



**RIGHTS AND INTERESTS IN LAND AMONG  
THE ORANG ASLI IN THE STATE OF PAHANG:  
A CASE STUDY**

**BY**

**HAMIMAH BINTI HAMZAH**

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**Ahmad Ibrahim Kulliyah of Laws**

**International Islamic University  
Malaysia**

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## ABSTRACT

This research examines the changes in the customary land tenure among the *Semai* community in the state of Pahang. The case study shows that despite the locality, the *Semai* customary land tenure has gradually changed due to the laws and policies introduced by the government. Chapter 1 introduces the research methodology, literature review and historical background of the study. Chapter 2 is a general description of Orang Asli history, social, economic and political institutions. It also explains the changing relationships of Orang Asli and the non Orang Asli communities during various periods starting from the Malay Sultanates through colonial times until Independence. Chapter 3 discusses the positions of the Orang Asli in the Malaysian legal framework with reference to land rights. Chapters 4 and 5 examine the changes of the customary land tenure in the *Semai* community. The concept and classification of land in the *Semai* community is also discussed in these chapters. Chapters 6 and 7 study the *Semai* rights and interests in land. The modes of protecting the *Semai* land rights and claims over the land are explained in these chapters. Chapter 8 concludes the research with suggestions to improve the tenure system. For example, the Aboriginal Peoples Act 1954 (Revised 1974) should be reviewed especially provisions relating to the security of Orang Asli customary land tenure. Under the Act, the Orang Asli are considered only as tenants-at-will on their customary lands. As tenants-at-will, the Orang Asli have no security on their customary lands. In addition, this has decreased the Orang Asli's initiative to develop the customary lands. Therefore, provisions for the Orang Asli permanent land tenure through communal titles should be incorporated under the Act to enable the Orang Asli to develop their customary lands.

## خلاصة البحث

هذا البحث هو دراسة حالة تتناول التغييرات الطارئة على الأعراف المتعلقة بملكية وحياسة الأراضي عند مجموعة السيمامي التي تقطن ولاية بهانغ بماليزيا. كشفت هذه الدراسة أن هذه الأعراف قد بدأت تتغير تدريجياً نسبة لتأثير القوانين والسياسات الحكومية . يتناول الفصل الأول منهجية البحث ومراجعة الأدبيات والخلفية التاريخية للدراسة. أما الفصل الثاني فهو وصف عام لتاريخ مجموعات الأورانغ أصلي "السكان الأصليين" التي تتفرع منها مجموعة السيمامي. ويتعرض الفصل أيضاً لمؤسساتهم الإجتماعية والإقتصادية والسياسية كما يتناول أيضاً بالشرح علاقات مجتمع الأورانغ أصلي مع غيرهم من الاثنيات منذ عصر السلطنة الملايوية مروراً بعهد الأستعمار وحتى عهد الإستقلال. وفي الفصل الثالث يناقش البحث وضع مجموعات الأورانغ أصلي في إطار النظام القانوني الماليزي والإشارة بصفة خاصة إلى حقوقهم في ملكية وحياسة الأراضي. ويبحث الفصلان الرابع والخامس المتغيرات التي طرأت على الأعراف المتعلقة بملكية وحياسة الأراضي عند مجموعة السيمامي. وفي هذين الفصلين يتناول البحث أيضاً بالنقاش مفهوم الأرض وتصنيفها عند المجموعة . أما الفصلان السادس والسابع فيتناولان حقوق ومصالح السيمامي في الأرض. ويتعرضان كذلك بالشرح لسبل حماية هذه الحقوق. وفي الختام يقدم الباحث عدداً من المقترحات لترقية وتنمية طرق ملكية وحياسة الأرض بما في ذلك تعديل قانون 1954 تعديل (1974).

## **APPROVAL PAGE**

The thesis of Hamimah Hamzah has been approved by the following:

---

Hunud Abia Kadouf  
Supervisor

---

Sharifah Zubaidah Syed Abdul Kader  
Internal Examiner

---

Hood Salleh  
External Examiner

---

Ramle Abdullah  
External Examiner

---

Nasr Eldin Ibrahim Ahmad  
Chairman

## DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for other degrees at IIUM or other institutions.

Hamimah Hamzah

Signature.....

Date .....

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Sabah Land Code 1930 (Cap.68).  
Sarawak Land Code 1958 (Cap. 81).  
Protection Of Wild Life Act 1972 (Act 76).

