



Fast Track Arbitration in Construction Industry: A Systematic Literature Review Identifying the Key Factors and Challenges for Current Trends

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Abstract

In the construction industry, differences in perceptions may exist among project participants, therefore, conflicts are inevitable and can quickly turn into disputes. It can be resolved or settled through litigation and Alternative Dispute Resolution (ADR). Arbitration is the most established and well sought-after method. Even so, the arbitral process takes a long time which leads to the fast track arbitration approach. It is expected that the fast track arbitration approach can minimise the time and optimise the cost. However, to date, there is limited established data on the application of fast track arbitration. The present review is trying to compile the key factors and challenges of fast track arbitration over the last eight years within the construction industry, from August 2010 to April 2018. The systematic review was limited to eight indicators: i) willingness of parties, ii) delay in proceeding, iii) cost controls, iv) time consuming, v) knowledge and awareness, vi) arbitral tribunal reputation, vii) expertise in arbitration, and viii) clear guideline. Literature searches were conducted using predefined keywords in six major databases, including Hein Online, Elsevier, Web of Science, Lexis Nexis, ASCE, and ProQuest. The abstracts and full-text articles of potentially relevant papers were screened to determine the eligibility. Data was abstracted for 36 eligible articles. The review primarily attempted to seek answers to the following two questions: (1) What are the different research approaches used to study fast track arbitration? (2) What is the status of recent publications on fast track arbitration? This study addresses the recent publications revealing that while fast track arbitration is evolving, there is still a gap in the application of fast track arbitration on its benefits. Thus, the findings may act as a catalyst for conducting further research in this field of study.

Keywords: *Alternative Dispute Resolution (ADR), Fast Track Arbitration, Arbitration, ADR method.*

1. Introduction

The construction industry is the driver of economic growth for the nation. The strong performance of the construction industry is attributed to the mega projects implemented by the government through the Public Private Partnerships, the Economic Transformation and the various Economic Corridors [1]. Over the past three years, the country saw the launch of 195 projects under the Nation Key Economic Areas (NKEA) listed in the Economy Transformation Programmed and these projects are expected to contribute RM144 billion to gross national income. Disputes between parties of construction projects are relatively common. Time is the life blood of the industry [2].

As the volume of disputes increases various reasons such as cost, delay, and uncertainty of outcome are among the motivating factors for the application of alternative means of dispute resolution. Alternative Dispute Resolution (ADR) encompasses a variety of techniques such as mediation, adjudication, and arbitration. Arbitration is the most established and long-standing technique. This technique has gained popularity as a substitute to litigation due to confidentiality and to avoid unnecessary delays with excessive cost [3]. In order to meet the increasing need for speed with more efficient tribunal proceedings, several institutions have developed their own set of "Fast own sets Track" arbitration rules that also known as expedited procedures. Arbitration has led to complex resolutions with extended and costly proceedings where parties end up frustrated,

thus it is expressly recommended to set out the fast track arbitration rules clause [4].

There is growing interest regarding fast track arbitration, yet there is a scarcity of systematic, extensive review of the recent research and concern on fast track arbitration [5]. This paper seeks to explore the status of the research publications on the key factors and challenges on fast track arbitration. The review was conducted with two research questions in mind: (1) What are the different research approaches used to study fast track arbitration? (2) What is the status of recent publications on fast track arbitration? The review paper is structured as follows, the first section describes general explanations about fast track arbitration and follow up with methodology used for the Systematic Literature Review. The next section presents detailed review of the collected material and discussion based on the findings of the review. Last but not least section concludes the review, presents the research contributions and research limitations.

2. Litigation and Alternative Dispute Resolution (ADR)

The construction industry is regarded as one of the most conflict and dispute-ridden industries, which has resulted in it being one of the most claim-oriented sectors. Conflicts commonly happen in project-based organisations. However, they would intensify into



disputes if the involved parties could not achieve agreement between each other. Once a conflict ascends, disputants normally attempt to negotiate and settle the arisen issues regarding the entire construction project [6], [7]. Therefore, Alternative Dispute Resolution (ADR) is a technique that has extended its reputation as a mean to manage conflicts and disputes. ADR is an assimilated and designated mean to evade and resolve project disputes in construction projects [8], [9].

Litigation in the civil court serves as the standard dispute resolution process for the modern justice system [10], [11] and there are four common types of ADR that can be used in resolving construction project disputes, including 1) arbitration [12], 2) adjudication [13], 3) negotiation [6], [14] and 4) mediation [15]. In practice, the litigation procedure always comes in the first place compared to the other four (4) types of ADR methods [12].

However, during the implementation of ADR, the rate of success is much contrasted to the various problems in construction projects. Hence, the process of litigation now has several difficulties including elongation of time, slowness and disparity of legal procedures and hearings [16]. Due to that, arbitration has established itself between the choices of types of ADR method for dispute resolution.

