Land Ownership For Orang Asli In Malaysia: Current Situation

Wan Ahmad Hazman Wan Daud, Aminah Mohsin, Mohd Sharil Abdul Rahman

Abstract: Orang Asli community is part of the minorities living in the blessed land of Malaysia. Orang Asli community is regularly observed as dropout and decline to acknowledge the change towards innovation. This circumstance is in opposition to the desire of the community themselves and they are not directly involved in the policies making level. The rapid development of Malaysia, expansion of palm oil plantations and intensive logging have left Orang Asli in a grey area, rendering them as one of the most vulnerable communities in this country. This paper is based on literature analysis from many sources such as book, article, journal, report and all related materials will focusing on the current situation of land ownership for Orang Asli in Malaysia. The findings are expected to gain a better knowledge on current situation regarding Orang Asli land.

Index Terms: Customary Land, Law, Malaysia, Orang Asli, Ownership, Policies, Rights.

1 INTRODUCTION

In peninsular Malaysia there are 3 main tribal groups of Orang Asli known as Negrito, Senoi and Proto-Malay. There are also 18 ethnic groups within the Orang Asli community. Classification of Orang Asli into groups depend on language, physical appearance, and customs practised by each group. Details of tribal and ethnic can be seen in table 1 below:

<table>
<thead>
<tr>
<th>Tribal</th>
<th>Negrito</th>
<th>Senoi</th>
<th>Proto-Malay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethnic</td>
<td>Kensiu, Kintak, Jahai, Lanoh, Mendriq, Bataq</td>
<td>Semai, Temiar, Jahut, Che Wong, Mahmeri, Semog Beri</td>
<td>Temuan, Semelai, Jakun, Kanaq, Kuala, Seleqar</td>
</tr>
</tbody>
</table>

The Aboriginal Peoples Act 1954 describes an Orang Asli as an individual whose parents are both aborigine or one parent, male or female, is or was, a member of an aboriginal ethnic group based on Section 3(2). The person can be an individual of another race who is an adopted child. The criteria are that the person communicates in a native language and constantly follows a native lifestyle and native traditions and convictions, and incorporates a descendent of that individual [1]. The Orang Asli are conceptually categorise as Bumiputras, a status signifying indiginity to Malaysia which carries certain economic, social, and political rights, along with the Malays and the natives of Sarawak and Sabah, but this status is basically not stated in the constitution [2]. The welfare and affairs of Orang Asli in Malaysia are managed by governmental agency The Department of Orang Asli Development or known as JAKOA.

This agency was first set up in 1954 and currently is under the purview of Prime Minister’s Department. The responsibility of this department is to eradicate poverty among the Orang Asli, raise their general livelihood, encourage education, and enhance their health [3]. Orang Asli peoples are among the most disadvantaged and vulnerable groups in Malaysia. Based on data from Department of Statistics Malaysia, in 2010, 76.9% of the Orang Asli population remains beneath the poverty line. 35.2% is classified as living in hard-core poverty, compared to 1.4% nationally [4]. Currently, there are around 180,000 of Orang Asli in Malaysia. The population distribution is as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>Orang Asli Population</th>
<th>Number of Orang Asli village</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johor</td>
<td>6,702</td>
<td>6,437</td>
</tr>
<tr>
<td>Kedah</td>
<td>155</td>
<td>115</td>
</tr>
<tr>
<td>Kelantan</td>
<td>7,140</td>
<td>6,317</td>
</tr>
<tr>
<td>Melaka</td>
<td>778</td>
<td>737</td>
</tr>
<tr>
<td>Negeri Sembilan</td>
<td>5,461</td>
<td>5,070</td>
</tr>
<tr>
<td>Pahang</td>
<td>35,323</td>
<td>32,183</td>
</tr>
<tr>
<td>Perak</td>
<td>27,716</td>
<td>25,583</td>
</tr>
<tr>
<td>Selangor</td>
<td>9,254</td>
<td>8,333</td>
</tr>
<tr>
<td>Terengganu</td>
<td>474</td>
<td>419</td>
</tr>
<tr>
<td>Total</td>
<td>93,003</td>
<td>85,194</td>
</tr>
</tbody>
</table>

