

## SYSTEMATIC LITERATURE REVIEW ON CUSTOMARY LAND MANAGEMENT IN NEGERI SEMBILAN

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### Abstract

*This article explores the cultural tradition of Perpatih, a practice observed in Malaysia's Negeri Sembilan and Melaka regions, rooted in Minangkabau heritage from Indonesia. Perpatih's foundation is in familial customs, encompassing social, economic, political, and legal aspects. The study examines the hierarchical customary law system, including Undang, Lembaga, Buapak, Perut, and the general public, with a democratic selection process for the Yamtuan. Perpatih's exogamous marriage system is also discussed. The article highlights the significance of a well-organized land management system for customary land. It delves into the Customary Tenure Enactment Chapter 215, detailing regulations for customary land inheritance and division. Abandoned customary land becomes a central concern, with factors contributing to abandonment explored, such as incomplete property division and location challenges. Through systematic review methodology, the study examines existing research on customary land in Negeri Sembilan. It identifies challenges in customary land management and discusses a proposed comprehensive forensic model utilizing forensic science to address abandoned customary land. In conclusion, the article emphasizes the importance of efficient customary land governance to prevent abandoned land and suggests the development of a forensic model to address this issue. Further research is recommended to enhance customary land management and uphold the rich cultural heritage of Perpatih.*

## INTRODUCTION

The cultural tradition of perpatih, observed in Malaysia, is limited to a specific segment of the populace residing in the regions of Negeri Sembilan and Melaka (Sahid, Chaedar, Hasan, & Amar, 2021; Zainon, Bakar, Zaghoul, Urus, & Abd Azzis, 2021). It is widely believed that the practise of perpatih was introduced by the Minangkabau people who migrated from Pagaruyong, Indonesia (Radzuan, 2021; Sahid et al., 2021; Sunarti, Sari, & Haghia, 2021). The foundation of the Perpatih customary law is rooted in the customs that are traditionally observed and passed down from one generation to the next among the progeny of each forebear (Radzuan, 2023; Zainon et al., 2021). In brief, the research conducted by Haron (1992, 1997) indicates that the perpatih custom is a social norm that is grounded in the familial group system. The rules in question encompass a wide range of areas, including but not limited to social, economic, political, and legal aspects. Thus, the prevalent arrangement of perpatih in this community is founded upon the familial structure to a great extent. The Papatih custom's division and practise system bears minimal dissimilarity to the Temenggung custom system's practise observed in various states (Karim, 2021). The governmental perspective on the implementation of customs is characterised by a hierarchical structure, wherein each level or stage is assigned specific responsibilities and entitlements (Radzi & Yusoff, 2023; Saludin, 2022). These entities are commonly referred to as Undang, Lembaga, Buapak, Perut, and the general public.

The Yamtuan in the state of Negeri Sembilan is selected through a democratic process whereby each chief from every tribe, referred to as Undang, participates in the election (Maamor, Kahn, & Taif, 2022). The appointment and election of all Undang within the tribe is determined based on the consensus of all members of the tribe (Sahid et al., 2021). From a legal perspective on property division, the customary practise of pepatih accords significance and precedence to the female gender as opposed to the maternal lineage (Wan, Rushdan, & Mohd, 2023). In the case of mortality, inherited assets, such as customary land, will be directly passed down to the daughter. Neither the spouse nor the offspring possess the entitlement to possess or inherit the bequest. In the event that a mother does not have a female offspring, the inheritance of property shall devolve upon her younger sister, daughter of her younger siblings, granddaughters, or any other female heir in succession. It is imperative that the customary land inheritance distribution guarantees that women belong to the same tribe. The Papatih community follows the exogamy system in customary marriages (Radzuan, 2021; Tono, Syibly, Mu'allim, Nurozi, & Purwanto, 2019). The exogamy system is a form of marital practise that prohibits individuals from marrying within their own tribe. As per the findings of Aunurrochim et al. (2017) research, intra-tribal marriage is prohibited due to the belief that such unions do not foster progress.

The establishment of a well-organized and efficiently run land management system is of paramount importance (Azizan & Hussin, 2017; Maidin, 2023). Primarily, it is imperative to establish a management framework for customary land, which pertains

to the customary practises of a particular community in Malaysia (Wook, Yusof, Khan, Mohd, Hassan, & Mohad, 2020). The effective management of customary land and its inheritance necessitates the appointment and establishment of responsible parties to oversee its division and maintenance within the customary land management system. Every state possesses the authority to introduce their respective customary laws. Diverse customary practises indicate variations based on the beliefs, customs, and ancestral traditions transmitted across successive generations. The customary tenure enactment chapter 215 and the customary tenure enactment (Lengkongan land) 1960 have stipulated that customary land is a type of land that is owned by the land office and is passed down from one generation to another within the same tribe in groups, in accordance with the rules of inheritance (Radi, 2019; Wan, Rushdan, & Mohd, 2023). Subsequently, during the registration process of the customary land register certificate, the appellation of the corresponding ethnic group is documented (Ismail, 2011). This practise is exclusive to certain communities residing in Negeri Sembilan and Melaka.

