

The Land Ownership of the Temiar Orang Asli in Gua Musang, Kelantan

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Abstract

The lives of the Orang Asli people naturally depend on the land and natural resources. The dependence of this community on land and natural resources is high and important in meeting the needs of life such as housing, finding food sources, income, and so on. It also shapes their worldview toward cultural, social, and economic systems. The existence concept of owned land refers to perennial land inherited through generations from ancestors to be looked after and cultivated. However, the absence of legal ownership of their land causes the area often explored for development purposes. Therefore, this study was carried out to explain the concept of owned land and the status of Orang Asli land ownership. In addition, to find out the types of land owned by the Temiar Indigenous community. To achieve the objectives of this study, an ethnographic approach used involving qualitative methods. The data collection process using interview techniques, observation and document analysis. A total of ten informants were involved in this study. The results of the study found that there are traditional values and hereditary heritage existed in the concept of Orang Asli land ownership. The high dependence on land use in daily life is particular related to culture, identity and socio-economic aspects of society. Owned land is used as an area to build houses, to carry out agricultural, economic, religious activities and so on.

Keywords : Land Ownership, Land Use, Temiar People

Introduction

Land and natural resources are essential elements in the life of the Orang Asli. The formation of such a close relationship that the land and natural resources are not only a source of sustenance for the survival of the Orang Asli community but also shape their unique culture, traditional knowledge, and identity. Orang Asli refers to an indigenous minority community found in Peninsular Malaysia. In brief, the definition of Orang Asli according to the definition stated in section 3 of Act 134 is anyone whose father consists of a group of orang asli who practice the way of life, customs, and beliefs of orang asli and usually speak the language of orang asli, any person who is adopted by orang asli and educated as orang asli, and the child

of a girl married to a man of another race provided that the child lives in the way of orang asli. According to Maryati Mohamed et. Al (2013), this Orang Asli community lives in remote areas and practices a way of life that is closely related to ritual practices inherited from their ancestors and from the elements of nature.

The Orang Asli community has its perspective on land. In the context of land ownership by the Orang Asli community, several types of land are categorized as perennial land and Orang Asli Reserve Land. While among the natives of Sabah and Sarawak, land ownership is related to customary land. For indigenous peoples, land belongs to the community which allows them to exercise some rights such as the right to cultivate, the right to hunt, and even the right to gather. The land is an inheritance that has been handed down from previous generations to children personally and cannot be owned personally (Carey, I. 1976). According to Zainal Zuhilmi Zainal Abidin & Seow Ta Wee (2013), the majority of indigenous peoples around the world still practice a traditional lifestyle and rely heavily on natural resources in their environment. Therefore, one of the important aspects of their lives is about the rights to land where these rights play a large role in guaranteeing the well-being and sustainability of the ecological and cultural system of their lives.

Indigenous Land Ownership Issues

Land is an element that has a considerable influence on the lives of the Orang Asli people. They consider that the inhabited land besides the natural resources found in the heritage land area belong to the community and often label themselves as the landlord. However, these lands are usually given to other people so they are threatened with losing their rights to the land they live on. The Orang Asli community adheres to beliefs and practices based on equality and sharing of resources where every community member has the right to obtain resources freely. This illustrates the rational use of resources is an approach to natural resource management that is commonly practiced by them and Indigenous people in general to curb excessive production and use of resources. Therefore, natural resources are taken carefully, rationally, and limited to ensure that these resources can also be inherited by future generations (Masron, Masami, and Ismail, 2013).

However, the sustainability of the life of the Orang Asli community, which is heavily dependent on the environment, is increasingly affected attributable to greedy and borderless development, resulting in the decline of the relevant resources. Areas that have been inhabited by them for generations have been targeted for agricultural production, agriculture, and widespread urbanization, causing the degradation of the environment and natural resources to the point of affecting the well-being of life (Subramaniam, 2013). Until now, the issue of encroachment on the Orang Asli perennial land has not yet found the best solution for all parties involved, namely between the Orang Asli community and the authorities. The dispute over the invasion of the Orang Asli perennial land is also felt by Indigenous people globally, where the right to land ownership is something that is still debated in terms of legal justice and human rights (Green and Raygorodetsky, 2010).

