

THE RIGHTS OF TEMPORARY OCCUPATION
LICENCE HOLDERS UNDER THE NATIONAL
LAND CODE, 1965: A COMPREHENSIVE STUDY.

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CHAPTER ONEINTRODUCTION

Before the introduction of Torrens System in Malaya, not a single system of land registration exist.

Noticeably , during the pre-colonial days in the Malay States, land was given to anyone who could develop it. To this verbal licences to occupy the land were granted and documentary permits to enter the land were freely issued. This is an early form of the Malay's customary tenure of land.

There are two types of adat or customary law in Peninsula Malaysia that is, Adat Perpatih and Adat Temenggong.

Adat Perpatih is the personal law of those Malays living for the most part Negeri Sembilan and Malacca, who are the descendents of the Minangkabau race of Sumatera, observe matriarchal rules.

Adat Temenggong Malays are those descended from the people of Palembang but who follow patriarchal rules.

Adat Perpatih follows rules of

"Tribal descent goes through women - a man is a member of his mother's tribe until by marriage he is received into his wife's. Land can be owned by women only. Women may not travel, the husband settles in his wife's village - not the wife in the husband's. Exogamy is insisted on."¹

1. W.J. Wilkinson: "Malay Law" contained in "Readings in Malay Adat Law" page 12.

Since the National Land Code, this form of Adat Perpatih have been preserved by protection under the Small Estates Legislation and by designation as Mukim Land under the National Land Code, 1965.

During the Malacca Sultanate (140 - 1511) the Malays retained their customary tenure of land.

The basic principles of the Malay customary tenure (excluding that prevailing under Adat Perpatih) was that all land may owned by the ruler. Occupation of that land by a cultivator was secure so long as he cultivated the land paid one-tenth of it's produce to the ruler, performed forced labour and paid certain taxes.

The occupier had an interest with certain proprietary incidents so that he could charge or assign the land. However, the land was not held under any formal title or grant and the occupier's rights were extinguished on abandonment for three years of non-cultivation for one year.

It could be seen that there was no proper system of registration so the state could not trace the person liable for payment of rent or other dues.

There was also no proper survey of land granted to individual and therefore disputes arose regarding titles to land ownership.

This form of land tenure continued until when the British occupied the Malay States.

since the British took power from the Malay rulers in the 19th century, a uniformed system of land tenure was introduced.