

# ISSUES OF CUSTOMARY LAND FOR ORANG ASLI IN MALAYSIA

Zainal Zulhilmi Zainal Abidin<sup>1</sup>, Seow Ta Wee<sup>1</sup>

Faculty of Technology Management and Business  
(FPTP)<sup>1</sup>

Faculty of Technology Management and Business  
(FPTP)<sup>2</sup>

Universiti Tun Hussien Onn Malaysia (UTHM)  
86400 Parit Raja, Batu Pahat, Johor  
[zainal\\_zulhilmi@yahoo.com.my](mailto:zainal_zulhilmi@yahoo.com.my)

Faculty of Technology Management and Business  
(FPTP)<sup>2</sup>

Universiti Tun Hussien Onn Malaysia (UTHM)  
86400 Parit Raja, Batu Pahat, Johor  
[tawee@uthm.edu.my](mailto:tawee@uthm.edu.my)

**Abstract** - The Human Rights Commission has received about 500 complaints related to the issue of customary land, along the 11 day consultation National Inquiry on Customary Land Rights conducted in the state. Development in rural areas has created conflict among land developers and local communities. The main objective of this paper is describing customary land issues that occur among indigenous people in Malaysia. This paper is based on literature analysis was conducted to explain the issues and problems of conflict of ancestral lands in Malaysia. Among the issues discussed were the cause of conflicts of customary land in Malaysia, the legal system of land management and measures to address the issue of settlement lands that happen. The findings are expected to gain knowledge on the issue of ancestral land that took place between the government and the community involved.

**Keywords** : Orang Asli, Conflict, Customary Land

## I. INTRODUCTION

“Orang Asli” term introduced by the Government of Malaysia to change the term 'abrogines' or Sakai used by the government during the colonial British administration, referring to a group that lived in the woods. The Malaysian Government has given the new title of the Aboriginal community in recognition of this as the earliest natives living in this country. Orang Asli in Peninsular Malaysia can be divided into 19 sub-groups. However, for the purposes of the Department Development of Aboriginal (JAKOA) has divided the sum of the last of three main groups, Negrito, Senoi and Proto-Malay, also called “Melayu Asli”. Division into groups is based on physical appearance, language and customs practiced by each group. Group and sub-group breakdown is shown in the table 1 below:

Table 1: Orang Asli group and sub-group in Malaysia

GROUP	SENOI	NEGRITO	MELAYU ASLI
SUB-GROUP	Temiar	Kintak	Temuan
	Semai	Kensiu	Semelai
	Che Wong	Jahai	Jakun
	Jah Hut	Batek	Kanaq
	Semaq Beri	Mendrik	Seletar
	Mah Meri	Lanoh	Orang Kuala

Source: JAKOA (2012)



Source: JAKOA

Based on the Act 134 ( Aboriginal Peoples Act 1954 ), "Orang Asli" is defined if :

i . His father was a clump of Aboriginal people , who speak indigenous languages and common in the life of Indigenous Aboriginal beliefs and customs and includes a descent through the male person;

ii . Any person of any race be adopted while still a child by a aborigine person who has been educated as a Native , common in the life of indigenous and aboriginal customs and beliefs is one of an aboriginal community ; or

iii . Child of any association between an aboriginal woman with a man of a different race , with a man of a different race, provided that the child was habitually speaks the indigenous language , prevalent in the Aboriginal way of life and the customs and beliefs of people original and still one of the indigenous peoples .

In short , the definition of indigenous peoples in accordance with Act 134 is the mother or father or both are indigenous , speaking in Aboriginal language , according to the Aboriginal way of life and believe in Aboriginal customs and beliefs " .

## I. ISSUE AND PROBLEMS

Land development undertaken by the government in the area of Aboriginal land has caused conflict between the developer and the local community . This situation has resulted in Aboriginal involved were left homeless and the search for forest resources for their livelihood. Torrens system practiced by Malaysia through the National Land Code 1965 only give importance to the land registered in the Land Registry, and the ancestral lands inherited from generation to generation is not included in the registration system under the land laws of Malaysia. State government authorities can take any land , including land occupied by Orang Asli as provided by the Land Acquisition Act 1960 ( Noor Ashikin , 2011 ) .

In Malaysia, the indigenous people are only considered as a tenant at will on the land inherited

and there is no title given to them by the Aboriginal Peoples Act 1954 ( Act 134 ) . Johor High Court in the case has been decided Adong bin Kuwau native rights to land should be decided according to local tradition , Adong only eligible for compensation for loss of life and non- value land. Recruitment and compensation issues taking ancestral lands in Malaysia is not in compliance with the Declaration of Indigenous Organizations of the United Nations in which the indigenous right to the lands , territories and resources and includes customs, traditions and their rights to land .

