



PROGRAM LAND MATTERS DISCOURSE : CURRENT ISSUES IN  
LAND DEVELOPMENT

**“KEDUDUKAN TANAH RIZAB MELAYU  
DAN PEMBANGUNAN TANAH DALAM  
KAWASAN RIZAB MELAYU”**

Eagle Ranch Resort, Post Dickson  
26 April 2018 (Khamis)

ABDUL AZIZ BIN MOHD JOHDI  
Kementerian Sumber Asli dan Alam Sekitar

# KANDUNGAN

- Peruntukan tentang Rizab Melayu dalam Enakmen Rizab Melayu
- Peruntukan tentang Rizab Melayu dalam Perlembagaan Persekutuan
- Fakta Penting berkaitan Rizab Melayu dalam Perlembagaan
- Keluasan Rizab Melayu Ketika Merdeka
- Pembangunan Dan Urusniaga Bagi Tanah Rizab Melayu
- Pengakusaksian bagi Tanah Rizab Melayu

Peruntukan tentang  
Rizab Melayu dalam  
Enakmen Rizab Melayu

# Asal-usul Enakmen Rizab Melayu



Undang-undang Tanah Rizab Melayu diperkenalkan pada 1 Januari 1914 setelah Enakmen Rizab Melayu 1913 dikuatkuasakan di Negeri-negeri Melayu Bersekutu (NMB) iaitu Pahang, Perak, Negeri Sembilan dan Selangor



ERM 1913 dimansuhkan pada 15.12.1933 dan digantikan dengan ERM 1933. Pada tahun 1935, ERM 1933 telah disemak semula dan kini dirujuk sebagai Enakmen Rizab Melayu (NMB Bab 142)



Sewaktu pemerintahannya, pihak British **tidak mewujudkan** sebarang ERM di **Pulau Pinang** dan **Melaka**



Negeri-negeri lain **Kelantan, Perlis, Kedah, Terengganu** dan **Johor** kemudiannya turut mewujudkan ERM negeri itu masing-masing

# Definisi “Melayu” di bawah Enakmen Rizab Melayu

## ERM NMB Bab 142

‘Melayu’ ertinya seorang yang berasal dari mana-mana bangsa “Melayan” yang lazim bertutur dalam bahasa Melayu atau manamana bahasa “Malayan” dan menganut Ugama Islam.

## ERM Terengganu

‘Melayu’ ertinya seorang yang berasal dari mana-mana bangsa Malayan yang lazim bercakap Melayu atau manamana bahasa Malayan dan menganut Ugama Islam.

## ERM Kedah

‘Melayu’ ertinya seorang yang menganut Ugama Islam dan lazim bercakap bahasa Melayu yang sekurang-kurangnya seorang daripada ibubapanya adalah bangsa Malayan atau berketurunan Arab.

### **ERM Kelantan**

'Melayu' ertinya seseorang yang berasal dari mana-mana bangsa "Malayan" yang bercakap mana-mana bahasa Malayan dan menganut Ugama Muhamad, dan hendaklah termasuk:-

(a) Majlis Ugama Islam dan

(b) Pegawai Pemegang Harta apabila bertindak sebagai Pentadbir atau Pemegang Amanah bagi harta pusaka si mati orang Melayu.

### **ERM Perlis**

"Melayu" ertinya seorang yang berasal dari mana-mana bangsa Malayan atau orang keturunan Arab yang lazim bercakap bahasa Melayu atau mana-mana bahasa Malayan dan menganut Ugama **Islam.**

### **ERM Johor**

'Melayu' ertinya seorang yang berasal dari Bangsa Melayu atau manamana bangsa Malaysia yang lazim bercakap bahasa Malayan dan menganut Ugama Islam dan ungkapan itu hendaklah disifatkan sebagai termasuk Pihak Berkuasa, Lembaga, Pertubuhan, Persatuan dan syarikat yang ditetapkan dalam Jadual Kedua kepada Enakmen ini.

Peruntukan tentang  
Rizab Melayu dalam  
Perlembagaan Persekutuan

“

Persetujuan Raja-Raja Melayu dirakamkan melalui [The Federation of Malaya Agreement, 1957](#) yang ditandatangani pada 5 Ogos 1957 bersama-sama dengan wakil Kerajaan Inggeris.

Peruntukan berhubung TRM dinyatakan dalam Perkara 89 Perlembagaan Persekutuan yang berasaskan kepada:



***Report of the Federation of Malaya Constitutional Commission (Reid's Report)*** tahun 1957; dan



***Federation Of Malaya Constitutional Proposals (White Paper)*** tahun 1957



# Federation of Malaya Agreement, 1957

## THE FEDERATION OF MALAYA AGREEMENT, 1957\*

AGREEMENT dated the 5th day of August, 1957, AND MADE BETWEEN SIR DONALD CHARLES MACGILLIVRAY, G.C.M.G., M.B.E., on behalf of HER MAJESTY of the one part and His Highness TUNKU ISMAIL ibni Sultan IBRAHIM, D.K., S.P.M.J., S.P.M.K., K.B.E., C.M.G., the Regent of Johore, on behalf of His Highness IBRAHIM ibni Almarhum Sultan ABU BAKAR, D.K., S.P.M.J., G.C.M.G., K.B.E. (Mil.), G.B.E., G.C.O.C. (I), Sultan of the State and Territory of JOHORE, His Highness ABU BAKAR RI'AYATU'D-DIN AL-MUADZAM SHAH ibni Almarhum ALMUTASIM B'LLAH Sultan ABDULLAH, G.C.M.G., Sultan of the State of PAHANG, His Highness TUANKU ABDUL RAHMAN ibni Almarhum TUANKU MUHAMMAD, G.C.M.G., the Yang di-Pertuan Besar of the State of NEGRI SEMBILAN, Dato' Klana Petra MOHAMED KASSIM bin Dato' Nika Haji Abdul Rashid, Undang of SUNGEI UJONG, Dato' Mendika Menti Akhizaman SHAHMARUDDIN bin Abdulrahman, Undang of JELEBU, Dato' Johan Pahlawan Lela Perkasa Setiawan ABDUL MANAP bin Tolok, Undang of JOHOL, Dato' Lela Maharaja HAJI IPAP bin Abdullah, Undang of REMBAU, and Tengku SYED IDRUS bin Tengku Syed Mohamad, Tengku Besar of TAMPIN, the Ruling Chiefs of the State of NEGRI SEMBILAN, His Highness HISAMUDDIN ALAM SHAH ibni Almarhum Sultan ALA-IDDIN SULAIMAN SHAH, K.C.M.G., Sultan of the State of SELANGOR, His Highness TUNKU BADLISHAH ibni Almarhum Sultan ABDUL HAMID HALIMSHAH, K.C.M.G., K.B.E., Sultan of the State of KEDAH, His Highness SYED PUTRA ibni Almarhum SYED HASSAN JAMALULLAIL, K.C.M.G., the Raja of PERLIS, His Highness TENGKU IBRAHIM ibni Almarhum Sultan MOHAMED, IV, D.K., S.P.M.K., S.J.M.K., D.K. (Johore), K.C.M.G., Sultan of the State of KELANTAN, His Highness Sultan ISMAIL NASIRUDDIN SHAH ibni Al-Marhum Sultan ZAINAL ABIDIN, K.C.M.G., Sultan of the State of TRENGGANU and His Highness Paduka Sri Sultan YUSSUF 'IZZUDDIN SHAH ibni Almarhum Sultan ABDUL JALIL RADZIALLAH HU-'AN-HU, K.C.M.G., O.B.E., Sultan of the State of PERAK, of the other part, for Themselves and Their Successors:

WHEREAS by the Federation of Malaya Agreement, 1948, provision was made for the establishment of a Federation of

\* Under the Constitutions of the States of Johore, Pahang, Kedah, Perlis, Kelantan and Trengganu it was unlawful for the Ruler to enter into any negotiation relating to the cession or surrender of the State or any part thereof. In consequence it was necessary, in order to make it clear that the Ruler of each of these States had authority to enter into this Agreement, to amend the State Constitutions to that effect. These amendments came into force on August 5, 1957 (the Agreement itself being signed on that date) and in general provided that it should not be "unlawful for the Ruler to enter into an agreement with Her Majesty and Their Highnesses the Rulers of the Malay States revoking the Federation of Malaya Agreement and the State Agreement, of 1948, and providing for the constitution and government of a new and independent federation, within the British Commonwealth of Nations, of the Malay States and the Settlements of Malacca and Penang and such further territories as may from time to time be admitted to such federation."

