

ORANG ASLI CUSTOMARY LAND AND ADAT PERPATIH: A CASE STUDY ON *TEMUAN* LAND IN NEGERI SEMBILAN

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Abstract

There is a dearth of scholarly writing on the customs and customary law of the *Orang Asli* communities, particularly on land matters, the ownership of which is usually contentious. Land is an essential foundation for the vulnerable indigenous peoples to maintain their livelihood and identities. By providing a case analysis on the customs, practice, use and traditions relating to the land of the *Orang Asli Temuan* in Negeri Sembilan, drawn upon the framework of common law jurisprudence on indigenous peoples' customary land, this article illustrates the significance of land and its security for the communities. In particular, this article investigates the concept and perspectives relating to customary land among the *Orang Asli* in selected villages, namely, Langkap in Kuala Pilah, Parit Gong in Jelebu and Bukit Kepong in Pasir Panjang. The article takes a qualitative approach through interviews and focus group discussions with the headmen, leaders of the communities, and relevant stakeholders, including an expert in the *Adat Perpatih* (customary laws) which are practiced by the *Temuan Orang Asli*. The research found that the *Temuan* people regard the land on which they live as a territory belonging to the community where the members have different types of rights. Within that territory, families have ownership rights over certain areas meant for different uses including for settlement and economic activities with boundaries that are known to the community of members. The ownership of these areas of land is passed to the next generation according to their customary rules. This also includes the land regarded as ancestral land passed from their ancestors. Beside this part of the land, areas surrounding the settlement and agricultural areas within the territory are regarded as common access areas meant for foraging to find food or other resources to add to their source of income. This topic is under-researched

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yet vital for policy makers, decision-makers and the public in paving the way for greater protection of indigenous peoples' lands.

Keywords: indigenous people, *Orang Asli*, *Temuan*, customary land, *adat perpatih*, land security, sustainable development goals.

I INTRODUCTION

This is an exploratory study on the land of the *Temuan Orang Asli* in Negeri Sembilan, Malaysia. The study is analysed under the framework of common law jurisprudence which recognises the land rights of indigenous peoples in Malaysia. It highlights the position of customary land of the *Orang Asli* communities and land that they occupy at present, particularly focusing on the concept, scope, land use and practice, inheritance and distribution under their customary law. A study of the customs of the diverse *Orang Asli* communities requires empirical work of its own. This topic is under-researched but is vital for policy makers, decision-makers and the public in paving the way towards greater protection of indigenous peoples' lands.

The Malaysian legal system is characterised by legal pluralism.¹ Each racial community has its own customs and customary legal system. The areas of law to which the *adat* of different communities commonly applies includes matters of land tenure and the inheritance of ancestral land and property.² However, little is written and known outside of the *Orang Asli* communities about their customs.³ Discussions of *adat* in the context of the legal system in Malaysia are often confined to groups with significant numbers, namely, the Malays, the natives in Sabah and Sarawak, Chinese and Indians.

The rights and interests of *Orang Asli* communities in land have also not been adequately taken into account in legal studies on land and natural resources. Even though reported judgments on cases relating to land claims by the *Orang Asli* make reference to the concept of customary land as developed from evidence presented in the cases, the limited number of cases may not reflect the whole scenario because of the diverse cultures of the indigenous communities. Apart from legal discourse, although there have been numerous studies on *Orang Asli* communities, in depth research into the lands and customs of these communities remains limited.

The research uses a qualitative approach to perform case studies in three villages. The villages selected are *Kampung Orang Asli Parit Gong* in the district of Jelebu, *Kampung Orang Asli Langkap* in the district of Kuala Pilah, and *Kampung Orang Asli Bukit Kepong* in Pasir Panjang in the district of Port Dickson. Of the three villages mentioned, there are

¹ Wu Min Aun, *Malaysian Legal System* (Pearson Malaysia, 2nd ed, 2005).

² Malay adat law which is a mixture of traditional practice and Islamic law, and native adat are still widely practised and recognised under the law. Chinese and Hindu law on marriage and divorce have diminished in relevance since the coming into force of the *Law Reform (Marriage and Divorce) Act 1976* (Malaysia). The Act was largely based on English legislation. It introduced a uniform law on marriage, divorce and its ancillary matters among non-Muslims.

³ See MB Hooker, 'The Challenge of Malay Adat Law in the Realm of Comparative Law' (1973) 22 *International and Comparative Law Quarterly*, 492.

631 residents in Parit Gong, 447 residents in Langkap and 91 residents in Bukit Kepong. All three villages have good access roads and are equipped with basic infrastructure, such as water and electricity supply and internet connection. There is also a community hall (*balai adat*) in each village which is used by the communities for their traditional ceremonies.

Data was collected by interviewing headmen, chairpersons of the village committees and other key persons, most of whom are from the Board of Customs (*Lembaga Adat*) of the communities. The empirical work was conducted through several visits to the villages between October 2018 and July 2019. The work was conducted with permission of the government department on the *Orang Asli* affairs, i.e. the *Orang Asli* Advancement Department (*Jabatan Kemajuan Orang Asli (JAKOA)*). Permission of the headmen of the three communities were obtained prior to the conduct of the research. The researchers also carefully obtained the written consent of each participant and the identities of the participants are kept anonymous.

In addition to the above, to understand the complex nature and substance of the customs, a focus group discussion was also conducted involving an expert on *Adat Perpatih* in Negeri Sembilan and an anthropologist who is an expert on the *Orang Asli* communities.

This article is arranged as follows. Parts II and III explain the context in relation to the land of the *Orang Asli*, the legal position and the issue of land security as well as the significance of security of tenure of the land of vulnerable minority communities. Part IV briefly analyses the position of the common law principle which provides for recognition of the customary land of the indigenous peoples in Malaysia. With this background, Part V highlights the practice of *Temuan* communities in Negeri Sembilan, in relation to their land as a basis for their livelihood, communal system and customs, including the use of land and aspects of distribution and inheritance. Part VI summarises the findings of this research on the customary land of the *Temuan* communities, illustrating its significance for the well-being of the communities as well as the society at large.

II ORANG ASLI AND THEIR LAND IN CONTEXT

The term '*Orang Asli*' is a Malay phrase for 'original peoples' or 'first peoples'. The phrase refers to communities known as 'aboriginal peoples' in various states of Peninsular Malaysia. There are various laws in Malaysia which affect the *Orang Asli*. These laws include the *Federal Constitution*,⁴ the *Aboriginal Peoples Act 1954*, the *National Forestry Act 1984*⁵ and the *Wildlife Conservation Act 2010*.⁶

Specifically, under the *Aboriginal Peoples Act 1954*, aboriginal peoples are defined using characteristics including language, way of life, custom and belief as well as lineage or blood relation to the aborigines.⁷ An aboriginal ethnic group is defined as 'a distinct tribal division of aborigines as characterised by culture, language or social organisation

⁴ *Federal Constitution* (Malaysia) art 8(5)(c); art 45(2); Sch 9 Item 16 ('*Federal List*').

