

*“Terjemahan”*

DALAM MAHKAMAH TINGGI MALAYA DI TEMERLOH

**PERMOHONAN BAGI SEMAKAN KEHAKIMAN NO: - 07**

Dalam perkara keputusan Kerajaan Negeri Pahang yang ternyata dalam Notis bertarikh 12.3.2007;

Dan

Dalam perkara Seksyen 16, 425 dan 426A Kanun Tanah Negara 1965, Seksyen 4, 7 dan 8 Akta Orang Asli 1954 dan Perkara 5, 8, 11 dan 13, 83, 85 dan 86 Perlembagaan Persekutuan;

Dan

Dalam perkara suatu permohonan untuk Perintah Certiorari dan deklarasi;

Dan

Dalam perkara Aturan 53 Kaedah-Kaedah Mahkamah Tinggi, 1980.

Antara

1. **Mohamad Bin Nohing**  
[Batin Kampung Bukit Rok]
2. **Raman Bin Mat** [Batin Kampung Ibam]
3. **Rohani Binti Nehir** [Penduduk Kampung Bukit Rok]
4. **Romani Bin Mohamad**  
[Penduduk Kampung Bukit Rok]
5. **Zainuddin Bin Yong** [Penduduk Kampung Bukit Rok]
6. **Jariman Bin Jali** [Penduduk Kampung Ibam]

**(Kesemua 6 Pemohon mendakwa bagi pihak dirinya dan semua yang lain yang merupakan Orang Asli Kampung Bukit Rok dan Kampung Ibam)**

Pemohon-  
Pemohon

Dan

1. **Pengarah Tanah Dan Galian Negeri Pahang**
2. **Kerajaan Negeri Pahang**
3. **Ketua Pengarah Jabatan Hal Ehwal Orang Asli**
4. **Kerajaan Malaysia**

Responden-  
Responden

### **A F F I D A V I T**

**I, MOHAMAD BIN NOHING (NRIC NO. 530624-06-5311)**, a Malaysian Citizen of full age and having an address at Kampung Bukit Rok, 28300 Triang Bera, Pahang Darul Makmur, do hereby solemnly and sincerely affirm and say as follows:

1. I am the Batin [village Headman] of Kampung Bukit Rok, Mukim of Guai, in the District of Bera, Pahang. Together with Raman bin Mat (NRIC NO. 701014-06-5537), the Batin of Kampung Ibam, Rohani binti Nehir (NRIC NO. 500624-06-5162), a resident of Kampung Bukit Rok, Romani bin Mohamad (NRIC NO. 641101-06-5293), a resident of Kampung Bukit Rok, Zainuddin bin Yong (NRIC NO. 660514-06-5279), a resident of Kampung Bukit Rok and Jariman bin Jali (NRIC NO. 650514-06-5085), a resident of Kampung Ibam we bring this action on our

own behalf and on behalf of the Aboriginal Peoples from Semelai tribe of the said Kampung Bukit Rok and Kampung Ibam.

2. Save as otherwise expressly stated, the facts deposed to herein are within my personal knowledge in my capacity as the Batin of Kampung Bukit Rok.

3. The 1st Respondent is the Pahang State Director of Lands and Mines appointed under the National Land Code 1965 under which he is entrusted with certain functions, powers and duties for the administration of the said Code. He is named as a party by virtue of Section 16 (2) of the National Land Code 1965.

4. The 2<sup>nd</sup> Respondent is the State Government of Pahang. Under the National Land Code 1965, the National Forestry Act 1984 and the Aboriginal Peoples Act 1954 (Revised 1974) the 2<sup>nd</sup> Respondent is entrusted with certain functions, powers and duties pertaining to the administration of forests, land and aboriginal peoples' land rights.

5. The 3<sup>rd</sup> Respondent is the Commissioner of Aboriginal Affairs appointed under Section 5 of the Aboriginal Peoples Act 1954. By virtue of the Titles of Office Act 1949, he is now

referred to as the Director General for Aboriginal Affairs. He is the head of the Department of Orang Asli Affairs or Jabatan Hal Ehwal Orang Asli [hereinafter referred to as “the JHEOA”] established by the 4<sup>th</sup> Respondent.