The Agreement was published in a Supplement to the Gazette of December 11, 1957, as Notification No. (New Series) 888.

Malaya comprising the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and the Settlements of Penang and Malacca:

AND WHEREAS the Federation of Malaya Agreement, 1948, has the force of law in the territories of the said Federation:

AND WHEREAS there now subsist between Her Majesty and each of Their Highnesses the Rulers of the said Malay States (in the case of Negri Sembilan between Her Majesty and His Highness the Yang di-Pertuan Besar and the Ruling Chiefs) divers Agreements relating to the government of the several States of Their Highnesses:

AND WHEREAS it has been represented to Her Majesty and Their Highnesses and the Ruling Chiefs of Negri Sembilan that fresh arrangements should be made for the peace, order and good government of the territories within the said Federation; and Her Majesty and Their Highnesses and the said Ruling Chiefs have agreed that the said Federation should become an independent country within the Commonwealth with the Constitution hereinafter provided for:

AND WHEREAS by the Federation of Malaya Independence Act, 1957, the approval of the Parliament of the United Kingdom was given to the conclusion of such Agreement as is herein contained:

NOW, THEREFORE, it is agreed and declared as follows:

Citation.

1. This Agreement may be cited as the Federation of Malaya Agreement, 1957.

Construction.

2. In this Agreement, unless the context otherwise requires—  
"the existing Federation" means the Federation of Malaya established by the Federation of Malaya Agreement, 1948;

"Federal Ordinance" means an Ordinance of the Legislature of the existing Federation;

"Their Highnesses the Rulers" means the persons who are for the time being the Sultan of the State and Territory of Johore, the Sultan of the State of Pahang, the Yang di-Pertuan Besar of the State of Negri Sembilan, the Sultan of the State of Selangor, the Sultan of the State of Kedah, the Raja of the State of Perlis, the Sultan of the State of Kelantan, the Sultan of the State of Trengganu, and the Sultan of the State of Perak;

"the Malay States" means the States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and all dependencies, islands and places which, immediately before the thirty-first day of August, nineteen hundred and fifty-seven, are administered as part thereof, and the territorial waters adjacent thereto;

"the Settlement of Penang" and "the Settlement of Malacca" include all islands and places which, immediately before the thirty-first day of August, nineteen hundred and fifty-seven, are administered as part of those Settlements, and the territorial waters adjacent thereto;

"the Settlements" means the Settlement of Penang and the Settlement of Malacca.

# Federation of Malaya Agreement, 1957

3. As from the thirty-first day of August, nineteen hundred and fifty-seven, the Malay States and the Settlements shall be formed into a new Federation of States by the name of Persekutuan Tanah Melayu, or in English, the Federation of Malaya, under the Federal Constitution set out in the First Schedule to this Agreement; and thereupon the said Settlements shall cease to form part of Her Majesty's dominions and Her Majesty shall cease to exercise any sovereignty over them, and all power and jurisdiction of Her Majesty or of the Parliament of the United Kingdom in or in respect of the Settlements or the Malay States or the Federation as a whole shall come to an end.

Establishment of new Federation: Federal Constitution.

4. The Constitutions set out in the Second and Third Schedules to this Agreement shall be the Constitutions of Penang and Malacca respectively as States of the new Federation.

Constitutions of Penang and Malacca.

5. Subject to the provisions of the said Federal Constitution and to the Fourth Schedule to this Agreement, the Federation of Malaya Agreement, 1948, and all other agreements subsisting between Her Majesty and the other Parties to this Agreement or any of them immediately before the said thirty-first day of August shall be revoked as from that day, but nothing in this Clause shall affect any provision in any agreement by which provision any disposition of territory was made.

Revocation of previous Agreements.

6. The foregoing provisions of this Agreement are conditional upon the approval of the said Federal Constitution by Federal Ordinance and by an Enactment of each of the Malay States.

Approval of this Agreement by Legislatures.

7. This Agreement shall be expressed in both the English and the Malay languages; but, for purposes of interpretation, regard shall be had only to the English version.

Languages of the Agreement.

IN WITNESS WHEREOF Sir Donald Charles MacGillivray, G.C.M.G., M.B.E., has hereunto set his hand and seal on behalf of Her Majesty; and Their Highnesses the Rulers of the States of Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the Ruling Chiefs of the State of Negri Sembilan and His Highness TUNKU ISMAIL ibni Sultan IBRAHIM, D.K., S.P.M.J., S.P.M.K., K.R.E., C.M.G., the Regent of Johore, on behalf of His Highness the Sultan of the State and Territory of Johore, have hereunto set their hands and seals.

Done the 5th day of August, 1957, corresponding to the 16th day of Muharram, 1377.

## FIRST SCHEDULE

This consists of the Federal Constitution: see page 19, *infra*.]

## SECOND SCHEDULE

This consists of the Constitution of Penang: see page 163, *infra*.]

## THIRD SCHEDULE

This consists of the Constitution of Malacca: see page 187, *infra*.]

## FOURTH SCHEDULE\*

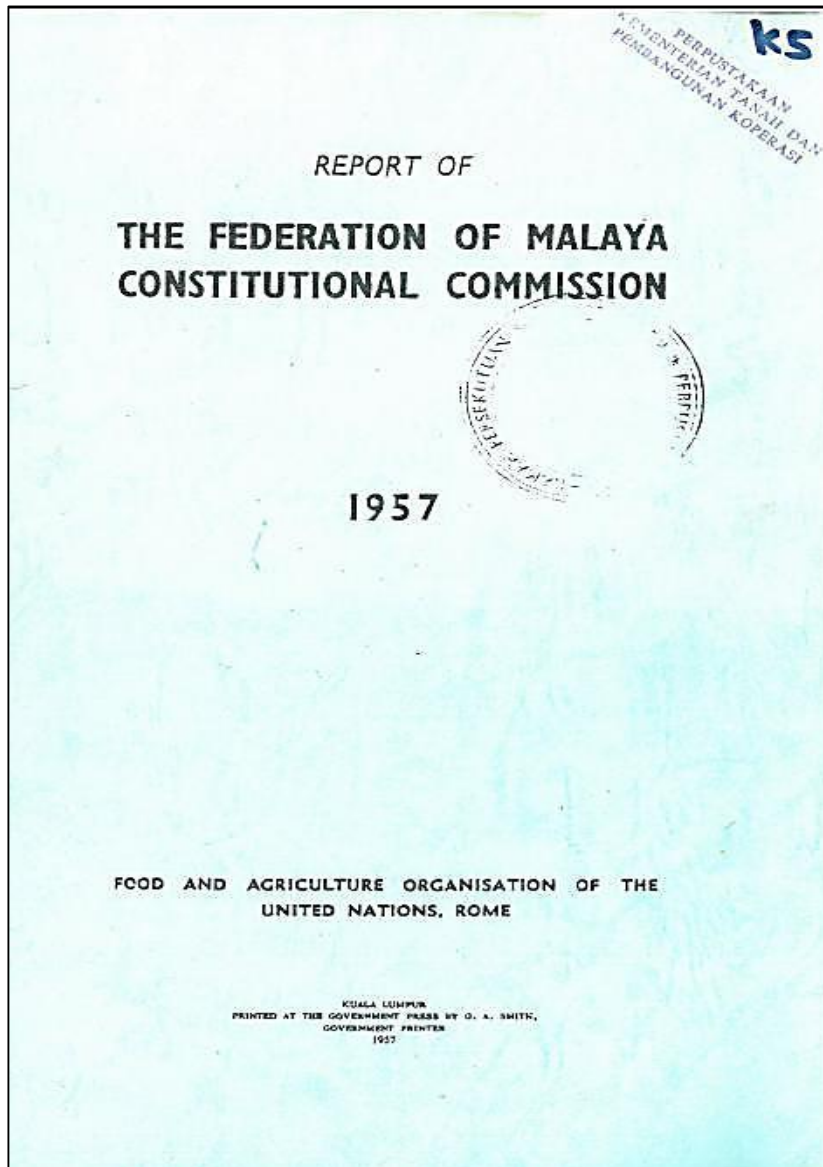
The following provisions shall apply in respect of the Treaty made on the sixth day of May, eighteen hundred and sixty-nine, between Her Majesty of the one part and The King of Siam of the other part relative to the State of Kedah:

