

**ADAT PERPATIH
STRUKTUR ORGANISASI, SISTEM SOSIAL DAN
PERLANTIKAN UNDANG**

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**KERTAS PROJEK INI DIKEMUKAKAN UNTUK MEMENUHI
SEBAHAGIAN DARIPADA SYARAT MEMPEROLEHI
IJAZAH SARJANA MUDA UNDANG-UNDANG DENGAN KEPUJIAN**

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PENGAKUAN

"Saya akui karya ini adalah hasil kerja saya sendiri kecuali nukilan-nukilan, hasil kerja-hasil kerja dan ringkasan-ringkasan yang tiap-tiap satunya telah saya jelaskan sumbernya".

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Tarikh



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A. 1531990

PENGHARGAAN

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ABSTRAK

Adat Perpatih adalah salah satu undang-undang adat yang diamalkan di Malaysia dan salah satu ciri budaya Melayu yang unik di Negeri Sembilan. Tujuan kajian ini adalah untuk menganalisa prosedur perlantikan Undang mengikut prinsip-prinsip adat di setiap luak dan masalah yang dihadapi dalam melaksanakan kuasa budi bicara memilih Undang.

Latarbelakang sejarah kedatangan Adat Perpatih ke Negeri Sembilan dan definisi adat berserta dengan kategorinya akan dijelaskan di dalam Bab Satu. Sistem Nasab Ibu yang merupakan ciri penting dalam Adat Perpatih juga akan diperkenalkan dalam bab yang sama. Bab Dua akan memperkenalkan empat luak yang menjadi skop kajian dan juga struktur politik yang diamalkan termasuk juga syarat-syarat kelayakan yang diperlukan pada seorang pemimpin mengikut Adat Perpatih.

Bab Tiga kertas projek ini akan menekankan pada prosedur perlantikan Undang yang berbeza mengikut luak masing-masing. Manakala Bab Empat akan menumpukan perbincangan kepada konflik perlantikan Undang yang timbul di Luak Sungai Ujong dan Luak Jelebu. Bab ini juga akan mengandungi alasan atau faktor penyebab krisis tersebut dan pandangan dan syor daripada penulis untuk menangani masalah yang akan datang kerana sesungguhnya mencegah adalah lebih baik daripada mengubati.

ABSTRACT

Adat Perpatih is one of the customary laws practiced in Malaysia and one of the unique features of Malay cultures in Negeri Sembilan. The purpose of this study is to analyse the election procedure of the Ruling Chief or Undang according to the principles of this custom in every 'luak' and the problem faced in exercising the discretion in selecting an Undang.

The historical background of the existence of Adat Perpatih in Negeri Sembilan and the definition of custom and its categories will be dealt in the First Chapter. The Matrilineal System which is a vital element in Adat Perpatih is also introduced in the same chapter. The Second Chapter will be dealing with the introduction to the four territories that are involved in this discussion and also the political structure practised there inclusive of all the pre-conditions and qualifications required of a leader in Adat Perpatih.

The Third Chapter of this project paper will give great emphasis on the procedure of the election of an Undang that varies according to territory. Whereas the Fourth Chapter which will concentrate solely on the conflict which arised in Luak Sungai Ujong and Luak Jelebu concerning the election of their respective Undang. This chapter also will consist of the reasons behind these crisis and the writer's views and suggestions of how to overcome future problems for prevention is better than cure.

SENARAI KES

Dato' Menteri Othman bin Baginda & Anor v. Dato' Ombi Syed Alwi b. Syed Idrus [1981]
MLJ 29.

SENARAI STATUT

Perlembagaan Negeri, Negeri Sembilan
Perlembagaan Persekutuan

SENARAI LAMPIRAN

- LAMPIRAN "A" - Peta Negeri Sembilan
- a) Luak-luak Adat
 - b) Luak yang diketuai Undang
 - c) Luak yang diketuai Penghulu
- LAMPIRAN "B" - Rajah Salasilah Undang Jelevu
- LAMPIRAN "C" - Carta Garis Keturunan Mengikut Nasab Ibu
- LAMPIRAN "D" - Kes : Dato' Menteri Othman bin Baginda & Anor v. Dato'
Ombi Syed Alwi b. Syed Idrus

SENARAI SINGKATAN

Anor	-	Another
DBP	-	Dewan Bahasa dan Pustaka
FSKK	-	Fakulti Sains Kemanusiaan dan Kemasyarakatan
hlm.	-	Halaman
ibid	-	ibidem
JMBRAS	-	Journal Of The Malayan Branch Royal Asiatic Society
JSBRAS	-	Journal Of The Straits Branch Royal Asiatic Society
MLJ	-	Malayan Law Journal
Sdn. Bhd.	-	Sendirian Bhd
U.K.M	-	Universiti Kebangsaan Malaysia
U.M	-	Universiti Malaya
U.P.M	-	Universiti Pertanian Malaysia
v.	-	Versus/Lawan

Pengakuan	
Penghargaan	iii
Abstrak	iv
Senarai Kes	vi
Senarai Statut	vi
Senarai Lampiran	vi
Senarai Singkatan	vii
Pendahuluan	x

BAB

1. PENGENALAN

1.1	Latarbelakang Sejarah Kemasukan Adat Perpatih ke Negeri Sembilan	1
1.2	Definisi	3
1.3	Mengenali Adat Perpatih dan Struktur Organisasinya	4
1.3.1	Adat Perpatih Secara Am	4
1.3.2	Pertalian Adat Perpatih dan dan Konsep Keadilan dan Kepimpinan	7
1.3.3	Kategori Adat	9
1.3.4	Sistem Nasab Ibu Dalam Adat Perpatih	13

2. LUK-LUK BERUNDANG DI NEGERI SEMBILAN

2.1	Pengenalan Kepada Luak-Luak di Negeri Sembilan	18
2.2	Pengenalan Kepada Luak Sungai Ujong	19
2.3	Pengenalan Kepada Luak Jelevu	22
2.4	Pengenalan Kepada Luak Rembau	25
2.5	Pengenalan Kepada Luak Johol	27
2.6	Struktur Politik Adat Di Setiap Luak	29

2.6.1	Konsep Pemimpin dan Demokrasi Dalam Adat Perpatih	29
2.6.2	Syarat-syarat Pemimpin	34
2.6.3	Pantang-larang Seorang Pemimpin	36
2.6.4	Perlantikan dan Tugas-tugas Ketua Adat Di Bawah Undang	38

3. PERLANTIKAN UNDANG

3.1	Institusi Undang	45
3.2	Perlantikan Undang Luak Sungai Ujong	49
3.2.1	Pendahuluan	49
3.2.2	Waris di Sungai Ujong	51
3.2.3	Cara Perlantikan Undang Sungai Ujong	56
3.3	Perlantikan Undang Luak Rembau	60
3.4	Perlantikan Undang Luak Johol	65
3.5	Perlantikan Undang Luak Jelebu	68
3.6	Penutup	72

4. KRISIS PERLANTIKAN UNDANG

4.1	Krisis di Luak Sungai Ujong	73
4.2	Krisis Perlantikan Undang Luak Jelebu	79
4.3	Faktor Penyebab Krisis	83
4.3.1	Kuasa Lembaga Tiang Balai	83
4.3.2	Kefahaman Terhadap Adat	86
4.3.3	Sistem Giliran	87
4.4	Cadangan Penyelesaian Krisis	89
4.4.1	Peranan Dato' Lembaga	90
4.4.2	Kebulatan	92
4.4.3	Peranan Dewan Keadilan dan Undang	95
4.5	Penutup	98

PENDAHULUAN

"Adat Berakar ke bumi
 Berpucuk ke langit
 Adat bersendikan hukum
 Hukum bersendikan kitabullah
 Adat sudah bertentu
 Bilang telah teratur
 Alam dah beraja
 Luak telah berundang
 Matahari telah terbit
 Bulan telah mengambang
 Oleh itu janji jangan berubah
 Setia jangan beralih
 Hidup bak lopak, bak sawah
 Bak Uang Bak durian
 Mengaji pada Alif
 Berbilang pada satu"

Diatas adalah antara keratan kata-kata Dato' Andika Mendelika¹ Ketua Lembaga Tiang Balai Luak Sungai Ujong ketika pertabalan Dato' Kelana Mubarak Thahak, Undang Luak Sungai Ujong yang ke-10. Dari ungkapan di atas ternyata Adat Perpatih masih dianggap adat yang mulia dan unggul. Pengamal Adat Perpatih di Negeri Sembilan masih lagi bergantung kepada perbilangan adat yang unik lagi bermakna untuk mengekalkan hidup yang harmoni dan tetap bersatu walaupun di zaman yang serba moden ini.

Dalam kertas Projek ini, penulis akan menumpukan aspek kajian kepada amalan dan perjalanan Adat Perpatih di Negeri Sembilan khususnya kajian penulis akan tertumpu pada pentadbiran politik dan pemimpin-pemimpin adat.

¹ Dato' Hj. Abd. Malek b. Joned

Masyarakat Adat Perpatih adalah satu masyarakat yang amat menghormati dan memandangi tinggi kepada ketua atau pemimpin mereka. Oleh yang demikian, pemilihan pemimpin-pemimpin di dalam Adat Perpatih akan dipilih secara teliti dengan mengamalkan sistem demokrasi di mana suara yang terlantang adalah suara dari anak-anak buah yang dipimpin. Anak buah yang berhak melantik dan anak buah juga yang berhak untuk memecat pemimpin mengikut kata-kata adat:-

Bulat anak buah menjadikan Buapak
Bulat Buapak menjadikan Lembaga
Bulat Lembaga menjadikan Undang
Bulat Undang menjadikan Keadilan/Raja

'Kebulatan' atau 'kata sepakat' atau 'muafakat' adalah tunggak atau dasar bagi pemilihan pemimpin-pemimpin adat. Sekiranya tiada muafakat keadaan akan menjadi kucar-kacir dan pertelingkahan akan berlaku.

Tujuan penulisan ini adalah untuk mengkaji prosedur atau proses perlantikan Undang di Luak-luak Sungai Ujong, Jelevu, Johol dan Rembau. Seterusnya penulis akan menyingkap beberapa krisis yang berlaku yang berkisar tentang perlantikan Undang dan perebutan kuasa antara waris-waris yang mengaku masing-masing lebih berhak untuk menyandang pesaka Undang.

Oleh itu, sebahagian besar metodologi kajian penulis adalah berdasarkan kajian yang terperinci terhadap journal, artikel buku-buku teks dan keratan akhbar yang membicarakan tentang Adat Perpatih. Secara ringkas, penulis akan banyak merujuk kepada bahan penulisan di perpustakaan. Penulis juga akan melakukan beberapa temubual dengan pakar adat yang berpengalaman tentang perjalanan Adat Perpatih di Negeri Sembilan.

Kertas Projek ini akan menyarankan bahawa Adat Perpatih hendaklah dikaji secara mendalam dan bukan sekadar mengetahuinya di atas permukaan sahaja. Ini adalah supaya tidak berlaku apa-apa pertelingkahan yang tidak diingini dan supaya terdapat ramai lagi yang arif dalam pentadbiran adat dan bukannya bergantung kepada generasi tua atau generasi yang terdahulu. Tidak semua masalah tidak boleh diselesaikan kerana 'tiada keruh yang tidak jernih, tiada kusut yang tidak selesai'.

Sememangnya untuk menyelesaikan pertelingkahan adat bukanlah perkara yang mudah kerana penyelesaiannya mestilah memuaskan hati kedua-dua pihak yang bertelingkah, diibaratkan seumpama :-

Menarik rambut dalam tepung

Rambut jangan putus

Tepung jangan berserak

Kalau mengikut maksud perpatah ini, dalam menyelesaikan satu-satu masalah menurut adat dan budaya janganlah sampai 'berpatah arang berkerat rotan' dan penyelesaiannya mestilah yang terbaik untuk semua pihak.

Melalui Bab Satu, penulis menyentuh latarbelakang sejarah kedatangan Adat Perpatih ke Negeri Sembilan, definisi umum Adat Perpatih dan konsep garis keturunan nasab ibu dan kepentingannya dalam masyarakat Adat Perpatih. Seterusnya dalam Bab ini juga penulis menjelaskan kategori-kategori adat dan bagaimana ia diaplikasikan.

Bab Dua pula lebih menumpukan kepada pengenalan dan sejarah empat buah Luak (i.e. Luak Sungai Ujong, Jelebu, Johol dan Rembau) yang menjadi skop kajian penulis. Seterusnya Bab ini membincangkan struktur politik Adat Perpatih yang diamalkan secara am di setiap luak. Dalam membincangkan tentang perkembangan politik adat, penulis menyentuh konsep demokrasi, syarat-syarat, pantang-larang dan perlantikan pemimpin-pemimpin adat.

Selain daripada itu, Bab Tiga kertas projek ini memberi penekanan kepada institusi Undang yang unik yang hanya wujud di Negeri Sembilan. Prosedur perlantikan Undang adalah penekanan utama Bab ini di mana ia menyentuh suku atau waris yang layak untuk menyandang pusaka Undang di tiap-tiap empat luak yang berundang tersebut dan bagaimana proses pemilihan dijalankan dan siapa bertanggungjawab atau yang berkuasa untuk menjalankan perlantikan.

Melalui kajian di dalam Bab Tiga jelas terdapat persamaan yang ketara dan juga sedikit perbezaan dalam proses perlantikan Undang di Luak-luak yang berbeza.

Di bawah bab terakhir iaitu Bab Empat, penulisan berkisar tentang krisis yang berlaku mengenai perlantikan Undang di Luak Sungai Ujong dan Luak Jelevu. Krisis berlaku tertumpu kepada perebutan kuasa dan ketidaksepakatan yang berlaku di kalangan Dato'-dato' lembaga sesama sendiri. Di dalam bab ini juga penulis akan menyentuh faktor penyebab konflik ini terjadi dan cadangan-cadangan dari penulis sendiri bagaimana hendak menangani masalah ini supaya tidak berulang kembali.

Sememangnya, setiap masalah sekiranya tidak diselesaikan segera, ia akan berpanjangan, daripada kudis akan menjadi pekung. Daripada pekung ia akan menular ke seluruh masyarakat yang masih memegang teguh dan masih sayang pada adat yang boleh menyatukan mereka. Oleh yang demikian pentadbiran adat hendaklah dibuat mengikut peraturan adat yang telah ditetapkan. Adat Perpatih harus dipertahankan dan bukannya dijadikan batu loncatan untuk mencapai kepentingan dan kepuasan nafsu sendiri. Sesungguhnya benar kata adat :-

Tiada keruh yang tidak jernih
 Tiada kusut yang tidak selesai
 Sesat di hujung jalan
 Balik ke pangkal jalan
 Bulat air kerana pembetong
 Bulat manusia kerana muafakat

BAB EMPAT

KRISIS PERLANTIKAN UNDANG

4.1 Krisis di Luak Sungai Ujong

Setiap kali kewafatan Undang berlaku masalah yang akan timbul adalah pemilihan Undang yang baru. Masalah ini akan bertukar menjadi pertikaian dan pertikaian akan berpanjangan menjadi satu krisis politik yang sukar untuk diselesaikan. Kadang-kadang ianya akan berlarutan sehingga bertahun-tahun lamanya dan contoh yang ketara sekali ialah seperti yang terjadi di Luak Sungai Ujong.

Tanggal 29 Januari 1994 adalah tanggal yang bermakna bagi anak-anak buah di Sungai Ujong kerana pada tarikh ini terlantiknya Undang Sungai Ujong yang ke-10, selepas 10 tahun menanti dan ini bermakna berakhirnya krisis perlantikan Undang di Sungai Ujong. Adat istiadat 'kerjan' atau pertabalan Dato' Mubarak Thahak, Dato' Seri Menanti sebagai mempersembahkan perlantikan beliau pada Yang Di Pertuan Besar Negeri Sembilan.¹

Diharapkan dengan perlantikan ini krisis tidak akan timbul lagi di kalangan masyarakat yang dikatakan sentiasa bersepadu dan bersatu dalam apa perkara sekali pun. Tetapi ada juga suara-suara kerdil yang masih tidak puashati atas perlantikan ini.

Punca utama krisis perlantikan ini berlaku adalah kerana terlampau ramai calon-calon yang kononnya berasal dari waris-waris yang layak menjadi Undang menuntut hak masing-masing. Kesannya prinsip dimana waris yang dilantik mestilah mengikut giliran antara Perut Hulu dan Perut Hilir tidak diikuti dengan ketat seperti yang sepatutnya.

¹ News Straits Times, 21/2/1994, hlm. 32.

Hakikat ini dapat dilihat didalam senarai dibawah di mana ada perut yang menyandang gelaran Undang berturut-turut :-

a)	Dato' Kelana Bador	-	Perut Hulu
b)	Dato' Kelana Leha	-	Perut Hulu
c)	Dato' Kelana Baki	-	Perut Hilir
d)	Dato' Kelana Kawal	-	Perut Hulu
e)	Dato' Kelana Sendang	-	Perut Hulu
f)	Dato' Kelana Syed A. Rahman	-	Perut Hilir
g)	Dato' Kelana Mohd. Yusof	-	Perut Hilir
h)	Dato' Kelana Maamor	-	Perut Hilir
i)	Dato' Kelana Mohd. Kasim	-	Perut Hilir
j)	Dato' Kelana Mubarak Thahah	-	Perut Hulu

Rasional di sebalik fenomena ini adalah ia mungkin disebabkan perut yang menerima giliran ketika itu tidak dapat mengadakan calon atau pengganti yang layak untuk menjadi Dato' Kelana kerana terdapat syarat-syarat yang tidak dapat dipenuhi. Jadi terpaksa dicari pengganti daripada perut yang sama dengan perut Dato' Kelana yang telah mangkat.