6. The 4<sup>th</sup> Respondent is the Government of the Federation of Malaysia and is commonly referred to as the Federal Government. Under the Aboriginal Peoples Act 1954, the 4<sup>th</sup> Respondent is entrusted with certain functions, powers and duties pertaining to the administration for the "welfare of the aborigines". The welfare of aborigines is expressly set out in the Federal Constitution to be within the legislative and executive competence of the 4<sup>th</sup> Respondent.

7. The Federal Constitution is the supreme law of the land. Article 8 (5) (C) of the Federal Constitution vests in and entrusts the Respondents with the authority to make provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsula, including the reservation of land which favour them over other communities notwithstanding the guarantee of equality before the law.

8. Under section 4 of the Aboriginal Peoples Act 1954 the 3<sup>rd</sup> Respondent is charged with the responsibility for the "administration, welfare and advancement of the aborigines". He is given the authority to do all acts reasonably necessary and incidental to or connected with the performance of his functions under the Act.

9. Section 7 of the Aboriginal Peoples Act 1954 provides for the State Authority of the 2<sup>nd</sup> Respondent to declare by notification in the Gazette any area exclusively inhabited by aborigines to be an aboriginal reserve.

10. The "Statement of Policy Regarding the Long Term Administration of the Aborigine People in the Federation of Malaysia" [hereinafter referred to as the "**Policy Statement**"] on 20.11.61 sets out the policies and underlying principles to be adopted in relation to various aspects of the protection and advancement of the Orang Asli.

Now produced and shown to me and marked as "**MN-1**" is a copy of the Policy Statement.

11. The Policy Statement touches upon several matters of fundamental importance to the special position of the Orang Asli which are modelled along the principles contained in Convention No. 107 of 1957.

Now produced and shown to me and marked as “MN-2 “is a copy of Convention No.107 of 1957.

12. The Policy Statement recognises the right of the Orang Asli to benefit equally with the other sections of the community and the need to promote their social, economic and cultural development. Therein is also stated the commitment to adopt special measures for protecting their institutions, customs, mode of life, person, property and labour. It sets out integration of the Orang Asli as opposed to assimilation as the object of the promotion of the social economic and cultural development of the Orang Asli. The basic principle of collaboration with Orang Asli in all matters concerning their welfare and development is stated as an imperative of the government.

13. The policy and underlying principle in regard to land in the Policy Statement is set out as follows:

"The special position of the aborigines in respect of land usage and Land Rights shall be recognised. Thus, every effort will be made to encourage the more developed groups to adopt a settled way of life and this is to bring them economically into line with other communities in their country. Aborigines will not be moved from their traditional areas without their full consent".

14. The Applicants are aborigines/aboriginal people of West Malaysia [Peninsular Malaysia] from the Semelai tribe. The Applicants and their ancestors have for generations settled as an aboriginal community in the lands covering 2,023.47 hectares in the Mukim of Guai, District of Berai, Pahang marked in yellow as shown in the JHEOA Plan [hereinafter referred to as **“Aboriginal Inhabited Place”**] annexed to this Affidavit. The said Aboriginal Inhabited Place is customary and ancestral land occupied by the Applicants and their forefathers for generations. By virtue thereof, the Applicants have customary and proprietary rights in and over the lands in the Aboriginal Inhabited Place.

Now produced and shown to me and marked as “MN-3 (a) – (b)” is a copy of the Plan from the JHEOA and a copy of the Plan from Jabatan Perhutanan Negeri Pahang.

15. Sometime in the year 2000 arising from an increase in population, the said Aboriginal Inhabited Place which was originally known as Kampung Bukit Rok, was administratively organised into 2 cantons; namely, Kampung Bukit Rok and Kampung Ibam under 2 headmen. Padang Kepayang which is a part of the Aboriginal Inhabited Place remains within the headmanship of the Batin of Kampung Bukit Rok.

