

PEMILIKAN DAN PENTADBIRAN  
TANAH ADAT  
1800 - 1960

NADZAN HARON

NEGERI SEMBILAN  
GEMUK BERPUPUK SEGAR BERSIRAM

**PEMILIKAN DAN  
PENTADBIRAN  
TANAH ADAT  
1800 - 1960**

**NADZAN HARON**  
Arkib Sejarah Lisan  
Jabatan Sejarah  
Universiti Kebangsaan Malaysia

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

Cetakan Pertama 1997

Hakcipta Jawatankuasa Penyelidikan Budaya, Muzium Negeri,  
Negeri Sembilan  
dan  
Kerajaan Negeri Sembilan Darul Khusus

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**MENTERI BESAR  
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**MENYALURKAN PENJELASAN TERPERINCI**

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

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

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

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

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

Salam hormat,

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

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



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

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

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

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

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

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

A handwritten signature in black ink, appearing to read "Samad Idris".

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

Pengerusi

Jawatankuasa Penyelidikan Budaya Muzium Negeri,  
Negeri Sembilan Darul Khusus

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# Pengenalan

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

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

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

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

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

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

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

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

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

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

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

hal tanah pesaka.

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

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

Kedudukan seseorang itu sebagai ketua adat akan terjejas

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

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

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

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

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

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

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

8. Mohd. Isa Mahmud, *Adat Bersuku Cara Perpatih* (Seremban: 1936).
9. Dalam tahun 1909 ‘Customary Tenure Enactment’, telah diperkenalkan. Undang-undang ini adalah khas untuk pentadbiran tanah pesaka dimana sistem pentadbiran tanah mengikut Adat Perpatih itu dalam beberapa aspek telah dikekalkan.
10. Terdapat banyak kesan-kesan sosial yang buruk berlaku akibat perlaksanaan sistem pentadbiran sesudah kedatangan British ini. Di dalam tulisan ini cuma beberapa di antara kes yang difikirkan dapat dijadikan sebagai bahan untuk difikirkan bersama didedahkan.
11. CTE 1909 digubal untuk pentadbiran tanah adat dalam daerah Kuala Pilah. Undang-undang ini dikuatkuasakan dalam daerah Tampin adalah kerana sebahagian luak Johol termasuk dalam pentadbiran daerah Tampin dibawah penyusunan daerah pentadbiran yang dilakukan oleh Inggeris.

CTE 1926 - Undang-undang tersebut diluaskan ke daerah Jelebu di samping tujuan asalnya ialah untuk pentadbiran daerah Kuala Pilah. Undang-undang CTE Cap. 215 dikuatkuasakan cara resmi ke daerah Rembau dalam tahun 1949.

Ordinan Penyelesaian Harta Pesaka Kecil 1955 adalah bertujuan untuk mengatasi kelemahan-kelemahan yang terdapat dalam undang-undang CTE.

# Bab Lima

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## Kesimpulan

**SESUATU** sistem pentadbiran tanah itu perlu di sesuaikan dengan perkembangan sosio-ekonomi masyarakatnya. Ianya haruslah tidak bertentangan dengan kehendak perkembangan yang dilalui oleh masyarakat berkenaan dan dasar kerajaan yang memerintah. British mendapati sistem pentadbiran tanah yang ada dianggap tidak sesuai dengan bentuk pentadbiran yang mereka perkenalkan. Terdapat keperluan suatu sistem pemilikan tanah yang seragam dan sesuai dengan perkembangan ekonomi moden. Maka itu British telah memperkenalkan suatu sistem pentadbiran tanah yang baru bagi menggantikan sistem tradisional yang diamalkan. Dalam usaha untuk menyesuaikan dengan arus perkembangan ekonomi yang berlaku dan mengatasi masalah yang terdapat penggubalan undang-undang serta pindaan telah dilakukan masa ke semasa.

Undang-undang tanah yang terawal di perkenalkan bagi pentadbiran tanah di Negeri Sembilan ialah *Land Regulations* 1887. Undang-undang ini mewajibkan pendaftaran semua pemilikan tanah serta pengenalan sistem cukai. *General Land Regulations* 1889 yang dikuatkuasakan dua tahun kemudian mengiktiraf semua pemilikan bumiputera sebagai pemilikan sah mengikut adat tempatan. *Negeri Sembilan Land Enactment*, 1897 memberi peruntukan bahawa semua tanah pemilikan bumiputera didaftarkan dibawah nama pemilik berkenaan. Hakmilik tuan tanah keatas tanahnya tidak diakui sah sekiranya harta berkenaan tidak terdaftar diatas namanya. *Land Enactment*, 1903 memperkuatkan lagi hak pemilik keatas tanahnya dimana dijelaskan pemilik mempunyai hak kekal dan bebas untuk melakukan apa jua jenis transaksi serta apa jua kepentingan keatas tanahnya.