Selain daripada sebab yang dinyatakan tadi, tidak mustahil masalah perebutan kuasa adalah punca utama prinsip mengikut giliran itu tidak diikuti. Kuasa yang luas yang datang bersama gelaran 'Dato' Kelana' itu adalah salah satu faktor perebutan. Tetapi di zaman serba maju ini Dato' Undang telah diberi ganjaran dan elaun yang jumlahnya sampai ke angka RM7,000 sebulan, menambahkan lagi godaan untuk merebut jawatan ini.

Krisis yang berpanjangan di Sungai Ujong bermula dengan pertikaian di antara Perut Hulu dan Perut Hilir yang mempertahankan hak masing-masing.

Pada 7hb. Mac 1984 Waris Perut Hilir telah mengadakan satu kerapatan dan Tua Waris Perut Hulu Dato' Johan, Dato' Razali telah mengisytiharkan bahawa selepas

kewafatan Dato' Mohamad Kassim Abdul Rashid Undang Luak Sungai Ujong ke-9 pada 23hb. Oktober, 1983² giliran seterusnya jatuh kepada Waris Perut Hulu untuk memegang pesaka Undang Luak Sungai Ujong. Menerusi kerapatan ini empat orang calon telah dilantik.

Sayangnya perkara ini tidak dibiarkan begitu sahaja, ianya telah dibantah oleh Ibu Sako Perut Hilir dengan alasan pencalonan itu bercanggah dengan aturan Adat. Antara alasan yang dikemukakan oleh Ibu Sako Perut Hilir adalah :-

- i) Memandangkan Undang Dato' Mohd Kassim dahulunya adalah dari Perut Hilir, Tua Waris Perut Hilir Dato' Maharajalela tidak pernah menyerahkan pesaka Undang kepada Perut Hulu.
- ii) Dato' Johan ketika itu tidak dianggap sebagai Tua Waris Perut Hulu kerana pesakanya tertanam selama 7 tahun.
- iii) Perpatah Adat 'Hilang di Hilir berganti di Hulu' tidak terpakai dalam keadaan di mana ada kecacatan dalam adat. Kecacatan yang dimaksudkan di sini adalah Perut Hulu dianggap tidak mempunyai Tua Waris kerana pesaka Dato' Johan telah tertanam disebabkan kesalahan adat yang telah dilakukan³ dan 'upacara penebusan' pesaka ini telah diadakan tetapi tidak diiktiraf akan keesahannya oleh Waris Perut Di Hilir.
- iv) Waris Perut Hilir menegaskan lagi bahawa dalam memilih calon-calon pengganti Undang Dato' Johan telah mengenenepikan pendapat Dato' Maharajalela Tua Waris Perut Hilir.

² News Straits Times - 21/2/1994.

³ Temubual penulis dengan Tuan Hj. Ghazali, Setiausaha Dewan Keadilan dan Undang Negeri Sembilan, 31hb. Januari 1994.

Di sini, ketegangan ditambahkan lagi dengan kenyataan Waris Perut Hilir yang mengatakan 'kerapatan' yang dimaksudkan oleh Dato' Johan Dato' Razali adalah sebenarnya muafakat daripada empat hingga sepuluh buah rumah sahaja dan bukannya sebulat suara keseluruhan anak-anak waris.⁴

Perut di Hilir mendakwa lagi bahawa Perut Hulu hilang gilirannya untuk menyandang pesaka Undang adalah disebabkan oleh ketiadaan Dato' Johan Tua Waris bagi Perut Hulu. Hakikatnya ini adalah satu kecacatan yang (*fundamental*) yang boleh menyebabkan perlantikan tidak sah. Peranan Tua Waris dalam pemilihan bakal pengganti Undang adalah penting kerana beliau yang akan mempersembahkan nama calon yang layak kepada Dato' Lembaga Tiang Balai.⁵

Sebenarnya, pada tanggal 8hb. Mac 1986, seorang waris dari Perut Hulu iaitu Raja Abdul Rahim b. Raja Abd. Razak telah dilantik menjadi Undang Luak Sungai Ujong yang ke-10 tetapi perlantikan ini telah mendapat tentangan daripada banyak pihak.⁶

Perlantikan ini telah diisytiharkan oleh Dato' Andika Mendelika Dato' Fadzil bin Nordin di Balai Undang, Kampung Telaga Undang Batu Sembilan, Pantai. Dato' Shahbandar telah mengatakan bahawa pengisytiharan tersebut tidak sah. Ini adalah kerana dua daripada Lembaga Tiang Balai telah dipecat oleh Dato' Shahbandar.

Tindakan Dato' Shahbandar tersebut adalah satu perkara yang bertentangan dengan adat kerana Dato' Shahbandar tidak ada kuasa untuk memecat sesiapa, sepatutnya pemecatan orang yang dilantik harus dilakukan oleh orang yang melantik iaitu anak buah.⁷ Dalam keadaan ini Dato' Shahbandar telah menggunakan kuasanya secara tidak munasabah semata-mata untuk menentang perlantikan tersebut.

⁴ Berita Harian, 14/12/1985.

⁵ Berita Harian, 17/12/1985.

⁶ Temubual penulis dengan Tuan Hj. Muhamad b. Tainu, Setiausaha Penyelidikan & Budaya Negeri Sembilan.

⁷ Ibid.

Perlantikan Raja Abdul Rahim tidak juga direstui oleh Dewan Keadilan dan Undang. Alasan sebenarnya penolakan perlantikan ini tidak diperjelaskan lebih lanjut kepada penulis tetapi apa yang difahamkan daripada penerangan dari pihak-pihak yang arif tentang adat sebab utama penentangan kepada perlantikan tersebut adalah tiadanya kata sepakat atau 'kebulatan' tidak tercapai. Jadi perlantikan itu lucut begitu sahaja.

Kemudian ada waris yang mengakui dirinya berhak untuk menjadi Undang Luak Sungai Ujong, terus mencero bohi dan mendiami Balai Undang dan duduk di situ beberapa hari sehingga dipaksa keluar oleh Kerajaan Negeri. Selepas itu beberapa kali Dewan Keadilan dan Undang Negeri Sembilan hendak mengisytiharkan perlantikan Undang Luak Sungai Ujong. Persiapan telah dibuat, tetamu telah di undang, calon-calon telah dijemput, tiba-tiba ditangguhkan. Langkah untuk menyelesaikan masalah ini telah menghadapi jalan buntu sekali lagi.

Pada tahun 1993 pula terdapat Dato' Lembaga daripada pihak Waris di Air telah mengisytiharkan dirinya sendiri di dalam akhbar sebagai Undang Luak Sungai Ujong yang baru. Kemudian dicanggah oleh Menteri Besar Negeri Sembilan.

Rentetan peristiwa yang berlaku sepanjang sepuluh tahun ini telah menunjukkan bahawa Lembaga Tiang Balai yang merupakan tunggak dalam pemilihan Undang telah tidak bermaya untuk bertindak tegas dengan kuasa yang telah diamanahkan sebaliknya mempunyai kelemahan yang ketara dan mudah tunduk kepada sesetengah pihak.

Secara teorinya, kelihatan agak mudah untuk mencapai kata sepakat sekiranya peraturan adat dipatuhi dengan sempurna. Sekarang ini malangnya kebulatan suara amat sukar untuk dicapai, sentiasa ada pihak yang menentang habis-habisan.

Lembaga Tiang Balai yang bertindak sebagai badan 'penapis' calon-calon yang telah dipilih sepatutnya lebih tegas dalam mempertahankan calon yang telah dipilih tetapi sebaliknya yang berlaku di mana Lembaga Tiang Balai tidak mampu untuk bersikap tegas akibatnya peraturan adat telah diketepikan sama sekali. Anak-anak waris yang

tidak puashati dengan penagguhan perlantikan Undang yang berpanjangan hingga ke sepuluh tahun telah bertindak dengan menghantar petisyen kepada Dewan Keadilan dan Undang meminta Dewan ini menyelesaikan masalah yang telah berlapak begitu lama.

Petisyen daripada anak-anak waris ini boleh dianggap sebagai surat penyerahan kuasa kepada Dewan untuk menggunakan budi bicaranya memilih dan seterusnya melantik Undang Luak Sungai Ujong yang baru. Tindakan ini adalah pesongan yang ketara daripada Adat di mana Dewan Keadilan dan Undang akan menilai calon-calon yang dikemukakan dan kemudiannya melantik Undang. Keputusan Dewan akan dianggap muktamad dan tidak akan dipertikaikan kerana langkah ini telah dipersetujui dan adalah kehendak anak-anak waris sendiri.

Hasil atau kesan daripada tindakan ini adalah terlantiknya Dato' Kelana Mubarak b. Thahak pada 29hb. Disember 1993 yang lalu. Perlantikan ini masih mendapat kritikan dari sesetengah pihak yang merasakan perlantikan tersebut telah tidak mengikut kata-kata Adat :-

Bulat Anak Buah menjadikan Buapak
 Bulat Buapak menjadikan Lembaga
 Bulat Lembaga menjadikan Undang
 Bulat Undang menjadikan Raja

Lembaga Tiang Balai yang telah diberikan kuasa telah gagal menjalankan amanah yang diberi oleh anak buah. Ini adalah kerana tidak ada ketegasan di kalangan mereka dan ketiadaan kebulatan telah mengeruhkan lagi keadaan. Sepatutnya mereka mengikut kata-kata adat :-

Tiada keruh yang tidak jernih
 Tiada kusut yang tidak selesai
 Sesat di hujung jalan
 Balik ke pangkal jalan

Bulat air kerana pembetong
 Bulat manusia kerana muafakat⁸

Nampaknya oleh kerana peraturan atau Undang-undang Adat ini tidak bertulis dan terpulang kepada penganut adat ini untuk menguatkuasakannya maka ia telah diketepikan sesuka hati oleh pemimpin adat. Sekiranya perkara ini berterusan dan tidak dibendung maka lama kelamaan Adat Perpatih akan kehilangan keunikan dan keunggulannya.

Melihat pada masalah yang telah dialami oleh masyarakat Adat Perpatih di Sungai Ujong, peraturan adat 'Adat bertanam Undang dengan Undang menanamkan' tidak dapat diaplikasikan kerana jangankan untuk melantik Undang supaya dapat menguruskan pengkebumian Undang yang mangkat malahan sepuluh tahun kemudian pun masalah yang sama tidak juga dapat diselesaikan.

Walaupun krisis yang melanda Sungai Ujong yang berlarutan hingga sepuluh tahun telah pun berakhir dengan terlantiknya Undang yang ke-10 ini tetapi tidak mustahil pisang akan berbuah dua kali apabila berlaku kekosongan lagi sekali dalam jawatan Undang.

4.2 Krisis Perlantikan Undang Luak Jelebu

Sudah menjadi kebiasaan di dalam dunia yang materialistik ini, apabila ada ganjaran yang lumayan maka akan banyaklah pihak yang ingin merebut peluang. Tambahan pula sekiranya pihak yang menuntut hak dibelenggu oleh perasaan tamak dan haloba.

Proses perlantikan Undang di Luak Jelebu tidak dapat lari dari masalah, ia tidak berjalan dengan lancar seperti yang diinginkan oleh semua pihak.

⁸ Hj. Muhammad b. Tainu, "Budaya Negeri" Bil. 11, 12 Julai, Oktober 1993, hlm. 1.

Krisis di Luak Jelevu ini bermula apabila mangkatnya Dato' Hj. Abu Bakar Ma'amor, Undang Luak Jelevu yang ke-14 pada bulan November 1979. Mengikut prosedur Adat Perpatih yang diamalkan di Jelevu, apabila Undang mangkat sebelum penggantinya dilantik, Dato' Menteri yang merupakan Dato' Lembaga Kanan bagi Undang akan menjadi Pemangku Undang buat sementara supaya anak-anak buah tidak hilang tempat mengadu.

Seperti biasa, apabila Dato' Menteri telah menjadi Pemangku Undang, Dato' Ombi pun memulakan proses pemilihan Undang dengan memberitahu Dato'-Dato' Lembaga dari tiga waris berundang untuk mencari calon. Memandangkan Undang Luak Jelevu yang ke-14 adalah Waris Hulu Jelevu maka giliran yang seterusnya dimiliki oleh Waris Sarin. Giliran ini telah ditentukan mengikut sistem giliran yang akan berpusing mengikut tiga waris berundang yang layak.

Selepas giliran diputuskan seorang calon pun dipilih dan namanya dikemukakan kepada Dato' Menteri dan kemudiannya Dato' Menteri meminta persetujuan daripada Dato' Ombi tetapi tidak diperolehi kerana pada pendapatnya calon tersebut tidak layak dari segi adat. Di peringkat ini, kita telah nampak tiada kebulatan dan ini hanya peringkat permulaan.

Kemudiannya Dato' Ombi, seperti yang dikehendaki oleh peruntukan adat, telah menghantar tiga nama calon Undang kepada Dato' Menteri untuk pertimbangannya. Dato' Menteri telah mengadakan semakan dan siasatannya sendiri seterusnya membuat keputusan bahawa di antara tiga nama yang dirujuk kepada Dato' Ombi, tidak ada satu pun yang layak. Sebaliknya, Dato' Menteri telah memberikan sokongannya kepada calon yang telah ditolak pencalonannya oleh Dato' Ombi. Jadi memandangkan calon telah tinggal seorang maka Dato' Menteri mengambil langkah mengisytiharkan calon tersebut Encik Musa b. Wahab sebagai Undang Luak Jelevu yang ke-15.⁹

⁹ Gullick J.M., "Law and the Adat Perpatih a Problem from Jelevu", JMBRAS Vol. 54 Part I, 1981, hlm. 9.

Dato' Ombi dan seorang lagi Dato' Lembaga yang menganggotai Lembaga Tiang Balai telah menentang perlantikan ini. Mereka membuat tuduhan bahawa perlantikan itu adalah tidak sah. Sebagai langkah pertama, Dato' Ombi telah merujukkan perkara ini kepada Dewan Keadilan dan Undang yang ditubuhkan di bawah Perkara XVI, Perlembagaan Negeri, Negeri Sembilan, dengan harapan masalah ini boleh diselesaikan.

Dewan Keadilan dan Undang telah membuat satu persidangan di Sri Menanti pada 7hb. Februari 1980 untuk membincangkan masalah ini.¹⁰ Selain daripada anggota-anggota Dewan, persidangan tersebut telah turut dihadiri oleh Menteri Besar Negeri Sembilan, Setiausaha Negeri, Penasihat Undang-Undang dan Mufti. Pegawai-pegawai Kerajaan Negeri ini hanya hadir sebagai pemerhati sahaja. Selepas selesai perbincangan permulaan, mereka tidak lagi terlibat dengan persidangan tersebut.

Kemudiannya, selepas perbincangan yang panjang lebar dan setelah mengambil kira kebaikan dan keburukannya Dewan telah 'merestui' perlantikan tersebut, dengan lain perkataan, Dewan telah menyokong perlantikan yang dibuat oleh Dato' Menteri.

Dato' Ombi tidak berputus asa dan keputusan Dewan tidak sedikit pun mematahkan semangatnya untuk menentang perlantikan tersebut habis-habisan. Dato' Ombi telah mengambil langkah kedua dengan memulakan prosiding di Mahkamah Tinggi Seremban memohon Mahkamah membuat satu deklarasi bahawa Undang Luak Jelebu yang baru dilantik itu bukannya seorang calon, tidak layak dilantik dan beliau tidak dilantik secara sah memandangkan persetujuan kesemua Dato'-Dato' Lembaga Tiang Balai tidak diperolehi.

Kes ini telah berpanjangan ke Mahkamah Persekutuan di mana ia adalah pertama kali dalam sejarah Jelebu pertelingkahan merebut jawatan Undang atau pertelingkahan adat sampai ke Mahkamah Sivil untuk mencari jalan penyelesaian.

¹⁰ Ibid.

Ada setengah pihak yang menyokong penuh perlantikan En. Musa b. Abdul Wahab, berpendapat tindakan ini tidak wajar, seolah-olah membuka pekung di dada. Masalah ini adalah masalah keluarga sendiri, tidak perlu didedahkan kepada orang luar.

Di dalam kes Dato' Menteri Othman b. Baginda & Anor v Dato' Ombi Syed Alwi b. Syed Idrus¹¹ ini telah dipertikaikan samada Mahkamah Tinggi mempunyai bidangkuasa untuk mendengar kes ini atau tidak. Di peringkat Mahkamah Tinggi, hakim terpaksa meneliti Perkara 71 Perlembagaan Persekutuan, mengenai bidangkuasa yang berbunyi :-

*"any dispute as to the title to the succession
as Ruler of any state shall be determined solely by
such authorities and in such manner as may be provided
by the constitution of the state".*

Di dalam Perkara 71(2) pula, 'dengan ubahsuaian yang perlu' Undang akan termasuk dalam peruntukan am ini. Secara kasar jika mengikut Perkara 71, Mahkamah Tinggi tidak ada bidangkuasa untuk mendengar kes ini. Ini jugalah menjadi keputusan Mahkamah Persekutuan seterusnya membuat rumusan bahawa Dewan Keadilan dan Undang mempunyai kuasa untuk 'merestui' perlantikan Undang Luak Jelevu yang ke-15 dan dengan keputusan Dewan tersebut sepatutnya pertelingkahan itu berakhir di situ.

Memandangkan keputusan Mahkamah Persekutuan tidak memihak kepada Dato' Ombi, tentangannya hanya setakat itu sahaja dan Dato' Musa bin Abdul Wahab diiktiraf menjadi Dato' Mandika Menteri Akhirulzaman Undang Luak Jelevu hingga sekarang.