## II. METHODOLOGY

Literature review is an early stage in understanding this research. Researchers have examined the issues of conflict ancestral lands, particularly in Malaysia. Next, the researchers identify the problems that were causing issues occur. This was done to get an initial overview of the issue of native customary land conflicts at the national level with the issue of conflict of ancestral lands in the State of Johor and Selangor. Data are obtained from Tun Sri Lanang Library of Universiti Kebangsaan Malaysia, Library Gombak of Orang Asli Development Department, Johor National Parks Corporation and the Department of Indigenous Development in Mersing and Johor Bahru. The information obtained is in the form of educational materials such as books, articles, magazines, journals, thesis, newspaper and articles.

## III. FINDING

There are three major factor that cause the issues for customary land in Malaysia :

### A. Land Administration System in Malaysia

Basically, there are four sources of the country's land law that are customary law , Islamic law , English law and the National Land Code which is based on the Torrens system. National Land Code was first

formulated prior to independence and founded the law existing prior the Land Code in 1926 and has been updated and added some new parts and has been amended 30 times starting from 1968 up to the year 2008 ( Haji Salleh Buang, 2003) . Amendments are intended to ensure that the administration of land in Peninsular Malaysia to meet the needs of current policies and socio-economic development and the basic form and its contents remain intact. Now, the land legislation in Malaysia is divided into four main legislative that are National Land Code (Penang and Malacca ) Act 1963 which came into effect in the state of Penang and Malacca , the National Land Code 1965 which came into force in Peninsular Malaysia , Sarawak Land Code 1958 , which came into power in Sarawak and Sabah Land Ordinance , which came into power in the state . Any grant of land under the National Land Code and the Land is alienated using the Torrens system.

In the context of Malaysian legal system, Orang Asli native land refer to the aboriginal areas, aboriginal reserve and aboriginal inhabited places as defined in Section 2 of the Aboriginal Peoples Act 1954 (Act 134) is:

*“aboriginal area – means an aboriginal area declared to be such under this Act:*

*Aboriginal reserve – means an aboriginal reserve declared to such under this Act :*

*Aboriginal inhabited place – means any place inhabited by an aboriginal community but which has not declared to be an aboriginal area or aboriginal reserve”*

By JAKOA record in 2006 , residential and land cultivated by indigenous peoples are covering 138,861.43 hectares. It is divided into five categories as follows :

i . The land was gazetted as Orang Asli reserves Orang Asli or under Sections 6 and 7 of the 1954 Malaysian Aboriginal or old land law , namely covering 19,303.43 hectares.

ii . Land which has been approved by the state government as an area reserved for indigenous peoples but has not been enacted , the area of 28,932.277 hectares.

iii . JAKOA proceedings of land requested by the area reserved for indigenous peoples but has not been approved by the state government of covering 79,715.53 hectares.

iv . Residential land by indigenous peoples but is not approved for some reason like Simpan Kekal Forest Reserve , Water Catchment Reserve, National Parks and Wildlife Reserve is an area of 9,873.04 hectares and

v . Property of indigenous person covering 644.17 hectares totaling 561.16 hectares of agricultural land and 83.01 hectares for residential areas.

### *B. Customary Land Conflicts*

In case Adong bin Kuwau & others v. State of Johore [ 1997 ] 1 MLJ 418 , the land which has been the home and their homes have been taken for the construction of the dam. Once a case is referred to court , Johor Baru High Court ruled that Aboriginal rights to land must be respected , and ordered the Johor State Government to pay compensation to the community. Aggrieved by this decision , the Johor State Government has appealed to the Court of Appeal , where the appeal is finally dismissed : see [ 1998] 2 AMR 1233. In its decision , the Court of Appeal stated that Aboriginal rights recognized include the right to remain on land tingal long didukui by their ancestors , and this right is not lost or removed by modern law . In case Sagong bin Tasi & Ors v. 6 . Selangor State Government [2002 ] 2 AMR 2028 , Aborigines were expelled from their area in Kampung Bukit Tampoi , Dengkil , Selangor . Their land is required to build part of a highway leading to the airport and the Court has held that the right of indigenous peoples to their land , including the right to move freely on their land , without being hindered or interrupted , and for a livelihood from the land ( Haji Salleh Buang, 2003) .