Literature Review

Regarding land ownership, Nor (1991), explained that the Orang Asli community has its own perspective regarding land. It is categorized into several types such as Orang Asli Reserve Land and perennial land. According to Abdullah et al (2020), land belonging to the Orang Asli

community is land used for residence, agricultural activities such as short-term and long-term agriculture, and other uses. The meaning of owning land for the Orang Asli community is not the same as for non-native communities or other land owners. According to Korff (2018), the Orang Asli have considered the land as "home" and a way to shape life. It is different for landowners or other communities who consider land an asset to make a profit or a commodity that can be bought and sold. Sustainable traditional practices and the balance of the forest ecosystem are factors that encourage land ownership as explained by Madeline et al. (2016) in their study. This is because the recognition of the Orang Asli for land use, culture, traditional beliefs, property, and perennial practices is often denied and disputes involving perennial land also often occur nowadays. In a study by Madeline et al (2016), there are aesthetic values, strong spiritual connections, burial areas, and places to find food in the perennial land area. When perennial land is taken and used as a development area, it will affect and affect the lives of the Orang Asli community. Their identity as Orang Asli is illustrated through their role in managing natural resources such as taking care of plants and animals and taking care of the land so that future generations can enjoy the culture and resources inherited from generations.

In most countries, areas that do not have legal ownership records are considered 'government land' even though the area has been inhabited for a long time (Fraser, 2019). The absence of legal ownership rights causes areas inhabited by Indigenous communities to be often confiscated or developed without reasonable compensation. For example, a study conducted by Bozigar, Gray, and Bilsborrow (2016), found that the indigenous ethnic groups living in the Northern region of Ecuador namely Secoya, Shuar, Kichwa, Cof'an, and Waorani are faced with the issue of encroachment on the area for natural gas production activities. In addition, the indigenous Q'eqchi community in Guatemala is faced with the issue of land confiscation in their area for palm oil and sugarcane cultivation activities (Alonso-Fradejas, 2013). The effects of greedy use and extraction of natural resources are also felt by the Mundurucu community in Brazil, which is threatened by the construction of the Sao Luiz do Tapajos dam (Hess and Fenrich, 2017; Gebara, 2018; Walker and Simmons, 2018).

The same situation is also experienced by the Orang Asli community when the issue of ownership, access to land, and resources continues to be a problem that has plagued the community until now (Wook, 2018). Factors of social change play a role in the issue of Orang Asli land acquisition as explained by Griffiths and Jean (2014), in their study regarding the Orang Asli community seeking justice for their rights and land security rights. According to the research, the land use policy practiced by a country is seen to have caused the violation of rights over the community's territory. This is because the unexplored Orang Asli settlement area in the interior is rich in natural treasures such as mining and agriculture. This resource from nature can produce and give high profits from an economic point of view and has a wide market. Therefore, the policy has focused on the colonization of Orang Asli territory where the ruling class is given the right to take Orang Asli land for specific purposes. On the other hand, the Orang Asli community does not have the right to object to the taking of a reserve by the authorities whether the area has been gazetted by the government or not yet gazetted.

Methodology and Research Area

This study was carried out in the settlement area of the Orang Asli Temiar in Gua Musang, Kelantan. This area was chosen because of land acquisition issues such as logging activities,

clearing land for agricultural fields, and reducing the scale of owned land (Abdullah et al., 2020). The research methodology uses an ethnographic approach to explain the concept of owned land, the status of land ownership, and the types of land owned by the Temiar Indigenous People. Qualitative methods are used in the process of collecting information or data. The data to be collected is descriptive and data analysis does not involve statistical packages. The data collection technique is through interviews, observations, and document analysis to obtain explanations and clarifications related to the concept and type of land owned in the life of the Orang Asli. A total of ten residents were selected as study informants. The analysis unit of this study is made up of representatives of the village population, namely local leaders (batin and MPKKOA members) and adults. In addition, the analysis unit also involves representatives from the staff of government agencies related to the lives of the Orang Asli Temiar community such as the Kelantan Orang Asli Development Department (JAKOA).

