



# Malaysian Experience of Orang Asli Involuntary Resettlement Compensation Package

Noraziah Abu Bakar<sup>1</sup>, Faridah Hussain<sup>1</sup>,  
Azlinor Sufian<sup>2</sup>, Haswira Nor Hashim<sup>1</sup>

<sup>1</sup> Faculty of Law, Universiti Teknologi MARA, Shah Alam, Malaysia, <sup>2</sup> College of Law, Prince Sultan University Riyadh, Kingdom of Saudi Arabia

[noraziah@uitm.edu.my](mailto:noraziah@uitm.edu.my), [faridah355@uitm.edu.my](mailto:faridah355@uitm.edu.my), [asufian@psu.edu.sa](mailto:asufian@psu.edu.sa), [haswira648@uitm.edu.my](mailto:haswira648@uitm.edu.my)  
Tel: 0167786792

## Abstract

The Malaysian land law provides that upon registration, the title shall be indefeasible under the National Land Code (Revised 2020) (NLC) where the proprietor is guaranteed the security of tenure. However, for the Orang Asli, the Aboriginal Peoples Act 1954 (Act 134) only declares a communal right to them and the right to revoke the declaration is vested in the government. Thus, only the courts' decisions proclaim the Orang Asli's land rights and an equitable compensation accorded to them upon eviction. This article examines the Orang Asli's land rights and the compensation for involuntary resettlement.

**Keywords:** registration, land right, aborigines, revocation, compensation, resettlement

*eISSN 2514-751X © 2022. The Authors. Published for AMER & cE-Bs by e-International Publishing House, Ltd., UK. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>). Peer-review under the responsibility of AMER (Association of Malaysian Environment-Behaviour Researchers) and cE-Bs (Centre for Environment-Behaviour Studies), College of Built Environment, Universiti Teknologi MARA, Malaysia.*

DOI: <https://doi.org/10.21834/aje-bs.v7i21.407>

## 1.0 Introduction

The Orang Asli are one of the components of the various races in Malaysia; from the perspective of modern society, the Orang Asli community is a race that is separated and isolated from the flow of development and progress of the country's development (Noraida, 2010). Section 3(1) of the Orang Asli Act 1954 (Act 134) defines Orang Asli as:

- (a) any person whose father is a member of the Orang Asli ethnic group, who speaks the Orang Asli language and habitually follows the Orang Asli way of life and the customs and beliefs of the Orang Asli and includes a descendant through the male line of that person;
- (b) any person of any race adopted as an infant by an Orang Asli who has been brought up as an Orang Asli, habitually speaks the Orang Asli language, ordinarily follows the Orang Asli way of life and the customs and beliefs of the Orang Asli and is a member of an Orang Asli community; or
- (c) the child of any union between an Orang Asli woman and a man of another race, provided that the child speaks the Orang Asli language, follows the Orang Asli way of life and the customs and beliefs of the Orang Asli and remains a member of an Orang Asli community.

According to Wook (2015), controversies about the rights of indigenous people to their land are a persistent problem in Malaysia that requires resolution. Indigenous peoples' land rights are recognised by common law. However, increasingly, under national and international law, they are also being acknowledged as stakeholders in the natural resources that are located within their areas. This recognition is in addition to the common law recognition of indigenous peoples' land rights. Since 1992, there has been a significant rise in the number of laws passed worldwide that recognise the rights of indigenous peoples and communities to forest areas and the resources within them.

In Malaysia, the Federal Constitution, as the supreme law, provides in Article 153 that it is the responsibility of the Yang Di Pertuan Agong and Yang Di Pertua Negeri to protect the unique position of the Orang Asli and the people of Sabah and Sarawak. The Orang Asli community also enjoys all the equality rights provided in Clause 8(1) and all other fundamental rights in the Federal Constitution. The Orang Asli community in Peninsular Malaysia is guaranteed to have the same rights and protection as other Malaysians. In addition, the Federal Constitution also authorises the government to enact laws to protect, prosper and advance the Orang Asli, including providing reserve land and public service employment as provided in Article 8(5) of the Federal Constitution as follows:

*“(5) This Article does not invalidate or prohibit—*

- (c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable*

*proportion of suitable positions in the public service;”.*

Therefore, the government has enacted a specific law that protects the Orang Asli in Peninsular Malaysia, Act 134.

