

PEMILIKAN DAN PENTADBIRAN
TANAH ADAT
1800 - 1960

NADZAN HARON

**NEGERI SEMBILAN
GEMUK BERPUPUK SEGAR BERSIRAM**

PEMILIKAN DAN PENTADBIRAN TANAH ADAT 1800 - 1960

NADZAN HARON
Arkib Sejarah Lisan
Jabatan Sejarah
Universiti Kebangsaan Malaysia

Penyelenggara
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Penerbit
JAWATANKUASA PENYELIDIKAN BUDAYA
MUZIUM NEGERI, NEGERI SEMBILAN
DAN
KERAJAAN NEGERI SEMBILAN
DARUL KHUSUS.

Cetakan Pertama 1997

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Negeri Sembilan
dan
Kerajaan Negeri Sembilan Darul Khusus

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Taman Seni Budaya, Muzium Negeri
Jalan Sungai Ujong, 70200 Seremban,
Negeri Sembilan Darul Khusus

Dicetak di Malaysia oleh

MALINDO PRINTERS
Lot 3, Jalan 15/17, 40000 Shah Alam
Selangor Darul Ehsan

ISBN 983 - 99849 - 5 - 0



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MENYALURKAN PENJELASAN TERPERINCI

Rasa kebanggaan yang amat sangat haruslah dikongsi bersama oleh kita di atas kejayaan bersama menerbitkan rangkaian buku Pemilikan dan Pentadbiran Tanah Adat 1800 - 1960.

Pemaparan terperinci buku-buku ini amat bermanfaat sekali bukan sahaja sebagai bahan bacaan tetapi juga panduan dan pedoman untuk generasi mendatang.

Usaha ini juga mampu menyalurkan penjelasan terperinci kepada masyarakat umum terutama dari luar khususnya dengan kekaburan berhubung pemakaian kaedah adat di negeri ini.

Penerbitan buku-buku ini diharap akan menyemarakkan lebih ramai penulis untuk memapar dan mengutarakan bahan-bahan utama bagi memperlembapkan pemahaman yang serba komprehensif mengenai struktur adat di negeri ini.

Rakaman setinggi-tinggi tahniah di atas kejayaan ini dan semoga ia akan menghasilkan sesuatu yang baik buat kita semua selaku pewaris bangsa yang progresif.

Salam hormat,

(DATO' SERI UTAMA TAN SRI HJ MOHD ISA BIN DATO' HJ ABDUL SAMAD)

**Dari Teratak Seni
TAN SRI A. SAMAD IDRIS**



Syukur Alhamdulillah dengan keredhaan Allah Subhanahu Wataala jua Jawatankuasa Penyelidikan Budaya Muzium Negeri, Negeri Sembilan dapat menerbitkan sebuah buku lagi dalam siri penerbitan Gemuk Berpupuk Segar Bersiram yang diberi jodol **“PEMILIKAN DAN PENTADBIRAN TANAH ADAT 1800-1960”** bagi tahun 1997.

Dengan penerbitan buku ini berjumlah enam siri telah diterbitkan iaitu:-

- | | |
|-------------------------------|---|
| i) Adat Merentas Zaman | ii) Luak Tanah Mengandung |
| iii) Luak Jelebu | iv) Adat Perpatih Nilai dan Falsafahnya |
| v) Luak Johol | vi) Pemilikan dan Pentadbiran Tanah Adat
1800-1960 |

Saya mengucapkan terima kasih kepada Dr. Nadzan Haron yang telah menulis buku ini hasil kaji selidik yang telah dilakukannya secara ilmiah dan menyerahkan kepada Jawatankuasa Penyelidikan Budaya Muzium Negeri, Negeri Sembilan untuk diterbitkan.

Adalah diharapkan buku ini yang mengandungi sistem pemilikan dan pentadbiran tanah adat di Negeri Sembilan akan dapat memberikan manfaat dan menjadi sumber rujukan kepada mereka yang ingin mengetahui tentang adat di Negeri Sembilan.

Saya juga mengambil peluang untuk mengucapkan terima kasih kepada Tuan Haji Muhammad bin Tainu yang berusaha menyelenggarakan penerbitannya.

A handwritten signature in black ink, appearing to be 'S. Idris', written over a horizontal line.

(DATO' SERI UTAMA TAN SRI A. SAMAD IDRIS)

Pengerusi

Jawatankuasa Penyelidikan Budaya Muzium Negeri,
Negeri Sembilan Darul Khusus

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Pengenalan

SEORANG penulis mengatakan bahawa banyak kajian telah dibuat oleh golongan pentadbir kolonial dan cendekiawan tentang perubahan sosio-ekonomi dan politik tempatan berikutan dari pelaksanaan pentadbiran kolonial, akan tetapi dalam kajian mereka itu tajuk mengenai tanah kurang mendapat perhatian, pada hal tanah merupakan soal pokok kepada masalah-masalah dan situasi tertentu dalam sejarah Malaysia.¹ Kemungkinannya tajuk tentang tanah ini tidak menarik minat pengkaji-pengkaji dari disiplin sejarah lantaran aspek-aspek yang berhubung dengan politik lebih menarik. Pegawai-pegawai tadbir kolonial pula adalah lebih cenderung mengkaji tentang segala aspek sosial, pemikiran, sikap dan kebudayaan orang Melayu kerana bidang-bidang ini lebih memberi makna kepada mereka dalam menjalankan tugas sebagai golongan yang menjajah. Memandangkan kepada kemunduran orang Melayu dalam bidang ekonomi aspek-aspek yang berhubung dengan tanah tidak seharusnya diabaikan, terutamanya terhadap tanah adat dan tanah simpanan Melayu yang sering dijadikan isu. Sejarawan juga harus memberi perhatian terhadap tajuk yang berkaitan dengan tanah, terutama tentang sistem pentadbiran dan pelaksanaan, memandangkan peripentingnya faktor tanah dalam pembangunan ekonomi, dalam penyusunan semula masyarakat dan dalam mengatasi masalah-masalah sosial.

Bekas Menteri Besar Negeri Sembilan, Dr. Mohd. Said pernah mengemukakan pendapatnya tentang Adat Perpatih khasnya tentang kelemahan sistem pentadbiran tanah adat itu dalam menghadapi cabaran pembangunan ekonomi.² Beliau telah menerbitkan beberapa siri artikel dalam akhbar *Berita Harian* Julai, 1968. Artikel pertamanya disiarkan pada 17 Julai adalah tentang sejarah awal Negeri Sembilan. Dalam siri kedua (18 Julai), beliau telah menerangkan tentang sistem 'matrilineal'; dan dalam siri ketiga (20 Julai), beliau menekankan bahawa Adat Perpatih itu tidak susah untuk difahami. Dalam siri terakhir (21 Julai) beliau

mengatakan bahawa kerajaan Negeri Sembilan mungkin terpaksa mempertimbangkan kembali sikapnya terhadap adat, kerana pada pendapat beliau penerusan adat itu menghalang pembangunan ekonomi negeri. Beliau juga mengatakan bahawa kemunduran hasil pertanian di Negeri Sembilan adalah kerana lapan puluh peratus dari tenaga yang betul-betul bertungkus-lumus mengerjakan tanah pertanian adalah kaum wanita. Tambahnya lagi kurangnya tenaga lelaki dalam penghasilan itu adalah kerana adat. Adat mengakui hak wanita keatas tanah adat dan penetapan keluarga sesudah berkahwin adalah di tempat kediaman keluarga isteri. Sistem perwarisan pula mengakibatkan pemecahan tanah dan ini turut menjatuhkan hasil ekonomi.

Dalam suatu seminar Adat Perpatih yang diadakan di Sekolah Menengah Johol dalam bulan Mei 1977 dahulu, seorang Pegawai Daerah telah memberikan pendapat beliau bahawa peraturan-peraturan adat yang dikekalkan dalam sistem pentadbiran tanah, bukan sahaja merumitkan tanggungjawab seorang Pemungut Hasil Tanah, tetapi peraturan-peraturan adat itu dianggap tidak dapat memenuhi kehendak-kehendak perkembangan pembangunan. Terdapatnya pendapat-pendapat yang telah dilahirkan oleh seorang sejarawan ekonomi dan tokoh-tokoh pentadbir ini telah menarik minat penulis untuk membuat kajian ke atas sejarah perkembangan pentadbiran tanah masyarakat adat.

Masyarakat Melayu Negeri Sembilan adalah agak unik jika dibandingkan dengan masyarakat Melayu ditempat lain. Mereka mengamalkan suatu sistem sosial berasaskan sistem Adat Perpatih,³ dimana kelompok-kelompok sosial hidup cara kolektif bergotong-royong. Bagi masyarakat yang mengamalkan sistem ini kedapatan suatu istilah iaitu 'tanah pesaka adat' atau lebih dikenali sebagai tanah adat yang bermaksud tanah harta kepada suku-suku tertentu yang diwariskan kepada anggotanya dari generasi ke generasi. Istilah ini juga merupakan sesuatu diantara perkara-perkara yang asasi dalam sistem Adat Perpatih itu.

Beberapa orang penulis telah memberikan huraian lanjut tentang aspek ini, akan tetapi tidak ramai di antara mereka itu yang telah mengkaji dengan mendalam tentang berbagai aspek sistem pentadbirannya. Penulis-penulis yang terdiri dari pegawai-pegawai tadbir British dahulu seperti Parr, Mackray, Martin Lister, Taylor, Maxwell, Winstedt dan beberapa orang lagi telah menyentuh tentang aspek tanah dalam kajian mereka yang berhubung dengan Adat Perpatih.⁴ Dalam penulisan mereka itu perbincangan mengenai tanah adalah tentang sistem perwarisan

saja. Kebanyakan hasil kajian mereka ini adalah bagi memenuhi keperluan bakal-bakal pegawai British yang ditugaskan berkhidmat di Negeri Sembilan ketika itu. Pada awal tahun tujuh puluhan pula seorang penulis barat, M.B Hooker, telah mengkaji tentang hukum-hukum adat Melayu dengan memberi perhatian khas terhadap hukum-hukum Adat Perpatih.⁵ Beliau telah banyak membincangkan tentang sistem perwarisan harta (tanah) yang diamalkan dalam daerah Kuala Pilah. Beliau berpendapat sistem yang diamalkan dalam daerah tersebut agak kompleks kerana dalam sistem perwarisan yang diamalkan itu penghakiman adalah merujuk kepada hukum Adat Perpatih, undang-undang Islam dan perundangan moden. Oleh kerana Hooker seorang ahli undang-undang kajiannya dalam beberapa aspek pentadbiran tanah itu ditumpukan kepada perundangan saja. Ia juga melengkapkan dengan beberapa kes bagi membuktikan masalah-masalah yang timbul dalam penghakiman mengikut perundangan moden, hukum-hukum Islam dan hukum adat. Seorang lagi penulis, Josselin de Jong, telah juga menyentuh tentang aspek pentadbiran tanah pesaka dalam kajiannya tentang Adat Perpatih di Negeri Sembilan, dibuat dalam bentuk perbandingan dengan yang terdapat di wilayah adat Minangkabau.⁶ Penulisannya adalah tertumpu kepada wilayah adat berasaskan, disiplin antropologi maka itu perbandingannya tentang beberapa aspek tanah pesaka adalah dengan cara kebetulan saja.

Penulis-penulis tempatan seperti Nordin Selat,⁷ Mohd Isa Mahmud,⁸ dan lain-lain telah juga membincangkan tentang tanah pesaka dan beberapa aspek pentadbirannya mengikut hukum-hukum adat. Mereka ini pula melihat dari sudut keunggulan sistem itu saja. Sepanjang yang diketahui tiada sejarawan yang telah membuat kajilidikan yang merangkumi semua aspek yang berhubung dengan pentadbiran tanah pesaka masyarakat adat seperti yang dijalankan dalam kajian ini. Aspek-aspek berkenaan saling berkait dan adalah tidak mungkin lengkap jika sesuatu aspek itu ditinggalkan.

Pada umumnya sistem pentadbiran tanah di negara ini adalah sama akan tetapi bagi tanah-tanah pesaka seperti yang terdapat di Negeri Sembilan adalah agak unik, kerana pentadbirannya adalah tertakluk kepada Kanun Tanah, Hukum-hukum Islam dan Hukum-hukum Adat itu sendiri. Bila kita halusi, keunikan sistem pentadbiran yang terdapat ini adalah merupakan hakikat bahawa disamping perubahan-perubahan yang berlaku hasil dari penjajahan British terdapat juga elemen-elemen kesinambungan.

Pernah diperkatakan bahawa 'Adat itu bersendikan syara', 'syara' bersendikan hukum dan hukum bersendikan kitab Allah'. Apa yang didapati dari segi agama Islam pentadbiran dari aspek perwarisan tanah itu adalah bertentangan, tetapi dikekalkan. Begitu juga bila sistem pentadbiran moden diperkenalkan beberapa aspek tentang sistem pentadbiran tradisional itu juga dikekalkan dan disesuaikan.⁹

Kajian ini merupakan suatu percubaan, meneliti enakmen-enakmen pentadbiran tanah pesaka itu dengan melihat kembali pada sejarahnya iaitu pentadbiran zaman tradisional dan mengikuti evolusi perkembangannya dengan pelaksanaan sistem Torrens. Tumpuan kajian yang utama adalah setelah pelaksanaan sistem pentadbiran moden yang diperkenalkan oleh British, meninjau mengapa British mengekalkan beberapa aspek sistem lama itu, hingga kini menjadi sebahagian sistem perundangan negara. Apakah motif penggubalan Customary Tenure Enactment itu? Bagaimana pula kedudukan tanah pesaka dalam Perlembagaan Negeri Sembilan dan Perlembagaan Negara? Perhatian adalah diberi pada kesannya dari segi ekonomi zaman kini dan kesannya dari segi sosial dengan merujuk kepada kes-kes tertentu.¹⁰ Dengan pendedahan kes-kes ini dijangkakan akan dapat menghidupkan perbincangan-perbincangan yang berkaitan dan akan dijadikan sebagai contoh kepada sesuatu pendapat yang dikemukakan. Dikatakan bahawa Customary Tenure Enactment 1909 itu bertujuan untuk melindungi tanah adat, di dalam kajian yang dijalankan didapati ada juga tanah adat yang secara tidak langsung terlepas kepada orang Cina. Seringkali juga diperbincangkan bahawa sistem pentadbiran tanah pesaka adat itu, khasnya tentang hukum perwarisan adalah bertentangan dengan undang-undang Islam. Perbincangan tentang masalah ini akan juga ditinjau untuk melihat kedudukan sebenar, dengan mengkaji mengapa sistem itu dikekalkan dan apakah sistem pentadbiran tanah pesaka itu perlu disesuaikan mengikut perkembangan zaman dan perkembangan ekonomi? Apabila timbul ura-ura mengadakan pembaharuan seperti yang disarankan oleh Mohamad Said dahulu, golongan yang menentang adalah ketua-ketua adat, iaitu Undang, Penghulu dan Lembaga, sedangkan penentangan dari orang ramai adalah tidak jelas. Harus difikirkan juga penentang-penentang ini mempunyai kepentingan sendiri. Wujudnya kedudukan mereka adalah kerana sistem adat itu. Mereka adalah sebagai ketua adat tetapi fungsi mereka dalam sistem birokrasi hampir tidak ada kecuali dalam

hal tanah pesaka.

Sumber utama yang digunakan dalam kajian ini terdiri dari Negeri Sembilan *Annual Report*, Negeri Sembilan *Government Gazettes*, *Harvey Papers*, bahan-bahan cetak kerajaan seperti Perlembagaan Negeri Sembilan, Perlembagaan Persekutuan Tanah Melayu, *Customary Tenure Enactment* 1909, *Customary Tenure Enactment* 1926, *Customary Tenure Enactment* 1936, *Customary Tenure (Amendment) Ordinance* No. 23 of 1949, *Customary Tenure (State of Negeri Sembilan) Ordinance* No. 33 of 1952, *Customary Tenure (Lengkungan Lands) Enactment* No. 4 1960, *Undang of Rembau (Lands) Enactment* No. 2 of 1949, *Small Estates (Distribution) Ordinance* No. 34 of 1955, *Small Estates (Distribution) (Amendment) Ordinance* No. 26 of 1959, *The Land Code* 1926, *National Land Code* (Act 56 of 1965), Fail-Fail Pejabat Tanah Daerah Kuala Pilah dan dokumen tertulis lain yang berkaitan. Didapati bahawa kajian ke atas tajuk seperti ini adalah tidak mungkin lengkap tanpa merujuk kepada keterangan lisan yang perlu dikutip dari kalangan anggota masyarakat berkenaan.

Suatu yang istimewa dalam kajian ini ialah keterangan sejarah yang terdapat dalam tradisi lisan sesuatu daerah adat itu. Tradisi lisan ini ada yang berbentuk naratif dan ada yang berbentuk puisi. Yang berbentuk naratif ini adalah keterangan tentang sejarah unit-unit politik yang terdapat seperti sejarah institusi undang, penghulu dan lain-lainnya bagi sesuatu daerah adat itu. Termasuk juga naratif tentang jurai keturunan perut-perut tertentu untuk menentukan giliran dan kelayakan seseorang calon ketua adat itu. Manakala tradisi lisan yang berbentuk puisi adalah perbilangan adat yang merupakan keterangan tentang hukum-hukum dan peraturan pentadbiran sistem sosial dan ekonominya. Tradisi-tradisi lisan ini memainkan peranan penting dalam menjaga keharmonian masyarakatnya. Ketua-ketua adat adalah merupakan pemegang tradisi-tradisi lisan berkenaan. Walaupun tidak ada sistem pembelajaran tertentu bagi seseorang pemegang tradisi ini seperti yang terdapat di kalangan masyarakat-masyarakat di Afrika, dan di tempat-tempat lain, namun demikian kedudukan seseorang ketua adat itu seperti buapak, lembaga, penghulu dan lain-lainnya memaksa seseorang itu mempelajari tradisi-tradisi lisan yang berhubung dengan salasilah wilayahnya, jurai keturunan perut, dan segala hukum-hukum adat berhubung dengan suku dan wilayahnya.

Kedudukan seseorang itu sebagai ketua adat akan terjejas

sekiranya ia tidak mengetahui tradisi-tradisi lisan berkenaan. Berbeza dari tradisi-tradisi lisan yang biasa terdapat tradisi lisan masyarakat adat ini boleh digunakan sebagai sumber sejarah. Berbeza dari tradisi lisan yang biasa, tradisi lisan yang terdapat di dalam sesuatu daerah adat itu boleh dianggap mempunyai pemegangnya yang tertentu. Tradisi ini mempunyai fungsi tersendiri dan penuturannya biasa dilakukan dalam upacara tertentu. Perbilangan-perbilangan adat yang berbentuk puisi itu senang dihafali dan tidak mudah mengalami interpolasi. Manakala yang berbentuk naratif dan genealogi itu boleh juga digunakan sebagai sumber sejarah kiranya dapat ditentukan ketulinan, kemunasabahan tradisi berkenaan dan juga kredibiliti penuturnya melalui proses penilaian 'intrinsic and extrinsic criticism'. Pentadbiran yang diamalkan sebelum campurtangan British dahulu boleh dilihat melalui kajian ke atas tradisi-tradisi lisan ini.

Selain dari tradisi lisan, keterangan proto dan keterangan saksimata juga digunakan bagi mendapatkan keterangan lanjut tentang kes yang dikaji. Ini adalah perlu kerana apa yang tercatat dalam buku Rekod Rakaman Perbicaraan Pemungut Hasil Tanah itu adalah keterangan ringkas sahaja. Wawancara telah diadakan dengan orang-orang yang terlibat dalam kes-kes yang dikaji. Begitu juga dengan masalah pentadbiran, keterangan lisan beberapa orang bekas pegawai yang terlibat dan mengetahui sendiri tentang sistem pentadbiran tanah yang diperkenalkan oleh British itu diperolehi untuk melihat apakah kesulitan dalam menjalankan tugas sebagai pegawai tanah. Antara mereka ialah bekas penghulu mukim, Pemungut Hasil Tanah Kuala Pilah, Pembantu Pemungut Hasil Tanah Kuala Pilah dan beberapa orang lagi.

