

**LAND TENURE IN PENINSULAR
MALAYSIA AND THE PHILIPPINES: A
COMPARATIVE PERSPECTIVE**

BY

**SITI MARYAM MALINUMBAY S.
SALASAL**

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ABSTRACT

Both Malaysia and the Philippines have experienced waves of aggression under the colonial rule. The Philippines had the worse one. The changes that swept the Malay Peninsula and the Philippine archipelago have had a lasting effect. It affected the political state of both countries and turned in a new millennium. The new laws introduced under the aegis of the new master have eroded and affected the way of lives of the local inhabitants.

The changes undeniably were aimed to develop the newly subjugated States, but it only served the purpose of those unscrupulous individuals who understand the law and had worked to the disadvantage of those who did not.

This thesis deals with the land tenure in Peninsular Malaysia and the Philippines. It is a comparative perspective. It is designed to investigate the development of land laws and its tenure. Also it seeks to study the implication of the laws brought about by the socio-economic and political changes as a result of the colonial intervention.

It is hoped earnestly that the present study makes a significant contribution in understanding the intricacies of land tenure and the laws pertaining thereto. It is also hoped to shed and bring new light to the students of land law and for policy makers to study the law carefully and call for amendments where defective parts need to be remedied.

In this study the writer first of all takes the descriptive and historical approach since an account of the past development is necessary for a better understanding of the basic organisation and structure of the present system, its characteristics and problems. The data used in the discussions were

gathered through library research, interviews, consultations and discussions with the authorities in the subject. Secondary sources were used too. Comparative juristic analysis of the system accompanied by its underlying concepts and principles was given due attention. English law in the field of land law is constantly referred to in some of the chapters. This is due to the fact that the Malaysian system of land law is historically the product of the British rule. Indeed, the bulk of the substantive land law was introduced upon a presumed level of English notions and principles.¹

The study concluded that in Peninsular Malaysia, the National Land Code, 1965, although it stipulates that all matters relating to land tenure and incidents thereto are provided therein, however, there is no particular provision that covers the ancestral lands of the Orang Asli. In the Philippines, in theory, the ancestral domain was recognised. The Ramos administration, took a step forward introducing the Land Code of the Philippines, House Bill No. 3963² which among other things stipulates the rights of the cultural communities to their ancestral domain. This would be a milestone for the cultural minorities in their quest for a truly and real recognition in the mainstream.

¹ David Wong, Tenure and Land Dealings in the Malay States, Singapore University Press, Singapore, (1975)p. 2.

² Authored by Hon. Yap and Hon. Paras. Another Bill calling for the extension of the period for members of the cultural communities to perfect their titles to ancestral occupied by them and for other purposes is being tabled at the House of Representatives through House Bill No. 8604 introduced by Congressman Jose T. Ramirez.

ملخص البحث

لقد تعرضت كل من ماليزيا والفليبين للعديد من محاولات الاعتداء تحت الحكم الاستعماري، وقد شهدت الفليبين اقصى هذه المحاولات. والتغيرات التي عصفت بجزر الملايو وأرخبيل الفليبين تركت كذلك اثارا باقية. وأثرت على الوضع السياسي لكلتا الدولتين على كل المستويات تأثيرا بالغ المدى على السكان المحليين.

لاشك أن هذه التغيرات استهدفت أساسا تطوير هاتين الدولتين في ظل السيطرة الاستعمارية ولكنها خدمت اهداف فئة من المتفعين الذين يفهمون القانون وألحقت الضرر بالذين لا يفهمونه.

تناول هذه الدراسة حياة الاراضي في جزر ماليزيا والفليبين من منظور مقارن وتبحث في تطور قوانين الاراضي وحيازتها وكذلك تطبيق هذه القوانين التي نتجت عن تغيرات اجتماعية واقتصادية وسياسية التي رافقت تدخل الاستعمار.

المأمول أن تساهم هذه الدراسة في فهم تفاصيل حياة الاراضي والقوانين المتعلقة بها وتلقي أضواء جديدة تساعد دارسي قوانين الاراضي وصانعي القرارات لدراسة القوانين بدقة والدعوة الى تعديلات الاجزاء التي تحتاج الى إصلاح.

اتبعت الباحثة في دراستها الاسلوب الوصفي التاريخي لأن البحث في الخلفية التاريخية ضروري لفهم أفضل للمنظمات الاساسية وبنية النظام الحالي وخصائصه ومشكلاته. وقد تم جمع البيانات المستخدمة في هذه الدراسة من خلال البحث المكتبي ومقابلات ومناقشات مع المتخصصين في الموضوع إضافة الى استخدام مصادر ثانوية.

وقد عنيت الباحثة بتحليل القانوني المقارن للنظام والمبادئ والمفاهيم التي تنضوي تحته. وتم الرجوع الى القانون الانجليزي في مجال قانون الاراضي في بعض فصول الدراسة نظرا لأن النظام الماليزي في قوانين

الاراضي هو تاريخيا نتاج القانون البريطاني. في حقيقة الأمر ان الجزء الرئيس من قانون الاراضي الاساس قد وضع وفق الافكار ومبادئ القانون الانجليزي¹

استنتجت الدراسة بأنه على الرغم من أن القانون الوطني للأراضي في جزر الملايو قد اشترط توفر جميع الامور المتعلقة بحياسة الاراضي وملاساتها، إلا أنه لا يوجد شرط خاص يغطي مجال الاراضي التي توارثها السكان الاصليون. وفي الفيليبين تم الاعتراف بحق وراثه الاراضي نظريا. وقد قدمت إدارة راموس قانون الاراضي الفيليبينية، القانون الداخلي رقم ٢٣٩٧٣ الذي يضمن حقوق الجماعات الحضارية فيما توارثوه عن أجدادهم. وهذا من شأنه أن يصبح الركن الاساس للأقليات مطالبتها باعتراف حقيقي وواقعي بحقوقها.

¹ ديفيد ونج، حيازة ومعاملات الاراضي في الولايات الملايوية، مطبعة جامعة سنغافورة، سنغافورة، ١٩٧٩، ص: ٢١٠.

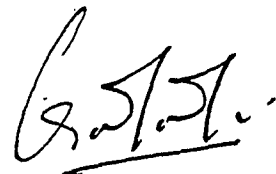
^٢ قدم هذا القانون الموقر ان ياب وباراس. وهناك قانون اخر يدعو الى تمديد فترة اعضاء الجماعات الحضارية لاتمام حقوقهم في ارضي اجدادهم التي سكنوها ولأغراض أخرى تم درجها في مجلس النواب خلال القانون الداخلي رقم ٨٦٠٦ وقدم بواسطة عضو مجلس البرلمان جوس ت. راميرز.

APPROVAL PAGE

The thesis of Siti Maryam Malinumbay S. Salasal has been examined and is approved by the following:



AHMAD MOHAMED IBRAHIM (Supervisor)



AZMI HARUN

NIK MOHD. ZAIN BIN NIK YUSUF (External Examiner)

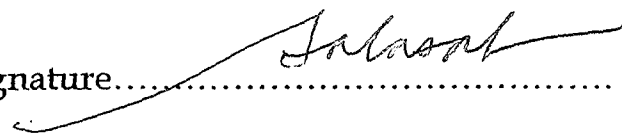


HARUN HASHIM (Chairman)

DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

SITI MARYAM MALINUMBAY S. SALASAL

Signature.....

Date.....14 Sept. 1998

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Kulliyah of Laws

Hja. S. Maryam Malinumbay S. Salasal

International Islamic University Malaysia

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³ House Bill introduced by Honorable Renato A. Yap and Hon. Jerome V. Paras.