At the global level, the United Nations Declaration on the Rights of Indigenous Peoples (DHOA) is a declaration ratified by the United Nations General Assembly in its 61st session in New York on September 13, 2007. The DHOA outlines the individual and collective rights of Indigenous Peoples and their rights to culture, identity, language, employment, health, education and other issues. This declaration also emphasises their right to preserve and strengthen institutions, culture and tradition and their right to development. (Noraidah, 2010).

The principles of the Charter of the United Nations, with the pure purpose of fulfilling the responsibilities shared by States under the Charter, affirming that Indigenous Peoples are equal to others, in addition to recognising the right of all people to consider themselves differently different, and to be respected as such. The Charter also reaffirms that exercising the Orang Asli's rights should be free from discrimination. Even so, international legal instruments in the form of declarations, such as DHOA, do not have binding legal effects because they are "soft law" (Muhamad Sayuti, 2019).

The State Authority may grant and pay such compensation to the persons entitled in his opinion. The Director-General shall hold as a common fund for such persons or aboriginal community as directed and administered as may be prescribed by the Minister as provided under Section 12 of Act 134. Act 134 is the manifestation of the protection accorded by the law that flows from the supreme law of the land, the Federal Constitution 1957. In brief, the declaration under Act 134 for the Orang Asli's land rights is not based on individual land registration. Hence, the Orang Asli's land rights are based on communal rights to land, unlike those who secure their land titles through the registration process under the NLC.

## **2.0 Literature Review**

### **2.1 The welfare of the Aborigines under the Federal Constitution**

The provisions of fundamental liberties under Article 8(1) of the Federal Constitution provide that all persons are equal before the law and entitled to equal protection. It also signifies that Article 8(5) of the Federal Constitution does not invalidate any protection, well-being, or advancement of the Orang Asli in West Malaysia. Since the Orang Asli are still struggling to maintain their identity and control over their lands and resources, the responsibility for safeguarding the rights of the Orang Asli lies with the government (Bulan, 2010). Relating to this issue, under Article 72 List 1 (Item 16) of the Federal Constitution, the welfare of the Orang Asli is provided under the Federal List. It means the welfare of the Orang Asli is the responsibility of the Federal Government. Even though the Federal

Constitution does not define the meaning of the word "welfare" but the literal interpretation given by the Black Law Dictionary, it simply means well-being in any respect or prosperity. The Concise Oxford Dictionary defines welfare as an action or procedure to promote people in need's essential physical and material well-being. In the case of *Re A (An Infant)* (1963) 1 All ER 531 welfare means a benefit, the English Court. The Malaysian Court, in the case of *Kerajaan Negeri Selangor & Ors v Sagong bin Tasi* [2005] 4 CLJ 169, on the other hand, has given a more comprehensive approach. Viewing the government's responsibility in safeguarding the welfare of the Orang Asli also includes protecting their land rights.

Article 13 provides no deprivation of property except under the law. It is further provided under Article 13(2) that no law shall provide for the compulsory acquisition or use of the property without adequate compensation. Revocation of the declaration provided under Act 134 may amount to the Orang Asli's deprivation of land rights. However, under Article 74 List-II (Item 2) of the Federal Constitution, the land is under the purview of the states. Thus, despite the decision of the court granting the aborigines the land rights, it does not affect or supersede the power of the State Authority relating to "land" in cancelling or revoking any declaration made over the aboriginal area or reserve in favour of the Orang Asli.

