

ECONOMIC DIMENSION OF THE RIGHT TO SELF-DETERMINATION OF THE ORANG ASLI: RIGHT TO LAND AND NATURAL RESOURCES

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ABSTRACT

The scope of the right to self-determination is still unresolved, even after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the General Assembly in 2007. Article 3 of the UNDRIP recognizes the indigenous people's right to self-determination that they can freely determine their political status and freely pursue their economic, social and cultural development. The main objective of this article is to critically evaluate the right to self-determination of Orang Asli particularly on the right to natural resources that have great impact on their traditional life as well as their economic development. Firstly, this article provides brief background information on Orang Asli including their origin, demography, history and their legal position under national laws. Secondly, this article analyzes the concept of self-determination of indigenous peoples by looking at the international laws, norms and practices. Thirdly, the legal framework on the right to natural resources will be analyzed by looking at the relevant domestic acts, court cases as well as government policies that affect the life of Orang Asli. The compatibility of domestic law with the international standards on the rights to self-determination and natural resources is the main aspect of this section. Finally, this article concludes that irrespective of the latest recognition on the rights to self-determination of indigenous peoples, there is much more to be done to ensure protection in practice. Thus, it is hoped that this article could provide positive contribution towards better recognition and protection of the rights of indigenous peoples, particularly to Orang Asli in Peninsular Malaysia.

Keywords: Self-determination, indigenous peoples, Orang Asli, international laws

Introduction

The plights of indigenous peoples¹ around the globe is become attention to the international community particularly after the adoption of UNDRIP by the United

¹ Special Rapporteur, Jose R. Martinez Cobo, Study of the Problem of Discrimination and Protection of Minorities, Vol V, Conclusion, Proposal and Recommendations,

Nations General Assembly in 2007.² The increasing international awareness of the oppression, subjugation and marginalization of indigenous peoples³ led to a positive and aggressive effort towards the international recognition of their rights.⁴ The struggle for the recognition of indigenous rights was a long and arduous journey for indigenous peoples, finally resulting in the codification of their international legal rights in the form of an international instrument in 2007.⁵

In the Malaysia context, indigenous peoples are divided into two groups namely the Orang Asli of the Peninsular Malaysia (the Orang Asli) and the Natives of the Sabah and Sarawak (the natives) who possessed different lifestyle.⁶ For the purpose of the present article, the focus will only be given to the Orang Asli as their state of affairs are believed to be poorer compared to the other group.⁷ Among the threat faced by the Orang Asli is the recognition of their rights including their

E/CN.4/Sub.2/1986/7/Add.4, Para 379-380, p 29. Pursuant to his report, indigenous peoples can be defined as following:

“Indigenous communities, peoples and nations are those which, having historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”

² GA/0612, 107th & 108th Meetings.

³ Rehman, J, International Law and Indigenous Peoples: Definitional and Practical Problems, *Journal of Civil Liberties*, Vol. 3, Issue 3 (1998), p 229.

⁴ Hannum, H, New Development in Indigenous Rights, *Virginia Journal of International Law*, Vol. 28:649, 1987, p 650. See Rohaida Nordin, The Right of the Indigenous Peoples: Development of Minimum International Standards, *Quarterly Law Review* [2010] 3 QLR.

⁵ The rights of Indigenous peoples have been recognized under United Nation Declaration on the Rights of Indigenous Peoples by the General Assembly on 13 September 2007.

⁶ Kathrin Wessendorf et al, *The Indigenous World 2011*. Copenhagen: International Work Group for Indigenous Affairs (IWGIA), 2011, p 280. Native peoples in Sarawak are collectively called *Orang Ulu* or *Dayak* and include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Murut, Penan, Bisayah, Kelabit, Berawan and Penan. They constitute around 50% of Sarawak’s population of 2.5 million people. However, in Sabah the natives or *Anak Negeri* was divided into 39 different indigenous ethnic groups. As at 2011, they constitute around 47.4% of the total population of Sabah.