⁵ *National Forestry Act 1984* (Malaysia) ss 40(3), 62(2)(b).

⁶ *Wildlife Conservation Act 2010* (Malaysia) s 51(1).

⁷ *Aboriginal Peoples Act 1954* (Malaysia) s 3.

...'. It may also include any group that is declared by the state authority as such.⁸ An aboriginal community is defined as the 'members of one aboriginal ethnic group living together in one place'.⁹ This article uses the term *Orang Asli* to refer to the communities characterised as the aboriginal peoples.

The *Orang Asli* communities are classified into three groups: *Negrito*, *Sen'oi* and Proto-Malay. These distinctions are made according to their religion, social organization and physical characteristics.¹⁰ These three main groups have 18 different sub-groups. The *Temuan* people, who are the focus of this study, is a sub-group of Proto Malay.

The *Orang Asli* are minority communities and are generally regarded as marginalised in Malaysia. After more than 60 years of independence, they remain at the lowest rung of Malaysian society. More than one-third of *Orang Asli* are living in poverty¹¹ and experiencing household food insecurity resulting in malnutrition and chronic energy deficiency.¹² Many suffer from poor health, with a disproportionately high number of deaths in childbirth, high infant mortality rates, a lower life expectancy compared to the national average, and higher reported rates of infectious and parasitic diseases and malnutrition.¹³ In terms of education, the number of dropouts from both primary and secondary schools among the *Orang Asli* children remains high, with an all-round poor academic performance.¹⁴ These facts reflect a serious inequality of these minority communities as compared to the rest of the country's population.

Compounding to this is the issue of security of land and the recognition of their land rights under the law. The legal position on the status of ownership of land on which the communities are living, is complicated. The *Aboriginal Peoples Act 1954* provides some form of protection to the land of the *Orang Asli*. It allows for the state authorities to declare the land occupied by the *Orang Asli* within their jurisdictions as an Aboriginal

⁸ Ibid s 2.

⁹ Ibid.

¹⁰ For a detailed account on the population and history, see Colin Nicholas, *The Orang Asli and the Contest for Resources* (International Work Group for Indigenous Affairs, 2000); Iskandar Carey, *Orang Asli: The Aboriginal Tribes of Peninsular Malaysia* (Oxford University Press, 1976); Robert Knox Dentan et al, *Malaysia and the Original People: A Case Study of the Impact of Development on Indigenous Peoples* (Allyn and Bacon, 1997).

¹¹ Malaysia Economic Planning Unit, *Strategy Paper 02: Elevating B40 households towards a middle-class society*, *Eleventh Malaysia Plan* (Strategy Paper, 2015) <www.epu.gov.my/sites/default/files/Strategy%20Paper%2002.pdf>.

¹² See Nor Haidanadia Hasni et al, 'Food Security among Orang Kintak in Pengkalan Hulu, Perak' (2017) 7(3) *International Journal of Academic Research in Business and Social Sciences*, 851; CS Pei, G Appannah and N Sulaiman, 'Household Food Insecurity, Diet Quality, and Weight Status Among Indigenous Women (Mah Meri) in Peninsular Malaysia' (2018) 12(2) *Nutrition Research and Practice*, 135; Goy Siew Ching et al, 'Applying Territorial Approach to Rural Agribusiness Development in Malaysia's Aboriginal (Orang Asli) Settlements: A Comparative Study of Pos Balar, Kelantan and Pos Sinderut, Pahang' (2016) 12(4) *Malaysian Journal of Society and Space*, 109.

¹³ See Nicholas (n 10) 33-6; Lim Y AL, 'Intestinal Parasitic Infections Amongst Orang Asli (Indigenous) In Malaysia: Has Socioeconomic Development Alleviated The Problem?' (2009) 26(2) *Tropical Biomedicine*, 110.

¹⁴ S Renganathan, 'Educating the Orang Asli Children: Exploring Indigenous Children's Practices and Experiences in Schools' (2016) 109(3) *The Journal of Educational Research*, 1-11; NC Zairil Khir Johari, 'The Need for Decentralization: A Historical Analysis of Malaysia's Education System' in C. Joseph, *Policies and Politics in Malaysian Education* (Taylor & Francis, 2017), ch 12.

Area (s 6) or an Aboriginal Reserve (s 7). In addition, the state authorities may also use power provided by the *National Land Code 1965* to set aside land for the *Orang Asli*.

Nonetheless, in practice, based on a report by the *Orang Asli* Advancement Department, the government department which was established to administer the affairs of the *Orang Asli*, less than 25% of the lands occupied by the *Orang Asli* have been declared as aboriginal reserve or aboriginal area under the law.¹⁵

Furthermore, while common law in Malaysia has established that these communities have legal rights over their customary land, unless affirmed by a court of law, the land status remains uncertain. On the other hand, there are many communities who live on land that may not fulfil the common law requirements of customary land. This includes communities who have been relocated by state authorities from their previous customary land to another location.

Data from a 2013 report of a national inquiry conducted by Malaysian National Human Rights Commission (Suhakam) on the position of land rights of the indigenous peoples exposed numerous incidents of land predicaments.¹⁶ This is consistent with many other research reports¹⁷ and news highlighting the encroachment on the peoples' customary lands by outsiders for logging, commercial plantations and farming, and infrastructure development. An important recommendation made by the Suhakam report was to establish a redress mechanism to resolve issues and grievances involving the indigenous peoples' customary or ancestral lands rights.¹⁸ This recommendation was supported by a task force established later to study the report.¹⁹

III LAND SECURITY AND SUSTAINABLE DEVELOPMENT GOALS

Secure tenure rights to land have been recognised as an important indicator of sustainable development goals as prescribed in the 2030 Agenda of Sustainable Development Goals (SDGs), as adopted by the United Nations General Assembly (Indicator 1.4.2 and Indicator 5.a.1).²⁰ The global indicator framework measures progress of the implementation of 17 sustainable development goals. The Agenda contains numerous elements that can

¹⁵ Jabatan Kemajuan Orang Asli, (Unpublished Report, 2016). See Nicholas (n 10); Human Rights Commission of Malaysia (Suhakam), *In-depth Discussion on Native Customary Land Rights of the Orang Asli in Peninsular Malaysia* (Report, 13 June 2009).