The Orang Asli's land right is only a declaration of aboriginal area or reserve, without any individual registration process. The right of occupancy within the aboriginal area does not confer on the Orang Asli any better title. The right is equivalent to a status of a tenant at will under Section 213 of the NLC. Section 12 of Act 134 explicitly provides that any aboriginal area or reserve land is acquired wholly or partly. The State Authority may grant compensation to the persons entitled or pay the same to the Director-General to be held by him as a common fund for such aborigine community and be administered in such manner may be prescribed by the Minister. The land declared for aboriginal or reserve may be acquired for public purposes as provided under Section 13 of Act 134. Concerning the welfare of the Orang Asli, Act 134 provides an avenue for land rights even though the concept of proprietary rights is not similar to those provided under the NLC. The aboriginal area or reserve occupancy rights are communal, not individual. Henceforth no indefeasibility of title is given to them. The State Authority may revoke the State Gazette of the aboriginal area under Sections 6(3) and 7(3) of Act 134.

## **2.2 The Orang Asli's Rights to Land**

According to Wook (2017), using a historical research approach, it is shown that it has rarely been the case under the law, policy, or practices that the Orang Asli's customary land was denied their entitlement. All of that is shown to be the case by demonstrating that there has never been a circumstance in which this has been the case. In actuality, the law, government policy, and their historical evolution all acknowledge and accept the pre-existing rights to land and resources. These rights originated from the custom of the residents, particularly the Orang Asli, and persist to this very day. The customary land rights are rights derived from custom customs and customary laws of the natives enforced by a society (Rohaida et al., 2021). Norashikin (2011) states that the Orang Asli do not give legal ownership of customary land, even though they are only considered tenants of the land.

Their rights can be cancelled at any time by the government. Section 6 of Act 134 provides for the management of Orang Asli land. The first action that needs to be taken is the reservation and gazette of all Orang Asli land according to section 6 or section 7, Act 134, whichever is appropriate, must be approved and gazette by the State Government. Through this Section 6 and Section 7 gazette:

1. Orang Asli Areas/Reserves are protected from being declared as Malay Reserves under any written law relating to Malay Reserves;
2. no land may be declared a sanctuary or reserve under any written law relating to the protection of wild animals and birds;
3. no land shall be declared as a forest reserve under any written law relating to the forest;
4. no land can be entitled, given, leased or otherwise disposed of except to the Orang Asli from the Orang Asli community who are generally resident in the reserve;
5. no temporary occupation of any land shall be permitted under any written law relating to land; and
6. no license for the collection of forest produces under any written law relating to forests shall be issued to a person who is not an Orang Asli ordinarily resident within the Orang Asli area or to any commercial enterprise without consultation with the Director General and in granting any such license it may be ordered that a certain proportion of Orang Asli labour be employed.

Section 7 of Act 134 also empowers the State Authority, through a notification in the gazette, to declare any area wholly or exclusively inhabited by indigenous people that has not been declared as an indigenous reserve as an indigenous area. Section 9 of Act 134 limits the power of Orang Asli. They are prohibited from transferring, leasing, or giving away any land except with the consent of the Commissioner. If it is found that the Orang Asli do the said thing without the consent of the Commissioner, then the declaration of the Orang Asli reserve area is considered invalid and not in effect. Even so, Section 10(1) of Act 134 gives the right to indigenous people living in Malay Reserve areas and reserve forests to continue to live in them under the conditions set. The right to occupy under Section 10(1) is, however, subject to Section 10(3), where the State Authority may by order require any Orang Asli community to leave and be outside any of the areas and may, in the order make any provisions arise including the payment of compensation, as necessary.

### **2.3 Revocation of Natives Customary Land under Act 134**

State Authorities are also empowered under Section 7(3) of Act 134 to revoke in whole or in part or vary any declaration of indigenous areas made under subsection Section 7(1). The cancellation shall be made by notification in the gazette. Section 11(1) also deals with compensation to natives if they prove a claim to fruit trees or rubber trees on government land owned, leased or temporarily occupied under license. Y.B. Tuan Azmizam Bin Zaman Huri, in the question-and-answer session during the Selangor State Legislative Assembly

(September 3, 2018, to September 7, 2018), stated that if any land wants to be removed from continuing to be an Orang Asli Area or Reserve, the provision under section 12 regarding compensation should comply with and must be guided by an assessment of the Valuation and the Property Services Department during the land acquisition process under the Land Acquisition Act 1960 (Act 486).

