



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
بُوتِنْبَرُفِيْتِي اِسْلَامًا اَنْبَارًا اِيْجَنَابًا مِلْدِيْتِيَا

AND ENVIRONMENTAL PROTECTION:
THE CASE OF FELDA LAND DEVELOPMENT
IN THE STATE OF PAHANG

by

ZAINUDIN BIN ISMAIL

L.L.B(Hons) University of Singapore (1969)
Diploma In Syariah Law And Practice, I.I.U.(1993)

SUBMITTED IN PARTIAL FULFILMENT
OF THE REQUIREMENTS FOR THE
DEGREE OF MASTER IN COMPARATIVE LAW
AT THE
INTERNATIONAL ISLAMIC UNIVERSITY, MALAYSIA
JUNE 1995

DONATED TO THE LIBRARY OF
INTERNATIONAL ISLAMIC UNIVERSITY
BY

MSD CIA

Date received :

6/11/95

anf

INTERNATIONAL ISLAMIC UNIVERSITY
LIBRARY
Copy no: 429146
Date: 26.3.96 (CC) ndm

DECLARATION OF AUTHOR'S RIGHTS

The copyright of this thesis belongs to the author under the provisions of the Copyright Act, 1987 (Act 332) Due acknowledgement must always be made of any material contained in, or derived from this thesis.

KPH
100.6
721 P
1995

THE PARADOX OF LAND DEVELOPMENT
AND ENVIRONMENTAL PROTECTION:
THE CASE OF FELDA LAND DEVELOPMENT
IN THE STATE OF PAHANG

by

ZAINUDIN BIN ISMAIL

L.L.B(Hons) University of Singapore (1969)
Diploma In Syariah Law And Practice, I.I.U.(1993)

SUBMITTED IN PARTIAL FULFILMENT
OF THE REQUIREMENTS FOR THE
DEGREE OF MASTER IN COMPARATIVE LAW
AT THE
INTERNATIONAL ISLAMIC UNIVERSITY, MALAYSIA
JUNE 1995

Supervisor:

Assoc.Prof. Dr. HUNUD ABIA KADOUF

MATRICULATION NO: G 9310121

CONTENTS

<u>CHAPTER</u>		<u>PAGE</u>
1.	CHAPTER I INTRODUCTION	1
2.	CHAPTER II ESTABLISHMENT OF FELDA	3
	(a) Duty of Felda	4
	(b) Statutory Powers of Felda	5
	(c) Financing of Land Development Project	7
	(d) Corporations	8
3.	CHAPTER III LAW ON GROUP SETTLEMENT AREAS	11
4.	CHAPTER IV STATE GOVERNMENT'S PERMISSION TO DEVELOP STATE LAND	24
5.	CHAPTER V FELDA'S PERMISSION TO OCCUPY LAND IN EXPECTATION OF TITLE	48
	(1) Commentary on Settler's Agreement for Rubber Cultivation	50
	(2) Contents of the First Agreement	51
	(3) Contents of the Second Agreement	64
	(4) Agreements For Oil Palm Cultivation	93
6.	CHAPTER VI ENVIRONMENTAL IMPACT ON LAND DEVELOPMENT	94
	(1) Conservation and Preservation Distinguished	94
	(2) Sustainable Development	97
	(3) Some Conservation Proposals	99

	(4) Conservation and Development	104
	(5) Some Environmental Issues in Land Development	105
	(6) Balancing Costs/Benefits in Development	110
	(7) Oil Palm Plantations: Environmental Impacts	112
	(8) Rubber Plantations: Environmental Impacts	116
(7)	CHAPTER VII. ROLE OF RELEVANT GOVERNMENT LEGISLATIONS	122
	(1) Waters Act 1920	122
	(2) Land Conservation Act 1960	130
	(a) Overview on Soil Degradation	130
	(b) The Malaysian Legal Position On Land Conservation	133
	(c) The Jengka Triangle Perspective	139
	(3) Pesticides Act 1974	144
	(a) Pesticides	144
	(b) Pesticides Board	145
	(c) Pesticides Licensing Officers	146
	(d) General Comments	147
	(4) National Forestry Act 1984	151
	(a) International Perception on Forestry	151
	(b) Local Forestry Legislation	155
	(i) Permanent Reserved Forests	156