In addition, the protection of Aboriginal reserve land can be easily undone by the State Authority as state in Aboriginal Act . This situation is contrary to Clause ( 85 ) ( 5 ) of the Constitution of Malaysia for Aboriginal reserve land is federal land , where cancellation is only possible with the consent of the Federal Government. State Authority may choose not to make a declaration of Aboriginal reserves and

authority to determine eligibility for Aboriginal living permanently in the area of Aboriginal reserves . This situation can lead to problems of interpretation error or abuse of these qualifications and can affect Aboriginal reserve land . The word ‘may’ also mean that the provisions of this Act is to allow and do not require the protection of Aboriginal land reserves allow it to be withdrawn at any time and cause the loss of Aboriginal land and whatever there is in the area of the reserve. Section 12 of the Act there is also mention of compensation for trees and crops cultivated by indigenous peoples but again words “may”not guarantee payment of benefits because it is determined ultimately by them. ( Anthony Williams-Hunt , 2005) .

### C. Legal Situation of Native Land

Article 13 under Malaysian Constitution 1957 state that no person may be deprived of property in accordance with law and no law may provide for compulsory acquisition or for the use of property without adequate compensation. With the reference to the clause of the land acquisition by the Federal Government, Article 83 sets out detailed procedures for land acquisition and compensation as stipulated by the Malaysian Constitution 1957 :

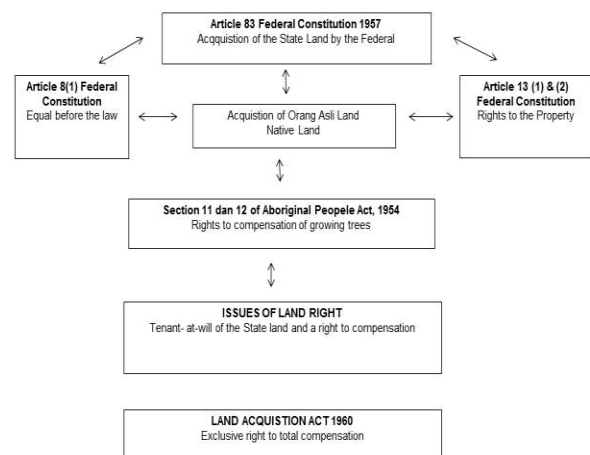
*Article 83(1)- ‘If the Federal Government is satisfied that land in the state, not being alienated land is needed for federal purpose, that government may, after consultation with the State Government, require the State Government, and it shall be the duty of that Government, to be caused to be made to the Federation Government may direct, such grant of the land as the Federal Government may direct’*

*Article 83(5)- ‘The foregoing provisions of this Article (except Clause (3) ) shall apply in relation to alienated land as they apply in relation to land not being alienated land, where a requirement is made under that clause, it shall be duty of the State Government to cause to be acquired by agreement (private treaty) or compulsorily.*

Therefore, the Orang Asli native land acquisition falls under Article 83(1) due to the status of Orang Asli lands as being un-alienated in nature. In contrast, by using the power contained in Land Acquisition Act 1960, the government can only acquire

alienated land, land under Application Approved and land under Registry Holder, for public purposes with adequate compensation as determined under Schedule 2 of the Act. Adequate compensation as stated under the provision of Article 13(2) of Federal Constitution refers to the amount of compensation which is decided, considering all principles stated under the First Schedule of the Land Acquisition Act 1960.

Article 8(1) of Federation Constitution,1957 states that ‘all person are equal before the law and are entitled to equal protection of the law’. This means that Orang Asli also have the same protection as other citizens of Malaysia and, they are entitled to adequate compensation when their land is required by the government. Although the State Authority power to take possession of a private land comes through Land Acquisition Act 1960, the same legislation does not given an acquisition for Orang Asli land. In the case of Orang Asli land, the power to acquire is extracted from Article 83(1), Article 13 and Article 8(1) of Federal Constitutionand the Aboriginal Peoples Act, 1954. The law does not allow the authority to violate one right’s onto their private properties, and this should apply to Orang Asli property rights as well. An acquisition of Orang Asli land can be summarised as shown :



Source :Anuar Alias, 2011

## CONCLUSION

Indigenous Declaration reflects the growing recognition of access to land is often a critical problem for Aboriginal to enjoy sustainable life . Acquisition of access to land , either through formal institutions, informal, customary or otherwise necessary for Indigenous communities to earn a living and is a key element in sustainable development . The problem of land ownership is often a contributor to food insecurity , limited livelihood opportunities , and poverty . Security of access to land should be considered in the course of development, especially in the rural areas . This requires the cooperation of all parties, including from the government in addressing problems related to land ownership even in the early stages of rural development projects to be executed..

In the context of Malaysia's Orang Asli , the indigenous peoples are often seen as a dropout and did not want to accept the change to a more modern life . This situation is contrary to the requirements of Aboriginal and they are not directly involved on the development of land to be made to their locality. Despite the act that protects the interests of indigenous peoples in the country, but there are still some weaknesses such as the provisions of the Aboriginal reserves and government oeh compensation for their crops destroyed as a result of the development of the settlement area of origin.

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