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# *Adat* land laws in Malaysia

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## What is adat land?

- customary land tenure is that it is a matriarchal system or *adat pepatih* and applicable in the districts of Kuala Pilah, Rembau, Jelebu and Tampin of Negeri Sembilan. In 1909, a Customary Tenure Ordinance was passed and enforced in the four districts above.



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## Four cardinal rules of adat land :

- The customary tenure has property vests in the tribe, not in the individual;
- acquired property, not inherited,
- becomes ancestral; all ancestral property vests in the female members of the tribe; and
- all ancestral property is strictly entailed in female.

# Background to the Adat legislation

- In 1909 a Customary Tenure Ordinance was passed and enforced in the four districts above. The objective of the Ordinance was 'to provide for the preservation of Customary Rights over certain lands. This Enactment was later repealed and replaced by a new enactment in 1926. The purpose of this Enactment was 'to prevent the passing of the Malay landholding into the possession of the foreigners.' This Enactment was in a way existed side by side with the MRE 1913.
- The difference was the former was more rigid in the application. It was only applicable to the Malay *adat pepatih* customary land. Whereas the latter, was applicable generally to most of the land that was owned by the Malays. Secondly, the Customary Enactment's application is restricted only to 4 districts in Negeri Sembilan, compared to Malay Reservation.

# The Adat Land Title

- This Customary Tenure Enactment provided that documents should be registered in the *Mukim* (sub-district) Register. In addition, the title of the land should be endorsed with the words 'Customary Land.' (***tanah adat***) Thus, as said by Nik Mohd. Zain that the Customary Tenure Enactment has adopted the policy of giving its protection to customary rights only where their existence was indicated by an endorsement on the register.
- [\[1\]](#) The Customary Tenure Enactment, Cap. 215, s. 4(i)

# The restriction of Adat Land

- By virtue of the Enactment, no land or interest therein may be transferred, charged, transmitted or otherwise dealt with except in accordance with the custom and consent of the *lembaga* or headman of the tribe. However, this restriction shall not be applicable to leases of customary land for a period not exceeding twelve months.

# The position of adat land under the National Land Code

- the effect of *adat* laws on the present land policy and the land regulations, for example the National Land Code 1965 and the Land Acquisition Act 1960.
- Section 4 (1) NLC – if there's a conflict between the NLC & any customary legislation, the customary provision prevails



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Special position of *adat* & Islamic matters  
conferred by the Federal Constitution, the  
supreme law of the land



### **FEDERAL (List I)**

- .External affairs
- .Defence
- .Internal security
- .Civil and criminal law and the administration of justice
- .Federal citizenship and naturalization; aliens
- .Federal Government machinery
- .Finance
- .Trade, commerce and industry
- .Shipping, navigation and fisheries
- .Communication and transport
- .Federal works and power
- .Surveys, inquiries and research
- .Education
- .Medicine and health
- .Labour and social security
- .Welfare of aborigines
- .Professional licensing
- .Federal holidays; standard of time
- .Unincorporated societies
- .Agricultural pest control
- .Publications
- .Censorship
- .Theatres and cinemas
- .Co-operative societies
- .Tourism
- .Prevention and extinguishments of fire.
- All matters relating to the Federal Territories.

### **STATE (LIST II)**

- Islamic laws and custom
- .Land
- .Agriculture and forestry
- .Local government
- .Local public services: boarding houses, burial grounds, pounds and cattle trespass, markets and fairs, licensing of theatres and cinemas
- .State works and water
- .State Government machinery
- .State holidays
- .Creation of offences under State List/ State law
- .Inquiries for state purposes
- .Indemnities related to State matters
- .Turtles and rivering fishing
- .Libraries, museums, ancient & historical monuments

### **SUPPLEMENT TO STATE LIST SABAH & SARAWAK (LIST IIA)**

- .Native law and Custom
- .Incorporation, winding-up of corporations
- .Ports & harbours
- Cadastral land surveying
- In Sabah, the Sabah Railway