	(ii) Forest Management and Development	160
(5)	Environmental Quality Act, 1974	168
	(a) Introduction	168
	(b) Pollution and Environment	169
	(i) Definition of Environment	169
	(ii) Definition of Pollution	172
	(c) Provisions on Prohibition and Control of Pollution	174
	(i) Ministerial Powers	174
	(ii) Occupier's liability	177
	(iii) Environmental Impact Assessment	179
	(iv) Adequacy of Punishment	182
(8)	CHAPTER VIII CONCLUSION	206

BIBLIOGRAPHY

APPENDIX A(1) & (2)	Documents of Title - H.S.(M) 3971 & 3972.
APPENDIX B	Document of Title - H.S.(D) 20.
APPENDIX C	Document of Title - Agreement Between Felda and Settler.
APPENDIX D	Pajakan Mukim L.M. 513.
APPENDIX E	Grounds of Judgment - Felda v Mohd Rawi.
APPENDIX F	Grounds of Judgment - Felda v Ghazali Ali.

ABSTRACT

This Dissertation is intended to study the seemingly conflicting issues of the development of land for agriculture as against the need for environmental protection.

From the legal perspective, the law defines the rules of relations between peoples as individuals and in groups. But the ecological integration of man with the ecosystem requires the law to address the relations between man and the ecosystem upon which he depends.

In this context the Dissertation looks into the legal framework within which FELDA (Federal Land Development Authority) functions and carries out its duties in respect of land development. Due to the need to limit the scope and time of the study, this Dissertation studies three selected areas where Felda has developed land schemes in the State of Pahang:-

- (i) Bilut Valley Land Development Scheme - (being the first Scheme wholly developed by Felda);
- (ii) Jengka Triangle Regional Scheme - (the earliest integrated regional development area developed into some 25 Schemes);
- (iii) Krau Complex - - (being an area already developed but not occupied by Settlers and is worked along the lines of an Estate System).

Chapter 1 introduces the subject in a very general manner.

Chapter II looks into the establishment of Felda under the Land Development Act 1956. It describes and comments upon the various legal issues, shortcomings and expectations of the Act, touching on them under the sub-headings of Felda's duties and statutory powers, financing of the Schemes and a general statement on the various corporations established by Felda to assist it in the carrying on of its functions and duties.

Chapter III discusses in detail various salient issues regarding the law on Group Settlement Areas. The Land (Group Settlement Areas) Act 1960 is a unique land-law legislation in that it allows the occupation of State land before alienation and where the alienation is made only after the land has been developed and planted with a major crop approved by the State Government and subject to full payment by the Settlers of premium, survey fees and other charges including the cost of development as may have been advanced by Felda, known as 'CAC' (the Consolidated Annual Charge). It allows the land to be developed in a group basis or by a cooperative organised for the purpose by Felda. This topic needs to be studied at the outset in order to understand the implications and effects of the next Chapter.

Chapter IV details the main clauses of the Agreement between the State Government and Felda which creates the initial act of vesting the State land on Felda until such time that the Settlers have paid the CAC in full, whereupon the land re-vests on the State Government. That stage sees the end of the first part of the group settlement area development because thereafter the State Government will alienate by way of 99 years lease the rural holdings to the Settlers, each comprising some 10 acres cultivated with the main crop and 1/4 acre for his residential purpose. This Chapter discusses some issues on legal implications of the relationship between the parties.

Chapter V is a detailed study of the 2 Agreements which the Settler enters into with Felda. The First Agreement covers the stage from his first occupation of the Scheme where he is required to work on an allotted piece of land and to stay within the Scheme in a house already constructed in the village area. If Felda is satisfied with his performance and behaviour and subject to the land in the scheme beginning to or becoming ready to be harvested, Felda allows the Settler to enter into the Second Agreement where he now occupies the allotted lands "in expectation of title." This kind of occupation of land which is still vested in Felda and which will later re-vest in the State involves many legal implications. Thus a commentary is made on the various provisions of the 2 Agreements.

