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ENHANCING VALUE OF CUSTOMARY LAND: A CASE STUDY OF NEGERI SEMBILAN

ABSTRACT

This paper examines the role of law in enhancing the value of customary land which is an integral part of the social and economic aspect of the adat perpatih community in the State of Negeri Sembilan, Malaysia. Tracts of customary land has been left idle for some time since 1980s mainly because of the wrong perception that agricultural activities will not yield fast and high returns. The Malaysian government identified various strategies to help alleviate rural poverty since the early days of independence. Despite the efforts undertaken by the government, the major problem posed to the government agencies is the increasing rate of idle agricultural land. Data were collected from interviews with affected landowners in Negeri Sembilan, the adat leaders, the State Authorities responsible for land administration and development, Federal government agencies established to address rural development strategies to identify the reasons for the increase in the idle agricultural land despite the policies and measures undertaken by the government for promoting efficient use of the land. Research identified that there are factors impacting adversely on the successful implementation of the government's

plans to develop idle agricultural lands. This problem if left not being watched will impact on the supply of agriculture land available for development. This paper sets out the legal measures that can be adopted in addressing issues relating to idle agricultural land, the problems faced and the proposals to overcome the problems to prevent the loss of supply of land available for agriculture development which is very crucial to ensure food security and promote sustainable development of the rural community that can have the effect of enhancing the values of customary land.

Key words: law for development of land, sustainable development of rural land

Abstrak

Tulisan ini mengkaji peranan hukum dalam meningkatkan nilai tanah adat yang menjadi bagian integral aspek sosial dan ekonomi dari komunitas Adat Perpatih di Negeri Sembilan. Tulisan-tulisan tentang tanah adat telah ditinggalkan sejak 1980-an karena adanya salah persepsi bahwa aktivitas-aktivitas pertanian tidak akan menghasilkan secara cepat dan tidak memberikan keuntungan yang tinggi. Pemerintah Malaysia mengidentifikasi berbagai strategi untuk membantu masyarakat desa yang menderita sejak awal kemerdekaan. Walaupun usaha-usaha telah dilakukan oleh pemerintah, masalah utamanya adalah meningkatnya jumlah tanah yang tidak produktif. Data dikumpulkan dari interview dengan para pemilik tanah di Negeri Sembilan, para pemimpin adat, pejabat negara bagian yang bertanggung jawab atas administrasi tanah, lembaga Pemerintah Federal yang didirikan terkait strategi pengembangan daerah untuk mengidentifikasi alasan-alasan tingginya tanah pertanian yang tidak produktif disamping kebijakan-kebijakan dan langkah-langkah yang diambil pemerintah untuk mempromosikan penggunaan tanah yang efisien. Penelitian ini mengidentifikasi bahwa terdapat beberapa faktor yang berdampak secara serius pada suksesnya implementasi rencana pemerintah untuk mengembangkan tanah pertanian yang tidak produktif. Masalah ini jika tidak diperhatikan akan berdampak pada ketersediaan tanah pertanian untuk pembangunan. Tulisan ini merancang langkah hukum yang dapat diadopsi dalam menjawab masalah-masalah yang berhubungan dengan tanah pertanian yang tidak produktif, masalah-masalah yang dihadapi dan proposal untuk menyelesaikan masalah diatas untuk mencegah hilangnya ketesediaan tanah yang produktif untuk pengembangan pertanian yang sangat krusial untuk menjamin kebutuhan pangan dan meningkatkan pembangunan berkelanjutan di daerah yang dapat membawa dampak pada peningkatan nilai tanah adat.

Kata Kunci: hukum pembangunan tanah, pembangunan berkelanjutan untuk pedesaan.

I. INTRODUCTION

The development of customary land has never been easy mainly due to the Rural development has been the core focus of the Malaysian economic policies since independence in 1957 through the 1990s based on the ideology that rural development is pivotal to the country's economic growth, upgrading of social structure and to a certain extent political stability. Post independent rural sector's salient characteristics were, high incidence of poverty leading to social problems, low productivity or agricultural land, lack of basic economic knowledge, lack of infrastructures and market imperfections creating imbalances. One of the major social problems of the rural sector is poverty arising from lack of fixed income, technology know-how, access to credit and etc. Although poverty is a universal problem, its higher occurrence and incidence in the rural sector makes it predominantly rural phenomenon (Siwar, 1996). The incidence of poverty in Malaysia was quite high in the 1970s, that is, almost half of the populations lived in poverty, with the rural sector being the most effected group. As the rural economy is mainly based on the agriculture sector, the Government strategized and developed various agricultural

policies to chart agrarian reforms as major measures responsible in transforming the poverty-stricken community to one that is commercially-oriented.

