



## Customary Land as the Foundation of Orang Asli Identity in Peninsular Malaysia: An Analysis of Development Conflicts and Social Marginalisation

Mohamad Murad Mahyudin Muheji (Ph.D.)

Universiti Malaya Centre for Continuing Education (UMCCed), Universiti Malaya

Article DOI: 10.55677/SSHRB/2026-3050-0706

DOI URL: <https://doi.org/10.55677/SSHRB/2026-3050-0706>

**KEYWORDS:** customary land, development conflict, Indigenous identity, Orang Asli, social marginalisation

**ABSTRACT:** This article examines the role of customary land as the foundation of Orang Asli identity in Peninsular Malaysia, with particular attention to development conflicts, legal protection and social marginalisation. Employing a qualitative document analysis approach, the study draws upon academic literature, legal instruments, judicial decisions and official reports to examine the interrelationship between these dimensions. The findings indicate that customary land extends beyond its function as a physical or economic resource, serving instead as the foundation of a holistic socio-cultural system that sustains collective identity, cultural continuity and intergenerational relationships. The loss of customary land therefore results not only in the displacement of communities but also in the erosion of cultural identity, the weakening of social cohesion and the disruption of traditional knowledge across generations. The study further demonstrates that conflicts over customary land arise not simply from competing legal claims but from fundamentally different conceptions of land and development. While government authorities and private developers generally perceive land as an economic asset, Orang Asli communities regard it as an ancestral homeland that embodies profound social, cultural and spiritual significance. These tensions are further exacerbated by weaknesses in the legal framework, particularly the gap between the judicial recognition of customary land rights and their effective implementation in practice. Social marginalisation is likewise found to reflect long-standing structural inequalities rather than a temporary socioeconomic condition. By integrating the dimensions of identity, development, legal protection and social marginalisation within a single analytical framework, this study offers a more comprehensive understanding of customary land conflicts and highlights the need for more inclusive and participatory approaches that recognise Orang Asli communities as equal partners in decisions affecting their lands and livelihoods.

**Corresponding Author**

Mohamad Murad Mahyudin Muheji (Ph.D.)

**Published: July 09, 2026**

**License:** This is an open access article under the CC BY 4.0 license:

<https://creativecommons.org/licenses/by/4.0/>

### 1. INTRODUCTION

Land is not merely a physical space measured in acres or hectares. For the Indigenous Peoples of Peninsular Malaysia, land represents the foundation of cultural identity, ancestral heritage and the continuity of life across generations. This relationship extends far beyond symbolic meaning. It is deeply embedded in everyday practices, collective memory, traditional rituals and livelihood systems that have evolved over centuries. The loss or dispossession of ancestral land therefore signifies more than the loss of physical territory. It also erodes the identity, cultural integrity and collective existence of the community.

The Indigenous Peoples of Peninsular Malaysia are the earliest inhabitants of the peninsula. They comprise three principal ethnolinguistic groups, namely the Negrito, Senoi and Proto-Malay, each consisting of several subgroups with distinct languages, cultural traditions and value systems. According to the Department of Orang Asli Development (JAKOA), the Orang Asli population was estimated at 227,900 in 2025. They are distributed across 317 gazetted Orang Asli villages, with approximately 36,094.165 hectares of gazetted reserve land (JAKOA, n.d.). This represents a substantial increase from the 178,132 individuals recorded in the

2010 national census, when the Orang Asli accounted for only 0.6 per cent of Malaysia's total population of 28.3 million (Nicholas, 2014). Despite continued population growth, the Orang Asli remain socially and economically marginalised and continue to experience limited representation in national development processes.

