A STUDY ON THE ADEQUACY OF THE ABORIGINAL PEOPLES ACT 1954 IN PROTECTING INDIGENOUS LAND IN MALAYSIA

By

Liah anak Asul (2008408708)

Maseirfan Syamshulbahri Gabil (2008408712)

Mohd Firdaus b. Hamzah (2008408734)

Mohd Ridhwanuddin b. Kamarullah (2008408744)

Nur Zalikha binti Mohd Ishak (2008408824)

Submitted in Partial Filfillment of the Requirements For the Bachelor in Legal Studies (Hons)

University Teknologi MARA
Faculty of Law

October 2010

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

ABSTRACT

This research is a legal study on the adequacy of the Aboriginal People's Act 1954 in protecting the indigenous land in Malaysia. The research which has been conducted is somehow in comparison to the Australia as Australian system towards the indigenous peoples land is better than the system which we have back here in Malaysia. This study sets out to discover the position of indigenous peoples land in Malaysia and also in Australia. This study also seeks to discover whether the Australian system of indigenous peoples land may be adapted to the Malaysian current situation. In Australia, their system is known to be as a system which gives better protection to the indigenous peoples where their system recognizes the position of indigenous peoples land. Due to this fact, we found that the Australian system may be suitable to be adapted into Malaysian system that we are using right now in order to give more recognition to the indigenous peoples land. However, this adaption from the Australian system should be amended so that it fits to the uniqueness of Malaysian society.

ACKNOWLEDGEMENT

This research project has been carried out by a team which has included Liah anak Asul, Maseirfan Syamshulbahri Gabil, Mohd Firdaus b. Hamzah, Mohd Ridhwanuddin b. Kamarullah and Nur Zalikha binti Mohd Ishak. First and foremost, we would like to extend our sincerest gratitude to our supervisor, Puan Ismah bt. Ismail, who had given us encouragement, guidance and supports from the initial to the final level of this research project. Next, we would like to offer our appreciation to the representative of the Jabatan Hal-Ehwal Orang Asli (JHEOA) for the cooperation he gave towards the interview and providing us with valuable information. Lastly, we are grateful to all whose given us supports in any respect during the completion of the project.

TABLE OF CONTENTS

Acknowledgement	ii iii		
Abstract			
Table of Contents			
List of Cases			
List of Legislations	vii		
CHAPTER ONE: INTRODUCTION			
1.0 Introduction	1		
1.1 Problem Statement	5		
1.2 Objective of Study	6		
1.3 Literature Review	6		
1.4 Research Methodology	11		
1.5 Scope and Limitation	12		
1.6 Significance of Study	13		
CHAPTER TWO: LITERATURE REVIEW			
2.0 Introduction	14		
2.1 Towards Defining the Indigenous Peoples			
2.1.1 Malaysian Position	16		
2.1.2 Australian Position	21		
2.2 Universal Rights of the Indigenous Peoples	22		
2.3 Relationship between the Indigenous Peoples and Lands	23		
2.4 Issues Regarding the Indigenous Lands			
2.4.1 Malaysian Position	24		
2.4.2 Australian Position	32		
2.5 Conclusion	35		
CHAPTER THREE: THE LEGISLATION RELATING TO			
INDIGENOUS PEOPLE'S RIGHT TO LAN	\mathbf{D}		
3.0 Introduction	36		
3.1 Position of Indigenous Peoples in Malaysia			
3.1.1 Federal Constitution	37		

	3.1.2 Aboriginal Peoples Act 1954	3
	3.1.3 The Sarawak Land Code	4
3.2	Cases of Indigenous Peoples in Malaysia	
	3.2.1 The Sagong Tasi Case	4
	3.2.2 The Adong Kuwau Case	4
	3.2.3 The Nor Anak Nyawai Case	4
3.3	Position of Indigenous Peoples in Australia	
	3.3.1 The Aboriginal Land Trust Act 1966 (ALTA)	5
	3.3.2 The Aboriginal Land Rights (Northern Territory) 1976 (ALRA)	5
	3.3.3 The Aboriginal Land Rights Act 1983 (NSW ALRA)	5
3.4	Cases of Indigenous Peoples in Australia	
	3.4.1 Mabo v Queensland Case	5
	3.4.2 Bennell v State of Western Australia Case	5
	3.4.3 Milirpum v Nabalco Pty Ltd Case	5
3.5	Conclusion	5
СНА	PTER FOUR: FINDINGS	
4.0	Introduction	6
4.1	The Indigenous People Land Culture	
	4.1.1 The origin of Indigenous People and also its land	6
4.2	The Objective of the New Land Acquisition Policy	
	4.2.1 To Create Security of the Land	6
	4.2.2 To Create a Permanent Resident	6
	4.2.3 To Create a Responsibility Society	6
	4.2.4 To Create Indigenous People's welfare	6
	4.2.5 To Create a Unified Land System	6
	4.2.6 To create Indigenous People's economy factor	6
	4.2.7 To Strengthen the Social System	6
	4.2.8 To Control and Act Towards Intruders	6
4.3	Methods of Jabatan Hal Ehwal Orang Asli to Safeguard Indigenous	
	People's Land	6
4.4	Indigenous People's Land Status	
	4.4.1 Majlis Mesyuarat Kerajaan Or Government Councils	6
	4.4.2 Malays Reservation Land	6
	4.4.3 Indigenous Reservation Land	6
	4.4.4 Conflict between Virgin Forest and State Authority Land	6
4.5	Functions of Jabatan Hal Ehwal Orang Asli	6
4.6	Aboriginal People's Act 1954	
	•	