In accordance with Chapter 215 on customary tenure enactment, there exist several provisions of customary regulations that must be adhered to when executing inheritance procedures on customary land (Ismail, 2011; Wan, Rushdan, & Mohd, 2023). As per Chapter 215, Section 2 of the customary land tenure enactment, the term "customary land" refers to land that has been duly registered and endorsed in accordance with the customary land tenure enactment of 1909. Additionally, such land must be subject to customary administration and regulations for its maintenance and management. Section 2 of the regulation enforces stricter regulations by forbidding the allocation of customary land to individuals who do not share the same tribal affiliation. According to Section 4 of the Customary Tenure Act, Chapter 215, it is mandated that the management and data records pertaining to the recording of "customary land" must be overseen by the land administrator and documented in the land office title document. Section 5 of the aforementioned legislation stipulates that any matters or activities pertaining to customary land, including but not limited to land ownership transfer and customary land collateral, must adhere to customary practises. Hence, it is imperative for communities adhering to the customary system of *pepatih* to conform to the regulations stipulated in the customary tenure enactment chapter 215, in order to streamline the processes of inheriting and partitioning their customary land. The Customary Tenure Enactment Chapter 215, in conjunction with the Customary Tenure Enactment (Lengkongan Land) 1960, serves as a guiding principle for practitioners of the *Pepatih* customary law in the transfer of customary land ownership (Radi, 2019; Wan, Rushdan, & Mohd, 2023).

## **METHODOLOGY**

Systematic reviews offer a comprehensive analysis of the available evidence pertaining to a particular area of inquiry, consolidating the findings of numerous studies (Davies, 2019; Tawfik et al., 2019). They continue to be regarded as one of the most reliable types of evidence, and mitigate the inherent bias present in alternative methodologies (Xiao & Watson, 2019). It fulfils numerous essential functions. Systematic reviews can offer comprehensive overviews of the current state of knowledge within a particular field, thereby facilitating the identification of future research priorities. Additionally, they can tackle questions that individual studies alone may not be able to answer, identify issues within primary research that require rectification in future studies, and generate or evaluate theories regarding the underlying mechanisms or causes of observed phenomena. Systematic reviews, is therefore, producing diverse forms of knowledge that cater to the distinct needs of various review users.

The present qualitative study has employed a systematic review to acquire an initial understanding of customary land management concerns in Negeri Sembilan, with a particular focus on the matter of abandoned customary lands. The present investigation conducted an online inquiry for scholarly works pertaining to the research objective. The study employed multiple primary search engines, namely MyJurnal, Google Scholar, PMC Pubmed, Scopus, and Science Direct. This research will solely consider literary works composed in Malay and English, and disseminated from 2015 to 2023, to the extent that they are accessible. The outcomes of the inquiry will be expounded upon in the subsequent segment and will be subjected to a more comprehensive discussion therein.

## **FINDING AND DISCUSSION**

### **The matter of relinquished customary land in Negeri Sembilan**

In the Malaysian context, customary land refers to land that has been acquired or is jointly owned by a community, such as the Minangkabau, Orang Ali, and Dayak tribes (Azaldin & Mat Zain, 2018; Manaf, Alias, & Omar, 2022; Wan, Rushdan, & Mohd, 2023; Wook et al., 2020). The foundation of Perpatih customs in Negeri Sembilan is commonly attributed to customary land (Wan, Rushdan, & Mohd, 2023). As previously mentioned, this category of land is a heritable asset that is passed down through generations in accordance with the matrilineal system, specifically the mother's side tribe. It serves as a significant symbol of the Negeri Sembilan ethnic community, which continues to be upheld to this day.