In Malaysia, arbitration is divided into two folds which are domestic arbitration and international arbitration. Domestic arbitration is created based on the English Arbitration Act (2005) that was successfully amended in 2011. While for international arbitration, Malaysia participated as a signatory to the 1968 UNCITRAL New York Convention which enables the newly named Asian International Arbitration Centre (AIAC) previously named by Kuala Lumpur Regional Centre for Arbitration (KLRCA) awards to be enforceable in 48 countries [18]. In the year 2018 marks the 40th year of the Centre's existence which has grown to become a globally – recognised niche ADR hub. The Arbitration (Amendment) Act 2018 was passed on 10th January 2018, signifying the name change which part of more extensive rebranding that aims to strengthen its regional footprint and presence further globally. It has been increasingly used as a method of dispute resolution that is initially used in construction disputes yet has slowly become popular in commercial dispute resolutions [18].

The common reasons for ineffective arbitration are extensive time and over expenses. It is suggested that new techniques of dispute resolution may be introduced to overcome the existing issues in order to bring satisfaction to users [19]. In the past few years, Malaysia has been in a quest for an efficient and reasonable dispensation

of justice and a better dispute resolution technique that is needed addressed for future enhancement within the construction industry [20]. Moreover, the process of arbitration which is conducted in private and with high confidentiality causes a surge in procedure complexity of procedural and the genuine positive of arbitration are diminishing that is considered as replicating litigation [8].

2.1. Fast Track Arbitration

International arbitration has become the preferred means of resolving cross-border disputes in the construction industry. However, there have been growing complaints that the process has become more similar to common law litigation, with interim applications, extensive disclosure and lengthy witness examination, resulting in a lack of speed and disproportionate costs. To address such criticism, many arbitral institutions have introduced fast-track rules that also known as expedited arbitration in recent years [21].

The fast-track rules which have been adopted by several institutions are not identical. However, there are common elements in all sets of rules which can be said to be key characteristics of fast track arbitration in general which including the dispute dealt by the way of sole arbitrator, limited number of permissible submission, specified limited time for filling each submission that given a limited scope, no hearing take place unless requested by the parties, the arbitrator dispense with providing reasons in the award and limited short time given to the arbitrator to issue the award [2].

In Malaysia, Asian International Arbitration Centre (AIAC) had first introduced Fast Track Arbitration in 2010 and revised it is 2012. To be precise, the 100 Day Arbitration Procedure introduced by the Society of Construction Arbitrators, United Kingdom serves as the fast track arbitration procedure that Malaysia has adopted [21]. The introduction of these rules is designed for parties who desire to obtain an award most rapidly with the least cost. The rules themselves provide that arbitration to be held with an essential oral hearing that needs to be finalised in a maximum of 160 days, whereby it is needed to be at the side of a sole arbitrator unless the parties favour a larger panel. Table 1 shows several established institutions have developed their own sets of "Fast Track" Arbitration rules [21].

Table 1: Several established fast track arbitration rules

| Arbitral Institution | Article / Section | Name of Rules | Duration of awards |
|--|-------------------|---|---|
| ICC (International Chamber of Commerce) | Article 24 | ICC Expedited Arbitration Rules 2016 | Within <i>six months</i> from the terms of reference. |
| DIS (The German Institution of Arbitration) | Section 1.2 | DIS – Supplementary Rules for Expedited Proceedings 08 (SREP) | Within <i>six months</i> from the statement of claim or nine months in case of a three-member tribunal. |
| SCC (Stockholm Chamber of Commerce) | Article 37 | SCC Arbitration Rules 2016 | Within <i>six months</i> from the transmission of the case to the arbitrator. |
| SIAC (Swiss Chamber's Arbitration Institution) | Article 42(1) | SIAC Arbitration Rules 2016 | Within <i>six months</i> from the transmission of the file to the tribunal. |
| CIETAC (The China International Economic and Trade Arbitration Commission) | Article 42(1) | CIETAC Arbitration Rules 2015 | Within <i>six months</i> from the composition of the tribunal. |

3. Methodology

The purpose of this paper is to identify and review the application of fast track arbitration in construction industry and find the latest issues in this area. By looking at the key factors and challenges in the literature, the existing research gaps and problems in the context of fast track arbitration in construction industry are discussed.

3.1. Selection of database

A systematic search was conducted on multiple databases for publications until April 2018. The primary databases were Hein Online,

Elsevier, Web of Science, Lexis Nexis, ASCE, and ProQuest. The search was performed on the abstracts, keywords, and titles of publications and the results were limited to publications starting from 2010 until April 2018. The research for the application of fast track arbitration is recently developed and proliferated. The primary purpose of the study is to investigate the usage of fast track arbitration rules and their application in construction industry. However, due to the limitation of the study, specifically on fast track arbitration, the literature search expanded until the area of international arbitration. Thus, the focus was on publications later than 2010.

3.2. Keyword selection

The literature search entailed two broad categories using specific sets of keywords. The first set of keywords was to identify the key factors for effective fast track arbitration. The terms used were i) knowledge and awareness, ii) arbitral tribunal reputation, iii) expertise in arbitration, and iv) clear guideline. The next keywords were to filter the research in determining the challenges in the existing fast track arbitration in Malaysian construction industry whereas the keywords used were i) willingness of parties, ii) delay in proceeding, iii) cost controls, and iv) time consuming. The exact terms were different for each database. General keywords were selected for each search term (such as international arbitration* or expedited*). The selected terms were searched using “AND” command to locate the intersection of the found articles for each term.

