

Indigenous Ancestral Rights Checklist: 7 Steps to Avoid Desecration, Litigation, and Reputational Harm

A practical guide for developers, project sponsors, and in-house counsel, drawn from the Federal Court's decision in Rosli Jedut & Ors v Agrobest (M) Sdn Bhd & Ors

1. Map and document all known burial sites and cultural spaces before a single machine moves

Agrobest's own sketch plan marked the graves — yet clearing proceeded. Commission an independent community-based mapping exercise that identifies graves, ritual sites, and foraging areas. Treat these as physical constraints, not afterthoughts.

2. Engage the community early, continuously, and in a culturally appropriate manner

The villagers were directed to vacate by the Orang Asli Development Department (JKOA) without compensation and without direct engagement with the developer. Build a structured, documented engagement process — with Orang Asli elders, the community, and the JKOA — before design finalisation. Record minutes, share maps, and obtain clear acknowledgement of site boundaries.

3. Do not assume that a state lease extinguishes native proprietary rights

The Federal Court was unambiguous: “Issuance of land titles ... cannot simply cancel or extinguish their customary rights to their land.” Usufructuary rights, including the right to visit ancestral graves, survive unless lawfully extinguished via the Land Acquisition Act 1960. Verify that compensation has been paid and rights properly extinguished — a lease alone is not enough.

4. Include a customary-rights impact assessment in your project feasibility study

Go beyond environmental impact. Assess how the project affects tangible and intangible cultural heritage, burial grounds, and spiritual connections to land. If graves exist, the project design must avoid or properly relocate them with free, prior, and informed consent — never bulldoze first and apologise later.

5. Train contractors on what to do (and not do) when graves or artefacts are found

The High Court noted that a backhoe contractor “acted in a manner that failed to respect Orang Asli customs and traditions.” Implement a stop-work protocol: if potential burial sites, tombstones, or personal items are unearthed, work stops immediately, the site is secured, and the community is contacted. Make this a contractual requirement.

6. Keep all communications careful and accurate — they will be read in court

Agrobrest wrote an apology letter admitting that it had cleared the cemeteries. That letter became a central piece of evidence in the villagers' case. Train site managers and executives that emails, letters, and even WhatsApp messages may later be evidence of knowledge, acknowledgment, or liability.

7. If things go wrong, respond with remedy, not denial

The villagers lodged around 20 police reports before suing. A prompt, genuine remediation effort — community dialogue, independent investigation, and compensation — could have contained the dispute. Litigation escalates when affected communities feel unheard; early human response is a risk-management tool, not a concession.