

Legal Factors in the Nigerian Construction Industry

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ABSTRACT

The purpose of this study was to review literature on various legal factors in the Nigerian construction industry (NCI). This research utilised various sources of information from previous studies on conference papers, articles in journals, and so on. Various keywords were utilised to search for the information related to the subject matter of this study. Moreover, some of the legal factors revealed from literature are regulations regarding the environment, professional codes of practices, health and safety regulations, permit, tax and insurance, interpretation of contractual documents, fiduciary relations, misrepresentation, incapability of procurement system, right of clients to change design, avoidance of responsibility, and ambiguity of work legislation. The study likewise discusses legal theories such as natural legal and legal positivism theory. Thereafter, the legal principles in the NCI were discussed. However, this study increases the knowledge of construction stakeholders on legal factors in the construction industry. It is highly recommended that all factors that can result to legal issues should be avoided, in order to improve the efficiency of the NCI.

Keywords: Construction industry, Legal factors, Legal principles, Legal theories, Nigeria, Construction industry

INTRODUCTION

Legal factors are external components which illustrate to how the law influence the way an industry operates and how customers or clients behave. In the construction industry, law is often used to keep up the existing state of affairs and has additionally had a basic task in controlling and legitimating the processes of progress. It is the tools for presenting thoughtful development as well as accommodating diverse interests. Based on the assertion of Deepanker and Priya (2013), the legal factors are issues associating to contract, legal validity of the contract, damages and so on. According to Hendri and Pierre (2018:154), construction law emphasizes on instituting and administering the contract. The relationships between the contractor and the client are all complicated and significant towards the accomplishment of the project. Though, this current study is significant, because it enhances the knowledges of construction stakeholders on various legal issues pertaining

the Nigerian construction industry. However, managing a building project necessitates project management understanding as well as a miscellaneous variety of skills and capabilities such as technical, general, leadership and entrepreneurial management skills. A study conducted by Quapp and Holschemacher (2014), emphasised that construction law plays an essential role in the construction industry. Though, the practice of contractors is not only dominated by solving technical situations but also by law. However, dealing with legal issues concerns both the contractors and the clients involved in the construction project, that is why understanding about legal factors will become more essential pertaining the construction schedule in project management. Ruya et al. (2017) emphasised that commonly in all nations, construction regulation authorities are recognised to harmonize construction laws establishment in statutes that might oppose one another, limit uncontrolled and unhindered physical scheduling of buildings as well as construction, regulate and impose the implements on the usage of the construction building code, avoid relaxed access as well as infiltration of incompetent contractors, and enhance on the bureaucratic necessities and processes in endorsement of building plans. Though, since legal factors is among the major issues affecting the performance in the construction industries, therefore, this particular study reviewed literature on legal factors in the construction industry. Also, various legal theories were discussed in this study.

LEGAL FACTORS IN THE NIGERIA CONSTRUCTION INDUSTRY

According to Mohammed (2018), the legal factors affecting construction industry in Nigeria are gradually becoming difficult, with substantial consequences on performance. It is problematic for construction firms to function in the absence of facing numerous policies influencing each phase of the segment. He stated that there are constantly a countless of laws that construction sectors must abide with such as regulations regarding the environment, professional codes of practice, health and safety laws, permits, tax and insurance laws. The adjustments in any of these laws are regular since construction industry frequently encounter issues when these ascend during the construction phase. Mahtab and Ali (2003) opined that traditionally construction has been liable to environmental law; several policies have ruled its design as well as site practices. Though, conformity with policies only would not avail in the time of such hasty social as well as technological transformation. However, regulations are commonly only signs for the slightest stages of required standards and consequently are under constant amendment.