⁷ The position of natives in Sabah and Sarawak have been recognized under Federal Constitution and in fact their position as equal as Malays who represent majority population in Malaysia. Their special position and privileges has been mentioned in article 153 (1) of the Federal Constitution which provides as following: It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.

identity, land, natural resources and their traditional territory. In this article, the focus will be on the rights to customary land and natural resources.

The first part of the article introduces the background of Orang Asli that includes their history, classification and their positions under Malaysian laws. The second part outlines the concept of the right to self-determination of indigenous peoples under international law particularly on economic dimension namely right to land and natural resources. Subsequently, the third part of this article will consider the domestic legal framework on natural resources that have implication to the traditional life of Orang Asli. The fourth part analyzes the compatibility of the domestic law with the international law on the right to self-determination of indigenous peoples. Finally, in part five, this article will make its conclusion and suggestions for betterment of Orang Asli.

Background information on Orang Asli

The word Orang Asli means original peoples and the word “Orang” mean peoples, whereas “Asli” is derives from Arabic word “Asali” which means original.⁸ Previously they have been referred as Sakai. However, the term Sakai bring negative connotation that means weak, slave and powerless.⁹ Besides that, they were also referred as Orang Liar, Pagan, Orang Mawas as well as Orang Jinak.¹⁰ As at 2011, these minorities population represent 0.6% of the national population approximately

⁸ Carey, I, *Orang Asli, the Aboriginal Tribes of Peninsular Malaysia*. Kuala Lumpur, Oxford University Press, 1976. p 3. See Dentan, *The Semai, a Non Violent People of Malaya*, Stanford University, California, 1968, p 1. Dentan defined Sakai as “bestial aborigine” or “slave”.

⁹ Gordon, 'The Orang Asli: Aboriginal Policies in Malaysia', (1985) 58 (4) *Pacific Affairs*, p 638.

¹⁰ Carey, *Orang Asli, The Aboriginal Tribes of Peninsular Malaysia*, p 3-4. These names were considered as derogatory terms.

150,000 peoples.¹¹ For the purpose of administrative convenience, the three major groups of Orang Asli is divided into 18 subgroups as follows:

Ethnics	Sub-groups
Negrito	Kensiu, Kintak, Lanoh, Jahai, Mendriq, Bateq
Senoi	Temiar, Semai, Semoq Beri, Che Wong, Jah Hut, Mah Meri
Melayu Proto	Temuan, Semelai, Jakun, Orang Kanaq, Orang Kuala, Orang Seletar

(Source: Planning and Research Division, Department of Orang Asli Development)

Further, Negrito¹² is the smallest population among the three groups of Orang Asli in Malaysia and yet they are believed to be the oldest generation in peninsular Malaysia approximately 25,000 years ago.¹³ At present, many of Negritos settled in Northern part of states namely Kedah, Kedah-Perak border, West Kelantan, North-central Perak, southeast Kelantan and Northeast Pahang and South Kelantan.¹⁴ In contrast, the Senoi¹⁵ represent the largest population among aborigines amounted 54% of Aborigines Populations. Their population are scattered in Perak, Pahang, Kelantan

¹¹ Kathrin Wessendorf etl, *The Indigenous World 2011*, p 280.

¹² The word “negrito” means Little Negro and the earliest terms used are Semang and Pangan. These peoples can be recognized by their appearance whose have dark skin, broad nose, round eyes and low cheekbones. Iskandar Carey, *Orang Asli, The Aboriginal Tribes of Peninsular Malaysia*, Oxford University Press, Kuala Lumpur, 1976, p 15.

¹³ According to archeologist, there are connection between Negritos and Hoabinhians who lives during the middle stone age. Colin Nicholas, *The Orang Asli and The Contest for Resources, Indigenous Politic, Development and Indentity in Peninsular Malaysia*, International Work Group for Indigenous Affairs (IWGIA), Copenhagen, 2000, p 3.

¹⁴ Colin Nicholas, *The Orang Asli and The Contest for Resources, Indigenous Politic, Development and Indentity in Peninsular Malaysia*, p 3.