Development efforts are governed by the two prong strategy of achieving growth with equity. The government policies had to a great extent achieved the intended results but poverty and inequality within and between sectors and the major ethnic communities were still significantly visible (Sundaram, 1996). Malaysia in line with the goals set out in the Millennium Development Goals of the United Nations also focuses on rural development and retained it as an important agenda in the country's effort to reduce poverty (<http://www.doingbusiness.org/data/exploreeconomies/malaysia/> on 22nd October 2012). Since poverty is very often linked to the rural community, the government has taken various efforts to improve the agricultural sector that is the predominant rural economic activity. Alongside the undertaking to develop rural areas and various related aspects, the authorities are also faced with the task of rehabilitating idle agriculture land left by the owners who are no longer interested to cultivate the land due to various reasons (Hussein, 182: 105-113). The problem of idle padi land has attracted national attention in recent years. The total area under all crops in Peninsular Malaysia is approximately 8.6 million acres. However, more than a million acres or about 12 percent of the total acreage are left idle and about 30% of the idle agricultural land has been found to consist of alienated padi land (Department of Agriculture, 1979: 6). The problem of idle padi land is especially acute in Negeri Sembilan where 20,784 acres or 57 % of all gazetted padi land are left idle. This study examines the factors contributing to the abandonment of padi land and to suggest alternative uses of the land. In Negeri Sembilan, about 57 % of the gazetted padi land is abandoned (Department of Agriculture, 1979: 6).

The research identified the factors that contributed to the abandonment of land in the State that has caused the value of the land to be considerably lower and suggest alternative uses of the land. The study shows that factors such as shortage of skilled labour, low productivity of padi land, shortage of water, multiple land ownership of inherited land are significantly influencing the farmer's decision to abandon their padi land. The research in these areas also indicated that the smaller idle padi land has been economically well utilised by smallholders by adopting integrated farming activities. Incorporation of short term crops such as pineapples, chili, maize, livestock rearing especially feedlot (cows), sheep and poultry, apiculture and mushroom cultivation with perennial crops and forest trees. Normally, this system lasts at the most three years before the canopy closes in. For agroforestry system to be sustainable, correct designs and techniques of planting tree crop, short-term crop and forest trees and choice of forest trees was established (Ahmad, 2001). The increasing cases of idle agricultural land can be a drawback to the strategies adopted to develop rural land aimed at ensuring food security and the other for poverty alleviation if not given serious attention. The government being aware of the fact that if the land is left to remain idle it could have a long term impact on the policies for alleviating rural poverty as well as sustaining agricultural activities for purposes of ensuring food security.

There were policies and efforts undertaken by the government in tackling the issue of idle agricultural land by taking the state of Negeri Sembilan as a case study. There are only six administrative districts that are still practicing *Adat Perpatih* in Negeri Sembilan, that is Rembau, Seremban, Jelebu, Jempol, Kuala Pilah dan Tampin. There is no customary land in Sungei Ujong (Seremban). There are about 12 tribes (*suku*) in Negeri Sembilan left at the moment. The study has as its main objective to identify the constraints faced in developing these lands that has led the land being left idle and unproductive. It is proposed to introduce legal measures to enforce the development of idle agricultural land which could in turn be converted to be productive and sustain the growing needs of subsistence agriculture. The distribution of customary land in the Districts in Negeri Sembilan as at 1983 is set out in Table 1 below (Negeri Sembilan State Structure Plan, 2000-2020). The Districts in Negeri Sembilan where adat land is available is in Figure 1 below.

