

ADAT PERPATIH

MATRILINEAL SYSTEM BASED ON HUMANITY AND SIMPLICITY

A Study by Dr. Nellie S.L. Tan-Wong

Before one may study the constitution of Negeri Sembilan as a whole, one has to understand the origin of the small matrilineal communities of which the state's population is made up of. Clan descent does through women - a man is a member of his mother's clan until by marriage he is received into his wife's. Women may not travel; the husband settles in his wife's village - not the wife in the husband's. Exogamy is insisted on. This process has been practised from generation to generation.

The women of a family group are called the "perut", which constitutes a wealthy, powerful and united body, bonded together by the bond of a common descent, sharing a common tradition and owning all the land. Their husbands, the men of the community, are drawn from many different clans and villages, not united by ties of blood, and not owning any of the lands and houses. In such settlements, the position of women is an immensely strong one.

The Adat Perpatih, which is practised in Negeri Sembilan may be described as a communal system based on common justice. The highest qualities of the Adat Perpatih are its humanity and its extreme simplicity that brought its provisions within the knowledge of everyone. It embodies law, tradition and proverbial philosophy. If a man was wronged, he was indemnified by the wrong-doer's "wife's relations". If a man committed an offence in a foolish moment, he was not turned into a criminal - he compounded the wrong with the help of his "wife's relations". The quarrels of the community were settled by the elders - the "ibu bapa" - men who were connected by marriage with both disputants and who might be expected to temper justice with mercy. This communal system explains both why the law was humane and why it could afford to be humane. The women constituted a bond of relationship between one man and another, and gave to a settlement of the unity of a family with the "ibu bapa" as its head.

The Customary Law Of Rembau

Under the Adat Perpatih, ownership goes with actual tenure, i.e. the real owner of a land is the occupier and cultivator; the original owner who does not develop the land is entitled to a small allowance as compensation, **BUT** this ownership is qualified by one important condition: the land might only belong to women. No male in Rembau could

own it. Every man lived on his wife's land or on his mother's or sister's land. He cultivated the soil and was entitled to his maintenance out of the proceeds. Since the law of exogamy was strictly observed, every man had, sooner or later, to leave his own village and settle in the village of his wife. Marriage within the maternal clan, the "perut" was incest and punishable with death. A man always migrated; a woman never did. With the change of home, a man passed from the power of his mother's family into that of his wife's. His wife's relations then became responsible for him.

The rules of the Adat Perpatih of Rembau take us into an interesting journey of discovery - let us study it under four topics: Marriage, Categories of Property, Adoption and Charges over Land.

a) Marriage

In Rembau, Negeri Sembilan, marriages are of three kinds:

1. The capacity to marriage contract is strictly subject to the exogamy rule and invariably also to the monogamous rule.
2. The marriage is valid only upon registration by the Kadhi.
3. The marriage ceremony, which is similar to those in other states of the country, is in origin many centuries pre-Muhammadan, with significance long forgotten.

There is a Malay saying: "Nyawa, darah, waris yang punya; Rugi, laba, tempat semenda" which means: "Life and blood belong to the waris; loss and gain to the wife's family". These are expressions of the principle that during marriage, all the man's material interests are bound up with the wife's clan, though his own family continues to be responsible for his life and blood.

b) Categories Of Property:

All questions of property are strictly governed by the matrilineal custom. Acquired property is sharply divided into two classes:

1. "Carian Bujang" - property belonging to clan of each spouse before marriage.
2. "Carian Laki-bini" - property acquired during marriage

Each spouse may possess property acquired out-

side that particular marriage - such property is not joint but separate; each spouse continues to hold it on behalf of their respective clans.

"Harta Pembawa" means the personal estate of a married man, the property brought by him to the clan of his wife, into which he passes on marriage. This may include property of three kinds, viz:

- a) his own earnings as a bachelor, "carian bujang".
- b) his share of the earnings of a former marriage.
- c) any ancestral property of his own family in which he holds an interest.

"Harta Dapatan" means the separate estate of a woman, which includes three kinds of property, viz:

- a) her own acquisition as a spinster/divorcee/widow, "carian bujang" or "carian janda".
- b) her share of the earnings of a former marriage.
- c) her ancestral property. The implications of the "Harta Dapatan" are that the husband obtains possessions but not ownership; he has the enjoyment during marriage but has no power of disposal.

"Carian Bujang" is property acquired by an unmarried man from his own earnings and he has the power to dispose of it at will; property acquired by a man's parents and given to him in childhood is also "carian bujang", but he cannot dispose of this without the consent of his mother's family. On marriage "carian bujang" becomes "harta pembawa". In the event of a dissolution of the marriage, it is returned to the man or his "waris" but such dissolutions are subject to any claim for "untung" by the wife or her clan. Women, when divorced or widowed, may acquire property by their exertion and this is called "carian bujang" or "carian janda". On re-marriage, such property becomes "dapatan" and on death it is inherited by all her daughters equally. If the woman dies without any daughters, such property would revert to her "waris".

"Carian Laki-Bini", the property during married life, becomes the joint property of husband and wife. Such property is not subject to customary limitations but serves to protect the wife and children.

Upon dissolution of marriage, all properties of both husband and wife must be brought into account. All properties owned prior to marriage must be restored to each spouse; the wife's separate estate remains with her whilst the personal estate brought by the husband returns to him. The woman's

ancestral property remains, the man having no further interest in it, even if he had built a house on such property.