16. That part of Kampung Bukit Rok known as Padang Kepayang is being used by the Applicants as farming, rituals and ancestral burial grounds. The Applicants gain sustenance from the said Padang Kepayang where they hunt, fish and gather jungle produce for their livelihood. The said Padang Kepayang provides sources of traditional medicine like roots and herbal leaves, forest produce like Kruing and Jelutong, as well as atap leaves and rattan for furniture and home building tools. In Padang Kepayang are also small-holdings of rubber trees and oil palm which provide another source of livelihood. The huts and/or buildings erected in the said Padang Kepayang are constructed as part and parcel of the

economic pursuit of the Applicants providing shelter and storage facilities. The three burial grounds in Padang Kepayang are still in use today namely Cerakak, Tanjung Rambutan and Seberang Giyah. The Applicants and the Semelai tribe aborigines consider Padang Kepayang to be a holy and sacred place which shall not be trespassed or taken by outsiders.

17. I am advised by my solicitors and verily believe that Respondents owe constitutional, statutory and fiduciary duties to the aboriginal peoples of West Malaysia including the Applicants who are members of the Semelai tribal community in relation to the said Aboriginal Inhabited Place. In particular, such duties extend to the protection of their common law, constitutional and statutory rights in and over their customary and ancestral lands [including lands under customary communal/community title] as well as lands occupied and/or inhabited by the aboriginal peoples [hereinafter collectively referred to as “**Land Rights**”].

18. I am further advised by my solicitors and verily believe that the Respondents are obliged to meet and to fulfil the legitimate expectations of the Applicants with regard to the protection of their Lands Rights over the said Aboriginal Inhabited Place.

19. The said Aboriginal Inhabited Place being an area exclusively inhabited by the Applicants has been approved by the State Authority of the 2<sup>nd</sup> Respondent to be declared as an aboriginal reserve under the Aboriginal Peoples Act 1954 vide Surat Kelulusan Bil. (22) Temp 9/74.

Now produced and shown to me and marked as “MN-4” is a copy of the Data Tanah, Jabatan Hal Ehwal Orang Asli, Kementerian Dalam Negeri Malaysia 1990, page 37.

20. I am advised by my solicitors and verily believe that the aforesaid approval although not administratively gazetted is sufficient to constitute the Aboriginal Inhabited Place as aboriginal reserves. The Applicants have thereby acquired the rights vested in them under the Aboriginal Peoples Act 1954. Furthermore the restrictions in favour of the Applicants as set out in the said Act will also apply to the said Aboriginal Inhabited Place.

21. I am further advised by my solicitors and verily believe that the Applicants have common law rights over the Aboriginal Inhabited Place which include but are not limited to the proprietary right, customary and/or native title [including lands

under customary communal/community title], usufructuary rights in and to the Aboriginal Inhabited Place, 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 and the right to live on their land as their forefathers had lived together with the right to the resources in and on the said land.

22. On or about 30.8.2004, the Applicants discovered that part of the Aboriginal Inhabited Place known as Padang Kepayang had been encroached and trespassed upon by unknown persons. The trespassers were conducting land surveying work on the Aboriginal Inhabited Place. The Village Headman of Kampung Bukit Rok on behalf of the Applicants immediately lodged a police report.

Now produced and shown to me and marked as “MN-5” is a copy of the police report dated 30.8.2004.

23. On or about 27.10.2004, without the presence of the Applicants or representative of the Applicants, a meeting was held, *inter alia*, between the representatives of 1<sup>st</sup> Respondent, representatives of 2<sup>nd</sup> Respondent, District Officers of 3<sup>rd</sup> Respondent under the charge of 4<sup>th</sup> Respondent and representatives

of 4<sup>th</sup> Respondent together with a representative of FELCRA BERHAD [a corporation wholly owned by the 4<sup>th</sup> Respondent] and the Village Headman of the adjacent Kampung Batu Papan. It was disclosed that the Forestry Department of the 2<sup>nd</sup> Respondent had granted a logging licence to carry on the logging activities on or in the vicinity of that part of the Aboriginal Inhabited Place known as Padang Kepayang (hereinafter referred to as the “**First Meeting**”).

Now produced and shown to me and marked as “**MN-6**” is a copy of the minutes of the meeting.

24. At the aforesaid First Meeting it appeared that FELCRA BERHAD had been appointed to undertake the development of a tract of land in the Mukim of Guai incorporating that part of the Aboriginal Inhabited Place referred to as Padang Kepayang for the benefit of certain unnamed villagers of the adjacent Kampung Batu Papan (hereinafter referred to as the “**Development**”).