Chapter VI Having studied the position on the ground, the study moves 'upwards' in order to examine and understand the impact and position of Felda's land development in the national and international perspective with regards to environmental law. Thus the Chapter discusses basic concepts of conservation, as distinguished from preservation, and sustainable development. It discusses the relationship of conservation and development and examines some environmental issues in land development. It touches on the need for balancing of costs against benefits when carrying out development. The Chapter ends with a discussion of the environmental impacts of oil palm and rubber cultivation within the context of the selected Felda Schemes.

Chapter VII brings back the focus onto the Malaysian legal scene to examine 5 major legislations affecting environmental issues of land degradation brought about by land development. It discusses the following Acts separately and comments on salient features therein related to land development:-

- (i) Waters Act 1920;
- (ii) Land Conservation Act 1960;
- (iii) Pesticides Act 1974;
- (iv) National Forestry Act 1984;
- (v) Environmental Quality Act 1974.

Chapter VIII makes certain conclusions on the available data and state of the law as available at the time of research for this Dissertation.

With such a wide coverage of subject-matter the study involved a study of various Agreements, Contracts and administrative files of Felda. There had been surprisingly many research papers done on Felda but there was a clear absence of a legal treatise or thesis at the postgraduate level. The Felda library offered a long list of reading materials on Felda's development activities but, again, no in depth coverage of the legal aspects could be found.

Thus this Dissertation had to start from scratch in respect of commentaries and discussions on legal implications of the various Acts and contractual documents referred to above. No single court decision could be found reported in the law reports. The case of Felda v Mohd Rawi bin Yaacob came nearest to being reported when the Supreme Court mentioned it briefly in Bohari bin Taib v PTG Selangor (1991) 1 MLJ, p. 346.

There seems to be much more legal materials available for further research than meets the eye but the subjects covered are so multifarious that many Ph.D. Thesis can be derived therefrom! Suffice it to limit this Dissertation to that small corner of law on land development and environmental protection.

ACKNOWLEDGEMENTS

This Dissertation had taken many weeks to complete and required me to pinch time from a busy city law practice as well as from my beloved wife and children. Weekdays and long evenings were not spared from this endeavour. I thank them for their telling patience.

The choice of topic involving Felda stemmed from a long association with this organisation on a professional basis and, subsequently, on a personal basis with a few officers therein. It was during this long association that a strong admiration arose in me of the wisdom of the early leaders of this country in laying the foundation stone for upliftment of the rural landless poor and the sustained dedication of the Felda officers, past and present, in implementing this noble vision. Thus this desire to put into paper a small contribution to their tireless efforts.

It is difficult to name all the names of Felda officers who had helped me in this endeavour but for special mention I must thank Felda's Chairman, Tan Sri R.M. Alias and its Pengarah Besar, Dato' Fadzil Yunus for their quiet encouragement. I received many useful tips and information from the newly retired Pengarah Tanah, En. Abdul Hamid Samad and the Pengarah Khidmat Urusan, En. Abdul Ghafar Hj. Abdul Wahab. The latter coordinated the search for administrative files, books and other valuable information and documents, without which I could not possibly gain a deep insight into the matters dealt with at the ground level as well as at the Felda headquarters. His valuable time spent as personal 'escort' for my trip to the Bilut Valley Scheme was very touching to me. I also spent many hours discussing with the Pengarah Besar (Zon 1) of Felda Plantations Sdn. Bhd. on the development of the Krau Complex and he was instrumental in guiding me on the relevant reading materials connected with agronomy and agricultural practices.

My supervisor, Assoc. Professor Hunud Abia Kadouf, has been a towering influence and mentor during the long periods of research, never demanding but always there to guide me back to the right path. Thank you Prof.

Lastly I must not forget that without the extra efforts and long hours in front of the temperamental computer put in by my secretary, Sabariah Bt Hj. Ahmad Jalaludin, this Dissertation would not have been completed.

To all others who had helped or assisted me I thank you all. May Allah bless you all.

ZAINUDIN BIN ISMAIL
29th. June 1995.