¹⁵ Originally they are Mongoloid peoples who have connection with Hoabinhians and the Neolithic cultivators who entered into peninsula in 2,000BC. They can be identified by their appearance as they are taller, skin in lighter color, and their hair more wavy. Colin Nicholas, *The Orang Asli and The Contest for Resources, Indigenous Politic, Development and Indentity in Peninsular Malaysia*, p 4.

as well as Coastal Selangor.¹⁶ The Proto Malay¹⁷ or also classified Aboriginal Malay is the second largest group who represent 43% of total population of Aborigines in peninsula. They live in Southern of the peninsular including Selangor, Negeri Sembilan, Pahang as well as Johor.¹⁸ Most of Orang Asli in Malaysia are involved in agricultures or riverine and coastal fishing and some of them inclined to involve in entrepreneurial and professional worker in the main stream.¹⁹

Historically, Orang Asli are believed to be the descendants of the first inhabitants in the peninsular. According to Means, Orang Asli were present at the peninsular prior to the Malays and they were migrated from upper Thailand, Burma or Cambodia from eight thousand to three thousand years ago.²⁰ Jones affirmed that the ancestors of Orang Asli arrived in this region since several thousand of years before recorded history.²¹ Nevertheless, the live of this Orang Asli greatly changed after the British invaded Malaya at the later century.²² The great impact of British invasion can be seen in the change of administrative process, laws which directly affect the Orang Asli.

From the legal point of view, the position of Orang Asli has been “protected” under domestic laws where the government enacted specific set of law meant for them. Aboriginal Peoples Act 1954 (Act 134) (APA 1954) was passed to protect the

¹⁶ Colin Nicholas, *The Orang Asli and The Contest for Resources, Indigenous Politic, Development and Indentity in Peninsular Malaysia*, p 4.

¹⁷ Most of them have straight hair, darker skin color compared to Senoi and their body heavier. William Hunt, *An introduction to the Malayan Aborigines*, AMS Press, New York, 1983, p 17.

¹⁸ Colin Nicholas, *The Orang Asli and The Contest for Resources, Indigenous Politic, Development and Indentity in Peninsular Malaysia*, p 4.

¹⁹ Colin Nicholas, *The Orang Asli and The Contest for Resources, Indigenous Politic, Development and Indentity in Peninsular Malaysia*, p 4.

²⁰ Gordon, 'The Orang Asli: Aboriginal Policies in Malaysia', (1985) 58 (4) *Pacific Affairs*, hlm 638.

²¹ Jones, 'The Orang Asli: An Outline of their Progress in Modern Malaya', (1968) Vol. 9 (No. 2) *Journal of Southeast Asian History*, hlm 287.

²² Jones, 'The Orang Asli: An Outline of their Progress in Modern Malaya', pp 287- 293.

well being of aboriginal in Peninsular Malaysia.²³ The definition of Orang Asli can be found in section 3 of the act.²⁴ Besides that, the word “aborigine” also has been defined in the article 160 of the Federal Constitution of Malaysia that refers to the aboriginal in peninsular Malaysia.

Economic Dimension of Self-Determination of Indigenous Peoples on the Rights to Land and Natural Resources

The right to self-determination of indigenous peoples is greatly debated by scholars despite the fact that the right has been recognized within the text of UNDRIP. While the UNDRIP received overwhelming support, the legal concept of self-determination has been opposed by the developed states as falling within the scope of rights accorded to indigenous peoples. For the purpose of the article at present, it is vital to highlight the general concept of self-determination of indigenous peoples.

The right to self-determination is accepted under international law.²⁵ In 1996, International Court of Justice in the case of *Portugal v. Australia (East Timor Case)*, ICJ Reports (1996), defined the right to self-determination as “*erga omnes*”. Anaya submits that the right to self-determination constitutes a part of *jus cogens* and is generally accepted under international law.²⁶ Further, the right to self-determination can be understood as freedom, integrity and respect. It extends beyond human rights,

²³ In the preamble of the act, it mentioned the purpose of the act. Section 1 of the said act provides that it only applicable to Orang Asli in Peninsula Malaysia.

²⁴ Section 3 of the Orang Asli Act classified 3 different situations to define the Orang Asli in Malaysia that includes any person whose male parents, or any person who adopted by aborigines or the child of any union of another races who habitually follows aboriginal lifestyles and their belief and speaks in their languages.