25. It is evident that all the parties attending the First Meeting acknowledged that such part of the Aboriginal Inhabited

Place as is confirmed to be aboriginal reserve shall be excised from the tract of land intended for the Development aforesaid.

26. The 1<sup>st</sup> Applicant has by way of several letters informed the 1<sup>st</sup> Respondent, a representative of 1st Respondent, the Menteri Besar of 2<sup>nd</sup> Respondent, the District Office of the 3<sup>rd</sup> Respondent, and the Deputy Prime Minister of the 4<sup>th</sup> Respondent regarding the encroachment on the Aboriginal Inhabited Place by FELCRA BERHAD and the timber company. Vide these letters the intervention of the 1<sup>st</sup> to the 4<sup>th</sup> Respondents towards the fulfilment of their obligations to protect the Applicants' Land Rights in and over the Aboriginal Inhabited Place was sought. However, the 1<sup>st</sup> to 4<sup>th</sup> Respondents did not take any steps to intervene and to act to protect the interests of the Applicants.

Now produced and shown to me and marked as "MN-7 (a)-(e)" are a copy of letter dated 24.9.2004, a copy of letter dated 28.11.2004, a copy of letter dated 2.2.2006, a copy of letter dated 12.2.2006 and a copy of letter dated 25.9.2006 respectively.

27. On or about 21.4.2006, the 1<sup>st</sup> Applicant together with members of the Majlis Lembaga Adat Semelai of Kampung Bukit Rok and Kampung Ibam held discussions (hereinafter referred to

as the “**Second Meeting**”) with the officers of the 1<sup>st</sup> Respondent, together with the representative of 2<sup>nd</sup> Respondent, the officers of the 3<sup>rd</sup> Respondent and the officers of the Department of Orang Asli Affair under the charge of 4<sup>th</sup> Respondent. During the aforesaid Second Meeting, the officers from the 3<sup>rd</sup> Respondent confirmed that the approval to gazette the Aboriginal Inhabited Place had been obtained.

Now produced and shown to me and marked as “**MN-8**” is a copy of minutes of meeting held on 21.4.2006.

28. Pursuant to the Second Meeting, in acknowledgement of the Land Rights of the Applicants in the Aboriginal Inhabited Place, it was agreed that the timber company which had been granted the logging licence shall pay compensation for the removal of the timber thus far extracted from Padang Kepayang.

29. On or about 12.3.2007, several of the Applicants were issued a Notice intituled “PENDUDUKAN TANAH KERAJAAN TANPA KEBENARAN PIHAK BERKUASA NEGERI” [hereinafter referred to as the “**Eviction Notice**”] to the Applicants occupying the Aboriginal Inhabited Place described as Padang Kepayang.

Now produced and shown to me and marked as “MN-9” is a copy of the Notice.

30. The Eviction Notice issued under Section 425 of the National Land Code 1965 to the Applicants required them to remove huts and/or buildings erected on Padang Kepayang and for the said villagers to leave Padang Kepayang within 14 days of the date of the Notice failing which the Pentadbir Tanah Daerah Bera will proceed to demolish and to destroy the said buildings without further notice under Section 426A of the said Code.

31. From the foregoing, it is clear that the 2<sup>nd</sup> Respondent had decided, notwithstanding the Land Rights of the Applicants and the representations of the Applicants’ concerning their Land Rights in and over the said Aboriginal Inhabited, that Padang Kepayang should be the site of a project to be undertaken by FELCRA BERHAD which is a corporation wholly owned by the 4<sup>th</sup> Respondent, for the benefit of certain unnamed villagers of the adjacent Kampung Batu Papan [hereinafter referred to as the “**FELCRA Development Decision**”]. Consequent to that decision, the Applicants are being asked to leave failing which they will be

removed from Padang Kepayang to make way for the said Development; hence the issuance of the said Eviction Notice.