- (a) All obligations under Article II of the said Treaty shall, on and after the thirty-first day of August, nineteen hundred and fifty-seven, be discharged as is provided in Article 167 of the First Schedule to this Agreement, and accordingly no liability whatsoever under the said Article II shall attach to Her Majesty on or after the said thirty-first day of August.
- (b) Article III of the said Treaty shall immediately before the said thirty-first day of August have the effect that the obligations of Her Majesty thereunder are obligations of Her Majesty in respect of Her Government of the Settlement of Penang, and all such obligations shall, on and after the said thirty-first day of August, be discharged as is provided in Article 167 of the First Schedule to this Agreement, and accordingly no liability whatsoever under the said Article III shall attach to Her Majesty on or after the said thirty-first day of August.

\* See the footnote to Article 167 of the Constitution of the Federation, *infra*, for details of the two Articles referred to in this Schedule.

[This Agreement was signed and sealed by Sir Donald MacGillivray, G.C.M.G., M.B.E., for and on behalf of Her Majesty, and by His Highness the Regent of Johore; His Highness the Sultan of Pahang; His Highness the Yang di-Pertuan Besar of Negri Sembilan; the Undang of the Luak of Sungei Ujong; the Undang of the Luak of Tebebu; the Undang of the Luak of Johor; the Undang of the Luak of Rembau; the Tengku Besar of Tampin; His Highness the Sultan of Selangor; His Highness the Sultan of Kedah; His Highness the Raja of Perlis; His Highness the Sultan of Kelantan; His Highness the Sultan of Trengganu; and His Highness the Sultan of Perak.]

# Report of the Federation of Malaya Constitutional Commission (Reid's Report), 1957



British subjects of European descent and to Malays but since that date there has been provision for one-fifth of the entrants being selected from other communities. In other services in which a quota exists the rule generally is that not more than one-quarter of new entrants should be non-Malays.

(3) There are now also in operation quotas in respect of the issuing of permits or licences for the operation of certain businesses. These are chiefly concerned with road haulage and passenger vehicles for hire. Some of these quotas are of recent introduction. The main reasons for them appear to be that in the past the Malays have lacked capital and have tended to remain on the land and not to take a large part in business, and that this is one method of encouraging the Malays to take a larger part in business enterprises.

(4) In many classes of scholarships, bursaries and other forms of aid for educational purposes preference is given to Malays. The reason for this appears to be that in the past higher education of the Malays has tended to fall behind that of the Chinese, partly because the Chinese have been better able to pay for it and partly because it is more difficult to arrange higher education for Malays in the country than for Chinese in the towns.

165. We found little opposition in any quarter to the continuance of the present system for a time, but there was great opposition in some quarters to any increase of the present preferences and to their being continued for any prolonged period. We are of opinion that in present circumstances it is necessary to continue these preferences. The Malays would be at a serious and unfair disadvantage compared with other communities if they were suddenly withdrawn. But, with the integration of the various communities into a common nationality which we trust will gradually come about, the need for these preferences will gradually disappear. Our recommendations are made on the footing that the Malays should be assured that the present position will continue for a substantial period, but that in due course the present preferences should be reduced and should ultimately cease so that there should then be no discrimination between races or communities.

166. With regard to land we recommend (Art. 82) that, subject to two qualifications, there should be no further Malay reservations, but that each State should be left to reduce Malay reservations in that State at an appropriate time. Land is a State subject and we do not recommend giving overriding powers to the Federation in this matter. We do not think that it is possible to lay down in advance any time when a change should be made because conditions vary greatly from State to State. The two qualifications to the rule that there should be no further reservations are: first, that if any land at present reserved ceases to be reserved, an equivalent area may be reserved provided that it is not already occupied by a non-Malay; and secondly that, if any undeveloped land is opened up, part of it may be reserved provided that an equivalent area is made available to non-Malays.

167. The effect of our recommendations (Art. 157) is that with regard to other preferences to Malays no new quota or other preference could be

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# Federation Of Malaya Constitutional Proposals (White Paper), 1957

## FEDERATION OF MALAYA CONSTITUTIONAL PROPOSALS

1957

KUALA LUMPUR  
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1957

## FEDERATION OF MALAYA CONSTITUTIONAL PROPOSALS

*(It is the purpose of this White Paper to describe the more important changes in the recommendations of the Constitutional Commission which are now proposed. Except where it is necessary in order to explain an amendment no reference is made to the recommendations of the Commission which it is proposed to accept, and this White Paper should therefore be read in conjunction with the Report of the Commission.)*

### INTRODUCTION

The Report of the Federation of Malaya Constitutional Commission, consisting of recommendations for the future Constitution of the Federation, was formally submitted to Her Majesty the Queen and Their Highnesses the Rulers and published on the 21st February, 1957. It then became the task of Her Majesty's Government, the Conference of Rulers and the Government of the Federation to examine these recommendations and to seek agreement on their acceptance or modification. As a first step, a Working Party was appointed in the Federation to make a detailed examination of the Report and to submit recommendations. This Working Party, consisting of the High Commissioner, four representatives of Their Highnesses the Rulers, four representatives of the Alliance Government, the Chief Secretary and the Attorney-General, held 23 meetings between the 22nd February and the 27th April; and it reported to the Conference of Rulers on the 14th March, the 10th April and the 7th May, and to the Federal Executive Council on the 3rd and 6th May.

2. In the meantime the Report was being studied by Her Majesty's Government in the United Kingdom, and when the Working Party in the Federation had agreed upon their recommendations in regard to the Commission's Report, a delegation consisting of the High Commissioner, the Chief Minister, the Attorney-General and representatives of Their Highnesses the Rulers and the Government of the Federation went to London to discuss the Report and their proposed amendments with Her Majesty's Government. The talks lasted from 13th May to the 21st May, and resulted in agreement being reached between all parties on all points of principle.

3. While these discussions on the substance of the Constitution were going on its drafting was being scrutinised in the Office of the Parliamentary Counsel in the United Kingdom with a view to removing ambiguities and inconsistencies and, where

55. The Commission recommended that their proposals for continuing the present preferences should be reviewed after 15 years. This recommendation was given careful consideration but it was not considered necessary to include such a provision in the Constitution. It was considered preferable that, in the interest of the country as a whole as well as of the Malays themselves, the Yang di-Pertuan Agong should cause a review of the revised proposals to be made from time to time.

Malay  
reservations.