²⁵ Rohaida Nordin, Muhamad Sayuti Bin Hassan @ Yahya, Matthew Albert Witbrodt, Indigenous Peoples in Asia: Indigenusness and Self-determination, paper presented at The 9th Annual Asli Conference 2012, Singapore on May 31 – 1 June 2012, p 3.

²⁶ Anaya, JS, *Indigenous Peoples in International Law*, Oxford university Press, New York, 2004, p 97. For clarity, Brownlie and Gos Espiell submit that self-determination constitutes *jus cogen*, particularly in light of General Assembly Resolutions 1514 and 2625. See. Hannum, H, *Autonomy, Sovereignty, and Self-determination, The Accomodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia, 1990, p 45.

despite its inclusion in both international covenants.²⁷ In the context of indigenous peoples, self-determination represents the freedom to make decisions regarding matters that affect them; to live in accordance with their traditional lifestyles, values and beliefs; and to be treated equally within the state.²⁸ The test to evaluate to the right of self-determination of indigenous peoples is whether they have the freedom to determine their own lifestyle.²⁹ Daes added that self-determination is the central tenet and acted as significant symbol of their movement.³⁰ On a separate note, Anaya pointed out that the fundamental spirit of self-determination is freedom and equality and it is known as ground for decolonization which resulting an independent statehood.³¹

It is important to note that the right to self-determination is provided for by article 1 of the International Covenant on Civil and Political Right (ICCPR) that is identical to article 1 of the International Covenant on Social, Economic, and Culture Rights (ICSECR) which recognizes the rights to self-determination of all peoples.³² Under international law, the right to self-determination of “peoples” may also include the right to secession and the right to choose independent statehood.³³

²⁷ Two international covenants on Human right are International Covenant on Civil and Political Right and International Covenant on Social, Economic, and Culture Rights. According to the African Charter on Human and Peoples Right, self-determination is a right to be free from any kind of colonial subjugation. Ivor Denning describes self-determination as the freedom to make a decision, whereas Micheal Addo added that the definition of self-determination depends upon the instrument utilized under international law. See Robert Mc Corquodale, *Self-determination in International Law*, Ashgate, Dartmouth, 2000, p xv.

²⁸ Daes, EI, The Concept of Self-determination and Autonomy of Indigenous Peoples in the Draft United Nations Declaration on the Rights of Indigenous Peoples, 14 *St. Thomas L. Rev.* 259 2001-2002, p 263.

²⁹ Daes, EI, *St. Thomas L. Rev.* p 263.

³⁰ Corntassel, JJ, *The Concept of Indigenous Peoples in Asia, A Resource Book*, p 57.

³¹ Anaya, A Contemporary Definition of the International Norm of Self-determination, *Transnational Law & Contemporary Problems*, Vol 3:131, p 132.

³² Article 1 of ICCPR provides that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

³³ Daes, E.I, The Right of Indigenous Peoples to “Self-Determination” in Contemporary World Order, in the *Self-determination, International Perspectives* by Donald Clark, Macmillan Press Ltd, London, 1996, p 49. This right only can be exercise by “peoples” who subjected to “alien subjugation, domination and exploitation”.

In 2007, indigenous peoples received international recognition as beneficiaries of the right to self-determination through article 3 of the UNDRIP, which provides:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The wording of article 3 is rather clear on the recognition of the right to self-determination. The right extends to political rights; rights to economic development; and rights to social and cultural development. Additionally, the right to self-determination is closely linked to natural wealth and resources.³⁴ Article 4 of the UNDRIP further provides that in exercising the right, indigenous peoples “have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions”. Therefore, arguably the rights to self-determination of indigenous peoples do not equate with the rights accorded to “all peoples”. In the spirit of non-discrimination, the right of indigenous peoples to self-determination should not be limited only to internal and local affairs only.