The regulation and administration of customary lands in Negeri Sembilan are subject to three enactments, as posited by Manaf (2009), Idris, Hussin, and Yussof (2015), Aunurrochim et al. (2017), Wook et al. (2020), and Shah et al. (2017). The Enactment of Pemegangan Adat Chapter 215 is a regulatory framework that oversees the management of several customary lands located in various districts, including Kuala Pilah, Jelebu,

Jempol, Rembau, Kecil Gemas, and Tampin. These lands encompass the Customary Territories of Luak Tanah Mengandung (Luak Terachi, Luak Ulu Muar, Luak Inas, Luak Jempol, Luak Gunung Pasir), Luak Rembau, Luak Jelebu, Tengku Besar Tampin Customary Territory, Air Kuning Pusaka Customary Territory, and Luak Gemencheh. The second regulation is the Enactment of Pemegangan Adat (Tanah Lengkongan) Year 1960, which presides over the management of traditional land in the Kuala Pilah district, encompassing Luak Gunung Pasir, Luak Ulu Muar, and a portion of Luak Jempol. The third matter pertains to the Enactment of Undang Rembau (Land) 1949, which regulates the management of five parcels of traditional land located within the Rembau district that are owned by Undang Luak Rembau and their successors. Despite the existence of regulations that oversee the administration of customary lands in Negeri Sembilan, research conducted by Hajah Makiah Tussaripah, Jamaliah Kadimi, and Izawati et al. indicates a declining significance of customary land institutions.

According to data from 1996, a mere 6.39% of customary land was documented under the Title of the Registrar's Office and the Title of the Land Office (Wook et al., 2017). The recorded area of customary land in Negeri Sembilan constitutes a mere 2% of the total expanse (Wook et al., 2017). The size of customary land documented in the district of Rembau is only 12.4% of the district's total area (Kadimi, 2015). According to data from 2012, the proportion of customary land records in the Kuala Pilah district accounted for only 11.4% of the overall land area in the district (Jamil & Taib, 2012). Prior research has demonstrated that customary land owners exhibit hesitancy in registering their land as customary land in accordance with current legislation.

Furthermore, the issue of abandoned land is also prevalent in customary lands located in Negeri Sembilan. As posited by Mohd Sabree and Mohd Sopiee (2015), Islamic jurisprudence and law outline four defining features of land that is deemed abandoned. These include the absence of an owner, lack of irrigation, non-utilization, and remoteness from inhabited settlement areas. Murad et al. (2017) conducted a study which revealed that as of 2017, an estimated 35,000 acres of land in Negeri Sembilan had been categorised as customary land. The aforementioned categorization encompasses around 20,458 parcels of land, which are associated with roughly 20,346 distinct ownership entitlements (Murad et al., 2017). In 2016, data indicated that there existed approximately 10,309.14 hectares of deserted land in the state of Negeri Sembilan (Murad et al., 2017). The abandoned lands encompass seven districts located in Negeri Sembilan, which are Tampin, Kuala Pilah, Rembau, Jelebu, Jempol, Port Dickson, and Seremban. Tampin spans an area of 2,309.63 hectares and comprises 424 land lots. Kuala Pilah covers an area of 2,305.73 hectares and encompasses 2254 land lots. Rembau spans an area of 1,512.70 hectares and comprises 1136 land lots. Jelebu covers an area of 1,365.24 hectares and encompasses 693 land lots. Jempol spans an area of 1,058.59 hectares and comprises 714 land lots. Port Dickson covers an area of 1,032.75 hectares and encompasses 811 land lots. Lastly, Seremban spans an area of 724.50 hectares and comprises 372 land lots. Based on

the information presented in the data, it can be inferred that the majority of abandoned land in Negeri Sembilan pertains to customary land in regions such as Kuala Pilah, Jempol, Rembau, Jelevu, and Tampin.

Previous research has identified several factors that contribute to the presence of abandoned customary land. These include the privatisation of customary land, resulting in its transfer from communal ownership to individual ownership; the marginalisation of customary institutions; the issue of multiple ownership of customary land; incomplete property division; inheritance laws that grant ownership rights solely to female heirs; the lack of guaranteed ownership status for customary land; the location of customary land in non-strategic areas, far from transportation networks; and the high initial costs associated with the development or exploitation of customary land.

### **The need to improve the customary land management system to reduce abandoned land**

The customary practise of perpatih remains prevalent among the populace of Negeri Sembilan, particularly in the domain of customary land legislation, in tandem with the advancement of scientific and technological knowledge. In Negeri Sembilan, the estimated area of customary land is limited to 34,550.07 acres (Murad et al., 2017). However, to ensure the preservation of customary land institutions in the region, a well-structured system of customary lands management is imperative.