56. A number of modifications have been made to the principles recommended by the Commission with regard to Malay land reservations and the preservation of the rights of other persons. The first and the most important concerns the manner in which the existing law may be amended. It is proposed that an enactment of a State Legislature for this purpose shall not only be passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting, but shall also be approved by a resolution of each House of Parliament passed in a similar way. Secondly, it is proposed that land which has not been developed or cultivated may only be declared as a Malay reservation if an equal area of similar land is made available for general alienation and if the total area of such land in a State declared as a Malay reservation after Merdeka Day does not at any time exceed the total area of such land in that State which has been so made available for general alienation. Thirdly, it is proposed that any Malay State should be entitled to acquire by agreement developed or cultivated land and to declare such land to be a Malay reservation in accordance with the existing law. Fourthly, it is proposed that the Government of any State should be entitled, in accordance with law, to acquire land for the settlement of Malays or of other communities and to establish trusts for that purpose. This last provision is intended primarily to have effect in Malacca and Penang where the other provisions do not apply.

Religion of the  
Federation.

57. There has been included in the proposed Federal Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as a secular State, and every person will have the right to profess and practise his own religion and the right to propagate his religion, though this last right is subject to any restrictions imposed by State law relating to the propagation of any religious doctrine or belief among persons professing the Muslim religion.

58. The position of each of Their Highnesses as head of the religion in his State and the rights, privileges, prerogatives and powers enjoyed by him as head of that religion will be

that these three officers should continue to be members of both Councils until the first elections are held under the new Constitutions.

Naning  
custom.

69. It is proposed that special provisions should be included in the Constitution for Malacca to deal with Naning custom and the appointment, precedence and duties of the Dato' Penghulu of Naning. It is proposed that the Governor should appoint a person to the office of Dato' Penghulu of Naning in accordance with the Naning custom and that the person so appointed should hold office in accordance with that custom.

### AMENDMENT OF THE CONSTITUTIONS

70. Under the proposals of the Constitutional Commission, it would have been possible to amend the Federal Constitution if the amendment was approved by at least 51 members of the House of Representatives and by at least 17 members of the Senate. Similarly, it would have been possible to amend the Constitution of a State by a simple majority of the total number of members of the Assembly. It is considered that amendment of the Constitutions should not be undertaken lightly and that the method of amendment should be designed to ensure that as far as possible constitutional changes are made in accordance with the wishes of the people as a whole. It has accordingly been provided that the votes of not less than two-thirds of the total number of members of each House should be required in the case of amendment of the Federal Constitution and the votes of not less than two-thirds of the total number of members of the State Legislative Assembly in the case of amendment of a State Constitution. In the case of the Malay States, this provision will not invalidate any provision of the State Constitution requiring the consent of any body of persons other than the State Legislative Assembly to an amendment affecting the succession to the Throne, the position of the Ruler, his heirs and Consort, and certain other matters regulated by Malay custom.

71. The above describes the Constitutions finally proposed for the Federation and for Malacca and Penang, and the processes by which they have been prepared. These Constitutions are acceptable to Her Majesty's Government, the Conference of Rulers and the elected Government of the Federation.

# Federation Of Malaya Constitutional Proposals (White Paper), 1957

56. A number of modifications have been made to the principles recommended by the Commission with regard to Malay land reservations and the preservation of the rights of other persons. The first and the most important concerns the manner in which the existing law may be amended. It is proposed that an enactment of a State Legislature for this purpose shall not *only* be passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting, but shall also be approved by a resolution of each House of Parliament passed in a similar way. Secondly, it is proposed that land which has not been developed or cultivated may only be declared as a Malay reservation if an equal area of similar land is made available for general alienation and if the total area of such land in a State declared as a Malay reservation after Merdeka Day does not at any time exceed the total area of such land in that State which has been so made available for general alienation. Thirdly, it is proposed that any Malay State should be entitled to acquire by agreement developed or cultivated land and to declare such land to be a Malay reservation in accordance with the existing law. Fourthly, it is proposed that the Government of any State should be entitled, in accordance with law, to acquire land for the settlement of Malays or of other communities and to establish trusts for that purpose. This last provision is intended primarily to have effect in Malacca and Penang where the other provisions do not apply.

# Perkara 89. Tanah Simpanan Melayu



(1) Mana-mana tanah di sesuatu Negeri yang merupakan tanah simpanan Melayu sebaik sebelum Hari Merdeka mengikut undang-undang yang sedia ada boleh terus menjadi tanah simpanan Melayu mengikut undang-undang itu sehingga diperuntukkan selainnya oleh suatu Enakmen Badan Perundangan Negeri itu, iaitu suatu Enakmen—

- (a) yang diluluskan oleh majoriti jumlah bilangan ahli Dewan Undangan dan dengan undi tidak kurang daripada dua pertiga daripada ahli-ahli yang hadir dan mengundi; dan
- (b) yang dipersetujui melalui ketetapan setiap Majlis Parlimen yang diluluskan oleh majoriti jumlah bilangan ahli Majlis Parlimen itu dan dengan undi tidak kurang daripada dua pertiga daripada ahli-ahli yang mengundi.

(1A) Apa-apa undang-undang yang dibuat di bawah Fasal (1) yang membuat peruntukan bagi pelucuthakan atau pengembalian kepada Pihak Berkuasa Negeri, atau bagi pelucutan, pemunyaan mana-mana tanah simpanan Melayu, atau apa-apa hak atau kepentingan mengenainya, disebabkan mana-mana orang, atau mana-mana perbadanan, syarikat atau badan lain (sama ada diperbadankan atau tidak diperbadankan) yang memegangnya tidak lagi layak atau berwibawa di bawah undang-undang yang berkaitan yang berhubungan dengan tanah simpanan Melayu untuk memegangnya, tidaklah menjadi tidak sah atas alasan ketidakselarasan dengan Perkara 13.

(2) Mana-mana tanah di sesuatu Negeri yang pada masa ini bukan tanah simpanan Melayu mengikut undang-undang yang sedia ada dan yang belum dibangunkan atau dicucuk tanam boleh diisytiharkan sebagai tanah simpanan Melayu mengikut undang-undang itu:

# Perkara 89. Tanah Simpanan Melayu



Dengan syarat bahawa—

- (a) jika mana-mana tanah di sesuatu Negeri diisytiharkan sebagai tanah simpanan Melayu di bawah Fasal ini, suatu keluasan tanah yang sama dengan luas tanah itu di dalam Negeri itu yang belum dibangunkan atau dicucuk tanam hendaklah diadakan bagi pemberian hakmilik umum; dan
- (b) jumlah keluasan tanah di sesuatu Negeri yang pada masa ini diisytiharkan sebagai tanah simpanan Melayu di bawah Fasal ini tidak boleh pada bila-bila masa melebihi jumlah keluasan tanah di Negeri itu yang telah diadakan bagi pemberian hakmilik umum menurut perenggan (a).

(3) Tertakluk kepada Fasal (4), Kerajaan mana-mana Negeri boleh, mengikut undang-undang yang sedia ada, mengisytiharkan sebagai tanah simpanan Melayu—

- (a) mana-mana tanah yang diambil oleh Kerajaan itu melalui perjanjian bagi maksud itu;
- (b) mana-mana tanah lain, apabila permohonan dibuat oleh tuan punya tanah itu, dan dengan persetujuan tiap-tiap orang yang mempunyai hak atau kepentingan mengenainya,

dan hendaklah, mengikut undang-undang yang sedia ada, dengan serta-merta mengisytiharkan sebagai tanah simpanan Melayu, dalam hal jika mana-mana tanah terhenti menjadi tanah simpanan Melayu, mana-mana tanah lain yang sama jenisnya dengan tanah itu dan yang luasnya tidak melebihi keluasan tanah itu.

(4) Tiada apa-apa jua dalam Perkara ini boleh membenarkan diisytiharkan sebagai tanah simpanan Melayu mana-mana tanah yang pada masa perisytiharan itu dipunyai atau diduduki oleh seseorang yang bukan seorang Melayu atau yang mengenainya atau ke atasnya orang itu ketika itu mempunyai apa-apa hak atau kepentingan.