3.3. Collection of articles

The review of articles was performed in six steps. The first step was to find all related publications from the search terms. The title and abstract of articles were reviewed to select the articles more related to the field of international arbitration. The second step consisted of a keyword selection and the third step went to more detailed review of all the selected publications. Next, the fourth step was to remove the duplicated papers from different databases and only the articles introducing, improving, and supporting the variables on the application of fast track arbitration were selected. The search resulted in 36 relevant publications. All the selected articles were reviewed meticulously to provide a summary of research trends. The structured review methodology adopted a six-step processes as presented in Fig. 1.

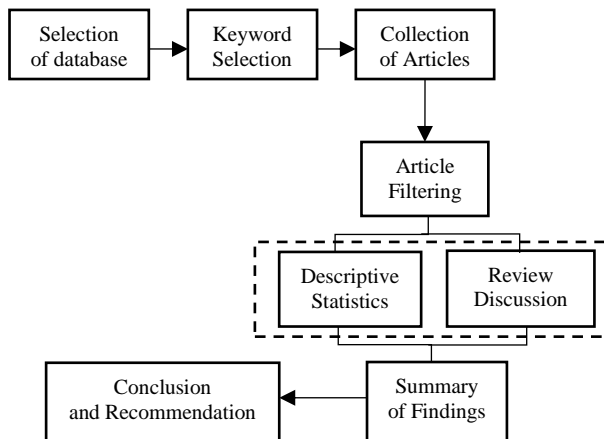


Fig 1: Research process adopted for the structured literature review

4. Results and Discussions

4.1. Descriptive Statistics

All the selected articles were extracted and briefly discussed for each of the criteria by using descriptive statistics approach.

4.1.1. Year – wise publications

In recent years, there was a fluctuation of published papers regarding fast track arbitration (Fig. 2). The number of publications experienced a slight increase between 2010 and 2015. However, the number of papers published in 2016 was decreased but it increased back during 2017 and ended with two publications in 2018. It was observed that 36 papers were published in total from 2010 to 2018, which indicated the previous researchers’ initiative to promote fast track arbitration.

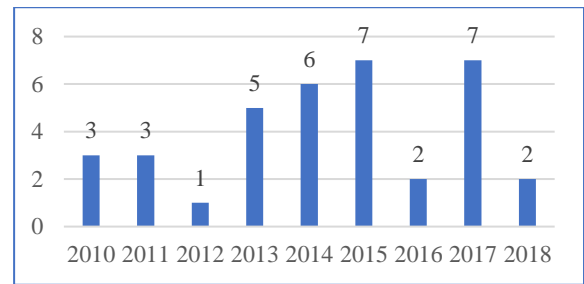


Fig 2: Year wise publication details

4.1.2. Contribution from publishers

The contributions made by various publishers were extracted by using Academic UiTM EzAccess tool. Hein Online resulted in the highest number of publications with sixteen (16) papers, followed by Elsevier Science with six (6) papers. This implied that the topic of fast track arbitration is widespread across different publishers (Fig. 3).

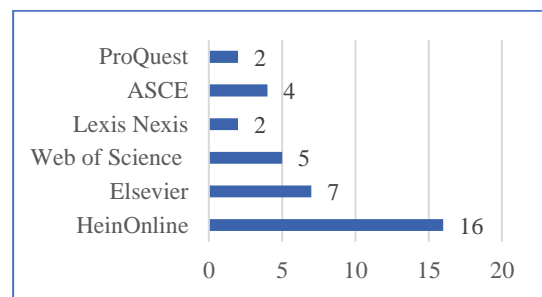


Fig 3: Contribution from publishers (> 2 papers)

4.1.3. Contribution from journals

The credibility and fame of publishing journals have a significant impact on how people perceive the publication. The journal classification was extracted by using the UiTM EzAccess tool. The Journal of International Arbitration had 11 publications, and both Journal of International Dispute Settlement and European Journal of International Law had two publications each (Fig. 4).