In actuality, most customary lands are backward, abandoned, and underdeveloped (Manaf, Alias, & Omar, 2022; Murad et al., 2017; Radi, 2019). The customary land management practises in Negeri Sembilan give rise to several issues, including legal challenges pertaining to the preservation and development of such lands (Idris, Hussin, & Yussof, 2015; Radi, 2019; Shah et al., 2017; Wook et al., 2017). Challenges pertaining to the management and administration of customary land, coupled with the community's misconceptions regarding land ownership, have resulted in various issues. These include prolonged disputes over land division, conflicts among rightful heirs to customary land, and the presence of uncultivated customary lands. Research done by Manaf (2009), Wook et al. (2017), as well as Azaldin and Mat Zain (2018) assert that the implementation of written laws, specifically land laws, has given rise to various predicaments concerning customary land, including conflicts over customary land ownership, issues pertaining to abandoned land, and the marginalisation of customary land institutions. According to the research conducted by Idris, Hussin, and Yussof (2015), it was discovered that the Perpatih Custom exhibits certain weaknesses in both its administrative structure and practical implementation.

### **The lack of a comprehensive model for the utilisation of forensic science in customary land legislation**

Most of the scholarly literature and research has centred on predicaments and concerns pertaining to customary land in the state of Negeri Sembilan. This is evident and prevalent by looking back at previous discussions. The research was conducted to determine the extent of community engagement with customary land and customary land legislation in the state of Negeri Sembilan. However, the aforementioned studies lack a clear discussion of the comprehensive solution steps that can be implemented. Prior research has also explored the notions of customary land and deliberations from the Sharia standpoint (Aunurrochim et al., 2017; Azaldin & Mat Zain, 2018).

To date, there has been no established model or specialised tool developed to address instances of abandoned customary land in Negeri Sembilan. The issue of neglected traditional land warrants attention and resolution, as it carries significant implications. This is due to the fact that land is a primary determinant of a nation's development. The implementation of effective land administration has the potential to act as a driving force for worldwide economic progress (Mohd Sabree & Mohd Sopiee, 2015; Radi, 2019). The utilisation of forensic science within the legal framework of customary land, known as the comprehensive forensic model of customary land, has been proposed as a viable approach to address the issue of unresolved cases of abandoned customary land (Azizan & Hussin, 2017).

### **Improve the customary land law administration system**

Initially, regulations pertaining to land were informal and not documented until the introduction of the Customary Tenure Enactment (CTE) or Enactment of Pemegangan Adat (EPA) in 1909 and 1926, which aimed to systematise customary practises within contemporary legal frameworks (Idris, Hussin, & Yussof, 2015; Wook et al., 2017). Nevertheless, the clauses encompassed therein are exclusive to land that has undergone registration as customary land. In cases pertaining to non-registered land, the application of customary land regulations is contingent upon the claimant's assertion and the judicial interpretation of "personal law".

Chap. 215 on Customary Tenure Enactment delineates the regulations governing the management of customary land in the districts of Kuala Pilah, Jempol, Jelebu, Rembau, Tampin, and the minor district of Gemas. The Tanah Adat (Tanah Lengkongan) 1960 was enacted with the specific purpose of governing the lands that are under the ownership of the "Adat Lengkongan" community. This legislation is solely applicable to the administration of Lengkongan Adat land in the Kuala Pilah district. The formulation of these legislative measures indicates that endeavours have been undertaken to enhance the customary land governance mechanism at the local level. Paradoxically, the introduction of written regulations engendered a conflict or dichotomy between the Perpatih Customary rules in Negeri Sembilan and the codified law.

The inadequacy of the customary land administration system can be attributed to the inherent inadequacy of customary law. Section 65 of the Customary Tenure and Estates Chapter 215 outlines certain limitations on customary land transactions, some of which may have unfavourable implications for land development. The complexity of customary legal procedures contributes to the protracted resolution of disputes pertaining to customary land ownership.

## CONCLUSION

The availability and quality of land are critical determinants of a country's development. The development of abandoned customary land has the potential to generate profits for the owning family and contribute to the enhancement of the global economy. The present research is grounded on the necessity to enhance the efficiency of the extant customary land governance mechanism with the aim of mitigating occurrences of deserted customary land. A number of concerns pertaining to customary land management in Negeri Sembilan have been effectively identified. These include the matter of relinquished customary land in the region, the requirement for enhancing the customary land management system to minimise the prevalence of abandoned land, the absence of a comprehensive model for the application of forensic science in customary land legislation, and the need to enhance the customary land law administration system.

Additional investigation is required to identify strategies for enhancing the efficacy of the extant customary land governance framework with the aim of mitigating instances of relinquished customary land. One recommendation is to develop a customary land forensic model to address instances of relinquished customary land. This aligns with the Negeri Sembilan Land and Mines Office's objective of establishing proficient, high-quality, and effective land management, and is consistent with their vision of achieving outstanding state land management.

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