In the context of natural resources, *Convention No 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, International Labour Organization (ILO 169) provides a clear standard on the usage of natural resources by indigenous peoples. It can be seen under article 15, ILO 169 where the convention give special attention to safeguard the right to natural resources among indigenous peoples which includes right to use, manage as well as conserve of the resources. The convention

³⁴ Daes, E.I, The Right of Indigenous Peoples to Self-determination in the Contemporary World Order, in *Self-determination, International Perspectives*, p 49.

went further to provide specific provision on the sub-surface resources.³⁵ Besides that, the indigenous rights to land and natural resources was internationally accepted where it was evidenced in the preparatory work of some of the international documents such as Chapter 26 of Agenda 21 adopted by the United Nations Conference in Environment and Development as well as World Bank Operational Directive, No. 4.20, 1991.³⁶

In addition, the UNDRIP provides for even much clearer provision on the rights of indigenous peoples on natural resources.³⁷ Article 26 (2) specifically provides that:

“Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”

Pursuant to the case of *Delgamuukw v. British Columbia*, the chief justice ruled that the indigenous titles is *sui generis* whereby the title will be belonged to them based on their habitation on that land since long time ago.³⁸ Besides that, in the case of *The Mayagna (Sumo) Awas Tingi Community v. Nicaragua*, the Inter-American Court of Human Rights recognized the property right of indigenous peoples by looking at the international instruments such as article 14 (2) of ILO 169 and American Convention on Human Rights.³⁹

³⁵ Article 15 (2), ILO 169.

³⁶ Anaya, J, *Indigenous Peoples in International Law*, p 145.

³⁷ Jayantha Parera, *Land and Cultural Survival, The Communal Land Rights of Indigenous Peoples in Asia*, Asian Development Bank, Philippine, 2009, p 22.

³⁸ Jayantha Parera, *Land and Cultural Survival, The Communal Land Rights of Indigenous Peoples in Asia*, p 25.

³⁹ Anaya, *Indigenous Peoples in International Law*, p 146.

Pursuant to the above discussion, it is submitted that the international law recognizes the indigenous people's rights to self-determination. In respect of land and natural resources, international attention has been given to the UNDRIP although it hold the status as soft law which not legally binding upon states. Nevertheless, it can be presumed as a good standard and it recognize all indigenous people's right around the globe to stand equal with others.

Malaysian legal framework on the right to natural resources

This section evaluates the adequacy of national provisions and laws on natural resources. It covers various statutory laws as well as judicial aspect that affect the life of Orang Asli directly or indirectly.

The Federal Constitution of Malaysia is silent on the rights of Orang Asli to claim natural resources. The law related to it was enunciated under article 74 (2) that delegates the power to states to enact laws or control any land and natural resources within their territory. In other words, land and natural resources in Malaysia fall within the ambit of state jurisdiction as enlisted under Second List of the Ninth Schedule in the Federal Constitution.⁴⁰ Nicholas submits that there was a conflict between the power of state and federal where the Orang Asli matter fall under the federal concern whereas the land and natural resources fall under state's jurisdiction.⁴¹

⁴⁰ Colin Nicholas, The Law On Natural Resource Management As It Affects The Orang Asli, Paper Presented At The UNDP-RIPP/PACOS Workshop On Indigenous Peoples And Natural Resource Management Laws, 10 November 2005, Donggongon, Sabah, http://www.coac.org.my/codenavia/portals/coacv2/code/main/main_art.php?parentid=11400226426398&artid=11475792539604, (15 August 2012).

⁴¹ Colin Nicholas, The Law On Natural Resource Management As It Affects The Orang Asli, p 2. Under Ninth Schedule of the Federal Constitution, item no 16 provides on the welfare of aborigines.

He further expressed his concern on this matter as state has all legal control on the land and natural resources.⁴²

As far as the right to land and natural resources is concern, the APA 1954 arguably failed to offer absolute recognition in protecting their rights in this matter. Sections 6(1) and 7(1) of the act implicitly deny the right of Orang Asli where these provisions empower the Minister to grant land for the use as Aboriginal areas or reserves. Sections 6(3) and 7(3) went further to allow the Minister to revoke those grants at any time, without consultation.⁴³ Additionally, section 8 of the act authorizes state to perform their discretionary power to grant right of occupancy to Orang Asli on the land within aboriginal areas or reserves.⁴⁴ Therefore, at this point, it was suggested that the act fails to recognize the ownership of ancestral land to Orang Asli where it only offers right of occupation and they were impliedly be considered as “tenant at will”.⁴⁵