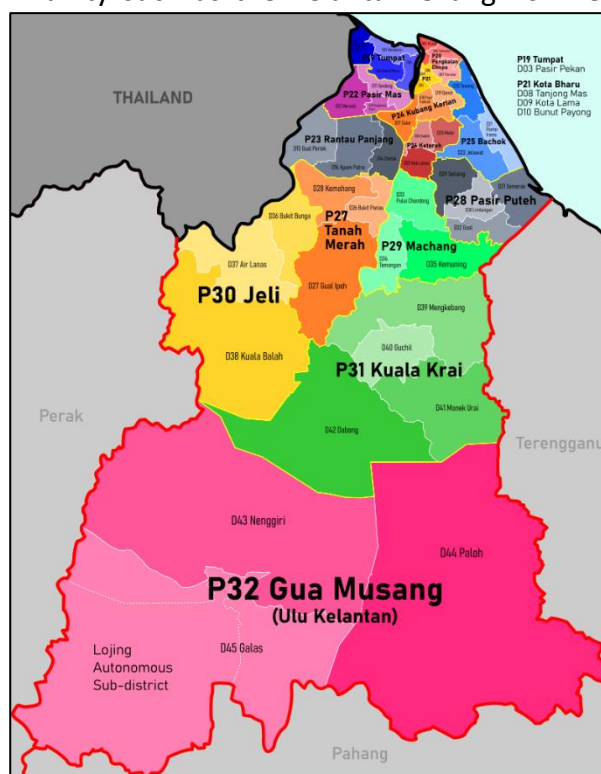


Figure 1 : Research Area Map

Result and Discussion

This article focuses on the concept of land, ownership status, and types of land owned by the Temiar Indigenous People. The results of the study are discussed as follows

The Concept of Land Owned by the Temiar Indigenous People

The life of the Temiar community is closely related to the land. Owned land has existed for a long time divided into two categories, namely 'perennial' land and 'selai' (garden) land. The concept of owned land such as perennial land and jam is the most important element in life and is a source of heritage preserved from previous generations through generations. The main function of the land belonging to the Temiar community is as a settlement where the land in the area will be built houses for them to live. In addition, owned land is also a place for the Orang Asli Temiar community to carry out short-term and long-term agricultural

activities besides various other daily activities (Abdullah et al., 2020). Some Orang Asli communities still practice economic activities based on hunting and gathering forest products such as rattan, wood roots, agarwood, and so on. Usually, this activity is carried out in the forest area which is called as Rayau area. However, logging activities, development, and the opening of plantations in the forest area have made the grazing area more and more limited, and even the concept of grazing area has also disappeared nowadays. In other words, all the activities of the Orang Asli community depend on natural resources including land.

According to the perspective of the Orang Asli, the land is considered a heritage and a trust from the ancestors in the past that must be taken care of and managed well. This is because the land that is considered a 'treasure' will also be handed down to future generations. The relationship formed between the Orang Asli community and the land is the core or "fundamental" in their lives. In the material and spiritual aspect, the existence of a special and unique intertwining with the elements of land, flora, and fauna as well as other natural resources form the unique 'identity' of the Orang Asli community. The land and forest environment influence social systems, beliefs and rituals, norms, taboos, language, and community art.

Status of Indigenous Land Ownership According to Law

In the context of Orang Asli communities, customary land rights are formed from customary laws and practices enforced by the community itself. These rights are distinct from documented land rights, which are derived from written documents or titles recognized by law. There exists a specific act pertaining to the Orang Asli known as the Aboriginal Peoples Act 1954 (Act 134), aimed at protecting their interests and way of life. This act covers various aspects of Orang Asli life including identity, education, security, and notably, their customary land rights, all of which fall under the jurisdiction of the Department of Orang Asli Development (JAKOA).

Regarding land rights specifically, there is no specific legislation providing absolute ownership rights to Orang Asli over their customary lands. Under Act 134, the rights granted to Orang Asli are not absolute ownership rights but rather akin to tenancy-at-will, meaning the government retains the power to revoke these rights at any time (Rohaida et al., 2021). Issues related to land such as declaration or cancellation (de-gazetting) of Orang Asli reserves fall under the jurisdiction of the government as stated in Act 134. Any area inhabited or occupied by Orang Asli can be declared by the State Authority either as an Orang Asli Reserve (s 7(1) AOA), Orang Asli area (s 6 AOA), or an area occupied by Orang Asli through the appropriate notification in the gazette.