Moreover, pertaining to the professional code of conduct, Vee and Skitmore (2003:4) emphasised that professionals not excluded from the common principled behaviours such as commitments, duties, and responsibilities that are obligatory on ordinary individual and are commonly bound by a group of regulations, methods or kinds of conduct dispositions that govern the way the profession is practiced. Hence, in respect to the health and safety regulation as among the legal factors in the construction industry. Ghazali et al (2014) emphasised that, health and safety regulation is to guard the workers from accident, injuries as well as hazard from the occupational workplace, insecure

atmosphere and so on. Though, the Occupational Safety and Health can be designated as act which offers the legislative framework in terms of safeguarding the safety, health as well as welfare among the entire workforces in a specific construction project. Alternatively, it is likewise had been recognised to safeguard others against hazards to safety and health which in connection of the undertakings performed by the persons at the workplace. Moreover, permit is also a legal factor in the construction industry. Tansatab (2016:151) clarified that building permits grant endorsement to potential developers to build structures in appropriate environments. The building activity must take place within a recognised time frame as well as in agreement with national building regulations. However, the permit is a legal document and covers any assets whose strategies are judged to be appropriate for implementation as well as following human dwelling. Furthermore, in order to completely recognise the issue of building permit in most developing countries, it is essential to comprehend the practice in other jurisdictions. Take for instance, Fuseini and Kemp (2015) specified that the CAP 84 in Ghana is grounded on whose procedures building permits have mainly been issued was a product of Britain's endeavours to reorganize preparation efforts in metropolitan Britain after the Second World War.

Besides, among the legal factors in the construction industry is insurance law. Tworek and Tomechi (2012:645) specified that contract decision principles and a normative model of an insurance contract, encompassing all-inclusive clauses describing parties' rights and commitments, are grounded on legal assumptions provided in the national legislature. Mostly, there are specific diversities between legal systems. However, when investing in a certain nation, it is advisable to thoroughly analyse the legal solutions which are referred to as acceptable there. Take for instance, in Poland as a country. The format as well as content of such a contract are well-defined in legal acts and various executive principles. The major basis of law which denote to insurance contracts is the Civil Code which, in article 805-834, explained the normative model of such a specific contract. Queen and Sateech (2018) indicated that construction insurance is highly essential as it encompasses the monetary deficit, product liability, public expenses, and legal costs. However, contractors are accountable to handle the hazard engaged in during the project. Contractors move the hazard to the insurance firms and in several circumstances to the sub-contractor. In addition, it is vital for the contractor to be conscious of numerous insurance regulations offered for the construction industry and have understanding to choose decent insurance regulation for their construction work. Farazieraet et al (2010) conducted a study in which some key legal issues were revealed as interpretation of contractual documents, fiduciary relations, doctrine estoppel and waiver, misrepresentation. Also, a study conducted by Fan et al (2018), legal factors surrounding in the construction industry were discovered as incompatibility of procurement system, inadequate early involvement of contractors, liability, unclear rights and responsibilities, right of client to modify the design, privity of client and right to depend on precision of models, evading of obligation under means and methods and spearin doctrine. Kishan et al (2014) highlighted some legal factors which are risky to building construction projects such as uncertainty

of task regulations, struggle to get permits, deferred dispute resolutions, legal disputes during the construction stage amongst the stakeholders of the contract, no expert arbitrator to assist resolve fast. However, legal issues can affect the performance of stakeholders in the construction industry. Truong and Ninh (2017) revealed four legal issues on construction contracts termination such as techniques for developing legal regulation, time of construction contract termination, compensation liability for damage due to construction contract termination.

LEGAL THEORIES

i. Natural Legal Theory

The natural legal theory is a top-down method, recognises the interconnectedness between law's (of nature) and decency's irreducibility to constructive and actual laws. Some natural legal theorists contend that there are worldwide and rational laws that are fundamentally beyond human laws and are ascertainable merely by human reasonableness (Agustin, 2016). However, since natural laws occur factually per se autonomously of the subjective will of any individual, appropriateness and unfairness is outright and that all sensible human beings have the responsibilities and, also, are obliged to obey them.

ii. Legal Positivism

Based on the assertion of Fernando (2011), a middle technique to legal theorizing, asserts that laws are postulated by the state or occur feebly with human will and legal position apply merely to construction team in a certain construction industry. It sights laws only as man's establishment rather than from any other bases (e.g., Hart's view). In other hands, among legal positivists, law is a creation of human motive in the form of directives, hierarchical standards, union of primary as well as secondary regulations, social facts. In legal positivism, a law does not need to fulfil any kind of moral content to be valid.