## LIST OF ABBREVIATIONS

AC	Appeal Cases
AIR	All Indian Report
All ER	All England Report
ALR	Australian Law Report
App Cas	Appeal Cases
BAKAS	<i>Bekalan Air Kesihatan Alam Sekitar</i> (Water Supply and Environment Cleanliness).
CJ	Chief Justice
CLJ	Current Law Journal
CLR	Commonwealth Law Reports
DLR	Dominion Law Report
Ed.	Edition
Edit.	Editor
<i>et.al.</i>	( <i>et.alia</i> ) and others
FELCRA	Federal Land Consolidation and Rehabilitation Authority
FELDA	Federal Land Development Authority
FMS	Federated Malay States
HSC	Higher School Certificate
J	Judge
JAIP	<i>Jabatan Agama Islam Pahang</i> (Department of Islamic Pahang)
JAKIM	<i>Jabatan Kemajuan Agama Islam Malaysia</i> (Department of Islamic Development Malaysia)
JHEOA	<i>Jabatan Hal Ehwal Orang Asli</i> (The Department of Orang Asli Affairs)
JKKK	<i>Jawatankuasa Kemajuan dan Keselamatan Kampung</i> (Committee for Village Development and Security)
JMCL	Journal of Malaysian Comparatives Laws
JSMBRAS	Journal of the Straits Malaysian Branch Royal Asiatic Society
KEMAS	<i>Kemajuan Masyarakat</i> (community development)
KESBAN	<i>Keselamatan dan Pembangunan</i> (Security and development)
Km	Kilometers
LCE	Lower Certificate Education
lit.	Literally
LP	Lord President
MBRAS	Malaysian Branch Royal Asiatic Society
MCP	Malayan Communist Party
MLJ	Malayan Law Journal
MPAJA	Malayan People Anti-Japanese Army
NZLR	New Zealand Law Report
PERKIM	<i>Pertubuhan Kebajikan Islam Malaysia</i> (Malaysian Islamic Welfare Organization)
POASM	<i>Persatuan Orang Asli Semenanjung Malaysia</i> (Peninsular Malaysia Association of Orang Asli)
PPRT	<i>Program Pembangunan Rakyat Termiskin</i> (Hard- Core Poor Development Programme)



RM	Ringgit Malaysia
RPS	<i>Rancangan Pengumpulan Semula</i> (Regroupment Scheme)
RTM	<i>Radio Televisyen Malaysia</i> (Malaysian Radio Television)
SAS	Special Air Service
SCR	Supreme Court Reports
TNB	<i>Tenaga Nasional Berhad</i> (National Energy Board)
UMNO	United Malays National Organization
US	United States
Viz	Videlicet (Lat) namely
Vol.	Volume

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.0 BACKGROUND OF THE STUDY

The introduction of the Torrens System by British administrators challenges the Orang Asli concept of property, especially land.<sup>1</sup> Customarily, the Orang Asli exercised usufructuary land right limited to their territory. At this stage, the concept communal land tenure was apparent.<sup>2</sup>

However, when the British intervened in the Malay states, the Residential system was introduced.<sup>3</sup> Under the system, the Sultan was required to have a British Resident whose advice he must accept except on matters relating to religion and custom.<sup>4</sup> The system ensured that the British Residents had the authority to control the natives' customary tenures.<sup>5</sup>

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<sup>1</sup> In 1857, Sir Robert Torrens in South Australia introduced the Torrens system of registering land titles vide the Real Property Act 1858 (South Australia). It was to overcome the difficulties and uncertainties of the then existing English deed registration system. In this system, the register is the key to the title. The register reflects all the facts material to the registered owner's title in the land. It refers to the name of the proprietor, the land that has been alienated, its area and location, its survey plan and boundary limits. This system of land registration was widely used in the British colonies and later adopted for use by most former colonies after independence, see; Das, S. K, *The Torrens system in Malaya*, Malayan Law Journal, 1963, at 25-27. The crucial aspect of this system is that once a title is issued over a piece of land that title becomes indefeasible. It can only be defeated under special circumstances. For details explanation on the concept of indefeasibility of title, see; Wong, David S.Y., *Tenure and land dealings in the Malay States*, Singapore University Press, 1975, at 322-325. The Torrens system also allowed the British administration to grant land titles or lease land to private individual and company. See; Clearly, Mark and Eaton, Peter, *Tradition and reform: Land tenure and rural development in South-East Asia*, Oxford University Press, 1996, at 34.

<sup>2</sup> Williams-Hunt, Anthony, "Land conflicts: Orang Asli ancestral laws and state policies," in Razha Rashid (ed.), *Indigenous minorities of Peninsular Malaysia: Selected issues and ethnographies*, (Kuala Lumpur: Intersocietal and Scientific Sdn. Bhd., 1995), at 37.