According to Act 134, several sections touch on the rights granted to Orang Asli concerning land ownership. Under section 6, an area predominantly or exclusively occupied by Orang Asli, but not yet declared as an Orang Asli Reserve, can be designated as an Orang Asli Area. In such areas, lands cannot be declared as wildlife reserves, forest reserves, or Malay reserves. Moreover, no land in Orang Asli areas can be granted ownership, disposed of, or leased except to Orang Asli who are ordinarily resident in that reserve. Non-Orang Asli residents or commercial companies are prohibited from obtaining licenses for timber extraction under written laws pertaining to forests. The issuance of timber extraction licenses must involve consultation with the Director-General responsible for Orang Asli affairs.

Furthermore, under section 7, any area exclusively occupied by Orang Asli and where they are likely to reside permanently can be declared as an Orang Asli Reserve. In such reserves, the land cannot be declared as forest reserves, Malay reserves, or wildlife sanctuaries. Ownership, grant, lease, or disposal of land in these reserves is restricted to Orang Asli members who usually reside in the area. Temporary occupation of any land in the reserve is not permitted.

The rights stated in both sections must first be declared by the State Authority through notification in the gazette. According to this act, Orang Asli cannot claim ownership of such lands until they are declared as Orang Asli Areas or Reserves in the gazette. Declarations made can also be fully or partially revoked or amended by the State Authority. Other relevant sections concerning Orang Asli land ownership include section 8, which deals with rights to occupy lands that are not owned as Reserves or Orang Asli Areas. Section 9 explains transactions involving Orang Asli lands, stating they cannot transfer ownership, lease, or release land without the Commissioner's permission. Section 10 grants rights to Orang Asli residing in forest reserves or Malay reserves to continue living there according to traditional ways, subject to specified conditions. Furthermore, section 11 concerns compensation for Orang Asli if they make claims for fruit trees or rubber trees on government land, with compensation payments governed by provisions under section 12.

In Peninsular Malaysia, the primary legal framework governing land administration is under the National Land Code 1965. This legal system refers to the Torrens system of registration, where legitimate ownership rights that cannot be disputed are only obtained upon issuance of a title deed. The government is responsible for maintaining all land and ownership records under the Torrens registration system. Within the National Land Code, there is a section that provides for the recognition of land under customary tenure, specifically under section 4(2), which states:

“Except in so far as it is expressly provided to the contrary, nothing in this Act shall affect the provision of (a) any law for the time being in force relating to customary tenure.”

The provisions mentioned indicate that customary land ownership is recognized under the National Land Code, even though it does not explicitly refer to the Orang Asli. However, it is clear that State Authorities (Pihak Berkuasa Negeri, PBN) have the power to determine the status of such lands under the National Land Code. Under the provisions of Act 134 concerning land management, it is stipulated that Orang Asli are only given rights to cultivate and occupy such lands, but not permanent ownership rights. However, the courts have recognized Orang Asli rights to land as proprietary rights, or ownership rights, both under written law and customary law, protected by the Federal Constitution.

The Types Of Land Owned By The Temiar Orang Asli Community

Tanah Saka

In the traditional context of Temiar community life, "tanah saka" refers to territories used by a specific group or band where they conduct daily activities passed down through generations. They engage in farming activities such as shifting cultivation of hill rice (padi huma) and maintain perennial crops like petai and durian within these areas. The hill rice fields are temporarily abandoned when the soil fertility diminishes, allowing for natural

regeneration. During this period, they establish new cultivation areas before returning to the restored old sites.

Perennial crops like petai and durian, as well as ancient graves within the "tanah saka," serve as markers indicating the area has been cultivated and is owned by the respective group. For the Temiar people, these territories are considered ancestral heritage and cannot be sold or transferred to others. Tanah saka belongs to the community, and every member has the right to manage and utilize it. During the fruiting season each year, family members and their descendants return to these areas to harvest the fruits grown by their ancestors. Through these practices, they pass on awareness of their tanah saka to future generations. Therefore, if there is a desire by the government to declare these areas, they would request that tanah saka be recognized as Orang Asli areas because they have historically cultivated and maintained them.

Tanah Selai

"Tanah Selai" refers to garden or farm lands used by the Temiar community for various agricultural activities, whether short-term or long-term crops. Typically, each family manages an estimated area of two to five acres of selai. The Temiar people cultivate several types of selai, including selai Hamis/Dapur, selai Kayu, selai Telui, selai Ba and selai Getah.