INTRODUCTION

A crisis of livelihood is generated by increasing rural populations. In Malaysia the first post - Independent government which came to power embarked on a plan to reduce the pressure of poverty by attacking its epicentre, the landless rural population. Vast tracts of forest were cleared in order to cultivate crops which can bring a better income to the landless poor. Several techniques were used to develop these lands but eventually the brunt of rural land development for agriculture fell on the shoulders of the many dedicated men in FELDA (Federal Land Development Authority), past and present.

There are various legal implications when large tracts of forests are cleared and thousands of landless, mostly rural, people are selected to settle on the resultant planned Schemes.

The physical acts of land clearance to make way for the planting of the major crops rubber and oil palm have destroyed forests and caused the disappearance of flora and fauna within them. But man must learn to conserve his natural resources to the extent that he must ensure a sufficient quantity remains for future generations.

The historical background for the choice of topic for this dissertation goes back to the principles laid down by the Stockholm Conference in 1972. It recognised the essential relationship between environment and development. Since then the

views being articulated appear to "attack" any sign of degradation of the environment resulting from any economic activity. The correct view should be to treat both economic development and environmental protection as two sides of the same coin. They are not separate issues.

The vision given by the Earth Summit is that of a new and more hopeful future as we move into the 21st Century.

A lot depends on the extent to which nations of the world plan, implement and enforce sustainable development at the ground level. It is in this context that the activities of Felda as a major agency for land development will be examined within the legal framework applicable to it.

To understand land development within the Felda Schemes requires on site research. A legal research, especially on a topic straddling land development and environmental protection, must necessarily require a study covering other non-legal areas so as to achieve a holistic approach to the issues involved in the research topic. Thus this Dissertation involves site visits to various Felda Schemes and readings into such non-law topics as agriculture and chemistry in order to get a feel of the activities on the ground. This has greatly assisted in the appreciation of legal issues on land development and environment covered by this Dissertation.

CHAPTER II

ESTABLISHMENT OF FELDA

The Federal Land Development Authority (Felda) was established by the coming into force of the Land Development Ordinance, 1956.¹ This Ordinance sets out as its objective "the establishment of a Federal development authority and local development boards to promote and carry out projects for land development and settlement, for making funds available therefor, and for purposes connected therewith".

The Ordinance has 8 Parts covering the following topics:-

- (i) Introductory;
- (ii) Federal Land Development Authority;
- (iii) Local Land Development Boards;
- (iv) Corporations;
- (v) Regulation and Incorporation of Boards and Corporations;
- (vi) Loans;
- (vii) Movable and Immovable Property;
- (viii) General.

1. West Malaysia - 1st. July 1956. L.N. 205/56.
East Malaysia - 1st. January 1968. P.U. 645/67.
Now known as Land Development Act, 1956 (Revised - 1991) Act 474. Section 3(2).

It is intended that this Chapter will highlight some of the provisions of the Ordinance which have direct relevance to the ground level aspect of land development which relates to environmental issues.

(a) DUTY OF FELDA

It is the statutory duty of Felda to promote and assist the investigation, formulation and carrying out of projects for the development and settlement of land in the Federation. However Felda must first obtain concurrence of the Governor of Sarawak before it can promote, carry out, assist or participate in any project or activity referred to in Section 3 of the Land Development Ordinance, 1956. In respect of the other States in the Federation, Felda must first take measures for consultation with the respective State Government or with any appropriate Federal Government Department.²

This provision on the duty of Felda was amended in 1992 so that Felda currently has its duties described under five separate paragraphs.³ It is to be noted that one of the new duties of Felda now is the management of land in the

2. ibid. Section 3(4).

3. Act A 818/92

Federation.⁴ Another new duty of Felda which can be put to good use in respect of sustainable development is at the last of the five sub-clauses which imposes on Felda to "assist, guide, advise, manage, administer and co-ordinate economic, social, residential, agricultural, industrial and commercial activities"⁵ in the areas where it is empowered to carry out land development projects.

This 1992 amendment in respect of Felda's duties can be taken to mean that the Government has since envisaged a wider role for Felda. If this be the case, it is legally possible to insist that Felda has the statutory duty to ensure that its activities must lead to sustainable development in the affected land development projects.