Pengenalan sistem baru ini bertentangan dengan adat dari dua segi. Pertama, pemilikan persaorangan dibawah sistem yang baru bertentangan dengan pemilikan terhad dibawah sistem adat.

Kedua, sistem pendaftaran itu pada zahirnya memperkuatkan hakmilik individu keatas tanahnya dan pemilik beranggapan bahawa ia berhak untuk melakukan apa jua urusan yang mungkin bertentangan dengan adat. Untuk mengatasi konflik ini suatu enakmen khas telah diperkenalkan demi untuk mengekalkan adat dalam urusan tanah. Namun itu enakmen ini dikuatkuasakan keatas tanah yang dapat dibuktikan bahawa tanah tersebut adalah pesaka yang diwarisi oleh anggota perempuan secara turun-temurun. Dengan adanya undang-undang tertulis ini secara tidak langsung telah menghadkan pemilikan individu keatas tanah yang sedia terdaftar di bawah namanya. Kedudukan tanah jenis ini yang kemudiannya didaftarkan sebagai 'tanah adat' kekal dibawah peraturan adat yang telah dijadikan sebagai undang-undang tertulis. Manakala kedudukan tanah yang tidak terdaftar sebagai tanah adat dalam keadaan tertentu pentadbirannya berasaskan peraturan adat dan ada pula yang ditadbirkan mengikut undang-undang biasa. Kedudukan peraturan adat ke atas tanah adat kekal dikuatkuasakan dibawah undang-undang yang tertulis. Manakala kedudukan peraturan adat keatas tanah yang tidak terdaftar sebagai tanah adat 'pesaka carian', peraturan ini sentiasa tercabar kerana sifatnya sebagai undang-undang yang tidak tertulis. Perlaksanaannya tergantung kepada budibicara pegawai tanah yang mentadbirkannya dan anggota adat yang berkaitan.

Dalam sistem Adat Perpatih peraturan adat sebenarnya adalah menyeluruh, ia tidak terhad keatas tanah yang didaftarkan sebagai 'customary land' saja, tetapi adat juga menentukan peraturan tertentu bagi semua harta tanah milik, anggota adat. Timbulnya masalah dalam pentadbiran kerana sikap anggota adat sendiri terhadap peraturan adat itu dan penakrifan pegawai tanah yang berbeza-beza keatas sesuatu peraturan yang tidak tertulis. Dalam sistem ekonomi moden dimana tanah adalah sesuatu komoditi kewangan yang terpenting seseorang itu mahu mempunyai hakmilik bebas keatas tanah yang terdaftar dibawah namanya. Dengan ini adat dilihat sebagai penyekat kepada keinginan tersebut. Maka itu didapati timbulnya masalah dalam perlaksanaan peraturan adat keatas tanah. Keinginan ini lebih jelas dilihat dimana peraturan adat yang menetapkan pesaka carian setelah diwarisi oleh anggota perempuan adalah dianggap sebagai tanah adat boleh dikatakan ditinggalkan langsung oleh masyarakatnya. Pemilik yang mewarisi pesaka carian ini tentu sekali tidak mahu mendaftarkan tanahnya sebagai 'tanah adat'.<sup>1</sup> Begitu juga dalam kes penyelesaian harta pesaka seseorang itu hanya merujuk kepada

peraturan adat apabila ia memikirkan bahawa penyelesaian mengikut peraturan adat itu lebih menguntungkannya. Seperti dalam penyelesaian harta Haji Pais, dimana sianak menuntut penyelesaian dibuat mengikut peraturan adat setelah ia gagal mewarisi keseluruhan harta peninggalan carian ibu-bapanya. Pada kebiasaan seseorang itu akan mengenepikan peraturan adat dalam apa jua urusan tanah yang tidak terdaftar sebagai tanah yang tertakluk kepada Enakmen Tanah Adat.