TABLE 1: DISTRIBUTION OF ADAT LAND IN THE DISTRICTS IN NEGERI SEMBILAN AS AT 1983

	JELEBU	K.PILAH	JEMPOL	REMBAU	TAMPIN	SEREMBAN	PORT DICKSON	TOTAL
LOTS	64	9,950	809	8,261	1,013	NIL	NIL	20,097
GRANT NO	63	9,973	751	8,587	992	NIL	NIL	20,366
TOTAL ACRE AGE	96	18,000	1,699	12,698	2,072	NIL	NIL	34,565

II. BACKGROUND INFORMATION ON THE SALIENT FEATURES OF THE ADAT LAND

The customary land in Malaysia is very much a unique feature of the Malay community in Negeri Sembilan where the State boasts the caption, “Negeri Sembilan Negeri Beradat” (loosely translated as *Negeri Sembilan Negeri Beradat* (loosely translated as Negeri Sembilan the State with Custom). Traditionally, the Malays in Peninsular Malaysia used and held their lands according to their *Adat* or customary laws. *Adat* might have differed *slightly* from Malay state to state or district to district but, generally, everybody understood how land could be used, acquired and inherited. There were never any written land laws. Sir W.E. Maxwell, the Straits Settlements Land Commissioner, wrote in 1884 that, generally, among the Malays there were only two kinds of land: *hidup* (alive) or *mati* (dead). Land that was being cultivated or occupied was considered as alive, and land that was not utilized or abandoned is considered to be dead land.

Sir Maxwell in the Malay Digests at p.121 aptly described the Malay customary land tenure as: “...the Malay cultivator can transfer only the interest in the land which he himself possesses; that interest ... is merely a permanent and inheritable right of occupation, conditional on the continuous occupation of the land on the payment of tenths and taxes, and on the rendering of certain customary services; and ... the

price to be paid has no reference to the value of the land itself ... but is calculated if garden land, by estimating the value of the fruit trees, or, if padi [i.e. rice-fields] land, by assessing at a reasonable sum the probable, value of the labour bestowed by the first cultivator in clearing the forest and bringing the filed into cultivation”.

A *sawah* (field) was deemed dead if it was abandoned for more than three years. An orchard, however, would be considered dead only if it had been abandoned and had stopped fruiting. In other words, the cultivator could still claim his produce as long as the orchard continued to fruit. Once it stopped producing, it was up to the Raja, Pembesar or Penghulu (headman) to decide whether to allow anyone else to occupy or cultivate the orchard. The land's occupant or cultivator had the sole right to its products, but he never actually owned the land. He did not have to pay land taxes but was obliged to give a certain fraction of his land's product to the Pembesar or Raja, or whoever was in power in the district or state at the time; this served as a show of allegiance. The concept of “ownership” as comprehended by the modern society never existed then. There were occasions, however, when an unjust ruler would wait to terminate the occupant's right to the land and seize the land either for himself or to give it away to some favoured persons.

British intervention in the Malay States in the last quarter of the 19th century introduced a major change in land issues. Believing that the sultans were the virtual owners of land, the British fully took over its administration. They then introduced laws that divided land into different functions, such as agricultural land, mining land, customary land, Malay reserved land, etc. to help ensure optimization of land use based on the nature and quality of land. Next, they decreed that ownership of land had to be registered with the newly set up land offices upon payment of certain fees, which subsequently became a major source of revenue for the state. Application for land ownership registration was then opened, especially for commercial purposes such as for mining and agriculture. The majority of applicants were European and Chinese entrepreneurs. Land which was already occupied by Malays, were classified as customary land and registered under the Mukim Register. Fees charged for the administration of customary land was comparatively lower than those for commercial purposes. Under the new regulations, all land with the exception of the Customary and Malay reserved lands could be bought, sold, mortgaged or leased. Land had thus become a commodity. The liberal land policy of the British facilitated the opening up of thousands of hectares of land, especially when mining and commercial agriculture became major revenue earners for the states. The Chinese and the Europeans, and with very few Indians and Malay elitists, played major roles in developing these two sectors.

However, the Malays were generally encouraged to cultivate rice to feed the growing labour force used in the manufacturing and commercial agricultural sectors. The British readily granted land to Malays, local as well as immigrant, so that they could form a settled peasantry to produce rice. Some Malay peasants preferred to sell their land, especially to non-Malays who offered them comparatively high prices. They evinced no worry that they were losing their land because the

British were still liberal in offering land for food production. As rubber prices kept soaring in the markets, the consequence was an alarming number of transactions of Malay land. Many European and Chinese planters and miners bought up isolated Malay land as well as kampung land to expand their estates. Substantial Malay traditional land had changed hands in the various states Malaya. Thus, came about the need to introduce legal measures to prevent any form of transaction of Malay land to non-Malays so that Malays would retain their customary land for purposes of assuring continued production of rice for the country. A proposal from R.J.B. Clayton, suggested that only the Malays were likely to form a permanent agricultural population and labour force in the Federated Malay States, thus their rights to the land should be protected. If not, it would defeat the main objective of the British policy to create a permanent agriculture population.