In relation to the issue of land inhabited by Orang Asli that has yet to be gazette and the area has already been declared as a Forest Reserve and other reserves, the provisions of Section 10, Act 134 must be complied with. The section clearly says that the Orang Asli are not obliged to leave the area and can continue to reside in it according to the conditions and methods set by the State Authority. The State Government can also exempt Orang Asli from any enforcement actions of written laws applicable to the reserves. In addition, in order to prevent Orang Asli lands and communities from being exploited by specific individuals and companies, every entry of non-Orang Asli individuals, companies and non-governmental organisations into Orang Asli villages/areas must obtain permission from JAKOA so that monitoring can be done (Selangor Legislative Assembly Session, 2018). When the State Authority cancels the declaration of the Orang Asli area, then the compensation is based on the following:

- a. Section 11(1) Act 134, If the Orang Asli proves a claim against fruit trees or rubber trees on any Government land owned, granted, leased for any purpose, temporarily occupied under license or forever disposed of, then such compensation shall be paid to the indigenous community as deemed fair by the State Authority.
- b. Section 12 of Act 134, If any land is removed from any aboriginal area or Orang Asli reserve or if any land within any aboriginal area is given a title, granted, leased for any purpose or otherwise disposed of, the Laws of Malaysia or if any right or privilege in any native area or native reserve granted to any native person or community is revoked in whole or in part, the State Authority may provide compensation for him and may pay such compensation to the person who in his opinion is entitled to it or may, if he thinks fit, pay such compensation to the Director-General to be kept by him as a general fund for such person or such aboriginal community as may be directed, and to be administered following the method as prescribed by the Minister.

In both sections, the compensation calculation needs to be clearly stated. Even so, the State Authority uses Act 486 in any compensation to the Orang Asli. In the case of *Sangka bin Chuka & Anor v Mersing District Land Administration, Johor & Ors* [2016] MLJU 01, the fifth respondent gazetted a large forest reserve as a national park, thereby trespassing on the part of customary land without any compensation to Jakun Kampung Peta. The High Court ruled that the action of the first respondent to evict the Orang Asli Jakun Kampung Peta (albeit only from the section) by notice under Section 425 of the NLC, without allowing the applicant to be heard was flawed and illegal and procedurally unfair by Wednesbury. Since the NLC cannot be applied to indigenous customary rights, the purported jurisdictional basis for issuing the notice needs to be interpreted, thus causing the decision

in the NLC notice to conflict with Act 134 and the Federal Constitution. The notice is manifestly invalid and contrary to the law.

In the case of *Director of Lands and Mines Johor & Satu Lagi v Khalip B. Bachik & Satu Lagi* [2013] 1 MLJ 799, the First Defendant agreed to gazette the Kuala Masai Indigenous Village. Accordingly, the issue of recognising the Plaintiff's right to the land cannot be disputed because the State Authority has agreed to gazette it. The First Defendant had breached his fiduciary duty when he failed to gazette the land in question, especially when, in this case, the Third Defendant has recognised the Plaintiff as an aborigine. The area of land the indigenous community will own should be the settlement area they planted with rubber, palm oil or other trees. Identification and delineation of customary land boundaries using the natural boundaries of rivers and hills should correspond as closely as possible to the claimed area. The area of land that the indigenous community will own should not include their wandering and foraging areas.