(b) STATUTORY POWERS OF FELDA

The original powers of Felda were contained in five sub-clauses,⁶ but this was amended in 1992 by replacing paragraph (c) with another paragraph which empowers Felda to enter

4. Land Development Act - op.cit.at Section 3(2)(b).

5. ibid - at Section 3(2)(e).

6. ibid. at Section 3(3)(a) to (e).

into a partnership, joint venture, undertaking or co-operation with third parties in order to carry on any activity which appears to Felda to be requisite, advantageous or convenient for or in connection with the discharge of its statutory duties. The amendment also added a new paragraph⁷ which enables Felda to establish or promote the establishment of companies to carry on or engage in any activity which has been planned or undertaken by Felda "(including the taking over of the function of a corporation which has been wound up and dissolved under Section 43)".

This latter provision, although inserted within brackets, can have a negative effect on the issue of sustainable development. This is because of the strong possibility now for a company to be more conscious of its corporatised or privatised existence and thus the corporate business need for the maximisation of profit. This would certainly be to the detriment of sustainable development and can mean environmental degradation and ecological destruction. Thus awareness and adoption of sustainable development policies has to be inculcated at all levels of management in order to be implemented on the plantation level in a way which will conserve natural resources and protect the environment from

7. *ibid.* at Section 3(3)(ca).

pollution

(c) FINANCING OF LAND DEVELOPMENT PROJECT

The cost of land development is very high and for Felda to develop and manage a huge area all over the country except Sarawak would invariably mean that funding has to come from outside sources. Thus Felda obtains funding from the Government by way of capital sums as may be provided from time to time by the Dewan Rakyat⁸, from capital sums allocated from loan funds, i.e. sums made available to the Government by way of loans⁹ and sums borrowed by Felda.¹⁰

Felda has been given the power to borrow money which it requires for meeting any of its obligations or discharging any of its duties.¹¹

Apart from the normal administrative and management costs, Felda has to fund the development costs. These costs are subsequently debited to the account of Settlers who will be

8. *ibid.* at Section 7(1)(a).

9. *ibid.* at Section 7(1) (b).

10. *ibid.* at Section 7(1)(c).

11. *ibid.* at Section 12.

contractually bound to pay off their individual loans. It is this particular issue that has caused many disputes between the Settlers and the Felda management. These disputes arise due to the fact that the Settlers claim for ownership of the land but can only do so after full settlement of their individual loans. Thus their anxiety for early and correct repayments to Felda.

(d) CORPORATIONS

Felda has established several corporations in exercise of its powers under Section 42 of the Land Development Act 1956. These Corporations carry out various functions as planned by Felda, including owning and managing rubber factories and oil palm mills to process the harvest from the Felda Schemes, marketing the products to the whole world through its own offices in London and controlling storage tanks in strategic parts of Europe, distributing retail goods for domestic consumption of Settlers, management and advisory services and consultancies for its group of corporations and plantations, transportation of its products from the various refineries and mills to the ports, security protection for the Schemes and other Felda properties, hostels in Kuala Lumpur for children of Settlers who attend schools in the cities and even catering of meals for their own officers and others on a commercial basis.

These activities will not be dealt with under the present study. Suffice it to say that with the latest amendments to Section 3 (2) and (3) of the Land Development Act 1956 in 1992¹² Felda is well established to now organise the vast resources from its Settler based plantations into an integrated, synergistic and viable group to ensure a continuous upgrading of the economic and social life of the future generation of the Settler community.

Felda has since embarked on a corporatisation exercise to convert all its corporations into limited liability companies under the Companies Act 1965.

Paragraph (c) in Section 3(2) of the Land Development Act 1956 hints at this corporatisation when it uses the words "or any other area which has been acquired, purchased, leased by or alienated to or is otherwise held or enjoyed by the Authority or its corporations or companies for the performance of its functions:"

12. Act A 818/92.

Paragraph (b) in Section 3(3), as amended by Act A 818/92 empowers FELDA to "promote, co-ordinate the carrying on of any such activities by boards, corporations, companies and other bodies

Paragraph (ca) in Section 3(3) was introduced by the 1982 amendment empowering Felda to "establish or promote the establishment of companies..... (including the taking over of the function of a corporation which has been wound up and dissolved under Section 43)".