# Perkara 89. Tanah Simpanan Melayu



(5) Tanpa menjejaskan Fasal (3), Kerajaan mana-mana Negeri boleh, mengikut undang-undang, mengambil tanah untuk menempatkan orang Melayu atau kaum lain, dan mewujudkan amanah bagi maksud itu.

(6) Dalam Perkara ini **"tanah simpanan Melayu"** ertinya **tanah yang disimpan untuk diberi hakmilik kepada orang Melayu atau kepada anak negeri bagi Negeri tempat terletakinya tanah itu**; dan **"orang Melayu"** termasuklah **mana-mana orang yang, di bawah undang-undang Negeri tempat dia bermastautin, dikira sebagai orang Melayu bagi maksud perizaban tanah.**

(7) Tertakluk kepada Perkara 161A, Perkara ini hendaklah berkuat kuasa walau apa pun apa-apa peruntukan lain dalam perlembagaan ini; tetapi (tanpa menjejaskan mana-mana peruntukan lain yang sedemikian) tiada tanah boleh dikekalkan atau diisytiharkan sebagai tanah simpanan Melayu kecuali sebagaimana yang diperuntukkan oleh Perkara ini dan Perkara 90.

(8) Peruntukan Perkara ini hendaklah terpakai bagi Wilayah-Wilayah Persekutuan Kuala Lumpur dan Putrajaya mengikut cara yang sama sebagaimana peruntukan Perkara ini terpakai bagi sesuatu Negeri, kecuali bahawa Fasal (1) dalam pemakaiannya bagi Wilayah-Wilayah Persekutuan Kuala Lumpur dan Putrajaya hendaklah diubahsuaikan supaya dibaca bahawa mana-mana tanah di dalam Wilayah Persekutuan Kuala Lumpur dan Wilayah Persekutuan Putrajaya yang sebaik sebelum Hari Merdeka ialah tanah simpanan Melayu mengikut undang-undang yang sedia ada boleh terus menjadi tanah simpanan Melayu mengikut undang-undang itu sehingga diperuntukkan selainnya oleh Akta Parlimen yang diluluskan oleh majoriti jumlah bilangan ahli setiap Majlis Parlimen dan dengan undi tidak kurang daripada dua pertiga daripada ahli-ahli yang hadir dan mengundi di dalam setiap Majlis Parlimen.

## Perkara 90. Peruntukan khas yang berhubungan dengan tanah adat di Negeri Sembilan dan Melaka, dan tanah pegangan Melayu di Terengganu



(1) Tiada apa-apa jua dalam Perlembagaan ini boleh menyentuh kesahan apa-apa sekatan yang dikenakan oleh undang-undang ke atas pemindahan hakmilik atau pemajakan tanah adat di Negeri Sembilan atau Negeri Melaka, atau pemindahan hakmilik atau pemajakan apa-apa kepentingan mengenai tanah itu.

(1A) Bagi maksud Fasal (1)—

(a) “pemindahan hakmilik” termasuklah apa-apa penggadaian, perpindahan atau peletakhakan, atau pewujudan apa-apa lien atau amanah, atau pemasukan apa-apa kaveat, atau apa-apa bentuk urusan atau pelupusan lain daripada apaapa jua perihalan atau jenis; dan

(b) “pemajakan” termasuklah apa-apa penyewaan dalam apa-apa jua bentuk atau jangka masa.

(2) Walau apa pun apa-apa jua dalam Perlembagaan ini, undang-undang yang sedia ada di Negeri Terengganu mengenai tanah pegangan Melayu hendaklah terus berkuat kuasa sehingga diperuntukkan selainnya oleh suatu Enakmen Badan Perundangan Negeri itu yang diluluskan dan dipersetujui sebagaimana yang diperihalkan dalam Fasal (1) Perkara 89.

## Perkara 90. Peruntukan khas yang berhubungan dengan tanah adat di Negeri Sembilan dan Melaka, dan tanah pegangan Melayu di Terengganu



(3) Apa-apa Enakmen Badan Perundangan Negeri Terengganu yang sedemikian boleh membuat peruntukan bagi tanah simpanan Melayu yang bersamaan dengan undang-undang yang sedia ada yang berkuat kuasa di mana-mana Negeri lain yang ber-Raja; dan dalam keadaan sedemikian Perkara 89 tersebut hendaklah berkuat kuasa berhubung dengan Terengganu tertakluk kepada ubah suaian yang berikut, iaitu:

- (a) dalam Fasal (1), sebutan mengenai tanah yang merupakan tanah simpanan Melayu sebaik sebelum Hari Merdeka mengikut undang-undang yang sedia ada hendaklah digantikan dengan sebutan mengenai tanah yang sebaik sebelum lulusnya Enakmen tersebut itu merupakan tanah pegangan Melayu; dan
- (b) tertakluk seperti yang disebut terdahulu, apa-apa sebutan mengenai undang-undang yang sedia ada hendaklah ditafsirkan sebagai sebutan mengenai Enakmen tersebut.

## Perkara 74. Hal Perkara Undang-undang Persekutuan dan Negeri



(2) Tanpa menjejaskan apa-apa kuasa untuk membuat undang-undang yang diberikan kepadanya oleh mana-mana Perkara lain, Badan Perundangan sesuatu Negeri boleh membuat undang-undang mengenai apa-apa perkara yang disebut satu persatu dalam Senarai Negeri (iaitu Senarai Kedua yang dinyatakan dalam Jadual Kesembilan) atau Senarai Bersama.

## Senarai II (Senarai Negeri) Jadual Kesembilan Perlembagaan Persekutuan



2. Kecuali mengenai Wilayah Persekutuan Kuala Lumpur, Labuan dan Putrajaya, tanah termasuk—

- (a) Pemegangan tanah, ...;
- (b) Tanah Simpanan Melayu atau, di Negeri Sabah dan Sarawak, tanah simpanan anak negeri;
- (c) Permit dan lesen untuk mencari gali bagi lombong; pajakan melombong dan perakuan melombong;
- (d) Pengambilan tanah secara paksa;
- (e) Pindah hakmilik tanah, gadai janji, pajakan dan gadaian berkenaan dengan tanah; isemen; dan
- (f) Rad; harta karun tidak termasuk benda purba.

# Perkara 160 Fasal 2 Perlembagaan Persekutuan



“Orang Melayu” ertinya seseorang yang menganuti agama Islam, Lazimnya bercakap bahasa Melayu, menurut adat istiadat Melayu dan –

- a) yang lahir sebelum Hari Merdeka, di Persekutuan atau di Singapura, atau yang lahir sebelum Hari Merdeka dan ibu atau bapanya telah lahir di Persekutuan, atau di Singapura, atau yang pada hari Merdeka berdomisil di Persekutuan atau di Singapura; atau
- b) ialah zuriat seseorang yang sedemikian.

# Peruntukan Perlembagaan Berhubung Tanah Rizab Melayu

Berdasarkan dokumen *White Paper on Constitutional Proposals* pada tahun 1957, tidak dinyatakan kemestian mewartakan keluasan keseluruhan TRM sehingga nisbah 50% daripada keseluruhan keluasan negeri.

Kandungan wasiat raja-raja Melayu perlu difahami dalam konteks peruntukan dalam Perlembagaan Persekutuan, yang tidak bermaksud keperluan mewartakan 50% keluasan negeri sebagai TRM.

Pada hari Merdeka, negeri-negeri seperti Kelantan dan Kedah sudah pun mempunyai keluasan TRM yang melebihi separuh keluasan negeri masing-masing.