¹¹ 1981, 1 MLJ 29.

Walaupun krisis perlantikan Undang di Jelevu telah pun berakhir tetapi langkah pencegahan perlu diambil supaya sejarah hitam tidak berulang kembali.

4.3 Faktor-Faktor Penyebab Krisis

4.3.1 Kuasa Lembaga Tiang Balai

Sepertimana yang telah diperjelaskan, kuasa Lembaga dalam perlantikan Undang adalah amat besar dan luas. Pendapat mereka amat berpengaruh di kalangan anak-anak waris. Sebaik-baiknya kuasa yang diamanatkan ini hendaklah digunakan dengan bijaksana.

Lembaga Tiang Balai sebagai satu badan penapis dalam memilih 'baka' atau 'benih' yang sesuai untuk menggantikan tempat Undang sepatutnya tegas dalam menjalankan tugas mereka. Seseorang calon pengganti Undang yang telah menjalani beberapa peringkat pemilihan, apabila sampai ke peringkat penapis lembaga dan apabila terpilih, ini bermaksud beliau adalah calon yang terbaik dan yang paling sesuai dan layak. Semestinya calon ini harus dipertahankan supaya dapat mencapai kata sepakat seperti kata adat :-

Bulat air melalui pembetong

Bulat manusia melalui muafakat

Kok bulat boleh digolekkan

Kok pipih boleh dilayangkan

Ini tidak, Lembaga tidak berupaya, begitu lemah untuk mempertahankan calon yang telah dipilih. Oleh yang demikianlah, perlantikan Undang senantiasa menghadapi masalah dan menempuh jalan buntu. Perbilangannya ada mengatakan :-

Hak orang jangan diambil

Hak kita jangan diagihkan

Kata-kata adat ini mempunyai signifikasi dalam masalah perlantikan ini. 'Hak orang jangan diambil', sepatutnya orang yang berhak sahaja yang boleh menyandang pesaka Undang tetapi sekarang ini apa yang berlaku adalah telah menjadi adat, manusia suka akan hak orang lain, sampai ke tahap yang tidak layak pun berani menuntut hak.

Disinilah sepatutnya Dato'-Dato' Lembaga memainkan peranan menjadi orang perantaraan, menenangkan keadaan dan menegahkan keadilan. Tetapi, yang sebaliknya telah berlaku di mana disebabkan tidak ada kata sepakat pihak lain terpaksa masuk campur. Contoh yang terdekat adalah masalah yang berlaku di Luak Sungai Ujong. Secara teori, 'Hak kita jangan diagihkan' tetapi Dato'-Dato' Lembaga di Sungai Ujong kerana tidak bermuafakat, kuasa yang ada pada tangan tidak digunakan akibatnya kuasa untuk melantik Undang telah terpaksa diagihkan kepada pihak lain.

Di sini kuasa untuk melantik Undang telah diserahkan secara mutlak kepada Dewan Keadilan dan Undang yang merupakan satu badan yang tidak ada kena mengena langsung dengan kuasa perlantikan Undang dari segi adat. Sebenarnya, peranan Dewan Keadilan dan Undang adalah untuk mengesahkan perlantikan sahaja dan bukannya sebagai badan yang melantik. Boleh dikatakan Dewan dalam perkara ini sepatutnya berperanan sebagai pemerhati dari luar dan bukannya untuk melibatkan diri secara langsung.

Walaubagaimanapun di dalam kes Dato' Menteri Othman bin Baginda & Anor lwn. Dato' Ombi Syed Alwi b. Syed Idrus¹² telah diputuskan sebaliknya. Kes ini adalah berkenaan krisis perlantikan Undang Luak Jebebu dimana pihak Responden iaitu Dato' Ombi telah memohon satu deklarasi

¹² 1981, 1 MLJ 29.

bahawa perlantikan Undang Luak Jelevu yang ke-15 Dato' Musa bin Abdul Wahab adalah tidak sah dan bercanggah dengan peruntukan Adat dan Perlembagaan Luak Jelevu. Perlantikan ini telah dibuat oleh pihak perayu pertama. Di dalam kes ini, Mahkamah Persekutuan telah memutuskan bahawa Dewan Keadilan mempunyai kuasa untuk 'merestui' satu-satu perlantikan. Oleh kerana di dalam Artikel XVI, Bab 6, Bahagian Pertama, Undang-Undang Perlembagaan Negeri Sembilan ada memperuntukkan bahawa kuasa Dewan keadilan dan Undang adalah (*inter alia*), memberi nasihat atas perkara-perkara yang berkaitan dengan adat sekiranya dirujuk oleh Yang DiPertuan Besar atau Undang, maka sekiranya Dewan 'merestui' satu-satu perlantikan ini merupakan perkara yang di dalam bidang kuasanya dan sepatutnya pertelingkahan berakhir di sini.¹³

Boleh dikatakan bahawa kes diatas adalah satu-satu kes yang boleh dibezakan di mana Dewan Keadilan dan Undang memainkan peranan dalam menyelesaikan perlantikan Undang.

Penyelewengan daripada prinsip-prinsip adat adalah kesan daripada sikap Dato'-Dato' Lembaga itu sendiri. Sikap mereka menampilkan seolah-olah mereka tidak berusaha bersungguh-sungguh untuk menyelesaikan pertelingkahan yang ada yang menjadi peranan dan tanggungjawab mereka sendiri. Kuasa ada di tangan mereka, sepatutnya mereka berani menegakkan kebenaran seterusnya membuat keputusan yang jitu.

Boleh dibuat kesimpulan bahawa salah satu daripada punca pertelingkahan tentang perlantikan Undang adalah tiada kebulatan suara antara Dato'-Dato' Lembaga sendiri dan masing-masing tidak mampu untuk mempertahankan calon yang telah dipilih. Kemungkinan juga Dato'-Dato' Lembaga merasa ragu-ragu atas kuasa dan kedudukan sebenar jawatan pesaka yang mereka

¹³ Per. Yang Amat Arif Abdul Hamid Omar (Hakim Mahkamah Persekutuan) Ibid, hlm. 30.

sandang menyebabkan kuasa telah tidak digunakan dengan sempurna.

4.3.2 Kefahaman Terhadap Adat

Sesuatu peraturan atau Undang yang tidak bertulis adalah amat sukar untuk dikuatkuasakan kecuali jika terdapat metod penguatkuasaan yang berkesan.

Adat Perpatih adalah satu peraturan yang tidak bertulis yang unik di mana ia disampaikan dari satu generasi ke generasi yang lain secara lisan dalam bentuk perbilangan yang disusun rapi. Penguatkuasaannya adalah terletak pada kebijaksanaan dan kesetiaan ketua-ketua adat pada adat itu sendiri.

Memandangkan peraturan Adat Perpatih tidak bertulis dalam bentuk statut, kemungkinan pengamal adat ini untuk mengenyepikan adat dalam perlantikan Undang sendiri adalah besar. Penulis tidak pula mengatakan bahawa sekarang ini pemimpin-pemimpin adat tidak lagi mengikut Adat Perpatih seperti yang telah diturunkan daripada nenek moyang mereka dahulu tetapi hakikatnya apabila perselisihan berlaku tentang perlantikan Undang, konflik akan berlaku dan tiada muafakat di kalangan pemimpin sendiri. Ini menyebabkan mereka sanggup berbuat apa sahaja untuk menegakkan hak masing-masing.

Berbalik kepada masalah ketidaktegasan Dato'-Dato' Lembaga, ianya mungkin timbul kerana perlantikan Dato'-Dato' Lembaga ini dijalankan mengikut waris iaitu garis keturunan yang layak dan bukannya mengikut pengalaman atau pengetahuan adat yang ada padanya.¹⁴ Kesannya, perkara ini telah membawa padah kepada pentadbiran adat di kebanyakan luak di Negeri Sembilan, di mana pihak yang tidak berapa arif tentang adat telah

¹⁴ Temubual penulis dengan Tuan Hj. Muhammad b. Tainu, Setiausaha Penyelidikan dan Budaya Negeri Sembilan, 8hb. Februari 1994.

menginterpretasikan adat mengikut kehendak sendiri. Ini menyebabkan peruntukan adat tersebut telah dieksploitasi supaya serasi dengan kehendak pihak tertentu.

Adat bukanlah satu perkara yang boleh dipermainkan, kelayakan Dato'-Dato' Lembaga haruslah dikaji semula dan hendaklah diukur melalui pengetahuannya yang mendalam terhadap adat.

4.3.3 Sistem Giliran

Biasanya di dalam proses perlantikan Undang salah satu peraturan yang perlu dipatuhi adalah sistem giliran di mana waris-waris yang layak akan mengikut giliran bagi menyandang pesaka Undang.

Misalnya, dalam proses perlantikan Undang Luak Sungai Ujong terdapat dua waris yang layak iaitu Perut Hulu dan Perut Hilir. Kedua-dua waris ini akan bergilir-gilir memperuntukkan bakal Undang.

Di Luak Jelevu pula terdapat tiga waris yang layak iaitu Waris Ulu Jelevu, Waris Sarin dan Waris Kemin. Sistem giliran ini pada hakikatnya tidak diikuti sepertimana sepatutnya. Ini dapat dilihat dari senarai di bawah¹⁵ :-

Nama Undang Luak Jelevu dari Tahun Masehi 1750 Hingga Sekarang

a)	Dato' Moyang Salleh	-	Waris Ulu Jelevu
b)	Dato' Bokor	-	Waris Ulu Jelevu
c)	Dato' Bakul	-	Waris Ulu Jelevu
d)	Dato' Yunus	-	Waris Ulu Jelevu

¹⁵ Mohd. Redzuan b. Tumin, Istiadat Tabal Undang Jelevu, PURBA Bil. 2 1983, hlm. 74.

e)	Dato' Lup	-	Waris Sarin
f)	Dato' Duraman	-	Waris Kemin
g)	Dato' Rengoh	-	Waris Kemin
h)	Dato' Pandak	-	Waris Sarin
i)	Dato' Mahmud Kulup Tunggal	-	Waris Kemin
j)	Dato' Haji Ibrahim	-	Waris Kemin
k)	Dato' Syed Ali Al-Jafri	-	Waris Ulu Jelebu
l)	Dato' Abdullah	-	Waris Sarin
m)	Dato' Shahmaruddin Haji Abdul Rahman	-	Waris Kemin
n)	Dato' Hj. Abu Bakar Maamor.	-	Waris Ulu Jelebu
o)	Dato' Musa Wahab (Dato' Undang yang ada sekarang)	-	Waris Sarin

Daripada senarai di atas, ia menampakkan bahawa sistem giliran tidak diikuti secara (*rigid*). Terdapat pada awalnya, calon dari Waris Ulu Jelebu telah dilantik menjadi Undang sebanyak empat kali berturut-turut.

Prinsip mengenai giliran ini adalah amat jelas sekali tetapi secara praktis ia telah menimbulkan banyak masalah. Ini adalah kerana waris-waris yang layak tidak dapat mengikutnya dengan ketat atas sebab-sebab yang tertentu. Alasan yang selalu digunakan adalah terdapat kecacatan peribadi pada calon dari waris yang sepatutnya ditabal pada masa itu.¹⁶ Maka giliran itu akan jatuh pada waris yang satu lagi.

Kenyataan bahawa sistem giliran yang dipraktikkan amat longgar menyebabkan calon yang dikemukakan terlalu ramai. Mereka berpendapat kemungkinan terpilih adalah besar kerana mana-mana waris boleh dipilih dan sudah menjadi kebiasaan sistem giliran diketepikan.

¹⁶ M.B Hooker, Negeri Sembilan : Adat, the Constitution and the Federal Court (1981) 2 MLJ cxc.

Pertikaian selalunya berkisar pada masing-masing mencari kecacatan calon yang ditentang dari segi adat supaya gilirannya akan jatuh.

Sekarang ini telah menjadi perkara biasa apabila mangkat sahaja seorang Undang masalah giliran waris yang layak akan menjadi punca pertelingkahan.

4.4 Cadangan Penyelesaian Krisis

Sistem perlantikan Undang mengikut Adat Perpatih sekiranya dilihat sepintas lalu, seolah-olah ia adalah satu sistem yang mudah tetapi hakikatnya, ia sangat sukar untuk dilaksanakan secara ideal. Kemungkinan besar, ini adalah kerana semakin negara kita mencapai kemajuan semakin manusia tidak pernah berpuashati dengan apa yang dia ada. Manusia telah menjadi tamak, apatah lagi kalau benda yang direbutkan itu adalah sesuatu yang akan memberi kuasa dan kedudukan yang tinggi dalam masyarakat.

Untuk menyelesaikan masalah yang berkait rapat dengan adat ini bukannya mudah kerana ia tidak dapat lari daripada pengaruh politik. Apabila dilihat dari satu segi, masalah adat adalah sebahagian dari masalah Undang-Undang Perlembagaan, tetapi bila dilihat dari sudut yang lain, masalah adat adalah pertelingkahan peribadi dan diibaratkan sebagai satu pergolakan yang berlaku di dalam keluarga sendiri yang seharusnya diselesaikan sesama sendiri dan dirujuk kepada Dato'-Dato' Lembaga yang berkenaan berdasarkan hukum adat yang telah diamalkan sejak turun temurun.

Kekeliruan inilah yang dihadapi oleh Mahkamah Persekutuan dalam membuat keputusan kes Dato' Menteri Othman b. Baginda & Anor v. Dato' Ombi Syed Alwi b. Syed Idrus.¹⁷ Kes rayuan daripada Mahkamah Tinggi Seremban mengenai pertelingkahan perlantikan Undang Jelebu yang tidak dipersetujui oleh Dato' Ombi

¹⁷ (1981)1 MLJ 29.

dan beberapa anak-anak waris yang lain yang ingin mahkamah mengisytiharkan perlantikan itu tidak sah. Selepas perbicaraan yang panjang lebar, akhirnya dengan keputusan majoriti, Mahkamah Persekutuan berpendapat bahawa Mahkamah Sivil tidak ada bidangkuasa untuk mendengar pertelingkahan adat yang jelas di bawah peraturan-peraturan adat yang sepatutnya diselesaikan oleh badan yang lebih arif tentang adat. Diputuskan juga perkara tersebut tidak jatuh dibawah undang-undang perlembagaan oleh itu Mahkamah Persekutuan tidak ada bidangkuasa untuk mendengarnya.

Sekiranya kita ambil iktibar dari kes di atas, maknanya pihak yang tertindas dan mungkin juga berhak ke atas pesaka Undang tidak mempunyai banyak alternatif untuk mendapatkan remedi. Sudahlah tidak boleh ke mahkamah dan kadang-kadang Dato'-Dato' lembaga pun tidak tahu menyelesaikan masalah, jadi kemanakah sepatutnya mereka pergi untuk mengadu nasib.

Sepatutnya pertama-tama sekali, masalah ini tidak timbul. Oleh itu mencegahnya daripada berlaku adalah lebih baik daripada cuba membetulkan apa yang telah berlaku. Semestinya kita belajar dari kesilapan dan langkah mestilah diambil untuk mengelakkan 'pisang berbuah dua kali'.

Di sini, penulis ingin menyarankan beberapa syor untuk menyelesaikan krisis yang mungkin boleh memecah-belahkan masyarakat adat.

4.4.1 Peranan Dato' Lembaga

Sepertimana yang telah dijelaskan beberapa kali sebelum ini Dato' Lembaga mempunyai kuasa yang telah ditetapkan oleh peraturan adat dalam melantik Undang.

Telah dibincangkan sebelum ini pihak Dato' Lembaga telah tidak menjalankan kuasanya yang diamanahkan oleh anak-anak buah dengan berkesan.

Di sini penulis bukanlah bermaksud ingin mengkritik atau memberitahu Dato' Lembaga bagaimana untuk menjalankan tugas mereka. Penulis pasti Dato' Lembaga lebih arif tentang adat tetapi adalah satu fakta yang tidak boleh dinafikan bahawa krisis yang timbul adalah berpunca daripada ketidaktegasan Dato' Lembaga dan seterusnya gagal mempertahankan calon yang dipilih.

Dalam menyelesaikan masalah ini, semua pihak mestilah berhati-hati supaya keputusan yang dibuat adalah yang terbaik untuk semua orang, 'ibarat menarik rambut dalam tepung rambut jangan putus tepung jangan berserak'.

Penulis ingin menyarankan di sini, Dato'-Dato' lembaga dalam memainkan peranannya hendaklah bersikap lebih tegas kerana anak-anak waris yang mereka wakili menaruh harapan yang amat tinggi supaya mereka dapat membuat penyelesaian yang terbaik.

Menyentuh tentang krisis perantikan Undang ini, Dato'-Dato' lembaga tidak boleh mengamalkan sikap seperti lalang, bila ditiup angin ke kiri ke kirilah ia dan bila di tiup ke kanan maka ke kanan pulalah ia. Sekiranya sikap ini ada maka tidak hairanlah kalau masalah ini tidak dapat diselesaikan kerana Dato'-Dato' lembaga sentiasa mudah dipengaruhi dan tidak tetap pendirian dan mungkin sehingga ke tahap boleh di beli. Ini adalah satu wabak yang semakin menular di kalangan masyarakat politik dan kemungkinan juga pemimpin-pemimpin adat tidak terlepas dari godaan.

Dato'-Dato' lembaga mesti tetap pendirian dalam mempertahankan keadilan dengan mengikut prinsip-prinsip adat yang telah terbukti keberkesanannya berkurun-kurun lamanya. Di zaman dahulu masyarakatnya berjaya melantik Undang tanpa wujud apa-apa pertelingkahan mengapa tidak sekarang.