The above position can be seen in the case of *Sagong Bin Tasi & Ors v Kerajaan Negeri Selangor & Ors* [2002] 2 MLJ 591. This case decided that the undivided interest of the Orang Asli in their customary and ancestral land is limited to the area that forms their settlement rather than the wilderness where they used to roam for a living according to their traditions. However, the Federal Court in the case of *Director of Forests, Sarawak & Anor v TR Sandah ak Tabau & Ors (suing on behalf of themselves and 22 other owners, residents, holders and claimants of native customary rights)* [2017] 2 MLJ 281, the court ruled that any concern justifying the claim on the land, where they keep virgin or primary forest for food and forest produce as a livelihood that potentially opens up space for other claims is quite remote if proven. The size of the area will be the proof.

In *Sagong Tasi* [2005], the plaintiffs were Orang Asli, who stayed at Bukit Tampoi ('the land'). The land was gazetted as Aboriginal land under Act 134. The purpose of revoking the declaration is to construct an expressway. The State Authority acquired the land and evicted the Plaintiffs. The High Court granted the plaintiffs compensation under the Land Acquisition Act 1960 for losing part of the customary land. The defendants appealed, and the Court of Appeal rejected the appeal. The judge expressly provides a liberal interpretation of the rights of the Orang Asli in this case:

*"The purpose of Act 134 is to protect and uplift the First Peoples of this country. It is, therefore, fundamentally a human rights statute. It acquires a quasi-constitutional status giving it pre-eminence over ordinary legislation. It must therefore receive a broad and liberal interpretation..."*

In *Bato Bagi & Ors v Kerajaan Negeri Sarawak & Another Appeal* [2012] 1 MLRA 1, the Federal Court rejected the argument on the absence of prior consultation before extinguishing the natives' customary land. It followed the Federal Court's decision in *S Kulaisingam & Anor v Commissioner of Lands Federal Territory & Anor* [1982] CLJ (REP) 314. Hence, since there is no provision under the law to inform the natives that their lands would be extinguished or invite them to make representation to the government, it cannot

be said that the provision is unconstitutional. It is viewed by the Honourable Raus Sharif FCJ on the issue of extinguishment of the natives' customary land as follows:

*"I agree that prior consultation perhaps is the right thing to do by the government, but it is not a legal requirement; the failure of the government to do so does not render the act of extinguishing the natives' customary rights unconstitutional."*

## **2.4 Orang Asli's Usufructuary Right**

In *Johor State Government & Anor v. Adong bin Kuwau & Ors* [1998] 2 CLJ 665, the respondent occupied an area of forest in Lembah Linggi in Johor ("the said land"), which is an area that has been occupied for a long time. Their daily life depends on the forest and the river. The Johor State Government ("Appellant") intends to build a dam on the said land. The respondent has taken civil action against the Johor State Government because it is unsatisfied with the compensation.

The Judge of the Johor Bahru High Court has decided that the respondent have common law rights on the land said, and those rights are complementary to other rights given to the Orang Asli under Act 134. The High Court has also decided that because these common law rights had been sued and affected by the State Government by building the dam, the respondent was entitled to compensation. The Johor State Government was ordered to pay adequate compensation following the requirements of Article 13 of the Federal Constitution. The Johor State Government appealed to the Court of Appeal. At the Appeal stage, the Johor State Government argued that the rights of the Orang Asli under the law are limited only to what is stated in Act 134 and nothing more than that. It is also argued that rights under common law cannot co-exist for Orang Asli. The Court of Appeal rejected the argument and decided correctly what the trial judge had decided.

In this case, the Court of Appeal has pointed out that the Orang Asli community is entitled under common law to utilise the proceeds from the land they occupy without being disturbed by anyone. These common law rights include farming, gardening, hunting animals, or catching fish in the river. However, the enjoyment recognised by this law is not to own the land in the modern legal sense, i.e., the right to sell, transfer or lease the land they occupy to others.

*"...the aboriginal peoples' right over the land includes the right to move freely about their land, without any form of disturbance or interference and also to live from the produce of the land itself, but not to the land itself in the modern sense that the aborigines can convey, lease out, rent out the land or any produce therein...."*

Gopal Sri Ram also explained that the rights of the Orang Asli over the land where they live are the core of the rights of the Orang Asli over the land where they live and continue their lives. The dependence of Orang Asli on this land is the core of the usufructuary right.