# Fakta Penting berkaitan Rizab Melayu dalam Perlembagaan



## **Tanah Rizab Melayu dilindungi dalam Perlembagaan**

Merupakan sebahagian daripada hak istimewa orang Melayu yang diletakkan di bawah kuasa Negeri.



## **Pindaan Terhadap Undang-Undang Rizab Melayu**

Sebarang pindaan terhadap undang-undang Rizab Melayu memerlukan kelulusan 2/3 daripada ahli Dewan Undangan Negeri berkenaan dan Parlimen.



## **Pertambahan Kawasan Rizab Melayu**

Kawasan Rizab Melayu boleh bertambah selepas Merdeka dengan syarat terdapat keluasan yang sama diisytiharkan untuk pemberimilikan umum dan undang-undang pengambilan tanah boleh digunakan.



## **Pembatalan Kawasan Rizab Melayu**

Kawasan Rizab Melayu boleh dibatalkan selepas Merdeka dengan syarat terdapat kawasan lain yang mempunyai keluasan yang tidak lebih daripada kawasan asal diisytiharkan sebagai kawasan Rizab Melayu yang baru.



## **Kawasan Milik Bukan Melayu**

Tanah yang dimiliki oleh bukan Melayu tidak boleh diisytiharkan sebagai kawasan Rizab Melayu



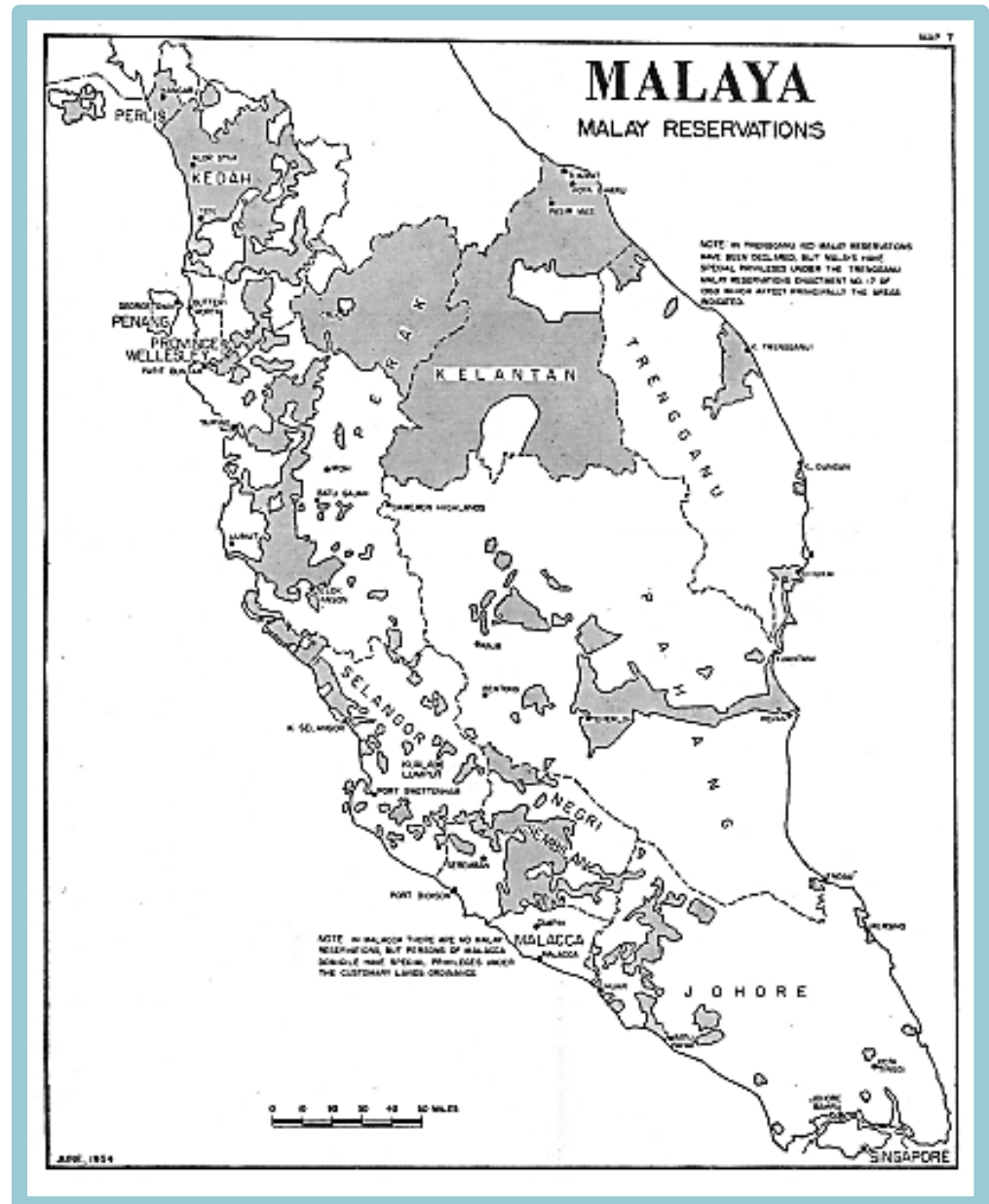
# Kedudukan Rizab Melayu Ketika Merdeka

# KEDUDUKAN TANAH RIZAB MELAYU KETIKA MERDEKA

Dipetik daripada *The Economic Development of Malaya, Report of a Mission organized by the International Bank for Reconstruction and Development at the request of The Governments of the Federation of Malaya, the Crown Colony of Singapore and the United Kingdom, 1955.*

## Catatan:

Ketika Merdeka, kecuali Kelantan dan Kedah, keluasan rizab Melayu tidak merangkumi 50% daripada keluasan negeri masing-masing.



# Pembangunan Dan Urusniaga Bagi Tanah Rizab Melayu

# KANUN TANAH NEGARA

➤ Pemakaian Undang-undang ke atas tanah rizab Melayu adalah diberikan keistimewaan di bawah peruntukan seksyen 4(2)(b) Kanun Tanah Negara:

## **4. Savings**

*(1) Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act: Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act.*

*(2) Except in so far as it is expressly provided to the contrary, nothing in this Act shall affect the provisions of-*

*(a) any law for the time being in force relating to customary tenure;*

***(b) any law for the time being in force relating to Malay reservations or Malay holdings;***

*(c) – (k) ...*

*and, in the absence of express provision to the contrary, if any provision of this Act is inconsistent with any provision of any such law, the latter provision shall prevail, and the former provision shall, to the extent of the inconsistency, be void.*

# KANUN TANAH NEGARA

➤ Pendaftaran urusan niaga yang tertakluk kepada kelayakan untuk pendaftaran juga membabitkan peruntukan undang-undang selain daripada KTN sebagaimana dijelaskan di bawah peruntukan seksyen 301 Kanun Tanah Negara:

## **301. When an instrument is fit for registration**

*An instrument shall be fit for registration under this Part if, but only if, the following conditions are satisfied:*

*(a) – (b) ...*

***(b) that the dealing which it effects is not contrary to any prohibition or limitation imposed by this Act or any other written law for the time being in force, or to any restriction in interest to which the land in question is for the time being subject;***

*(c) – (e) ...*

*Provided that where a certificate of sale has been given to a purchaser in respect of any charged land or lease under subsection 259(3) or 265(4), any requirement to obtain the consent of the State Authority relating to the restriction in interest to such land or lease in question shall not be applicable.*

# PEMBANGUNAN DAN URUSNIAGA TANAH RIZAB MELAYU

- Secara umumnya, TRM boleh dibangunkan selaras kuasa yang diberikan kepada tuan tanah menurut seksyen 92 KTN melalui prosedur yang ditetapkan di bawah KTN:
  - Pecah Sempadan (*Subdivision*) tanah dan bangunan;
  - Pecah Bahagian (*Partition*);
  - Penyatuan (*Amalgamation*);
  - Serah balik dan bermilik semula;
  - Tukar syarat/sekatan/kegunaan tanah.
- Tuan tanah juga berhak untuk menjalankan urusan ke atas tanahnya sama ada memindahmilik, menggadai atau memajak seperti mana yang dinyatakan dalam seksyen 92 KTN.
- Pembangunan dan urusan ini boleh dibuat oleh tuan punya tanah sendiri ataupun seorang **pemegang surat kuasa wakil**.
- Walau bagaimanapun, pembangunan dan urusan yang melibatkan TRM masih lagi tertakluk kepada **sekatan-sekatan yang ditetapkan dalam Enakmen Rizab Melayu (ERM)** Negeri-negeri yang berkenaan.
- Bagaimana dengan pewujudan perbadanan pengurusan melibatkan tanah pegangan Melayu atau TRM yang dipunyai oleh Melayu yang secara automatik terbentuk apabila buku daftar strata dibuka menurut seksyen 17 Akta Hakmilik Strata.