Peraturan-peraturan adat yang berbentuk kata-kata perbilangan bukannya satu yang statik. Adat Perpatih sedia menerima perubahan bak kata adat :-

Sekali air bah
 Sekali pantai berubah

Oleh yang demikian, Dato'-Dato' lembaga perlu memainkan peranannya dari masa ke semasa untuk mengkaji peraturan atau adat pesaka lama sekiranya ada yang samar-samar haruslah diterangkan, mana yang terdapat keraguan haruslah diperjelaskan dan yang longgar diketatkan, selaras dengan perbilangan adat :-

Lapuk-lapuk dikajangi
 Usang-usang diperbaharui
 Nan elok dipakai
 Nan buruk dibuang
 Kok pendek diuleh
 Kok panjang dikerat
 Kok senteng dibilai
 Melebihi jangan keterlalu
 Mengurangi jangan sia-sia

Jadi peranan Dato' Lembaga tidak terhenti pada menyelesaikan masalah adat sahaja. Peraturan adat itu sendiri pun perlu dikaji secara mendalam.

Penyelesaian masalah ini haruslah bermula daripada daya inisiatif Dato'-Dato' lembaga itu sendiri.

4.4.2 Kebulatan

Masalah yang paling besar dalam perlantikan Undang adalah tidak ada kebulatan atau kata sepakat di antara pemimpin-pemimpin adat itu sendiri. Mereka dengan kepala sendiri dan tidak mahu bertolak ansur di antara satu dengan yang lain.

Persefahaman adalah satu elemen yang penting untuk mendapatkan satu keputusan yang padu dan jitu. Sepatutnya kata-kata adat mestilah dipegang supaya boleh dijadikan panduan :-

Bulat air kerana pembedung
 Bulat manusia kerana muafakat
 Faham sesuai, benar seukur
 Bulat segolek, pipih selayang
 Rundingan jangan selisih
 Muafakat jangan bercanggah
 Tuah pada sekata
 Berani pada seiya

Penulis mencadangkan di sini untuk sampai kepada satu kebulatan yang dicita-citakan Dato'-dato' Lembaga yang berkuasa memilih Undang mestilah mahu bertolak ansur dan seiya sekata supaya 'bulat boleh digolekkan pipih boleh dilayangkan seiya sekata, seayun selenggang'.

Memandangkan Undang adalah seorang pemimpin yang akan memegang jawatannya seumur hidup, kebulatan persetujuan anak-anak buah yang dipimpinnya adalah sangat penting. Ini adalah kerana sekiranya Undang tersebut tidak mampu untuk menjalankan tugasnya dengan sempurna atau beliau hanyalah seorang pemimpin boneka yang dikuasai oleh pihak lain, maka ia tidak boleh diguling dan diganti begitu sahaja. Sistem adat tidak sama dengan sistem politik moden yang diamalkan sekarang. Sekiranya habis satu penggal, kalau pemimpin itu tidak disukai, beliau tidak akan dipilih lagi. Manakala sekali pemimpin adat dipilih ia adalah untuk selamanya.

Setiap pemilihan Undang semestinya dijalankan dengan jujur sepatutnya penyelewengan tidak ada tempat dalam menjalankan proses pemilihan ini. Misalnya dalam proses pemilihan Undang Luak Jelebu, selepas tercapai

kebulatan daripada waris berundang dan telah ditapis oleh lembaga maka pemilihan terakhir terpulang kepada Dato' Menteri. Di sini Dato' Menteri hendaklah membuat keputusan yang bijak dan mengambil kira kebulatan dan persetujuan anak-anak waris yang memilih. Dalam menjalankan tugasnya Dato' Menteri mestilah bersikap jujur dan amanah. Mengikut adat terdapat sumpah yang harus dipegang oleh Dato' Menteri iaitu 'Siapa bengkok makan sarung'. Ia membawa maksud, kalau kita sendiri tidak betul, kita akan rosak.¹⁸ Tanggungjawab untuk memilih Undang ini adalah satu amanah yang sekiranya tidak disempurnakan dengan baik, akan memakan diri sendiri dan akan pincanglah masyarakat.

Tiada satu pun masalah di dunia ini tidak boleh diselesaikan. Jika dicari dengan daya inisiatif sendiri jalan penyelesaian ada di mana-mana. Jika kita telah sesat di hujung jalan, kita haruslah kembali ke pangkal jalan.

Masyarakat Adat Perpatih adalah merupakan sekelompok kecil sahaja kenapa masih dibelenggu krisis, masalah dan pertelingkahan sesama sendiri. Apa yang perlu ada adalah perpaduan atau (solidarity). Bersatu dalam membuat apa tugas sekali, kebulatan akan mudah dicapai sekiranya ada perpaduan selaras dengan kata-kata adat :-

Seikat seperti sirih
 Serumpun seperti serai
 Seciap seperti ayam
 Sedencing seperti besi
 Mahu tak boleh diagih
 Suku tak boleh dianjak
 Melompat sama patah
 Menyerudup sama bongkok

¹⁸ Salmiah Ismail, Hukum Adat Berpusing Bak Kincir : Perbualan dengan Dato' Niko Menteri Sah Mangku Alam Raja Sari Luak Jelevu, DEWAN BUDAYA, Mac 1983, hlm. 10.

Jalan sedundun
Selenggang seayun

4.4.3 Peranan Dewan Keadilan dan Undang

Pada zaman dahulu, sebelum hidup masyarakat adat menjadi kompleks, perjalanan pentadbiran adat adalah ringkas, lancar tanpa masalah. Apabila keadaan telah berubah, kerajaan Negeri serba sedikit ingin memainkan peranan dalam proses perlantikan Undang sebagai penasihat atau pemerhati. Maka dengan ini satu badan telah ditubuhkan di bawah Perkara XVI, Bab 6, Bahagian Pertama Undang-Undang Perlembagaan Negeri Sembilan bagi tujuan untuk memastikan pentadbiran adat berjalan dengan lancar.

Perkara XVI ini adalah satu otoriti yang tertinggi di Negeri Sembilan yang boleh dipakai oleh badan tersebut sekiranya ia hendak masuk campur dalam perlantikan Undang. Perkara XVI berbunyi seperti berikut :-

"There shall be a Dewan Keadilan dan Undang to be called in English 'the council of the Yang DiPertuan Besar and the Ruling Chiefs' hereinafter referred to as the Dewan to advise on questions relating to Malay customs in any part of the state or on other matters which may be referred to it by His Highness or any of the Ruling Chiefs and to exercise such functions as may be conferred upon it by this constitution or any other written law".

Peruntukan inilah yang sering dipertikaikan definisinya. Interpretasi perkataan (*advise*) atau 'nasihat' telah diberikan dalam berbagai versi. Sekiranya diteliti peruntukan Perkara XVI ini, ia telah menggariskan dua fungsi bagi Dewan Keadilan dan Undang iaitu :-

- a) untuk menasihati mengenai apa-apa persoalan yang berkaitan dengan Adat Melayu.
- b) untuk melaksanakan apa saja fungsi yang mungkin diberikan kepadanya melalui Perlembagaan atau oleh mana-mana undang-undang bertulis yang lain.

Sekilas pandang, fungsi yang diperuntukkan untuk Dewan ini nampaknya agak terhad, terdapat kawalan tertentu. Tetapi bila diamat-amati, kuasanya agak luas dan dalam situasi yang tertentu ia mestilah diperincikan bagi mengelakkan sebarang keraguan akan fungsi sebenar Dewan ini.

Di dalam kes Dato' Menteri Othman bin Baginda & Anor v. Dato' Ombi Syed Alwi bin Syed Idrus¹⁹ yang telah dibincangkan sebelum ini, di peringkat Mahkamah Tinggi telah dibincangkan samada 'nasihat' yang boleh diberikan oleh Dewan merangkumi perisytiharan atau (*declaration*) ke atas keesahan sesuatu perlantikan atau sebaliknya. Persoalan timbul di mana 'nasihat' Dewan kemungkinan besar merangkumi merestui satu-satu perlantikan dan mungkin juga sebagai badan yang berkuasa untuk membuat keputusan dalam satu pertelingkahan perlantikan Undang.

Penulis berpendapat fungsi Dewan Keadilan dan Undang hendaklah digariskan satu persatu secara lebih terperinci supaya Dewan ini tidak melampaui kuasanya. Dewan Keadilan dan Undang sepatutnya tidak ada kuasa untuk melakukan semakan ke atas proses perlantikan Undang dan seterusnya memutuskan samada ianya sah atau tidak. Dewan juga tidak mempunyai kuasa untuk membuat keputusan untuk menyelesaikan krisis perlantikan Undang. Ini adalah tugas Dato'-Dato' lembaga yang sememangnya lebih arif dalam hal ehwal Adat Perpatih.

Dewan, sebagai satu badan di luar pertelingkahan yang berlaku sepatutnya tidak diberi kuasa untuk melantik Undang dan seterusnya mengesahkan perlantikan itu sekaligus, seperti yang telah berlaku di Luak Sungai Ujong. Apa yang berlaku di sini adalah satu penyelewengan daripada adat.

Fungsi Dewan Keadilan dan Undang semestinya dihadkan kepada mengesahkan semata-mata perlantikan yang telah dibuat mengikut kebulatan adat dan bukannya untuk melantik Undang, atau untuk mempertikaikan keesahan perlantikan dan yang penting sekali bukan untuk memihak kepada mana-mana orang.

Secara ringkasnya, Dewan hanya bertugas sebagai pemerhati, cuma memastikan tiada sebarang kejadian yang tidak diingini berlaku dan menyerahkan pertelingkahan kepada Dato'-Dato' lembaga untuk menyelesaikannya.

Setengah-setengah pihak dalam masyarakat Adat tidak berapa setuju Dewan memainkan peranan menyelesaikan pertikaian, tambahan pula anggota-anggota Dewan tidak berapa arif dalam peruntukan adat. Campurtangan Dewan Keadilan dan Undang akan mengeruhkan lagi suasana. Walaupun campurtangan Dewan telah menyelesaikan satu masalah yang telah berpanjangan selama 10 tahun di Sungai Ujong namun begitu masih ada pihak yang tidak berpuashati dengan hakikat ini dan berpendapat langkah yang diambil oleh Dewan itu adalah tidak wajar. Campurtangan Dewan hendaknya tidak di luar batasan.

Sesungguhnya amatlah sukar untuk membuat keputusan yang memuaskan semua pihak. Memandangkan adat adalah satu perkara yang sensitif maka terpaksalah berhati-hati dalam menyelesaikannya ibarat menarik rambut dalam tepung, rambut jangan putus, tepung jangan berserak.

4.5 Penutup

Sebenarnya, Adat Perpatih adalah satu perkara peribadi, satu masalah yang eksklusif yang perlu diselesaikan oleh pengamal adat itu sendiri. Orang luar hanya mampu untuk menjadi pemerhati sahaja, tidak ada sebarang hak pun untuk campurtangan.

Segala yang kusut hendaklah diselesaikan ~~secara~~ rasional, tidak mengikut perasaan yang pentingnya tidak mengheret orang luar untuk menyelesaikan masalah dalaman.

Dalam menyelesaikan masalah adat ini perkara yang pertama perlu dilakukan adalah melihat dan mengkaji semula peruntukan adat itu sendiri. Bukan mengikutnya membabi buta kerana setiap perbilangan adat ada rasional di sebaliknya. Kebanyakan pengamal-pengamal adat perpatih sekarang mengetahui tentang adat dari segi luarannya sahaja, tidak begitu mendalam. Malahan Undang sendiri pun kadang-kadang diragui pengetahuannya tentang adat perpatih.

Perbilangan adat itu sendiri kadang-kadang mengelirukan. Bagi orang yang tidak mengerti, apa yang dilihatnya hanya keseragaman kata, bak pantun sedap dibaca tetapi yang penting adalah ide di sebaliknya.

Kata adat banyak kiasan
Ditunjuk dia tetapi bukan
Bergulung pendek panjang direntang
Tak faham kalau tak direnungkan

Pendekata tidak mustahil bagi kata-kata adat tersebut disalahertikan. Mungkin ada yang berkata Adat Perpatih adalah satu peraturan yang lapuk, yang tidak patut diamalkan lagi, lebih mendatangkan masalah daripada kebaikan. Tetapi jika dilihat dari sudut yang lain, Adat Perpatih bukannya satu adat yang rigid, ia boleh berubah mengikut masa kecuali perkara-perkara yang menjadi akar umbi adat tidak boleh diubah.

Oleh yang demikian adat perlulah diamati, dikaji dengan teliti supaya:-

Usang-usang diperbaharui

Lapuk-lapuk dikajangi

Yang elok dipakai

Yang buruk dibuang

Kalau singkat minta disambung

Kalau panjang minta dikerat

Kalau koyak minta ditampal

Sebenarnya, tiada jalan yang mudah untuk keluar dari pertelingkahan yang sering berlaku setiap kali seorang Undang mangkat. Mungkin kali ini masalahnya telah selesai tetapi apabila seorang Undang perlu dilantik masalah akan timbul semula, adakah kita akan terpaksa menunggu sepuluh tahun untuk menyelesaikannya.

Penyelesaian masalah ini sebenarnya terletak pada ketua-ketua Adat Perpatih itu sendiri dengan sikap tolak ansur dan berbincang secara rasional, insya-Allah perkara ini boleh diselesaikan. Dan yang terpenting sekali dalam pemilihan Dato'-Dato' Lembaga hendaklah dipenting pengalaman dan pengetahuannya yang mendalam tentang adat bukan hanya mementingkan garis keturunannya sahaja.

Segala syor dan cadangan yang tertera di dalam kertas projek ini adalah pendapat penulis sahaja. Keberkesanannya mungkin diragukan tetapi dalam menangani masalah ini, kita mestilah ada titik permulaan, jadi pengamal-pengamal adat perpatih mesti mula dari sekarang, supaya pisang tidak berbuah dua kali. Tambahan pula adalah lebih baik mencegahnya daripada cuba membetulkan keadaan iaitu apabila nasi telah menjadi bubur.

Adat Perpatih adalah satu-satunya adat pusaka Melayu yang masih kuat diamalkan sehingga sekarang jadi kita haruslah dengan sedaya upaya mempertahankannya supaya ia tidak luput ditelan zaman dan terus hanyut bersama pengolahan politik.

Kesimpulannya, adat perpatih adalah satu adat yang 'tak lekang oleh panas dan tak lapuk oleh hujan' dan ia tidak akan ditelan zaman dan sesungguhnya ia masih mampu bertahan, dan masih mampu menyelesaikan masalahnya sendiri. Insya-Allah.

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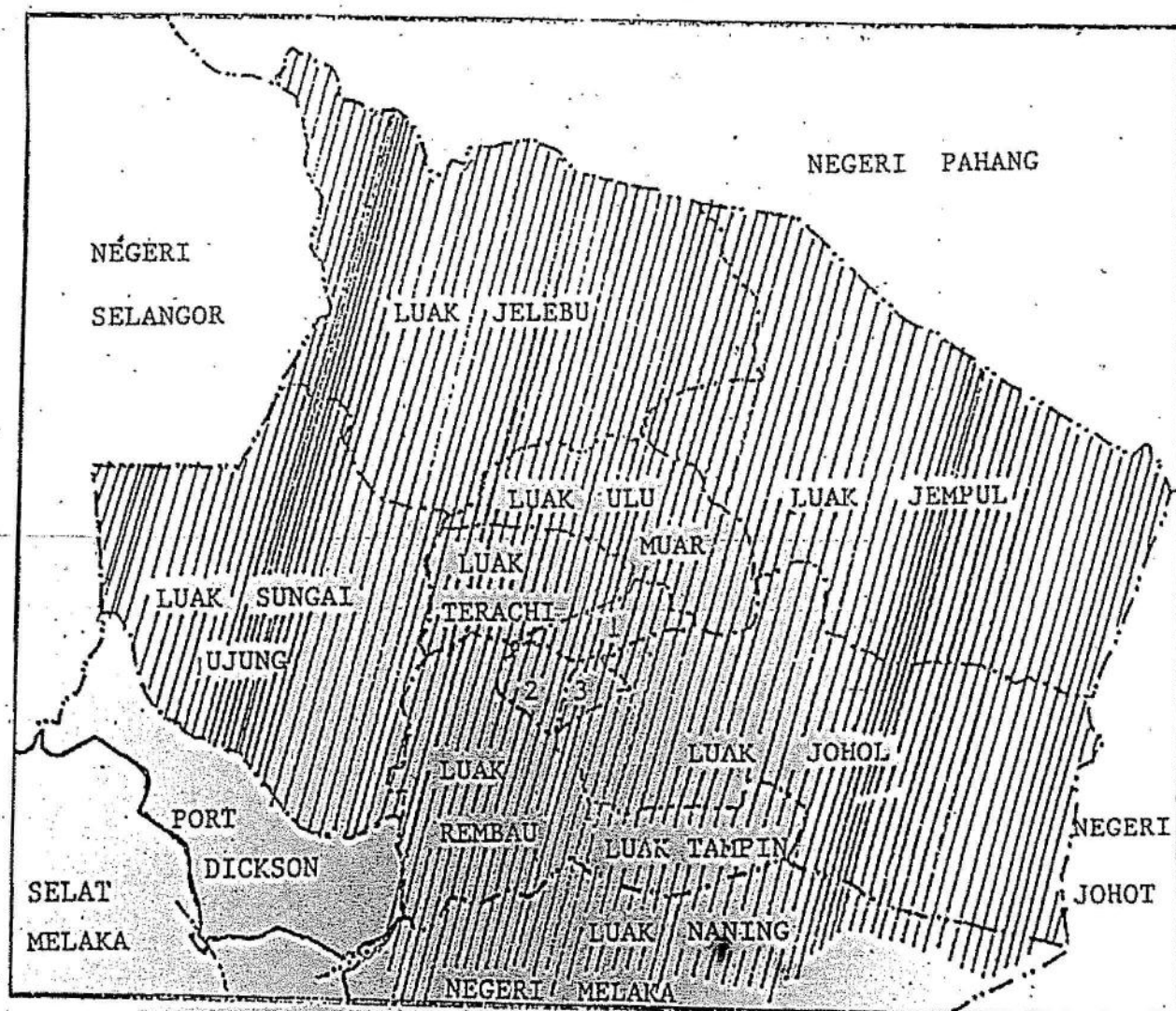
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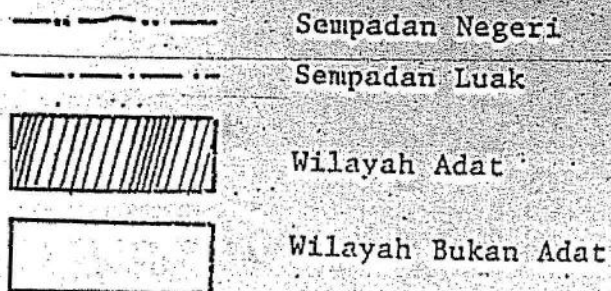
LAMPIRAN