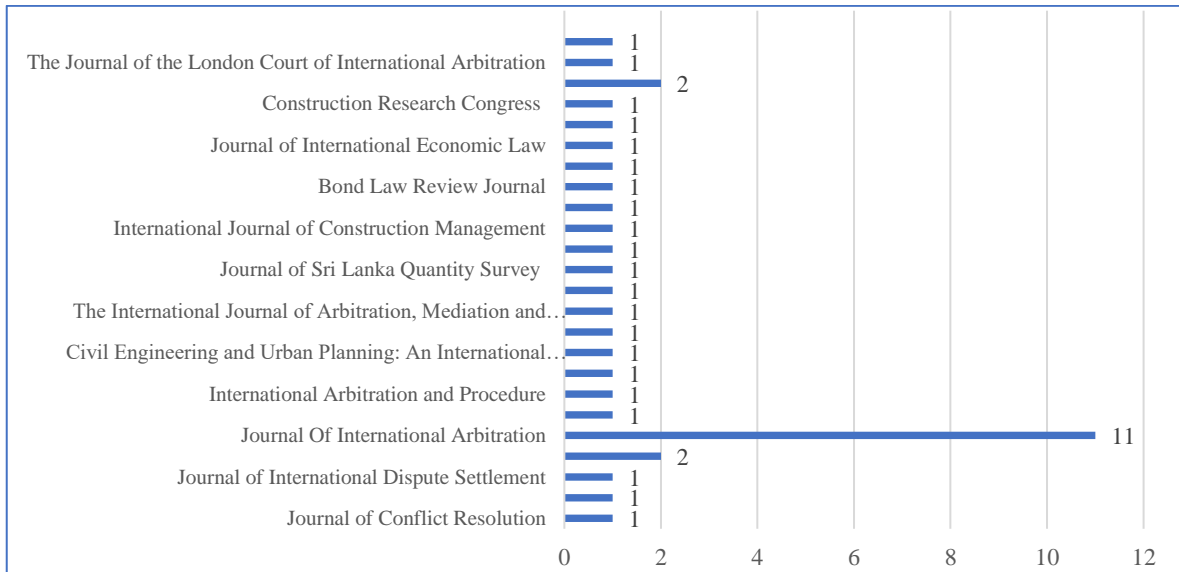


Fig 4: Journal Publication Details

4.1.4. Frequently used keywords

The most commonly used keywords in all selected papers were extracted using the UiTM EzAccess tool. “Arbitration” was the most frequently used keyword (56%), followed by “international” (42%), “fast track” (28%), “arbitrator” and “construction industry” (25%) and “expedited” (22%). The other keywords used were “arbitral institution”, “willingness”, “delay”, “time” and “cost” (Fig. 5).

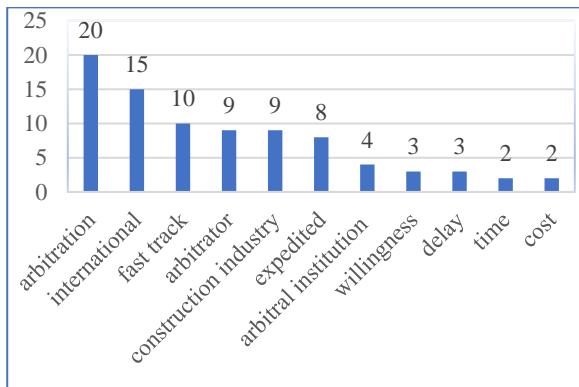


Fig 5: Frequently used keywords

4.1.5. Fast track arbitration papers based on type of research

Fig. 6 shows the distribution of the selected 36 papers by methodology. Two research methodologies were considered for classification, namely conceptual and empirical. Empirical papers focused on observable or measurable fast track arbitration rules and procedure over a variety of methodological approaches. Conceptual papers discussed the ideas, benefits, theories, applications and challenges of fast track arbitration but did not collect any primary data or analyse any secondary data. It can be observed from Fig. 6 that 67% of the papers described the topic at conceptual level. The remaining 33% of the papers dealt with the topic using empirical research methods included case study (13%), questionnaire survey (9%), meta-analysis (4%) with logit regression model and systematic review (2%).

Fig. 7 presents a trend on how various research techniques were being used to study fast track arbitration. The trend observed in Fig. 7 reveals a slight increase in the conceptual papers on different aspects of fast track arbitration. The trend reveals that the concepts

presented in the papers were tested and validated through empirical studies using case studies, questionnaire surveys, meta-analysis, analytic process, systematic reviews and logit regression model. A sharp increase was observed in the conceptual studies. However, the increase in the studies using empirical approaches is not significant and of less concern. Therefore, more studies using empirical approaches are required to be undertaken.