<sup>3</sup> Sadka, Emily, *The protected Malay states 1874-1895*, University of Malaya Press, 1968, at 47-48. The Residential system came into action after the Pangkor Treaty of 1874. The system was extended over other protected Malay states (Selangor and Negeri Sembilan in 1875, and Pahang in 1887). In general, the British were willing to acknowledge that the Orang Asli were dependent subjects of the Malay Sultan.

<sup>4</sup> Maxwell, W. G, and Gibson, W. E, *Treaties and engagements affecting the Malay States and Borneo*, Truscott and Son, 1924, at 28-30.

<sup>5</sup> Wong, n. 1 at 23.

Without a new land system, only natives viz; Malays and Orang Asli could claim 'ownership' of the land according to their respective customs.<sup>6</sup> Therefore to overcome this, a new land system was introduced. The new land system was based on Maxwell's theory that the traditional Malay rulers were the sole owners of all lands in the state.<sup>7</sup> On the contrary, Muhammad Kamil<sup>8</sup> asserts that in reality the Sultan possessed no legal rights over the lands but enjoyed an administrative right of supervisory oversight of the land for the benefit of the whole community.

However, in 'assisting' the Sultan in the administration, the British Residents transferred the rightful land ownership to the Sultan.<sup>9</sup> In addition, the British Residents caused the Sultan to issue proclamations giving rights to foreigners to own land which was not available under the customary tenure system.<sup>10</sup> Later, in the 1880s under the governorship of Sir Frederick Weld, Land Commissioner William Maxwell decided to adopt the Torrens system of land tenure in the Malay States.<sup>11</sup>

The system was designed to provide registered title to land. The system which had replaced the Malay customary land tenure, their conception of land usage and 'ownership,' was incorporated with the Malay peasants and Sultans, excluding the Orang Asli.<sup>12</sup> Thus, permanently cultivated land was registered and titled. However, uncultivated land was unregistered land and reverted to the colonial powers and Malay Sultanate. Unfortunately, Orang Asli lands were deemed to be the Sultan's lands and

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<sup>6</sup> Wan Hashim, *Peasants under peripheral capitalism*, Universiti Kebangsaan Malaysia, 1968 at 72.

<sup>7</sup> Maxwell, W. E., "The law and customs of the Malay with reference to the tenure of land", vol.13 (1884) *Journal of the Straits Malaysian Branch Royal Asiatic Society* at 75-200. For further arguments of the theory see; Kadouf, H. A., "The traditional Malay Ruler and the land: Maxwell's theory revisited," [1997] *1MLJ* at 121-129; Wong, n.1 at 8-20.

<sup>8</sup> Muhammad Kamil Awang, *The Sultan and the constitution*, Dewan Bahasa dan Pustaka, 1998, at 22.

<sup>9</sup> Mohideen Abdul Kader, "Land alienation: The need for transparency and accountability," in Consumer' Association of Penang (ed.), *Tanah air ku: Land issues in Malaysia*, (Penang: Consumers' Association of Penang, 2000), at 12.

<sup>10</sup> Wong, n.1 at 24.

<sup>11</sup> Means, Gordon. P, "The Orang Asli: Aboriginal policies in Malaysia," vol. 58(4) (1985) *Pacific Affairs*, at 639.

<sup>12</sup> *Ibid.* at 640.

treated as if they were unoccupied.<sup>13</sup> This caused Orang Asli to be landless, except as wards of the Sultan and the colonial government.

To this effect, Means<sup>14</sup> warned that the new land policy would adversely affect the Orang Asli territorial areas. Apparently, his warnings were proven right. The Orang Asli territory was converted into various titles, such as Forest Reserves, Water Catchment Reserves and Game Reserves. Moreover, the British administrators prevented them from access into the reserves for 'swidden' cultivation.<sup>15</sup> The conversion and restriction imposed on large areas of Orang Asli customary land had consequently decreased their land for cultivation. As a result, Orang Asli land became smaller and they shared the remaining areas as community owned by redistributing it on family basis.<sup>16</sup>

The British intervention also accelerated the growth of a cash economy in Malaya. The cash economy had also penetrated in the Orang Asli community. For example, Juli<sup>17</sup> notes that in Kinta District, Perak the *Semai* became involved in cash crops cultivation, especially rubber cultivation since the early twentieth century. He concludes, with such participation the *Semai* customary perception toward land has changed; viz from communal shared holding property to the family property.<sup>18</sup>

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<sup>13</sup> Means, Gordon. P, "The Orang Asli: Coping with a changing environment," Unpublished Conference Paper presented at 14<sup>th</sup> Annual Conference, Canadian Council for Southeast Asian Studies, Acadia University, Wolfville, Nova Scotia, 12-14 October, at 6. The Orang Asli practiced swidden cultivation. They cultivated in a plot of land for a certain period of time. After harvesting they will move to another plot and leave the earlier plot empty for a certain period of time. The British colonialists thought that the empty place is waste land belonging to the state rather than the Orang Asli.