Bagi pegawai tanah pula mereka mempunyai takrif yang berbeza tentang kedudukan adat sebagai undang-undang tanah yang tidak tertulis. Terdapat kontroversi tentang Enakmen Tanah Adat Cap. 125 yang secara jelas telah menghadkan perlaksanaan peraturan adat keatas harta pesaka yang terdaftar sebagai 'customary land' saja. Lantas boleh ditakrifkan bahawa adat tidak lagi boleh dikuatkuasakan keatas tanah yang tidak terdaftar sebagai tanah adat seperti sebelum pengenalan 'Customary Tenure Enactment' 1909. Persoalan timbul samada tanah yang tidak terdaftar sebagai tanah adat boleh ditadbirkan mengikut peraturan adat. Cussen J. dalam kes tahun 1939 *Re Haji Mansur dec.*, berpendapat bahawa undang-undang tertulis tidak boleh mengatasi atau menggantikan adat yang sedia kukuh melainkan dengan pengistiharan resmi. Peraturan adat boleh dan harus diberi perhatian dalam mentadbirkan tanah dalam Daftar Mukim yang tidak terdaftar 'customary land'.<sup>2</sup> Pandangan ini adalah berdasarkan kepada pengiktirafan keatas adat sebagai undang-undang am 'comon law' yang tidak tertulis.

Terdahulu dari ini Mudie J. dalam *Re. Kutai v. Taensah* kes tahun 1934 berpendapat penyelesaian tanah yang terdaftar dalam Daftar Mukim sebagai 'tanah adat' adalah tertakluk kepada peraturan, adat. Manakala tanah yang tidak terdaftar sebagai 'tanah adat' penyelesaiannya adalah tertakluk kepada hukum faraid.<sup>3</sup> Takrif yang sama diberikan dalam dua kes berlainan pada tahun 1936 dimana Pedlon J dalam *Indun Binti Mat Zin v. Haji Ismail Bin Musa dan Ors.*, dan Raja Musa J. dalam *Re. Jeriah dec.* telah menyelesaikan kes-kes berkenaan mengikut hukum faraid kerana tanah yang dipertikaikan tidak didaftarkan sebagai 'customary land', walaupun ternyata bahawa tanah berkenaan adalah pesaka carian yang telah diwarisi oleh beberapa jenerasi perempuan.<sup>4</sup> Manakala dalam dua kes penyelesaian harta simati yang terdahulu dari ini iaitu dalam tahun 1920an Acton J. dalam *Re Dato Ngiang Kulop Kidal dec.* dan Burton J. dalam *Re Haji Pais dec.*, kedua-dua hakim ini memutuskan bahawa harta simati

harus diselesaikan mengikut undang-undang peribadi ‘personal law’ simati. Acton J. telah mengenepikan wasiat yang telah dibuat oleh Dato Ngiang Kulop kerana simati adalah anggota adat dan harta yang diselesaikan terletak dalam wilayah adat Rembau.<sup>5</sup> Begitu juga Burton J. dalam penyelesaian pesaka Haji Pais memutuskan bahawa adat perpatih itu adalah ‘personal law’ bagi anggota masyarakat adat Negeri Sembilan.

Terdapat banyak lagi kes terkemudian yang menimbulkan kontroversi, kesemua ini berpunca dari sikap anggota adat yang terlibat terhadap peraturan adat itu sendiri. Manakala pegawai British cuma menjalankan tugas untuk menegakkan keadilan dalam pertikaian pesaka anggota adat berkenaan. Malah usaha untuk mengekalkan adat dalam pentadbiran tanah adalah usaha pegawai British sendiri. Sehingga pada tahun 1949 contohnya dalam Anyam v. Intan, tanah yang dipertikaikan adalah tanah pesaka carian yang diwarisi oleh simati dari ibunya. Taylor J. mengeluarkan perintah bahawa tanah tersebut diselesaikan perwarisannya mengikut adat dan tanah berkenaan didaftarkan sebagai ‘tanah adat’.<sup>6</sup>

Dalam menegakkan keadilan pegawai tanah sering merujuk kepada adat walaupun tanah yang dipertikaikan bukan tanah yang tertakluk kepada Enakmen Tanah Adat. Dalam Minah v. Mat Dahan beberapa lot tanah carian laki-bini terdaftar dibawah nama sisuami [Mat Dahan] yang kemudiannya membuat urusan sulit menjual dan mlarikan wang jualan tersebut. Si isteri [Minah] mengetahui rancangan sisuami lantas memohon kepada PHT supaya namanya didaftarkan sebagai pemilik bersama keatas semua lot tanah tersebut. PHT telah mengeluarkan perintah supaya nama siisteri didaftarkan sebagai pemilik separuh bahagian keatas semua lot tanah tersebut. Perintah ini adalah mengikut peraturan adat ‘carian bahagi’. Pada pendapatnya jika seorang isteri yang masih belum diceraikan tidak boleh menuntut separuh bahagian haknya keatas harta carian seperti peraturan adat, seorang suami yang pembelit boleh menjualkan hak tersebut tanpa terlebih dahulu mendapat persetujuan siisteri.<sup>7</sup> Pegawai Tanah telah bertindak mengikut peraturan adat iaitu ‘harta carian laki-bini adalah hak kepunyaan bersama suami dan isteri’. Suami tidak boleh membuat sebarang pindahmilik walaupun harta ini terdaftar atas namanya seorang melainkan dengan persetujuan bersama siisteri.