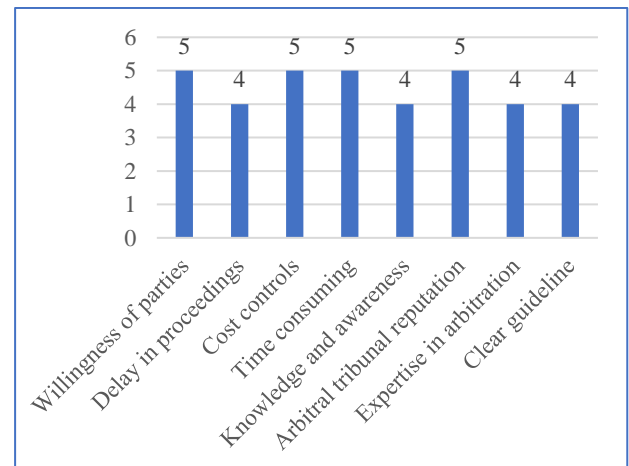


Fig 6: Distribution based on type of research

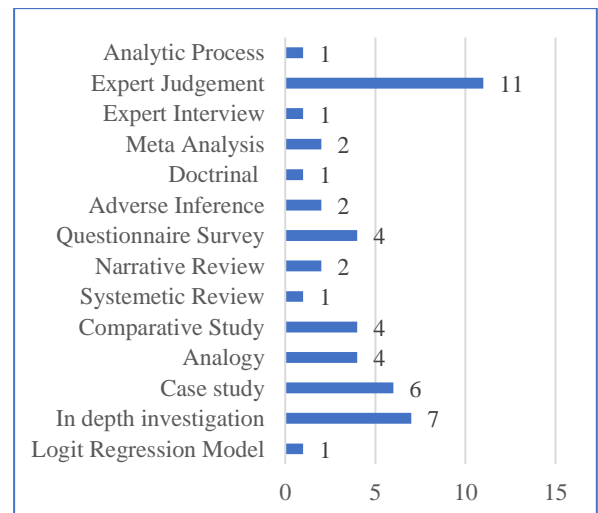


Fig 7: Distribution of research approaches

4.1. 6. Distribution of publications as per research categories

The selected 36 papers were categorised into eight research categories, as shown in Fig. 8. The distribution of categories shows a slightly balance in the number of publications. The selected categories are willingness of parties (14% of papers), delay in proceedings (11% of papers), cost controls (14% of papers), knowledge and awareness (11% of papers), arbitral tribunal reputation (14% of papers), expertise in arbitration and clear guideline (11% of papers). Fig. 9 presents the distribution of the research categories. The findings indicate an inclination from the researchers in all research categories.

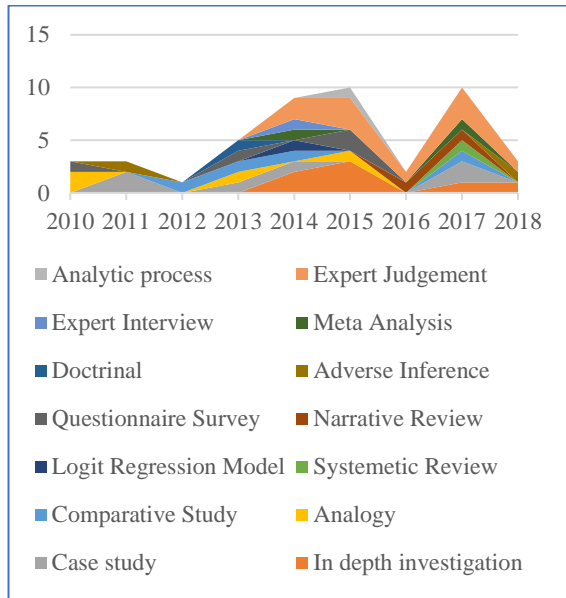


Fig 8: Distribution of research categories

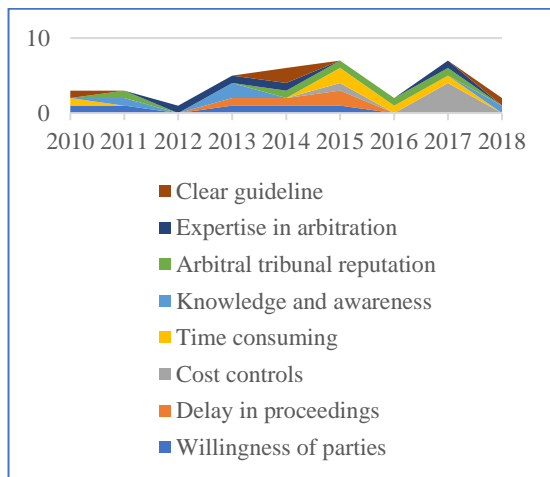


Fig 8: Distribution of research categories during 2010 – 2018

4.1.7. Research techniques across fast track arbitration

Table 2 presents the various research techniques that have been used to study fast track arbitration research categories. Most studies adopt the conceptual research approach (80%), and the remaining research used empirical approach (20%) in the study of fast track arbitration. The empirical approach is concerned with case studies, meta-analysis, and questionnaire survey for testing and validating the concepts, theories, and applications. Out of the five articles on willingness of parties, 60% of them used analogy approach. The logit regression model and case study both accumulate to 20% of the studies respectively. Out of the four articles on delay in proceedings, a balanced of 33% used expert judgement, in-depth investigation and case study approach. Similar to willingness of parties, 60% of expert judgement approach were used in cost controls articles, while the rest used in-depth investigation (10%), comparative study (10%), systematic review (10%) and narrative review (10%). 60% of adverse inference were used in cost controls articles. Other approaches were the in-depth investigation (10%), comparative study (10%), systematic review (10%) and narrative review (10%). Doctrinal approach (50%) were used to design knowledge and awareness articles with the rest of adverse inference (25%) and meta-analysis (25%) approach.

Next, 40% of the analogy method used in arbitral tribunal reputation articles, while 15% applied to expert judgement, meta-analysis, expert interview and analytic process. The expertise in arbitration articles consisted of comparative study approach (75%) and meta-analysis approach (25%). Finally, both expert judgement and in-depth investigation showed the same amount of 38% approach on clear guideline articles, and the other 24% used analogy as the method. This finding indicates that the expert judgement approach was used by the researchers to demonstrate the rules or the adoption of fast track arbitration. Apart from expert judgement, in-depth investigation and case study research approaches were found to be increasing, but it is not significant. More studies using these approaches may be conducted in the future. The detailed systematic literature review classification is presented in Table 3