### **CONCURRENT LIST (LIST III)**

- Social welfare
- Scholarships
- Protection of wild animals and birds; national parks
- Animal husbandry
- Town and country planning
- Vagrancy and itinerant hawkers
- Public health
- Drainage and irrigation
- Rehabilitation of mining land and land which has suffered soil erosion
- Fire safety measures in buildings
- Culture and sports
- Housing; improvement trusts
- SUPPLEMENT TO CONCURRENT LIST SABAH & SARAWAK (LIST IIIA)**
- Personal law
- Adulteration of foodstuffs & other goods
- Shipping under 15 tons
- Production, distribution & supply of water power & electricity generated by water power
- Agriculture & forestry research
- Charities & charitable trusts
- Theatres; cinemas; places of public amusement
- Elections to the State Assembly
- In Sabah until the end of 1970 (but not Sarawak),

# List 1

1. External affairs
2. Defence
3. Internal security
4. Civil and criminal law and the administration of justice
5. Federal citizenship and naturalization; aliens
6. Federal Government machinery
7. Finance
8. Trade, commerce and industry
9. Shipping, navigation and fisheries
10. Communication and transport
11. Federal works and power
12. Surveys, inquiries and research

13. Education
14. Medicine and health
15. Labour and social security
16. Welfare of aborigines
17. Professional licensing
18. Federal holidays; standard of time
19. Unincorporated societies
20. Agricultural pest control
21. Publications
22. Censorship
23. Theatres and cinemas
24. Co-operative societies
25. Tourism
26. Prevention and extinguishments of fire
27. All matters relating to the Federal Territories.



# An evaluation of the List

- there is a strong central bias, federal list covers 27 topics as compared to 13 entries for the State. Contained most of the important & expensive function i.e. external affairs - treaties, extradition and passports, internal security, finance, currency, loans & taxes.
- State List, matters which are more localised or regional in nature which includes Islamic law, land tenure, Malay reservation...
- division however not rigid

# List II

1. Land
2. Agriculture and forestry
3. **Local government**
4. Islamic laws and custom
5. **Local public services:  
boarding houses,  
burial grounds,  
pounds and cattle  
trespass, markets and  
fairs, licensing of  
theatres and cinemas**
6. State works and water
7. State Government  
machinery
8. State holidays
9. Creation of offences  
under State List/ State  
law
10. Inquiries for state  
purposes
11. Indemnities related to  
State matters
12. Turtles and riverine  
fishing
13. Libraries, museums,  
ancient & historical  
monuments



# 'Land' under the Federal Constitution

- Ninth Schedule, List I, List II, List IIA, List III, & List IIIA
- land, agriculture, forestry, local government, turtle & riverine fishing, State List/ List II
- town & country planning, rehabilitation of mining land & land which has suffered soil erosion, housing, drainage & irrigation Concurrent List/List III
- 'Environment'/environmental related matters'- all the five list
- definition of land under NLC

## What is *adat* land?

- A hybrid between customary & Islamic land
- According to the Federal Constitution, it is exclusively a state matter,
- Parliament cannot legislate on all land matters on grounds of uniformity of law and policy
- Hence adat land have a a special position under the Malaysian land law in that if there's a conflict between any provision pertaining to *adat* and the National Land Code, that provision will prevail

# Per 76 (4) Perlembagaan Persekutuan

- Parlimen boleh, hanya bagi maksud memastikan keseragaman undang-undang dan dasar, membuat undang-undang mengenai pemegangan tanah, perhubungan antara tuan tanah dengan penyewa, pendaftaran hakmilik dan surat ikatan yang berhubungan dengan tanah, pindah hakmilik tanah, gadai janji, pajakan dan gadaian berkenaan dengan tanah, ismen dan hak dan kepentingan lain mengenai tanah, pengambilan tanah dengan paksa, perkadaran dan penilaian tanah, dan **kerajaan tempatan**; dan Fasal (1)(b) dan (3) tidaklah terpakai bagi mana-mana undang-undang yang berhubungan dengan mana-mana perkara itu.



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# Issues of adat land

- Agricultural land in rural areas - small & uneconomical size due to its inheritance procedure
- Owners unknown – abandoned, under utilised
- Information of proprietors not updated
- Trustee of land property not stated on land title- adat institution not given due recognition under the law



## Features of *adat* land

- To ascertain that land belongs and remain within the same clan/*suku* via the matrilineal line
- To revived the function of *penghulu* – if land abandoned then it will revert to penghulu and he will distribute it to the other members of the *suku*