III. DEVELOPMENT POLICIES FOR TACKLING IDLE RURAL LAND PROBLEM

Policies were formulated to guide and direct the development of the agriculture sector since the early years of independence Wafa, 1974). The First Malaysia Plan (1966-1970), 2nd Malaysia Plan (1971-1975), 3rd Malaysia Plan (1976-1980) and 4th Malaysia Plan (1981-1985) indicated some significant institutional effort initiated by the government. The First Malaysia Plan emphasized the agricultural sector. The New Economic Policy was introduced during the Second Malaysia Plan (1970-1975) period to restructure the economic development of the country (National Development Plan). This has resulted in the establishment of various agencies to handle redevelopment of rural based economy including the Federal Land Development Authority (FELDA) and Federal Land Consolidation and Rehabilitation Authority (FELCRA). FELDA was successful in eradicating rural unemployment and landlessness (MacAndrews, 1977).

The function of FELDA was to promote and assist the investigation, formulation and carrying out agricultural based projects for the development and settlement of landless people with the objectives:

1. to reduce unemployment in rural areas
2. to solve the problems of land ownership
3. to establish a developed and progressive new community; economically and socially

FELCRA too was established in 1966 for purposes of consolidation and rehabilitation and to develop land as agreed or requested by the State government or on its own, or on requests from the land owners. FELCRA's objectives amongst others are the followings:

1. to ascertain a strong returns on its output for the developed estates
2. to increase the quality of living for its participants and staff.
3. to improve the productivity levels with knowledge and up-to-date technological management.
4. to enlarge technology and land management

5. to upgrade value-added economy

FELCRA's efforts are focused on rehabilitation and to develop individual idle land. Since 1967 until Jun 1989, there are 225,867 hectares of land has been redeveloped and managed as mini estates. It is clear that, with the establishment and operation on agriculture land management, huge areas of idle land has been improved and managed for productivity. However, there are landowners who are not totally satisfy with the bonus and the way FELCRA cutting off their debts instalment.

The phase after the introduction of National Agriculture Policy (1984) until the 8th Malaysia Plan (2001-2005) had its focus on the commercialization of agriculture products for food security including developing technology, to increase size of land, attempt to increase the scale of economic, size and management efficiency in developing agriculture and commodity sector. In doing so, the government institutionalized other agencies such as Rubber Industry Smallholders Development Authority (RISDA) and Farmers Organization Authority (FOA). The objective of the FOA is to produce commercial farmers who would contribute towards the development of agriculture industry through promotion, stimulation, facilitate and undertake economic and social development organizations and to register, supervise farmer's organizations and allocate funds on matter relating to farmers. To a certain extent, the government was successful in strengthening the agriculture institutions and to revive idle land by way of securing both economies of scale and the effective transfer of technology. However, the effort by FOA was not smooth due to constraint within the informality such as old age of landowners, small size of lands and passive attitude.

The government in realising the importance of rural sector to the country's economic growth, social and political development, has taken several steps to sustain the development of land in rural area regardless of whether it is adat land or free land. The issue of idle land has been much discussed in the 7th Malaysia Plan (1996-2000) and continued throughout the 8th Malaysia Plan (2001-2005) period. For the former, the concept of *landlord-in-trust* was introduced. The Ministry of Agriculture attempts to implement the new concept to redevelop the idle land through the establishment of the Incorporated Ministry of Agriculture (MOA Incorporated) to handle and redevelop idle lands in selected areas. It was a mandate on the government to give more attention for agencies to redevelop idle land and increased productivity of land. From this concept, all the agencies under Ministry of Agriculture acts like a team of consultants, led by Agriculture Department. By 2001, the Agriculture Department was successfully executed redevelopement of idle lands at 12 different locations or about 919 hectares of land involving 392 farmers. In 2004, Ministry of Agriculture has allocated about RM13 billion to undertake redevelopement of idle land. However, there are problems with multiple ownership constraints due to risks on rental, passive attitude and unsatisfactory term and references of contract agreements (Improving Idle Land Management in Malaysia - An Institutional Framework for Analysis", 1st. Real Estate Educators and Researchers Conference, Universiti Teknologi Malaysia, Kuala Lumpur, 26-27th

September). Unfortunately, despite the good planning for the development of land, the issue of idle agricultural land remained unresolved and it was reported in 9th Malaysia Plan, that approximately 163,000 hectare of agricultural land remained idle due to the difficulties to incorporate the land (Manaf, 2007).

