

# **COST and CONTRACT ADMINISTRATION in CONSTRUCTION**

**Divine Perspectives**

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# Chapter 7

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## Investigation of Construction Contract Subject Matter in Meeting *Shari'ah* Compliance

Nur Ayunni Azmin and Siti Nora Haryati Abdullah Habib

### Introduction

According to Khairuddin (2002), the term 'construction' refers to the process to build physical structure, infrastructure, all civil engineering works and related activities such as building, repairing, maintaining, renovating, demolishing and erecting building or structure. Since the construction is unique and custom in design and built, the construction activities need to be managed effectively (Reve & E Levitt, 1984). That is why the needs of the construction contract are essential to manage the construction activities. Maher (1983) mentioned that the construction contracts act as the medium to manage construction process in order to achieve the ultimate goal of construction which is to produce the building and structure. A construction contract is a written agreement function as a tool that binds contracting parties to carry out obligations during construction process based on terms and conditions express in the contract (Zaghloul & Hartman, 2003; *Inland Revenue Board Malaysia, 2009*; Singh, 2005). Thus, construction contract is crucial to carry out the construction operation and formation of construction contract is pre-requisite to perform this operation.

In Malaysia, construction contracts are governed by the general elements and rules of Contracts Act 1950 (*Act 136*) (Siti Nora, 2010). As the construction contract is governed by the Contracts Act 1950, there are many principles and conditions applied that have to be followed by

contracting parties which relates to the validity of contract, the contingent of contract and the performance of contract. The terms and agreement of contract will bind the parties that are involved in the construction contract. As there are many types of documents in the construction industry, the elements of the contract should be made clear between the contracting parties so that unforeseen event and condition can be dealt effectively. The elements of the formation of contract include offer and acceptance, consideration, subject matter and legal capacity (Hughes et al., 2002). Regarding to those element, research only covers on the current practice of offer and acceptance during formation of contract is in compliance with *Shari'ah* or otherwise (Siti Nora, 2010). Since subject matter of a contract is an essential element to ensure the validity of contract, it is appropriate to conduct a study on subject matter in construction contract.

Conceptually, *Shari'ah* refers to a set of rules, regulations, teaching and values governing the lives of Muslims. Feldman (2008) defines *Shari'ah* as a religious code on the life of Muslims and the purpose is for the best interest of human on earth by protecting the human religion and mind. *Shari'ah* is not only for Muslims, but it is revealed for all human on earth. Imam Al- Ghazali stated that Allah revealed *Shari'ah* in order to achieve justice, thus it will benefit human on earth. Shihab (2011) explained on the objective (*maqasid*) of *Shari'ah* as nurturing the righteous individuals, establishing justice, and realization of benefits while (Al-Allaf, 2003) refers *Shari'ah* as to protect or secure the life of human by a set of rules and regulations based on the divine sources of Islam which are Al Quran, Al-Sunnah, *ijma'* and *qiyas*. Thus, activities in man's daily life should be made in line with *Shari'ah*.

As Malaysia is an Islamic country where the majority of citizens are Muslims and their religion is Islam (Najib, 2012), nation's activities should comply with *Shari'ah*. Besides, Islam teaches its followers every aspect of human life relates to Islamic belief, ethics and social behavior (Khan, 2001). It is only appropriate that contracts should be made in alignment with Islamic teachings such as the elements of subject matter in contract are complying with *Shari'ah*.

*Shari'ah* compliance contract is an agreement on particular transaction between two or more parties and it contains obligation on