¹⁶ Human Rights Commission of Malaysia (Suhakam), *National Inquiry into the Land Rights of Indigenous Peoples* (Report, 2013) accessed at <http://www.suhakam.org.my/documents/10124/1326477/SUHAKAM+BI+FINAL.CD.pdf>.

¹⁷ See e.g., Rusalina Idrus, 'The Discourse of Protection and the Orang Asli in Malaysia' (2011) 29 (Suppl. 1) *Malaysian Studies* 53; Colin Nicholas, *Orang Asli: Rights, Problems, Solutions* (Suhakam, 2010); Hasan Mat Nor et al, 'Mengapa Kami Jadi Begini? Konflik Masyarakat Orang Seletar dan Pembangunan Iskandar, Johor Bahru, Malaysia (Why Have We Become Like This? The Conflict of Orang Seletar Communities and Iskandar Development, Johor Bahru Malaysia)' (2009) 5(2) *Malaysian Journal of Society and Space*, 16.

¹⁸ Human Rights Commission of Malaysia (Suhakam) (n 16).

¹⁹ Loh Foon Fong, 'Cabinet Forms Committee on Indigenous Land Rights' *The Star* (online, 17 June 2015) <<http://www.thestar.com.my/News/Nation/2015/06/17/cabinet-approves-indigenous-lands-rights/>>.

²⁰ *Transforming our world: the 2030 Agenda for Sustainable Development*, GA Res 70/1, UN Doc A/RES/70/1 (adopted 25 September 2015).https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

go towards articulating the developmental concerns of indigenous peoples especially concerning human rights principles and standards.²¹ Some elements which are relevant to the *Orang Asli* include the goals to end poverty and hunger, achieve food security and improved nutrition, promote sustainable agriculture, good health and well-being for people, and clean water and sanitation.

Malaysia has endorsed the Agenda in its planning framework. The 11th Malaysia Plan reflects the multi-dimensional nature of the SDGs with the specific aim of reducing inequalities in society, including the *Orang Asli*. As an integral element of the SDGs, the international standard as reflected in the *United Nation Declaration on the Rights of Indigenous Peoples* (UNDRIP),²² to which Malaysia voted for adoption at the UN General Assembly in 2007, requires strong protection of land and resource rights of indigenous peoples. The Declaration provides that the indigenous peoples have the right to own and possess the lands and resources that they traditionally occupy or use. Their special relationship is acknowledged as the principal source of livelihood, social and cultural cohesion that is fundamental to their identity and spiritual welfare. States thus have a duty to respect the special relationship and to have due regard for their traditional patterns of use and occupancy. For this reason, irrespective of the position of land rights of other people in a particular state, ownership of the lands of the indigenous peoples must be established.

IV COMMON LAW PRINCIPLES ON THE RECOGNITION OF INDIGENOUS LAND RIGHTS

Under Malaysian common law, the lands of indigenous peoples like the *Orang Asli*, which have generally been occupied by them for a long time, are recognised as legally owned by these communities. There have been a number of court cases which have affirmed this position based on developed common law principles.

Briefly, common law recognises and protects existing rights of people including rights relating to land ownership. The legal rights which arise from the customs of the people continue to exist unless they are extinguished by legislative provision or an act of executive government authorised by legislation. Legal rights of indigenous people neither depend on statutory provision nor declaration by the executive government. They exist on their own and are protected by the common law, subject to extinguishment by means authorised by law. On this basis, state land ownership is not absolute but subject to existing legal rights.

This legal principle is the basis for the recognition of the land rights of indigenous peoples in Malaysia including the *Orang Asli* of Peninsular Malaysia and natives in Sabah and Sarawak. Specific to the *Orang Asli* communities, the rights recognised under common law exist in tandem with, or complementary to, the rights protected by

²¹ Ibid.

²² *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, Agenda Item 68, UN Doc A/RES/61/295(2 October 2017, adopted 13 September 2007).

the *Aboriginal Peoples Act 1954*, which is a special statute providing for protection of the minority communities.²³

The basis of the customary rights is custom or known as ‘*adat*’ in Malay. Conceptually, the terms ‘*adat*’ or ‘custom’ is used interchangeably with the terms customary law or native law.²⁴ Under the Malaysian law, custom or *adat* is one of sources of law recognised by the Federal Constitution and is enforceable by the common law.²⁵ This is similar to English law, in which custom is also a source of law.²⁶

In relation to the indigenous peoples’ land rights, custom as practiced by the communities gives rise to legal rights, recognised and enforceable by the court of law. The customary legal rights continue to exist unless extinguished by a clear and plain legislation or by an executive act authorised by such legislation. When customary legal rights are extinguished, compensation must be paid.²⁷

At present, the customs of certain sections of society are codified in statutes. For instance, some part of custom on customary land of the Malay communities in Negeri Sembilan is regulated by the *Customary Land Enactment 1926*. This statute, amongst others, provides for the registration of ‘customary’ land. Another example of the customs of local communities that has been codified in the form of a statute is distribution of *harta sepencarian* (jointly acquired property) governed by various *Syariah* enactments in all Malay states.

However, such statutes containing the codification of custom do not necessarily exclude related or other parts of customs as an element that may have the force of law.²⁸ Where customs are codified, such codification does not extinguish uncodified and related customs.²⁹ This is similar to the position of Islamic law in Malaysia, which has been incorporated into legislation. Reference to other written sources and to the opinions of experts on the contents of Islamic law are common practice and are allowed although not specifically mentioned in the legislation.³⁰

The *Orang Asli*, similar to other groups considered as indigenous peoples in Malaysia, are also regulated internally by their own traditional laws on various matters including land and natural resources.³¹ Even under the relevant international law jurisprudence, the legal systems of indigenous peoples are recognised as an integral part of their identity.³²

²³ *Kerajaan Negeri Selangor v Sagong Tasi* [2005] 6 MLJ 289 (Court of Appeal); *Yebet Bt Saman v. Foong Kwai Loong* [2015] 2 MLJ 498.

²⁴ Ramy Bulan and Amy Locklear, *Legal Perspectives on Native Customary Land Rights in Sarawak* (Suhakam 2009), 17.

²⁵ *Federal Constitution* (Malaysia) art 160(1), which defines the word ‘law’ to include ‘written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof’.

²⁶ E K Braybrooke, ‘Custom as a Source of English Law’ (1951) 50(1) *Michigan Law Review* 71, 72.

