | Ambiguous responsibility                   | 2.98 |
| 6    | Ambiguous procedures                       | 2.87 |
| 7    | No standard format                         | 2.78 |
2.2.6 Negotiation stage

According to Table 8, the main problems associated with claim negotiation are “disagreement arising during negotiation”, “unsatisfactory evidence to convince other parties” and “poor negotiation skills”. It is believed that these three problems are somehow linked. Lack of negotiation skills will give impact on the ability of the contractor to convince the owner, and hence conflicts may arise. Strong evidence is very much needed for presentation during this stage in order to support the claim and to convince the owner. In many cases, the contractors lose their claim as a result of the lack of documentation evidence therefore affecting the contractor’s position during claim negotiation. In some cases, the negotiation process could jeopardise the relationship between the contractor and the owner as a result of unsatisfactory claims preparation and negotiation. The contractors becomes the weakest party because the owner, because of the adversarial relationship, may reject the claim with very little consideration given to the contractor’s situation.

In the construction industry, the problems associated with not having experienced construction personnel with high level of negotiation skills is predictable. Most contracting companies do not have a dedicated unit or individual who is responsible for managing the claims. Normally, the duty to manage the claim process is assigned to the project manager or site engineer, who may not be skilled negotiators. Clearly, there is a need to enhance staff negotiation skills to avoid from facing difficulties and potential conflicts during negotiation with the client. Failing to do so may result in losing the claim.

Table 8: Problems in Claim Negotiation.

| Rank | Problems in Claim Negotiation   | Means |
|------|---------------------------------|-------|
| 1    | Disagreement                    | 3.74  |
| 2    | Unsatisfactory evidence         | 3.52  |
| 3    | Poor negotiation                | 3.28  |
| 4    | Adversarial relationship        | 3.12  |
| 5    | Inadequate time                 | 2.95  |
| 6    | Difficult                       | 2.74  |

In the negotiation stage, decisions by the owner are very little consideration given to the contractor’s situation. This leads to an adversarial relationship, may reject the claim with very little consideration given to the contractor’s situation. Clearly, there is a need to enhance staff negotiation skills to avoid from facing difficulties and potential conflicts during negotiation with the client. Failing to do so may result in losing the claim.

3 Conclusion

This research aimed to explore the problems related to the process of claim from contractor’s point of view by analyzing common procedure categories, distributed into six stages (claim identification, claim notifications, claim examination, claim documentation, claim presentation and claim negotiation). The study findings emphasize on the need for a good documentation system with a capable site staff that can identify a claim during project execution. These competencies must be joined so that it would allow easy accessibility to project records when needed in order to support the submitted claim. Thus, keeping relevant project information should be viewed as an essential part of project monitoring and reporting. It also appears that a standard and transparent procedure should be put in place whereby contractor’s staff would be able to follow to properly prepare the claim. This procedure should highlight the importance of linking the claim to cost recovery so as not to disadvantage the contractor. The contractors can increase their claim management efficiencies by deliberately scrutinizing the contract provisions, enhancing the cooperative atmosphere among all parties, establishing the good claim management data collection and documentation, promptly notifying to the client the event that change their statuses, and signing another separate contract for the large-amounted variation order. The government can help the contractors by improving the relevant laws, regulations and standards and establishing the claim settlement organization.

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