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**INTERNATIONAL JOURNAL OF ENGINEERING SCIENCES & RESEARCH  
TECHNOLOGY****LITIGATION AS A CONSTRUCTION DISPUTES RESOLUTION:  
A COMPREHENSIVE STUDY TO IMPROVE JUDICIARY PERFORMANCE****Kemala Hayati**

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**ABSTRACT**

The complexity of construction process, documents, and contractual term potentially cause higher dispute because of misinterpretation to contract contents. Hence, claims and disputes cannot be avoided in the construction project. The success of construction project highly depends on effective resolution. Claims and disputes resolution method through litigation or judiciary help in alternative method problem solving. It means the action to verdict can be insisted effectively to lose party and it has law power in where the claims and disputes are verified. The objective of the research is to identify caused factors which potentially resolve the claims through litigation or judiciary as well as to develop information system based resolution in construction claim management, such a comprehensive judiciary procedure and shorten time consume. As result, necessary cost can be reduced lower and the outcome can be gained from optimum judiciary process.

**KEYWORDS:** Construction Claim, Disputes, Litigation, Resolution**1. INTRODUCTION**

A Construction project is a complex and competitive activity which utilize new standard, advance technology, additions and changes as per requested by project owner. Owner, contractor, and consultant experience many problems in project implementation with the existence of claims and disputes. Though the success of project completion is believed depends on contractor, consultant, and owner cooperation, conflicts always emerge because of there are different perspectives about many aspects in design and construction [1]. If conflict is not managed well, it will turn to a dispute. The dispute is one of main factor that prevent the success of construction project completion which requires claim process [2]. So that, construction law issue becomes one of important problem [7]. The process of issuing dispute in construction industry arises in case the submitted claim cannot be resolved. Meanwhile, claim occurs because of the conflict is not managed effectively and no balance in the construction risk. A number of disputes are based on: (i) failure in contract documentation, (ii) errors, defects, and omissions, (iii) failure in actual cost, and (iv) the stakeholders involve in the project [4]. Claims and disputes in construction have major impact in project implementation, such in cost and time [3]. So that, the success of construction project really depends on effective claims resolution [6]. Claim and dispute resolution method without litigation or judiciary have more benefit in shorter procedure of time that can lead to lower cost, non publicity or closed, so that any confidential information or business data do not expose to public and more focus in win-win solution. Even though, this method weak in goodwill of both parties to follow the verdict sincerely. Claim and dispute resolution method through litigation or judiciary is conducted effectively to lose party and it has strong law power in the country where the claims and disputes are verified. Despite, litigation can be held longer and requires higher cost [5].

**2. METHODS**

Align with the research objective, to identify potential cause factors that possibly resolve claim through litigation and also to develop a construction claim resolution in comprehensive manner such judiciary procedure. Hence, this research design is consisted of: research strategy selection, survey, and expert judgment. The data collection process is conducted through literature study, questionnaires, and interviews with expert in order to achieve the research objective. The applied research method as reference in the research is descriptive statistic analysis and parametric statistic correlation. By applying these methods, required data to describe correlation between both





variables can be extracted from each sample. The analysis applied in this research is descriptive statistic analysis, validity test and reliability, risk ranking analysis based on risk management. The validation of research result is conducted by expert in order to gather inputs such action and response to dominant factors to improve the performance of judiciary.

### 3. RESULTS AND DISCUSSION

From the result of data processing and analysis, it is identified risk rating and how to response and control potential risk that affect performance of time and cost in judiciary. Based on these information, the improvement on trial procedure of civil offense in judiciary are arranged.

#### *Identification of Cause Factors and Resolution*

In previous risk identification and validation process, there are 33 risk factors which are divided to several variable indicators. Risk identification survey result show few risk factors which are categorized as 7 high risk. After detail of variable with high risk weight, in next step risk response is identified. The possible improvement to increase performance of time and cost in judiciary is by improving civil action procedure in the judiciary. This procedure can be improved by using digital information technology through web-based and application in each point. The system will be applicable in every step: (i) preparation step which are registration, offense file submission, and electronic call: (ii) trial step; (iii) post trial step.