²⁷ *Kerajaan Negeri Selangor v Sagong Tasi* [2005] 6 MLJ 289 (Court of Appeal); *Superintendent of Lands & Surveys Miri Division v Madeli bin Salleh* [2008] 2 MLJ 677 citing *Mabo (No 2)* (1992) 175 ALR 1, 3.

²⁸ *Nor Anak Nyawai v Borneo Pulp Plantation Sdn Bhd* [2006] 1 MLJ 256.

²⁹ *Ibid* 285-6.

³⁰ See for example, M. Siraj, ‘Recent Changes in the Administration of Muslim Law in Malaysia and Singapore’ (1968) 17(11) *International and Comparative Law Quarterly*, 221.

³¹ See Yi Fan Chung, ‘The Orang Asli of Malaysia: Poverty, Sustainability and Capability Approach’ (Master of Science Thesis, Lund University Centre of Sustainability Science, 2010).

³² *United Nations Declaration of the Rights of Indigenous Peoples* art 5.

This reflects the significance of the customs of communities and the understanding of them in the consideration of laws.

An important piece of evidence which is essential to prove the existence of customary land rights is continuous occupation and control of particular area of land for a long time or for several generations.³³ Occupation of land forms the connection between communities and the land. This can be in the form of settlement or use of land for agriculture. The test of occupation to meet the evidentiary burden is the existence of ‘sufficient measure of control to prevent strangers from interfering.’³⁴ Continuation of a long established practice of their custom and exercise of the customary right over the land is important to prove the connection.³⁵ However, an actual physical presence is not a pre-requisite to establish continuous use and occupation.

As custom is the basis of the rights, their contents are determined by custom of the particular communities. In other words, the types and extent of the rights are defined by practice, usage and traditions of the communities. Nonetheless, it has also been held by the courts that changes in the communities’ traditional law and custom do not affect the connection of communities to the land.³⁶

A Customary Right to Land

The courts in Malaysia have recognised that the *Orang Asli* communities have the customary right to live on land that they have occupied for generations, and that this right is proprietary in nature.³⁷ In the case of *Sagong bin Tasi v Kerajaan Negeri Selangor (Sagong bin Tasi)*,³⁸ the Court of Appeal held that the plaintiffs in the case, who were *Temuan* people, had ownership of the lands in question under a customary community title of a permanent nature. It was affirmed that the customary land of the *Temuan* tribal group is a proprietary right with full beneficial interest in, and to the land. The lands are inheritable, that is, capable of being passed down from generation to generation.

In a more recent case of *Mesara Long Chik v Pengarah Tanah Dan Galian Pahang*,³⁹ the plaintiffs who were the *Semoq Beri* communities, a subgroup of *Sen’oi*, claimed for a declaration that they have rights and interest over an area of land of about 12 acres in Maran. They also claimed, among others for the return of the land, or in alternative, compensation for the loss of the land. The plaintiffs stated that although they had moved from the area, they had inherited the land from their ancestors and continued to frequent the land, on which was planted a variety of fruit trees. They used to collect the fruits from the area during fruit season and sell them for income. In fact, they had in both 1985 and

³³ *Superintendent of Lands & Surveys Miri Division v Madeli bin Salleh* [2008] 2 MLJ 677.

³⁴ *Ibid.* See also *Sangka bin Chuka & Anor v Pentadbir Tanah Daerah Mersing, Johor* [2016] 8 MLJ 289 (‘*Sangka bin Chuka*’).

³⁵ *Nor Anak Nyawai v Borneo Pulp Plantation Sdn Bhd* [2001] 6 MLJ 241; *Kerajaan Negeri Selangor v Sagong Tasi* [2002] 2 MLJ 591, *Adong bin Kuwau v Kerajaan Negeri Johor* [1997] 1 MLJ 418; *Superintendent of Lands & Surveys Miri Division v Madeli bin Salleh* [2008] 2 MLJ 677.

³⁶ *Sagong bin Tasi v Kerajaan Negeri Selangor* [2005] 6 MLJ 289.

³⁷ *Ibid.* See also *Mohamad bin Nohing v Pejabat Tanah dan Galian Negeri Pahang* [2013] 5 MLJ 268.

³⁸ *Kerajaan Negeri Selangor v Sagong bin Tasi* [2005] 6 MLJ 289, [35].

³⁹ *Mesara Long Chik v Pengarah Tanah Dan Galian Pahang* [2018] 1 LNS 1009.

1989 made applications to the state authority for a land grant, but there was no positive response. Subsequently, a grant of a temporary license was issued in 2005 by the state authority to an individual, following which fruit trees on the land were cleared.

The High Court in Kuantan found that the plaintiffs had proved their rights over the land on the test of occupation and control over the land, and that these rights were recognised and enforceable by the common law. However, although the court recognised the legal right over the land that the court termed ‘*geran adat*’ (custom grant) under the common law,⁴⁰ the court only allowed for compensation for the trees on the land according to s 11 of the *Aboriginal Peoples Act 1954*.

In addition, cases on claims to land rights have been confined to customary land of the indigenous communities. The principles derived from these cases therefore may not extend to land occupied by the *Orang Asli* upon resettlement, which is often occurs because of government initiatives. In relation to this, it has been suggested by Azman J, in an obiter statement, in *Pedik bin Busu v Yang Dipertua Majlis Daerah Gua Musang*,⁴¹ that the *Orang Asli* own the land that is given to them by the government through the Resettlement Scheme, although they have yet to be given title to the land.

B Rights to Resources or Foraging

In view of the cases on *Orang Asli* land rights decided thus far, it appears that the common law is unsettled as to whether the recognition of the *Orang Asli* customary rights extend to the areas of land on which they customarily foraged for living.

The Court of Appeal in *Sagong bin Tasi*⁴² held that the *Orang Asli* customary land rights recognised by the common law is limited to the land that they occupy, namely, the area over which they have direct control (for instance through settlement and agricultural activities on the land). This view has been followed by another Court of Appeal decision in *Ketua Pengarah Jabatan Hal Ehwal Orang Asli v Mohamad bin Nohing (Batin Kampung Bukit Rok) (Mohamad bin Nohing)*.⁴³ Vernon Ong JCA in *Mohamad bin Nohing* reiterated the position in *Sagong Tasi* stating as follows:

Whilst actual physical presence on the land is not necessary, there can be occupation without physical presence on the land provided there exists sufficient measure of control to prevent strangers from interfering.⁴⁴

The Court of Appeal in *Mohamad bin Nohing* reversed the High Court ruling⁴⁵ that the customary land of *Semelai* people in the case includes the right to exclusively occupy and use the land and its resources which extend to surrounding areas that they use to forage for resources.

⁴⁰ Ibid 22.