Dalam pada itu kaedah soal selidik telah juga dijalankan untuk melengkapkan kajian dengan data-data yang tertentu untuk penelitian yang lebih dalam bagi keperluan dalam bab-bab yang tertentu. Misalnya jika diperkatakan bahawa sistem perwarisan itu mengakibatkan pemecahan dan gagal dalam matlamatnya menjamin ekonomi kaum wanita. Maka dijalankan kerja lapangan mengedarkan soal selidik di beberapa buah kampung berhampiran untuk mengetahui berapakah luas tanah yang dimiliki oleh kaum wanitanya dan berapa pula jumlah wanita yang bakal mewarisi harta itu. Dengan demikian dapat diperkuatkan sesuatu pendapat yang diberi.

Kajian ini ditumpukan di daerah Kuala Pilah atas beberapa sebab. Pertama, selain dari tanah adat Rembau, daerah Kuala Pilah mempunyai keluasan tanah pesaka yang terbesar mahupun jenis

tanah kampung, tanah sawah atau tanah dusun berbanding dengan daerah Jelevu, Tampin, Port Dickson dan Seremban. Kedua, tujuan awal enakmen tanah adat CTE 1909 itu digubal adalah untuk panduan Pemungut Hasil Tanah yang mentadbirkan tanah masyarakat adat di dalam daerah Kuala Pilah.¹¹ Pegawai-pegawai tadbir British yang membuat draf undang-undang CTE itu adalah mereka yang pernah berkhidmat sebagai Pegawai Daerah Kuala Pilah. Ketiga, masyarakat yang mengamalkan sistem pentadbiran demikian masih memegang kuat kepada peraturan Adat Perpatih itu sendiri. Sedangkan dalam daerah-daerah lain sistem pentadbiran demikian tidak begitu praktikal; misalnya daerah Seremban atau Port Dickson, tanah pesaka yang terdapat dalam kedua-dua daerah tersebut tidak seluas seperti yang terdapat dalam daerah Kuala Pilah. Masyarakat Melayunya pula tidak begitu terikat kepada hukum-hukum Adat Perpatih. Oleh yang demikian pemilihan daerah Kuala Pilah bagi kajian ini dapat mewakili daerah-daerah lain dalam pemilikan dan pentadbiran tanah adat di Negeri Sembilan.

Tarikh yang ditentukan ialah antara zaman pemerintahan tradisional, pengenalan sistem pentadbiran moden pada zaman British, dan kuatkuasa pentadbiran berkenaan hingga kini. Pemilihan jangkawaktu yang demikian difikirkan dapat mengkaji perubahan, penyesuaian dan pengekaln peraturan adat dalam pentadbiran moden seperti yang telah berlaku. Semasa pemerintahan Inggeris itulah undang-undang pentadbiran tanah masyarakat adat dihasilkan. Namun demikian sehingga pemergian Inggeris mereka hanya berjaya menghasilkan undang-undang pentadbiran tanah masyarakat adat suku yang dua belas sahaja. Sedangkan di Kuala Pilah terdapat suatu jenis tanah adat lagi yang perlukan undang-undang pentadbiran yang berlainan iaitu tanah masyarakat adat lingkungan.

1. Lim Teck Ghee, *Origins of Colonial Economy: Land and Agriculture in Perak 1874 - 1897* (Penang: Penerbitan USM, 1976), h. 3.
2. Mohd. Said bin Mohamed ialah bekas Menteri Besar Negeri Sembilan 1959-1969. Sikap beliau terhadap adat telah dipersoalkan oleh ketua-ketua adat. Sebagai ketua pentadbir beliau adalah seorang yang tegas dan seorang yang praktikal.
3. Suatu perkara yang menarik mengenai hukun Adat Perpatih itu ialah, di samping ia terkumpul di dalam perbilangan-perbilangan ia juga merupakan asas bagi pembentukan beberapa bahagian undang-undang tanah di Negeri Sembilan.
4. Antara kajian yang berkaitan ialah Parr, C.W.G. & Mackray, W.H., 'Rembau, One of the Nine States, its History, Constitution and Customs', *JSBRAS*, Vol. LVI, 1910; Martin Lister, 'The Negri Sembilan, Their Origin and Constitution', *JSBRAS*, Vol. XXI, 1890; E.N. Taylor, 'The Customary Law of Rembau', *JMBRAS*, Vol. XII, Pt. 1, 1929, dan 'Inheritance in Negri Sembilan', *JMBRAS*, Vol. XXI, Pt. 2, 1948; W. Maxwell, 'The Law and Customs of the Malays with Reference to the Tenure of Land', *JSBRAS*, Vol. XIII, 1884; dan R.O. Winstedt & Josselin de Jong, 'A Digest of Customary Law From Sungei Ujung', *JMBRAS*, Vol. XXVII, Pt. 3, 1954.
5. M.B. Hooker ialah seorang ahli undang-undang, semasa menghasilkan penulisannya Hooker berkhidmat sebagai Pensyarah Fakulti Undang-Undang, University of Singapore. Antara hasil kajian yang berhubung dengan sistem pentadbiran tanah pusaka ialah: *Readings in Malay Adat Laws*, (Singapore; 1970); "The Interaction of Legislation and Customary Law in a Malay State", *American Journal of Comparative Law*, Vol. 16, 1968.
6. Josselin de Jong, *Minangkabau and Negeri Sembilan* (Jakarta: Bhanatra, 1960).
7. Nordin Selat, *Sistem Sosial Adat Perpatih* (Kuala Lumpur: 1967).

8. Mohd. Isa Mahmud, *Adat Bersuku Cara Perpatih* (Seremban: 1936).
9. Dalam tahun 1909 'Customary Tenure Enactment', telah diperkenalkan. Undang-undang ini adalah khas untuk pentadbiran tanah pesaka dimana sistem pentadbiran tanah mengikut Adat Perpatih itu dalam beberapa aspek telah dikekalkan.
10. Terdapat banyak kesan-kesan sosial yang buruk berlaku akibat perlaksanaan sistem pentadbiran sesudah kedatangan British ini. Di dalam tulisan ini cuma beberapa di antara kes yang difikirkan dapat dijadikan sebagai bahan untuk difikirkan bersama didedahkan.
11. CTE 1909 digubal untuk pentadbiran tanah adat dalam daerah Kuala Pilah. Undang-undang ini dikuatkuasakan dalam daerah Tampin adalah kerana sebahagian luak Johol termasuk dalam pentadbiran daerah Tampin dibawah penyusunan daerah pentadbiran yang dilakukan oleh Inggeris.
CTE 1926 - Undang-undang tersebut diluaskan ke daerah Jelebu di samping tujuan asalnya ialah untuk pentadbiran daerah Kuala Pilah. Undang-undang CTE Cap. 215 dikuatkuasakan cara resmi ke daerah Rembau dalam tahun 1949.
Ordinan Penyelesaian Harta Pesaka Kecil 1955 adalah bertujuan untuk mengatasi kelemahan-kelemahan yang terdapat dalam undang-undang CTE.

Bab Empat

Implikasi Dari Statut Pemilikan Dan Pentadbiran

British telah meninggalkan suatu sistem pentadbiran tanah yang lebih tersusun dan lebih sesuai untuk pentadbiran yang berkesan. Kuasa kerajaan ke atas tanah dan hakmilik individu atas tanahnya adalah dilindungi oleh undang-undang yang merupakan 'authority' dalam sesebuah negara. Keseluruhan pentadbiran tanah adalah di bawah kanun tanah negara. Di bawah peruntukan yang terdapat dalam kanun tanah itu pula, diberikan kuasa kepada badan perundangan tertentu untuk mentadbirkan tanah-tanah yang termasuk di bawah kategori tertentu. Untuk pentadbiran tanah masyarakat adat, pihak Inggeris telah mengadakan polisi-polisi yang tertentu, terkandung dalam undang-undang yang dinamakan 'Customary Tenure Enactment Cap. 215', 'Malay Reservation Enactment', 'Cultivation of rice Enactment' dan 'Small Estates (Distribution) Ordinance 1955'. Undang-undang Customary Tenure Enactment ialah undang-undang yang mengandungi peraturan-peraturan adat yang dikekalkan. 'Malay Reservation Enactment' ialah undang-undang untuk melindungi tanah-tanah orang Melayu. 'Cultivation of rice Enactment' ialah undang-undang yang memaksa masyarakat adat menumpukan pada penghasilan padi. 'Small Estates (Distribution) Ordinance 1955' ialah undang-undang yang digubal untuk mengatasi kelemahan yang terdapat dalam Customary Tenure Enactment tentang penyelesaian harta pesaka kecil.

Untuk mengkaji implikasi undang-undang di atas terhadap masyarakat adat Negeri Sembilan, perlu dilihat dari dua bahagian. Pertama, melihat kebaikan dan kelemahan dari segi peraturan-peraturan yang terkandung dalam undang-undang tersebut. Kedua, sikap orang-orang Melayu sendiri terhadap peraturan-peraturan adat yang dikekalkan dan peraturan yang terkandung dalam 'Malay Reservations Enactment' dan 'Cultivation of rice Enactment'. Dalam membincangkan kebaikan dan kelemahan dari implikasi perlaksanaan sistem pentadbiran baru ini, adalah

tidak mungkin kita dapat memisahkan dari mempersoalkan beberapa kelemahan-kelemahan Adat Perpatih itu sendiri.

Dalam menggubal dasar dalam sistem pentadbiran baru, pihak Inggeris telah mengekalkan peraturan-peraturan adat. Pengekalan peraturan adat ini mempunyai kebaikan dan kelemahan. Dengan adanya prinsip adat yang dijadikan undang-undang tertulis, Adat Perpatih dapat kekal dikalangan masyarakat Melayu Negeri Sembilan, khasnya masyarakat dalam wilayah-wilayah adat. Mungkin jika prinsip adat itu tiada dikekalkan sebagai sebahagian dari undang-undang tertulis untuk pentadbiran tanah adat, besar kemungkinannya institusi Lembaga dan Penghulu Luak itu sudah lama terkubur. Ini adalah berdasarkan kepada fungsi ketua adat berkenaan dalam pentadbiran zaman British hingga kini. Fungsi mereka sebagai ketua sesuatu komuniti sudah tidak penting lagi dalam pentadbiran moden. Masyarakat lebih memandang tinggi kepada seorang Penghulu Mukim, kerana Penghulu Mukim mempunyai kuasa pentadbiran dan merupakan orang perantaraan antara kerajaan dengan masyarakat. Semua hal-hal urusan pentadbiran yang berkaitan dengan tanah dan pembangunan luar bandar mempunyai kaitan dengan tanggungjawab Penghulu Mukim sebagai wakil Pegawai Daerah. Manakala seorang Penghulu Luak fungsinya hampir tiada lagi melainkan dalam urusan tanah pesaka seperti yang terdapat dalam Customary Tenure Enactment itu. Begitu juga peranan seorang Lembaga, fungsinya adalah dalam pentadbiran tanah pesaka saja. Manakala fungsi lain semakin hilang, bahkan fungsi sosialnya dalam istiadat nikah kahwin dan perkediman semakin berkurangan. Dengan demikian terdapatnya peraturan-peraturan adat dalam undang-undang tertulis untuk pentadbiran tanah pesaka itu, institusi-institusi pegawai berkenaan dapat kekal. Pengekalan ini juga menyebabkan Adat Perpatih itu masih mendapat tempat.

Disamping itu juga pihak Inggeris berpendapat dengan mengekalkan prinsip-prinsip pentadbiran adat itu mereka telah melaksanakan tugas sebagai pelindung ke atas tanah yang menjadi jaminan ekonomi orang Melayu. Mereka menyedari bahawa orang-orang Melayu kurang mengetahui tentang konsep tanah sebagai suatu komoditi dalam aktiviti ekonomi. Oleh yang demikian dengan mengekalkan prinsip-prinsip adat dijangkakan dapat menyelamatkan tanah masyarakat adat dari berpindah milik kepada pengusaha-pengusaha ladang dan peminjam-peminjam wang. Dalam hal ini, terdapatnya peraturan pemindahan hakmilik yang terhad dalam Customary Tenure Enactment dan 'Malay

Reservations Enactment' mendatangkan kebaikan kepada masyarakat adat, di mana tanah mereka dapat diselamatkan dari berpindah milik kepada orang bukan Melayu. Jikalau tiada undang-undang tersebut, mungkin banyak tanah masyarakat adat yang telah terlepas pada bukan Melayu. Dalam pada itu tidaklah pula dinafikan banyak tanah pesaka yang telah menjadi hakmilik bukan Melayu secara tidak langsung. Tanah berkenaan kepunyaan Melayu tetapi yang menduduki dan yang mendapat faedah ekonominya adalah orang bukan Melayu. Di atas tanah itu telah didirikan bangunan-bangunan yang diperbuat daripada batu untuk dijadikan tempat kegiatan ekonomi.

Kebanyakan kes-kes seperti ini bermula sejak awal kurun yang kedua puluh lagi, dan ada pula keluarga bukan Melayu yang menduduki tanah tersebut terdiri dari generasi ketiga. Ini menunjukkan berapa lamanya tanah pesaka itu telah dinikmati oleh bukan Melayu. Anehnya pula kebanyakan sewa yang dibayar itu adalah terlalu rendah iaitu mengikut kadar sewa yang terkandung dalam surat perjanjian yang telah sama-sama dipersetujui sebelum Perang Dunia yang Kedua dahulu. Kebanyakan surat-surat perjanjian itu merupakan pengakuan berhutang yang dibuat oleh seorang peguam. Dalam pada itu banyak juga yang menyewa tanah tersebut tanpa menentukan jangkamasanya. Keadaan seperti ini menyebabkan penyewa-penyewa tersebut begitu sukar untuk diusir keluar. Ramai juga diantara penyewa itu yang telah beberapa kali cuba diusir tetapi mereka berpegang pada perjanjian yang tidak menentukan jangkamasa bila perjanjian itu akan tamat. Dalam keadaan tertentu pula penyewa tersebut meminta tuan tanah membayar ganti rugi yang tinggi bagi harta rumah atau kedai yang telah dibina itu. Tidak kurang pula yang memberikan syarat kepada tuan tanah supaya mencarikan tempat sebagai ganti. Ramai juga yang sengaja berdegil dan tuan tanah tidak dapat membuat apa-apa tindakan. Lebih-lebih lagi tindakan undang-undang kerana ini memerlukan perbelanjaan.

Terdapat gejala yang seperti ini bukanlah kerana kelemahan undang-undang Customary Tenure Enactment atau 'Malay Reservations Enactment' itu, tetapi adalah kerana sikap orang Melayu sendiri yang mudah tertarik kepada wang tanpa menghitung baik buruknya terlebih dahulu. Dalam pada itu pula mereka tidak pula tahu menilai kedudukan sesuatu tanah itu dari segi ekonomi. Mereka begitu mudah untuk menerima sewa bulanan atau tahunan yang sedikit memandangkan mendapat hasil dari tanah

tanpa mengeluarkan titik peluh. Sebab lain mengapa tanah adat diduduki oleh orang bukan Melayu adalah kerana penglibatan dalam hutang. Sepertimana yang kita ketahui, bahawa tanah adat itu tidak boleh digadai atau dicagarkan kepada bukan Melayu. Oleh itu tanah pesaka tidak diterima oleh peminjam wang seperti ceti atau mana-mana institusi kewangan yang terdapat zaman dahulu sebagai cagaran untuk mendapatkan pinjaman. Dengan demikian tuan tanah tidak mempunyai jalan lain untuk mendapatkan pinjaman, melainkan daripada orang Cina. Bagi orang Cina pula mereka memberikan pinjaman itu sebagai pinjaman biasa dimana perjanjian pengakuan berhutang dibuat dihadapan peguam. Sebagai persetujuan antara kedua pihak pula, tuan tanah membenarkan orang Cina itu menduduki sebahagian tanah kepunyaannya dengan bayaran sewa bulanan atau tahunan. Mungkin dilain masa pula tuan tanah mengalami kesesakan wang dan membuat pinjaman lagi. Dengan ini hutang bertambah dan sukar untuk dibayar kembali. Sebaliknya orang Cina itu akan membina bangunan tetap untuk tempat kediaman dan tempat bagi aktiviti ekonominya.

Gejala yang demikian berlaku dikalangan masyarakat adat, dimana sebelum Perang Dunia Kedua dahulu orang Cina terdapat di merata-rata perkampungan Melayu dalam daerah adat. Gejala ini terbantut akibat kemasukan Jepun dan akibat perlaksanaan Rancangan Briggs, di mana orang-orang Cina yang tinggal diluar bandar telah dipindahkan kekampung-kampung baru yang diletakkan dibawah pengawasan pasukan keselamatan. Setelah darurat diistiharkan tamat iaitu diakhir tahun 1959, ramai juga bilangan orang Cina yang mula kembali menduduki tanah-tanah pesaka. Segala gambaran di atas dan setakat mana peranan undang-undang Customary Tenure Enactment dan 'Malay Reservation Enactment' menyelamatkan tanah pesaka masyarakat adat dapat dilihat dari kes contoh di bawah.

Tanah yang terlibat ialah tanah adat E.M.R 6616 seluas 3R. 36P. bertempat di Kuala Parit, dalam Mukim Terachi. Tanah ini ialah tanah pesaka suku Tiga Nenek dan tuan tanah ini bernama Puasa bte Busu. Tanah ini mempunyai kedudukan ekonomi yang baik iaitu di persimpangan jalan serta disekelilingnya ialah kampung-kampung yang mempunyai hampir 5,000 orang penduduk. Pada akhir tahun dua puluhan dahulu seorang Cina telah menyewa sebahagian tanah tersebut dengan bayaran sewa \$16/- setahun untuk mendirikan sebuah kedai membeli getah dan menjual barangan runcit. Tuan tanah membeli barang-barang keperluan

harian dari kedai Cina tersebut. Setelah perniagaan bertambah maju, peniaga berkenaan telah membina sebuah bangunan tetap yang diperbuat dari batu-bata, lengkap dengan tempat kediaman, tempat perniagaan dan sebuah rumah asap getah keping.

Pada 2 Februari 1949 tuan tanah bersama dengan bapa saudaranya membuat permohonan kepada Pemungut Hasil Tanah Kuala Pilah untuk menjual tanah tersebut kepada Limah Binti Pintas dari suku Sri Melenggang dengan alasan untuk menjelaskan hutang sebanyak \$1,000/-. Malangnya penjualan tidak dapat diteruskan walaupun dipersetujui oleh Lembaga suku tuan tanah itu iaitu Dato' Menteri Abdul Rahman bin Oyot. Peruntukan dalam Customary Tenure Enactment Cap. 215 mengatakan, dalam sebarang pemindahan hakmilik keutamaan hendaklah diberi kepada waris terdekat.¹ Bantahan dibuat oleh seorang waris bagi menyekat penjualan itu. Pemungut Hasil Tanah telah membuat keputusan memberi waris berkenaan peluang untuk membeli tanah tersebut dengan harga \$1,000/- dalam tempoh satu bulan dari tarikh keputusan itu dibuat. Si waris tidak mampu mengadakan sejumlah wang yang diperlukan sebaliknya telah mendapatkan wang dari orang lain, juga anggota suku lain, dengan berjanji untuk memberikan tanah tersebut kepada orang berkenaan. Apabila tuan tanah mengetahui bahawa waris bermaksud tidak jujur iaitu untuk memberikan tanah tersebut kepada orang dari suku lain, tuan tanah enggan menjualkan tanah tersebut kepadanya. Kes ini telah didengar beberapa kali lagi pada tahun-tahun kemudiannya sehinggakan bakal pembeli sanggup untuk dikedimkan kepada suku Tiga Nenek bagi membolehkan pembelian itu. Namun demikian penahanan pihak waris menyebabkan kes ini tergantung selama sepuluh tahun.