#### *Improvement of Civil Offense Procedure*

From previous result of analysis, the next step is to develop and improve civil offense procedure in judiciary. The procedure can be improved by using information technology system through web-based and application in each point.

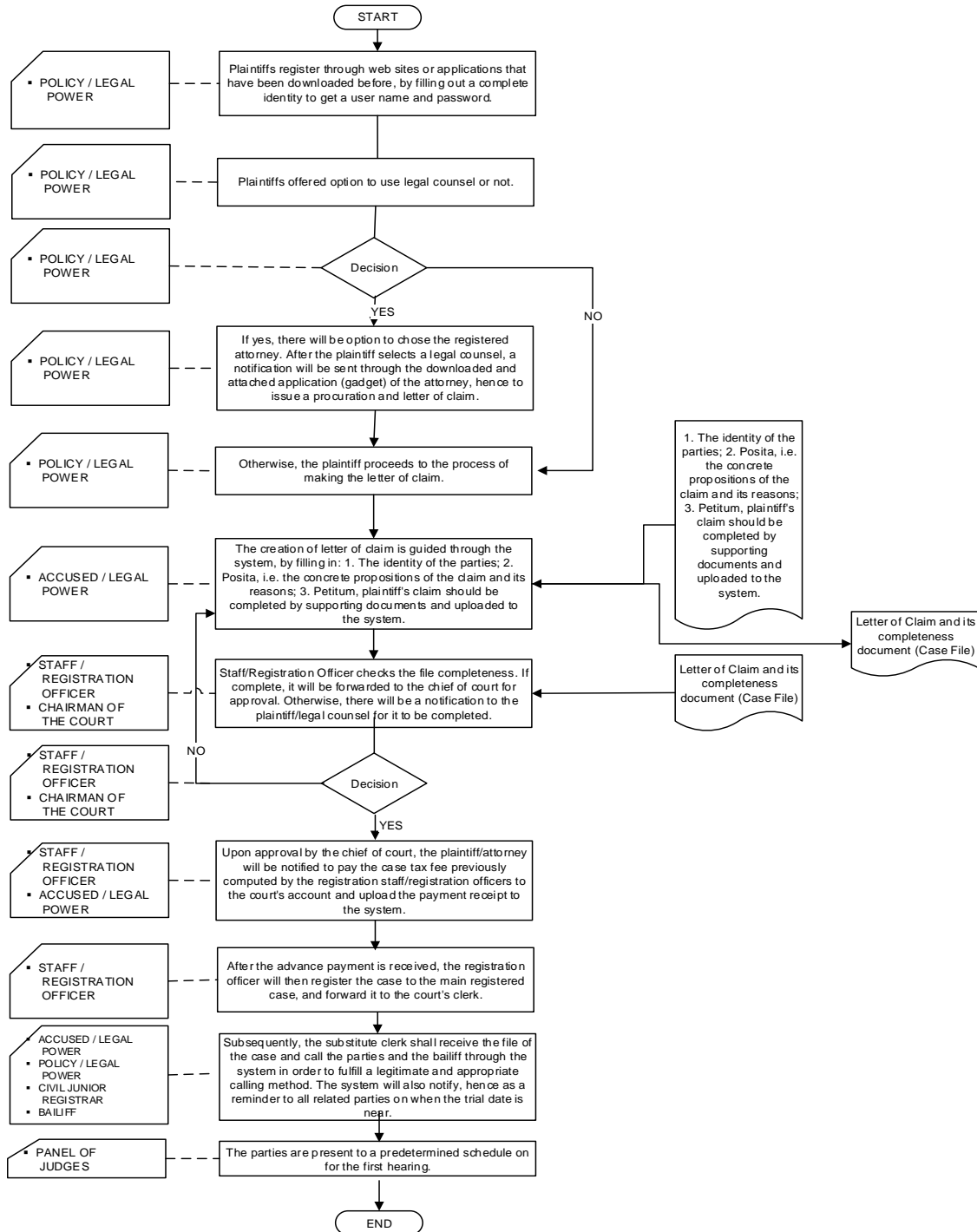
##### 1. Stage for Trial Preparation

In trial step, system will be integrated to all judiciary and integrated with electronic devices of the respective parties, such as: judges, substitute committees, curators or the substitute, and also the litigants and their legal counsel, so each party can be informed or reminded about trial schedule or any important matters. Flow chart of improvement in trial step which are registration, offense file submission, and electronic call. The improvement of civil offense in trial step or trial registration. Those are:

- a. The plaintiffs do registration through website or application which has been downloaded previously. After receiving the account, the plaintiffs will be guided by system about how to get legal counsel and to create lawsuit letter. Next, the plaintiffs upload supporting documents into system.
- b. After all necessary matters completed and approved by Head of Judiciary, the system will inform the plaintiffs to pay down payment fee for the case.
- c. After the payment is received, the system will automatically appoints Board of Judges, Substitute Committees, and Substitute Curators that will handle the case and on duty. System will also define the trial schedule by considering schedule of each judge, available time of judge to check the file, and study the case, availability of trial room, and also domicile of the parties. Next, system will call the respective parties.



Figure:



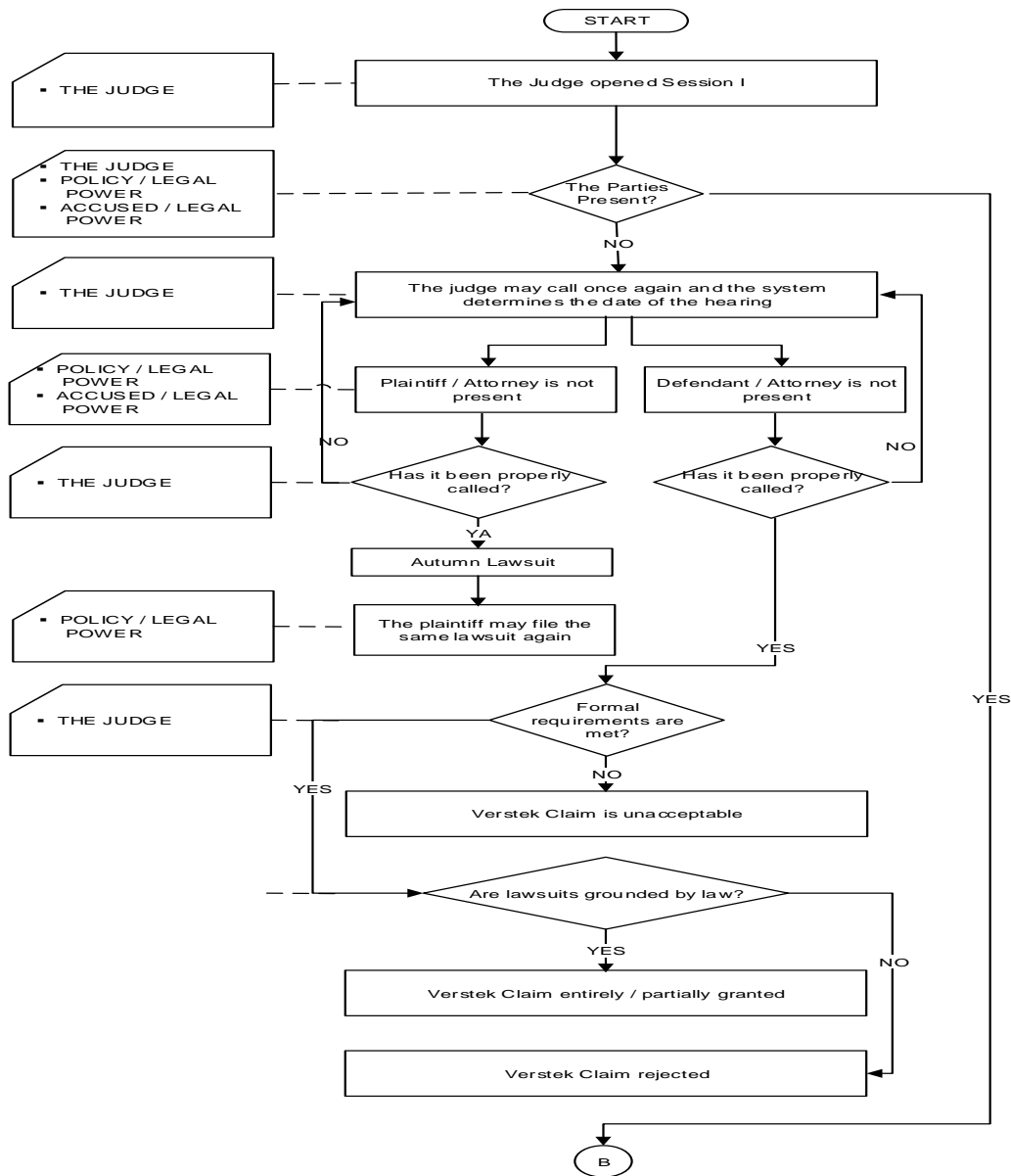
Stage for Trial Preparation

2. Stage of Trial Process

Therefore, in the steps of trial process, all involved parties will use electronic devices in the process such claim submission, correspondences, verification, and so on. In this electronic trial, if necessary, each party and judges

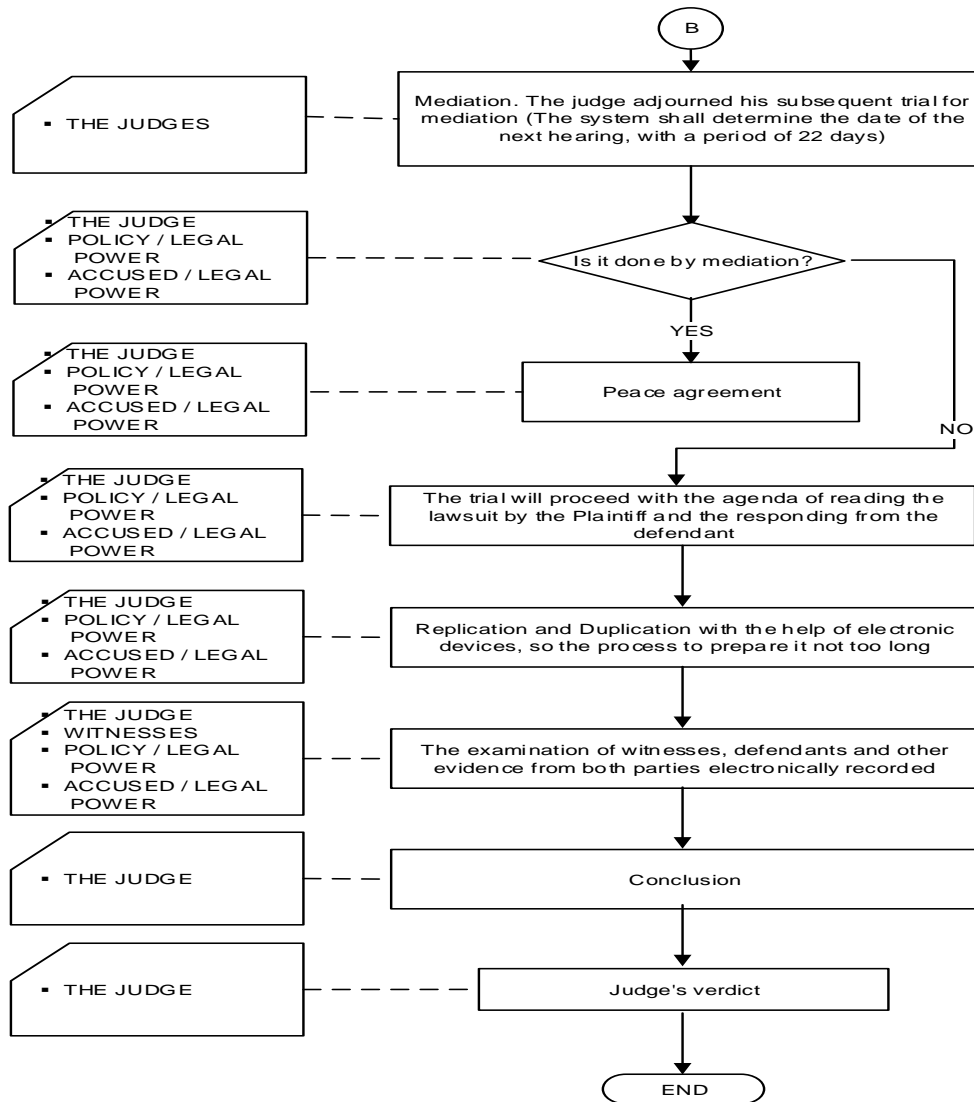
possibly see the issuing file in the available electronic devices. In addition, all process is recorded electronically and support devices such sound system and teleconference are available as well. To manage and identify few things before a court is conduct is held, chat room feature is also available which will be automatically transcribed to guarantee the transparency, in order to find the efficient way to interact day to day without physical meeting boundary.