⁴¹ *Pedik bin Busu v Yang Dipertua Majlis Daerah Gua Musang* [2010] 5 MLJ 849, [13].

⁴² *Sagong bin Tasi* (n 36). The Court of Appeal affirmed the High Court ruling in *Sagong bin Tasi v Kerajaan Negeri Selangor* [2002] 2 MLJ 591.

⁴³ [2015] 6 MLJ 527.

⁴⁴ Ibid [41].

⁴⁵ *Mohamad bin Nohing v Pejabat Tanah dan Galian Negeri Pahang* [2013] 5 MLJ 268.

The High Court position in this aspect is in line with the decision in *Adong bin Kuwau v Kerajaan Negeri Johor*,⁴⁶ the first land claim case by the *Orang Asli* in which the customary rights of the *Jakun* community to the areas in which they traditionally foraged for food and other needs, were affirmed.

A similar position was also taken by the High Court in *Sangka bin Chuka & Anor v Pentadbir Tanah Daerah Mersing, Johor*.⁴⁷ The High Court held that the customary land rights of the indigenous communities extend to the area of land used for collection of forest produce, hunting and foraging commonly located surrounding the village of the communities as such activities are continuously in practice integral to the communities' custom and traditions and vital to their livelihood. These have been 'the primary source and essence of their very existence and will continue to be essential to their future livelihood'.⁴⁸ A failure to recognise this would be viewed as 'threatening the continuation of not only the character but also the contents of their traditions and custom, and potentially in the long run the very survival of the *orang asli*, as presently identifiable with their custom and traditions ...'.⁴⁹

Correspondingly, the High Court in the case of *Eddy bin Salim v Iskandar Regional Development Authority*⁵⁰ held that that the recognition of the customary right, which is non-exclusive, over land at common law,

...includes the surrounding waters in which their customary activities are being carried out. Hence a claim for native customary rights over lands covering rivers, streams within the boundaries of the land used by them for fishing and gathering of produce of such waters should be claimable but subject to proof.⁵¹

Therefore, the actual practice by the communities is important to determine the extent of the rights of the communities.

On the other hand, the view which restricts the land rights of the *Orang Asli* to occupation by settlement and cultivation has been criticised as failing to fully appreciate the customary land system. The courts accept the principles that the customary rights are dependent on the custom and practice of the indigenous people but they refuse to give full effect to them.⁵² This goes against the common law basic principle of the recognition of the land rights of the indigenous peoples, in which the nature and scope of the rights are determined by their customs.

V THE *TEMUAN ORANG ASLI* AND CUSTOMARY LAND

In the context of framework of the common law principles discussed above, the practice of the *Orang Asli* investigated through the lens of a case study would be significant in

⁴⁶ *Adong bin Kuwau v Kerajaan Negeri Johor* [1997] 1 MLJ 418.

⁴⁷ *Sangka bin Chuka* (n 34).

⁴⁸ *Ibid* [61].

⁴⁹ *Ibid* [62].

⁵⁰ 2017 1 LNS 822.

⁵¹ *Ibid* [7.2].

⁵² *Bulan and Locklear* (n 24).

understanding the practices of *Orang Asli* communities, which are diverse in terms of their custom, practice and traditions. This part of the article will explain the practices of the *Orang Asli* in Negeri Sembilan with the examples of three villages in the state.

There are 67 *Orang Asli* villages in Negeri Sembilan, with a total population of 10,563 as at 2015. This constitutes less than 1% of the total population of Negeri Sembilan (which stood at 1,098,500 in 2015).⁵³ Most of the *Orang Asli* in Negeri Sembilan are of *Temuan* descent, whose total population as at 2015 had reached 7,884, or about 75% of the total *Orang Asli* population in the state. Another subgroup of the *Orang Asli* living in Negeri Sembilan are the Semelai, who live near the border of the state of Pahang. These two sub-groups are under the main group of Proto-Malay, one of three classifications of *Orang Asli* in Malaysia.

The *Temuan* communities are the descendants of the earliest population in Negeri Sembilan. They are believed to have resided in the area for about 5,000 years, having arrived from surrounding regions of Sumatera and Kalimantan (Borneo).⁵⁴ They are physically indistinguishable from the Malays, and their language may be regarded as a dialect of Malay, excepting few distinctive terms of their own and a slightly different accent.⁵⁵

In terms of their belief system, a majority of the *Temuan* community hold ancestral beliefs in nature spirits such as the spirit of the forest, evil spirits and the respect of the spirits of ancestors. A small number of them are Christian or Muslim.⁵⁶

A Adat Perpatih (*Perpatih Custom*) Practised by Temuan

Similar to the majority of the Malays in Negeri Sembilan and Naning in Melaka, *Temuan* communities also practice *Adat Perpatih* as their culture, with slight variations amongst various communities in the state.⁵⁷ *Adat perpatih* is a form of custom practiced by communities in Negeri Sembilan different from the other forms of custom practiced by Malay communities in Peninsular Malaysia, known as *Adat Temenggung*. Relative to formal laws, customs are larger in scope and inclusive of rules, practice, usage of daily conduct and relationships among family and community members. Some customs may be enforceable in a court of law.

⁵³ RosiSwandy Mohd. Salleh, *Sejarah Pengamalan Adat Perpatih di Negeri Sembilan* (Jabatan Muzium Malaysia, 2017).

⁵⁴ Anuar Alias, SN Kamaruzzaman and Md Nasir Daud, 'Traditional Lands Acquisition and Compensation: The Perceptions of the Affected Aborigin in Malaysia' (2010) 5(11) *International Journal of the Physical Sciences* 1696; Dentan et al (n 10).

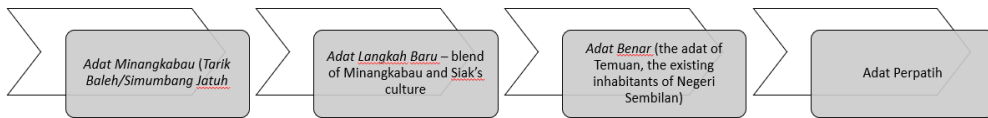
⁵⁵ Dentan et al (n 10).

⁵⁶ 'Penduduk Orang Asli Mengikut Agama Mac 2018' *Portal Data Terbuka Malaysia* (Webpage, 16 July 2018) <http://www.data.gov.my/data/ms_MY/dataset/penduduk-orang-asli-mengikut-agama-mac-2018>; Haliza Mohd Said, Zainal Abidin Ramli and Sukma Dina Radin, 'Enhancing Temuan Tribe Economic Activities as an Indigenous Attraction in Kampung Dengkil, Mukim Sepang, Selangor' (2012) 4(1) *Interdisciplinary Journal of Contemporary Research in Business* 421.