2 ORANG ASLI PERSPECTIVE TO LAND

The association of indigenous peoples with land is a complex and unique connection. Land mean more than an economic and social base to indigenous peoples. Land is essential and inter-related to all indigenous systems that encompass belief, culture, social, resource management, health, knowledge transfer, juridical, economic and political frameworks. So, the one of a kind relationship that indigenous peoples groups have with their property is integral to their lifestyles and aggregate ways of life as people groups [1]. In Malaysia, the Orang Asli people are only considered as a tenant at will on the land inherited and there is no title given to them by the Aboriginal Peoples Act 1954 ( Act 134 ) [5]. This lack of formal recognition results in insecurity. Without title, the Orang Asli are considered as occupying land at the discretion of the state.
[6]. According to Majid Suhut, the President of the Peninsular Malaysia Orang Asli Association (POASM), the solution to the progress of his people is the guarantee of land ownership [7]. Be that as it may, the Orang Asli has no registerable title to the customary lands. The uncertainty of the customary land tenure has affected the Orang Asli land rights and enjoyment [8]. William Hunt, Anthony in his study indicated that there are 4 effects on the occupation of the Orang Asli on their ancestral land without registered title. First, the Orang Asli can be evicted any time during their occupation on the land should the land be taken for other inflicting purposes. Second, Orang Asli will be prevented from enjoying their rights to customary land by earning income from plants or other resources found on the customary land that can be traded. Third, they will face difficulties to obtain any assistance from government agencies for land development. Lastly, the absence of Orang Asli legal entitlement on the land will make it difficult to raise capital for doing businesses in order to improve their living standards [9]. There is an elevated level of disappointment, outrage and franticness between Orang Asli communities in light of the non-acknowledgment of their privileges to land, resulting in the protests and objections openly. That kind of action in some cases causes separation among Orang Asli community as well as created negative mental impacts [1]. Based on the Guidelines on Indigenous Peoples’ Issues, 2008 by United Nations Development Group, there is several guideline related to territories, land, and natural resources:

- Indigenous peoples’ lands and area should be recognised, demarcated and protected from external pressures;
- Indigenous peoples’ privileges assets that are vital for their for their livelihood and growth should be respected;
- All endeavours ought to be made to guarantee that indigenous people groups decide the activities that happen on their territories and specifically that effects on the environment and sacred and cultural sites are avoided;
- In the situation of State-owned sub-surface assets on indigenous peoples’ groups’ territories, indigenous peoples still reserve the privilege to free, prior and informed consent for the investigation and misuse of those assets, and have a right to any benefit-sharing arrangements.

Since land is significant component to indigenous people groups’ life, unique consideration ought to be set on the insurance of the earth of the land from different exercises, for example, logging. Yet, more significant than that the present of Orang Asli on their territory must be perceived by the government by giving ownership.

3 CURRENT LAND SITUATION

The current forceful quest for improvement in Malaysia has brought about awkward nature and negative effects on indigenous rights. The various land improvement issues, for example, contamination of graves; obliteration of agricultural land, crops, catchment territories and significant social and consecrated destinations; water, air and commotion contamination just as impractical salary must be routed to guarantee advancement truly benefits all people groups [1]. Basically, the Government acknowledge three categories of Orang Asli customary lands: Gazetted Orang Asli Reserves, Orang Asli areas approved for gazetting as Orang Asli Reserves but not gazetted as yet, and Orang Asli lands applied for gazetting but not approved yet. Practically, the State Executive Committee or Majlis Mesyuarat Kerajaan Negeri (MMKN) is the approving authority for all the application received. Besides that three categories, based on data by JAKOA there is also a land that been alienated to Orang Asli for housing and agriculture purpose but the size is not that big. According to Aboriginal Peoples Act 1954, land can be alienated as aboriginal reserves or area as mention under section 6 and 7. Section 6 aboriginal areas (1) The State Authority may, by notification in the Gazette, declare any area predominantly or exclusively inhabited by aborigines, which has not been declared an aboriginal reserve under section 7, to be an aboriginal area and may declare the area to be divided into one or more aboriginal cantons: Provided that where there is more than one aboriginal ethnic group there shall be as many cantons as there are aboriginal ethnic groups. An aboriginal area may be declared in an area predominantly or solely occupied by aborigines, which has not been declared as a reserve. Within an aboriginal area, no land shall be declared as Malay Reserve land, as a sanctuary for protection of animals or birds, or as forest reserve, or be alienated, granted or leased except to aborigines normally resident in the territory. Besides, no permit for collection of woodland produce will be given in an aboriginal area to a person not being aborigines normally resident in that aboriginal area, or for any commercial undertaking, without consulting the Director General [1]. Section 7 aboriginal reserves (1) The State Authority may, by notification in the Gazette, declare any area exclusively inhabited by aborigines to be an aboriginal reserve: Provided—
(i) when it appears unlikely that the aborigines will remain permanently in that place it shall not be declared an aboriginal reserve but shall form part of an aboriginal area; and
(ii) an aboriginal reserve may be constituted within an aboriginal area.

A zone to be declared an aboriginal reserve is any area exclusively inhabited by aborigines and where the aborigines are likely to remain permanently. Such an area is to be gazetted. Within an aboriginal reserve, no land may be declared a Malay Reserve land, a sanctuary for wild animals, or reserved forests, neither shall lands be alienated, granted or leased except to Orang Asli who are resident there, and no temporary occupation of the land is allowed [1].