Besides that, National Land Codes 1965 (Act 56) affirms that all land and natural resources matters are under state’s jurisdiction. In Malaysia, the Torrens system is applicable throughout peninsular that all land requires registration and it is conflicted with the indigenous concept on land where they traditionally owned the land without documentation.⁴⁶ In that case, it is argued that the National Land Code 1965 is failed to provide statutory recognition to Orang Asli right to ancestral land.⁴⁷

⁴² Colin Nicholas, *The Law On Natural Resource Management As It Affects The Orang Asli*, p 2.

⁴³ Amy Dennison', *Evolving Conceptions Of Native Title In Malaysia And Australia - A Cross-Nation Comparison*, 11 *Austl. Indigenous Law Review*, 79 2007, p 82.

⁴⁴ Section 8, *Aboriginal Peoples Act 1954 (Act 134)*.

⁴⁵ Amy Dennison', *Evolving Conceptions Of Native Title In Malaysia And Australia - A Cross Nation Comparison*, p 82. See Colin Nicholas et al, *The Orang Asli and The UNDRIP, from Rhetoric to Recognition*, Center For Orang Asli Concerns, Subang Jaya, 2010, p 77.

⁴⁶ Amy Dennison', *Evolving Conceptions Of Native Title In Malaysia And Australia - A Cross Nation Comparison*, p 82. See also Colin Nicholas, *The Law On Natural Resource Management As It Affects The Orang Asli*, p 3.

⁴⁷ Amy Dennison', *Evolving Conceptions Of Native Title In Malaysia And Australia - A Cross Nation Comparison*, p 81.

Prior to judicial recognition towards ancestral land, they were regarded as landless as all their land belongs to the State.⁴⁸ Furthermore, National Forestry Act 1984 (Act 313) provides on the conservation of forest and forestry development in Malaysia. Section 14 of the said act indicates that all forest products are the state property.⁴⁹ The rights of Orang Asli become more threaten when section 19 of the same act further requires all product collectors to get a license in order to collect the product of the forest.⁵⁰ These two sections in away infringe the Orang Asli's traditional way of life that has strong attachment with their land and resources in the forest. On the other hand, the Protection of Wildlife Act 1972 (Act 76) recognizes the rights of Orang Asli's activities where the law allow Orang Asli to proceed with their traditional activities such as hunting, shoot, or kill to any wildlife within Wildlife Reserves and Sanctuaries Area which declared under this act.⁵¹ As far as legislation is concern, it is seems that, Orang Asli rights are not ready to be recognized. A lot more has to be done towards recognition.

Besides statutory provisions, judicial rulings delivered by Malaysian court play very important role in the protection of Orang Asli's rights. It can be seen in the case of *Koperasi Kijang Mas v Kerajaan Negeri Perak* where the High Court ruled that the Orang Asli has the rights to the natural resources. Further, the state has been declared breach of the provision contained in the APA 1954 and the contractor in that case has no right to proceed on the logging activities within the Aboriginal Reserves.⁵² The decision is significant to Orang Asli especially when the court directed that state gazette was not mandatory to allow Orang Asli's enjoyment of the

⁴⁸ Amy Dennison', *Evolving Conceptions Of Native Title In Malaysia And Australia - A Cross Nation Comparison*, p 81.

⁴⁹ Section 14, National Forestry Act 1984.

⁵⁰ Section 19, National Forestry Act 1984.

⁵¹ Section 52, the Protection of Wildlife Act 1972 (Act 76). The act of shoot, kill or take of th wild animal and birds are described under Schedule Two and Four of the same act.