# **SEKATAN-SEKATAN ENAKMEN RIZAB MELAYU (NMB BAB 142)**

## **➤ PELUPUSAN – SEKSYEN 7**

- Tidak dibenarkan tanah Kerajaan dalam kawasan Rizab Melayu diberimilik kepada bukan Melayu
- Kecuali pertubuhan/perbadanan yang disenaraikan dalam Jadual Ketiga

## **➤ SURAT KUASA WAKIL – SEKSYEN 9**

- Apa-apa urusan yang dibuat melalui Surat Kuasa Wakil kepada orang bukan Melayu bagi pihak tuan punya Melayu menjadi tidak sah dan tidak layak untuk didaftarkan.

## **➤ URUSNIAGA – SEKSYEN 8**

- Tidak dibenarkan pindahmilik, gadaian dan pajakan kepada orang bukan Melayu kecuali pindahmilik bersilang – serentak.
- Lot dimiliki sepenuhnya oleh bukan Melayu akibat pemecahan ini tidak lagi menjadi tanah pegangan Melayu.

# SEKATAN-SEKATAN ENAKMEN RIZAB MELAYU (NMB BAB 142)

## ➤ KAVEAT DIDASARKAN KEPADA LIEN – SEKSYEN 10

- Tiada lien dengan menyimpan Dokumen Hakmilik Keluaran (DHK) boleh diwujudkan bagi faedah mana- mana orang (termasuk Melayu dan syarikat Melayu).
- Kaveat Pemegang Lien tidak layak untuk didaftarkan oleh Pendaftar (kecuali Menteri Besar (Diperbadankan), syarikat kerjasama yang diluluskan oleh Menteri Besar atau pertubuhan/perbadanan yang disenaraikan dalam Jadual Kedua) - Seksyen 17(1)(a).

## ➤ KAVEAT PERSENDIRIAN – SEKSYEN 11

- Tiada kaveat oleh orang atau ejen bertindak bagi pihak prinsipalnya, bukan Melayu boleh didaftarkan.
- Jika prinsipalnya (syarikat Melayu) dan ejen bukan Melayu, kaveat boleh didaftarkan.
- Menteri Besar (Diperbadankan), syarikat kerjasama yang diluluskan oleh Menteri Besar (seksyen 17) dan pertubuhan/perbadanan dalam Jadual Kedua dan Jadual Ketiga tidak layak didaftarkan.
- Orang Melayu yang memasukkan kaveat boleh didaftarkan.



# SEKATAN-SEKATAN ENAKMEN RIZAB MELAYU (NMB BAB 142)

## ➤ KAVEAT PENDAFTAR – SEKSYEN 11

a. Kaveat yang dimasukkan oleh Pendaftar melalui seksyen 320 KTN dikecualikan daripada larangan ini.

Mencegah penipuan atau urusan tidak teratur; atau

Bagi melindungi kepentingan:

i. Persekutuan atau Pihak Berkuasa Negeri (PBN); atau

ii. Mana-mana orang yang pada pandangannya tidak upaya kerana belum dewasa, sakit otak atau ketidaksempurnaan akal, atau telah dibuktikan dan ia berpuashati bahawa orang itu tiada dalam Persekutuan.

Bagi menjamin bahawa tanah itu akan tersedia menyelesaikan bayaran keseluruhan atau sebahagian daripada apa-apa hutang yang kena bayar kepada Persekutuan atau PBN, sama ada hutang sedemikian ada tercagar atau tidak dan sama ada penghakiman mengenainya telah diperoleh atau belum; atau

Oleh kerana padanya ada beberapa kesilapan yang telah dibuat dalam DHD dan DHK kepada tanah itu atau mana-mana suratcara lain yang berkaitan dengannya.

# SEKATAN-SEKATAN ENAKMEN RIZAB MELAYU (NMB BAB 142)

## ➤ PERLETAKHAKAN – SEKSYEN 12

- Tanah Pegangan Melayu tidak boleh diletakhak kepada pegawai pemegang harta kerana kebangkrapan tuan punya.
- Kaveat Pendaftar boleh dimasukkan jika melibatkan kepentingan Kerajaan.

## ➤ PENAHANAN DALAM MENYEMPURNAKAN PERINTAH MAHKAMAH – SEKSYEN 13

- Pegangan Melayu tidak boleh ditahan dalam menyempurnakan perintah Mahkamah melainkan prosiding dimulakan sebelum kuatkuasa Enakmen ini.

## ➤ AMANAH – SEKSYEN 14

- Dilarang untuk diwujudkan bagi mana- mana tanah pegangan Melayu untuk kepentingan atau faedah bukan Melayu
- Batal dan tidak sah dan tidak upaya dikuatkuasakan oleh Mahkamah.

## ➤ PEMBERIAN PROBET DAN SURAT PENTADBIRAN – SEKSYEN 15

- Dilarang meletakkan mana- mana pegangan Melayu kepada mana- mana wasi / pentadbir bukan Melayu.
- Pegawai amanah raya dan pegawai pentadbir – bagi pihak orang melayu

# SEKATAN-SEKATAN ENAKMEN RIZAB MELAYU (NMB BAB 142)

## ➤ JUALAN OLEH PEMEGANG BEBANAN (ENCUMBRANCERS) – SEKSYEN 16

- Tanah di bawah ERM boleh dibebankan kepada:
    - i. Orang Melayu;
    - ii. Syarikat disifatkan sebagai Melayu;
    - iii. Syarikat kerjasama tertentu yang diluluskan oleh Menteri Besar ;
    - iv. Pertubuhan/Perbadanan yang tersenarai dalam Jadual Kedua; dan
    - v. Menteri Besar (Diperbadankan).
- Nota: Bebanan termasuklah gadaian, kaveat pemegang lien, penahanan dalam menyempurnakan dekri atau perintah mahkamah dan penahanan sebelum penghakiman.
- Atas sebab tertentu, pemegang bebanan boleh meminta:
    - i. Mahkamah di bawah seksyen 259 KTN
    - ii. Pentadbir Tanah di bawah seksyen 265 KTNmenjual secara lelong awam kepada orang Melayu jika pada tarikh pendaftaran tanah itu milik orang Melayu dan menjadi pegangan Melayu.
  - Jika tanah dimiliki oleh bukan Melayu maka boleh dijual kepada bukan Melayu dan Melayu (jika kepada Melayu, endorsan di bawah seksyen 6 hendaklah dibuat segera).

# SEKATAN-SEKATAN ENAKMEN RIZAB MELAYU (NMB BAB 142)

➤ TANAH-TANAH BOLEH DIGADAI DAN DIPAJAK KEPADA KERAJAAN DAN DIGADAIKAN KEPADA SYARIKAT KERJASAMA TERTENTU – SEKSYEN 17

- i. Menteri Besar (Diperbadankan)
- ii. Syarikat kerjasama tertentu yang diluluskan oleh Menteri Besar
- iii. Mana-mana pertubuhan/perbadanan yang disenaraikan dalam Jadual Kedua.