## **3.0 Methodology**



The paper employs doctrinal legal research by analysing statutory provisions by applying the power of reasoning (K Vibhute and F Aynalem, 2009). Even though it is less rigorous, it is in-depth and flexible, providing room for critical analysis of the Orang Asli's rights to fair compensation upon eviction from their land and livelihood. The literature review is carried out on digital and non-digital libraries comprising primary and secondary sources in this legal research. The fundamental objective of this type of research is to discover, explain, examine, analyse, and present in systematic manner facts, principles, provisions, concepts, theories, or the operation of specific laws and legislation.

## 4.0 Results

### 4.1 The Judicial Cognisance of the Aborigine's Land Right

The acceptance of the court on the issue of customary land rights is highly commendable. However, the court is still reluctant to decide against the rights to revoke the aborigines' ancestral land declaration under Act 134. The Act is silent on any compensation payable to the Orang Asli upon eviction. Hence, they still need to enforce this right through court proceedings. Interestingly, during the State Assembly Sessions, the State Government pointed out that the computation of the compensation should comply with the assessment of the Valuation and the Property Services Department during the land acquisition process under Act 486.

### 4.2 Compensation Payable upon Eviction from the Customary Land

The Court in *Bato Bagi* rejected the natives' appeal, alleging that the government's extinguishing the natives' customary land was unconstitutional based on a lack of criteria in calculating the amount of compensation. In claiming compensation, it was up to the appellants to furnish evidence supporting the quantum of compensation they were claiming. They could claim based on loss of livelihood, agricultural produce of crop, and loss of the right of way or burial sites.

In deliberating the rights to get compensation upon extinguishment, the honourable Richard Malanjum CJSS in *Bato Bagi* opines as follows:

*"In considering the quantum of compensation, the relevant authority should not attempt to evaluate natives' customary rights purely from the monetary aspect. All relevant factors must be taken into account. The natives who belong to the land are part and parcel of it instead of being the owners, their total dependency on the land and its surroundings, and how their livelihood depends on the land. These are factual issues, and most importantly, the amount of compensation must reflect the long-term effect that the extinguishment will inflict upon the natives. The compensation should not be merely adequate. It should also be sufficient and reasonable based on a long-term scale."*

In the case of *Adong Kuwau*, the High Court has expressed the views which the Court of Appeal upheld that the State Authority must pay adequate compensation for trees, livelihood and hunting grounds. In deliberating the quantum of damages, the court is a generous effort to allow compensation payable for any loss based on evidence furnished by the Orang Asli. On the one hand, it favours them if they can provide proof. However, the Orang Asli will be protected if the compensation payable is incorporated under guidelines or a statute. In the absence of such a law, they still need to fight for their rights to adequate compensation in courts, which is lengthy in process and expensive.

## 5.0 Discussion

Concerning calculating the quantum of compensation payable upon extinguishing the Orang Asli's customary land, no precise legal method is provided by Act 134. As noted above, Sections 11 and 12 of Act 134 merely provide compensation as the State Authority thinks and fits. Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which the General Assembly adopted in 2007, declared that the pre-consultation with the aborigines should carry out before any legislation or administrative action is decided for the payment of compensation. The honourable Raus Sharif FCJ rejected using "international norms" in interpreting local law in *Bato Bagi*; by stating that international treaties do not form part of the national law unless ratified and introduced at the national level. This view aligns with the principle of transformation, where international law does not transform into federal law unless enacted in national law. The decision is also in tandem with the principles of international law, where states can only adopt any international law or treaty if incorporated into their domestic law.<sup>1</sup> In brief, even though Act 134 gives unfettered discretion to the State Authority, it is valid and enforceable since UNDRIP is not adopted under any domestic law in West Malaysia. Another relevant treaty for recognising the aborigines' land rights is the World Commission Dam, where in brief, it proposed that before any land designated to the aborigines could be taken away, the aborigines should be consulted before the process. The proposals by the Committee of Orang Asli's Rights of the Bar Council of Malaysia in 2012 should be considered in formulating guidelines for the quantum of compensation upon extinguishing the Orang Asli's customary land.