Pada bulan November, 1957 tuan tanah telah mati secara mengejut meninggalkan beberapa orang anak, termasuk empat orang yang masih kecil. Selang beberapa bulan kemudian bapa saudara kedim simati juga telah meninggal dunia. Pada tahun 1960, Limah, iaitu orang yang telah memberikan pinjaman wang sebanyak \$1,000/- kepada tuan tanah, telah membuat tuntutan hutang ke atas harta simati.² Bagi menyelesaikan hutang simati ini, Pemungut Hasil Tanah telah membuat keputusan memerintahkan waris yang membantah penjualan tersebut menyediakan wang sebanyak \$1,000/- sebagai ganti hutang, dan

\$300/- lagi sebagai faedahnya. Pada kali ini siwaris telah menemui taukeh Cina yang menyewa tanah tersebut. Taukeh Cina itu bersetuju untuk memberikan wang yang diperlukan dengan syarat hakmilik tanah itu diberikan kepada seorang yang boleh dipercayainya. Apabila Pemungut Hasil Tanah mengetahui keadaan sebenarnya, beliau telah menilai kembali harga tanah itu dan telah menetapkan nilai sebanyak \$3,500/. Penyelesaian telah dibuat dimana \$1,300/- telah diserahkan kepada Limah dan bakinya disimpan untuk anak-anak tuan tanah.³

Semakan kemudian pada 20 November 1962 seorang yang bukan anggota suku telah menjadi tuan tanah pada tanah pesaka berkenaan.⁴ Pada praktiknya pula, keluarga bukan Melayu itu adalah merupakan penduduk tetap pada tanah tersebut. Seluruh kawasan tanah itu telah dipagar, bangunan tambahan telah didirikan, disitulah keluarga bukan Melayu berkenaan kekal menetap. Disitulah juga ia melakukan segala kegiatan ekonominya, berniaga, bercucuk tanam, berternak dan memproses getah.

Ini adalah merupakan sebagai suatu contoh bagaimana tanah adat telah menjadi tempat menetap keluarga bukan Melayu. Dari kes di atas kemungkinan ketiadaan undang-undang 'Customary Tenure Enactment' dan 'Malay Reservations Enactment', tanah tersebut sudah tentu menjadi hakmilik kepada bukan Melayu tersebut. Pada kenyataannya pula walaupun yang menduduki tanah itu ialah bukan Melayu, tetapi 'Customary Tenure Enactment' dan 'Malay Reservations Enactment' telah memainkan peranan sebagai penghalang kepada anggota bukan Melayu itu dari menjadi tuan tanah yang sah dari segi undang-undang. Contoh ini juga adalah sebagai bukti bahawa kemungkinan ketiadaan undang-undang 'Customary Tenure Enactment' dan 'Malay Reservations Enactment', tanah-tanah kepunyaan masyarakat adat mungkin banyak yang telah menjadi hakmilik bukan Melayu.

Tujuan 'Customary Tenure Enactment' dan 'Malay Reservation Enactment' untuk melindungi tanah orang Melayu pada dasarnya memanglah tercapai. Sejak undang-undang tersebut dikuatkuasakan tidak ada tanah yang telah dicatatkan 'Customary Land' atau 'Malay Reservations' pada gerannya yang telah berpindah milik kepada bukan Melayu, walaupun pada kenyataan

terdapat orang-orang bukan Melayu menjadi pemilik secara tidak langsung.

Kesan negatif dari peraturan adat yang dikekalkan

Undang-undang 'Customary Tenure Enactment', 'Malay Reservations Enactment' dan 'Small Estates (Distribution) Ordinance 1955' kesemuanya membenarkan perkongsian milik dilakukan tanpa had. Peraturan yang demikian merupakan suatu kelemahan, kerana peraturan itu mendatangkan implikasi sosial dan ekonomi yang buruk ke atas masyarakat adat.

Pertambahan bilangan anggota perempuan begitu ramai sedangkan tanah pesaka boleh dikatakan tidak bertambah. Ini menyebabkan pemecahan secara tidak langsung dilakukan tanpa had, sehingga jumlah tanah pesaka yang dimiliki oleh seorang wanita dalam masyarakat adat itu amat kecil. Untuk melihat betapa kecilnya bahagian tanah pesaka yang dimiliki oleh wanita-wanita dalam masyarakat adat, suatu kajilidikan telah dijalankan di beberapa buah kampung iaitu Kampung Dingkir, Kampung Kabong, Kampung Tanah Baharu, Kampung Seginyeh dan Kampung Gating. (sila lihat jadual berikut).

PEMILIKAN TANAH KAMPUNG

Jumlah Ekar Tanah

1/4 1/2 2/3 3/4 1 1 1/2 2 2 1/2 3 3 1/2 4 6

Bil. Pemilik Wanita

29 40 21 17 15 12 15 6 6 5 5 2

Bilangan wanita yang dikaji = 180 orang

Bilangan wanita yang memiliki tanah kampung = 173 orang

Bilangan wanita yang bakal mewarisi tanah kampung (anak perempuan) = 219 orang

PEMILIKAN TANAH SAWAH

Jumlah Ekar Tanah

1/4	1/2	3/4	1	1 1/4	1 1/2	2	2 1/4	3	4	5 1/2	6
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Bilangan Pemilik Wanita

5	16	19	50	2	15	20	6	2	6	5	3
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Bilangan wanita yang dikaji = 180 orang

Bilangan wanita yang memiliki tanah sawah. = 149 orang

Bilangan anak perempuan yang bakal mewarisi tanah sawah = 197 orang

Kedua-dua jadual ini dianggap mewakili masyarakat adat keseluruhannya dalam sesebuah daerah adat. Keluasan tanah yang dimiliki sungguh kecil dan keadaannya tentulah lebih hebat lagi dalam masa-masa yang akan datang. Ada juga sebilangan kecil wanita yang memiliki tanah kampung dan sawah yang agak luas iaitu lebih dari empat ekar, tetapi bilangan mereka ini kecil.

Hasil dari kajian yang dibuat ke atas buku-buku Daftar Tanah Pesaka, terdapat tanah-tanah yang sukar ditentukan seluas mana hak seseorang itu. Suatu contoh ialah tanah sawah E.M.R. 1020 dalam Mukim Sri Menanti, dengan keluasan hanya satu ekar.⁵ Dari keterangan yang terdapat, pemilik tanah ini terdiri dari empat orang wanita adat iaitu Awi bte Sitam (1/2) bahagian, Bariah bte Kadir (1/6) bahagian, Noriah bte Ali (1/6) bahagian dan Saleha bte Ali (1/6) bahagian. Melihat pada keluasan tanah tersebut, bagaimanakah keadaan jika tiap-tiap pemilik mempunyai dua atau tiga orang anak perempuan yang akan mewarisi tanah itu seterusnya?. Sudah tentu sukar untuk ditentukan seluas mana bahagian seseorang itu. Kalau tanah sawah yang seluas seekar ini dimiliki oleh beberapa orang petani, tentu sekali banyak masalah yang timbul. Pemecahan tanah yang demikian jika dinilai dari segi ekonomi adalah merugikan, dimana pembazarian tenaga buruh akan berlaku.

Dalam keadaan tertentu pula pemecahan tanah boleh membawa kerugian ekonomi yang berterusan. Sebenarnya banyak tanah-tanah yang terbiar diusahakan oleh pemilik-pemiliknya akibat dari kebenaran pemilikan secara beramai-ramai. Suatu contoh yang perlu mendapat perhatian dalam hal ini ialah tanah E.M.R. 3328 dalam Mukim Johol. Keluasannya ialah 2 ekar 15 pole. Tanah ini dipunyai oleh Wok bte Desa. Wok mempunyai tiga anak perempuan dan dua darinya telah meninggal dunia terlebih dahulu. Anak perempuan yang tua meninggalkan dua orang anak perempuan, manakala anak perempuan kedua meninggalkan empat orang anak perempuan. Atas kematian Wok, Pemungut Hasil Tanah telah mewariskan kepada waris-warisnya, iaitu Lijah bte Tanggam ($1/3$) bahagian, Kamariah bte Senin ($1/6$) bahagian, Libah bte Senin ($1/6$) bahagian, Limah bte Pintas ($1/12$) bahagian, Saadiah bte Pintas ($1/12$) bahagian, Noyah bte Pintas ($1/12$) bahagian, Saadiah bte Pintas ($1/12$) bahagian dan Milah ($1/12$) bahagian.

Oleh sebab Lijah anak perempuan simati yang ketiga masih tidak berpuashati ke atas bahagian yang diterimanya, ia telah mengemukakan suatu rayuan kepada badan 'Appeal Committee' dibawah peruntukan seksyen 15 (1) Customary Tenure Enactment Cap. 215.⁷ Lijah menuntut keatas semua bahagian-bahagian harta ibunya yang telah diwariskan kepada Limah, Saadiah, Noyah dan Milah atas dasar bahawa ia telah menguruskan pengkebumian simati. Mengikut keterangan responden (Limah, Saadiah, Noyah dan Milah) mereka juga turut bersama-sama menjaga nenek mereka semasa nenek mereka sakit dan menguruskan pengkebumian nenek mereka. Mereka juga menafikan dakwaan Lijah yang mengaku telah membelanjakan segala perbelanjaan pengkebumian itu. Simati banyak meninggalkan harta seperti barang-barang emas dan beberapa ekor kerbau dan harta-harta ini kesemuanya telah diambil oleh Lijah sebagai perbelanjaan pengkebumian.

Atas pengakuan Penghulu Luak Inas berserta dengan Lembaga Suku Sri Melenggang yang mendakwa Lijah sebenarnya menguruskan segala perbelanjaan pengkebumian, anggota-anggota 'Appeal Committee' yang terdiri dari Tunku Besar Burhanudin sebagai ahli yang dicalunkan oleh Yang DiPertuan, H.P. Bryson iaitu Penasihat British Negeri Sembilan dan Bacik - Penghulu Luak Inas telah melakukan pembahagian seperti berikut:

- Lijah bte Tanggam (1/2) bahagian.
- Libah bte Senin (1/8) bahagian.
- Kamariah bte Senin (1/8) bahagian.
- Limah bte Pintas (1/16) bahagian.
- Saadiah bte Pintas (1/16) bahagian.
- Noyah bte Pintas (1/16) bahagian.
- Milah bte Pintas (1/16) bahagian.⁸

Pembahagian yang demikian menimbulkan rasa tidak puashati di kalangan mereka yang mendapat bahagian yang semakin berkurangan. Akibat dari pemecahan tanah ini juga telah mendatangkan implikasi sosial yang buruk, dimana perhubungan antara ibu saudara dengan anak-anak buahnya telah menjadi renggang. Tanah ini adalah tanah pesaka adat yang ditanam dengan pokok getah. Sejak pemecahan tanah ini dilakukan, iaitu dalam tahun 1949 dahulu, tanah tersebut telah menjadi tanah terbiar ditumbuhi oleh belukar yang tebal. Lijah yang mempunyai bahagian yang terbanyak ke atas tanah itu pernah membuat permohonan untuk mendapatkan rancangan tanam semula. Tetapi, ia terpaksa mendapatkan kerjasama pemilik-pemilik yang lain terlebih dahulu, sedangkan perhubungan antara mereka sejak pemecahan tanah itu dilakukan adalah buruk. Lijah telah cuba membeli bahagian pemilik-pemilik yang lain tetapi telah gagal. Sehingga tahun 1980 tanah tersebut menjadi terbiar tanpa tanaman yang mendatangkan sebarang hasil. Hampir empat puluh lapan tahun telah berlalu hasil ekonomi yang sepatutnya dapat diperolehi telah dilepaskan dengan begitu saja.

Hasil dari tinjauan yang dibuat ke atas beberapa buah kampung didapati banyak tanah pesaka yang tinggal terbiar akibat dari pemecahan tanah. Oleh kerana bahagian yang diterima oleh seseorang itu terlalu kecil, pemilik berfikir lebih baik berpindah ketempat lain untuk mendapatkan penghidupan baru seperti di Rancangan FELDA atau FELCRA. Pemecahan tanah ini juga menjadi halangan dalam melancarkan sesuatu projek ekonomi. Sesuatu tanah adat yang mempunyai kedudukan yang baik, adalah agak sukar tanah tersebut untuk dimajukan sekiranya pemiliknya ramai.⁹ Misalnya sebidang tanah yang sesuai untuk dimajukan bagi rancangan perumahan tidak mungkin dapat persetujuan semua pihak yang mempunyai hak ke atas tanah itu. Dengan demikian tanah yang mungkin mendatangkan hasil ekonomi yang

baik tidak akan dapat dimajukan.

Dilihat pula dari segi nilai tanah adat dengan bukan tanah adat, terdapat perbezaan yang agak jauh bezanya. Keadaan yang demikian adalah kerana undang-undang pentadbiran tanah adat itu sendiri. Mengikut undang-undang tersebut penukaran hakmilik bagi tanah adat adalah terhad. Dengan demikian nilainya juga adalah rendah, kerana permintaan yang dibenarkan adalah terhad. Kebanyakan tanah adat pula telah ditentukan tanaman-tanaman yang dibenarkan. Ini bermakna sebarang penukaran penggunaan tanah itu terlebih dahulu hendaklah mendapat kelulusan dari pihak kerajaan. Ini adalah merumitkan dan memakan masa yang lama.

Dalam usaha untuk mendapatkan modal bagi tujuan sesuatu projek ekonomi, tanah adat boleh digunakan sebagai cagaran pada pinjaman yang dibuat. Tetapi, nilai pinjaman yang akan diluluskan adalah rendah. Pihak yang memberikan pinjaman agak enggan menerima geran tanah adat sebagai cagaran pada pinjaman yang dibuat. Kalau pun diterima nilai yang diberi adalah rendah kerana sekiranya sipeminjam gagal membayar balik pinjamannya, walaupun agensi pemberi pinjaman seperti MARA berhak melelong tanah tersebut, namun demikian MARA tidak berhak melelong harta-harta itu dengan mengenyepikan peraturan-peraturan yang telah sedia terkandung di dalam Customary Tenure Enactment Cap. 215.

Undang-undang membenarkan perkongsian milik secara beramai tetapi undang-undang tidak membenarkan geran-geran baru dikeluarkan. Tiap-tiap kali pemindahan hakmilik dilakukan, nama dan bahagian seseorang itu dicatatkan ke dalam geran yang sama iaitu geran E.M.R. yang asal. Peraturan yang demikian mendatangkan masalah pada tuan-tuan tanah. Tanah yang seluas dua ekar dan dipunyai oleh beberapa orang pemilik sudah tentu akan menimbulkan beberapa masalah. Masalah yang pertama ialah untuk menentukan bahagian seseorang itu. Dalam penentuan pembahagian ini, sudah tentu seseorang itu mahukan kedudukan tanah yang baik. Dalam hal ini perkelahian akan berlaku di mana masing-masing mahukan bahagian tanah yang baik untuk pertanian atau untuk membina tempat kediaman. Masalah akan juga timbul dalam menguruskan pembayaran cukai, dimana tuan-tuan tanah itu terpaksa menjelaskan cukai cara bergilir-gilir atau membayar cara bersama-sama. Dalam hal ini kesulitan mungkin timbul untuk menentukan siapa yang harus menguruskan pembayaran cukai tersebut, kerana dalam keadaan

tertentu perhubungan di antara mereka ini adalah tidak begitu baik.

Dari perbincangan tentang kebaikan dan kelemahan dari segi peraturan-peraturan yang terdapat dalam undang-undang yang telah digubal oleh pihak Inggeris untuk pentadbiran tanah pesaka itu, didapati sesuatu peraturan itu mempunyai implikasi yang baik atau yang buruk. Untuk melihat dengan lebih lanjut lagi kebaikan dan kelemahan sesuatu peraturan itu akan dapat dikaji melalui sikap yang ditonjolkan oleh orang-orang Melayu sama ada anggota adat atau pun bukan anggota adat.

Sikap orang-orang Melayu terhadap peraturan adat yang dikekalkan

Pendidikan sama ada pendidikan formal atau tidak formal, memainkan peranan utama dalam mengubah sikap seseorang itu. Dengan pendidikan seseorang itu akan memandang dengan lebih jauh ke hadapan, menganalisis dengan lebih mendalam tentang sesuatu gejala yang terdapat dalam masyarakatnya. Melalui pendidikan agama seseorang itu akan mula mempersoalkan amalan-amalan masyarakatnya yang bertentangan dengan ajaran yang dipelajari. Dasar pelajaran pemerintahan Inggeris, walaupun bertujuan tidak lebih dari melengkapkan orang Melayu dengan pengetahuan membaca dan menulis, tetapi pendidikan itu telah mula memainkan peranan dalam mengubah sikap beberapa golongan masyarakat Melayu. Dalam masyarakat adat sendiri terdapat juga beberapa golongan yang mula mempersoalkan akan keburukan-keburukan yang terdapat dalam sistem Adat Perpatih itu.

Perubahan sikap masyarakat terhadap tanah adat pula dapat ditinjau melalui desakan-desakan beberapa golongan tertentu yang mendesak supaya mengadakan kajian semula terhadap adat, khususnya peraturan-peraturan adat yang telah dikekalkan di dalam sistem baru itu. Perubahan sikap terhadap pentadbiran tanah masyarakat adat, pertama kali telah ditonjolkan oleh golongan ketua-ketua adat di Rembau. Golongan ini adalah merupakan golongan yang kuat mempertahankan sistem adat itu. Namun demikian mereka inilah yang pertama kali melakukan perubahan ke atas dua aspek dalam penyelesaian harta. Aspek yang pertama ialah berhubung dengan harta carian. Mengikut hukum adat, pembahagian harta carian adalah tertakluk kepada

peraturan-peraturan adat, iaitu dapatan tinggal, harta yang dibawa kembali, carian bahagi. Pihak Inggeris telah cuba mengekalkan peraturan tersebut kedalam sistem baharu. Ketua-ketua adat dari daerah Kuala Pilah, Tampin dan Jelebu menyokong cadangan tersebut. Tetapi, golongan ketua adat dari Rembau menentangnya. Penentangan ketua-ketua adat ini dapat diteliti dari surat yang dihantar kepada Residen, seperti yang disalinkan di bawah.¹⁰

Kepada Tuan Residen,

Bahawa dengan sesungguhnya sahaya Lembaga yang bersain dibawah ini telah bermesyuarat dengan mendapat sabulat suara berkenaan dengan harta yang dinesbahkan kepada charian. Semuanya itu akan dijalankan mengikut bahagian hukum shara' tentang daripada tanah pesaka iaitu tanah O.T. yang turun menurun didalam suku itu tidak dapat dengan dibeli ya'ni dapat sahaja dijalankan mengikut bahagian adat Rembau juga.

Tanda tangan-tanda tangan

18 orang sahaja.

3.2.1930

Tanda tangan Undang Rembau

Dalam tahun 1940 pula, ketua-ketua adat di Rembau telah mencapai kebulatan bagi menghapuskan amalan berkedim atas alasan perbuatan itu bertentangan dengan ajaran Islam.¹¹ Amalan berkedim adalah peninggalan amalan Pagan dahulu. Amalan ini memerlukan istiadat bercecah darah, dimana anak angkat dan waris-waris ibu angkatnya mencecahkan jari masing-masing kedalam suatu bekas yang berisi dengan darah binatang yang disembelih. Amalan ini bertentangan dengan ajaran Islam tambahan pula darah berkenaan dianggap sebagai najis.

Motif penghapusan istiadat ini bukanlah semata-mata kerana pertentangan dengan ajaran Islam, tetapi adalah dorongan dari motif ekonomi. Tujuan sebenar adalah menghalang orang luar dari suku mewarisi atau membeli tanah adat sesuatu suku itu, memandangkan pertambahan bilangan anggota adat berganda sedangkan keluasan tanah masyarakat adat boleh dikatakan terlalu sedikit kadar pertambahannya. Dengan terhapusnya istiadat berkedim ini tuan tanah yang tidak mempunyai anak perempuan terpaksa berfikir dua kali dahulu sebelum mengambil seseorang anak angkat. Anak angkat yang tidak dikedimkan bererti seseorang

itu tidak diakui sebagai anggota suku ibu angkatnya. Ia tidak berhak mewarisi harta pesaka dan tidak pula layak untuk mendapatkan perlindungan adat dalam hal-hal seperti nikah kahwin dan lain-lain.¹²

Perubahan peraturan adat ini hanya berlaku di Rembau. Sedangkan di tempat lain amalan itu masih berkekalan sehingga kehari ini. Dalam penggubalan Ordinan Penyelesaian Harta Pesaka Kecil 1955, pihak Inggeris telah memberikan perhatian khas terhadap pentadbiran harta carian. Di bawah Ordinan ini harta carian boleh sekiranya dipersetujui ditadbir mengikut hukum adat. Di dalam Ordinan ini juga diberikan peruntukan tentang syarat-syarat pemberian harta pesaka kepada anak angkat. Dalam hal ini Rembau adalah berlainan di mana pentadbiran harta carian adalah mengikut hukum syarak dan anak angkat tidak dibenarkan sama sekali mewarisi harta pesaka adat.