On the death of a married man, his "waris" can only recover the "harta pembawa"; the rest of his property remains with his widow alone or where there are children from that marriage; to the widow and such children. When the widow dies, such property goes to the children of that marriage, or if there are no issues from that marriage, to her daughters of another marriage, if any, failing which to the "waris" of the women.

On the death of a married woman, where there are no children, her clan recovers her "harta dapatan". If there are children from that marriage, the children have a right to maintenance and her property is then divided between widower and children, the proportions for which shall be decided and fixed by the two families and their clan chiefs, when they meet at the Hundredth Day Feast. In no case can the widower be the guardian of his young children; they must remain in the custody of their own clan.

All Ancestral Property belongs to the clan; it vests in the female members but they hold it as trustees for their clan rather than as owners. The primary duty of a holder of Ancestral Property is to conserve it in and for the clan. Consequently if she abandons it, her "waris" are entitled to take possession of it on behalf of the clan, but they must also accept any liabilities properly chargeable on the property and conversely, if any absent member of the clan returns to live permanently in Rembau, she may recover her proper share from her sister.

c) Adoption

Two definite rules are acceptable:

- (i) the degree of adoption is determined by the status of the adoptee before adoption, and the ceremonies actually performed, and
- (ii) a fully adopted child has all the rights and responsibilities of a natural child.

Adoption, once performed, is irrecoverable. On completion of the necessary ceremony, the adoptee assumes all rights and liabilities of a natural child, both direct and collateral, and becomes entitled to inherit all property to which a natural child would succeed, irrespective of whether it was acquired before or after the date of adoption. A fully adopted daughter becomes the sister and "waris" of her adopted mother's sons: she must cherish them whenever they are unmarried, and is heiress to their "harta pembawa". If an adopted daughter

has children, they become the grandchildren and heiresses of the adopted parents, even if the adoptee dies first.

d) Charges Over Land:

The traditional form of a charge over land in Rembau is a very simple contract which seems to have developed naturally in a community of simple smallholders. The transaction is essentially, one of a loan, for which the borrower provides security by allowing the lender to occupy and enjoy an ascertained portion of the borrower's land, until the loan is repaid. There is no interest. If the lender makes any profit out of the land, that is his remuneration. The lender is not accountable to the borrower for such profits.

If the loan is for a fixed period, the lender cannot claim repayment until the period has expired: however, the buyer may repay the loan earlier to the expiry date. If the borrower pays in cash the full sum of the loan, the lender must accept and vacate possession of the land, but in that case the lender is entitled to compensation for certain special damage, e.g. in the case of padi land, he cannot be deprived of the current season's crop.

Originally such contracts were oral but since 1928, it is possible to register the charge in which all the terms of the loan are stated.

Basis Of Origin

The Peninsular Malays are believed to have originally come from the Minangkabau highlands of Sumatra. Some came direct, bringing with them the pure Malay law of Minangkabau, the matrilineal "Adat Perpatih Pinang Sa-batang". Others came by way of Palembang and brought with them the patrilineal "Adat Temenggong". The ancient Malay kingdom of Palembang was under the influence of the old Hindu civilisation of Java. To these two schools, we must add a third: the "Hukum Shara" or Muhammadan law. No three systems could be more unlike one another. As stated earlier, the marriage ceremonies, for example, which are used throughout the Peninsular, are said to be in origin, partly Hindu and partly pagan and many centuries pre-Muhammadan; their significance has long been forgotten. The "Adat Perpatih" has been described as primitive but democratic, the "Adat Temenggong" as cruel and autocratic, whilst the "Hukum Shara" as theocratic and appeals to the educated class.

In comparison with the other two systems, the merits of the Adat Perpatih appear to be more outstanding. The Adat Temenggong seems faulty: it was crude in its legal theories, unmethodical in its pronouncements and cruel in its punishments. The

Hukum Shara law stands on a much higher plane of intelligence but was impractical in its inability to distinguish between crime and sin. Compared to the English law, which is notoriously slow, full of formalities and technicalities, costly and constantly being amended or modified, the Adat Perpatih is exceptionally interesting because it shows how the then primitive Malays overcame many difficulties which the English law has failed to surmount.

The people of Minangkabau succeeded in creating a jurisprudence so simple that the humblest village could understand it, so well known that no judge could excuse or defend an unjust decision, so little vindictive that it sought the interest of the injured party rather than the punishment of the wrong-doer, and so humane that it could dispense with mutilation, scourging, torture, slavery and imprisonment. In fact, throughout this old Sumatran adat, the message is: the worst use to which a criminal can be put is to cripple him, kill him, dishonour him with degrading punishment or to brutalise him by unproductive prison labour.



Biodata Of Writer

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NELLIE S. L. TAN-WONG was born in Labu, Negeri Sembilan. Her interest in Adat Perpatih is easily understood as she has given almost 25 years of voluntary service to women's organisations, locally and internationally. She is Managing Director of Wintrac, Malaysian Affiliate of Women's World Banking. She served a full term as Trustee of Women's World Banking, New York and was Honorary Regional Co-ordinator for WWB Asia and Pacific. Other international positions held by her are: Advisory Council Member, Global Fund for Women, a grantmaking foundation based in California, U.S.A. and Finance Chairperson, World YWCA, Geneva. In Malaysia, she is an Advisory Council Member of NACIWID, by appointment of the Rt. Hon'ble Prime Minister, a former National President, YWCA of Malaysia and Executive Committee Member, National Council of Women's Organisations. She heads her own firm of Certified Public Accountants and is Managing Director of several private limited companies. In 1976 she was awarded "Outstanding Young Person of Negeri Sembilan" by the Seremban Junior Chambers of Commerce International.