The proposal on the types of compensation by the Bar Council is divided into three (3) headings:

- i. Monetary Compensation;
- ii. Non-Economic Loss; and
- iii. Compensation for Future Generation.

### 5.1 Monetary Compensation:

---

The compensation payable to the aborigines is based on the case of *Adong bin Kuwau* (Court of Appeal, 1998), where it decided by the court that compensation should be paid on deprivations of:

- i. heritage land;
- ii. freedom of habitation or movement;
- iii. forest produce; and
- iv. future living.

In *Sagong bin Tasi* (High Court, 2002; affirmed, Court of Appeal, 2005), the court ordered 'market value' compensation to acquire the natives' customary land. Taking into consideration of the special attachment that Orang Asli have with their customary lands in assessing compensation, the following factors should be taken into account in assessing compensation for the loss of Orang Asli's customary land:

- a. Market value: the price that a willing buyer will pay and what a willing seller will accept;
- b. Highest and best use: valuation according to the most advantageous use of the property;
- c. Special value to the owner: this refers to a particular feature of the land that involves a financial advantage to the owner;
- d. Severance: where land has been severed from the balance of the owners' land, then compensation is allowed for the reduction in the market value of the land retained by the owner;
- e. Injurious affection: where part of the property is acquired, compensation will be allowed for loss that is caused to the balance of the land;
- f. Reinstatement: the cost of reinstating the disposed of the owner in a comparable land;
- g. Disturbance: costs directly incurred as a consequence of the acquisition; and
- h. Special compensation or solatium: for hardship, inconvenience, and injured feelings.

## 5.2 Non-Economic Loss

In computing non-economic loss, the sub-headings for non-economic loss would include but are not limited to:

- i. the insult associated with the loss of essential rights without consent;
- ii. the disruption to cultural practices caused by the loss; and
- iii. mental distress associated with the loss of homelands.

## 5.3 Compensation for Future Generation.

*Adong bin Kuwau* (1998) considered a deprivation of 'heritage land' and 'future living' in assessing compensation for losing Orang Asli lands. A possible method to compensate for such loss would be to factor an appropriate multiplier for the base amount of compensation

assessed. In this case, the court also ordered a multiplier of 25 years for loss of 'future' living. Whereas in the recent case of *Bato Bagi* (2012), instead of 25 years of future living cost, the Federal Court decided that the multiplier should be 20 years and not 25 years.

## 6.0 Conclusion

No guidelines and laws provide provisions on the computation of compensation payable to the Orang Asli when their land was extinguished for a public purpose, and it is left to the court to interpret what is considered fair and adequate. The compensation must be clarified to compute the amount (Peter, 2005). Above all, despite the Malaysian court's vigorous interpretation of the aborigines' land rights in the case of *Adong bin Kuwau and Bato Bagi* in interpreting the aborigines' land rights, the future of the Orang Asli's rights to land still needs to Case law is classified as unwritten law under the Malaysian Legal System that is flexible and may be subject to changes. In contrast, a statute is a written law that contains express provisions to be readily complied with by anyone. Guidelines on Compensations payable to the Orang Asli should be made available by the relevant authority that conforms with the international requirements to safeguard their rights and welfare.

## Article Contribution to Related Field of Study

This article reviewed the Orang Asli's land right upon their eviction from the customary land; It reflects the lack of protection accorded to the Orang Asli despite the fundamental liberties guaranteed under the Federal Constitution.