1) Selai Hamis/Dapur

"Selai Hamis," also known as kitchen gardens, are small plots of land used for cultivating short-term vegetables located near residential areas. Among the commonly grown short-term vegetables in selai hamis include spinach, cucumbers, chili peppers, eggplants, sweet potatoes, okra, and mustard greens. Typically, these vegetables are cultivated for daily household consumption rather than for sale. The selai hamis is considered a small garden by the Temiar community, utilizing only a small area of land, usually not exceeding half an acre.

2) Selai Kayu (Ubi Kayu)

"Selai kayu" refers to garden areas managed by residents for cultivating cassava (ubi kayu). These selai kayu plots are located outside residential areas and typically range from half an acre to two acres per family. Cassava is a staple food for the Temiar community and is a mandatory crop cultivated by every family. The cultivation of cassava is typically small-scale, meant primarily for self-sufficiency rather than large-scale production due to limited demand from outside communities.

3) Selai Telui (Pisang)

"Selai Telui" is an area of garden cultivated with banana plants. These selai telui plots are located outside residential areas and typically range in size from one to two acres, depending on the individual or family managing them. The banana plants grown here are intended to meet the demand of external communities, where the yields from banana trees serve as an economic source for the local community. Moreover, bananas are also a primary source of income for several villages, especially those located in Pos Balar and Pos Belatim.

4) Selai Ba (Padi)

"Selai Ba" is an area for cultivating rice, typically involving a plot of land ranging from one to three acres. Rice cultivation in selai ba traditionally involves two or three families, comprising

children and siblings. However, nowadays, rice cultivation in selai ba is no longer widely practiced, with only a few villages in Pos Pasik continuing this tradition. This shift is due to several factors, including the complexity of maintenance aspects and adherence to taboos throughout the rice cultivation process, from planting to harvesting. One of the taboos to prevent rice spoilage includes restricting outsiders, aside from family members, from entering during the rice cultivation process.

5) Selai Getah

"Selai getah" refers to areas specifically designated for planting rubber trees. The activity of planting rubber trees is mainly carried out by villagers for commercial purposes and serves as a primary source of income to support the community's economy. The Orang Asli community still practices traditional methods of rubber tree cultivation, often without following strict guidelines due to limited knowledge and exposure provided to them regarding rubber cultivation. Typically, the size of land for selai getah managed by Orang Asli ranges from two to six acres. However, the actual land area can vary depending on the strength and diligence of each family in clearing and planting the rubber trees.

Tet Tengos

The area used by the Temiar people for hunting and gathering forest produce is called 'tet tengos' or 'hill land'. The tet tengos area is larger compared to selai areas and is located outside the settlements of the Orang Asli community. Each village or settlement of the Temiar Orang Asli has its own tet tengos area, and the boundaries between these tet tengos areas are typically determined by rivers, hills, and large trees. However, the use of tet tengos areas is increasingly diminishing today due to encroachment by outsiders. The opening of plantations in forest areas has also contributed to the reduction and even disappearance of tet tengos areas at present.

Conclusion

Through the findings of the study, it can be concluded that the lack of legitimate ownership of land among the Indigenous Peoples complicates their efforts to protect the land heritage passed down from their ancestors. The Indigenous community, particularly the Temiar tribe, is highly dependent on the land and natural resources in their surroundings, especially for subsistence and commercial economies based on agriculture. However, they only have the right to manage the land as stipulated in Act 134, which states that Indigenous Peoples do not have absolute rights and lack legitimate ownership of customary land.

From the perspective of the Indigenous community, land is a heritage and a highly valuable asset. This heritage needs to be preserved to ensure the continuity of the Indigenous Peoples' way of life, encompassing aspects of culture, spiritual development, and the socioeconomic status of the community. Ancestral land is where each member of the community carries out daily activities that contain important values and meanings for their lives. There are ancestral lands, burial grounds of ancestors, and gardens (selai) cultivated by the Temiar community. Every member of the community has rights over the land. This illustrates the significance of land ownership to the Indigenous Peoples. Therefore, the rights to the land belonging to members of the Temiar Indigenous community must be preserved and maintained to ensure the continuity of this community's heritage.

Therefore, this study is very important to serve as a reference for authorities, whether government bodies or NGOs, in their efforts to ensure the welfare and rights of the Indigenous Peoples, particularly regarding land, are preserved. This study can also be utilized by any academic researchers who wish to conduct further studies related to Indigenous land in the future.

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