A brief analysis of the Malaysia Plans shows the institutional efforts undertaken by the government to deal with the agriculture idle land issues. Beside the formal institutionalized effort by the government, the agricultural sector also evaluated the responses from the landowners on the reason as to why they are no longer keen to develop their padi land despite the customary rule requiring them to continuously cultivate the land or risk losing the land. The factors contributing to the growing phenomenon of idle land are discussed in the preceding paragraph.

IV. CHALLENGES FACED IN DEVELOPING IDLE AGRICULTURAL LAND

Amongst the factors identified to have influenced the development of Adat land are:

1. Land Unsuitable for Agricultural Development

The British owned most of the fertile lands and merely reserved some small-sized unfertile agricultural lands for purposes of Malay Reservation with pockets of land in suburbans (Mustapha, et.all, 1996: 1,2,11). Most of the land that had been declared as Malay reservation by the British was considered third and fourth class (Rashid, 1979:5). Moreover, the Malay reservation land has been located at hilly areas and it is normally thick jungle, which makes cultivation almost impossible (Awang, 1991: 63-64). This may be the reason why Malay reservation land has been abandoned by the landowners. There was an allegation that the British intentionally planned for this as the Malays were known not to keen to be involved in plantation activities and prefer subsistence agriculture. In addition, the Malays were lacking in agricultural skills. The alienation of fertile land around Kuala Lumpur to Thomas Heslop, Ambrose Beatty Rathborne and Martin Lister, was the best example of the British policy in disposing fertile land to British citizens (Soo, 2000: 21). This land, which is now known as Golden Triangle, was later owned by Loke Wan Tho (Soo, 2000: 21). It is perceived that despite being aware of the economic inability of the Malays to own this prime land due their low purchasing power, the British did not declare any urban area in Kuala Lumpur as Malay reservation. If they could have declared the whole of Kelantan and nearly most of the *kampung* lands as Malay reservation, they could have declared the city of Kuala Lumpur as Malay reservation if they genuinely intended to protect the Malay race's property rights.

2. Location of Land and Lack of Infrastructure

Most adat land is situated in remote areas with limited accessibility and infrastructure (Hamid, 1997: 5-6). It shows that the British declared only *kampung* land or wasteland as Malay reservation. In the extreme cases it overlaps with forest reserves. Some of this land according to Mohd Ridzuan Awang (1987: 368), are neglected and not cultivated by the owners. Any land that had develop-

ment potential, urban areas, mining land was excluded from reservation. The British colonialist is said to have revoked the status of Malay reservation of some land after discovering tin deposits in the land. It is believed that the British viewed the Malays as incapable and not keen in developing their land. Thus, they choose to declare rural areas with no infrastructure facilities as adat land limiting the adat communities access to development due to expensive costs (Zain, 1996: 32).

3. Fragmentation and Multiple Ownership of Land

Another obstacle to the development of Malay Reservation land, especially in the urban area, is the issue of fragmentation and multiple ownerships which makes them less valuable and unsuitable for beneficial development. Efforts to change the mind-set of the Malays towards development of Malay Reservation land, issue of market value as well as establishment of a specific consortium for development of Malay Reservation land have been proposed by many parties for quite sometime. Unfortunately, there is a lack of positive outcome and perhaps the government as well as the Malay companies should work hand in hand with other agencies such as the Peninsular Malaysia Malay Chambers of Commerce, Malay Contractors' Association as well special development agencies like Urban Development Authority (UDA) to develop Malay Reservation land.