⁵⁷ Nur Asmira Anuar and Fauziah Fathil, 'The Role and Contributions of Orang Asli in the Formation of Adat Perpatih' in Nerawi Sedu, Nurazzura Mohamad Diah and Fauziah Fathil (eds), *Being Human: Responding to Changes* (Partridge Publishing Singapore, 2019).

It is believed that *Adat Perpatih* as it is practiced in Negeri Sembilan today has evolved from and has been shaped by diverse customs of communities. Its origins can be traced to those who migrated in a series of migrations from Minangkabau through Siak, in Sumatera, and also the existing *Orang Asli* inhabitants who were living in the region.⁵⁸ *Adat Minangkabau*, also known as *Tarik Baleh/Simumbang Jatuh*, forms the origin of *adat* in Minangkabau. As people from Minangkabau migrated to Siak, they brought their customs and culture promoting the blend of the two cultures, known as *Adat Langkah Baru*. Other waves of migration from Siak to the areas in the southern part of the Malay Peninsula brought together the mixed customs and later assimilated with existing *adat* of the existing inhabitants, namely, the *Orang Asli*, referred to as *Adat Benar*.⁵⁹ In other words, the *Adat Perpatih* is the outcome of a blend of customary practice that has been practised for more than 650 years until today by the majority of the Malays in Negeri Sembilan and also, which is largely unknown, the *Temuan* people.

Table 1: The blend of the three cultures



The *Adat Perpatih* is mainly characterised by a social structure in which relationships and social processes are matrilineal in nature. Descent is determined matrilineally. It also regulates other aspects of life comprising politics, economy, social, moral, cultural and spiritual aspects of communities.

According to Nur Asmira and Fauziah Fathil,⁶⁰ the *Adat Benar* of the *Orang Asli* in Negeri Sembilan played an important role in shaping the content of *Adat Perpatih* in several aspects. A prominent aspect is the distinctive tradition of the *Orang Asli* on geo-political or territorial organisation of the state which was already in place at the time of arrival of the migrants from Minangkabau. The territorial divisions were Jelebu, Sungai Ujong, Klang and Johol. Each district was headed by a *Batin* or chief of the clan.⁶¹ The four chiefs of the four territories shared the same ancestry, i.e., the descendants of *Batin Seri Alam*.⁶² This territorial division was adopted by the Minangkabau migrants which formed the origin of '*Undang Yang Empat*' (Four Chieftains) currently in practice. It was also reported that later, the *Orang Asli* created five minor areas forming the 9 territories in former Negeri Sembilan, i.e. Naning, Rembau, Jelai, Pasir Besar and Segamat.⁶³ This system of territorial divisions originated under *Adat Benar* of the *Orang Asli*, headed by

⁵⁸ Ibid.

⁵⁹ Ibid; Salleh (n 53).

⁶⁰ Anuar and Fathil (n 57).

⁶¹ Ibid, citing RJ Wilkinson, *Notes on the Negeri Sembilan, Papers on Malay Subjects* (Oxford University Press, 1911) 11.

⁶² Ibid, citing A. Samad Idris, *Negeri Sembilan Gemuk Berpupuk Segar Bersiram: Luak Tanah Mengandung* (Jawatankuasa Penyelidikan Budaya Muzium Negeri Sembilan, 1994) 24.

⁶³ Ibid.

Batins, was also adopted in the current practice of *Adat Perpatih* in Negeri Sembilan. The chief of each territory, known as *Undang*, enjoys direct authority over their territory without the interruption from higher authority in the Federation, i.e. the *Yang Dipertuan Besar* (the King of Negeri Sembilan).

B Community Leadership

For the *Temuan* communities, their village or *kampung* is “conceived of as a corporation of people in relation to their estate”.⁶⁴ Generally, they are ‘ruled’ by a hierarchy of leaders who rank, in order of precedence: *Batin*, *Sandang*, *Jenang*, *Jekerah/Jengkerah*, plus a number of *Pelimas/Panglimas*.⁶⁵ These offices form a ‘customary board’ (*Lembaga Adat*), which administers the customs of the communities including marriage, divorce and property distribution. This research found that this system continues to be in practice in all three villages.⁶⁶ However, in Parit Gong, the *Sandang* is known as *Tok Mangku*, which carries the same meaning. Parit Gong also has a higher number of *Pelima*.⁶⁷

In particular, *Batin* who is the headman, is the chief custodian of custom (referred to as *ibu Adat*, “mother of *Adat*”). *Batin*, assisted by his deputy (*Sandang*) and other officers, is commonly referred to settle dispute in the community. The *Tok Mangku* or *Sandang* acts as a judge tasked to make decisions for disputes involving members of the communities. The *Jekerah* and *Pelima* function like committee members to assist in the administration of the village and ceremonial activities in the communities.

Leadership appointments, especially in Parit Gong and Langkap, are made according to the *Adat Perpatih*, in which maternal lineage is important. Under the system, all leadership offices i.e. *Batin*, *Sandang/Tok Mangku* and *Jenang* must be passed on from a man to his sister’s son (*anak buah*).⁶⁸ According to Hood Salleh, a renowned anthropologist specialising on the *Orang Asli* communities, a few conditions must be satisfied for this appointment. First, the person to be appointed must be of rightful clan (*perut*) affiliation and rightful base (*telapak*). Second, the person must be an adult without serious physical or mental handicap, virtuous in the sense that he is not greedy (*haka*), and possesses sound knowledge of traditions (*adat*).⁶⁹ The community leaders in Parit Gong and Langkap explained that decisions on the appointment of traditional offices are made by the communities themselves through consultation with the community members.⁷⁰

In addition to the customary system, each village has an administrative committee presided over by a chairperson. The members of this committee are appointed by a government department specific for *Orang Asli* affairs which was established under the *Aboriginal Peoples Act 1954*. This committee mainly functions to assist in the

⁶⁴ Hood Salleh, ‘Bases of Traditional Authority among the Orang Asli of Peninsular Malaysia’ (1989) 35 *Akademika* 75.

⁶⁵ *Ibid.*

⁶⁶ Interview and focus group discussion with the leaders of the three communities.

⁶⁷ Focus group discussion with the leaders of Parit Gong communities.

⁶⁸ Interview and focus group discussion with the leaders of the three communities.

⁶⁹ Hood Salleh (n 64).

⁷⁰ Interview and focus group discussion with the leaders of the three communities. See also Anuar and Fathil (n 57).

administration and management of a village. These two community leadership structures coexist together and are intended to complement each other.