Dalam Bedah v. Neman pula atas kematian siibu semua lot tanah pesaka simati diturunkan kepada anak perempuan pertama.

Manakala anak perempuan kedua tidak mewarisi harta tersebut kerana semasa penyelesaian dibuat ia mengikut suaminya yang berada di luar wilayah Rembau. Setelah genap dua belas tahun anak perempuan kedua telah kembali ke Rembau dan menuntut bahagian haknya. Sikakak tidak mahu menyerahkan hak siadik atas alasan tuntutan berkenaan dibuat selepas melebihi jangka waktu yang dibenarkan oleh undang-undang. PHT telah meluluskan tuntutan siadik kerana adat menjamin hak anak keatas harta pesaka ibunya.<sup>8</sup>

Dalam Re Munap & Salleh tiga lot tanah harta carian laki-bini adalah terdaftar dibawah nama suami. Pasangan ini mempunyai dua orang anak lelaki yang masih kecil. Siisteri telah meninggal dan kedua-dua anak tersebut dipelihara oleh adik perempuan simati. Apabila sisuami berkahwin lagi semua lot tanah tersebut telah dipindahkan keatas nama ibunya. Adik perempuan simati telah menuntut separuh bahagian harta tersebut sebagai pemegang amanah kepada anak-anak simati. PHT telah meluluskan tuntutan tersebut kerana kedua-dua anak simati adalah waris kepada harta carian ibunya dan mengikut adat adik perempuan simati adalah penjaga yang sah keatas anak-anak simati.<sup>9</sup>

Kes-kes yang dirujuk menunjukkan bahawa pengenalan sistem ekonomi moden dan perkembangan pelajaran agama telah mempengaruhi sikap anggota adat terhadap peraturan adat dalam pentadbiran tanah milik mereka. Mereka sering mengenepikan adat dalam apa juga bentuk urusan tanah mereka. Mereka hanya merujuk kepada adat sekiranya cara berkenaan lebih menguntungkan mereka. Usaha untuk mengekalkan adat dalam pentadbiran tanah datangnya dari pegawai British sendiri. British telah mewartakan sebahagian peraturan adat itu sebagai undang-undang tertulis yang kekal sehingga kehari ini. Sifatnya sebagai undang-undang tertulis menyebabkan ‘Customary Tenure Enactment’ itu adalah satu-satunya yang mengekalkan warisan tradisional dikalangan masyarakat Melayu Negeri Sembilan.

Sesuatu yang tidak tertulis itu tidak kekal untuk selamanya. Lambat laun ia akan hilang juga ditelan perubahan yang sentiasa mencabar. Sehingga kehari ini sebahagian besar peraturan adat perpatih itu telah diketepikan oleh masyarakatnya. Bahkan sebahagian yang tertulis itu juga sering tergugat dan tidak dipatuhi oleh anggota yang mendokongnya. Contohnya, CTE memberi peruntukan yang mengatakan bahawa pesaka carian setelah diwarisi oleh anggota perempuan boleh didaftarkan sebagai ‘tanah

adat'. Tetapi dari segi perlaksanaan rata-rata anggota adat tidak mahu mendaftarkan tanah berkenaan sebagai 'tanah adat'.

Peraturan adat dalam pentadbiran tanah yang kekal hanya berhubung tanah yang sedia terdaftar sebagai tanah yang tertakluk kepada enakmen tanah adat saja. Kekalnya peraturan ini kerana peraturan berkenaan telah diwartakan sebagai undang-undang tertulis. Manakala sebahagian yang tidak diwartakan sebagai undang-undang tertulis itu walaupun sering dirujuk oleh pegawai tanah dalam urusan terdahulu kini hampir tidak mendapat tempat lagi. Pada praktiknya peraturan adat bagi tanah yang tidak terdaftar sebagai 'tanah adat' tidak menjadi rujukan pegawai tanah lagi dalam urusan penyelesaian kes-kes yang timbul. Dalam penyelesaian perwarisan tanah demikian hukum faraid itu telah mengatasi adat. Manakala dalam urusan seharian penama yang terdaftar sebagai pemilik itu adalah orang yang berkuasa keatas apa jua urusan yang berkaitan tanpa sekatan adat atau undang-undang tertulis.