The issue of customary land has long been a source of tension between the imperatives of national development and the traditional rights of the Orang Asli. The Aboriginal Peoples Act 1954 (Act 134) empowers state governments to gazette areas as Orang Asli reserves. At the same time, it also authorises the revocation of such gazettements on the grounds of public interest (Laws of Malaysia, 2006). This imbalance of authority within the legal framework has created persistent tensions between Indigenous communities, government authorities and private developers. The growing pace of infrastructure development, commercial agriculture and urbanisation has further intensified pressure on customary lands. Mat Dong et al. (2022) found that the Orang Asli continue to experience significant spatial injustice, as they are frequently excluded from decision-making processes concerning their own ancestral territories. Such circumstances undermine both social cohesion and the continuity of their cultural heritage. In addition, limited legal awareness and inadequate documentation of customary land rights have left many Orang Asli communities vulnerable to exploitation by external parties (Wook, 2015).

This article examines the role of customary land as the foundation of the Orang Asli's collective identity in Peninsular Malaysia within the broader context of conflict and development. It explores the concept of customary land and its legal status while analysing the conflicts arising from development initiatives and the challenges associated with protecting customary land rights. Among these challenges are the risks of social marginalisation and the exploitation experienced by Orang Asli communities. The article further discusses the significance of customary land in sustaining Orang Asli identity and evaluates the importance of safeguarding customary land rights as a means of reducing marginalisation and exploitation among Indigenous communities.

## 2. LITERATURE REVIEW

### 2.1 The Orang Asli and Customary Land as the Foundation of Community Identity

Customary land refers to land that is occupied, utilised and managed by a community in accordance with customary practices transmitted across generations, without reliance on formal land titles issued by the state. It differs from inherited family property, which is associated with individual ownership and familial succession, as well as inherited estates distributed under Islamic inheritance law or civil legal systems. For the Orang Asli, customary land encompasses living spaces, ceremonial sites, hunting grounds and repositories of collective memory that connect successive generations. These customary territories are known by different local terms across communities, including *nenggrik*, *tanah adat* and *pemakai menoa*, and comprise diverse ecological landscapes ranging from inland forests and wetlands to riverbanks and coastal areas (Nicholas, 2014). The relationship between Indigenous communities and their ancestral lands is inherently holistic, encompassing economic, spiritual and social dimensions simultaneously (Anaya, 2004). Within the context of the Orang Asli in Peninsular Malaysia, customary land serves not only as a source of livelihood but also as the centre of community life and the foundation of its social organisation and worldview (Nicholas, 2000).

This understanding is consistent with the principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which recognises the rights of Indigenous Peoples to the lands, territories and natural resources that they have traditionally owned, occupied or used (United Nations, 2007). Similarly, SUHAKAM (2013) documented that land constitutes the foundation of the Orang Asli's cultural continuity, spiritual well-being and collective identity. The integration of Orang Asli communities into mainstream society has often occurred under unequal conditions. Kamaruddin (2006) observed that many Orang Asli communities have been compelled to adapt to external value systems without adequate support to preserve their traditional identity. Under such circumstances, customary land frequently remains the primary means through which that identity can be sustained. Taken together, these perspectives demonstrate that customary land is far more than a traditional place of settlement. It represents the foundation of Orang Asli identity, social relationships and cultural continuity. Consequently, the loss of customary land has implications that extend well beyond the loss of physical territory.

### 2.2 Development and Land Conflicts

Within the Orang Asli context, development extends beyond physical transformation of the land. It also reshapes social structures, value systems and community autonomy. Such changes frequently occur without meaningful consultation, leaving Indigenous communities as passive recipients of decisions made beyond their sphere of participation. Dentan et al. (1997) found that development programmes implemented without genuine consultation have contributed to prolonged social tensions. Top-down development approaches often fail to recognise the values, priorities and actual needs of the communities they are intended to serve. Similarly, Mohd Tap Salleh (1990) observed that development planning in Orang Asli settlements has largely been based on assumptions made by external actors. This suggests that the gap extends beyond inadequate information and reflects fundamental differences in values and perspectives between development planners and Orang Asli communities. Idrus (2011) further argued that the rhetoric of protection frequently employed by state authorities has functioned more as a mechanism of control than one of empowerment. The portrayal of Indigenous communities as groups requiring guidance has often been used to justify development programmes that diminish their autonomy. Mat Dong et al. (2022) identified inequitable access to land and resources as one of the