Figure:



Trial Process in Judiciary (I)

Figure:

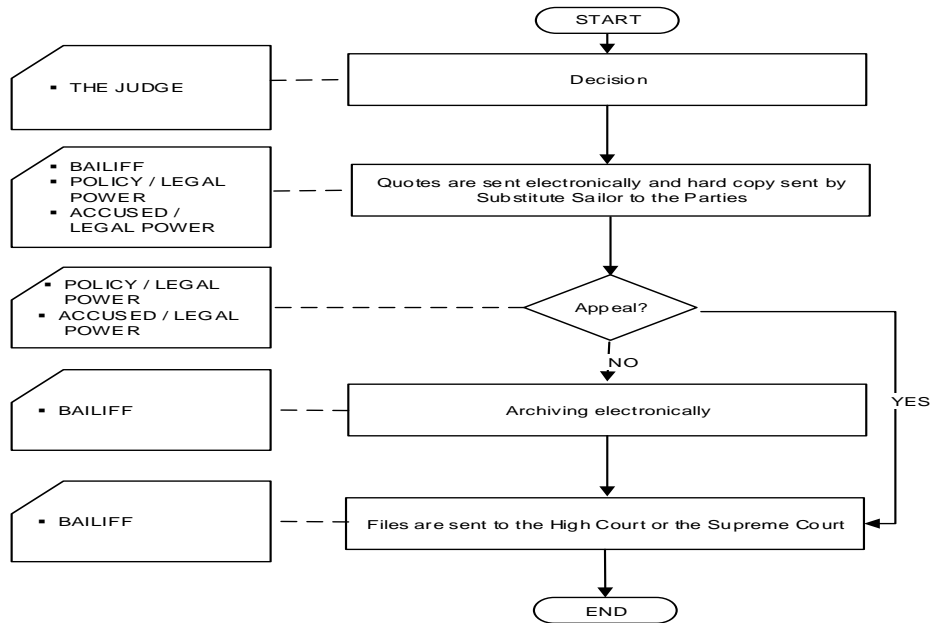


*Trial Process in Judiciary (2)*

Explanation for trial procedure as describe in Figure 2 above as below:

- a. All involved parties in the trial will use electronic devices to proceed claim submission, correspondences, verification, and so on. In this electronic trial, if necessary, each party and judges possibly see the issuing file in the available electronic devices. In addition, all process is recorded electronically and support devices such sound system and teleconference are available as well.
- b. To manage and identify few things before a court is conduct is held, chat room feature is also available which will be automatically transcribed to guarantee the transparency, in order to find the efficient way to interact day to day without physical meeting boundary. This digital trial room can be solution for main or dominant factor which is complicated and time-consuming correspondences in the trial process. The correspondences can be initialized in digital trial room first till complete, so what left in the trial day is the announcement of the decision. As result, there is no more additional time for any parties to review and arrange the response. Next, post-trial procedure which is further legal process submission and handover the copy of verdict are described.

Figure:

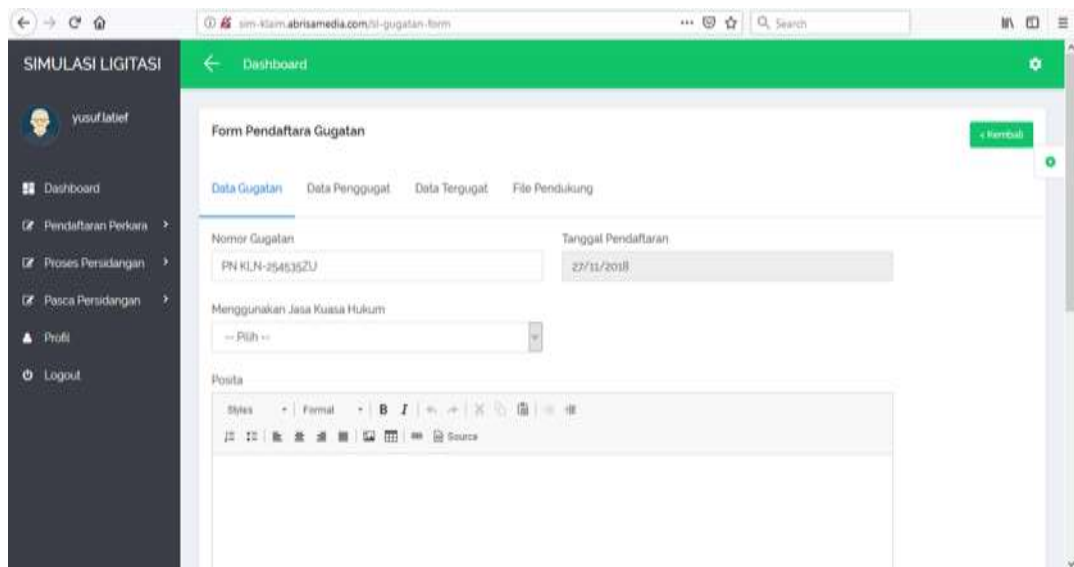


Post Session Procedure

Flow chart of the improvement on post-trial above can be described as below:

- A copy of verdict will be automatically sent by system to the parties once it is decided by board of judges. The system will also publish the verdict through judiciary website.
- The system will automatically sent the file electronically to next judiciary, whether a Supreme Court, in case the parties decide to proceed further legal process.
- The system will also automatically archive the file electronically.

Figure:



Web Based of Judiciary



#### 4. CONCLUSION

Construction claims have a major impact in project implementation, i.e. for cost and time. Hence, the success of a construction project majorly depends on the effective resolution of the claim. Though, many parties in construction industry agree that litigation or judiciary is not a best solution since it can dismiss or erase profit and damage good relationships, but it is a traditional and main method for claim and dispute resolution in construction industry. Result of research that have been conducted shows main or dominant cause factors and also analysis of risk response. The prevention effort can be done to improve performance of time and judiciary cost is by developing a comprehensive resolution for construction project claim management through litigation method or judiciary based on information system.

#### 5. ACKNOWLEDGEMENTS

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