"A"

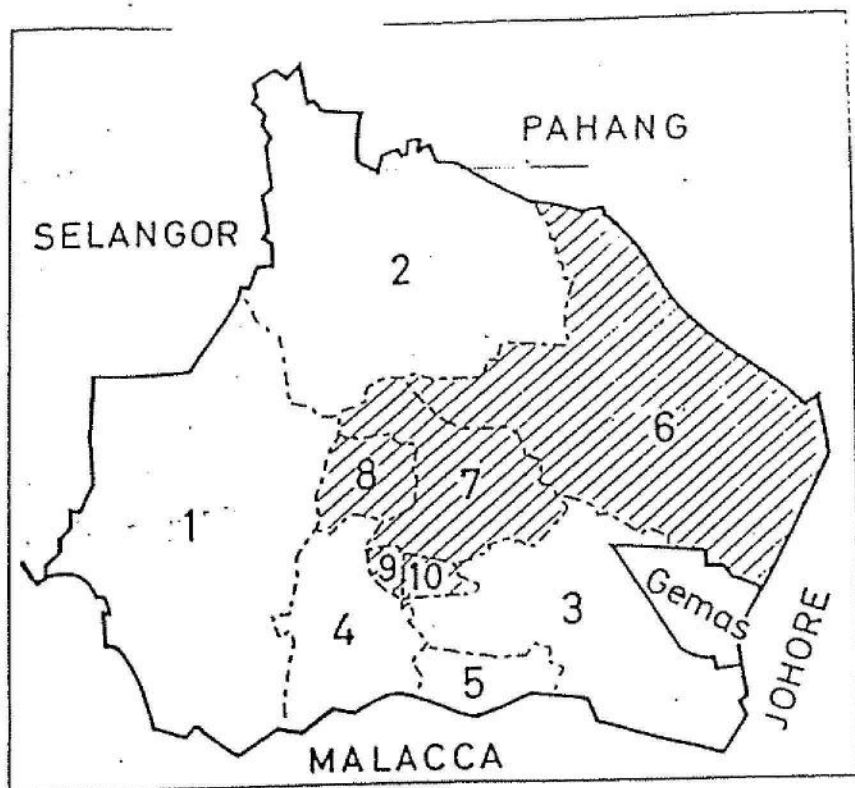
PETA LAKAR NEGERI SEMBILAN: LUAK-LUAK ADAT



Legenda:

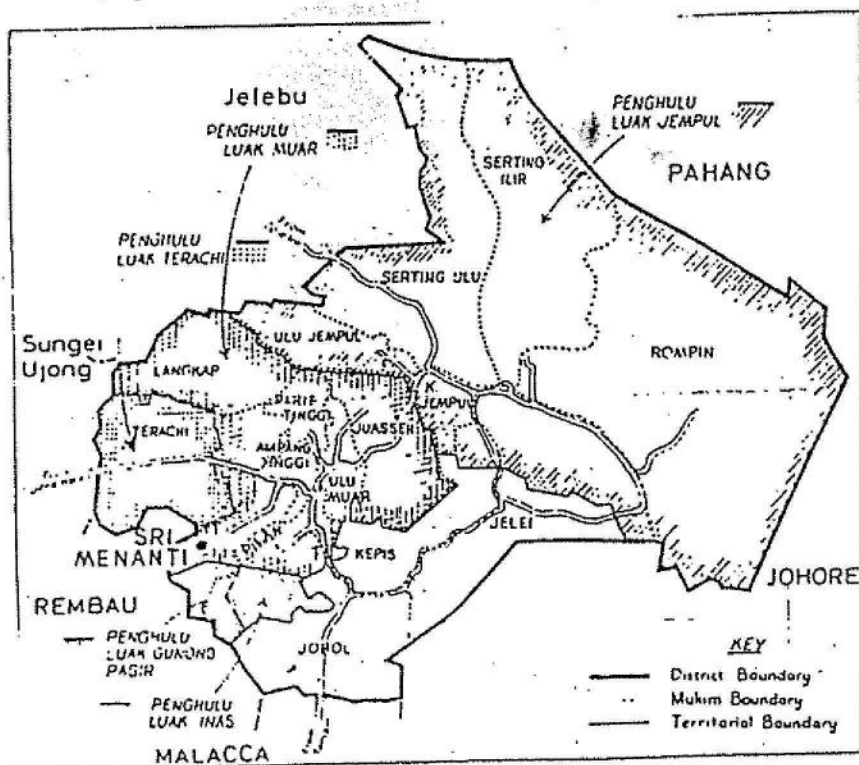


1. Seri Menanti
2. LUAK GUNUNG PASIR
3. LUAK INAS



MAP I. Map of Negri Sembilan showing areas of the territory controlled, according to custom, by the four Ruling Chiefs (*Undang Luak*), by the Tengku Besar Tampin, and five Territorial Chiefs (*Pengkulu Luak*).

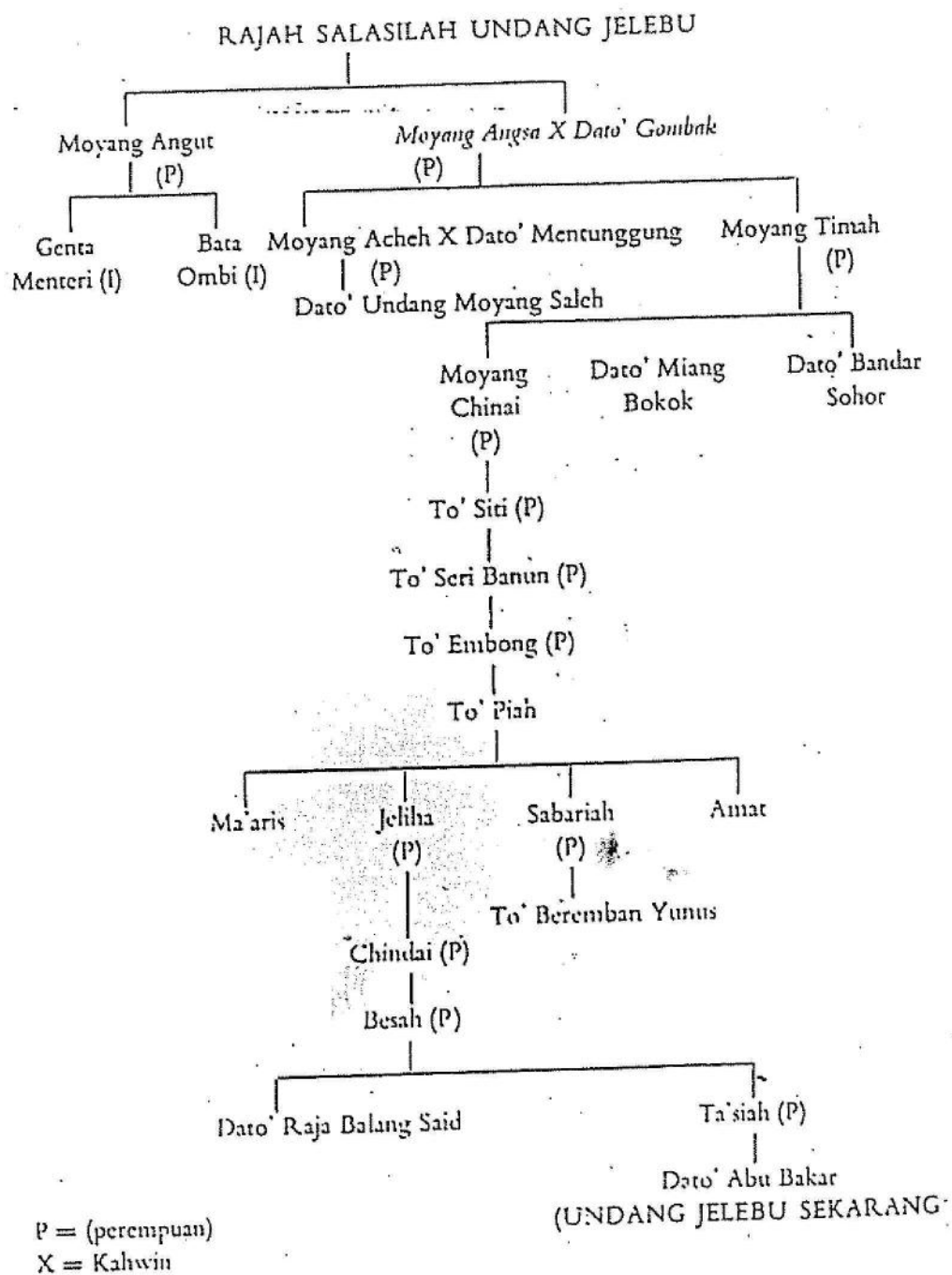
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|--|-------------------------------|
| 1. UNDANG LUAK SUNGEI UJONG
DATO MUDA LINGGI | 1. TENGGU BESAR TAMPIN |
| 2. UNDANG LUAK JELEBU | 6. PENGHULU LUAK JEMPUL |
| 3. UNDANG LUAK JOHOL | 7. PENGHULU LUAK MUAR |
| 4. UNDANG LUAK REMBAU
Pengkulu Luak Gemencheli
Pengkulu Pasaka Ayer Kuning | 8. PENGHULU LUAK TERACHI |
| | 9. PENGHULU LUAK-GUNONG PASIR |
| | 10. PENGHULU LUAK INAS |



MAP 2. Map of the Tanah Mengandung the territorial divisions round SRI MENANTI controlled by Territorial Chiefs (*Pengkulu Luak*).

LAMPIRAN

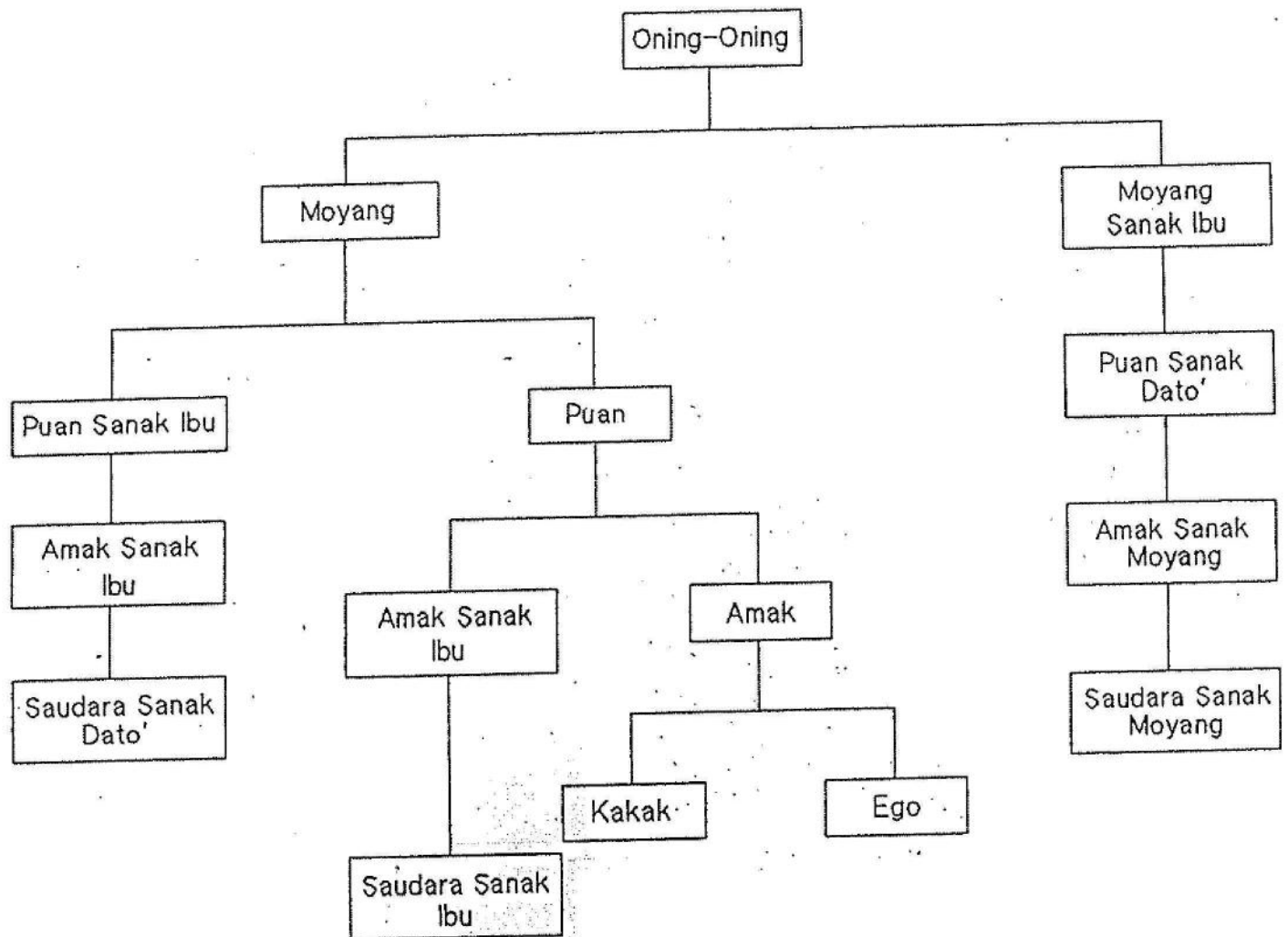
"B"



LAMPIRAN

"C"

LAMPIRAN 'C' : CARTA GARIS KETURUNAN MENGIKUT NASAB IBU



Huraian :-

1. Oning-oning = nenek moyang yang sama - common ancestress
2. Ego = ibu mereka adik-beradik
3. Sanak Ibu = nenek mereka adik-beradik
4. Sanak Dato' = moyang mereka adik-beradik
5. Sanak Moyang = tiga pupu - third cousins
6. Kakak = kakak yang tua

LAMPIRAN

"D"

**DATO MENTERI OTIMAN BIN BAGINDA
& ANOR. v.
DATO OMBI SYED ALWI BIN SYED IDRUS**

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya) Ag. L.P.,
Salleh Abas F.J., Ibrahim Manan F.J. &
Hashim Yeop A. Sami J.) July 15 & September 26, 1980]
[Kuala Lumpur — Federal Court Civil Appeal No. 104 of 1980]

Constitutional Law — Election of Undang of Jelevu —
Whether election contrary to adat laws and constitution of
luak of Jelevu — Application for declaration that purported
election invalid — Whether court has jurisdiction to entertain
action — Whether Undang immune from being sued in per-
sonal capacity — Dewan Keadilan dan Undang given power
to advise on questions relating to Malay custom — Jurisdiction
declined on ground that Court is *forum non conveniens* —
Constitution of Negri Sembilan, Articles XIV and XVI —
Federal Constitution, arts. 71 and 181.

Customary Law — Election of Undang of Jelevu —
Whether in accordance with adat laws and constitution of
luak of Jelevu — Dewan Keadilan dan Undang proper body
to decide — Constitution of Negri Sembilan, arts. XIV and
XVI.

Administrative Law — Declaration — Application for
declaration that election of Undang of Jelevu void — Dewan
Keadilan dan Undang given power to resolve dispute — Court
forum non conveniens — Jurisdiction declined.

In this case the respondent had applied for a declaration
that the purported appointment by the first appellant of the
second appellant as the new Undang of Jelevu was contrary
to the adat, custom and constitution of the luak of Jelevu.
The appellants after filing their defence applied for an order
that the statement of claim be struck out on the ground that
the court had no jurisdiction because the dispute involved a
question of adat and custom of the Malays in the luak and
on the further ground in the case of the second defendant
that under the Constitution of Negri Sembilan he as Ruling
Chief enjoyed legal immunity in his personal capacity. The
learned trial Judge dismissed the application of the appellants,
holding that the court had jurisdiction to entertain the action
and that the second defendant did not enjoy legal immunity.
The appellant appealed.