Perubahan sikap terhadap pentadbiran tanah adat telah ditonjolkan sekali lagi di daerah Rembau dalam tahun 1951 dahulu. Pada kali ini perubahan sikap itu telah dilahirkan oleh golongan agama dan politik. Golongan ini mendesak supaya mengadakan reformasi ke atas adat itu keseluruhannya. Dalam bulan Februari tahun tersebut Barisan Ugama Umno Rembau telah mengadakan perhimpunan mengecam prinsip-prinsip hakmilik dan perwarisan adat yang dikekalkan dalam undang-undang pentadbiran tanah adat itu. Golongan ini berpendapat bahawa:

- a) Sistem ini adalah haram dari segi agama dan siapa yang mengikutinya adalah berdosa.
- b) Adat dianggap tidak adil kerana anak lelaki tidak berhak mewarisi harta pesaka.
- c) Adat tidak sesuai lagi bagi tahap perkembangan masyarakat dan ekonomi zaman baharu ini.

Hasil dari perhimpunan itu satu resolusi telah dicapai mendesak supaya ditubuhkan satu jawatankuasa bagi mengkaji semula peraturan-peraturan adat yang telah diterapkan ke dalam undang-undang pentadbiran tanah. Cadangan itu telah dikemukakan kepada Majlis Negeri Sembilan.¹³ Golongan UMNO ini juga telah cuba mendapatkan sokongan Undang Rembau iaitu Hj. Ipap bin Abdullah. Majlis Negeri tidak menetapkan

pendiriannya kerana jawatankuasa yang dipinta itu adalah bertentangan dengan Perlembagaan Negeri Sembilan. Undang Rembau pula memberi alasan bahawa ia tidak dapat bertindak dalam perkara-perkara adat tanpa nasihat dan kebenaran dari Lembaga dan ketua-ketua adat yang lain, ketua-ketua adat saja yang berhak untuk menentukan sesuatu yang berhubung dengan adat. Tanpa kebulatan ketua-ketua adat sesuatu tindakan itu adalah tidak sah. Dalam bulan Julai tahun yang sama Pegawai Daerah Rembau, seorang pegawai Inggeris, telah mengumumkan sokongannya ke atas resolusi UMNO itu dan berjanji untuk mengemukakan perkara tersebut kepada Pesuruhjaya Tinggi Persekutuan Tanah Melayu. Reaksi Pegawai Daerah tersebut menyebabkan ia diperintahkan bertukar keluar dari Negeri Sembilan dalam tempoh empat puluh lapan jam. Tindakan ini dilakukan oleh pihak pentadbir British sendiri bagi mengelakkan sebarang kekeliruan berhubung dengan pendirian pihak British dalam hal tersebut.

Dalam bulan September Lembaga dan pegawai-pegawai adat yang lain serta disertai oleh kaum ibu telah berhimpun di padang pekan Rembau. Mereka ini telah berikrar untuk mempertahankan adat. Dua bulan kemudian Hj. Ipap dengan resminya mengumumkan bahawa ia tidak dapat menyokong resolusi UMNO itu, lantaran dari desakan ketua-ketua adat yang lain.

Dalam hal ini, alasan yang dikemukakan oleh UMNO itu adalah merupakan satu alasan yang menasabah. Ditinjau dari segi hukum-hukum Islam kandungan Customary Tenure Enactment adalah bertentangan dengan hukum-hukum Islam. Dalam hukum Islam hak mewarisi adalah melalui beberapa landasan iaitu pertalian keluarga, perkahwinan dan agama. Harta seorang lelaki Islam yang telah meninggal, akan dibahagikan antara waris-waris iaitu anak simati (lelaki dan perempuan), saudara lelaki simati, dan isterinya yang ditinggalkan. Pembahagiannya pula adalah mengikut peraturan yang tertentu iaitu, memberikan hak yang lebih kepada tanggungjawab yang ditinggalkan khasnya kepada anak lelaki. Peraturan terbentuk demikian rupa adalah kerana Islam berdasarkan sistem 'patrilineal' iaitu menghitung keturunan di sebelah pihak lelaki. Ketiadaan waris-waris ini harta akan terpulang kepada Baitulmal iaitu perbendaharaan agama.¹⁴ Sistem ini adalah berbeza dari sistem yang terdapat dalam adat di mana ketiadaan waris harta tersebut akan terpulang kepada waris-waris yang jauh atau anggota dalam suku yang sama. Perwarisan yang demikian bukan sahaja mendapat tentangan dari Barisan

UMNO tersebut tetapi isu ini sering juga dikemukakan oleh tokoh-tokoh agama, mahupun mereka yang terdiri dari masyarakat adat atau pun mereka yang luar dari masyarakat adat. Mereka berpendapat amalan berkedim tidak seharusnya dipraktikkan oleh masyarakat yang beragama Islam. Masyarakat adat adalah beragama Islam, tetapi mereka mengamalkan sesuatu yang bertentangan dengan ajaran agama itu sendiri.

Dengan demikian penentangan ketua-ketua adat terhadap resolusi UMNO itu adalah juga kerana dorongan motif ekonomi. Undang pentingkan kedudukannya, menyokong resolusi UMNO itu akan menghapuskan kuasanya ke atas adat. Ia juga akan menghadapi penentangan ketua-ketua adat yang lain dan mungkin pula akan menjejaskan kedudukannya. Ketua-ketua adat tidak akan dapat pula mempertahankan perlunya dikekalkan jawatan-jawatan ketua adat itu. Terdapatnya peraturan-peraturan adat yang dikekalkan dalam pentadbiran tanah pusaka, adalah merupakan satu-satunya yang menyebabkan institusi ketua adat itu masih wujud. Tanpa peranan enakmen itu mungkin juga jawatan-jawatan ketua adat dihapuskan.¹⁵ Tindakan diambil ke atas Pegawai Daerah tersebut kerana Pegawai Daerah telah melanggar etika perjawatan iaitu seorang Pegawai Daerah Inggeris tidak seharusnya campurtangan dalam hal adat dan agama. Peristiwa ini adalah implikasi dari peraturan-peraturan adat yang dikekalkan oleh pihak Inggeris ke dalam Undang-Undang 'Customary Tenure Enactment' dan Ordinan Penyelesaian Harta Pusaka Kecil.

Kritikan terhadap peraturan-peraturan adat dalam pentadbiran tanah diperingkat kemudiannya pula telah dilahirkan oleh tokoh-tokoh masyarakat yang terdiri dari pegawai tadbir dan tokoh politik. Mereka mendakwa bahawa peraturan-peraturan adat yang terkandung dalam Customary Tenure Enactment dan Ordinan Penyelesaian Harta Pesaka Kecil itu adalah merupakan gejala-gejala kepada pembangunan ekonomi masyarakat adat keseluruhannya. Golongan ini menyalurkan pendapat-pendapat mereka cara individu melalui akhbar, makalah dan dalam seminar-seminar yang pernah diadakan.

Dalam bulan Julai 1968 dahulu Mohd. Said Bin Mohamed, Menteri Besar Negeri Sembilan ketika itu, pernah mengatakan bahawa kerajaan Negeri mungkin terpaksa mempertimbangkan semula sikapnya terhadap adat, kerana pada pendapat beliau, kemunduran pertanian di Negeri Sembilan adalah disebabkan oleh kelemahan yang terdapat dalam sistem Adat Perpatih,

khasnya dalam aspek pentadbiran tanah. Manifestasi dari peraturan-peraturan adat itu menyebabkan kurangnya peranan tenaga lelaki dalam menghasilkan aktiviti pertanian. Mengikut laporan beliau, hampir lapan puluh peratus kegiatan pertanian diusahakan oleh anggota perempuan. Terdapat keperluan bagi kerajaan Negeri Sembilan untuk meninggikan hasil padi, tetapi kebanyakan tanah-tanah sawah yang terdapat adalah tanah adat. Tambahnya lagi, kuatkuasa 'Customary Tenure Enactment' dan Ordinan Penyelesaian Harta Pesaka Kecil telah membawa akibat yang buruk di mana pembahagian tanah telah berlaku sehingga sukar untuk diteruskan lagi. Amalan yang terdapat ini adalah bertentangan dengan kehendak-kehendak perkembangan ekonomi dalam zaman pembangunan.¹⁶ Aliran pendapat yang demikian bukanlah dilahirkan oleh Said sahaja, bahkan pernah juga dilahirkan oleh tokoh-tokoh dari pegawai tadbir. Pendapat yang mereka lahirkan itu adalah berdasarkan pengalaman yang telah mereka alami, dengan membandingkan masalah yang mereka alami semasa bertugas sebagai pegawai tadbir dalam daerah adat dengan pengalaman yang didapati semasa bertugas di luar daerah adat.

Hasil dari tinjauan yang dibuat, pendapat yang mengatakan hampir lapan puluh peratus kegiatan pertanian diusahakan oleh wanita itu adalah suatu kenyataan yang berasas. Terdapat tiga gejala yang menyebabkan orang lelaki kurang terlibat dalam pertanian bersawah. Pertama 'Customary Tenure Enactment' menetapkan tanah adat hanya boleh dimiliki oleh wanita. Ini melahirkan sesuatu yang bertentangan dengan agama di mana timbul anggapan suami tidak boleh memakan hasil harta isteri. Lanjutan dari anggapan ini lahirlah pula pembahagian pekerjaan di mana suami membuat pekerjaan mencari wang sebagai penoreh getah, pencari barang hutan, berternak atau sebagainya lagi. Akibat dari pembahagian pekerjaan yang demikian rupa timbul pula suatu implikasi yang buruk ke atas pembangunan yang dirancang oleh pihak kerajaan. Anggota-anggota lelaki dalam daerah adat kebanyakannya menumpukan kepada pekerjaan menoreh getah. Pekerjaan menoreh getah dilakukan pada sebelah pagi sahaja dan ini pula bergantung pada cuaca. Pada sebelah petang, dan pada hari cuaca kurang baik, jarang suami yang menumpukan masa mereka mengusahakan penghasilan padi bersama-sama isteri mereka di sawah. Keadaan yang demikian menimbulkan masalah kepada kerajaan melaksanakan skim penanaman padi dua musim dahulu.

Suatu lagi gejala, orang lelaki kurang terlibat dalam pekerjaan bersawah adalah disebabkan oleh sistem adat itu sendiri yang menetapkan penempatan suami isteri sesudah berkahwin ialah di tempat ibu isteri. Corak tempat kediaman seperti ini menimbulkan kesan-kesan yang negatif terhadap sikap suami dalam bidang ekonomi. Suami kurang bersungguh-sungguh dalam usaha-usaha ekonomi yang mereka jalankan ke atas tanah kepunyaan ibu isteri. Oleh yang demikian keinginan suami untuk betul-betul berusaha mengerjakannya tidak ada, kerana tanah-tanah pertanian itu bukan haknya. Dalam perkara seperti ini soal pemilikan adalah penting kerana sipemilik akan merasa bertanggungjawab terhadap tanah kepunyaannya. Kalau tidak ada pun rasa tanggungjawab itu sekurang-kurangnya ia terpaksa mengerjakan tanah itu dan mendapatkan hasil darinya kerana ia mesti membayar cukai untuk tanah tersebut pada tiap-tiap tahun.

Disamping itu pula kedudukan suami di bawah peraturan adat diibaratkan sebagai 'abu di atas tunggul'. Ia menetap dikalangan keluarga isterinya selagi ia disukai oleh isteri dan ahli keluarga isteri, dan jika berlaku perselisihan faham antara suami dan isteri atau antara suami dengan ahli-ahli keluarga isterinya ia mesti meninggalkan tempat itu. Keadaan seperti ini tidak mendorong, malahan kadang-kadang pula menghalang mereka dari betul-betul berusaha untuk hidup, apa lagi untuk sama-sama bertungkus lumus dengan isteri di sawah. Dengan demikian peraturan-peraturan adat yang terdapat dalam undang-undang pentadbiran tanah masyarakat adat itu membawa kepada kesan negatif dari segi penilaian tenaga buruh.

Di kalangan pegawai tadbir pula disamping mereka lahirkan masalah-masalah yang mereka hadapi dalam melaksanakan projek pembangunan itu mereka menghadapi berbagai masalah dalam melaksanakan tugas mereka sebagai pegawai tanah, terutama dalam aspek mengadakan sesuatu penyelesaian tanah masyarakat adat. Mereka yang terdiri dari pegawai-pegawai Melayu lebih menghormati peranan ketua adat tersebut seperti yang terkandung di bawah peruntukan dalam undang-undang 'Customary Tenure Enactment' itu. Dalam kes-kes tertentu terdapat peranan ketua adat yang tidak menunjukkan sikap kejujuran yang sebenarnya. Ketua adat seperti ini telah memihak kepada sesuatu pihak menyebabkan keadilan yang diberikan oleh pegawai tadbir itu tidak dianggap adil oleh pihak yang sebenarnya berhak. Akibat dari keterangan Lembaga, orang tersebut tidak mendapat hak yang sepatutnya seperti dalam kes EMR 3328 yang telah

dibincangkan. Kemungkinan juga kes ini boleh di bawa kepada badan Jemaah Rayuan sekali lagi, ini pula akan merumitkan pentadbiran di mana sesuatu yang boleh diselesaikan dalam masa yang singkat memerlukan pula masa yang lebih panjang lagi.

Ada pula pendapat yang mengatakan bahawa penggubalan undang-undang tanah seperti undang-undang 'Customary Tenure Enactment', 'Malay Reservations Enactment' dan 'Cultivation of Rice Enactment' adalah perkara-perkara yang menyebabkan orang Melayu tinggal dalam keadaan yang asal di kampung-kampung mengamalkan ekonomi secukup hidup.¹⁷ Melihat kepada kenyataan ini tidaklah dinafikan bahawa dasar British terhadap tanah-tanah orang Melayu telah turut menyumbang kesan seperti yang dikatakan. Tetapi, adalah sukar untuk mengukur sejauh mana polisi British ke atas tanah orang Melayu itu meninggalkan kesan yang menyebabkan orang Melayu masyarakat adat tinggal dalam keadaan yang asal menumpukan hidup pada tanah yang ada. Pihak Inggeris menggubal undang-undang tanah seperti 'customary Tenure Enactment', 'Malay Reservations Enactment' dan 'Cultivation of Rice Enactment' adalah bertujuan untuk melindungi tanah-tanah orang Melayu. 'Malay Reservation Enactment' adalah dihasilkan dari kesedaran beberapa orang Inggeris yang merasakan mereka benar-benar bertanggungjawab memperlindungi orang Melayu dari menghadapi penindasan kaum mendatang. 'Customary Tenure Enactment' adalah mempunyai tujuan yang sama, disamping menghormati perjanjian bahawa Inggeris tidak akan mencampuri hal adat. Mungkin jika British tidak mengekalkan peraturan-peraturan adat dalam dasar-dasar pentadbiran tanah masyarakat adat, akan menimbulkan kemarahan masyarakat adat pula.

Tidaklah juga dinafikan bahawa undang-undang tersebut disertai dengan polisi-polisi Inggeris terhadap tanah telah menyebabkan masyarakat adat kurang berminat untuk membuka tanah-tanah baru. Masa sebelum Perang Dunia yang Kedua dahulu masyarakat adat terjamin dalam keadaan asalnya tanpa menghadapi masalah tanah. Mereka mempunyai tanah yang cukup untuk pertanian dan untuk membina tempat kediaman. 'Cultivation of rice Enactment' pula yang dikuatkuasakan sejak dari tahun 1917 hingga ke akhir pemerintahan Inggeris telah memaksa masyarakat adat untuk mengusahakan tanah-tanah mereka yang ada. Tindakan diambil ke atas tuan tanah dan juga ke atas tanahnya, jika seseorang itu tidak mengikuti peraturan mengusahakan pertanian bersawah. Masyarakat mempunyai tanah

pertanian yang cukup pada masa itu dan mereka terpaksa mengusahakan tanah tersebut untuk penghasilan padi. Pertambahan pemilikan tanah, bererti menambahkan tanggungjawab seseorang individu itu ke atas tanah-tanahnya seperti yang dikehendaki oleh 'Cultivation of rice Enactment'. Maka itu tidak timbul kecenderungan anggota masyarakat untuk meluaskan hakmilik mereka. Inggeris juga mengenakan peraturan-peraturan tertentu bagi pemilikan tanah baharu. Seseorang itu dikehendaki mengikut peraturan-peraturan tertentu untuk memohon tanah baru. Masyarakat pendalaman adalah jahil tentang peraturan yang demikian. Zaman tradisional dahulu pembukaan tanah diketuai oleh Lembaga. Mereka tidak tahu bagaimana cara-cara permohonan yang harus dibuat seperti yang terdapat dalam sistem pentadbiran baru. Mereka juga tidak berani membuka tanah tanpa kebenaran pemerintah kerana itu dianggap suatu kesalahan. Pihak Inggeris juga mengenakan syarat-syarat tertentu sebelum sesuatu hakmilik ke atas tanah yang diusahakan itu diberikan. Antaranya ialah tanah tersebut mestilah telah menunjukkan bahawa tanah itu sudah dimajukan. Peneroka juga dikehendaki membayar berbagai bayaran seperti premium, bayaran ukur dan lain-lain lagi, di mana seorang petani miskin itu tidak mampu membayarnya. Peringkat akhir pemerintahan Inggeris dahulu masalah tanah telah timbul di kalangan masyarakat adat yang rata-rata bergantung kepada tanah sebagai sumber utama ekonomi mereka. Kemungkinan masalah tanah yang dihadapi oleh masyarakat Melayu ini lebih buruk lagi seandainya pihak Inggeris tidak menggubal undang-undang 'Customary Tenure Enactment' dan 'Malay Reservations Enactment' dahulu. Dalam pada itu pula undang-undang tersebut dan juga 'Cultivation of rice Enactment' sedikit sebanyak telah meninggalkan implikasi yang buruk. Undang-undang ini dapat mengatasi masalah tanah orang Melayu dalam jangkamasa pendek, tetapi tidak bagi jangkamasa panjangnya.

1. Seksyen 8, Customary Tenure Enactment Cap. 215.
2. Rakaman Perbicaraan CTE Seksyen 11 No. 47/1960, Pejabat Tanah, Kuala Pilah.
3. Keterangan-keterangan wawancara dengan Abdul Rahman bin Oyot, Lembaga suku Tiga Nenek, bertempat dirumahnya di kampong Gemetir, Tanjong Ipoh, 8.1.1978; dan Limah binti Pintas, Kampung Inas, Johol, 15.12.1977.
4. Presentation No. 17747, dalam Fail Register of Applications CTE Seksyen 7(iv), No. 76/62, Pejabat Tanah, Kuala Pilah.
5. Register of the Mukim of Sri Menanti SMVI, 998 to 1197, Pejabat Tanah, Kuala Pilah.
6. Presentation No. 3485, Transmission Vol. VI, Folio 85, 21 Dec. 1949, Pejabat Tanah, Kuala Pilah.
7. Appeal No. 3/50, CTE Appeal Cases Register, pp. 81-84, Pejabat Tanah, Kuala Pilah.
8. Presentation No. 5018, Transmission Vol. VIII Folio 38, 1st. March, 1951, Pejabat Tanah, Kuala Pilah.
9. Dibawah Seksyen 6 dalam Customary Tenure Enactment Cap. 215, dikatakan bahawa tiada geran akan dikeluarkan bagi tanah adat. Ini bermakna walaupun tanah adat boleh dipecah-pecahkan tetapi pemecahan pembahagian itu terkandung dalam pendaftaran asal dan bahagian seseorang itu pula dicatitkan di dalam salinan geran asal yang telah dikeluarkan pada masa pendaftaran zaman dahulu.
10. Surat dari ketua-ketua adat Rembau dalam simpanan Setiausaha Kerajaan dalam (N.S.S.S) File 2/1930.
11. Lokman bin Yusuf, "Custom as seen in Land Inheritance", *Intisari* (Singapore) Vol. 1, No. 4, h. 17.
12. Dalam tahun 1944 dahulu beberapa orang ketua adat yang berpengaruh telah melanggar larangan berkedim ini, atas

alasan kedim adalah sebahagian dari adat, larangan itu adalah sesuatu yang tidak sah dan bertentangan dengan prinsip-prinsip adat. Ketua-ketua adat tersebut telah membenarkan anggota sukunya mempraktikkan semula mengkedimkan anak angkat. Akibatnya Undang Rembau telah mengambil tindakan iaitu melucutkan jawatan ketua-ketua adat berkenaan, termasuk Datuk Mangku Bumi, seorang ketua adat yang menerima elaun bulanan sebanyak \$200/-. Undang mendapati mereka bersalah melanggar peraturan yang telah dicapai 'kebulatan' yang dibuat dalam tahun 1940 dahulu, di mana institusi kedim telah dihapuskan dalam luak Rembau. Di bawah Pentadbiran Tentera British (BMA) ketua-ketua adat tersebut telah mengemukakan rayuan kepada pihak Inggeris, tetapi pihak berkuasa BMA telah menyokong tindakan Undang Rembau itu.