4. Low Market Value of Land

It is an acceptable fact that the market value of Malay reservation land is much lower than other types of land (Al Haj, 1960: 6). Lands within the Malay reservation were valued, in practice, based on sales of similar such lands in the neighbourhood. Being lands restricted to a certain market however such sales were comparable and hence the value of the acquired land was generally lower than for lands outside the Malay reservation. Wan Suleiman F.J. in *Collector of Land Revenue, Kuantan v. Noor Chahaya Binte Abdul Majid* (*Collector of Land Revenue, Kuantan v Noor Chahaya Binte Abdul Majid*, 1979: 180) further confirmed this contention. In delivering his judgement he said that 'the fact remains that in law no non-Malay can own reservation, and this restriction must remain a disadvantage, which must necessarily be reflected in a lower market value (*Collector of Land Revenue, Kuantan v Noor Chahaya Binte Abdul Majid*, 1979: 181). The value of the adat land is lesser compared to freehold land principally because the Malays either lack the ability to pay a higher value or takes for granted the true value of the adat land.

5. Lack of Financial Capacity

It has always been said that the *adat* community are poor and therefore unable to finance development (Mustapha, et.all, 1996:12). Nik Abdul Rashid (1993: 1993: 3) said poverty is one of major problems of the Malays in the rural areas. Therefore, any efforts to develop their land have been hampered by the fact that the landowners are not financially capable to do so. Moreover, according to Nik Hashim Mustapha apart for financial lacking owners are also lacking in

management skill (Mustapha, et.all, 1996:3-12). The land owners require financial support as incentives to undertake agriculture production on the land. They need money to build fences for farming and to protect the crops from wild animal. Landowners had tried to get financial assistance from Agriculture Department but failed due to wrongly interpreted financial incentives. According to the District Director of Agriculture Department, there is no financial support available for the construction of fence to the landowners. The financial support to build fence is only available to developers who are developing their rented agriculture land. Even if they manage to obtain loans or funding from the financial institutions, they are not able to develop their land owing to lack of financial management skills.

6. Problems of Access to Credit - Financial Institutions Reluctance to Fund Development

Hashim Bin Aman a financier, believes and argues that the financial institutions are reluctant to invest in the development of adat land (Aman, 1993: 4-5). According to him the banks are reluctant to release loan for development of adat land as there are inherent financial problems such as the land can only be owned by Malays, most of the Malay reservation land is classified as agricultural land and the lower market value of the land (Aman, 1993: 4-5). Nik Hashim Mustapha and H.M. Jajuli (1996:38) also argues that the banks are the caused for the lower market value of adat property. Despite the adat land being freehold land, it is normally valued at a lower rate. In consequence, the registered owner or a developer will have limited cash flow or insufficient financial capacity in developing the said property. Lack of access to credit for developing land due to the nature of ownership, location, uneconomical size of the adat land is Banks are reluctant to offer loan to multiple sisterhoods. Interview with Mr.Huzairi from Bank Pertanian Malaysia Berhad (agriculture-based bank), indicated that there are some cases whereby banks failed to offer financial assistance due to the multiple sisterhood land ownership. In other words, land owners of *tanah adat* are still facing unavoidable unattractive problem in dealing with the regulation of the banking system. As a result, this unattractive nature of *Tanah Adat* has discouraged the landowners from developing the land thus, responsible for the idyllic nature of the agriculture lands.

7. Lack of Policy Directions for Developing Adat Land

Despite the Federal Government implementing the various Malaysian economic development policies and plans such as the five yearly Malaysian plans, national development plan, Vision 2020, yet there is no clear policy on development of adat land. There are no special policy drawn by the Federal Government to resolve the problems developing the reserved land and no special body established to study the development of the land. In addition, there is no coordination amongst government departments and agencies to deal with the adat land (Ishak, 1998: 7). The present government provides very little incentive for the development of adat land. In one hand, it appears as if the Government is being very protective and sense the needs of the Malay reservation institution, whilst it legally condoned dealings with non-Malays. This leads one to wonder to

uncertainties and confusion on the actual intention of the Government.

8. Ideology on Preservation of Adat Land

It appears that the Malays perceived the Malay reservation institution as a design by the British to protect them and their land. They actually believed that it was their Malay Rulers who persuaded the British into implementing the laws (William, 1967). This attitude appears to be the principal obstacle for achieving economic and sustainable development of the land. This thought has remained with the Malays until the 21st century. They were complacent with the laws and could not accept any changes to the law. Whereas, little did they know that the restrictive nature of the law pushes them into poverty. It is not used as a regulatory framework to promote economic development. Malay reservation land has been treated as a sanctuary that needs to be preserved and protected rather than as a platform that can be used to develop the Malay community.