32. I am advised by my solicitors and verily believe that the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents have breached their constitutional and/or statutory and/or fiduciary duties and/or acted contrary to the common law rights and/or legitimate expectations of the Applicants which they owe to the Applicants with regard to their Land Rights in and over the said Aboriginal Inhabited Place in the following respects:

- (a) the 2<sup>nd</sup> Respondent administratively failed to gazette the declaration of the Aboriginal Inhabited Place as an aboriginal reserve;
- (b) the 2<sup>nd</sup> Respondent failed to afford the Applicants the right to be heard with regard to the said FELCRA Development Decision affecting that part of the Aboriginal Inhabited Place known as Padang Kepayang;
- (c) the 2<sup>nd</sup> Respondent failed to consult and/or to obtain the consent of the Applicants with

regard to the said FELCRA Development Decision affecting that part of the Aboriginal Inhabited Place known as Padang Kepayang;

(d) the 2nd Respondent unlawfully made the FELCRA Development Decision affecting that part of the Aboriginal Inhabited Place referred to as Padang Kepayang for the benefit of certain unnamed villagers of Kampung Batu Papan notwithstanding that the Applicants had Land Rights in and over the said Aboriginal Inhabited Place including such rights arising from the said Aboriginal Inhabited Place being land constituted as Aboriginal Reserve;

(e) the 2nd Respondent unlawfully approved the development of that part of the Aboriginal Inhabited Place referred to as Padang Kepayang by FELCRA BERHAD for the benefit of certain unnamed villagers of Kampung Batu Papan instead of for the benefit of the Applicants;

- (f) the 2<sup>nd</sup> Respondent discriminated against the Applicants by purportedly approving the development of the said Aboriginal Inhabited Place by FELCRA BERHAD for the benefit of certain unnamed villagers of Kampung Batu Papan notwithstanding that the Applicants had prior title, occupancy and enjoyment of the said Aboriginal Inhabited Place;
- (g) the 2<sup>nd</sup> Respondent unlawfully caused or permitted the grant and issue of a logging licence or otherwise permitted the extraction of timber by non-aboriginal peoples on that part of the Aboriginal Inhabited Place known as Padang Kepayang;
- (h) the 2<sup>nd</sup> Respondent failed to positively discriminate and/or to act in favour of the Applicants notwithstanding Article 8(5) (c) of the Federal Constitution; and

- (i) the 2<sup>nd</sup> Respondent unlawfully caused and/or permitted issuance of the said Eviction Notice.

33. The FELCRA Development Decision which will result in the eviction of the Applicants from that part of the Aboriginal Inhabited Place known as Padang Kepayang is tantamount to a gross violation of the constitutional, statutory and common law rights of the Applicants and also of the legitimate expectations of the Applicants with regard to their Land Rights. The 2<sup>nd</sup> Respondent would also be in breach of the constitutional, statutory and fiduciary duties owed to the Applicants. The constitutional right to life and the right to property of the Applicants will also be violated besides causing serious and irreparable damage to the Applicants inconsistent with the aforesaid rights and legitimate expectations of the Applicants and the duties of the 2<sup>nd</sup> Respondent for the following reasons:

- (a) the Applicants have resource rights over the Aboriginal Inhabited Place known as Padang Kepayang where they hunt, fish and gather jungle produce for their livelihood and if

FELCRA Development Decision is executed it would deprive the Applicants' resource rights and right to livelihood;

(b) many of the Applicants are also dependent on the rubber small-holdings cultivated on the Aboriginal Inhabited Place known as Padang Kepayang for their livelihood and if the FELCRA Development is executed it would deny them access to the said rubber small-holdings cultivated and it will affect and/or deprive the Applicants' right to economic returns and livelihood;

(c) the huts and/or buildings erected in the Aboriginal Inhabited Place known as Padang Kepayang are constructed as part and parcel of the economic pursuit of the Applicants providing shelter and storage facilities and if the FELCRA Development Decision is executed, the huts and/or buildings erected will be demolished and the Applicants'

economic activity and livelihood will be impaired;

(d) the said Aboriginal Inhabited Place known as the Padang Kepayang is the location of the burial grounds of the Applicants' ancestors which include but are not limited to Cerakak, Teluk Rambutan and Seberang Giyah and it is a sacred and holy place to the Applicants where they practice their aboriginal customs and beliefs, if the FELCRA Development Decision is executed it would result the burial grounds of the Applicants' ancestors to be destroyed and it will deprive them the rights to practice an aboriginal way of life, customs, beliefs and freedom to worship;

(e) the Applicants have been occupying and enjoying the full benefits of that part of Aboriginal Inhabited Place known as Padang Kepayang and if the FELCRA Development Decision is executed the Applicants will be deprived of the rights to their customary lands

and the right to enjoy the full benefits of it;  
and

- (f) the effect of the FELCRA Development Decision if implemented will cause the Applicants to suffer irreparable losses and damage.