Table 2: Level of research across key factors and challenges on fast track arbitration

| Research Categories | a | b | c | d | e | f | g | h | i | j | k | l | m | n | Total |
|------------------------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|-------|
| Willingness of parties | - | 1 | - | 1 | 3 | - | - | - | - | - | - | - | - | - | 5 |
| Delay in proceedings | 2 | - | 2 | 2 | - | - | - | - | - | - | - | - | - | - | 4 |
| Cost controls | 3 | - | 2 | - | - | 1 | 1 | 1 | - | - | - | - | - | - | 5 |
| Time consuming | 1 | - | - | 1 | - | - | - | 1 | 3 | - | - | - | - | - | 5 |
| Knowledge and awareness | - | - | - | - | - | - | - | - | 1 | 2 | 1 | - | - | - | 4 |
| Arbitral tribunal reputation | 1 | - | - | 2 | - | - | - | - | - | - | - | 1 | 1 | 1 | 5 |
| Expertise in arbitration | - | - | - | - | - | 3 | - | - | - | - | - | 1 | - | - | 4 |
| Clear guideline | 3 | - | 3 | - | 1 | - | - | - | - | - | - | - | - | - | 4 |

*Remarks: a. Expert Judgement, b. Logit Regression Model, c. In – depth Investigation, d. Case Study, e. Analogy, f. Comparative Study, g. Systematic Review, h. Narrative Review, i. Questionnaire Survey, j. Adverse Inference, k. Doctrinal, l. Meta-Analysis, m. Expert Interview, n. Analytic process.

Table 3: Systematic Literature Review (SLR) on fast track arbitration studies

| Topic | a | b | c | d | e | f | g | h | Research Approach |
|-----------------|---|---|---|---|---|---|---|---|------------------------------------|
| 1 Aliaj (2016) | | | | / | | | | | Narrative Review, Expert Judgement |
| 2 Amaral (2018) | | | | / | | | | | Adverse Inference |

| | | | | | |
|----|------------------------------------|---|---|---|--|
| 3 | Beardsley and Lo (2014) | / | | | Logit Regression Model |
| 4 | Chung and Ha (2015) | | / | | Analytic process |
| 5 | Duijzentkunst and Dawkins (2015) | / | | | Analogy |
| 6 | Fortese and Hemmi (2015) | | / | | In depth investigation, Expert Judgement |
| 7 | Gad et al. (2012) | | | / | Comparative Study |
| 8 | Gaillard (2010) | / | | | Analogy |
| 9 | Gent (2013) | / | | | Analogy |
| 10 | Gill et al. (2015) | | / | | Questionnaire Survey |
| 11 | Gunasena et. al. (2010) | | / | | Questionnaire Survey |
| 12 | Harisankar and Sreeparvathy (2013) | | | / | Comparative Study |
| 13 | Hayati et al. (2017) | / | | | Narrative Review, Expert Judgement |
| 14 | Idowu et al. (2015) | | / | | Questionnaire Survey |
| 15 | Kirby (2015) | / | | | In depth investigation, Expert Judgement |
| 16 | Kitharidis (2011) | | | / | Case study |
| 17 | Kohler (2010) | | | / | Analogy |
| 18 | Komurlu and Arditi (2017) | / | | | Comparative Study |
| 19 | Langford et al. (2017) | | | / | Meta-Analysis |
| 20 | López (2014) | | | | Comparative Study |
| 21 | Marques (2017) | | / | | Case Study |
| 22 | Mason (2011) | | / | | Adverse Inference |
| 23 | Park (2014) | | | / | In depth investigation, Expert Judgement |
| 24 | Parlett (2018) | | | / | In depth investigation, Expert Judgement |
| 25 | Polkinghorne and Gill (2017) | | | / | Case study, Expert Judgement |
| 26 | Puig (2014) | | | / | Expert Interview, Meta-Analysis |
| 27 | Phull (2011) | / | | | Case study |
| 28 | Rose (2013) | | / | | Questionnaire Survey |
| 29 | Rosengren (2013) | | / | | Doctrinal |
| 30 | Respondek (2014) | / | | | Case study |
| 31 | Rivkin and Rowe (2015) | | / | | In depth investigation, Expert Judgement |
| 32 | Scherer and Koepf (2016) | | | / | Expert Judgement |
| 33 | Vasista (2017) | / | | | Systematic Review |
| 34 | Wiegand (2017) | / | | | In depth investigation, Expert Judgement |
| 35 | Williams (2014) | | | / | In depth investigation, Expert Judgement |
| 36 | Wilske et. al. (2013) | / | | | Case study |

*Remarks: a. Willingness of parties, b. Delay in proceedings, c. Cost controls, d. Time consuming, e. Knowledge and awareness, f. Arbitral tribunal reputation, g. Expertise in arbitration, h. Clear guideline.

4.2. Review Discussions

The collected articles were discussed based on the 8 indicators which are: i) willingness of parties, ii) delay in proceeding, iii) cost controls, iv) time consuming, v) knowledge and awareness, vi) arbitral tribunal reputation, vii) expertise in arbitration, and viii) clear guideline.