9. Ignorance of Proprietors on Importance of Development

The Malays were perceived to be simple people and according some authors, the time of the British arrival in 1776, and of the Pangkor Treaty of 1874, the Malay cultivator was still at the base of the social system, “owing loyalty and obedience to his local chief and with little knowledge of a world beyond his own and nearby villages” (William, 1967). Frank Swettenham is said to have remarked that, “these people had no initiative as they were there simply to obey orders of their petty chiefs no more, no less (William, 1967: 9). Thus, it would not be an understatement if one were to state that the attitude of the adat land proprietors and their ignorance of the importance of development of land is a factor to be considered about. The attitude of the proprietors must be reoriented in order to promote effective development of the land (Said, 1995:2). Some landowners give out their prime land for rental to obtain easier and speedier returns from a development project by becoming a dormant partner in joint venture deals with non-Malays or “lend” their names to non-Malay companies, (Mohammed, 1970:45) as such they fail to benefit from the actual value of any development projects awarded to them by the government.

10. Tanah Adat Regulations on Matrilineal Lineage

Most of the landowners are old ladies and their daughters who inherited the land usually does not stay in the village thus, hindering the development of the land. Interviews with landowners identified that their daughters are not interested to work on the idle lands. The sons who are not allowed to inherit the traditional land are precluded from developing the land despite the adat principles stating clearly that the sons can have a share of the profit (*makan hasil*). However, the womenfolk who inherit the land hardly observes the rule on sharing the produce with the male sibling. Additionally, the problem is more acute when dealings with multiple land ownership of all-sisters-akin (known as *nisab ibu*) or *multiple sisterhood*. Multiple land ownership makes it diffi-

cult for landowners to undertake development or renting out the land to developers. Moreover, developers are reluctant to take risk for fear of uncertainty in decisive land owners. This has led to the agriculture land being left idle.

11. Old ages and physically incapable

Most of the landowners are old and physically incapable to develop their lands. With the average age ranging from above 50 years, they are not strong and incapable to develop their land themselves despite availing financial incentives. The landowners are also reluctant to pay third parties to develop the land for fear to take risk of being cheated.

12. Unfair Bargaining Terms in Renting Contracts

There are loose agreements between landowners and developers such as uncertainty in renting terms and conditions. This leads to insecurity in land tenure and resulted in lower productivity of the agriculture lands. For example, some landowners had rented their land to developers to cultivate paddy for 3 seasons with RM60 payment of rent for one season. Once the developer stops their cultivation after a season, the landowners has no right for any sort of compensation due to nothing stated in the agreement about the early departures of the land developers.

13. Limited Market for Renting

Most landowners were disappointed with the limited market for their land to be rented or leased as the law restricts the land from being dealt with persons coming from outside the *suku*. This restricts the market for development as Malay developers are not keen to invest in the *adat* land. The small land size also hinders the landowners from securing rental income from the land.

14. Attitude of Landowners

The younger generation of landowners adopt the attitude that being involved in agriculture is a hindrance to economic development owing to the long hours and low returns generated by the agricultural activities. They rather work as labourers in the industrial administrative sectors. The younger generation are not interested to be farmers and the parents never encouraged them to continue the farming activities for fear to having to face retaliation from the children. This can be linked to the colonial legacy where the Malays were left out in the economic development owing to the colonial policy. The landowners are worried that if their children continue with agricultural activities they will lose out in the modern development. They fear of being burdened with the continued British policy of retaining the Malays, to form a settled peasantry community where they are required to retain their customary land for purposes of assuring continued production of rice for the country. However, they failed to realise that with modern technology and assistance from the government agencies, agriculture activities can yield more profits compared

to the wage earned as labourers or clerical workers.

V. PROPOSED SOLUTIONS

The following solutions are proposed to address the problems of adat land left idle and losing its value. It is proposed for the State Authority responsible for land administration to enforcing the law on forfeiture of abandoned land. The proposal may seem to be harsh and negative reaction from landowners but at times, it is necessary to take harsh measures to ensure government policies can be effectively implemented for the benefit of the landowners themselves. There is already in existence an express legal provision in section 129(4)(c) of the National Land Code 1965, the principal law for land administration in Malaysia where the State Authority can forfeit land left idle. This is in consonant with the adat law itself where uncultivated land can be forfeited.