1. Haji Hussain v. Maheran dalam *Federated Malay States Law Report*, 1941, 18, adalah contoh delima yang dihadapi oleh seorang yang telah berjaya mewarisi kebun getah melalui penyelesaian pesaka simati mengikut peraturan adat. Tetapi setelah berjaya mewarisi tanah tersebut ia tidak mahu tanah tersebut didaftarkan sebagai tanah pesaka yang tertakluk kepada Enakmen Tanah Adat.
2. *Federated Malay States Law Report*, 1939, hlm. 73.
3. *Federated Malay States Law Report*, 1933, hlm. 34,304.
4. Dilapurkan dalam E.N. Taylor, "Inheritance in Negeri Sembilan", *JMBRAS*, 21, Pt. 2 (1948), hlm. 90.
5. Dilapurkan dalam E.N. Taylor, 'The Customary Law Of Rembau, *JMBRAS*, 7, Pt. 1 1929), hlm. 89.
6. *Malayan Law Journal*, 1948-1949, Supp. 13.
7. E.N. Taylor, 'The Customary Law Of Rembau', hlm. 99.
8. E.N. Taylor, 'The Customary Law Of Rembau', hlm. 173.
9. E.N. Taylor, 'The Customary Law Of Rembau', hlm. 133.

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## LAMPIRAN

Lampiran A - Lampiran ini ialah undang-undang untuk pentadbiran tanah negeri Selangor. Tujuan dimasukkan di sini kerana didapati undang-undang ini telah dijadikan sebagai model untuk penggubalan bagi negeri-negeri Melayu yang lain. Keistimewaannya ialah Sistem Torrens yang dicontohi dan undang-undang 'Customary Land' yang terkandung di dalamnya.

Lampiran B - Undang-undang ini ialah undang-undang yang awal bagi pentadbiran tanah daerah Sri Menanti (Kuala Pilah).

Lampiran C - Undang-undang ini khas untuk pentadbiran tanah dalam daerah Sri Menanti sahaja untuk menggantikan Land Regulation 1887.

Lampiran D - Undang-undang ini ialah undang-undang yang digunakan untuk pentadbiran tanah bagi (penyelesaian) pesaka orang-orang Melayu.

Lampiran E - Undang-undang yang digubal khas untuk pentadbiran tanah pesaka adat dalam daerah Kuala Pilah. Undang-undang ini kemudiannya dikuatkuasakan ke daerah Tampin.

Lampiran F - Undang-undang ini dikuatkuasakan ke atas semua tanah milik Melayu dalam Negeri Melayu Bersekutu termasuk juga tanah pesaka adat dan tanah-tanah kerajaan negeri yang disimpankan untuk kegunaan pertanian bagi orang-orang Melayu.

Lampiran G - Undang-undang ini ialah undang-undang tanah adat yang telah dikaji semula. Kuatkuasa undang-undang ini ialah keatas daerah Kuala Pilah, Tampin dan Jelebu.

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

Lampiran G2 -Pindaan keatas CTE Cap. 215.

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

## LAMPIRAN A

### REGULATION III. OF 1891

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

J.P. RODGER

Acting British Resident

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

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

#### PART I

#### INTRODUCTORY

1. This Regulation may be cited as "The Land Code, 1891" and is divided into parts as follows:
  - Part I - Introductory.
  - Part II - Town Lands.
  - Part III - Customary Land.
  - Part IV - Country Lands.
  - Part V - Leases and Licenses for other than Agricultural purpose.
  - Part VI - Provision respecting Mining.
  - Part VII - Demarcation and Survey.
  - Part VIII - Collection of Land Revenue.
  - Part IX - Trespasses and Penalties.
  - Part X - Miscellaneous.
2. All existing Land Regulations are hereby repealed, provided that the Resident on behalf of His Highness the Sultan and his successors in regard to any leases or agreements issued

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **PART III**

#### **CUSTOMARY LAND**

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

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

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

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

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

20. No right of any description shall be deemed to have been or shall be acquired by any person over any land to which this Part applies except the following:-

- (a) Rights created by a grant, lease or agreement made by or on behalf of the Government of Selangor.
- (b) Rights created or originating in any of the modes herein-after specified;
- (c) Rights legally derived from any right mentioned in Clauses (a) and (b) of this section.

21. Except as provided in Section 53 any person, being a Muhammadan, who has been without written authority for ten years continuously in possession of any agricultural land in respect of which the revenue due thereon (if any) to the State has been regularly paid, shall be deemed to be on the expiration of that period a customary landholder in respect of such land.