<sup>14</sup> Means, n. 11 at 639.

<sup>15</sup> Swidden means that a plot of land is cleared of its natural vegetation, burned and then planted with crops (hill paddy, cassava and corn). The farming system was based on land rotation. For example, after working a plot of land for one season, the farmers move on to another plot of land. After a number of years they return working on the same earlier plot of land.

<sup>16</sup> Juli Edo, "Claiming our ancestors' land: An ethnohistorical study of *Seng-Oi* land rights in Perak Malaysia" (Ph.D. dissertation, Australian National University, 2004), at 310.

<sup>17</sup> Ibid, at 172.

<sup>18</sup> Id, at 172.

Equally, after independence Hasan<sup>19</sup> observes that the *Semai* continued to cultivate rubber trees. For instance, in Betau, Pahang, the *Semai* planted 60 acres (24 hectares) of rubber and fruit trees before they participated in the government sponsored regroupment scheme in 1980s.<sup>20</sup> However, after joining the scheme each *Semai* family was allocated 8 acres (3.20 hectares) of land to be cultivated with rubber trees.<sup>21</sup> The policy of providing specific areas of land to each family changed the *Semai* idea of land holding. The concept of individual holding of land emerged as every family was given a certain area to hold and develop. In turn, the *Semai* accepted the concept of economic-based family holding and abandoned the practise of communal shared holding.

Besides rubber, the *Semai* also cultivate fruit trees such as *durian* (*Durio zibethinus murr*) and *petai* (*Parkia speciosa*). Before 1990s, when fruits still had no market value, the holders paid less attention to their orchards. However, when the fruits became marketable in 1990s, the idea of individual family holding an orchard became obvious. Thus, over time, the *Semai* regarded their orchards as individual family properties. For that reason, the lands did not revert to the community but the individual family members could inherit the lands.

The emergence of new perceptions of land holding among *Semai* has created land and inheritance problems. Therefore, modes of protecting land rights have to be introduced in order to avoid any land and inheritance disputes. However, Dentan<sup>22</sup> described the *Semai* as “a nonviolent people of Malaya” for their non aggressiveness

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<sup>19</sup>Hasan Mat Nor, “The Semai and the regroupment scheme of Betau, Pahang,” in King, Victor. T. and Nazaruddin Mohd. Jali (eds.), *Issues in rural development in Malaysia*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), at 117.

<sup>20</sup> Ibid, at 117.

<sup>21</sup> Id, at 120.

<sup>22</sup> Dentan, R. K., *The Semai: A nonviolent people of Malaya*, Stanford University, 1968, at 55.

to interpersonal violence of any sort. Similarly, Robarcheck<sup>23</sup> in his study of the image of nonviolence *Semai* finds that whenever possible *Semai* tend to avoid any open confrontations and conflicts. Thus, when a dispute arises amongst them, these are usually settled by negotiation or mediation. However, if a settlement cannot be reached, only then the matter will be referred to the *batin* (lit. village headman). The *batin* then will summon a *bicara* (lit. formal assembly to resolve the dispute) to settle the dispute.

This study also examines the position of Orang Asli under the Malaysian legal framework. As a peripheral community, their impoverished status meant that the Orang Asli had no clout in the determination of the constitution or law. The law is imposed by the government for the protection and advancement of Orang Asli community. Despite this effort, most of Orang Asli remained among the impoverished Malaysians. One of the factors that has led to this situation is law and policies set up for the protection and advancement of Orang Asli have done little to secure Orang Asli land rights.<sup>24</sup> The insecurity of land tenure is due to backlog in gazetting Orang Asli reserves. This has resulted in loss of their lands to the government, developers, mining and logging companies.<sup>25</sup> Thus, dispossession from their lands has caused the Orang Asli to be continuously entrenched in poverty.