Held, by a majority (Suffian L.P. dissenting): (1) the
Dewan Keadilan dan Undang is given power under the Con-
stitution to advise on matters relating to Malay custom and
as the Dewan in this case had blessed the appointment of
the second defendant as the Undang of Jelevu, the court
should not attempt to usurp the function of the Dewan,
which is a more suitable forum for discharging that function;

(2) the court should decline jurisdiction on the ground
that it is *forum non conveniens* and that there is another
body which is more appropriate and which has been given
power under the Constitution of the State to decide the
matter;

(3) the respondent in this case had sent petitions to His
Highness the Yang di-Pertuan Besar and to other ruling chiefs
and also to the Secretary of the Dewan and the Dewan
having sat and deliberated upon the petitions and finally given
its ruling the matter should have ended there. The respon-
dent is therefore estopped from raising the matter again,
especially before the court of law;

(4) article 181(2) of the Federal Constitution is irrelevant
in this case as the very appointment of the second appellant
is under attack. The Article does not define a Ruler but
deals rather with the consequence of one being a Ruler.

Cases referred to:-

- (1) *Ibeneweku v. Egbuna* [1964] 1 W.L.R. 219, 225.
- (2) *Pyx Granite Co. Ltd. v. Ministry of Housing and
Local Government* [1958] 1 Q.B. 534, 571.
- (3) *N.T.S. Arumugam Pillai v. Government of Malaysia*
[1980] 2 M.L.J. 283.
- (4) *Rediffusion (Hongkong) Ltd. v. Attorney-General*
[1970] A.C. 1136, 1155-6.

- (5) *Minister of Home Affairs v. Fisher* [1979] 3 All E.R.
21.
- (6) *Attorney-General of St. Christopher, Nevis and An-
guilla v. Reynolds* [1979] 3 All E.R. 129, 136.
- (7) *Government of Malaysia v. Government of the State
of Kelantan* [1963] 1 M.L.J. 129.

HIGH COURT.

Abdul Razak bin Ahmad for the plaintiff.

Ariiffin bin Jaka for the defendants.

Cur. Adv. Vult.

Abdul Hamid F.J.: There are three applications
before the court, first by the plaintiff for an interim
injunction to restrain the second defendant from acting
and/or exercising the duties and powers of Undang
Luak Jelevu; second, by each of the defendants for
an order that the Writ of Summons and the plaintiff's
statement of claim be struck out on the ground that
the court has no jurisdiction in the matter and pursuant
to Order 25 rule 4 of the Rules of the Supreme Court,
1957.

In Seremban High Court Civil Suit No. 40 of 1980
the plaintiff asks for a declaration that the appoint-
ment of the second defendant as the new Undang of
Luak Jelevu on February 4, 1980 made by the first
defendant is invalid, ineffective, void and of no effect
on the ground that it is *ultra vires* the adat laws and
constitution of Luak Jelevu.

It is the plaintiff's allegation that on the death
of the 14th Undang of Luak Jelevu on November 20,
1979 he as Dato' Ombi a Dato' Lembaga of Luak
Jelevu, was responsible under the adat laws and con-
stitution of Luak Jelevu (hereinafter called 'the adat')
to submit a list of eligible candidates for selection as
Undang of Luak Jelevu. He presented the names of
three candidates to the first defendant as Dato' Menteri
in accordance with the adat. On February 4, 1980
the first defendant appointed the second defendant as
the new Undang although the second defendant was
not a candidate for selection as Undang and was not
an eligible person according to the adat. He also
alleged that the purported appointment of the second
defendant was disapproved and rejected by the plain-
tiff and six Dato' Lembagas of Luak Jelevu.

The first defendant contended that on the death
of the 14th Undang he became the acting Undang in
accordance with the adat. He instructed the plaintiff
to investigate and put forward a suitable candidate for
the appointment of a new Undang. On December 4,
1979 he received a nomination naming Encik Musa bin
Wahab as a candidate and on receipt of the nomination
he directed the plaintiff to include Encik Musa in the
list of possible candidates and to investigate further
into his background and eligibility. On December
14, 1979 he received a letter from the plaintiff notifying
him of three candidates and the second defendant was
not one of them. In view of the foregoing he convened
a meeting on December 24, 1979.

It is the first defendant's contention that as there
was no single candidate acceptable by the lembagas
it was his duty to choose a new Undang in accordance
with the adat.

The second defendant maintained that he was

lawfully elected as new Undang of Luak Jelebu in accordance with the adat on February 4, 1980. He pointed out that on February 7, 1980 the Dewan Ka'adilān dan Undang (Council of the Yang di-Pertuan Besar and the Ruling Chiefs) held a meeting and it gave its approval and blessing to his appointment.

As for the application to strike out the Writ of Summons and the statement of claim, it is the defendants' contention that the court has no jurisdiction to entertain the action on the ground that the claim relates to purely question of adat and customs of the Malays in Luak Jelebu. The defendants also contended that the plaintiff's action is scandalous, frivolous, vexatious and an abuse of the process of the court.

The second defendant has raised a further ground, namely, that as Undang of Luak Jelebu he is Ruler of the State of Negeri Sembilan as defined under the Laws of the Constitution of Negeri Sembilan and therefore enjoys protection of the Constitution from being sued in his personal capacity.

At the hearing before me Encik Ariffin appearing on behalf of both the defendants urged the court to hold that it has no jurisdiction to hear the case against both the defendants. He submitted that on a matter respecting the adat and customs of the Malays the Dewan Ka'adilān established under Article XVI Chapter 6 of the First Part of the Laws of the Constitution of Negeri Sembilan is the highest and the deciding authority in the State. Article XVI reads — "There shall be a Dewan Ka'adilān dan Undang to be called in English 'The Council of the Yang di-Pertuan Besar and the Ruling Chiefs' hereinafter referred to as the Dewan to advise on questions relating to Malay Customs in any part of the State or on other matters which may be referred to it by His Highness or any of the Ruling Chiefs and to exercise such functions as may be conferred upon it by this Constitution or any other written law."

There is not the slightest doubt in my mind that the Dewan Ka'adilān is fully conversant with matters of Malay Customs in the State and is indeed the most appropriate body to advise on the questions of Malay Customs. And I am of the view that any evidence of an advice given by the Dewan on the correct adat applicable to a given situation would be highly relevant. There is, however, no evidence before the court of any such advice. The only evidence before the court is an extract of the minutes of the Dewan Ka'adilān that is exhibited to the defendants' affidavit which incorporates a note to the effect that the Dewan Ka'adilān dan Undang Negeri Sembilan at the meeting held on that day had given its blessing to the appointment of Dato' Musa bin Abdul Wahab to hold the office of new Dato' Undang Luak Jelebu with the title of Dato' Mandika Menteri Akhirulzaman. It may be argued that the "blessing" means an "approval" or a "confirmation" of such appointment but it is also open to argument that since the function of the Dewan is to advise on questions relating to Malay Customs in any part of the State or on other matters which may be referred to it by His Highness or any of the Ruling Chiefs it could not have been the intention of the Dewan to approve or disapprove the appointment as it was not called upon to determine the validity or otherwise of the appointment. And if the Dewan should be called upon to decide would it have the necessary authority to do so.

Fundamentally, the Dewan is conferred with dual functions under Article XVI, namely,
A (a) to advise on questions relating to Malay Customs; and
(b) to exercise such functions as may be conferred upon it by the Constitution or any other written law

B In the circumstances the court is unable to construe the effect of the Dewan's decision any more than a blessing not amounting to an approval or a confirmation. Clearly, the Dewan was not sitting in judgment to consider the validity or otherwise of the appointment or to approve or disapprove such appointment. It would seem to me that the Dewan intentionally refrained from using the word "approve" or "confirm". In the capacity it was sitting the Dewan was not exercising specific function conferred by the Constitution or a written law to enable it to review or determine a dispute concerning the validity of the second defendant's appointment. Although Article XIV of the First Part of the Laws and Constitution of Negeri Sembilan clearly provides that the Undangs shall be persons lawfully elected in accordance with their respective luaks, there is, however, no provision in the Constitution of a written law that confers authority upon the Dewan or any other body to determine a dispute arising from the election of an Undang.

E I refrain at this stage of the proceedings to determine the merits or demerits of the claim, however, I feel constrained to hold that in consideration of what I have stated there is clearly a serious question to be considered and I see no reason why this court should be divested of its inherent jurisdiction to hear the case. There is absolutely no question of any interference with the adat instead it would be the function of the court to invoke the relevant adat as practised in Luak Jelebu to determine the question before the court.

The question that calls for determination is whether the first defendant had acted in accordance with the adat laws and constitution of Luak Jelebu as explained in the Papers by A. Caldecott entitled "Jelebu Its History and Constitution" published in *R.J. Wilkinson's Papers on Malay Subjects* at pages 348/9 to the effect that —

G "... On the death of an Undang the Manteri becomes regent and his orders are Sabda. The three lembagas then approach the Manteri and tell him to seek out a new Undang. The Manteri refers this request to the Ombi who calls the waris yang tiga and instructs the waris, whose turn it is, to put forward a candidate. It is the Ombi's business to satisfy himself as to the eligibility of the candidate proposed and to reject him if the rules of inheritance (pesaka) have not been observed. If the Ombi is satisfied on this score he must present him to the Manteri who will consider the candidate in respect of his qualification as regards adat. If he approve him, he will commend him to the 'Eight' with whom rests his final acceptance or rejection."

I Turning now to the defendants' contention that the claim is vexatious, scandalous and an abuse of the process of the court, it is, I think, settled law that an application under Order 25 rule 4 applies only to plain and obvious cases i.e. to cases where the statement of claim clearly discloses no cause of action. There is here a serious question to be considered and for this reason the application must fail.

1 M.L.J.

With regard to the second defendant's contention that he is a Ruler of the State of Negeri Sembilan, A reliance is placed on Article XXVIII (1) which reads —

"(1) Subject to Clause (2) of this Article the expression *Ruler* wherever it occurs in the Second Part of the Constitution shall mean His Highness and at least three of the four Undangs if there be only three Undangs holding office at the time of the exercise of such discretion, at least two of them:

Provided that His Highness alone and in accordance with the Constitution may exercise His discretion under Clause (2) of Article XL as aforesaid, in cases described — B

- (i) in paragraph (f) thereof, where the appointment does not affect the prerogative, powers and jurisdiction of the Ruling Chiefs in their respective territories;
- (ii) in paragraph (g) thereof."

Encik Ariffin has asked the court to invoke Clause (2) of Article 181 of the Federal Constitution which provides that no proceeding whatever shall be brought in any court against the Ruler of a State in his personal capacity. It is argued that since the second defendant is a Ruler under Article XXVIII (1) of the State Constitution Clause (2) of Article 181 of the Federal Constitution therefore bars the institution of any proceeding against him in any court in his personal capacity. D

With all humility I fail to see any merit in the contention. "Ruler" as defined under Article 160 Clause (2) as follows —

"in relation to Negeri Sembilan means the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs in accordance with the Constitution of that State:" E

would have to be considered in determining whether an Undang is a "Ruler" for purposes of Clause (2) of Article 181.

It is primarily a question of construction. To my mind the definition covers the Yang di-Pertuan Besar on behalf of himself in his personal capacity as well as the representative capacity i.e. on behalf of the Ruling Chiefs. By himself or on behalf of himself an Undang cannot be construed to come within the definition of "Ruler". Thus the immunity from proceedings as envisaged by Clause (2) of Article 181 cannot be held to cover an Undang. F

In this connection it is pertinent to refer to Clauses (1) and (2) of Article 71 which read as follows — G

"(1) The Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State; but any dispute as to the succession as Ruler of any State shall be determined solely by such authorities and in such manner as may be provided by the Constitution of that State:

(2) Clause (1) shall, with the necessary modifications, apply in relation to a Ruling Chief of Negeri Sembilan as it applies to the Ruler of a State. H

Looking at these two Clauses it is apparent that a distinction is drawn between a Ruler of a State and a Ruling Chief of Negeri Sembilan. Applying Clause (2) of Article 71 with necessary modifications, it seems reasonable to construe Clause (1) to mean that the Federation shall guarantee the right of a Ruling Chief of Negeri Sembilan to hold, enjoy and exercise the constitutional right and privileges of a Ruling Chief in accordance with the Constitution of that State. The second limb of Clause (1) does not appear to be applicable to a Ruling Chief. I

The right of a Ruling Chief of Negeri Sembilan to hold, enjoy and exercise the constitutional right and privileges must therefore be restricted to only such right and privileges as provided under the State Constitution without the benefit of the immunity from being sued in a proceeding in a court of law in his personal capacity as provided under the Federal Constitution.

In the light of all this I am of the opinion that there is no merit in the defendants' applications and they must fail. They are therefore dismissed with costs.

As for interim injunction it is also settled law that pre-eminently it is a discretionary remedy. The discretion must, however, be exercised judicially and in accordance with the recognised principles. The court must take into consideration the circumstances surrounding this particular case in determining whether to reject or grant the order applied for. The court shall also have regard to the balance of convenience even though it should find that there is a serious question to be tried. In the present case there is no evidence to indicate that the plaintiff would suffer any damage if the interim injunction is refused. There is also no question of the plaintiff being injuriously affected by a breach. In the circumstances of this particular case I do not consider it proper to grant the interim order sought. I therefore dismiss the application with costs.

The dispute which surrounds the appointment of the second defendant should in my view be speedily disposed of. The action should be heard as soon as it is ready for trial. I make an order for an early trial to be held.

From the above judgment the defendants appealed to the Federal Court.

FEDERAL COURT.

N. Ramachandran (Ariffin bin Jaka and Joseph Chia with him) for the appellants.

Abdul Razak bin Ahmad for the respondent.

Razali bin Hassan, Legal Adviser, Negeri Sembilan — Watching brief for State of Negeri Sembilan.

Cur. Adv. Vult.

Raja Azlan Shah Ag. L.P.: We have been entrusted with a grave and delicate issue — whether or not to issue a declaration that the purported election of the 15th Undang of Jelebu is *ultra vires* adat laws and constitution of Luak of Jelebu.

My first observation is that judges should adjudicate on such matters as the present with restraint and certainly not to emulate the quasi-legislative role of the United States Supreme Court. The power to grant a declaration should be exercised with a proper sense of responsibility and after a full realization that judicial pronouncements ought not to be issued unless there are circumstances that properly call for their making. (See *Ibeneweka v. Egbima*⁽¹⁾).

What perhaps stands out about declaratory relief is the wide range of circumstances in which the procedure has been invoked already and the wide variety of cases in terms of subject matter where this type of

proceedings has been used. It has now become a regular feature of litigation and Lord Denning was probably only anticipating a little when he said in *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government*⁽²⁾ that:

"The wide scope of it can be seen from the speech of Viscount Kilmuir L.C. in *Vine v. National Dock Labour Board* ([1957] A.C. 488, 498) from which it appears that if a substantial question exists which one person has a real interest to raise, and the other to oppose, then the court has a discretion to resolve it by a declaration, which it will exercise if there is good reason for so doing."

Being discretionary, the remedy may, of course, be denied in appropriate cases. It may also be excluded by enactments. Some enactments expressly exclude the remedy (see *N.T.S. Arumugam Pillai v. Government of Malaysia*⁽³⁾) where some of the cases are discussed), whereas the courts have to look behind the not very clear language of others in order to discover whether Parliament or some other enacting body had intended that result. In general the existence of another remedy is not sufficient to make a declaration unavailable but the courts may decide that that other remedy is more appropriate to the circumstances.

It is here we must distinguish cases where the courts have held that they lack jurisdiction to deal with the matter and those cases where in the exercise of discretion, jurisdiction is declined. In *Rediffusion (Hong Kong) Ltd. v. Attorney-General*,⁽⁴⁾ the Privy Council discussed the distinction and recognised that what is often loosely referred to as matters of jurisdiction really are not so at all but merely situations where a court, having jurisdiction in the matter, refuses to exercise it.

"When considering an action claiming relief in the form of discretionary remedies only it is thus important to distinguish between the jurisdiction of the court to entertain the action at all, i.e., to embark upon the inquiry whether facts exist which would entitle the court to grant relief claimed, and a settled practice of the court to exercise its discretion by withholding the relief if the facts found to exist disclose a particular kind of factual situation. The application of a discretion to refuse relief even though this may be pursuant to a settled practice is an exercise of jurisdiction, not a denial of it."

The history of the case had been admirably dealt with at length by the learned Lord President and Tan Sri Dato' Salleh Abas F.J. I shall not repeat it. I shall confine my judgment to the issue of jurisdiction. Shorn of its massive publicity and its numerous surrounding issues the case is essentially one of interpretation of Article 71 of the Federal Constitution which "guarantees the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges", and articles XIV and XVI of the Constitution of the State of Negeri Sembilan. Article XIV deals with the election of the Ruling Chiefs (the Undangs) who "shall be persons lawfully elected in accordance with the custom of their respective luaks." Article XVI is reproduced in full:

"There shall be a Dewan Ke'adilán dan Undang to be called in English 'The Council of the Yang di-Pertuan Besar and the Ruling Chiefs' hereinafter referred to as the Dewan to advise on questions relating to Malay Custom in any part of the State or on other matters which may be referred to it by His Highness or any of the Ruling Chiefs and to exercise

such functions as may be conferred upon it by this Constitution or any other written law."

In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way — "with less rigidity and more generosity than other Acts" (see *Minister of Home Affairs v. Fisher*⁽⁵⁾). A constitution is *sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: "A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms." The principle of interpreting constitutions "with less rigidity and more generosity" was again applied by the Privy Council in *Attorney-General of St. Christopher, Nevis and Anguilla v. Reynolds*.⁽⁶⁾

It is in the light of this kind of ambulatory approach that we must construe our Constitution. The Federal Constitution was enacted as a result of negotiations and discussions between the British Government, the Malay Rulers and the Alliance Party relating to the terms on which independence should be granted. One of its main features is the enumeration and entrenchment of certain rights and freedoms. Embodied in these rights are the guarantee provisions of Article 71 and the first point to note is that that right does not claim to be new. It already exists long before Merdeka, and the purpose of the entrenchment is to protect it against encroachment. In other words the provisions of Article 71 are a graphic illustration of the depth of our heritage and the strength of our constitutional law to guarantee and protect matters of succession of a Ruler (including election of the Undangs) which already exist against encroachment, abrogation or infringement.