13. Wawancara dengan Hj. Jaafar bin Hj. Ipap, Sekolah Rendah Tunku Besar, Tampin, 12.11.1977.
14. Akta No. 15, Enakmen Pentadbiran Undang-Undang Islam di Negeri Sembilan 1960.
15. Ini dapat dilihat ke atas jawatan adat seperti Buapak dan Lembaga Tiang Balai. Kedua-dua jawatan ini sudah hampir lenyap, kerana kedua-dua jawatan adat ini tidak mendapat tempat dalam mana-mana enakmen pentadbiran tanah adat.
16. Kuala Lumpur, *Berita Harian*, 21 Julai, 1968.
17. Kassim Ahmad, "Tanah Simpanan Orang Melayu", dalam buku cenderamata Menjelang Kongress ke-13 Parti Rakyat Malaya, Kuala Lumpur, 1969, h. 30.

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LAMPIRAN

- Lampiran A - Lampiran ini ialah undang-undang untuk pentadbiran tanah negeri Selangor. Tujuan dimasukkan di sini kerana didapati undang-undang ini telah dijadikan sebagai model untuk penggubalan bagi negeri-negeri Melayu yang lain. Keistimewaannya ialah Sistem Torrens yang dicontohi dan undang-undang 'Customary Land' yang terkandung di dalamnya.
- Lampiran B - Undang-undang ini ialah undang-undang yang awal bagi pentadbiran tanah daerah Sri Menanti (Kuala Pilah).
- Lampiran C - Undang-undang ini khas untuk pentadbiran tanah dalam daerah Sri Menanti sahaja untuk menggantikan Land Regulation 1887.
- Lampiran D - Undang-undang ini ialah undang-undang yang digunakan untuk pentadbiran tanah bagi (penyelesaian) pesaka orang-orang Melayu.
- Lampiran E - Undang-undang yang digubal khas untuk pentadbiran tanah pesaka adat dalam daerah Kuala Pilah. Undang-undang ini kemudiannya dikuatkuasakan ke daerah Tampin.
- Lampiran F - Undang-undang ini dikuatkuasakan ke atas semua tanah milik Melayu dalam Negeri Melayu Bersekutu termasuk juga tanah pesaka adat dan tanah-tanah kerajaan negeri yang disimpan untuk kegunaan pertanian bagi orang-orang Melayu.
- Lampiran G - Undang-undang ini ialah undang-undang tanah adat yang telah dikaji semula. Kuatkuasa undang-undang ini ialah keatas daerah Kuala Pilah, Tampin dan Jelebu.

Lampiran G1 - Pindaan-pindaan keatas undang-undang CTE kuatkuasanya adalah diluaskan ke daerah Rembau secara resmi.

Lampiran G2 -Pindaan keatas CTE Cap. 215.

Lampiran H -Perhatian ialah pada bahagian tiga - Penyelesaian harta pesaka masyarakat adat.

LAMPIRAN A

REGULATION III. OF 1891

A Regulation to amend and consolidate the Law relating to the sale and Occupation of Lands in the State of Selangor.

J.P. RODGER

Acting British Resident

WHEREAS it is expedient to amend and consolidate the Law relating to Land in the State of Selangor:

It is hereby enacted by His Highness the Sultan in Council, with the advice and consent of the British Resident as follows:-

PART I

INTRODUCTORY

1. This Regulation may be cited as "The Land Code, 1891" and is divided into parts as follows:

Part I	-	Introductory.
Part II	-	Town Lands.
Part III	-	Customary Land.
Part IV	-	Country Lands.
Part V	-	Leases and Licenses for other than Agricultural purpose.
Part VI	-	Provision respecting Mining.
Part VII	-	Demarcation and Survey.
Part VIII	-	Collection of Land Revenue.
Part IX	-	Trespasses and Penalties.
Part X	-	Miscellaneous.

2. All existing Land Regulations are hereby repealed, provided that the Resident on behalf of His Highness the Sultan and his successors in regard to any leases or agreements issued

under any Regulation hereby repealed shall have any may exercise every power of resumption in such Regulation mentioned.

3. In the construction of this Regulation, the following terms shall if not inconsistent with context or subject-matter, have the respective meanings hereby assigned to them, that is to say:-

“Court” means the Court of the Chief Magistrate of Selangor.

“Customary Land” means any land which is held under a separate engagement for the payment of any rent or assessment to the State, and in respect of which particulars have been duly registered under Part III hereof.

“District Officer” means the officer for the time being in charge of the Revenue Administration of a District.

“Gazette” means the Selangor Government Gazette, or such other Official Gazette as may be published under the authority of the Government of Selangor.

“Grant” means a grant of State land issued by or under the authority of His Highness the sultan, and includes a Lease in perpetuity of State land issued prior to the coming into operation of this Regulation.

“Representative” means the person authorised by law to represent the estate of person who is dead or lunatic, or otherwise under incapacity.

“Rent” means whatever is to be rendered on account of the use or occupation of land whether in money or in kind.

“Minor” means a person who has not completed the age of eighteen years.

“Penal Code” means the Straits Settlements Penal Code, as for the time being modified for use in the State of Selangor.

“Prescribed” means prescribed by rules made under this regulation.

“Resident” means the British Resident in Selangor for the time being.

“Waste Land” means all lands in Selangor not being customary land which have not been or may not hereafter be reserved for or dedicated to any public purpose, or which have not been granted or leased, or agreed to be granted or leased, to any person: and includes all lands which at the time of the commencement of this Regulations may have become and which hereafter may become, forfeited by reason of any breach in the conditions on which the same have been granted or leased or agreed to be granted or leased.

Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine gender, when not inconsistent with the context.

4. Under and subject to the provisions of this Regulation the Resident in the name and on behalf of His Highness the Sultan shall grant or otherwise dispose of lands for the time being belonging to the State for such interest and in such manner as is hereby authorised and not otherwise.
5. The Resident may from time to time, either by a general or particular description reserve from sale either temporarily or permanently any State lands which in his opinion are required for any public purpose, whatsoever, or for quays, landing-places, tramways, railways and railway station, roads, canals or other internal communication, or for reservoirs, public aqueducts, or watercourses, or for the use or benefit of the aboriginal inhabitants, or for the sites of markets, abattoirs, public baths or wash-houses, schools, colleges, places of public worship, dwelling houses for the Ministers of any religious denomination, reformatories, libraries, museums or other institutions for public instruction, hospitals, asylums or infirmaries, or for experimental farms, and for the growth and preservation of timber gardens, parks, or places for the internment of the dead, or for the recreations, convenience or amusement of the people, and by the same or any subsequent notice may be except from occupation for mining purpose or for residence or business under any mining license any specific portion of State lands or any class of State lands; and no land so excepted, shall be

occupied under any mining license or lease, until such exception shall be revoked.

6. After any land has, been temporary reserved from sale the same shall not be sold until such temporary reservation shall have been revoked by the Resident, and after any lands has been permanently reserved from sale every disposition thereof except for the purpose for which such reservation has been made shall be absolutely void, as well against His Highness the Sultan as all other persons whomsoever.
7. Before any land is permanently reserved as here in before mentioned notice of the intention to reserve the same shall be published in the Gazette for four consecutive weeks before the same shall be so reserved, and the purpose for which it is to be reserved, shall be fully described and stated.
8. When any land has been temporarily reserved as here in before mentioned, or excepted from occupation under Part VI hereof, notice of such reservation or exception shall be published in the Gazette, and before any such temporary reservation or exception shall be revoked, notice of the intention to make such revocation shall be published for four consecutive weeks in the Gazette.
9. Every grant, lease or other instrument heretobefore executed by the Resident on behalf of His Highness the Sultan, or by any officer of Government duly authorised in the behalf, shall subject to the conditions thereof, be valid and effectual as well against His Highness the Sultan and his successors as against all other persons.
10. The Resident may divide into districts the territory of the State, and may also sub-divide any district into mukims and towns, and by Proclamation to be published in the Gazette may define the boundaries of such district, mukims or towns and may distinguish each by a name, and after such Proclamation the territory comprised within the boundries of any of the said divisions shall thenceforward be recognised as a district, mukim or town by the name so given as aforesaid. Provided that it shall be lawful for the Resident by Proclamation in the Gazette

to diminish or extend the area of any district or mukim to any other adjacent district or mukim, and to divide any district or mukim into two or more districts or mukims, and to give to each a distinguishing name.

11. The Resident may, from time to time, make, and when made vary or rescind rules providing for:-

- (i) The mode in which applications for land shall be made, the sale of State Land by auction and the term on which grants, leases or other dispositions shall be issued.
- (ii) The time and place at which person to whom rent or assessment due to the State shall be paid.

PART III

CUSTOMARY LAND

18. Nothing contained in this Part shall apply to the following:-

- (a) Land temporarily or permanently reserved from sale, or included in any reserved forest or mining reserve;
- (b) The soil of any public road, canal, drain or embankment;
- (c) Land included within the boundaries of any town;
- (d) Land being, when this Regulation comes into force, the site or compound of any church, mosque, temple or other religious edifice, and continuing to be used for the purpose of such church, mosque, temple or other religious edifice.

The Resident may, from time to time, by Notification published in the Gazette exclude any other land from the operation of this Part.

19. When the boundaries of any lands exempt or excluded under Section 18 from the operation of this Part need definition for

the purpose of that section, and no other mode of defining them is provided by law, the Resident shall cause them to be defined, in such manner as he shall think fit. If before they are defined any question arises as to whether any land is included within them, such question shall be decided by the District Officers, subject to appeal and review as hereinafter provided.

20. No right of any description shall be deemed to have been or shall be acquired by any person over any land to which this Part applies except the following:-
 - (a) Rights created by a grant, lease or agreement made by or on behalf of the Government of Selangor.
 - (b) Rights created or originating in any of the modes hereinafter specified;
 - (c) Rights legally derived from any right mentioned in Clauses (a) and (b) of this section.
21. Except as provided in Section 53 any person, being a Muhammadan, who has been without written authority for ten years continuously in possession of any agricultural land in respect of which the revenue due thereon (if any) to the State has been regularly paid, shall be deemed to be on the expiration of that period a customary landholder in respect of such land.

Explanation - When land in the possession of one person comes immediately into the possession of another, by transfer or transmission, the possession is deemed to be continuous for the purpose of reckoning the period above-mentioned.

22. The status of a customary land-holder may also be acquired by a Muhammadan applicant for waste land, if the District Officer thinks fit to recognise him as a customary-landholder in respect of such land, in which case the District Officer shall cause the necessary entries to be made in the Register of Customary lands, hereinafter mentioned, and

there-upon such applicant shall become and be a customary land-holder in respect of such land and shall hold the same subject in all respects to the provisions of the Regulations.

23. A customary land-holder shall be deemed to have a permanent, transmissible, and transferable right of the use and occupancy in his land subject to the provisions of this Part, and -
 - (a) To the payment of all such assessment as may, from time to time, be imposed in respect of customary land under this Regulations;
 - (b) To the reservation in favour of the Government of all mines and mineral products, and of all buried treasure, with full liberty to work and search for the same, paying to the customary land-holder only compensation for surface damage as assessed by the District Officer.

Provided that it shall not be lawful for customary land to be the transferred or transmitted to any person not being a Muhammadan, and every such transfer or transmission made to a person not being a Mohammadan shall be absolutely void.

24. Any customary land-holder, who for three consecutive years suffers his customary land to remain uncultivated, and the assessment thereon to remain unpaid, shall be held to have forfeited his status of customary land-holder in respect of such land.
25. At every District Office there shall be maintained a Register of Customary Lands in the form of Schedule B hereto, in which the District Officer shall enter the particulars of the lands held by every land-holder in the district.
26. Any person asserting that he himself or any other person through whom he claims, is or has become a customary land-holder in respect of any land may apply to the District Officer to record him as such in the Register of Customary

Lands, and the District Officer, if it appears to him after a notice of such application has been published for such period and in such manner as the Resident may by rule prescribe, and after enquiry as the District Officer may think fit to make, that the application ought to be granted, shall make the necessary entry to the effect.

27. An appeal shall lie from any order made by the District Officer under the preceding section to such officer to such limitations as to time and other conditions as the Resident may, from time to time, by rule direct.
28. For the purposes of any enquiry made by district Officer under Section 26 hereof, or by an officer to whom appeal may be made under Section 27 hereof, such District Officer or officer may require, by a summons under his hand, any person being within the State to attend before him or before some District Officer in his possession named and, if necessary, to produce all documents in any land in the State.
29. No Court shall exercise jurisdiction as to any claim or question in respect of which jurisdiction is given by this Part to the District Officer.
30. All customary land shall be liable to an assessment, the rate of which per acre shall be fixed and registered shall remain in force for such period as the Resident shall by Notification in the Gazette direct, provided such shall not exceed thirty years and shall not be less than seven years. At the end of that period and of every successive revenue period, the rate will liable to revision.
31. (1) The amount of assessment payable in respect of any customary land shall be communicated to the customary landholder entitled to such land by a notice to be served or published in the prescribed manner. If the customary landholder be dissatisfied with the amount of assessment he may, within thirty days of the service or publications of such notice, appeal, in writing, to the Resident, whose order shall be final.
32. Every sum payable as assessment in respect of any customary land shall (if collected in arrears) be due jointly and sever-

ally from all persons who have been in possession of such customary land at any time during the year in respect of which such sum is due and unpaid, and from all persons who have held under them as tenants.

33. The district Officer may by a notice in writing duly served in the prescribed manner require any customary land-holder to erect boundary marks, where necessary, sufficient for defining the limits of his customary land or to repair any boundary mark already existing; and if such land-holder fails to comply with his requisition within a period to be specified in the notice may cause the work to be done and recover the cost thereof as if it were an arrear due to the State in respect of the land.
34. An extract from the Register, being a true and complete copy of the official entry made therein in respect of his customary Lands, shall, upon his application, be issued by the District Officer to every customary land-holder, and a title-plan of such land, with the dimensions, abutments and boundaries thereof, shall be drawn on the back of the said extract.
35. The District Officer shall keep the Register of Customary Lands, and he shall from time to time cause to be registered all changes that may take place and anything that may affect any of the rights or interests recorded, and shall correct any errors which the parties interested admit to have been made in the Register.
36. The Resident may prescribe proper fees for mutations in the Register to be paid by the person in whose favour the mutation is made.
37. All person succeeding to any proprietary right in customary land or the profits thereof, whether by transmission or by purchase, gift or other form of transfer, shall notify the same immediately after it has taken place to the Penghulu of the Mukim in which land is situated, and the Penghulu shall report such notice to the District Officer.
38. The District Officer, on receiving such report, shall make such enquiry as appears necessary to ascertain the truth of the

alleged transmission or transfer of the property, and if the transmission or transfer appears to have taken place, he shall record the same in the Register.

Provided that no such entry shall be held to affect the rights of any other person who may claim and establish to the satisfaction of the Resident any interest in the land to which the entry has reference.

39. If the person so succeeding is a minor or other wise disqualified, the guardian or other person who has charge of his property shall make the notification required by Section 37.
40. Any person neglecting to make the notation required by Section 37 and 39 within three months from the date of the transmission or transfer having taken place, shall be liable at the discretion of the District Officer to a fine not exceeding ten dollars.
41. If in the course of enquiry made under Section 26 a dispute regarding the possession of the property arises, and the district Officer is unable to satisfy himself as to which party is in possession, he shall ascertain by summary enquiry who is the person best entitled to the property, and shall put such person in possession and make the necessary entry in the Register accordingly, subject to any order that may be subsequently passed by the District Officer or the officer to whom appeal may be made under Section 27.
42. All register books kept under this part shall be opened to public inspection at such hours and subject to such conditions as to fees or otherwise as the Resident may, from time to time, prescribe.
43. In addition to other matters in respect of which rules may be made, the Resident may, from time to time, make rules consistent with this Regulation:-
 - (a) To regulate all appeal proceedings under Section 27 hereof;

- (b) To determine the date and place of payment of assessment and the person to whom the same is payable;
- (c) To determine the fees to be charged under this Regulation, and the mode in which such fees shall be recovered;
- (d) To prescribe the mode of service or publication of notices issued under this Regulation;
- (e) Generally to carry out the provisions of this Regulation in relation to any matters whether similar or not to those above-mentioned as to which it may be expedient to make rules.

Passed by the State Council the 13th, day of June, 1891.

H.C. RIDGES,
Acting Government Secretary.

LAMPIRAN B**ORDER OF APRIL 9, 1887****LAND REGULATIONS**

State lands are divided into four classes:

1. Land available for agricultural purpose;
2. Land in occupation of natives;
3. Building allotments in towns or villages or Government reserves;
4. Mining reserves.

CLASS II.**LAND IN OCCUPATION OF NATIVES.**

12. All land in occupation of natives must be registered in the District Land Office, where all particulars must be correctly given.
13. A lease in perpetuity will be issued when the survey has been completed and has been ascertained that the occupier's claim is undisputed. The quit-rent will be according to the annexed scale. The expenses of the survey will be borne by the lessee and the lease will be subject to the registration, the property will be subject to the registration fee of one dollar.
14. If orchards or padi lands for which leases are held are abandoned for three consecutive years, a notice will be issued to the owner to resume occupation in six months; should this notice be neglected, the property will be at the disposal of the Government.

GENERAL

24. All disputes as to the ownership of land shall be reported to the Collector of Land Revenue, who will note the names of the disputing parties and the nature of the complaint, and

report to the Resident, who will give instructions as to the hearing and settlement of disputes.

25. Transfer of Land - All transfers of land must be registered at the office of the Collector of Land Revenue, who on receipt of the fees and any arrears of rent that may be due, will register the particulars of the transfer and endorse a certificate of the same on the lease. No transfer or succession to land will be recognised, unless such succession or transfer shall have been registered.
26. No mortgage or other charge on land will be recognised, unless registered in the office of the Collector of Land Revenue. Mortgage or other charges will take priority according to date of registration and not according to date on which the charge was made.
27. Sub-division of Land Leased. - If a sub-division of land is required, the original lease may be returned and fresh one issued; provided that proper marks showing the boundaries of the sub-divisions have been erected, and the expenses of the new survey, registration, etc., have been paid, together with all arrears of rent and a fee of one dollar for each new lease issued. Leases for sub-divisions shall be on the same terms as the original lease.
28. Proceeding to enforce Payment of Rent. - When any rent is overdue, the Collector of Land Revenue may demand payment by notice, in writing, and, if the rent is not paid within the time specified in such notice, may issue an attachment and seize and sell by virtue thereof any property or effects of the occupier which may be found on the land in respect of which the rent is due, or the land itself. A fee of twenty-five cents shall be recoverable with the rent for the issue of the notice, and a fee of fifty cents shall, in like manner, be recoverable for the attachment, the notice or attachment being proved to have been duly served on the occupant of the land or posted on the land itself.
29. Fees. - All fees mentioned in the appendix shall be chargeable by the Collector of Land Revenue and paid into the Treasury to the credit of the State.

LAMPIRAN C**ORDER OF DECEMBER 9, 1889****GENERAL LAND REGULATIONS.**

The lands of the State are divided into four classes -
Viz.:

- I. - Land available for agricultural purpose;
- II. - Land in the occupation of natives under Malay tenure;
- III. - Building allotments in towns or villages or Government reserves;
- IV. - Mining reserves.