4.2.1. Key factors on the application of fast track arbitration

➤ Knowledge and awareness

The selection of dispute settlement often based on the nature and the complexity of cases that will be handled by experts. It is crucial for the parties to have basic knowledge and awareness regarding the choice selection of dispute settlement. An effective arbitrator should be conscious and knowledgeable with the awareness on the usage of fast track arbitration, because they spread their knowledge

to the industry practitioners for the effective implementation [22]. Much of the studies recently has focused on adjudication and the effectiveness of the rules, without acknowledging or exploring the facts that fast track arbitration has the ability to be set aside in preparation for legal dispute in an effective manner [23]. Although fast track arbitration has been introduced widely to the practitioners within the construction industry, the interpretative procedure cannot be reduced to a mere application of legal rules or principles, and it is to a great extent a matter of the arbitrator's experience or skilled intuition will encourage the parties to acknowledge and aware of the procedure [24]. It is agreeable that despite the existence of fast track arbitration which promote the usability of the rules, it carries the burden of its implementation where the party is not convincing enough to exert it without evidence of cases and sufficient knowledge [25]. Collectively, these studies outlined a critical role for knowledge and awareness to implement the fast track arbitration in the construction industry.

➤ Arbitral tribunal reputation

Most of the fast track arbitration rules have been modified to run more cohesively with the international trends in arbitration proceedings where each arbitral tribunal has taken the approach on functions in line with the current practices in the international commercial arbitration [1]. The reputation of arbitral tribunal shows the capability of the institution and arbitration stakeholders that influence the successful of the tribunal itself. It is therefore fortunate to have a wide support of the practitioners to fully utilise the service that they have provided and increase the name of efficiency and services [26]. Due to the effectiveness and the capability of the arbitral tribunal, ICC (International Chamber of Commerce) London's are selected as one of the popular arbitral tribunal for the resolution of international disputes and it is based on their rigorous approach, efficient processes, and practical rules that cover every contractual issue that make them the leading arbitral institution including their usage of fast track arbitration [27]. The effect of being unsuccessful in handling cases makes a country less attractive as a venue for international commercial arbitration, as parties have certainty that the choice of rules in their agreements will be given effect [28]. Many of the arbitration proceedings are administered by a select number of arbitral institutions which are expanding their services around the world like London, Stockholm, The Hague and Paris [29]. The evidence presented in this section suggests that the reputation of arbitral tribunal appears to be significant to promote and as one of the key factors to apply fast track arbitration in construction industry.

➤ Expertise in arbitration

The selection of arbitrators is one of the most important factors that differentiate the application of arbitration from litigation [30]. It is crucial and fundamental importance that the parties know how to select their arbitrators, since the quality of the arbitral process which includes fast track arbitration will depend on the quality of the arbitrators [31]. Single individual actor may be able to play multiple roles as arbitrators, counsel, or expert witnesses within the fragmented arbitration system. If they can conduct and assist a case, they are given the trust to handle the case based on their expertise and experience. It is the same as arbitrators who have the ability to advise on the usage of the adjudication system [32]. Furthermore,

the existence of a credible and efficient dispute resolution mechanism such as fast track arbitration becomes imperative that the parties get the assistance of a body, with financial, technical and legal expertise, to settle their disputes in a time-bound manner [33]. Not just that, the disputes in international construction mostly occur for reasons such as parties' lack of knowledge and experience in construction law, so they have limited awareness regarding the usage as well as the application of fast track arbitration. They might need help from the expertise with technical background and knowledge regarding construction law [34]. Therefore, the gathered articles emphasised on the expertise in arbitration as one of the key factors to apply fast track arbitration.

➤ Clear guideline

Ambiguities may lead to curiosities. Fast track arbitration exists irrespective of being incorporated into a contract. They just express the choices made by an arbitral institution. Albeit unenforceable for as long as they are incorporated into a contract, these rules may have an impact on other players including other institutions, legislators and courts [35]. In practice, the effectiveness of the safeguards will ultimately depend on the ethical standards observed by parties, their counsels, and the experts themselves. However, if the parties are not given clear guideline, the experts will be questioned or cross-examined at a hearing [36]. The involvement through reference to arbitration rules that includes professional guidelines merging with parties' autonomy to enhance the prospect that fast track arbitration will get the benefit of their bargain, is a process that is fair and final [37]. To ensure the consistency and predictability for smaller parties, a clear guideline must be in place such as to provide structure for tribunals when fixing and allocating cost and to promote transparency during the implementation of fast track arbitration process [38]. The usage of clear guideline may ease and make the practitioners understand the use of fast track arbitration in the construction industry. The relevance of clear guideline as one of the key factors of the application of fast track arbitration is clearly supported by the current findings. Challenges hinder the application of fast track arbitration.

4.2.2. Challenges hinder the application of fast track arbitration

➤ Willingness of parties

The main objective of fast track arbitration is to provide an expedited procedure using the concept of maximum time and minimum cost of dispute settlement. It seems faster compared to arbitration and litigation, albeit depends on the complexity of the dispute and the willingness of the parties to cooperate in the process [39]. In most of the forms of legal dispute settlement, such as fast track arbitration, getting the initial consent from all parties involved and being bound are practically required [40]. One of the researchers affirms a statement mentioning that when deciding to pursue legal dispute resolution or fast track arbitration, it is advisable to pursue and apply an effective conflict management strategy towards the party as it is one of the factors that significantly influence the willingness of states to relinquish control or pursue fast track arbitration [41]. By contracting to arbitrate, the parties waive their rights to enter into any form of contracts based on the agreement made between the parties. If the agreement is not achievable which means the party are unwilling to contribute for the success of fast track arbitration, the process is unable to proceed and may take a longer time to resolve [42]. The willingness of each party to involve in the process are crucial whereas all the players in the field, be it practitioners, arbitrators or courts are exclusively focusing on the process, and the accusation of inconsistency will be used mercilessly [43]. Together, these collected articles outline that the willingness of party is one of the challenges to ensure the applicability of fast track arbitration in the construction industry.