Election of Undangs has since time immemorial been made in accordance with the ancient customary laws of their respective luaks. Article XVI of the Constitution of the State of Negeri Sembilan as pointed out by Salleh Abas F.J. preserves and protects the ancient customary laws of Negeri Sembilan. It was drafted in broad and ample style which lays down principles of width and generality pertaining *inter alia* to Malay custom. It gives *carte blanche* to the Dewan to give 'advice' on such matters. 'Advice' here calls for a generous interpretation avoiding what has been called 'the austerity of tabulated legalism'. This must mean approaching the question with an open mind. In that context the Dewan does not make suggestions; it takes cognizance of such matters as may be referred to it

and gives decisions in the form of 'advice' in the same way as the Privy Council gives 'advice' to His Majesty the Yang di-Pertuan Agong on matters of appeals from this country. A

This court, being the highest court in the land in constitutional matters should take the occasion to re-affirm expressly, unequivocally and unanimously the constitutional position of the Ruler in matters of succession including the election of the Undang and to hold that it is non-justiciable. Here is something basic to our system of government: the importance of holding it far transcends the significance of any particular case. The Dewan in this case has blessed the appointment of the 15th Undang of Jelebu and for judges at first instance or an appeal to pre-empt its function is for courts to usurp the function of the Dewan, and apart from this, the Dewan is a far more suitable forum for discharging that function than a panel of five judges. It is open to the courts in this country to refuse a remedy on the ground that it is *forum non conveniens*. This doctrine is that a court may decline to exercise jurisdiction on the ground that another body would be more appropriate. B C D

I would allow the appeal with costs here and below.

Salleh Abas F.J.: The dispute between the parties in this case is whether the second appellants' appointment as the fifteenth Undang of Jelebu on February 4, 1980 was made in accordance with the ancient constitution and custom of the Luak of Jelebu. The respondent contended that it was not, whilst the appellants claimed that it was so. However, before this issue was tried, the appellants raised a preliminary objection stating that the court has no jurisdiction to go into the matter. The objection was overruled by the Seremban High Court and so the case came before us for decision. The question which requires our determination in this appeal is only confined to one of jurisdiction. In my view the court has no jurisdiction. E F

Article 71(1) of the Federal Constitution makes provision that whilst the "Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State," the Federation, however, has to adopt a policy of non-interference and strict neutrality as regards a dispute as to the title or right of a particular individual to succeed as Ruler. This principle of strict neutrality is clearly stated in the second limb of Article 71(1) as follows:— G H

"but any dispute as to the title to the succession as Ruler of any State shall be determined solely by such authorities and in such manner as may be provided by the Constitution of that State". (The emphasis is mine).

There can be no doubt that this principle is also applicable to a dispute relating to the appointment of an Undang because Clause (2) of this Article provides that:— I

"Clause (1) shall, with the necessary modifications, apply in relation to a Ruling Chief of Negeri Sembilan as it applies to the Ruler of State."

The State Constitution of Negeri Sembilan recog-

nizes the continued application of the ancient constitution and ancient custom of the State so long as they are not inconsistent with the State Constitution (Article XXXII). Part of the ancient constitution and ancient custom is the concept of rulership. There exist five Ruling Chiefs (Article XIV) in addition to the royal personage styled as Yang di-Pertuan Besar of the State, and not as Sultan like the royal personage in other states (Article VII). The Ruling Chiefs are the Undangs of Sungai Ujong, Jelebu, Johol and Rembau and Tengku Besar of Tampin (Article XIV). The rulership in Negeri Sembilan State Constitution unlike that in other states is a composite concept, consisting of His Highness the Yang di-Pertuan Besar and the five Ruling Chiefs (Article XXVIII). For the exercise of functions under the State Constitution, His Highness the Yang di-Pertuan Besar and at least three of the four Undangs must act (Article XXVIII(2)), but for the exercise of functions under the Federal Constitution only the Yang di-Pertuan Besar is required to perform them, although in performing those functions, His Highness is regarded as acting not only on his own behalf but also on behalf of the Ruling Chiefs as well (Article 160(2)). The reason why the Undangs are not required to perform the functions under the Federal Constitution must have understandably been due to the question of convenience. Because the definition of ruler is a composite one, the Constitution of the State itself was declared and ordained by His Highness together with the Ruling Chiefs (see preamble to the Constitution of Negeri Sembilan). His Highness the Yang di-Pertuan Besar is elected by the four Undangs (Article VII), whilst the Undangs themselves have to be elected in accordance with the custom of their respective territories (luaks) (Article XIV(1)). His Highness and the Ruling Chiefs and a few other persons are members of a Council known as the Dewan Ka'adilhan dan Undang, in short "the Dewan". (Article XVI and Article XVII). The main function of the Dewan is "to advise on questions relating to Malay Custom in any part of the State or on other matters which may be referred to it by His Highness or any of the Ruling Chiefs."

The Dewan is the culmination of the lengthy political and constitutional developments of the State. It is the embodiment of traditional elements and values which are kept alive by the Constitution. It is a machinery to rationalize these elements so as to make them work under a modern democratic constitution. Until the present Constitution was promulgated in 1959 Negeri Sembilan had no written constitution. Her constitutional law, however, could only be found in the various treaties entered into by the Yang di-Pertuan Besar, the Undangs and the British Government. Besides these treaties, customary laws were allowed to continue side by side to govern the political social and economic life in the respective territories so long as they did not become a hindrance to the British policy. Indeed Negeri Sembilan itself was only constituted as a State by the treaty of July 13, 1889, whereby the parties concerned agreed to form "a Confederation of States to be known as the Negeri Sembilan." In 1895 this Confederated State joined the Federation of Protected Malay States of Perak, Selangor, Negeri Sembilan and Pahang. The forma-

tion of Malayan Union in 1946 and its subsequent transformation into the Federation of Malaya in 1948 did not give Negeri Sembilan a separate written constitution. It was only Independence in 1957 which finally gave her the present Constitution promulgated in 1959. Under this Constitution the ancient constitution and custom are preserved, "except as expressed herein", and "where not inconsistent with" the Constitution. To rationalize and make this ancient constitution and custom work and to avoid disputes which could arise from many divergent interpretations of this ancient constitution and ancient custom, the Dewan is established with power "to advise on questions relating to Malay custom in any part of the State or other matters which may be referred to it by His Highness or any of the Ruling Chiefs." The expression "to advise on" in my judgment is not merely confined to the ascertainment and statement of customary law in an abstract and generalized way like a statute or an enactment. Neither is the expression restricted to mean only "to give an opinion". The expression "to advise on" must in my judgment be the ascertainment and the application of law on a given subject to a particular set of facts. The advice so expressed by the Dewan, irrespective of the language used by the clerk of the Dewan to record it, whether "giving its blessing or approval" or some other words clearly indicates the thinking and view of the Dewan and such opinion, since it comes from the highest and august body should be worthy of respect and obedience. It should not be ignored. There is no need for a provision in the Constitution saying that the advice is binding. Customary law, after all is based on the recognition and acceptance that a rule is binding, otherwise inconveniences and crisis would follow from disobedience thereto. What higher and better authority deserves and commands respect in the interpretation and explanation of customary law on this particular topic than the Dewan itself which consists of the Ruler of the States and other prominent persons? As an example of an advice being binding, is the advice pronounced by the Federal Court under Article 130 of the Federal Constitution when it exercises its advisory jurisdiction on a question referred to the court by the Yang di-Pertuan Agong for its opinion as to the effect of any provision of the Constitution. Such advisory opinion was expressed by the court in the *Government of Malaysia v. Government of the State of Kelantan*,⁽¹⁾ as to the meaning of the word "borrow" under Article III(2) of the Federal Constitution. Here there can be no doubt that the court's opinion is binding, although there is no provision in the Federal Constitution which says that it is so.

In conclusion I find myself unable to subscribe to the view that the Dewan has no authority to resolve this dispute. This means that the court has no jurisdiction over the matter, as Article 71(1) clearly points to the way in which the dispute has to be settled, and by reference to the Dewan, the matter is closed.

The words "merestui perlantikan" used in the minutes to record the decision of the Dewan at the end of its one hour close-door deliberation, translated as "giving its blessing" or some other English rendering, in my view convey the meaning that the Dewan

was of the like mind and agreed to the validity of the appointment of the second respondent as the 15th Undang of Jelebu. Since I hold that the Dewan has the authority to make the determination, the advice so expressed should bring the matter to an end.

It is observed that the respondent himself had sent a petition, signed by himself and six other Lembagas to the three Undangs of Sungai Ujong, Rembau and Johol and to the Secretary of the Dewan. The minutes of the Dewan recorded that His Highness too received the petition. What then was the purpose of sending the petition, if the respondent and the other Lembagas did not want His Highness and the Undangs to take some positive action? And what more logical action was expected to be taken by the recipients of the petition than to thrash this matter in the Dewan? Is the Dewan not a proper and suitable forum to deal with it? Thus I cannot see how the matter could still be prolonged just because the respondent had received an adverse ruling from the Dewan on his petition. It was he who desired a ruling by sending the petition and he must therefore accept and abide by it and cannot now be heard to say that the Dewan has no authority. His conduct estops him from raising the issue any further. The court is certainly not an appellate authority as regards the "advice" of the Dewan.

Counsel for the appellants also submitted that the court has no jurisdiction to determine the dispute because the second appellant enjoys immunity from judicial proceedings under Article 181(2). This Article is as follows:—

"181(1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negeri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.
 (2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity."

The short answer to this submission is that this Article is irrelevant in the present case, because the very appointment of the second appellant itself is under attack. This Article would be relevant in cases where the suit is against an Undang whose appointment as such is not in dispute and the suit is for something he has done or for some other matter.

Counsel made this submission in order to show to us that an Undang is a Ruler because he enjoys immunity from judicial proceedings under Clause (2) of this Article. This argument in my view turns the Article completely upside down. In the first place the immunity under Clause (2) is one of the results or consequences of one being a Ruler and not vice versa. It is not on account of this immunity that a person is a Ruler. An accredited diplomat is not a ruler, although he enjoys this immunity. In the second place, the first question as regards Clause (2) is whether an Undang enjoys the immunity, and this question in fact depends upon whether the word "Ruler" in that clause includes also the Ruling Chiefs. If they are so included, then no proceedings in their personal capacity can be brought in court against them; otherwise such proceedings can be instituted. Whether one can read into the word "Ruler" in Clause (2) so as to include the Ruling Chiefs is debatable. It depends

upon how one construes Clause (1) itself and also on whether the definition of "Ruler in Article 160(2) is applicable to the interpretation of Clause (2) of Article 181. In Clause (1) of Article 181, the Rulers and the Ruling Chiefs are mentioned separately, whereas in Clause (2) only the Rulers are mentioned, and not the Ruling Chiefs. Even under Clause (1) itself, there is a difference in that the Ruling Chiefs do not possess sovereignty though they have prerogatives, powers and jurisdiction; whereas the Rulers have all the four attributes, namely sovereignty, prerogatives, powers and jurisdiction. One therefore could conclude that the framers of the Federal Constitution did not intend to treat an Undang to be on equal footing as a Ruler who belongs to a royal ancestry, though an Undang is part of the Ruler of Negeri Sembilan. In my view the difference in status between the Rulers and the Ruling Chiefs as stated in Clause (1) is highly relevant in interpreting the word "Ruler" in Clause (2). It is the sovereignty possessed by the Rulers which make them immune from judicial proceedings in their personal capacity. They can of course be sued in their official capacity, but in that event the suits will have to be instituted in the names of the Governments of their states. It follows therefore that as an Undang has no sovereignty, he does not enjoy such judicial immunity. The omission of the words "Ruling Chiefs" in Clause (2) of Article 181 must have been deliberate and not merely due to a draftsman's error. The answer to this question is of course not called for in this appeal, but I deal with it because in my judgment the question whether an Undang is a Ruler does not depend upon Clause (2) of Article 181.

Since Clause (1) of Article 181 itself provides an answer to the applicability of Clause (2) to an Undang, it follows therefore that the definition of "Ruler" under Article 160(2) for this purpose is virtually unnecessary. The definition of "Ruler" under Article 160(2) is reproduced as follows:—

"160(2) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

'....'

'Ruler'—

- (a) in relation to Negeri Sembilan, means the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs in accordance with the Constitution of that State; and
- (b) in the case of any State, includes, except in Article 181(2) and the Third and Fifth Schedules, any person who in accordance with the Constitution of that State exercises the functions of the Ruler." (The emphasis are mine).

From the introductory phrase "unless the context otherwise requires", it is clear that the definition is only intended to apply where the context is not otherwise. Since there is a difference in the content of Clauses (1) and (2) of Article 181, it seems reasonable therefore to conclude that the definition of "Ruler" under Article 160(2) is inapplicable for the purpose of interpreting the word "Ruler" in Article 181, be it Clause (1) or Clause (2).

In my view the definition under Article 160(2) is purely a functional one; it being confined to the performance by a Ruler of functions under the Federal Constitution and federal law. It has no bearing upon his personal status at all. This functional definition

in the case of Negeri Sembilan means that the functions under the Federal Constitution and federal law are exercisable by His Highness the Yang di-Pertuan Besar alone although in the performance of these functions he is acting on behalf of himself as well as the Ruling Chiefs. As an example of this is the attendance of the Rulers' Conference. Here His Highness alone attends the Conference. The idea of agency and trust is incorporated into the definition because the Rulership in Negeri Sembilan is not unitary or singular but shared. This is all that the definition under Article 160(2) means. It certainly does not mean to say that an Undang is a Ruler for all purposes. He is a Ruler as regards performance of functions and power but not a Ruler for the purpose of judicial immunity under Article 181(2). Although by virtue of Article XXVIII of the State Constitution, an Undang is included in the definition of Ruler, and he is therefore a joint Ruler. This definition is also a functional one. As regards the performance of functions under the State Constitution and the State law, these are exercisable by His Highness and at least by three Ruling Chiefs. (Article XXVIII(2)). Thus even the definition under the State Constitution is also a functional one just as it is under Article 160(2).

That the definition under Article 160(2) is a functional one is clearly reflected by the second limb of the definition as regards other States. Here while the definition of "Ruler" includes "any person who in accordance with the Constitution of that State exercises the functions of the Ruler", it excludes such person from being regarded as a Ruler for the purpose of Article 181(2); (dealing with judicial immunity), the First Schedule (dealing with election of the Yang di-Pertuan Agong) and the Fifth Schedule (dealing with the Conference of Rulers). Such exclusion is effected by the words "except in Article 181(2) and the Third and Fifth Schedules". Thus for these purposes — i.e. Article 181(2) the Third and the Fifth Schedules the status of a Ruler who is a descendant of a royal ancestor is preserved and not extended to others. He is a Ruler in the full sense of the word, both functionally and status wise. Others such as the Ruling Chiefs and the Yang di-Pertua Negeri are included in the definition of Ruler for certain purposes only. It appears therefore clear that by virtue of the context of Article 181 itself and the definition of Ruler under Article 160(2), an Undang is not intended to be included in the word "Ruler" under Article 181(2). Here I agree with the conclusion of the court below that "the immunity from proceedings as envisaged by Clause (2) of Article 181 cannot be held to cover an Undang", because for the purpose of this Article he is not a Ruler.

Even if the immunity extends to an Undang, I cannot see its relevancy in the present proceedings, because the election of the second appellant itself is in dispute. The issue raised is highly premature and entirely irrelevant. It would have been relevant if the appellant's appointment is not in dispute and he is sued in connection with something else in respect of his private business or matter.

In view of what I have discussed earlier my con-

clusion is that the court of law has no jurisdiction to try this dispute. The second limb of Clause (1) of Article 71 read together with Clause (2) of that Article clearly shows that the dispute has to be settled by authorities and in a manner prescribed by the Constitution of Negeri Sembilan. The Dewan is such an authority as it is established under Article XVI of that Constitution. The respondent having sent petitions to His Highness, and to other Ruling Chiefs and also to the Secretary of the Dewan; and the Dewan having sat and deliberated upon the petitions and finally given its ruling, the matter should have ended and the respondent is estopped from raising the issue again, especially before the court of law. Lastly Article 181(2) is irrelevant for the purpose of the present appeal. That Article does not define a Ruler but deals rather with the consequence of one being a Ruler. It cannot be used as a ground to show that an Undang is a Ruler for all purposes.

In conclusion I would allow this appeal with costs both before us and the court below.

Ibrahim Manan F.J.: The main issue in this appeal concerns the jurisdiction of the court and for the determination of that issue I think I need set out only the following undisputed facts. On February 4, 1980 the first defendant/appellant (the Dato Menteri and acting Undang) appointed and proclaimed the second defendant/appellant (a member of the Warith Sarin) as the 15th Undang of the luak of Jelebu. Plaintiff/respondent (the Dato Ombi) and 6 other Lembagas disputed the appointment and the dispute was brought to the attention of the Dewan. The Dewan met on February 7, 1980 to discuss the dispute and was attended by the following high officials on invitation; the Menteri Besar, the State Secretary, the Legal Adviser and the Mufti. The Menteri Besar was requested to report on the dispute which he did. Then the members discussed the matter among themselves behind closed doors for about one hour at the conclusion of which the Dewan decided to give its blessing to ("merestui") the election (appointment).