CLASS II.**LAND IN THE OCCUPATION OF NATIVES UNDER MALAY
TENURE**

- 5. Every Mohamadan land-holder who is in lawful possession, at the date of these Regulations, of land according to the law and custom of the State in which such land is situated, shall be deemed to have a permanent, heritable and transferable right of occupancy in such land, subject only to -
 - (a) The payment of a registration tax of one dollar per annum per holding, or of such other tax or assessment as may hereafter be imposed by the Chief Officer in Council.
 - (b) The reservation in favour of the State of all mines and minerals, with liberty to work and search for the same, on payment to the land-holder of compensation for any damage occasioned thereby, to be assessed by the chief officer.
 - (c) The reservation in favour of the State of the right of making roads, canals and water-courses and using and main-

taining the same, paying to the land-holder compensation for surface damage, to be assessed by the chief officer.

6. Padi land and land not planted with fruit-trees which shall be abandoned or allowed to fall out of cultivation for three consecutive years shall be deemed to have been forfeited to the State.

GENERAL

16. Application. - Application for a grant of land must be made personally at the Land Office, or else in writing addressed to the chief officer.
17. Land-marks. - As soon as land is allotted, good and permanent land-marks, defining the boundaries of the land allotted, to the satisfaction of the chief officer, shall be put up, maintained and kept in repair at the expense of the grantee.
18. Survey Fees. - The applicant must pay the fees and charges (according to the scale annexed) incidental to the survey of lands granted or agreed to be granted to him; he must also pay the expenses of marking the boundaries and cutting lines and clearing for survey.
19. Payment of Rent. - All rents shall be payable on the 1st day of January, annually, in advance, without demand, at the Land Office of the district in which the lands are severally situated.
20. Disputes about Title to Land. - A complaint book shall be kept at every Land Office in which in case of any dispute as to the ownership of land under Class II. The names of the parties complaining and the nature of the complaint will be entered. The chief officer will hear and decide the dispute, and his decision will be final.
21. Register of Holdings. - As soon as practicable a register of holdings under Class II. Shall be compiled in separate parts corresponding to mukims or parishes. A copy of the register in Malay shall be lodged with the penghulu of the mosque.

22. Maintenance of Record. - Every person succeeding to any proprietary right under Class II, whether by inheritance, purchase, gift or other form of transfer, shall notify the same immediately to the lembaga, for notification at the Land Office.
23. Penalty. - Any person neglecting to make the notification required by the preceding rule, will be liable to a fine not exceeding five dollars.
24. Transfer of Land. - Any person wishing to transfer his land shall do so by attending with the transferee, either personally or by duly appointed agent, at the Land Office of the district, and bringing with him the document of title (if any) under which the land is held. The chief officer, on receiving payment of the proper fees and any arrears of rent which may be due, will then register the transfer, and endorse a certificate of the same upon the document of title.
Any person claiming land by virtue of any other form of transfer, or by succession, must attend either personally, or by duly appointed agent, at the district Land Office, and produce the document of title under which he claims. Upon his satisfying the chief officer of validity of his claim, the document may be registered as in the the preceding paragraph.
(Peraturan 25-29 adalah perkara yang berhubung dengan cukai tanah dan bayaran pendaftaran).
30. Special terms for the Encouragement of Agricultural and Mining Industries. - The foregoing rules are subject to modifications in special cases, notably in those of the first bona fide introducers of new agricultural industries or persons embarking capital for the development of mines.
31. Interpretation. - In these rules the term "chief officer" shall be held to include the chief British officer of the State and any magistrate, collector or district officer duly authorised by the Government of the State to carry out the provision of these rules.

*MARTIN LISTER,
Collector and Magistrate, Sri Menanti.*

LAMPIRAN D**FEDERATED MALAY STATES****STATE OF NEGRI SEMBILAN****ENACTMENT VIII OF 1897**

An Enactment to facilitate succession to the land of deceased person and to lessen the cost of the same in cases where such land is of small value.

E.W. Birch

Acting British Resident.

(18th June, 1897)

It is hereby enacted by His Highness the Yam Tuan and Chiefs of the Negri Sembilan in Council as follows:

Short title and
commencement.

1. This Enactment may be cited as the "Succession to Land Enactment, 1897", and shall come into force on the publication thereof in the government Gazette.

Interpretation

2. The following words and expressions shall in the Enactment bear the meanings hereby assigned to them, unless there be something in subject or context repugnant to such constructions.

"Collector" means the officer for the time being in charge of the land revenue and administration of a district;

'Court means the Residency Court'.

Procedure.

3. (i) Any person claiming to succeed to any proprietary right in the land of a deceased person, the value of which does not exceed five hundred dollars, may apply to the collector of the district in which the land is situated to make an or

der that the applicant is so entitled.

(ii) The collector shall thereupon cause notice of such applications to be published in the Gazette, or to be exhibited in a conspicuous manner on the land the subject of such application, and at the mosque, police station, and other public buildings and places of resort in the district in which such Land is situated, in such languages as may be most readily understood by the persons concerned.

(iii) The collector shall make an entry of every such order in a register to be kept for that purpose, and shall cause the title to the land to be transferred to the applicant thereunder.

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| 4. No fees shall be chargeable in respect of any application under section 3 except the transfer fees in force for the time being. | No fees to be charged except transfer fees. |
| 5. Should it be subsequently proved that the value of any such land was in excess of the sum of five hundred dollars at the time when the application was made, any order made by the collector under section 3 shall not be rendered invalid, but the duty properly payable on the full value of the land as then ascertained shall be charged. | Order of that the collector to be binding subject to appeal to the court. |
| 6. Every order made by the the collector under section 3 hereof shall be binding on all parties and shall not be set aside or | Jurisdiction of courts barred. |

varied; provided always that it shall be lawful for any person who conceived that a right to or interest in land which he claims to have is injuriously affected by any such order, to move the court, within one month after the registration of such order, to quash the same; and the court shall try the question whether such order be or be not inconsistent with the rights of the party moving, and if the court shall decide that the said order is inconsistent with such rights, the same shall be amended or quashed by the court.

7. Except as herein expressly provided, no court exercise jurisdiction as to any claim or question in respect of which jurisdiction is given by the Enactment to the collector

LAMPIRAN E

ENACTMENT NO. 17 OF 1909

CUSTOMARY TENURE

An Enactment to provide for the preservation of Customary Rights over certain lands.

H. CONWAY BELFIELD,
Acting British Resident

(1st November, 1909)

WHEREAS certain lands in the administration district of Kuala Pilah and Tampin have been and are lawfully occupied by the member of certain tribes enumerated in the schedule in accordance with their tribal custom, which is hereinafter referred to as "the custom".

AND WHEREAS particulars of certain of the said lands have already been entered in the said mukim registers:

It is hereby enacted by His Highness the Yang di Pertuan and Chiefs in Council as follows:

1. (i) This Enactment may be cited as "The Customary Tenure Enactment, 1909 and shall come into force upon the publication thereof in the Gazette. Short title, commencement and construction.
- (ii) This Enactment shall be read and constructed with "The Land Enactment 1903", but so that nothing in that Enactment shall be deemed to prevail against the provisions hereof.
2. (i) In the case of any land particulars of which have been or may hereafter be entered in any of the mukim registers of the district of Kuala Pilah and Tampin in accordance with the provisions of Part III of "The Record of customary tenure in mukim register.

Land Enactment, 1903," it shall be occupied subject to the custom, to add to the entry in the mukim register the words "Customary Land" and authenticate by his signature; and the addition of such words so authenticated to any entry in the said mukim registers shall, subject to the result of any appeal to the Resident under Section 5, be conclusive proof that the land to which such entry relates is occupied subject to the custom.

(ii) Whenever the words "Customary Land" shall have been added under sub-section (i) or (i) (a) to any entry in a mukim register, it shall be lawful for the Collector to add the same words to any extract from the register issued pursuant to the said entry.

Maintenance of 3. Subject to the provisions of this the custom. Enactment no land subject to the custom shall be transferred, charged, transmitted, or otherwise dealt with except in accordance with the custom.

Limited right of 4. (i) No land subject to the custom transfer and shall be transferred or changed charge. except with the assent of the local headman of the tribe of the transferor or charger, as the case may be; and no such land shall be transferred or charged to any person other than a member of one of the tribes included in the schedule unless such notice, in writing or otherwise, of the intention to transfer or charge as the Collector shall deem sufficient shall have been published in the mukim in which the land is situate for a period of not less than one month immediately preceding the execution of the transfer or charge.

(ii) No instrument of transfer or charge of land subject to the custom shall be valid

unless

(a) the same be executed in the presence of such local headman as aforesaid and of the Collector; and

(b) the execution thereof by the parties and the assent thereto of such local headman be evidenced by the certificate of the Collector upon the face of the instrument that such execution and assent were made and given in his presence; and

(c) such instrument be in conformity with the requirements of any rule made under Section 10 for the regulation of such instruments.

Provided that in any case where the Collector after due enquiry shall find that the assent of the local headman to any such transfer or charge as is in this section referred to is given contrary to the custom, the Collector shall record such finding in writing, with the grounds thereof, and shall not give the certificate mentioned in clause (b) of sub-section (ii) except by order of the Resident made under Section 5.

Provided futher that in any case where the local headman shall refuse his assent to such transfer or charge as aforesaid or shall absent himself after being duly notified the place and time arranged for the execution thereof, the Collector, if after enquiry he shall find no reasonable or proper cause for the refusal of assent by the local headman or for his absence, as the case may be, shall record such finding in writing, with the grounds therefor, and thereupon the provisions of this section prescribing the assent and the presence of the local head-

man shall cease to apply to the said transfer or charge.

5. Any person dissatisfied with anything done by the Collector under Section 2 or with any refusal of the Collector to give the certificate mentioned in clause (b) of subsection (ii) of section (4) may appeal to the Resident, who, after public notice shall have been given in the mukim in which the land is situate of the time when and the place where the appeal will be heard, shall duly investigate and decide the matter, and such decision shall be final; provided that no appeal from such refusal of the Collector as aforesaid shall be presented after the expiration of one month from the date of such refusal.

Appeal to Resident.

6. (i) No land subject to the custom shall be sold in execution of decree to any person who is not a member of the tribe of the judgement-debtor.

(ii) No sale of any such land shall be ordered on the application of a charge under Section 45 of "The Land Enactment, 1903", until the Collector shall have enquired from the local headman of the tribe of the chargor whether any member thereof desires to pay the amount due on the charge and the costs (if any); any member of the said tribe shall thereupon, on payment to the chargee, through the Collector of the said amount due and costs and subject to the approval of the Collector, be entitled to be registered as chargee in the place of the chargee aforesaid for the better securing the repayment of the amount so paid, and upon such registration shall be entitled to the same remedies against the land charged and against the chargor

to which the chargee aforesaid was entitled. If no member of the tribe of the chargee desires to avail himself of the provisions of this sub-section, the Collector shall make similar enquiry from the local headman of the other tribes included in the schedule, and thereupon any member of any such tribe shall be entitled to pay the amount due and, subject to the approval of the Collector, to be registered as chargee in the same way and with the same effect as if he were a member of the tribe of the chargee. If no member of any tribe included in the schedule desires to avail himself of the provision of this sub-section, it shall be lawful for the Collector to proceed as if the said land were not subject to the custom, and if it be sold pursuant to an order in that behalf under Section 45 of the "Land Enactment, 1903", it shall cease to be subject to the custom.

7. If a person other than a member of one of the tribes included in the schedule acquire by transfer from the owner any land which is subject to the custom, and if the requirements of Section 4 shall have been complied with in respect of such transfer, such land shall cease to be subject to the custom.

Effect of transfer on operation of the custom.

8. When any land ceases to be subject to the custom, the Collector shall cancel in the mukim register and the extract, if any, the words "Customary Land" as relating to such land.

Record of cessation of operation of the custom.

Prohibition of grant.
Rules

9. No grant shall be issued for any land occupied subject to custom.

10. (i) The Resident may, if he thinks fit, with the approval of the Resident-General,

from time to time make rules to embody the custom, to prescribe the extent to which and the manner in which dispositions of lands which are subject to the customs may be made and recorded, and generally for the purpose of giving effect to this Enactment; all such rules shall be published in the Gazette and shall thereupon, anything in "The Land Enactment, 1903", notwithstanding, have the force of law.

(ii) The Resident may also, with such approval as aforesaid, from time to time by notification in the Gazette add to or remove from the schedule the name of any tribe.

THE SCHEDULE**LIST OF TRIBES**

- | | |
|-------------------|-----------------|
| 1. Biduanda | 8. Tiga Nenek |
| 2. Batu Hampar | 9. Paiah Kumboh |
| 3. Sri Melenggang | 10. Anak Melaka |
| 4. Tanah Datar | 11. Anak Achih |
| 5. Sri Lemak | 12. Batu Belang |
| 6. Mungkal | 13. Batu Ampar |

LAMPIRAN F

ENACTMENT NO. 15 OF 1913

An Enactment to provide for securing to Malays their interest in land.

ARTHUR YOUNG

(23rd December, 1913)

President of the Federal Council

It is hereby enacted by the Rulers of the Federated Malay States in Council as follows:

1. (i) This enactment may be cited as "The Malay Reservation Enactment, 1913", and shall come into force upon the 1st of January, 1914.

Short Title and
commencement.

(ii) Nothing in this Enactment contained shall affect the provisions of the Customary Tenure Enactment, 1909, of the State of Negeri Sembilan.

Interpretation.

2. In this Enactment the following expression shall have the respective meanings hereby assigned to them:

"Collector" means any Collector or Assistant Collector duly appointed under the Land Enactment, 1911;

"Malay" means a person belonging to any Malayan race who habitually speaks the Malay Language or any Malayan language and professes the Moslem religion;

"Registrar of Titles" means to Registrar of Titles appointed under "the Registration of Titles Enactment 1911", or under any

Enactment thereby repealed and includes a Deputy Registrar appointed under any of the said Enactments;

“Reservation-land” means land situate within an area which has under the provisions of Section 3 or Section 4 been declared to be or to be included in, and is, or is included in, a Malay Reservation;

The expression “to alienate” with its grammatical variations, and the expression “State Land” have respectively the meanings assigned to the said expressions by the Land Enactment, 1911.

3. (i) It shall be lawful for the Resident of any State with the approval of the Ruler of such State in Council, to declare by notification in the Gazette any area of and within such State to be a Malay Reservation. Declaration of Malay Reservation.

(ii) Such declaration shall describe with reasonable accuracy the limits and boundaries of such area of land, either by reference to boundaries of surveyed lands or by reference to natural features or otherwise, as may to be necessary for the purpose of such declaration to measure or survey the area therein referred to.

(iii) Such declaration shall take effect on the publication thereof in the Gazette unless it be expressed to take effect at a later date therein specified, in which case it shall take effect at the later date so specified.

Alteration and
revocation of

4. With respect of any State the Resident of such State may at any time,

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| Malay Reservations. | with the approval of the Ruler thereof in Council, by declaration in the Gazette. |
| | (a) alter the limits or boundaries of any Malay Reservation, or |
| | (b) revoke any declaration made under Section 3, either as to the whole or any of the area therein referred to, or |
| | (c) include in any Malay Reservation any land excluded therefrom. |
| | Such declaration shall take effect in the manner provided in sub-section (iii) of Section 3. |
| Inclusion of alienated or State land. | 5. Any alienated land or State land may be included in a Malay Reservation. |
| Notice of Reservation. | 6. (i) On the declaration of a Malay Reservation and on the inclusion in any existing Malay Reservation of any land previously excluded therefrom notice thereof shall be forthwith served upon every person having a registered title to land within the area so declared or included or otherwise in lawful occupation of land therein. |
| | (ii) Such notice may be served personally upon the person to whom it is addressed or may be served in any manner provided under the Land Enactment, 1911, for the service of notices thereunder; provided that no failure to serve or irregularity in the service of any such notice as is prescribed by this section shall affect the validity of the declaration to which the same relates. |

Restriction on alienation.

7. No state land included within a Malay Reservation under this Enactment shall be sold, leased, or otherwise disposed of to any person not being a Malay.

Restriction on transfer of interest.

8. (i) No right or interest of any Malay in Reservation-land shall except in pursuance of a sale effected with the consent of the Ruler of the State in Council as in Section 10 provided, be transferred to or vest in any person not being a Malay; provided that nothing in this section contained shall be deemed to prohibit the leasing of Reservation-land to persons other than Malays for any a term not exceeding three years.

(ii) Notwithstanding anything contained in "The Powers of Attorney Enactment, 1912", and except in the case of powers of attorney valid within the Federated Malay States immediately prior to the commencement of this Enactment, no power of attorney whereof the donee or any donee is a person not being a Malay shall in so far as it relates to any right or interest of a Malay Reservation-land, be irrevocable.

Restriction on execution sales.

9. No right or interest of any Malay in Reservation-land shall be sold in execution of a decree to any person not being a Malay.

10. No right or interest of any Malay in Reservation land shall be sold at the instance of a chargee of such land without the consent of the the Ruler of the State wherein such land

Restriction
charge sale.

is situate in Council. Such consent may be subject to such condition and limitations (if any) as the Ruler of the State in Council may see fit to impose.

11. (i) If the Ruler of the State in Council shall refuse to consent to the sale of Reservation-land charged by a charge created prior to the taking effect of the declaration whereby the land charged was included in a Malay Reservation or shall consent there to subject to conditions or limitations imposed or if the charge was registered before the 1st, July 1913, the chargee may apply to the Resident of the State wherein such land is situate for payment of the amount due upon such charge, and if such application be made then the Resident shall pay to the chargee the amount due upon such charge, or if the value of the land charged shall be less than the amount due upon the charged the Resident shall pay to the chargee the value of the land.

(ii) In the event of any dispute arising as to the value of such land the Resident and the chargee shall each appoint a person to determine the value of the land and the person so appointed shall before entering upon such valuation appoint an umpire and shall thereafter proceed to their valuation shall be final and binding, but if they fail to agree the matter shall be referred to the umpire and the valuation of the umpire shall then be final and binding as to

Claim of charge with
sale prohibited.

the value of the land.

(iii) If the Resident shall under the provisions of this section pay to a chargee the amount due upon the charge or the value of the land charged, as the case may be, then the charge shall be deemed to be satisfied, but the amount of such payment shall be a debt due by the chargor, his executors and administrators to the State wherein the land which was charged is situate and the same may be sued for and recovered in a Court of law at any time within six years from the date when such payment was made.

(iv) For the purpose of this section the value of the land shall mean the value thereof immediately prior to the publication of the declaration that the same is, or is included in, a Malay Reservation.

(v) Any person appointed under sub-section (ii) not being a public officer may receive such fee for his services as the Resident shall direct, and any expenses necessarily incurred for the purpose of the said sub-section shall be borne by the Government.

12. (i) Immediately after the taking effect of any declaration under Section 3 or Section 4 (c) the Collector for every district wherein are situated any lands owned by or held on lease from the Government by Malays which by the said declaration are declared to be, or to be included in, a Malay Reservation shall by public no-

Inscription
document title for
Reservations

tice require all persons owning or holding on lease from the Government such of the said lands as are within his district under documents of title issued before the taking effect of the said declaration to attend before him and produce such documents of title, and all such persons shall attend and produce such documents accordingly.

(ii) On the production of such documents the Collector shall in the case of documents of title registered in the Land Office inscribe conspicuously in red ink across the face thereof the words "Malay Reservation" and shall in the case of documents of title registered in a Registry of Titles forward them to the Registrar of Titles who shall inscribe thereon the said words in manner aforesaid; after the inscription prescribed by this section has been made upon any document of title, it shall be returned to the person entitled to the custody thereof.

(iii) Before the issue or return to any Malay of any document of title for land which at the time of such issue or return is included within a Malay Reservation and whereon the inscription prescribed by sub-section (ii) has not been made the Collector or Registrar of Titles, as the case may be, shall inscribe conspicuously in red ink across the face thereof the words "Malay Reservation".

(iv) In every case where an inscription is required to be or has been made

under this section on any document of title a corresponding inscription shall be made in the Mukim Register or Register of Titles or Register of Leases of States Land, as the case may be.

(v) Any person failing to attend before the Collector when required so to do under sub-section.

(i) Shall be liable on conviction before a Magistrate to fine not exceeding twenty-five dollars.