## References

- Bright, S, Dewar, K. (Eds). *Land Law: Themes and Perspectives*. New York: Oxford University Press, 15-51.
- Committee of Orang Asli Rights Malaysian Bar Council, (2012), Submission of Orang Asli Rights of the Bar Council of Malaysia on Compensation for Loss of Orang Asli's Land for SUHAKAM's National Indigenous Land Inquiry 2011-2012.
- Francis, E.A., (1972), *The Law and Practice Relating to Torrens Title in Australasia Volume 1*, Butterworth & Co (Australia) Limited
- Hinde, D.W., McMorland, D.W., Sim, PB, (1978), *Land Law*, Butterworths of New Zealand Ltd
- Kelsen, H., (2003), *Principles of International Law*, The Lawbooks Exchange Ltd, New Jersey.
- Laslett, P. (Ed). (2003). *Locke Two Treatises of Government*. Cambridge University Press, UK;
- Munzer, S.R.(Ed). (2001). *New Essays in The Legal and Political Theory of Property*. Cambridge University Press.
- Peter C., (2005), After Adong: The Emerging Doctrine of Native Title, *Journal of Malaysian Comparative Law* 3 assessed at URL: <http://www.austlii.edu.au/forms/search1.html> on 1 January 2019.

- Ramy, B., (2010), Indigenous Peoples and the Right to Participate in Decision Making in Malaysia, International Expert Seminar on Indigenous Peoples and The Right to Participate in Decision Making, Chiang Mai, Thailand.
- Salleh, B., (2010), Malaysian Torrens System, Dewan Bahasa dan Pustaka, Kuala Lumpur
- Seenivasan, G. (1995). *The Limits of Lockean's Rights in Property*. New York: Oxford University Press, pp. 5.
- Simpson, S.R., (1976), Land Law and Registration, Cambridge University Press, Australia
- Teo, K.S., (2012), Land Law in Malaysia Cases and Commentary Third Edition, Lexis Nexis Malaysia Sdn Bhd, Kuala Lumpur
- Wong, D.S.Y., (1972), Tenure and Land Dealings in the Malay States, Singapore University Press.
- Hashimah Abdul Halim and Rohaida Nordin, (2021). *Self-determination of indigenous peoples in Greenland: a comparison with the Orang Asli in Peninsular Malaysia*. Jurnal Undang-Undang dan Masyarakat, 29. pp. 39-48. ISSN 1394-7729.
- Mohamad Sayuti Bin Hassan@Yahya & Rohaida Nordin, (2019). *Status Dan Kedudukan Deklarasi Pertubuhan Bangsa-Bangsa Bersatu Mengenai Hak Orang Asal (DHOA) Di Sisi Undang-Undang Antarabangsa*. Legal Network Series, [2019] 1 LNS(A)cxlii.
- Noor 'Ashikin Hamid, Noraida Harun and Nazli Ismail@Nawang, (2011). *Pengambilan tanah bagi pembangunan ekonomi: isu dan penyelesaian*. Jurnal Undang-Undang dan Masyarakat, 15. pp. 135-148. ISSN 1394-7729.
- Noraida Binti Harun & Noor 'Ashikin Binti Hamid, (2010). *Akta Orang Asli 1954 (Akta 134): Sejauh Mana Melindungi Hak Orang Asli: Satu Kajian Perbandingan*. ICOPS 2010: International Conference on Public Policies & Social Sciences: E-Proceedings, 26 to 27 May 2010, SP Inn Hotel, Sungai Petani Kedah, Malaysia.
- YB Tuan Azmizam Bin Zaman Huri, (2018). *Melindungi Tanah Adat Orang Asal/Asli*, Sesi Soal Jawab Dewan Undangan Negeri Selangor, E-QUANS Electronic Question & Answer Dewan Negeri Selangor.
- Wook, I. (2015). Indigenous Land Disputes and Law Reform in India: Lessons for Malaysia. *IJUM Law Journal*, 23(2).
- Wook, I. (2017). Acknowledging Land Rights of the Orang Asli: A Historical Perspective of Laws in Peninsular Malaysia. *IJUM Law Journal*, 25(1). <https://doi.org/10.31436/ijumlj.v25i1.309>