TABLE 3
Details on Gazetted Orang Asli Reserves by Departments of Orang Asli Development (JAKOA) as 2014.

<table>
<thead>
<tr>
<th>Aboriginal Land Gazetted (Hectares)</th>
<th>NLC Gazette Section 62</th>
</tr>
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TABLE 3
Details on Gazetted Orang Asli Reserves by Departments of Orang Asli Development (JAKOA) as 2014.
Based on data there is 29,166.66 hectares of land that had been gazetted under section 6 and 7. There is also a case where State government gazette an area combining section 6 and 7 as data above where Perak State Government declare 2,821.33 hectares of land under section 6 and 7. This is still less to be compared with total amount of land that applied for gazetting but not approved yet. Besides Aboriginal Peoples Act 1954, aboriginal land also can gazette under section 62, National Land Code 1965. Under the section 62 mention that State authority can reserves a land for public purposes. The biggest dilemma faced by Orang Asli under section 6 and 7 is subsection 3 on both section mention that the State Authority may in like manner revoke wholly or in part or vary any declaration of an aboriginal reserve made under subsection (1). This subsections in effect give complete power for the state government to remove any protections on Orang Asli land. Their tenure therefore not secure [10].

### TABLE 4
Details on Orang Asli Land by Departments of Orang Asli Development (JAKOA) as 2014.

<table>
<thead>
<tr>
<th>State</th>
<th>Aborigina l Areas Approved by States Executive Committee Yet to be Gazetted (Hectares)</th>
<th>Aborigina l Land in Application (Hectares)</th>
<th>Individual Land Titles (Hectares)</th>
<th>Housing</th>
<th>Agriculture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kedah</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Perak</td>
<td>4,927.25</td>
<td>25,588.94</td>
<td>2.5</td>
<td>1.28</td>
<td>41.3</td>
</tr>
<tr>
<td>Selangor</td>
<td>1,388.30</td>
<td>3,925.73</td>
<td>18.86</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

This has significant ramifications as bigger area of the land claimed by the Orang Asli has been approved to be reserves but not yet put on gazette [14]. Data also shown a very huge area of land that is 75,181.40 or 59.4% already in application process to be gazetted as Orang Asli reserves but yet there is still no approval on that application. This need to be seriously manage by the authority because this effect the right and protection to Orang Asli. 115.53 hectares of land has been alienated to Orang Asli for housing purposes and 1420.85 hectares of land for agriculture purposes. The number shown that land alienation for individual titles is possible for Orang Asli according to National Land Code 1965.

### 4 THE NEW ORANG ASLI LAND POLICY BY GOVERNMENT

Acknowledging the discomfort of Orang Asli community on the entitlement to customary lands issues, the government on 4th December 2009, through the 65th National Land Council Meeting chaired by the Deputy Prime Minister of Malaysia approved the new Policy on the Alienation and Development of Land for Orang Asli for Agricultural and Residential Purposes. Through this development scheme, government decide to give 29,990 Orang Asli households permanent (individual) titles to agricultural lots range from 2 to 6 acres (0.8 to 2.4 hectares), each household were also granted with a quarter acre (0.1 hectares) for their house and orchard (dusun) [11]. The land that is released for ownership to the Orang Asli cannot be leased, rented, mortgaged or disposed of with exception by authorisation of the state authorities after consulting with the Director General of the Department of Orang Asli Development (JAKOA). The land is also not transferable by the first owner within 15 years and ownership transfers are only permissible among the Orang Asli community. The new policy will not be allowed Orang Asli to take the Government to court over those lands, nor will they be entitled to compensation. Based on the new policy, the development of Orang Asli lands that had been given the ownership must be developed by difference agency and the cost must be paid by Orang Asli themselves [1].

Salleh Buang in his writing to comment about the new Land Policy for Orang Asli claims that the alienation of land exercise under the policy is questionable [12]. As an illustration, the cultivated process for the Orang Asli agricultures plots will be managing by third parties and only will transferred back to Orang Asli after the oil palm matures. Few argument arises either the Orang Asli have the right to choose and decide which party to managed the cultivate process and either the land will be taken back from the Orang Asli if they decided to managed their agricultures.
plot by themselves. Definitely, the argument is not answerable because the policy had been announced without having a proper consultations process with Orang Asli as a stakeholders [9]. However, the new policy received objections from the Orang Asli community that they had a rally in Putrajaya to hand over the memorandum to the Prime Minister on 17th March 2010 [13]. A few requests and suggestions were stated in the memorandum to plead the Prime Minister and the government to protect the rights of Orang Asli as a part of the community in Malaysia. Therefore, the proposed Orang Asli Land Policy can be summarised that will not benefit the Orang Asli community. This policy is actually a contrary proposition because it has actually denying the Orang Asli right and not recognizing their right on their customary lands.