(iv) Where land ceases to be included in a Malay Reservation, any inscription made under this section relating to such land may be cancelled by the Collector or the Registrar of Titles, as the case may be.

Dealings contrary
to Enactment void.

13. All dealings or disposals whatsoever and all attempts to deal or dispose in or of Reservation-lands contrary to the provisions of this Enactment shall be null and void.

Decision of doubtful
points by Ruler
in Council

14. If doubt shall arise in any State as to whether any person is a Malay within the meaning of this Enactment or the manner in which the provisions thereof are to be construed or carried into effect or otherwise in relation thereto, the same may be referred through the Resident of such State to the Ruler thereof in Council who shall decide the same, and every such decision shall be final and shall not be questioned or revised by any Court.

Funds for
payment.

15. All moneys payable under the provisions of sub-section (i) or sub-section (v) of Section II shall be payable

out of the revenues of the State wherein the land charged is situate.

Application of the Land
Enactment, 1911.

16. Except as otherwise in this Enactment provided the Land Enactment, 1911, shall apply to Reservation-lands.

LAMPIRAN G**CUSTOMARY TENURE ENACTMENT (Cap. 215)**

N.S.

lof 1926.

lof 1930.

An Enactment to consolidate and amend the law relating to Customary Tenure.

N.S.O.C.

lof 1932.

lof 1934.

(1st. December, 1926)

Short title.

1. (i) This Enactment may be cited as the Customary Tenure Enactment.

(ii) This Enactment shall be read and construed with the Land Code, but so that nothing in that Enactment shall be deemed to prevail against the provisions hereof.

(iii) Except as herein specially otherwise enacted nothing shall affect the past operation of the Customary Tenure Enactment, 1909, or of any order made there under or invalidity of anything done or suffered under that Enactment before the commencement hereof.

Interpretation.

2. In this Enactment -

N.S.O.C.
Law lof 1932

'Custom' shall mean the Customary land of Malays resident in the districts of Kuala Pilah, Tampin and Jelebu, who are members of one of the tribes mentioned in

Schedule B;

'customary land' shall mean land held by any entry in the mukim register which has been endorsed under the provisions of sub-sections (i) and (ii) of Section 4 of this Enactment or under Section 2 of 'The Customary Tenure Enactment, 1909';

'Customary estate' shall mean and include customary land and charges and leases of customary land, which are registered in the name of a deceased person;

'maternal' when used in connection with brothers or sisters means born of the same mother but not necessarily by the same father;

'Lembaga' includes any person appointed to act as lembaga under the provisions of Section 2A.

'Principal Chief' includes the Tengku Besar Tampin and the Penghulu, Ulu Muar, Terachi, Jempol, Gunong Pasir, Gemencheh and Inas.

2A (i) If it shall at any time appear to any Undang or Principal Chief that.

Appointment of
actings lembagas.
N.S.O.C.
1 of 1932.

(a) the office of any one of his acting is vacant, or

(b) any one of his lembagas is unable by reason of sickness or mental or physical infirmity or absence from the district to carry out his duties as lembaga,

such Undang or Principal Chief may appoint any other person to act as lembaga

for the purposes of exercising the powers and carrying out the duties conferred and imposed on a lembaga by this Enactment.

(ii) Any appointment made in the circumstances specified in paragraph (a) of Sub-section (i) shall lapse when the office of lembaga ceases to be vacant and any other appointment made under sub-section (i) may at any time revoked by the Undang or Principal Chief, as the case may be.

(iii) The Undang or Principal Chief, as the case may be, shall notify the Collector of the district in writing whenever he makes or revokes an appointment under this section.

Male registered owners of customary land: temporary provisions.

i) In any case where prior to the coming into force of this Enactment any male shall have been registered as owner of any land, the title for which shall have been endorsed as customary land under the provisions of 'The Customary Tenure Enactment, 1909', such male registered owner may make application to the Collector, within the period of one year from the date of the coming into force of this Enactment or within such further period as the Resident may in special cases allow for the cancellation of such endorsement on the ground that it was made in error or was made contrary to the customs.

(ii) In any such case as is referred to in sub-section (i) hereof if application shall not have been made by any male registered owner within six months from the date of the coming into force of this Enactment application may be made by any adult relative of such registered owner or

by any public officer who is subordinate to the Collector of the District wherein such land is situated and who has been directed by such Collector to make such application.

(iii) On receipt of any application under the provisions of sub-sections (i) and (ii) hereof the Collector shall cause notice of such application to be served on the occupier if any of the land in respect whereof such application is made and on the lembaga of the tribe of the registered owner and also published locally in the district and posted on the land for a period of thirty days and shall make such enquiry as is necessary.

(iv) If after such notice and enquiry the Collector is satisfied that the endorsement in respect whereof application is made, was made in error or was made contrary to the custom, he shall cancel the endorsement and the land shall thereupon cease to be subject to the custom.

(v) Any decision of the Collector under this section shall be subject to appeal as provided by Section 15 of this Enactment.

(vi) From and after the commencement of this Enactment and subject to the provisions of this section the customary heir of a deceased male registered owner of customary land shall be his nearest female relatives who is also a member of his tribe.

Record of
customary
tenure in mukim
registers
N.S

4. (i) In the case of any land particulars of which have been or may hereafter be entered in any of the register. of the districts of Kuala Pilah, Jelebu and Tampin in accordance with the provisions 1 of

1930.

of the Land Code or of any previous Land Enactment it shall be lawful for the Collector, at the instance of himself or of any interested party, to enquire whether or not such land is occupied subject to the custom. If he be satisfied that such land is occupied subject to the custom and that it is registered in the name of a female member of one of the tribes included in Schedule B the Collector shall add to the entry in the mukim register the words 'Customary Land' and authenticate them by his signature; and the addition of such words so authenticated to any entry in the mukim register shall, subject to the result of any appeal to the Resident under Section 15, be conclusive proof that the land to which such entry relates is occupied subject to the custom.

If the Collector is not satisfied that such land is occupied subject to the custom he shall record his decision to that effect and such decision shall, subject to the result of any appeal to the Resident under Section 15, be conclusive proof that the land to which the entry relates is not occupied subject to the custom.

(ii) It shall also be lawful for the Collector in the case of the alienation of lands by the State the district referred to in subsection (i) of this section to female members of the tribes included in Schedule B, to add with the consent of the alienee, to the entry in the mukim register the words 'Customary Land' and for him to authenticate the same by his signature, and the addition of such words so authenticated to any entry in the said mukim register shall, subject to the result of any appeal

to the Resident under Section 15 of this Enactment, be final and conclusive proof that the land to which such entry relates is occupied as land subject to the custom under this Enactment.

(iii) Whenever the words 'Customary Land' shall have been added under sub-sections (i) or (ii) to any entry in a mukim register, it shall be lawful for the Collector to add the same words to any extract from the register issued pursuant to the said entry and he shall authenticate the same with his signature.

(iv) The Collector may be notice under his hand require any person in whose possession such extract as is referred to in sub-section (iii) is, to produce such extract within such period not being less than 14 days after the service on him of the notice as may be therein specified and the person so required shall be legally bound to produce the same accordingly.

(v) Any person who shall wilfully neglect to comply with the requirements of any notice duly served on him under sub-section (iv) shall be liable on conviction to a fine not exceeding fifty dollars.

(iv) Where any entry in the mukim register has been endorsed by the Collector under sub-sections (i) or (ii) the land to which such entry relates shall be deemed to be subject to the custom with effect from the date of such endorsement, notwithstanding the fact that no action has been taken under sub-sections (iii) and (iv).

Maintenance of
the custom,
N.S.O.C.
1 of 1934.
Enactment.

5. Subject to the provisions of this Enactment, no customary land or any interest there in shall be transferred, charged, transmitted or otherwise dealt with except in accordance with the custom.

Provided that nothing in this Enactment contained shall prevent the surrender to the State of any customary land in a town or village by the registered owner thereof for the construction of roads or public ways or the demarcation of road reserves or for other public purposes.

Any such surrender shall be subject mutatis mutandis to the provisions of sub-sections (iv) and (v) of Section 7 so far as they may be applicable.

Prohibition of
grant.

6. No grant shall be issued for any customary land.

Limited right
of dealing.

7. (i) No customary land or any interest therein shall be transferred or leased to any person other than a female member of one of the tribes included in Schedule B.

(ii) Subject to the provisions of this section customary land shall not be charged except to

(a) A female member of one of the tribes included in Schedule B;

(b) The Collector of the district wherein the same is situate;

(c) Subject to the provisions of sub-section (iii) a Co-operative Society duly registered under Section 9 of the Co-operative Societies Enactment.

(iii) Customary land shall not be charged to a Co-operative Society unless.

(a) Such Society habitually carries on business in the district wherein such land is situate;

(b) The Society has been generally authorised by the Register of Co-operative Societies with the consent of the Collector of the district wherein such land is situate to hold charges over customary land.

Such authority may be subject to such limitation as the Registrar of Co-operative Societies may direct and may be withdrawn or varied at any time.

(iv) No customary land or any interest therein shall be transferred, charged or leased except with the assent of the *lembaga* of the tribe of the registered owner thereof and unless such notice, in writing or otherwise, of the intention to transfer, charge or lease as the Collector may deem sufficient, shall have been published for a period of not less than one month immediately preceding the execution of such transfer or charge or lease.

(v) No instrument of transfer or charge or lease of customary land or of any interest therein shall be valid unless-

(a) the same be executed in the presence of such *lembaga* as aforesaid and of the Collector; and

(b) the execution thereof by the parties and the assent thereto of such *lembaga* be evidenced by the certificate of the Col-

lector upon the face of the instrument that such execution and assent were made and given in his presence; and

(c) such instrument be in conformity with the requirement of any Rule made under Section 24 for the regulation of such instruments.

Provided that in any case where the Collector after due enquiry shall find that the assent of the lembaga to any such transfer or charge or lease as is in this section referred to is given contrary to the custom, the Collector shall record such finding in writing, with the grounds therefore, and shall not give the certificate mentioned in subparagraph (b) hereof, except by order of the Resident made under Section 15.

Provided further that in any case where the lembaga shall refuse his assent to such transfer or charge or lease as aforesaid or shall absent himself after being duly notified, of the place and time arranged for the execution thereof, the Collector, if after enquiry he shall find no reasonable or proper absence, as the case may be, shall record such finding in writing, with the grounds therefore, and thereupon the provisions of this section prescribing the assent and the presence of the lembaga shall cease to apply to the said transfer or charge or lease.

(vi) The provisions of this section shall not apply to leases of customary land for a period not exceeding twelve months.

(vii) In any case where it is desired to transfer a charge or lease which has been registered before the date of the coming into force of this Enactment, the following provisions shall apply:

(a) If the registered charge or lease is a female member of one of the tribes included in Schedule B the foregoing provisions of this section shall be complied with.

(b) If the registered chargee or lessee is not a female member of one of the tribes included in Schedule B, the foregoing provisions of this section shall not apply and

there shall be no restriction on transfer or any such charge or lease.

Execution sales, 8.
charge sales
and sales for
arrears of rent.

(i) In the case of a sale of customary land or any interest therein, whether by order of Court or in accordance with the provisions of the Land Code, the following provisions shall apply not with standing anything in any other Enactment contained:

(a) The bidding shall in the first instance confined to the female members of the tribe of the judgment-debtor, charger or defaulter as the case may be.

(b) If no bids are forthcoming from the female members of the tribe of the judgment-debtor, charger or defaulter the sale shall be postponed and at the postponed sale all female members of the tribes included in Schedule B shall be entitled to bid.

(c) Save as hereinbefore provided and subject to the provisions of sub-sections (ii) and (iii) no persons shall be entitled to bid.

(ii) (a) In the case of any sale under Section 141 to 144 of the Land Code, where the charge has been registered before the date of the coming into force of this Enactment in the name of any person who is not a female member of one of the tribes included in Schedule B the provision of sub-section (i) hereof shall not apply.

(b) To any such case the provisions of Section 6 of 'The Customary Tenure Enact-

ment, 1909', shall continue to apply notwithstanding the repeal thereof.

(iii) In the case of any sale by order of Court of an interest in any charge or lease registered before the date of the coming into force of this Enactment in the name of any person who is not a female member of one of the tribes included in Schedule B the provisions of sub-section (i) hereof shall not apply.

Claims to
registration
as owner.

(i) Any person asserting that she is entitled otherwise than by right of succession to a deceased owner, to be registered as the owner of any customary land may, whether such land shall have been alienated to any other person or not, apply to the Collector to record her as such in the register of the mukim in which the land is situate. The Collector shall thereupon cause a notice of such application substantially in the Form of Schedule C, to be served on the occupier (if any) of such land and also to be published locally in the district and posted on the land for a period of thirty days and shall make such enquiry as may be necessary.

(ii) If after such notice and enquiry the Collector is of opinion that such application ought to be granted or in the course of such enquiry it shall be proved to his satisfaction that some person other than the applicant is entitled to be registered as the owner of such land, then, in either of such cases, he shall make an order substantially in the Form of Schedule D, in accordance with his decision and shall thereupon make any necessary entry in the mukim register.

(iii) A copy of the order above mentioned shall be furnished on applications by the Collector to the person in favour of whom such order is made and to any other party to the proceedings or, at the discretion of the Collector, to any other person.

Claims to
registration
by right of
succession.

10.(i) Any person claiming to succeed to the ownership of a customary estate which is registered in the name of a deceased person may apply to the Collector to record her in the mukim register as owner of the customary estate so claimed. The Collector shall thereupon cause a notice of such application substantially in the Form of Schedule E, to be served on the occupier (if any) of the land affected and also to be published locally in the district and posted on such land for a period of thirty days and shall make such enquiry as may be necessary.

(ii) If after such notice and enquiry the Collector is of opinion that such application ought to be granted, or if in the course of such enquiry it shall be proved to his satisfaction that some person other than the applicant is entitled to succeed to the ownership of such customary estate, then in either such case, he shall make an order, substantially in the Form of Schedule F, in accordance with his decision and shall thereupon make any necessary entry in the mukim register.

(iii) A copy of the order above mentioned shall be furnished on application by the Collector to the person in favour of whom such order is made and to any other party to the proceedings or, at the discretion of the Collector, to any other person.

Claim to registration by right of succession.

10. Any person claiming to succeed to the ownership of a customary estate which is registered in the name of a deceased person may apply to the Collector to record her in the mukim register as owner of the customary estate so claimed. The Collector shall thereupon cause a notice of such application substantially in the Form of Schedule E, to be served on the occupier (if any) of the land affected and also to be published locally in the district and posted on such land for a period of thirty days and shall make such enquiry as may be necessary.

(ii) If after such notice and enquiry the Collector is of opinion that such application ought to be granted, or if in the course of such enquiry it shall be proved to his satisfaction that some person other than the applicant is entitled to succeed to the ownership of such customary estate, then in either such case, he shall make an order, substantially in the Form of Schedule F, in accordance with his decision and shall thereupon make any necessary entry in the mukim register.

(iii) A copy of the order above mentioned shall be furnished on application by the Collector to the person in favour of whom such order is made and to any other party to the proceedings or, at the discretion of the Collector, to any other person.

(iv) None of the provisions of the Probate and Administration Enactment shall apply to any customary estate or any part thereof and no customary estate of a deceased person shall vest in his executor or administrator.

(v) In any case in which registered owner of customary estate shall have died and no application under sub-section (i) shall have been made within six months of the death of the deceased, the Collector may direct any public officer subordinate to him to apply that such customary estate be transmitted to the person entitled thereto and the Collector shall thereupon proceed as if application had been duly made under the provisions of sub-section (i).

(vi) If in the course of any enquiry under this section it shall appear to the Collector that any minor would but for the disability of minority be entitled to be registered as owner of any customary estate the Collector may appoint any fit and proper person to be trustee for the said minor and shall register such person as owner of such estate as trustee and shall at the same time lodge a caveat against the title for the land affected to protect the interests of the said minor. The Collector may at any time on good cause being shewn revoke the appointment of a trustee under this section and appoint a new trustee.

Debts and
contracts of
deceased person

11.No objection to any application made under Section 10 shall be maintained on the ground of any debt, contract or thing incurred, made or done or alleged to have been incurred, made or done by or on behalf of the deceased, subject to the following exceptions:

(i) Where the objection is based on a contract made by the deceased to sell a customary estate or part thereof to any

female member of one of the tribes included in Schedule B such estate may with the assent of the lembaga of the tribe of the deceased be transmitted to the person who contracted to acquire the same or to her customary heir.

Provided that the Collector shall give such notice in writing or otherwise of the claim of the objector as the Collector shall deem sufficient in which the land affected is situate, for a period of not less than one month after the recording of the objection, and the Collector shall record and consider any counter-objections to the claim of the objector before ordering that the estate be transmitted to the objector.

Provided further that in any case where the Collector after due enquiry shall find that the assent of the lembaga is given contrary to the custom the Collector shall record such finding in writing and shall refuse to transmit the land to the objector.

Provided further that in any case where the lembaga shall refuse his assent or shall absent himself after being duly notified of the place and time arranged for the hearing of the application the Collector if after enquiry he shall find no reasonable or proper cause for refusal of assent by the lembaga or for his absence as the case may be, may order the transmission of the land to the objector.

(ii) (a) Where the objection is based on a debt which is properly chargeable in accordance with the custom on customary land owned by the deceased, the Collec-

tor, if after enquiry he is of opinion that such debt is due and owing, may in lieu of transmitting all or any part of such customary land to the customary heir of the deceased direct by order under his hand that the land or any part thereof be auctioned in accordance with the provisions of this sub-section.

(b) The date of the sale shall be not less than six months after the date of the order of sale.

(c) The order of sale shall specify the amount due to the objector and if such sum is paid to him at any time before the sale the order of sale shall be cancelled and the land transmitted to the customary heir of the deceased.

(d) The upset price shall be not less than the amount specified as due to the objector together with an estimated amount to cover the expenses of the sale and all costs,

(e) Copies of the order of sale shall be posted on the land, at the Land Office and in such other places as the Collector may direct.

(f) At the sale only the female members of the tribe of the deceased shall be entitled to bid. If no bids are forthcoming the Collector shall adjourn the sale. At the postponed sale all female members of the tribes included in Schedule B and no others shall be entitled to bid. If at such postponed sale no bids are forthcoming the Collector may at his discretion reduce the upset price.

(g) Any sale under this sub-section shall

be conducted by the Collector or by such member of his staff as he may direct.

(h) From the proceeds of sale the Collector shall be entitled to retain and to pay into Government revenue a commission on sale in the accordance with the scale laid down for sales under the Land Code.

(i) The order of sale and of transmission to the purchaser may be in the Form provided in Schedule G.

(j) Out of the purchase money the Collector after deducting the commission on sale shall pay to the objector the amount of his debt and the balance, if any, shall be paid to the customary heir of the deceased.

Provision for
life-occupancy

2. If in the case of any application under Section 19 it shall appear to the Collector that the deceased has left.

(a) a female customary heir and a lawful son but no female issue or

(b) a female customary heir and a lawful maternal brother but no issue or maternal sister it shall be competent for the Collector, in so far only as the customary land owned by the deceased is concerned, to order the transimission of the land to such customary heir subject to beneficial occupancy by and for the life of such lawful son or maternal brother, as the case may be, provided that, where more than one person is entitled to such a life-occupancy, the occupancy shall be a joint occupancy with survivorship.

(ii) The order of the Collector shall be in

the Form provided in Schedule H.

(iii) The registered owner and the life-occupant of land subject to life-occupancy shall be jointly and severally liable for the rent due to the State in respect of such land but so that as between the registered owner and the life-occupant the rent shall be payable by the life-occupant.

(iv) The interest of a life-occupant in land under this section shall not be capable of being transferred, charged, leased or otherwise dealt with, provided that a life-occupant may at any time execute a surrender of his interest in favour of the registered owner of the land whereof he is life-occupant or in favour of a joint life-occupant of the land.

(v) The interest of a life-occupant under this section shall not be capable of being attached or sold in execution of a decree.

(vi) Whenever after enquiry it shall appear to the Collector that a life-occupant or, where there are more than one, all the joint life-occupants of any land have abandoned the land for a period exceeding one year the Collector may by order under his hand cancel the order creating the life-occupancy and the beneficial occupancy of the land shall thereupon vest in the registered owner of the land.