C Land Use and Ancestral Land

The three villages are aboriginal reserves under the *Aboriginal Peoples Act 1954*. For Parit Gong, the size of the reservation is about 700 acres, comprising the present settlement areas and the 'old village' (referred to as '*kampung lama*') that is the area of the former settlement which they regard as *tanah saka* (ancestral land). This ancestral land is within the forest surrounding the present village. In this area, fruit orchards are maintained. There is also a graveyard which continues to be used. The order declaring this land as an aboriginal reserve was made by the state government in 2015, following a wait of about 50 years after the application.⁷¹ The community in Parit Gong are seeking for the surrounding forest areas outside of the *tanah pusaka* to be reserved under the Act as well, as they are also dependent on the area for their livelihood.

In Langkap, the size of the area under reservation is about 1200 acres. The reservation comprises the village namely, the settlement area and plantation, but not their ancestral area which is within the Berembun Forest Reserve.⁷² The reservation for Bukit Kepong is much smaller at only 220 acres, comprising the village settlement area and a rubber plantation belonging to the villagers.⁷³

In Bukit Kepong, according to the headman, the community has lived in the village since its opening by their own community in 1914. Before that, they lived separately in smaller family units surrounding the present area. Living closer together, the headman explained, was regarded as easier for community activities. On the other hand, Langkap and Parit Gong communities were re-grouped by the government in the present settlement area in the 1940s and in 1972, respectively, mainly for safety reasons due to communist resurgence. According to Langkap headman, the Langkap area once became a centre for settlement of *Orang Asli* from surrounding areas, including Sg Sampo, Sg Lui and Sg Kalebang. After Malaysia's independence in 1957, many of the *Orang Asli* went back to their original places. The people who originated from Langkap continued to live in the area until now. Thus, all the three communities had originally lived in the surroundings of the present village for a long time. Parit Gong was settled by the communities about a century ago.

Almost all community members in the three villages manage their own small-scale rubber plantations, with a minority of them maintaining oil palm trees within the reservation areas. Land areas used for these plantations were originally forested area, cleared by individual families which was the norm in the past. Ownership of the land is based on family. The boundaries of each family land are known to all community members which are commonly marked by fruit trees. Any disputes will be resolved by referring to their customary board.

⁷¹ Focus group discussion with the leaders of Parit Gong communities.

⁷² Interview with the leaders of Langkap communities.

⁷³ Interview with the headman.

According to all *Batin* in the three villages, the headmen used to have discretion to allocate certain areas of land in the village settlement to new families who had no land. However, at present, vacant areas of land to be given to new families are becoming scarce. For them, no land owned by a family which is meant for agriculture should be left unattended. Thus, it is common for headmen and elders in the communities to advise anyone who has left any land unworked on, to work the land, as it is important for their future generations. The *Temuan* people feel that they would lose the land if it remains unworked.

Furthermore, especially for Parit Gong and Langkap, although they have moved their settlement from *kampung lama*, i.e. the former areas which are in the forest surrounding the present villages within forest reserves, the communities regard the former areas as belonging to their communities. They refer to these areas of land as *tanah pusako*, which means ancestral land inherited from their *nenek moyang* (ancestors). Each parcel of land belongs to a family unit and the members know the boundary of each parcel. This generally works by mutual understanding using certain natural boundaries such as rivers or a particular type of tree such as *pinang* palm trees or jackfruit trees. These areas of land are commonly planted with a variety of fruit trees which provide a relatively good yearly income.

D Inheritance of Land

The rules relating to inheritance of ancestral land upon the death of a member of the communities are made according to the matrilineal system, especially in Parit Gong and Langkap. Following the *adat perpatih*, the ancestral lands of the communities are passed to daughters. Daughters took care of the land for the community. This works like a trustee of the land for the community. Meanwhile, a son is expected to work and find his own property. A son may also get married and work the land which belongs to his wife. A male from outside the community marrying a female from the community will have to work the land belonging to his wife. He is also expected to support the village leadership. A male marrying a female from outside the community will have to live in his wife's village.⁷⁴

However, in Bukit Kepong, the customary rules on inheritance are currently rarely practised. The headman states that the rules are felt to be unnecessary to the community at the village, as most members of both genders are working outside of the village.⁷⁵ This reflects changes to the custom practised by Bukit Kepong which is located near tourism area in Port Dickson.

E Sale or Exchange of Land

Generally, the sale of ancestral land is strictly prohibited under the custom. However, it may only be allowed in exceptional cases for instance in situations in which the owner is in dire need of funds such as for a costly medicinal treatment, but this is extremely rare.

⁷⁴ Interview and focus group discussion with the leaders of Langkap and Parit Gong communities.

⁷⁵ Interview with the headman.

In such situations, the land can only be sold to other members of the community. The *Batin* at Langkap and the customary board at Parit Gong will be the witnesses for the sale.

F Foraging Areas

In Parit Gong and Langkap, the forest areas surrounding the village and the ancestral land are considered by the communities as *tanah rayau* or foraging areas. In these areas which are located within the forest reserve, plant resources such as *petai* (*parkia speciosa*), rattan, some forest fruits, and a few small animals are important sources for food and income. Some villagers, especially those who have no rubber or oil palm plantations, rely on this area to supplement their income.

Unlike ancestral land which belong to family units in the communities, the foraging areas are not owned by anyone and are considered common access. Although there is a relatively small number of villagers going to the forest areas to find these resources, it remains an important source of income. The people in the communities have asserted their rights to access these areas. The people in Langkap and Parit Gong also hope that the foraging areas are gazetted for their protection under the *Aboriginal Peoples Act 1954*. In a way, the continued dependence of the *Orang Asli* upon land and the forest is not only important for their livelihood, identity and local environment but also a factor in determining their culture and customs.⁷⁶

G Land as the Communities' Territories and Community Responsibility

As was mentioned above, it is recorded in history that the *Orang Asli* in Negeri Sembilan practices geo-political or territorial organisation of their areas. This reflects a kind of attachment that many *Orang Asli* communities (not only in Negeri Sembilan) have to the land that they and their ancestors have lived on.⁷⁷ This land is a definite territory consisting of a large tract of land occupied by a community that has lived in the area for a very long time governed by their specific custom. Robert Dentan has also recorded that *Temuan* consider that their communities have more or less exclusive rights over land with clear boundaries.⁷⁸

This is similar to the practice of other sub-groups of the *Orang Asli*. Kirk Endicott and Juli Edo wrote that,⁷⁹ the *Sen'oi*, a group of *Orang Asli*, who have permanently settled in one place for a long time, referred to their territory as *saka'*, *lengri'* or *dengri'* [territory] and the communities residing in the *saka'* as *gu* [group]. These communities regard themselves as the original occupants in the area. As such, the members of the community have rights within the communal territory – to dwell, forage and gather forest

⁷⁶ Roozbeh Karadooni et al, 'Traditional Knowledge of Orang Asli on Forests in Peninsular Malaysia' (2014) 13(2) *Indian Journal of Traditional Knowledge*, 283.