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

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

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

23. A customary land-holder shall be deemed to have a permanent, transmissible, and transferable right of the use and occupancy in his land subject to the provisions of this Part, and -
  - (a) To the payment of all such assessment as may, from time to time, be imposed in respect of customary land under this Regulations;
  - (b) To the reservation in favour of the Government of all mines and mineral products, and of all buried treasure, with full liberty to work and search for the same, paying to the customary land-holder only compensation for surface damage as assessed by the District Officer.
- Provided that it shall not be lawful for customary land to be transferred or transmitted to any person not being a Muhammadan, and every such transfer or transmission made to a person not being a Muhammadan shall be absolutely void.
24. Any customary land-holder, who for three consecutive years suffers his customary land to remain uncultivated, and the assessment thereon to remain unpaid, shall be held to have forfeited his status of customary land-holder in respect of such land.
25. At every District Office there shall be maintained a Register of Customary Lands in the form of Schedule B hereto, in which the District Officer shall enter the particulars of the lands held by every land-holder in the district.
26. Any person asserting that he himself or any other person through whom he claims, is or has become a customary land-holder in respect of any land may apply to the District Officer to record him as such in the Register of Customary

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

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

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

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

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

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

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

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

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

*H.C. RIDGES,*  
*Acting Government Secretary.*

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

State lands are divided into four classes:

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

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

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

**GENERAL**

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

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

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

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

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

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

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

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

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

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

### **GENERAL**

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

22. Maintenance of Record. - Every person succeeding to any proprietary right under Class II, whether by inheritance, purchase, gift or other form of transfer, shall notify the same immediately to the lembaga, for notification at the Land Office.
23. Penalty. - Any person neglecting to make the notification required by the preceding rule, will be liable to a fine not exceeding five dollars.
24. Transfer of Land. - Any person wishing to transfer his land shall do so by attending with the transferee, either personally or by duly appointed agent, at the Land Office of the district, and bringing with him the document of title (if any) under which the land is held. The chief officer, on receiving payment of the proper fees and any arrears of rent which may be due, will then register the transfer, and endorse a certificate of the same upon the document of title.

Any person claiming land by virtue of any other form of transfer, or by succession, must attend either personally, or by duly appointed agent, at the district Land Office, and produce the document of title under which he claims. Upon his satisfying the chief officer of validity of his claim, the document may be registered as in the preceding paragraph.

(Peraturan 25-29 adalah perkara yang berhubung dengan cukai tanah dan bayaran pendaftaran).

30. Special terms for the Encouragement of Agricultural and Mining Industries. - The foregoing rules are subject to modifications in special cases, notably in those of the first bona fide introducers of new agricultural industries or persons embarking capital for the development of mines.
31. Interpretation. - In these rules the term "chief officer" shall be held to include the chief British officer of the State and any magistrate, collector or district officer duly authorised by the Government of the State to carry out the provision of these rules.

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

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

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

E.W. Birch

Acting British Resident.

(18th June, 1897)

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

Short title and commencement.	1. This Enactment may be cited as the "Succession to Land Enactment, 1897", and shall come into force on the publication thereof in the government Gazette.
Interpretation	2. The following words and expressions shall in the Enactment bear the meanings hereby assigned to them, unless there be something in subject or context repugnant to such constructions.  "Collector" means the officer for the time being in charge of the land revenue and administration of a district;  'Court means the Residency Court'.
Procedure.	3. (i) Any person claiming to succeed to any proprietary right in the land of a deceased person, the value of which does not exceed five hundred dollars, may apply to the collector of the district in which the land is situated to make an or

der that the applicant is so entitled.

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

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

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

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

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

## LAMPIRAN E

## ENACTMENT NO. 17 OF 1909

## CUSTOMARY TENURE

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

*H. CONWAY BELFIELD,  
Acting British Resident*

*(1st November, 1909)*

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

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

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

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

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

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

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

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

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

unless

- (a) the same be executed in the presence of such local headman as aforesaid and of the Collector; and
- (b) the execution thereof by the parties and the assent thereto of such local headman be evidenced by the certificate of the Collector upon the face of the instrument that such execution and assent were made and given in his presence; and
- (c) such instrument be in conformity with the requirements of any rule made under Section 10 for the regulation of such instruments.

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

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

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

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

Appeal to Resident.

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

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

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

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

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

Prohibition of  
grant.

Rules

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

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

Effect of transfer  
on operation of the  
custom.

Record of cessation  
of operation of the  
custom.