(vii) On proof that a sole life-occupant or all the joint life-occupants of any land are dead the Collector may by order under his hand declare that the life-occupancy affecting the said land has lapsed and the beneficial occupancy of the said

land shall thereupon vest in the registered owner thereof with effect from the date of the death of the life-occupant or of the last surviving life-occupant, as the case may be.

(viii) On presentation of an order under this section the Collector shall enter in the mukim register a memorial of the life-occupancy, and in like manner shall record in the mukim register the cancellation or lapse of any life-occupancy under sub-section (vi) or (vii).

Failure of
customary
heirs.

13. (i) If any person shall die and leave a customary estate and it shall appear to the Collector that the deceased has left:

(a) a lawful son but no customary heir.

(b) a lawful maternal brother but no customary heir or lawful son.

(c) no customary heir or lawful son or maternal brother.

it shall be lawful for the Collector after such enquiry as he may deem fit, either of his own motion or on the application of such lawful son or brother, to direct by order under his hand that such customary estate be auctioned on such date being not less than one month from the date of such order as may be specified on such order.

(ii) The Provisions of Section 11 (ii) (e) (f) (g) and (h) with the exception of the words 'If at such postponed sale no bids are forthcoming the Collector may at his

discretion reduce the upset price', in Section 11 (f) shall apply to sales under this section.

(iii) The net proceeds of sale shall be paid:

(a) In the case mentioned in sub-section (i) (a) hereof to the lawful son or sons of the deceased.

(b) In the case mentioned in sub-section (i) b) hereof to the lawful maternal brother or brothers of the deceased.

(iv) In any other case such net proceeds of sale shall be paid into the District Treasury to the credit of the fund referred to as the 'Muhammadan Religious Fund' in Section 16 of the Muhammadan Laws Enactment, and shall thereupon form part of such fund.

Caveats.

14. The jurisdiction and powers which are by Section 172 of the Land Code vested in the Court shall in so far as customary land is concerned be vested in the Collector.

Appeal N.S.O.C
1 of 1932.

15. (i) From any order of a Collector under this Enactment and from any refusal of a Collector to make an order under this Enactment, an appeal shall lie to the Resident; provided that no such appeal shall except with the leave of the Resident be admitted after the expiration of thirty days from the date of the order or refusal appealed against.

(ii) Any person who conceives that a right to or interest in any land which he claims to have is injuriously affected by any such

order or refusal as aforesaid, may apply to the Resident within three months after the registration of such order or of the date of such refusal or within such further period as the Resident may allow, to set aside or vary such order, or, where an order has been refused, to make an order, and the Resident shall try the question whether such order be or be not inconsistent with the rights of the applicant; and if the Resident shall decide that the said order is inconsistent with such rights he shall set aside or vary such order or himself make an order, as he may think just, and the Collector shall on receiving notice thereof make any necessary entry in the mukim register.

(iii) In hearing any appeal under this section the Resident shall sit with one or more assessors as follows:

(a) If the land in respect whereof the appeal is lodged is situate in one of the territories of Johol, Jelevu or Rembau the Resident shall sit with one assessor only who shall be the Undang of such territory.

(b) In any other case there shall be two assessors of whom one shall be nominated by His Highness the Yang Di Pertuan and the other shall be the Principal Chief of that part of the State wherein the land in respect whereof the appeal is lodged is situate.

(iv) (a) In the case of any appeal subject to the provisions of paragraph (a) of subsection (iii), if the office of the Undang concerned is vacant or if for any other reason such Undang is unable to act, some

other person shall be appointed by the Council of the Yang di Pertuan Besar and Undang to act as assessor in lieu of such Undang.

(b) In the case of any appeal subject to the provisions of paragraph (b) of sub-section (iii) if the office of the Principal Chief concerned is vacant or if for any other reason such Principal Chief is unable to act, some other person shall be appointed by His Highness the Yang Di Pertuan Besar to act as assessor in lieu of such Principal Chief.

(v) If after hearing the appeal the Resident and the assessor or both assessors (as the case may be) are agreed their order shall be final and there shall be no appeal therefrom.

(vi) If the Resident and the assessor or one or both the assessors (as the case may be) are not agreed the case shall be referred to the State Council whose decision shall be final.

(vii) A copy of any order made by the Resident under sub-section (ii) or (v) shall be furnished on application to the person in favour of whom such order is made and to any other party to the proceeding or, at the discretion of the Collector, to any other person.

(viii) In filing an appeal under sub-section (i) or an application under sub-section (ii) the appellant or applicant shall pay a fee of three dollars to the Collector, provided that the Resident may at his discretion remit the whole or any part of such fee.

Procedure on appeal.

16. (i) Any person desiring to appeal to the Resident under Section 15 (i) or to make applicaiton under Section 15 (ii) shall, within the period prescribed in each case, deliver to the Collector for transmission to the Resident, a memorandum of appeal substantially in the Form of Schedule I, or an application substantially in the Form of Schedule J, as the case may be, together with a certified copy of the order in question and shall also pay to the Collector the prescribed fee.

(ii) The Collector shall thereupon cause notices substantially in the Form of Schedule K to be served upon all parties directly affected by the appeal or application and shall without delay forward the documents to the Resident together with a copy of the notes of enquiry and a report upon the matter.

Rectification of register.

17. (i) Any person claiming any estate or interest in customary land, not being an estate or interest in respect whereof an application can under the provisions of sub-section (i) of Section 10 be made to the Collector, may, at any time, if his claim cannot be properly dealt with under Section 9, apply to the Resident that any register book or journal kept at the Land Office of the district wherein such land is situated shall be rectified, or that any entry may be made or interpolated in any such register book or journal, or that any entry therein may be cancelled: and the Resident may either refuse such application or, if satisfied as to the justice of the case, may make such order in reference thereto as he may think just.

(ii) The Collector and every other person affected by such order of the Resident shall obey the same upon being served with a copy of such order.

(iii) Any order made by the Resident under this section shall be final and there shall be no appeal therefrom.

Procedure under
section 17.

18. Any person desiring to apply to the Resident under Section 17 shall deliver to the Collector, for transmission to the Resident, an application substantially in the Form of Schedule L together with a statutory declaration in support of the alleged facts. Thereupon the Collector shall cause service of notices substantially in the Form of Schedule M and copies of such statutory declaration upon every person whose rights would be directly affected by the order applied for, and shall without delay transmit the application and the statutory declaration to the Resident together with a report upon the matter.

Power to enforce
attendance of
witnesses.

19. (i) For the purpose of any enquiry or appeal made or heard by the Collector or by the Resident under this Enactment, the Collector may require by summons under his hand any person being within the State to attend before him or before the Resident, as the case may be, and, if necessary, to produce all documents in his possession relating to any right or interest in any land which forms the subject of any such enquiry or appeal.

(ii) The Collector or Resident as the case may be, may also examine upon oath, or solemn affirmation having the force of an oath, any person so summoned touching

any right to such land or interest in the same.

(iii) Any person so summoned or examined who fails to attend as required by the summons or to produce all such documents as aforesaid or to answer on oath or affirmation any lawful questions put to him shall be liable on conviction to a fine not exceeding fifty dollars.

Registers of enquiries and appeals.

20. The Collector shall keep in the Form of Schedule O, a register of enquiries held by him under Section 9 and 10, and shall take notes in writing of all evidence given before him in the course of any such enquiry and shall also keep in the Form of Schedule P a register of all appeals decided by the Resident under Section 15.

Registration of orders.

21. All orders under Section 9, 10, 11, 12, 13, 15 and 17 shall be registered in the Land Office of the district wherein the land affected is situated.

Solicitors not entitled to appear.

22. No advocate or solicitor shall be entitled to appear or any person at the hearing of any enquiry or appeal under this Enactment.

Interpretation Enactment.

23. If doubt shall arise as to the mode of operation of this Enactment or the manner in which the provisions thereof are to be construed or carried into effect or otherwise in relation thereto, the same may be referred through the Resident to the State Council who shall decide the same and such decision shall be final and shall not be questioned or revised by any Court.

Rules.

24. (i) The State Council by resolution may from time to time, make Rules to embody the custom, to prescribe the extent to which and the manner in which dispositions of lands which are subject to the custom may be made and recorded, and generally for the purpose of giving effect to this Enactment; and may also alter, add to or rescind any of the Form contained in Schedule C to P.

(ii) Any such Rules or alteration of, addition to or rescission of the said Schedule shall be published in the Gazette.

Exception of
non-customary
estate

25. Nothing in this Enactment contained shall affect the distribution of the estate, not being customary estate, of any deceased person.

SCHEDULE B**List of Tribes**

- | | |
|---------------------------|-----------------|
| 1. Biduanda (Waris and/of | 7. Tiga Batu. + |
| Dagang). | 8. Tiga Nenek |
| 2. Batu Hampar. + | 9. Paiah Kumboh |
| 3. Sri Melenggang | 10. Anak Malaka |
| 4. Tanah Datar.+ | 11. Anak Achih |
| 5. Mungkal | 12. Batu Belang |
- + Excluding the division known as 'Ayer Kaki pada Yam Tuan'.
- + Excluding the division known as 'Lengkongan Yam Tuan'.

LAMPIRAN G1

CUSTOMARY TENURE (AMENDMENT)

ORDINANCE (1949) NO. 23

An Ordinance to amend the Customary Tenure Enactment
of the State of Negri Sembilan.

(30th August, 1949)

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Customary Tenure (Amendment) Ordinance, 1949 and shall be read as one with the Customary Tenure Enactment of the State of Negri Sembilan, hereinafter referred to as the principal Enactment.

F.M.S.
Cap. 215.

Amendment of
section 2 of
principal
Enactment.

2. Section 2 of the principal Enactment is hereby amended by the insertion, immediately after the word 'Tampin' in the definition of 'custom' of the word, 'Rembau'.

3. Section 4 of the principal Enactment is hereby amended-

(a) by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council', and

(b) by the insertion, immediately after the word 'Jelebu' in line 3 of sub-section (i),

of the word, 'Rembau'.

Amendment of
section 7 of
principal
Enactment.

4. Sub-section (v) of section 7 of the principal Enactment is hereby amended by the deletion of the word 'Resident' in line 6 of the first proviso and the substitution thereof of the words 'Ruler in Council'.

Amendment of
section 15
of principal
Enactment.

5. (i) Sub-section (i) of section 15 of the principal Enactment is hereby amended by the deletion of the word 'Resident' wherever it occurs and the substitution thereof of the words 'Ruler in Council'.

(2) Sub-section (ii) of section 15 of the principal Enactment is hereby amended-

(a) by the deletion of the word 'Resident' wherever it occurs in lines 3 and 5 and the substitution thereof of the words 'Ruler in Council';

(b) by the deletion of the words 'Resident shall try' in line 7 and the substitution thereof of the words 'Ruler in Council shall appoint a Committee to consider';

(c) by the deletion of the words 'the Resident' in lines 8 and 9 and the substitution thereof of the words 'upon receipt of the report of such Committee the Ruler in Council; and

(d) by the deletion of the word 'he' wherever it occurs in lines 10 and 11 and the substitution thereof of the words 'the Ruler in Council'.

(3) Sub-section (iii) of section 15 of the principal Enactment is hereby repealed

and the following sub-section substituted therefor -

(iii) In appointing a Committee under sub-section (ii) of this section the Ruler in Council shall have regard to the following principles -

(a) if the land in respect whereof the appeal is lodged is situate in one of the territories of Johol, Jelevu or Rembau the Committee shall consist of two members, one of whom shall be the Undang of the territory and the other of whom shall be a person having special knowledge of the custom of such territory;

(b) in any other case the Committee shall consist of three members, of whom one shall be appointed by the Ruler in Council, one shall be nominated by His Highness the Yang di Pertuan Besar and one shall be the Principal Chief of that part of the State wherein the land in respect of which the appeal is lodged is situate'.

(4) Sub-section (iv) of section 15 of the principal Enactment is hereby amended -

(a) by the deletion of the words 'Council of the Yang di Pertuan Besar and Undang to act as assessor' in paragraph (a) and the substitution therefor of the words 'Ruler in Council to act as a member of the Committee'; and

(b) by the deletion of the words 'appointed by His Highness the Yang di Pertuan Besar to act as assessor' in paragraph (b) and the substitution therefor of the words 'nominated by His Highness the Yang di-Pertuan Besar to act as a mem-

ber of the Committee’.

(5) Sub-section (v) of section 15 of the principal Enactment is hereby repealed and the following sub-section substituted therefor -

‘(v) The order of the Ruler in Council shall be final and there shall be no appeal therefrom’.

(6) Sub-section (vi) of section 15 of the principal Enactment is hereby repealed.

(7) Sub-section (vii) of section 15 of the principal Enactment is hereby amended by the deletion of the word ‘Resident’ and the substitution therefor of the words ‘Ruler in Council’.

(8) Sub-section (viii) of section 15 of the principal Enactment is hereby amended by the deletion of the word ‘Resident’ and the substitution therefor of the words ‘Menteri Besar’.

Amendment of
section 16 of
principal
Enactment.

6. (1) Sub-section (i) of section 16 of the principal Enactment is hereby amended by the deletion of the word ‘Resident’ wherever it occurs and the substitution therefor of the words ‘Ruler in Council’.

(2) Sub-section (ii) of section 16 of the principal Enactment is hereby amended by the deletion of the word ‘Resident’ and the substitution therefor of the words ‘State Secretary for submission to the Ruler in Council’.

Amendment
of section

7. Section 17 of the principal Enactment is hereby amended by the

17 of principal Enactment.	deletion of the word 'Resident; wherever it occurs and the substitution therefor of the words 'Ruler in Council'.
Amendment of section 18 of principal Enactment.	8. Section 18 of the principal Enactment is hereby amended- (a) by the deletion of the word 'Resident' wherever it occurs in lines 1 and 2 and the substitution therefor of the words 'Ruler in Council'; (b) by the deletion of the word 'Resident' in line 9 and the substitution therefor of the words 'State Secretary for submission to the Ruler in Council'.
Amendment of section 19 of principal Enactment.	9.(1) Sub-section (i) of section 19 of the principal Enactment is hereby amended - (a) by the deletion of the words 'the Resident' in line 2 and the substitution therefor of the words' a Committee appointed by the Ruler in Council'; (b) by the deletion of the word 'Resident' in line 4 and the substitution therefor of the word 'Committee'. (2) Sub-section (ii) of section 19 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the word 'Committee'.
Amendment of section 20 of principal Enactment.	10. Section 20 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the words 'Ruler in Council'.

Amendment of
section 23 of
principal
Enactment.

11. Section 23 of the principal Enactment is hereby amended by the deletion of the words 'Resident' to the Council of the Yang di-Pertuan Besar and Undang' and the substitution therefor of the words 'Menteri Besar to the Ruler in Council'.

Amendment of
section 24 of
principal
Enactment.

12. Section 24 of the principal Enactment is hereby amended by the deletion of the words 'Council of the Yang di Pertuan Besar and Undang' and the substitution therefor of the words 'Ruler in Council'.

Amendment of
schedules to
principal
Enactment.

13. Schedules I, J, K, L, M and P to the principal Enactment are hereby amended by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council'.

LAMPIRAN G2

CUSTOMARY TENURE (STATE OF NEGRI SEMBILAN

ORDINANCE (1952) NO. 33

An Ordinance to confer upon the Council of State of the State of Negri Sembilan authority to pass laws relating to customary tenure of land and to rights and usages connected therewith.

(13th August, 1952).

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

Short title.

1. This Ordinance may be cited as the Customary Tenure (State of Negri Sembilan) Ordinance, 1952.

Council of State of Negri Sembilan empowered to legislative on matters affecting customary tenure of laws in Negri Sembilan. Saving for, legislative Council.

2. The Council of State of the State of Negri Sembilan is hereby empowered to pass laws relating to the customary tenure of land within such State and to the rights and usages connected therewith and to any other matter incidental thereto or consequential thereupon.

3. Nothing in this Ordinance shall affect the rights and powers of the Legislative Council to pass such laws as it may think fit relating to any of the matters referred to in section 2 of this Ordinance.

LAMPIRAN H**THE SMALL ESTATES (DISTRIBUTION)****ORDINANCE 1955 (NO. 34)**

An Ordinance to consolidate and amend the law relating to the distribution of small estates of deceased persons and to provide for matters incidental thereof and to prevent the excessive multiplication of interest in land arising from inheritance.

IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council as follows:

PART III**SPECIAL PROVISIONS RELATING TO****NEGRI SEMBILAN**

Application
of Part.

20. (1) This Part shall apply only in the districts of Jelebu, Kuala Pilah, Rembau and Tampin in the State of Negri Sembilan.

(2) The provisions of Part II shall apply without modification in all cases where the deceased was not a member of a tribe.

(3) Where the deceased was a member of a tribe, provisions of Part II shall take effect subject to the provisions of this Part in respect of any property comprised in the estate of the deceased and situated within the districts to which this Part ap-

plies.

21. (1) In this Part 'the Enactment' means the Customary Tenure Enactment of Negri Sembilan and 'tribe' means one of the tribes specified in Schedule B to the Enactment.

Interpretation
FMS Cap. 215.

(2) This Part shall be read with the Enactment and words defined therein shall have the same meanings in this Ordinance.

(3) In the event of any conflict between this Ordinance and the Enactment the provisions of the Enactment shall prevail.

(4) For the purposes of this Part the estate shall not include such part of the estate as is 'customary estate' within the meaning of the Enactment.

All tribal
estates to be
'small'.

22. The estate of any deceased person who was at the time of his death a member of a tribe shall be deemed to be a small estate, whatever its total value, and every such person shall be deemed for the purposes of this Ordinance to have died intestate in respect of such estate.

Jurisdiction.

23. (1) The Collector of the district in which is located the tribe or section of which the deceased was a member shall have exclusive jurisdiction over the estate under this Ordinance:

Provided that if the value of the estate exceeds five thousand dollars the hearing of any petition for distribution shall be before one or more officers nominated for that purpose by the Menteri Besar of the State of Negri Sembilan and such of-

ficers shall have all the powers of a Collector having jurisdiction over the estate under this Ordinance.

(2) Where the deceased has left customary estate in addition to other property the Collector or other officer or officers nominated under this section shall, wherever practicable, fix the hearing of the application under section 10 of the Enactment for the same time and place as the hearing under section 12 of this Ordinance.

Principles of distribution.

24. In making any distribution order, the Collector, which expression, in this section, shall be deemed to include the officer or officers nominated under section 23, shall apply the following principles:

(a) if any land appears to be ancestral customary land, though not registered as such, it shall be transmitted to the customary heiress, subject if necessary to life occupancy;

(b) where any property is found as a fact to be *harta pembawa* or *harta dapatan* it may be transmitted to the customary heiress of the deceased subject to the right of any other person to a share in or charge over that property according to the principal of *untong*, where applicable, and on registration of the order the Collector may, if necessary add the words 'Customary Land' to any title affected but he shall not be bound to do so;

(c) where any property is found as a fact to be *harta carian bujang* or *harta carian lakibini* it may be transmitted according to

the custom of the luak and on registration of the order the Collector may, if necessary, add the words 'Customary Land' to any title affected but he shall not be bound to do so;

(d) the Collector shall give effect to customary adoptions where they are satisfactorily proved;

(e) in all cases regard shall be had to any partial distribution of property made or agreed upon in the lifetime of the deceased and to the existence of any property which is affected by any such distribution or agreement though not part of the estate;

(f) wherever practicable the Collector shall avoid transmitting undivided shares in any one lot to members of different tribes;

(g) Where funeral expenses are by the custom chargeable on specific property and the party on whom that property ought to devolve has not paid them, the Collector may require such party to pay the funeral expenses as a condition of inheriting that property or may, by the order, charge that property with the amount of the funeral expenses.

Appeals.

25. (1) Any appeal under section 29 of this Ordinance which relates to customary land or to the estates of a deceased member of a tribe shall be heard by an Appeal Committee appointed by the Ruler in Council, instead of by the High Court, and subject to confirmation by the Ruler in Council, the report of the Committee shall be final. The Ruler in Coun-

cil may make rules of procedure and prescribe fees for such appeals.

(2) Unless and until an Appeal Committee is appointed under sub-section (1) any such appeal shall be heard in the same manner as an appeal under section 15 of the Enactment.