- Untuk faedah 3 kategori di atas:
  - ❖ Lien dan kaveat pemegang lien boleh didaftarkan
  - ❖ Tanah boleh dipajak kepada Menteri Besar (Diperbadankan)

➤ PEMEGANG AMANAH RAYA DAN PEGAWAI PEMEGANG HARTA SEBAGAI SEORANG MELAYU DALAM KES-KES TERTENTU – SEKSYEN 18

- Boleh menerima pindahmilik atau penurunanmilik untuk orang Melayu.
- Hendaklah didaftarkan pindahmilik atau penurunanmilik itu dan disifatkan sebagai Melayu.

# **MANGSUR YASSIN LWN. CIMB BANK BHD. [2012]**

## **5 CLJ 983**

Mahkamah Tinggi Malaya, Muar

- Plaintif merupakan pemilik berdaftar hartanah GM 2188 Lot 3158, Mukim Ayer Hitam, Johor ('hartanah tersebut'). Hartanah tersebut adalah termasuk dalam kawasan Tanah Simpanan Melayu yang telah diwartakan pada tahun 1948.
- Plaintif telah menggadaikan hartanah tersebut ('gadaian tersebut') kepada defendan sebagai satu sekuriti bagi membantu kenalan plaintif, seorang Ng Kim Fong untuk mendapatkan satu pinjaman wang sebanyak RM100,000 ('pinjaman itu').
- Ng Kim Fong telah mengingkari bayaran balik pinjaman itu dan telah pun meninggal dunia.
- Persoalan yang perlu diputuskan oleh mahkamah adalah: (i) sama ada gadaian tersebut adalah menyalahi dan/atau melanggar peruntukan Malay Reservations Enactment Johor (No. 1 tahun 1936) ('Enakmen tersebut') dan (ii) sama ada gadaian tersebut tidak sah, batal dan tak sah dari mulanya dan dengan itu adalah tidak berkesan dan tidak boleh dikuatkuasakan oleh defendan.

# MANGSUR YASSIN LWN. CIMB BANK BHD. [2012]

## 5 CLJ 983

Mahkamah Tinggi Malaya, Muar

### Diputuskan (dibenarkan dengan kos):

- (1) Menurut s. 9 Enakmen tersebut, “Malay holding” tidak dibenarkan dipindahmilik, digadai, dipajak atau dengan apa cara dilupuskan (*disposed of*) kepada sesiapa yang bukan Melayu dan di bawah s. 20 Enakmen tersebut, semua ‘dealing’ atau ‘disposal’ apa-apa pun dan semua percubaan untuk ‘deal on’ atau ‘dispose of’ Malay holding bertentangan dengan peruntukan Enakmen tersebut adalah ‘null and void’. (*Wan Ismail & Anor v. Musa Mat Jani & Anor; Idris Hj Mohamed Amin v. Ng Ah Siew; Robert Lee & Anor v. Wong Ah Yap & Anor*) (perenggan 5)
- (2) Persetujuan plaintif untuk membekalkan sekuriti dalam bentuk gadaian terhadap tanah tersebut tidak dapat mengelak daripada pemakaian s. 19 dan 20 Enakmen tersebut. Tambahan, walaupun defendan berhujah untuk melelong hartanah tersebut kepada seorang Melayu sahaja, ianya masih tidak disangkal bahawa ‘dealing’ untuk menggadai hartanah tersebut untuk kepentingan orang bukan Melayu adalah **tidak sah dan terbatal** kerana defendan tidak akan memberi pinjaman itu kepada Ng Kim Fong tanpa gadaian tersebut yang diberi oleh plaintif dan yang berkepentingan adalah Ng Kim Fong, seorang bukan Melayu. (perenggan 12-14)

# Pengakusaksian bagi Tanah Rizab Melayu

# PENGAKUSAKSIAN

## **211. Attestation of instruments of dealing.**

*(1) Every execution by a natural person of any instrument effecting any dealing under this Act shall be attested in accordance with the following provisions of this section by one of the officers or other persons specified in that behalf in the Fifth Schedule. Provided that this requirement shall not apply to the execution of any such instrument by-*

- (i) the State Director,*
- (ii) the Registrar,*
- (iii) any Land Administrator,*
- (iv) any officer of the Court, or*
- (v) the Official Administrator.*

*(2) The attestation clause to be used in any case shall be that shown in Form 13B; and the position thereof in the instrument shall be immediately after the execution to which it relates.*

*(3) The officer or other person attesting any execution pursuant to this section shall sign the attestation clause and, if he has a seal of office, authenticate his signature with that seal.*



# PENGAKUSAKSIAN BAGI TANAH RIZAB MELAYU

## FIFTH SCHEDULE

(Section 211)

### OFFICERS OR OTHER PERSONS TO ATTEST EXECUTIONS OF INSTRUMENTS EFFECTING DEALINGS UNDER ACT

1 – 2 ...

3. *Subject to paragraph 4, every execution by a natural person of any instrument effecting any dealing under this Act in respect of any of the following lands shall be attested by a Land Administrator:*

- 1) *a Malay holding under the Malay Reservations Enactment of the Federated Malay States, the Malay Reservations Enactment of Johore, or the Malay Reservations Enactment of Terengganu;*
- 2) *reservation land held by a Malay under Enactment No. 63 (Malay Reservations) of Kedah, the Malay Reservations Enactment of Kelantan, or the Malay Reservations Enactment of Perlis;*
- 3) *reservation land held by a Siamese under Enactment No. 63 (Malay Reservations) of Kedah, or the Malay Reservations Enactment of Perlis;*
- 4) *Land that is subject to Part VIII of the National Land Code (Penang and Malacca Titles) Act 1963.*

4. *The requirement for attestation by a Land Administrator under paragraph 3 shall not be applicable to:*

- 1) *any instrument of charge in respect of any land referred to in that paragraph executed by a person under a power of attorney on behalf of a body corporate or a company, provided that such body corporate or company is allowed to be a chargee under the appropriate Malay Reservations Enactment;*
- 2) *any instrument of discharge of charge.*

# **PEKELILING KETUA PENGARAH TANAH DAN GALIAN PERSEKUTUAN BILANGAN 2/1992: PENGAKUSAKSIAN BAGI PERMOHONAN MEMASUKKAN KAVEAT BAGI TANAH YANG TERTAKLUK KEPADA SEKATAN DI BAWAH UNDANG-UNDANG RIZAB MELAYU ATAU TANAH ADAT MELAKA**

- Menasihat Pendaftar Hakmilik dan Pentadbir Tanah mengenai siapa yang boleh mengakusaksikan permohonan untuk memasukkan kaveat di bawah KTN.
- Permohonan untuk memasukkan kaveat bagi tanah di bawah KTN mestilah diakusaksikan menurut peruntukan di bawah seksyen 211 KTN. Oleh itu, kehendak Jadual Kelima KTN yang menetapkan siapa yang boleh membuat pengakusaksian mestilah dipatuhi sepenuhnya.
- Bagi tanah yang dinyatakan di perenggan 3(1), (2), (3) dan (4) dalam Jadual Kelima itu, iaitu, tanah yang tertakluk kepada sekatan-sekatan di bawah undang-undang rizab Melayu atau tanah adat Melaka, **pengakusaksian hanya boleh dibuat oleh Pentadbir Tanah sahaja.**
- Sekiranya permohonan untuk memasukkan kaveat bagi tanah yang tertakluk kepada sekatan-sekatan di bawah undang-undang rizab Melayu atau tanah adat Melaka tidak diakusaksikan oleh Pentadbir Tanah, maka permohonan itu adalah tidak teratur dan perlulah ditolak.

**TERIMA KASIH**