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

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

**THE SCHEDULE****LIST OF TRIBES**

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

## LAMPIRAN F

### ENACTMENT NO. 15 OF 1913

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

ARTHUR YOUNG  
President of the Federal Council

(23rd December, 1913)

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

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

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

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

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

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

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

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

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

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

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

Declaration of Malay Reservation.

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

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

Alteration and revocation of

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

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Malay Reservations.	with the approval of the Ruler thereof in Council, by declaration in the Gazette.
	<ul style="list-style-type: none"><li>(a) alter the limits or boundaries of any Malay Reservation, or</li><li>(b) revoke any declaration made under Section 3, either as to the whole or any of the area therein referred to, or</li><li>(c) include in any Malay Reservation any land excluded therefrom.</li></ul>
Inclusion of alienated or State land.	Such declaration shall take effect in the manner provided in sub-section (iii) of Section 3.
Notice of Reservation.	<ul style="list-style-type: none"><li>5. Any alienated land or State land may be included in a Malay Reservation.</li><li>6. (i) On the declaration of a Malay Reservation and on the inclusion in any existing Malay Reservation of any land previously excluded therefrom notice thereof shall be forthwith served upon every person having a registered title to land within the area so declared or included or otherwise in lawful occupation of land therein.</li><li>(ii) Such notice may be served personally upon the person to whom it is addressed or may be served in any manner provided under the Land Enactment, 1911, for the service of notices thereunder; provided that no failure to serve or irregularity in the service of any such notice as is prescribed by this section shall affect the validity of the declaration to which the same relates.</li></ul>

Restriction on alienation.	7. No state land included within a Malay Reservation under this Enactment shall be sold, leased, or otherwise disposed of to any person not being a Malay.
Restriction on transfer of interest.	8. (i) No right or interest of any Malay in Reservation-land shall except in pursuance of a sale effected with the consent of the Ruler of the State in Council as in Section 10 provided, be transferred to or vest in any person not being a Malay; provided that nothing in this section contained shall be deemed to prohibit the leasing of Reservation-land to persons other than Malays for any a term not exceeding three years.  (ii) Notwithstanding anything contained in "The Powers of Attorney Enactment, 1912", and except in the case of powers of attorney valid within the Federated Malay States immediately prior to the commencement of this Enactment, no power of attorney whereof the donee or any donee is a person not being a Malay shall in so far as it relates to any right or interest of a Malay Reservation-land, be irrevocable.
Restriction on execution sales.	9. No right or interest of any Malay in Reservation-land shall be sold in execution of a decree to any person not being a Malay.
10. No right or interest of any Malay in Reservation land shall be sold at the instance of a chargee of such land without the consent of the the Ruler of the State wherein such land	Restriction charge sale.

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

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

Claim of charge with sale prohibited.

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

the value of the land.

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

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

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

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

Inscription  
document title for  
Reservations

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

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

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

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

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

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

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

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

Dealings contrary to Enactment void.

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

Decision of doubtful points by Ruler in Council

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

Funds for payment.

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

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

Application of the Land Enactment, 1911.

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

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

N.S.

lof 1926.

lof 1930.

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

N.S.O.C.

lof 1932.

lof 1934.

(1st. December, 1926)

Short title.

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

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

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

2. In this Enactment -

Interpre-  
tation.N.S.O.C.  
Law lof 1932

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

## Schedule B;

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

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

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

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

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

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

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

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

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

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

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

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

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

Male registered owners of customary land: temporary provisions.

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

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

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

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

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

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

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

Record of  
customary  
tenure in mukim  
registers  
N.S

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

1930.

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

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

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

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

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

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

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

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

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

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

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

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

Prohibition of grant.

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

Limited right of dealing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Claims to registration as owner.

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

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

Claims to registration by right of succession.

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

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

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

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

Claim to registration by right of succession.

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

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

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

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

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

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

Debts and contracts of deceased person

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

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

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

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

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

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

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

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

- (b) The date of the sale shall be not less than six months after the date of the order of sale.
- (c) The order of sale shall specify the amount due to the objector and if such sum is paid to him at any time before the sale the order of sale shall be cancelled and the land transmitted to the customary heir of the deceased.
- (d) The upset price shall be not less than the amount specified as due to the objector together with an estimated amount to cover the expenses of the sale and all costs,
- (e) Copies of the order of sale shall be posted on the land, at the Land Office and in such other places as the Collector may direct.
- (f) At the sale only the female members of the tribe of the deceased shall be entitled to bid. If no bids are forthcoming the Collector shall adjourn the sale. At the postponed sale all female members of the tribes included in Schedule B and no others shall be entitled to bid. If at such postponed sale no bids are forthcoming the Collector may at his discretion reduce the upset price.
- (g) Any sale under this sub-section shall

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

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

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

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

Provision for life-occupancy

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

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

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

(ii) The order of the Collector shall be in

the Form provided in Schedule H.