Their implications and extent are not directly related to the subject of the present study but nevertheless worth noting in the context of the overall strength of the Felda group to plan in a cohesive, realistic and yet responsible manner in its treatment of the environment so as to achieve a workable balance in the important area of sustainable development.

CHAPTER III

LAW ON GROUP SETTLEMENT AREAS

(a) THE LAND (GROUP SETTLEMENT AREAS) ACT 1960

FELDA has to promote and carry out projects for land development and settlement within the context and scope of and in accordance with the provisions of the Land (Group Settlement Areas) Act, 1960.¹ The Act has the objective of ensuring uniformity of the law and policy in respect of the establishment of group settlement areas and the conditions of alienation and occupation of land in such areas.

The Act has 9 Parts covering the following topics:-

- (i) Preliminary (Sections 1-2)
- (ii) Group Settlement (Sections 3-13)
- (iii) Rural Holdings (Sections 14-18)
- (iv) Occupation of Rural Holdings in Expectation of Title (Sections 19-25)

1. Act of Parliament No. 13 of 1960. Came into force on 30th May 1960:

- (v) Urban Holdings (Sections 26-29)
- (vi) General (Sections 30-33)
- (vii) Development of State Land by Felda
(Sections 34-37)
- (viii) Surrender of Rights of Occupier in Expectation of
Title (Sections 40-43)
- (ix) Termination of Group Settlement Areas (Sections
(44-48)

(b) CREATION OF GROUP SETTLEMENT AREAS

Under this Act, an area of State land is first declared a Designated Area.² This has the effect of requiring that the alienation or occupation of any land within the Designated Area must be made according to the provisions of the Act relating to land within a group settlement area or according to the provision of any written law relating to mining land.³

2. *ibid.* Section 3(1).

3. *ibid.* Section 3(2).

A Group Settlement Area is an area of State Land declared as such by the Ruler in Council,⁴ i.e. effectively exercised by the respective State Executive Council and notified in the Gazette. The Gazette will also declare which part of the Group Settlement Area is to be a Rural Settlement Area⁵ and which part is to be the Urban Settlement Area.⁶ Within the Rural Settlement Area are the rural holdings, which comprise one or more parcels of land to be occupied by one individual holder. In addition to a parcel which comprises of an area to be planted with an appropriate crop, the rural holding occupied by the individual holder will also include a parcel of land within an urban settlement area for occupation by him for residential purposes exclusively.⁷ Apart from the rural holdings occupied by the individual holders, other persons or corporations can also occupy urban holdings within the urban settlement area for any of the following purposes, namely, commercial, industrial or residential purposes or purposes of public utility.⁸

4. *ibid.* Section 4.

5. *ibid.* Section 5(1).

6. *ibid.* Section 6.

7. *ibid.* Section 7(2).

8. *ibid.* Section 7(3).

(c) RURAL AND URBAN HOLDINGS OCCUPIED IN EXPECTATION OF TITLE

In a study of the environmental impact of land development, it is necessary to establish the various media or proponents which cause the impact on the environment. Apart from natural elements and agents, it can be seen from the provisions of the Act that a land scheme which is developed by FELDA would involve the occupation of the rural holding as well as the urban holdings. At the time of development and until premiums are paid to the State Government, these lands are still State land and not yet alienated to Felda or to the individual holders who occupy these lands in expectation of title.

It must be remembered that these rural holdings and urban holdings are initially occupied "in expectation of title". This phrase "in expectation of title" is not found in the National Land Code 1965.⁹ The only explanation for this is that the phrase, though used in the respective State Land Enactments was not picked up by the draftsmen of the National Land Code. Thus, this Act, drafted prior to the drafting of the National Land Code, has the unenviable position of being stranded and having to use a phrase which is no more

9. Act 56/1965. Note Section 4(2) (i) of the National Land Code 1965 which states that the Code does not affect the provisions of the Land (Group settlement Areas) Act 1960. However this was deleted by the amendment vide Act A832/92.