Furthermore, the insecurity of Orang Asli land tenure deters them from developing their lands. The Orang Asli feel that is pointless to invest in their lands if

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<sup>23</sup>Robarcheck, C. A., "Semai nonviolence: A system approach to understanding" (Ph.D. dissertation, University of California Riverside, 1977), at 214.

<sup>24</sup>Lim Heng Seng, "The land rights of the Orang Asli" in Consumer' Association of Penang (ed.), *Tanah air ku: Land issues in Malaysia*, (Penang: Consumers' Association of Penang, 2000), at 185.

<sup>25</sup>"Orang Asli want review of land," *The Star*, 29<sup>th</sup> November 2008, at 17; "Tasik Bera Orang Asli to be relocated," *Bernama the Malaysian National News Agency*, 4<sup>th</sup> April 2003, at <http://www.lexisnexis.com/us/Inacademic/> viewed on 30<sup>th</sup> April 2009; "Orang Asli to be resettled to make way for new road," *Malaysian General News*, 2<sup>nd</sup> September 2000, at <http://www.lexisnexis.com/us/Inacademic/> viewed on 30<sup>th</sup> April 2009.

they would be relocated to other places.<sup>26</sup> Besides, the land also cannot be used to obtain loans and secure capital. Without them, it is not possible for Orang Asli to embark on any undertaking, especially in business, to further their economic status. This illustrates that the law and policies concerning Orang Asli raise a kind of culture of poverty syndrome.<sup>27</sup> Hence, the study attempts to examine the law and changes of land rights, particularly land among *Semai* communities in Pahang and how the changes enhance the *Semai* wellbeing.

### 1.1 AREA OF STUDY

In this study the researcher explores the rules governing land rights and interests of Orang Asli. The study focuses on *Semai* communities in Kuala Lipis, Pahang (see Appendix A). For comparison purposes, two villages were selected for the research. Firstly, Bertang village in Pos Betau that represents the government sponsored regroupment scheme. Secondly, Lenjang village in Pos Lenjang represents the ‘traditional’ village.

The researcher studied the *Semai* general ideas of land as property. The assumption was that initially the *Semai* of Pos Betau and Pos Lenjang held similar ideas of land being regarded as equally held by the community. However, the socio-political and economic changes they are facing have changed their ideas of land as property. As a result, new ideas of land holding have emerged, which emphasises family rather than the community holding.

The research examines the changes that have occurred in land use and holding after the *Semai* participated in the government sponsored regroupment scheme. By

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<sup>26</sup> Zawawi Ibrahim, “Regional development plan in rural Malaysia and the tribal question,” in Hasan Mat Nor (ed.), *Warga pribumi menghadapi cabaran pembangunan*, (Bangi: Department of Anthropology and Sociology, UKM, 1998), at 176.

<sup>27</sup> Williams –Hunt, n. 2 at 45.

participating in the scheme and getting assistance from the government agencies the Semai can develop their lands. For example, with the Federal Land Consolidation and Rehabilitation Authority (FELCRA) aid, the *Semai* have developed the land through rubber cultivation. In addition, Hasan<sup>28</sup> claims that this scheme also had consequently transformed *Semai* from swiddeners to smallholders.

As a result, the *Semai* are integrated into the market system. Additionally, they ceased to grow hill paddy as the land for paddy cultivation is decreasing. Since they are earning cash income from rubber cultivation, they are able to buy rice and other subsistence needs. As such, the *Semai* no longer survive on their production. This signifies a crucial element in the dissolution of the *Semai* subsistence economy to cash economy.

The researcher also discusses the process of the *Semai* protecting their land rights and interests. As previously mentioned there are several methods devised by the Semai to protect their land rights and interests. However, the *Semai* considers *bicara* session as the last option to protect their rights and interests in land. One of the aims of the *bicara* session is for the *batin* to conduct *berajar* (lit. to teach) not only in respect of the offender but also the community in general regarding the *Semai* customary land law and reminding them to observe the law.

Besides the above, this study also considers the position of Orang Asli land rights under the Malaysian legal framework. The affirmation of the Court of Appeal<sup>29</sup> that the concept of ‘aboriginal title’ applied in Malaysia, gave a ‘new life’ to the Orang Asli land rights. The rule now is that the Orang Asli has proprietary rights over the customary land. Moreover, the Court of Appeal declared that the purpose of the Aboriginal Peoples Act, 1954 was to protect and uplift the Orang Asli, fundamentally

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<sup>28</sup> Hasan, n. 19 at 120.

<sup>29</sup> *Kerajaan Negeri Selangor & Ors v Sagong Tasi & Ors* [2005] 6 MLJ 289.