It was legally recognised by the adat principles and the British Courts that proprietary right is created by clearing “dead land” by way of cultivation or building a house on the land and thus causes the dead land to “live.” Such right is absolute so long as it is followed by the continuous occupation or the land bears signs of appropriation. This concept was accorded judicial recognition in *Abdul Latif v Mohamed Meera Lebe* (1829: 249) Court of Judicature of Prince of Wales Island Singapore and Malacca where Claridge R, said: “There are two kinds of land, first the ‘living land’ and second, the ‘dead land.’ With regard to ‘dead land’ nobody has property rights to it, (when) there is no sign of it being under cultivation by someone, (then) certainly nobody can lay a claim to that land. If someone cultivates it into a (rice field, be it) a huma or ladang or sawah or bendang, no one can proceed against him. Thai is what is understood by ‘living land’”.

In the same case, it was further held that: “The custom in Malacca for a cultivator of land to pay a tenth of the produce to the proprietor of the land in lieu or rent – and as long as the cultivator does so he cannot be ejected it is good and reasonable custom, and one the court will recognise and uphold”. However, such right or “private ownership” of land was nothing more than a right of occupation, although it was capable of being inherited. The occupier was required to pay a tithe in the form of one-tenth of the harvest or the income derived from the land, regularly and without fail, to the Ruler. He also had to ensure that the land remained in constant cultivation and in default of which the land would be subject to forfeiture by the Ruler. He also has to ensure that the land remained in constant cultivation, in default of which the Ruler will forfeit the land. Sir Benson Maxwell CJ in in the case of *Sahrip v Mitchell & Anor* (1789: 466) upheld this custom: “It is well known that by the old Malay law or custom of Malacca, while the sovereign was the owner of the soil, every man had nevertheless the right to clear and occupy all forest and wasted land, subject to the payment, to the sovereign, of one tenth of the produce of the land so taken. The trees he planted, the houses he built, were his property, which he could sell or mortgage or hand down to his children. If he abandoned the paddy land or fruit trees for three years, his rights ceased and the land reverted to the sovereign. If, without deserting the

land he left it uncultivated longer than usual or necessary, he was liable to ejection”.

A *sawah* (field) was deemed dead if it was abandoned for more than three years. An orchard, however, would be considered dead only if it had been abandoned and had stopped fruiting. In other words, the cultivator could still claim his produce as long as the orchard continued to produce fruit. Once it stopped producing, it was up to the Raja, Pembesar or Penghulu (headman) to decide whether to allow anyone else to occupy or cultivate the orchard. The land’s occupant or cultivator had the sole right to its products, but he never had nor claimed ownership of the land. He did not have to pay land taxes but was obliged to give one tenth or tithe from his land’s produce to the Pembesar or Raja, or whoever was in power in the district as a show of allegiance. The concept of “ownership” as comprehended by the modern society was not recognised then. There were occasions, however, when an unjust ruler would wait to terminate the occupant’s right to the land and seize the land to be used for any purpose he wishes. However, the forfeiture exercise must not be done harshly but by adopting proper procedures especially by ensuring the landowner is given an opportunity to defend his case and to try to develop the land. The State Authority can also consider making some compensation to the landowners who are made landless to help them.

The legal framework regulating the *Adat land* sparked off informal constraints thus compounding the development. Due to the strict regulations regulating the *Adat land*, especially the issue relating to transfer of the land within the tribe or suku had restricted the landowner from making decisions to deal with the land thus halting development on the lands. Factors such as age and financial incapability, location of land, access to credit and land rendered unsuitable for agriculture demoralised the landowners efforts to develop the land. At this juncture the leaders of the Adat institution must be prepared to change the law that can assist the related government departments to come forward and undertake efforts in developing the idle agriculture land. Various agencies under the MOA Incorporated need to contribute to the process of institutional change. Steps should be undertaken to educate and promote benefits of agriculture land management schemes to landowners and all other stakeholders. The government agencies should be prepared to establish a one stop centre to provide legal, financial, planning and other related advise to the landowners to motivate and facilitate the development of the idle agricultural land.

VI. CONCLUSION AND PROPOSAL FOR REFORMS

The customary landowners in Malaysia are lucky as their land are registered and regulated by the respective Enactments, State land Rules and the National Land Code 1965. This is an added value compared to other customary landholding around the world. Thus a sound legal framework can help promote the development of the customary land that will have added value. The administrators of the adat land institution must be prepared to enforce the law without fear or favour in order to promote continued development of the land.

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