OVERVIEW OF LEGAL PRINCIPLES IN THE NIGERIAN CONSTRUCTION INDUSTRY

The perceptions of overall principles of law in the Nigerian construction industry has been conversant in continental legal theory as one of the bases of law, either legitimately listed as such, or fundamentally exist in promulgated law, or both (Jordan, 2010:110). However, the meaning of legal principles is very complex, since principles at times are delivered to be legal norms, while at times are considered as standards upon which legal rules should be grounded. According to Black et al (2007:192), the term principles can be used only to denote to general rules, or likewise to recommend that these rules are indirectly progressive in the understood or unambiguous hierarchy of norms than more comprehensive rules: they express the vital obligations that all must perceive. Kasmiasi et al (2018) describes principle in the construction industry as a general proposition stated in general terms without signifying

precise methods of undertaking it, which are applied to a various action to be the appropriate clue for that action. According to Ruya et al (2017), in Nigeria, there are little working National Standards relating to entire construction sectors such as buildings, roads and several of them which are not recognized. Due to this, the designers utilize majorly British as well as American Standards and Codes even though the actuality of local necessities are regularly diversified. Based on the assertion of Edinburgh (2003), regulations are guidelines implemented by government and supported by various effects, normally destructive ones in the way of punishments. Whereas a regulatory framework simply means a formation of principles and the methods utilized to implement them. These are usually formed by industry governing members to control the certain activities. Additionally, construction law agencies eradicate corruption instances in the construction industry, highlight on both material, quality and contractor efficiency, and revise the building code to guarantee significance (Nahinja, 2014). However, construction regulations are constitutional tools setting out the least legal necessities for tasks and relate mostly to the health, safety and wellbeing of the employees that must be deliberated when scheduling construction operations and throughout the real construction phase.

METHODOLOGY

This study is focused on legal factors in the Nigerian construction industry. Pertaining to this study, various source of information were thoroughly read such as previous conference papers, article in journals, books, dissertation and books. Firstly, the meaning of legal factors was well elaborated and discussed based on the assertion of previous researchers. Then, the key findings on legal factors from previous studies were clearly revealed and discussed. In this study, various key words were used to search for the information related to the subject matter of this article. The keywords are legal factors, legal theories, legal principles, Nigeria, construction industry. Moreover, the key findings were the factors that were common and also identified as notable legal issues in the construction industry.

CONCLUSION

This study has reviewed literatures on numerous legal factors in the Nigerian construction industry. It was discovered from the literatures that legal factors influencing construction industry in Nigeria are steadily becoming problematic, with notable consequence on performance. It was well-clarified in the literature that, traditionally, the construction sectors have been subject to environmental law. In this study, the key findings on legal factors as revealed form the numerous literature review such as regulations regarding the environment, professional codes of practices, health and safety regulations, permit, tax and insurance, interpretation of contractual documents, fiduciary relations, misrepresentation, incapability of procurement system, right of clients to change design and avoidance of responsibility. Furthermore, legal

theories in the construction industry such as the natural theory and legal positivism were discussed in this study. It was emphasized that natural theory is a top-down approach, which recognizes the relationship between laws of nature. Conclusively, the overview of legal principles in Nigeria were elaborated in this study. It was emphasized that legal principles can be utilized only to denote to general rules, or to suggest that rules are implicitly developed in the understood hierarchy of norms than more integrated rules. However, this study will be benefits to the construction stakeholders based on the enlightenment and better understanding of key legal factors in the construction industry. Therefore, it is highly recommended in this study that all factors that can lead to legal issues should be avoided, in order to improve the efficiency in the Nigerian construction industry.

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