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

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

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

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

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

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

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

Failure of customary heirs.

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

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

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

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

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

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

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

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

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

Caveats.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Procedure on appeal.

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

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

Rectification of register.

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

## Procedure under section 17.

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

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

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

## Power to enforce attendance of witnesses.

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

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

any right to such land or interest in the same.

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

Registers of  
enquiries and  
appeals.

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

Registration of  
orders.

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

Solicitors not  
entitled to  
appear.

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

Interpretation  
Enactment.

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

Rules.

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

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

Exception of  
non-custodial  
estate

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

**SCHEDULE B****List of Tribes**

1. Biduanda (Waris and/of Dagang).	7. Tiga Batu. +
2. Batu Hampar. +	8. Tiga Nenek
3. Sri Melenggang	9. Paiah Kumboh
4. Tanah Datar.+	10. Anak Malaka
5. Mungkal	11. Anak Achih
	12. Batu Belang

- + Excluding the division known as 'Ayer Kaki pada Yam Tuan'.
- + Excluding the division known as 'Lengkongan Yam Tuan'.

**LAMPIRAN G1**

**CUSTOMARY TENURE (AMENDMENT)**

**ORDINANCE (1949) NO. 23**

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

(30th August, 1949)

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

Short title.	1. This Ordinance may be cited as the Customary Tenure (Amendment) Ordinance, 1949 and shall be read as one with the Customary Tenure Enactment of the State of Negri Sembilan, hereinafter referred to as the principal Enactment.
F.M.S. Cap. 215.	2. Section 2 of the principal Enatment is hereby amended by the insertion, immediately after the word 'Tampin' in the definition of 'custom' of the word, 'Rembau'.  3. Section 4 of the principal Enatment is hereby amended-  (a) by the deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council', and  (b) by the insertion, immediately after the word 'Jelebu' in line 3 of sub-section (i),
Amendment of section 2 of principal Enactment.	

Amendment of section 7 of principal Enactment.

Amendment of section 15 of principal Enactment.

of the word, 'Rembau'.

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

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

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

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

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

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

(d) by the deletion of the word 'he' wherever it occurs in line 10 and II and the substitution therefor of the words 'the Ruler in Council'.

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

and the following sub-section substituted therefor -

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

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

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

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

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

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

ber of the Committee'.

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

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

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

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

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

Amendment of  
section 16 of  
principal  
Enactment.

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

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

Amendment  
of section

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

17 of principal Enactment.

deletion of the word 'Resident' wherever it occurs and the substitution therefor of the words 'Ruler in Council'.

Amendment of section 18 of principal Enactment.

8. Section 18 of the principal Enactment is hereby amended-

(a) by the deletion of the word 'Resident' wherever it occurs in lines 1 and 2 and the substitution therefor of the words 'Ruler in Council';

(b) by the deletion of the word 'Resident' in line 9 and the substitution therefor of the words 'State Secretary for submission to the Ruler in Council'.

Amendment of section 19 of principal Enactment.

9.(1) Sub-section (i) of section 19 of the principal Enactment is hereby amended -

(a) by the deletion of the words 'the Resident' in line 2 and the substitution therefor of the words 'a Committee appointed by the Ruler in Council';

(b) by the deletion of the word 'Resident' in line 4 and the substitution therefor of the word 'Committee'.

(2) Sub-section (ii) of section 19 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the word 'Committee'.

Amendment of section 20 of principal Enactment.

10. Section 20 of the principal Enactment is hereby amended by the deletion of the word 'Resident' and the substitution therefor of the words 'Ruler in Council'.

Amendment of section 23 of principal Enactment.

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

Amendment of section 24 of principal Enactment.

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

Amendment of schedules to principal Enactment.

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

## **LAMPIRAN G2**

### **CUSTOMARY TENURE (STATE OF NEGRI SEMBILAN ORDINANCE (1952) NO. 33**

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

(13th August, 1952).

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

Short title.

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

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

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

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

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

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

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

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

Application  
of Part.

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

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

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

Interpretation  
FMS Cap. 215.

All tribal  
estates to be  
'small'.

Jurisdiction.

plies.

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

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

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

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

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

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

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

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

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

Principles of distribution.

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

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

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

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

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

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

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

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

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

#### Appeals.

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

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

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