➤ Delay in proceedings

In construction industry, time is the lifeblood of a project. Most of the industry players seek to find the fastest and economical way to dispute settlement. Delay in proceedings has been a challenge related to the usage of arbitration and it affects the implementation of

fast track arbitration as well. It is observed that the only way to resolve the conundrum of time and cost is to go to the one person who can exert some authority, and that is the arbitral tribunal. They have the authority to avoid unnecessary delays and expenses, so as to provide a fair, efficient, and expeditious means for the final resolution of the parties' dispute [44]. Nowadays, there is hardly any international arbitration institution that does not have procedural rules that aim to prevent delays and speed up arbitration proceedings. However, despite the long list of efficient and expeditious rules have been established, it is of concerned that delays are not only occur but are also seem to be on the increase [45]. A common criticism on fast track arbitration is that arbitral tribunals take a long time to render the awards and it opens up to the risk of possibility that the award will not be enforceable and may face not only reputational damages, but the worst even personal liability [46]. In the same vein, fairness is required in fast track arbitration since justice too long delayed becomes justice denied, which makes the arbitral proceeding could hardly be considered as an efficient dispute resolution mechanism [47]. The study presented the evidence that delay in proceedings contributes to the challenges in the application of fast track arbitration.

➤ Cost controls

Construction industry is a fragmented industry with high complexity, which involves various experts with diversities of views, talents and knowledge. Due to differences in perception among parties, conflict is inevitable and quickly turns to disputes. The introduction of fast track arbitration has become an alternative to arbitration in settling disputes, but the usage of fast track arbitration is still at an infant stage. It is due to the conviction of competent arbitrator [48]. The lack of competent arbitrator for budget control and time which may result in losses to both parties leads the practitioners to face difficulties in using fast track arbitration [49]. Besides, arbitrators refuse to work in such stressful manner to meet the deadline, and this may lead to the process of re-electing another arbitrator, which consumes resources such as time and cost [50]. In general, the Asians have demonstrated a more noticeable cost-sensitivity when it comes to choosing the method of dispute settlement. The ability to optimise the arbitral process and cost controls is being emphasised to maintain or enhance the attraction of fast track arbitration [51]. For this reason, arbitrators also can draw their experience to educate and inform the parties about cost-effective procedures which promote the usage of fast track arbitration [52]. Overall, these studies highlighted the need for cost controls as a challenge in the implementation of fast track arbitration.

➤ Time consuming

Alternative dispute resolution (ADR) methods, such as arbitration, are often being used instead of litigation to resolve construction disputes as industry folklore considers litigation as overly expensive and time consuming. Fast track arbitration thus, comes into the picture to cover the small claims of disputes for the parties wishing to resolve a contractual dispute in an effective manner [53]. However, this approach may require considerable time, attention and expense if parties are unlikely to fully cooperate once dispute has arisen [54]. Similarly, fast track arbitration should not be the option in an over-emphasised manner, which may lead to time consuming, add to project cost, and make the environment hostile [55]. In theory, arbitration can be less costly and less time consuming than the courts because it is more output- (determination-) oriented. It is critical for disputes to be expeditious to maintain lasting relationships among parties. This is due to the belief that the construction relationships are built from previous interactions on past projects and may cause major impacts on the success of project if failed to be handled properly or dealt with expedience [56]. In deciding which dispute resolution method to apply, lack of experience in the usage of fast track arbitration method has hindered the acceptance of potential users, they believe the implementation of the said method will be the same as arbitration nowadays, which will slowly lead to time consuming approach [57]. Together, these gathered literature provide important insights into the challenge of time that hinders the application of fast track arbitration in the construction industry.

5. Conclusion

This paper is aimed at exploring the current state of research on fast track arbitration by performing an SLR on selected publications through an appropriate review methodology. Thirty-six (36) articles were thoroughly analysed for the purpose. The results obtained from this SLR indicate that fast track arbitration is an emerging area with an increased number of publications over the past few years. Firstly, the SLR was focused on the types of research methods used in the selected articles. The use of expert judgement was found in most of the articles selected due to the limitation on fast track arbitration towards construction industry. However, due to the similar nature of legal requirements on fast track arbitration, the selection used to identify the suitable criteria for the key factors and challenges are almost as the same as arbitration. Majority of the studies focused on the importance of arbitral tribunal on the application of fast track arbitration followed by general discussions. Expert judgement and in-depth investigations approaches were mainly used for studies on fast track arbitration.

Nevertheless, more studies on procedural rules and significant use of empirical research approaches like stimulations are required for leveraging the fast track arbitration effectively for construction industry. Besides, the lack of studies on fast track arbitration in construction industry itself indicates an open research area that should be explored by future studies. The limitation of the study is in selecting the Hein Online database as there might be articles outside Hein Online database that might be relevant to the scope of the study. Review studies in the future may include other popular databases, like Scopus. Therefore, the results of this research are limited to a selected number of publications and should be validated by further studies, e.g. covering other research databases such as Scopus or empirical studies

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