4.1 National Inquiry Into The Land Right of Indigenous Peoples in Malaysia

Pertaining to the incident, the Human Rights Commission of Malaysia (SUHAKAM) conducted its first-ever National Inquiry into the Land Rights of Indigenous Peoples in Malaysia from December 2010 to June 2012 for 18 months.The inquiry found that it is fundamental to grant the customary rights of land to the indigenous community in order to ensure and advance their rights as indivisible and essential part of the assurance and advancement of their other human rights. Back to back changes to land laws since the British provincial time frame had disintegrated indigenous peoples’ customary rights to land. While some constructive statutory arrangements do exist, much more efforts need to be done to enhance protection so that these are aligned with the indigenous peoples’ own perspectives, international laws and court decisions [1]. Inquiry that was carried out by SUHAKAM has identified that there are flaws in the legal system that is related with the Orang Asli in this country. On the structure of land law in the country, where jurisdiction over land matters are vested in the individual States, this makes various issues, particularly since the obligation regarding the prosperity and progress of the Orang Asli is vested in the Federal Government, as per the Ninth Schedule of the Federal Constitution. Most importantly, the absence of uniform law that affects Orang Asli among States. Next, lack of recognition makes the risk of land alienated to third parties that not to Orang Asli. This situation can be seen where Orang Asli village are located on forest reserves or on State land, there land continues to be treated as forest reserve or state land because there is no recognition to their customary right on the land. Other than that, States usually do reservation for Orang Asli land using section 62 of the National Land Code as State reserve rather than doing reservation using Aboriginal Peoples Act 1954 which cause the Director-General of the Department of Orang Asli Development have no power over the land. As a common practice, States always generate income from land alienation. So, States will always choose to alienate land for commercial purposes to corporations or individuals that will give higher income to them. This create bad impact to Orang Asli people because the will not been consults before any alienation of forest reserve status process take places. As a result, the will also not receive any compensation for the loss of the customary land as they are not the registered owner of the land. If there was any consultation, it was for the most part through Orang Asli headman (Batin) or with JAKOA representatives. Lastly, there is no security of tenure for the Orang Asli either an Orang Asli reserve is made under the under Section 62 of the National Land Code or under Aboriginal Peoples Act. The power that State Government have can revoke Orang Asli reserve easier than any Malay Reserve land [1].

5 DISCUSSION

Based on the current situation of Orang Asli land ownership, there are several action need to be taken. Firstly, there must be a strong will from the government both Federal and State to give ownership to Orang Asli for their land. There is almost 10 years after the government announce the Policy on the Alienation and Development of Land for Orang Asli for Agricultural and Residential Purposes but commitment and the follow thru by the state government is still in a questionable progress. The amount of land been gazetted for Orang Asli land also still low and need to give extra focus on it. Secondly, amendment of related law and regulations to suit urgent need of Orang Asli demand especially related to land rights. There are a few loopholes in Malaysian Legal System that is in dire need of re-drafting to be up to par with the international laws. For instance, the Orang Asli Act 134 that aims to avoid the community from being involved or provide any assistance to any communists activity need to be revised after the country has obtained its independence. The Act is seen as incompatible to be utilised and has to be revised as it is also seen as to be controlling the lives of the Orang Asli in Peninsular Malaysia [14]. Thirdly, there must be a totally new approach from JAKOA and all related parties where Orang Asli must be involve from the beginning in any policy making process especially related to their rights as a stakeholders. Continuous protest from Orang Asli regarding the new Orang Asli Land Policy because they not been involve and not been listening from the beginning should be a very good lesson learn by the government where Orang Asli need to be actively engage in policy making process in future. The spirit of public participation, partnership and mutual respect must be seriously emphasise. Fourthly, suggestion made by SUHAKAM National Inquiry Into The Land Right of Indigenous Peoples in Malaysia regarding the establishment of an independent National Commission on Indigenous Peoples should be taken seriously by the government. Members of the Commission should consist of representatives of the indigenous peoples who receive support from indigenous communities of Malaysia. Among the responsibility of this Commission, are to advance cooperation of indigenous people groups at all levels; consult the Government on laws and regulations associated to indigenous peoples; recommend and monitor sustainable development initiative on indigenous peoples’ land; and conducting research on issues identified with the prosperity and wellbeing of indigenous peoples [1].

6 CONCLUSIONS

This paper has discuss current situation of land ownership for Orang Asli. Based on current scenario there must be a serious and immediate action taken to protect the rights of Orang Asli. The new Land Policy announce by government on 2009 seems not as what Orang Asli want, so the new approach on Orang Asli land ownership must be consider by the authority. Win-win situation and think out of the box is the key to a new land policy regarding Orang Asli land ownership. Land ownership is the key to help Orang Asli out from the poverty zone and will raise their living standard as par as other
community in Malaysia.

7 REFERENCES