Plaintiff/respondent was not satisfied with the Dewan's decision and on February 22, 1980 he filed a Writ (Civil Suit No. 40 of 1980) in the High Court at Seremban asking for a declaration that the appointment was null and void on the ground that it was made in violation of the adat, constitution and laws of Negeri Sembilan. In their combined Statement of Defence both defendants/appellants denied the nullity of the appointment and applied to have the Writ struck out on the ground that the court had no jurisdiction to determine the matter. Abdul Hamid F.J. refused the application and the defendants/appellants are appealing against that decision.

Article 71 of the Federal Constitution guarantees the right of an Undang "to succeed and to hold, enjoy and exercise his constitutional rights and privileges" in accordance with the Constitution of the State of Negeri Sembilan and provides that "any dispute as to the title to succession... shall be determined solely by such authorities and in such manner as may be provided by the Constitution of that State."

Article XIV of the State Constitution provides that the Undang of Jelebu shall be a person "lawfully

elected in accordance with the custom "of that luak" and Article XVI provides that there shall be a Dewan Keadilan dan Undang (the Dewan) "to advise on questions relating to Malay Custom in any part of the State or on other matters which may be referred to it by His Highness or any of the Ruling Chiefs and to exercise such function as may be conferred upon it by this Constitution or any other written law."

B Article I of the State Constitution provides that it "shall be read subject to the Federal Constitution."

The Dewan has used the word "blessing", the said Article XVI the word "advise" and the said Article 71 the word "determined" but in my view there is not much significance in the different words used. Before the Dewan decided to give its blessing it must have determined the dispute before it and so satisfied itself as to enable it to advise that the second defendant/appellant had been "lawfully elected in accordance with the custom" of his luak.

It is true that the said Article XVI does not itself state that the validity of its act shall not be questioned in any court but in my view the combined effect of the said Articles XVI and XIV of the State Constitution read in the light of the said Article 71 of the Federal Constitution is that the Dewan is intended to be the sole authority to determine and advise on the dispute.

For the above reason I would hold that the court has no jurisdiction to try the dispute. Having held that I consider it not necessary for me to deal with the other issue in this appeal which concerns the legal immunity of the second defendant/appellant from being sued in his personal capacity.

I would therefore allow the appeal and order that the writ be struck out and that the costs in this court and in the court below be paid by the plaintiff/respondent to the defendants/appellants.

Hashim Yeop A. Sani J.: In support of the leading judgment I need only say a few words on the concept of "Rulership" in the State of Negeri Sembilan and the legal status of the Dewan Keadilan.

It is essential to distinguish between the "unitary" and the "composite" concept of Rulership when we speak of the "Ruler" of the State of Negeri Sembilan. The Federal Constitution is indeed careful in its treatment of the subject of "Ruler" in relation to Negeri Sembilan. Clause (2) of Article 71 directs that clause (1) be applied with the necessary modifications to the Ruling Chiefs of Negeri Sembilan. Clause (1) speaks of the "constitutional rights and privileges" of the Ruler and "succession as Ruler." The definition "Ruler" in Article 160 brings out clearly the composite concept of Rulership. This definition is meant only for use in its proper context in the Federal Constitution itself and therefore should not be applied generally or out of context. Article 181 again clearly distinguishes the fact that a Ruling Chief has everything that a Ruler has except "sovereignty". There Article 181(2) does not give a Ruling Chief immunity from legal process.

In the context of the Negeri Sembilan Constitution the Dewan Keadilan must surely be regarded as the custodian of the adat in Negeri Sembilan. The constitution of the members of the Dewan Keadilan would

indicate this very intention. The advice of the Dewan Keadilan in the matter of adat must therefore be regarded as binding and conclusive for otherwise there would be uncertainty.

The provision of Article 71(1) of the Federal Constitution as it now appears was not contained in the early draft of the Merdeka Constitution. It was inserted only in a subsequent draft which became the final draft. In the original draft the genesis of this provision appeared as Article 65(1) but dealing solely with federal guarantee of a Ruler of a State to succeed and ended there. It did not speak of the guarantee "to hold, enjoy and exercise" constitutional rights of the Rulers and the Ruling Chiefs. I cannot find any reason in the Reid Report for the widening of the guarantee in the final draft but I can only surmise it must surely have been inserted to preserve the then existing rights of the Rulers and the Ruling Chiefs of Negeri Sembilan. In my view to override the advice of the Dewan Keadilan in matters of adat relating to succession of a Ruling Chief would be going against the guarantee of Article 71(1). It necessarily follows that to enlarge the jurisdiction of the court to include adjudication on such matters as succession of a Ruling Chief would likewise to my mind be *ultra vires* Article 71.

I would also allow the appeal with costs here and below.

Suffian L.P. (dissenting): This dispute concerns the succession to the 14th Undang (Ruling Chief) of the luak (territory) of Jelebu in the State of Negri Sembilan, and the answers to the issues that arise in this appeal turn on the construction of certain provisions in the Federal Constitution and in the State Constitution.

Preliminary

On November 21, 1979, when the 14th Undang died, it was necessary that his successor be, in the words of Clause (1) of Article XIV of the State Constitution, a person "lawfully elected in accordance with the custom of [his luak]". Until then in accordance with the adat (custom) and constitution of the luak, Dato Menteri Othman bin Baginda ("the first defendant") became Acting Undang. He was bound by the adat of the luak to instruct Dato Ombi Syed Alwi bin Syed Idrus ("the plaintiff") one of the Dato Lembuga (Tribal Chiefs) of the luak to investigate and nominate candidates, from amongst whom a suitable person would be elected as successor to the deceased Undang.

On December 4 the Dato Menteri received a nomination from Kecik bin Kiman, Dato Raja Diraja or Buapak from Waris Sarin, nominating Musa bin Wahab, P.J.K. ("the second defendant") as a candidate. On receipt of the nomination the first defendant directed the plaintiff to investigate into Encik Musa's background and qualifications and include his name in the list of candidates.

On December 14, the first defendant received a letter from the plaintiff giving the names of three possible candidates: namely Syed Zin bin Syed Hussein, Syed Subong bin Syed Chik and Nordin bin Ahmad. It will be observed that the second defendant's name

was not on the list. The first defendant claimed that it was his duty under the law, custom and constitution of the luak to see that the nomination of the second defendant be given due consideration, and that the plaintiff had failed in his duty as Dato Ombi by not considering the second defendant's eligibility as a candidate under the rules of pesaka (succession). So the plaintiff as acting Undang called a special meeting of the Tribal Chiefs of the luak on December 24 to discuss the matter. On December 31 another special meeting of the Tribal Chiefs was held attended by eight of them.

The first defendant alleged that there was no single candidate acceptable to the Eight Tribal Chiefs, whereupon it was his duty under the adat, custom and constitution of the luak to choose the new Undang. So he personally investigated into the background and qualifications of all the three candidates submitted by the plaintiff and into those of the second defendant, and he concluded that none of the three candidates was eligible and that only the defendant was a fit and proper person to be appointed the new Undang, that there was no reason why he should not be appointed and that in failing to take into account his eligibility the plaintiff has failed to carry out his duty as Dato Ombi. Subsequently, on February 4, 1980, he (the first defendant) proclaimed the appointment of the second defendant as the new Undang of the luak of Jelebu in accordance with the adat, custom and constitution of the luak.

Seventeen days later the plaintiff filed a suit in the Seremban High Court against the two defendants, alleging that the second defendant was not a candidate for the Undangship, was not qualified for it under the adat, custom and constitution of the luak, that his appointment was not approved by the plaintiff and six other Tribal Chiefs of the luak, whom he named; and by reason of all this the plaintiff asked the court to declare that the purported appointment by the first defendant of the second defendant as the new Undang was invalid as being contrary to the adat, custom and constitution of the luak of Jelebu.

In their defence the two defendants maintain that the appointment was valid according to the adat, custom and constitution of the luak. Secondly, they contend that the court has no jurisdiction to entertain the action. Thirdly, the second defendant for his part alone contends that as the lawfully elected Undang he is immune from being sued in his personal capacity.

On March 24, the two defendants applied by summons in chambers for an order that the plaintiff's statement of claim be struck out on the ground that the court had no jurisdiction because the dispute involved a question of adat and custom of Malays in the luak and, in the case of the second defendant, on the further ground that under the constitution he as Ruling Chief enjoyed legal immunity in his personal capacity.

These contentions were hotly contested. In the event, the learned judge (Abdul Hamid F.J., sitting in the High Court) dismissed the application, holding that the court had jurisdiction to entertain the action and that the second defendant did not enjoy legal immunity.

The defendants have appealed to this court.

Before proceeding any further, it should be stressed that as this matter has not gone to trial yet, the facts given above have been taken from the pleadings and affidavits filed in connection with the summons in chambers, and may not be "firm". Secondly, while clause (1) of Article XIV of the State Constitution speaks of the Undang of Jelevu being elected, the above narration of the facts speaks of his being "chosen" and "appointed", the very words which were used in the affidavit. But it would appear that at this stage there is no significance in the deviation from the word used in that clause. Thirdly, the court is not concerned at this stage with the merits of the plaintiff's claim, i.e. with the validity or otherwise of the election of the second defendant.

Issues

There are two issues in this appeal.

First, does the court have jurisdiction to determine this dispute? The defendants contend that, contrary to the ruling of the learned judge, the court does not.

Legal immunity

Secondly, does the second defendant enjoy legal immunity from being sued in his personal capacity? He contends that, contrary to the ruling of the learned judge, he does. As regards this, Article 181 of the Federal Constitution provides:

"181. (1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.

(2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity."

and Article 160(2) of the same Constitution provides:

"In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them: that is to say—

'Ruler'—

(a) in relation to Negri Sembilan means the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs in accordance with the Constitution of that State; . . ."

It appears doubtful that Article 181 gives the second defendant legal immunity at all. I say so because such immunity is usually an attribute of sovereignty, and while Clause (1) of the Article speaks of the sovereignty of a Ruler it speaks only of the prerogatives, powers and privileges, not sovereignty, of a Ruling Chief. And the definition of Ruler in Clause (2) of Article 160 appears to refer only to functions and does not touch on the question of whether or not a Ruling Chief is sovereign.

In the past, treaties between the State and the British were co-signed by the Ruling Chiefs. The Federation of Malaya Agreement, 1957, signed by Their Royal Highnesses the Rulers and the British, one of the instruments granting us independence, was also co-signed by the Ruling Chiefs. It is therefore also arguable that a Ruling Chief does enjoy legal immunity to the extent set out in Article 180, being "sovereign".

Be that as it may, I am of the opinion that even assuming, without deciding, that an Undang of Jelevu enjoys legal immunity in his personal capacity, this is so if and only if there is no dispute as to the validity

of his election; and that if the very validity of his election is disputed, then until the court is satisfied as to its validity, the purported holder of the office is subject to the process of the court. Otherwise, every pretender or usurper will enjoy legal immunity. For this reason, I am of the opinion that the second defendant cannot at this stage avail himself of the protection of Article 181(2) of the Federal Constitution.

B Jurisdiction

I now turn to the first issue in this appeal. It transpires that before this action was filed this dispute was brought to the attention of His Royal Highness the Yang di-Pertuan Besar, i.e. the Ruler of the State, and on February 7, 1980, a meeting of the Dewan Ke'adlan dan Undang, the Council of the Yang di-Pertuan Besar and the Ruling Chiefs, ("the Council") was held to discuss the matter. This body, established by Articles XVI, XVII and other Articles of Chapter 6 of the Negri Sembilan Constitution, consists of His Royal Highness, the Ruling Chiefs, the Tengku Besar of Tampin and other high dignitaries, and its function (Article XVI) is "to advise on questions relating to Malay Custom in any part of the State or on other matters which may be referred to it by His Royal Highness or any of the Ruling Chiefs . . ." When the Council deliberates on State or National policy the Menteri Besar shall be invited to attend (Article XVII); and the Council may invite to any of its meetings any person if it considers that his presence is desirable (Article XXIV). This meeting of February 7 had only one item on the agenda, to discuss the election of the new Undang, and was attended by the following high officials on invitation: the Menteri Besar, the State Secretary, the Legal Adviser and the Mufti — which shows the importance attached to the matter under discussion. According to its minutes (Exhibit DM7), His Royal Highness, the President of the Council, reported that he and the Secretary of the Council had each received a letter signed by seven Tribal Chiefs of the Luak of Jelevu expressing dissatisfaction with the election of the second defendant as Undang of Jelevu, and His Royal Highness invited the Menteri Besar to report on the dispute, which he did. Then the members of the Council discussed the matter among themselves behind closed doors in the absence of non-members for about an hour. When the non-members had been invited to re-enter, His Royal Highness announced the decision of the Council, formally recorded in the minutes as follows:

"The Council of the Yang di-Pertuan Besar and the Ruling Chiefs, Negri Sembilan which sits this day gives its blessing to the election of Dato' Musa bin Abdul Wahab (the second defendant) to hold the hereditary office of the Undang of Jelevu Territory, the new Undang, with the title of Dato' Mendika Menteri Akhirulzaman."

The last paragraph of the minutes concludes:

"Thereafter His Royal Highness commanded the Secretary to the Council to make a press statement announcing the decision of the Council of the Yang di-Pertuan Besar and the Ruling Chiefs."

Reference was made in the lower court and before us to Article 71 of the Federal Constitution, and it was contended that in the light of that Article, the decision of the Council is decisive of this dispute and removed it from the jurisdiction of the courts. That Article provides that any dispute as to the title to the

succession as a Ruling Chief in Negri Sembilan shall be determined solely by such authorities and in such manner as may be provided by the Constitution of that State, and reads as follows:

"71.(1) The Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State, but any dispute as to the title to the succession as Ruler of any State shall be determined solely by such authorities and in such manner as may be provided by the Constitution of that State."

(2) Clause (1) shall, with the necessary modifications apply in relation to a Ruling Chief of Negri Sembilan as it applies to the Ruler of a State."

The learned judge held that the court has jurisdiction to adjudicate on this dispute because the election must be held in accordance with the custom of Jebebu, the Council's function relating to Malay Custom is merely advisory (the Council does not decide), there is no evidence so far from the minutes showing what was the custom that it took into account when "blessing" the new appointment, and that blessing it is not the same as approving or confirming it, which in any event it has no power to do.

The learned judge also held that the second limb of clause (1) of Article 71 of the Federal Constitution, meaning the words underlined, does not appear to be applicable to a Ruling Chief. With respect I do not agree. In my judgment, the effect of this Article 71 is that the Negri Sembilan Constitution may provide that a dispute as to the title to the succession as a Ruling Chief in Negri Sembilan may be determined solely by such authorities and in such manner as may be provided by it, and if that is done, the court's jurisdiction is ousted.

It was submitted before us that the State Constitution has provided that such a dispute should be determined solely by the Council established by Article XVI of that Constitution; thus ousting the court's jurisdiction. True the Council's function is expressed to be advisory, but it was submitted that it is an august body, consisting of the highest dignitaries in the State who are repositories of Malay adat and with easy access to experts on adat, and that if a disputed election such as this which should have been held in accordance with adat had been referred to it, it would not have blessed it if it found that it had contravened adat, and that if it blessed it it must have found that it did conform to adat; that it was far-fetched to imagine that the constitution-makers of the State intended that thereafter the court should have jurisdiction to re-open the subject and question its validity. And mention was made of the fact that the State Assembly had on February 13, formally "noted" the election of the 15th Undang and that he has been in receipt of his civil list allowances since the election.

I am of the opinion that while it is of course open to the Federal or State Constitution to oust the jurisdiction of the court, it must do so in clear language.

Suppose a vote on something is taken in the House of Representatives; the validity of the proceeding cannot be questioned in the court, because Article 63(1) of the Federal Constitution so provides. Suppose Mr. Speaker certifies that the steps which require to be taken before a money bill may be presented to the

Yang di-Pertuan Agong for his Assent over the objection of the Senate, have been taken; the validity of the certificate may not be questioned in the court, because Article 68(4) so provides. Or suppose a Member says in the House something that is defamatory; he may not be sued in court, because Article 63(2) expressly provides that he shall not be liable to any proceedings in any court in respect of anything said by him in the House. In all these instances, there are provisions clearly ousting the jurisdiction of the courts.

In my respectful judgment, there is nothing as clear as the above provisions in the Constitution, Federal or State, ousting the court's jurisdiction over a disputed election of an Undang, and I therefore agree with the learned judge that the court does have jurisdiction to adjudicate on this election — in the same way as the court has jurisdiction to determine the validity of the dismissal by the Public Service Commission of a public servant, when it is challenged.

As a public servant may not be dismissed without being first given a reasonable opportunity of being heard (Article 135(2)), and the court has jurisdiction to entertain and adjudicate on his complaint that he has been so dismissed, there being no provision in the constitution to oust the jurisdiction of the court, so in my judgment the court has jurisdiction to entertain and adjudicate on the complaint of a Tribal Chief of the luak of Jebebu that a new Undang of Jebebu has been elected contrary to the custom of the luak, there being no provision in the Federal or State Constitution ousting the jurisdiction of the court. To determine whether or not the complaint is justified, the court has first to ascertain what is the custom in Jebebu, and then apply it to the facts, and there is no question of the court interfering with or disregarding it. Whether or not the Undang has been validly elected is of course a delicate question, and a political question which is best solved by political means; but if the constitution and law require, as I think they do, that the matter be resolved by the court, then until the constitution has been suitably amended, the court has no alternative but to embark on the task as best as it can, though that will have the unfortunate effect of throwing the court into the political arena. So that courts are not turned into a political forum, I would rather that State constitutions be amended by the appropriate authorities, so that future disputes regarding succession are kept out of our way and decided by persons or bodies better equipped to do so.

Until then, I would with respect have dismissed this appeal with costs.

Appeal allowed by the majority.

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