⁷⁷ Dentan et al (n 10).

⁷⁸ *Ibid* 74.

⁷⁹ Kirk Endicott, 'Property, Power and Conflict Among the Batek of Malaysia' in Tim Ingold, David Riches and James Woodburn (eds), *Hunters and Gatherers* (St. Martin's Press, 1988) 110; Juli Edo, 'Claiming Our Ancestors' Land: An Ethnohistorical Study of Seng-oi Land Rights in Perak, Malaysia' (PhD Thesis, Australian National University, 1998).

resources and to use the land subject to certain customary conditions. There is also a shared belief that members must ensure that the land and its resources exist in perpetuity for the use of future generations.⁸⁰ By mutual understanding, the communities recognise the boundaries of their territory which are normally marked by certain trees, rivers or streams. The *Sen'oi* cannot enter another *gu's* territory regarded as *saka'mai* [belonging to others].⁸¹ They only move to another territory by joining or marrying into the group which owned the territory.⁸² With the consensus of the community, individuals and families could acquire personal rights within the communal territory by clearing forests or opening up land for cultivation.⁸³

In addition, groups of western *Semang*, *Mendriq* and *Jahai* also practise the same concept of a defined territory in which they have control subject to certain restrictions under their customs.⁸⁴

The relationship of a community to the land that they live on entails a responsibility of the community leadership and members in *Temuan* communities to take care of the present and future community. The interviewees stressed repeatedly that taking care of the land is important for the communities. The land and the communities cannot be separated. Members of the communities may go out and work elsewhere, but they can and should always go back to their original place.

VI CONCLUSION

This paper has outlined the concept, use of and practice in relation to the land of the *Temuan* communities in Negeri Sembilan using case studies of three communities in the state. The discussion draws from the framework of the judicial principles and content of the common law recognising the customary land rights of the indigenous peoples as developed through several cases involving land ownership claims. The crux of legal rights recognised by the courts are the customs of the communities themselves, with their practices and usage in relation to the land. However, the common law has been restrictive in that it tends to exclude the right to access resources in areas regarded as foraging areas. These areas are within the communities and are vital for the livelihood of those depending on it. This article provides local case studies to highlight the practice of the communities to allow further assessment of the local dimensions of the issues.

Taken together, the data suggests that the *Temuan* people regard the land that they live on as a territory belonging to the community in which the members have different types of rights. Within that territory, families have ownership over certain areas meant

⁸⁰ Endicott (n 79), 141 (Batek, a subgroup of the Orang Asli); Edo (n 79), 299.

⁸¹ Edo (n 79) 10; Endicott (n 79) 114; Dentan et al (n 10) 74.

⁸² Juli Edo, 'Traditional Alliances: Contact between the Semais and the Malay State in Pre-modern Perak' in Geoffrey Benjamin and Cynthia Chou (eds), *Tribal Communities in the Malay World* (Institute of Southeast Asian Studies, 2003) 137, 143-44.

⁸³ Nicholas (n 10).

⁸⁴ Ibid. See also the concept akin to a defined territory practiced by *Semelai* group: Zanisah Man & Shanthi Thambiah 'Kinship and *Semelai* Residential Arrangements: Belonging to Village and the Resilience of Communal Land Tenure in Tasek Bera, Malaysia' (2020) 21(4) *The Asia Pacific Journal of Anthropology*, 315-331.

for different uses including for settlement and economic activities with boundaries known to the community members. The ownership of these areas of land passes to the next generation according to their customary rules. This also includes the land being regarded as ancestral land located within the surrounding forest areas passed from their ancestors. The ancestral land may only be sold in exceptional situations but only within the communities. In this way, their land remains solely within their communities. It is passed down and taken care of by members of the community for the well-being of present community members as well as that of future generations.

Beside this part of land, especially in Langkap and Parit Gong, areas surrounding the settlement and plantation within the territory are regarded as common access meant for foraging to find food or other resources to add to their source of income. These common areas serve as buffer zone to members who are in need. Although at present only a minority of the communities are fully dependent on these area for their livelihood, there are many others who regularly go into the forest to supplement their primary income to varying degrees. This equates to the common law understanding on usufructary rights recognised in some cases but not others, subject to the extent of use.

Furthermore, as the economic system practised by the communities is predominantly agricultural, land is considered as one of the principle elements that the communities seek to safeguard. Therefore, it takes a central domain in the communities. It becomes the base for the members of the communities. It unites and safeguards at the same time.

It also appears that these communities have their own 'legal systems' with custom and customary rules as the 'law' which governs them. This is similar to many indigenous peoples around the world and has been recognised in several international instruments as an integral part of the identity of indigenous communities. The community at large needs to know them and their 'legal system'. Often denial against the rights of indigenous people is because of ignorance. We must acknowledge that within the 'big legal system' that we have, there are multiple other legal systems that exist within the communities. These community systems, including that of the indigenous peoples, must be acknowledged, recognised and respected in our quest for 'sustainable development'. Further, the 'special relationship' between the indigenous people and the land they occupy must be acknowledged as the principal source of livelihood, social and cultural cohesion fundamental to their identity and spiritual welfare as affirmed in the UNDRIP. It has been pointed out this is legally possible to be implemented under the construct of the present Malaysian Federal Constitution without the need for any amendment, although the recognition of *Orang Asli* customary land rights consistent with the UNDRIP may necessarily require the State to reduce or relinquish the excessive control they currently possess over *Orang Asli* and their lands.⁸⁵

The findings of this research provide an insight as to the position of land to the communities which may enhance understanding on the matter. This will contribute to public knowledge and awareness, which is important to pave the way towards policy and legal changes. Public knowledge and awareness about the ways these communities use

⁸⁵ Yogeswaran Subramaniam, 'Rights Denied: Orang Asli and Rights to Participate in Decision-Making in Peninsular Malaysia' (2011) 19 *Waikato Law Review*, 44.

their land and its significance to them will allow for a better understanding of the need to protect these communities. This in turn may assist in efforts for policy and legislative changes, especially in terms of the manner in which state authorities deal with the *Orang Asli* for greater protection of their land.