34. I am further advised by my solicitors and verily believe that the 3<sup>rd</sup> and/or 4<sup>th</sup> Respondents have breached their constitutional and/or statutory and/or fiduciary duties and/or acted contrary to the legitimate expectations of the Applicants which they owe to the Applicants in that they have failed to exercise their duty to undertake the welfare of the Applicants and their protection, well-being and advancement with particular regard to the Land Rights of the Applicants in and over that part of the Aboriginal Inhabited Place known as Padang Kepayang as well as the entire Aboriginal Inhabited Place in the following respects:

- (a) the 3<sup>rd</sup> Respondent and the 4<sup>th</sup> Respondent permitted and/or facilitated the process for FELCRA BERHAD to undertake the development of Padang Kepayang for the

benefit of certain unnamed villagers of Kampung Batu Papan and/or did not take steps to stop the same;

(b) the 3<sup>rd</sup> and 4<sup>th</sup> Respondent failed to act in favour of the Applicants notwithstanding Article 8 (5) (c) of the Federal Constitution and their express statutory and constitutional duty to ensure the welfare, protection and well-being of aboriginal peoples;

(c) the 3<sup>rd</sup> and 4<sup>th</sup> Respondents failed to intervene and/or take steps to ensure that the State Authority of the 2<sup>nd</sup> Respondent took steps to gazette the declaration of the Aboriginal Inhabited Place as aboriginal reserve;

(d) the 3<sup>rd</sup> and 4<sup>th</sup> Respondent failed to effectuate the reservation of the said Aboriginal Inhabited Place to be reserved or granted to the 4<sup>th</sup> Respondent for a federal purpose, to wit the protection, advancement and well-

being of aborigines of Applicants who are from the Orang Asli Semelai tribe;

(e) the 3<sup>rd</sup> and 4<sup>th</sup> Respondent permitted and/or failed to intercede or intervene on behalf of the Applicants with regard to the FELCRA Development Decision which will result in the eviction of the Applicants from that part of the Aboriginal Inhabited Place known as Padang Kepayang contrary to their Land Rights, their constitutional right to life and their right to property of the Applicants in the manner set out in paragraph 33 hereinbefore; and

(f) the aforesaid acts and/or omissions constitute gross breaches of the constitutional, statutory and fiduciary duties of the Respondents vested with the duty to safeguard and advance the welfare of the aboriginal peoples of West Malaysia, including the Applicants as the first peoples of the West Malaysia; the same being aggravated by gross violation, neglect, failure

and refusal to take cognizance of the special position guaranteed to aboriginal peoples of West Malaysia under the Federal Constitution, the Aboriginal Peoples Act 1954 and the undertakings of the 3<sup>rd</sup> Respondent and 4<sup>th</sup> Respondent as set out in the Policy Statement.

35. Having regard to the facts referred to in the paragraphs hereinbefore, I am advised by the Applicants' solicitors and verily believe that the 2<sup>nd</sup> Respondent erred in law and/or acted without jurisdiction when it decided that the part of the Aboriginal Inhabited Place referred to as Padang Kepayang is to be developed by FELCRA BERHAD for the benefit of the villagers of Kampung Batu Papan, such aforesaid decision being formally communicated through the issuance of the Eviction Notice dated 12.3.2007. The grounds upon which the Applicants rely on are as stated in the Statement filed herein pursuant to Order 53 Rule 1 of the Rules of the High Court, more particularly that:

- (a) the 2<sup>nd</sup> Respondent had unlawfully made the FELCRA Development Decision affecting that part of the said Aboriginal Inhabited Place known as Padang Kepayang for the benefit of

the certain unnamed villagers of Kampung Batu Papan;

(b) the 2<sup>nd</sup> Respondent had failed to take into account various relevant considerations pertaining to the Land Rights, Constitutional and statutory rights as well as the legitimate expectations of the Applicants together with the constitutional, statutory and fiduciary obligations which the 2<sup>nd</sup> Respondent owed to the Applicants arising from relevant provisions of the Federal Constitution, the Aboriginal Peoples Act 1954 and the Policy Statement:

(i) that the Applicants had common law rights, over that part of the said Aboriginal Inhabited Place referred to as Padang Kepayang;

(ii) that Article 8(5) (c) of the Constitution expressly provides for positive discrimination in favour of

Aboriginal Peoples including the Applicants with regard to land matters;

- (iii) that even without such provision for positive discrimination, the Applicants had in any event prior claims and overriding rights over that part of the said Aboriginal Inhabited Place referred to as Padang Kepayang to the unnamed villagers of Kampung Batu Papan;
- (iv) that the Aboriginal Inhabited Place including Padang Kepayang is land which the State Authority of the 2<sup>nd</sup> Respondent had approved to be declared as aboriginal reserves;
- (v) that with regard to aboriginal reserves no land shall be declared a Malay Reservation or be alienated, granted, leased or otherwise disposed

of except to aborigines of the  
aboriginal communities normally  
resident within the reserve and no  
temporary occupation of any land  
shall be permitted under any written  
law relating to land;

(vi) that with regard to that part of the  
Aboriginal Inhabited Place referred  
to as Padang Kepayang which the 2<sup>nd</sup>  
Respondent had approved to be  
declared Aboriginal Reserve only  
aboriginal peoples in particular the  
Applicants had the right and/or  
legitimate expectations to the benefit  
of development by FELCRA  
BERHAD or any other entity and the  
said FELCRA Development Decision  
is thereby contrary to law;

(vii) that with regard to that part of the  
Aboriginal Inhabited Place referred  
to as Padang Kepayang statutory

restrictions apply which will prohibit the 2<sup>nd</sup> Respondent from making the FELCRA Development Decision;

(viii) the right of Orang Asli including the Applicants to benefit equally with the other sections of the community and the need to promote their social, economic and cultural development as set out in the Policy Statement;

(ix) the recognition of the special position of the aborigines in respect of land usage and land rights is a policy imperative under the Statement of Policy;

(x) the policy that every effort will be made to encourage the more developed groups to adopt a settled way of life and this to bring them economically into line with other

communities in their country as set out in the Policy Statement; and

(xi) the policy that Aborigines will not be moved from their traditional areas without their full consent as set out in the Policy Statement.

(c) The 2<sup>nd</sup> Respondent had for the reasons set out hereinbefore, improperly exercised its statutory discretion and/or failed to apply its mind to the true nature of the Land Rights of the Applicants, the nature of the rights of aboriginal peoples to aboriginal inhabited places which have been approved as aboriginal reserves and the restraints on their powers concerning such lands as well as the fiduciary, constitutional and statutory duties emplaced on it when exercising its powers and functions in making the FELCRA Development Decision affecting that part of the Aboriginal Inhabited Place referred to as

Padang Kepayang for the benefit of the villagers of Kampung Batu Papan;

(d) The 2<sup>nd</sup> Respondent in making the FELCRA Development Decision affecting that part of the Aboriginal Inhabited Place referred to as Padang Kepayang for the benefit of certain unnamed villagers of Kampung Batu Papan, had misconstrued and misinterpreted the object, purposes, policy and scope of the Aboriginal Peoples Act 1954 and the National Land Code 1965 as well as the Policy Statement and/or Federal Constitution and/or in any event his decision militates against the object of the said statutes and/or Policy Statement;

(e) Having regard to the facts and circumstances set out hereinbefore in this Affidavit, the 2<sup>nd</sup> Respondent had unlawfully exercised its executive powers pertaining to land and/or its statutory power under the National Land Code 1965 without any lawful basis;

- (f) By reasons, *inter alia*, of the foregoing, the 2<sup>nd</sup> Respondent made the FELCRA Development Decision which is perverse and/or which is so unreasonable that no reasonable authority in his position who is obliged to exercise his discretionary power upon an objective assessment of the facts and materials pertinent to the case could have ever come to it, in issuing the said Notice; and
- (g) The 2<sup>nd</sup> Respondent committed procedural impropriety when it failed to consult and/or to afford the Applicants the right to be heard before making the FELCRA Development Decision and the same is therefore null and void and of no effect.

36. I am further advised by my solicitors and verily believe that the matters aforesaid also constitute a denial of the legitimate expectations of the Applicants.