⁵² [1991] 1, MLJ 486.

natural resources in the reserves.⁵³ This case was further supported with the case of *Adong bin Kuwau v Kerajaan Negeri Johor*, where the Orang Asli has been declared to enjoy the proprietary right on the land.⁵⁴ Judge Mokhtar Sidin in this case pronounced that the Orang Asli has the rights on the land as provided under both common law and statutory law.⁵⁵

The decision of the High Court and affirmed by the Court of Appeal through landmark case of *Sagong Tasi and Ors v Government of Negeri Selangor* has brought a tremendous victory to the Orang Asli. It was declared that the establishment of the ancestral ties would confer upon the Orang Asli as actual ownership of the customary land and thus entitled to compensation for the loss suffered, which is the value of the land.⁵⁶ In this case the court upheld the rights of Orang Asli to their ancestral land to include “in and on” the land.⁵⁷ Thus, the case of *Sagong Tasi* gives further recognition towards Orang Asli’s rights to customary land that includes rights on and to the land itself. In respect of judicial recognition, a positive development can be seen where the court starts to play their role to open up our mind that Orang Asli has to be respected by all nation. With the good decision, it is hope that, it will trigger the importance of recognition of Orang Asli rights towards land and natural resources.

⁵³ Colin Nicholas et al, *The Orang Asli and The UNDRIP, from Rhetoric to Recognition*, p 79.

⁵⁴ [1997] 1 MLJ 418.

⁵⁵ Ramy Bulan, Native Title as a Proprietary Right Under the Constitution in Peninsula Malaysia: A Step in the Right Direction? 9, *Asia Pacific Law Review* 83 2001. The proprietary rights on the land includes right to freely move, right to live on the land like their forefather and others. See Yogeswaran Subramaniam, Common Law Native Title In Malaysia: Selected Issues For Forest Stakeholders, [2010] 1 MLJ Xv; [2010] 1 MLJA 15, p 2.

⁵⁶ [2002] 2 MLJ 591.

⁵⁷ [2002] 2 CLJ 591.

Economic Dimension of Self-determination on the Rights to Land and Natural Resources: An Analysis

The international law recognition of the rights to self-determination to all indigenous peoples are clear particularly after the adoption of UNDRIP. Nevertheless, within domestic law the issue of recognition on that right is still not absolute. This article submits that the legal framework on the Orang Asli's rights over natural resources to a certain extent is incompatible with the international law.

The availability of law to protect Orang Asli's rights undeniably beneficial to them particularly APA 1954, however in some provisions it goes against the norm of self-determination that they were entitled under international law. The provisions of section 6, 7 and 8 of APA 1954, National Forestry Act 1984, and National Land Code 1965 on the right to land and natural resources of Orang Asli is incompatible with the provision laid in article 26 (2) of UNDRIP as well as article 15 of ILO 169. On the other hand, the section 52 of the Protection of Wildlife Act 1972 upholds the right of Orang Asli to enjoy their traditional way of life which is inline with the international law standard on the right to natural resources.

In addition, as far as Malaysian Courts is concerned, the above cases demonstrate that the rights of Orang Asli to natural resources have positively evolved towards better protection and recognition. Besides considering national statutory provisions on that matter, the judges in the above cases were correctly referred to the international practices and common law in delivering their judgment. The case of *Sagong Tasi* signified that Malaysian court took very important step to uphold the better recognition of Orang Asli as postulated under international law.

The fact that Malaysia did not ratify the ILO 169 and the nature of UNDRIP as soft law imposes Malaysia with no legal obligation to comply to those international law standards. Nonetheless, Malaysia has no choice but to observe the indigenous rights to self-determination as it was recognized as a norm under international customary law.

Conclusion

In conclusion, a significant amount of efforts need to be invested in order to secure the right to self-determination of Orang Asli. The political interests of the majority should be set aside in order to ensure the protection of the right. Rather than simple rhetorical recognition within legal provisions, Orang Asli require compatible policies and practices in order to realize such rights. The existing diversity between theory and implementation should be bridged by the appreciation of the Orang Asli right to self-determination. As such, active, progressive and concerted efforts between State governments and non-governmental organizations could significantly aid in the resolution of issue relating to Orang Asli within the State. The role of the State is of paramount importance in the transition from the theoretical existence of international human rights accorded to Orang Asli and the actual enjoyment and realization of indigenous rights by indigenous peoples within their territories. The discriminatory and prejudicial treatments towards indigenous peoples should be eliminated and all indigenous peoples in this world should be treated with due justice and fairness.