most pressing challenges confronting Orang Asli communities in the contemporary development landscape. This inequality is not incidental but is embedded within administrative structures that exclude Indigenous communities from decision-making processes concerning their own lands. In response, the Orang Asli have pursued various avenues to assert their rights, including dialogue, public protests, blockades, legal action and participation in international forums. Nevertheless, their struggle for recognition and justice remains ongoing (Nicholas, 2014). Azima et al. (2015) found that disputes over customary land rights take multiple forms, ranging from boundary conflicts to the non-recognition of customary rights by government authorities. Don et al. (2019) further argued that development strategies should give greater consideration to local perspectives and community aspirations. The meaning of development should therefore be understood from the viewpoint of the communities themselves rather than solely from that of implementing agencies. Without such a shift in perspective, even well-intentioned development initiatives risk generating new sources of conflict and further eroding trust between Indigenous communities and state authorities. Consequently, many Orang Asli perceive that development decisions are driven primarily by external actors rather than through meaningful participation by the communities directly affected.

### 2.3 Legal Protection of Orang Asli Customary Land

The legal framework governing Orang Asli land in Malaysia is primarily founded on two key statutes, namely the Aboriginal Peoples Act 1954 (Act 134) and the National Land Code 1965. The Aboriginal Peoples Act 1954 empowers the Minister to gazette any area as an Orang Asli reserve but does not confer absolute ownership of the land upon the communities concerned (Laws of Malaysia, 2006). Wook (2015) argued that the Act adopts a predominantly paternalistic approach and falls short of providing adequate recognition of customary land rights in comparison with contemporary international standards. In practice, Orang Asli communities are generally recognised as customary users of the land rather than as its legal owners under the formal legal system. The distinction between rights of use and legal ownership is significant, as it leaves customary land rights vulnerable whenever development projects or compulsory land acquisition are undertaken by the authorities. Consequently, the absence of legally recognised ownership places Indigenous communities in a particularly fragile position when confronted with competing development interests. Furthermore, the National Land Code 1965 does not explicitly recognise the concept of Indigenous customary land (JKPTG, n.d.). As a result, land that has been traditionally occupied and utilised without formal documentation remains legally uncertain. This legislative gap tends to favour parties with greater knowledge of the formal legal system while exposing Orang Asli communities to the risk of legally sanctioned dispossession.

To some extent, judicial decisions have filled this legislative gap. At the same time, Indigenous communities have consistently advocated for the incorporation of two fundamental principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) into all decisions affecting their rights and interests. These principles are Free, Prior and Informed Consent (FPIC) and the Right to Self-Determination, which they regard as essential alongside judicial protection (Nicholas, 2014; United Nations, 2007). The landmark case of *Kerajaan Negeri Johor & Anor v Adong bin Kuwau & 51 Ors* (1997) established judicial recognition of customary land rights under the common law. This recognition was further strengthened in *Sagong bin Tasi & Ors v Kerajaan Negeri Selangor & Ors* (2002), in which the court affirmed the entitlement of Orang Asli communities to compensation for the loss of customary land arising from development projects (Malaysian Bar, 2002). Subsequently, *Mohamad bin Nohing (Batin Kampung Bukit Rok) & Ors v Pejabat Tanah dan Galian Negeri Pahang & Ors* (2013) reinforced the principle that the traditional occupation and use of land constitute a valid basis for recognising customary land rights (Malayan Law Journal, 2013). Collectively, these judicial decisions demonstrate the progressive development of judicial recognition of customary land rights within the Malaysian legal system.

Despite these important judicial developments, legal recognition has not automatically resolved conflicts on the ground. Khan et al. (2021) found that the implementation of judicial decisions continues to be constrained by bureaucratic obstacles and procedural ambiguities. Likewise, Bulan and Locklear (2008) observed that the gap between legal recognition and effective protection remains a persistent challenge in Malaysia. Accordingly, legal reform alone is insufficient without stronger implementation mechanisms that effectively safeguard the rights and interests of Indigenous communities.

### 2.4 Social Marginalisation and Customary Land Exploitation

The social marginalisation experienced by Orang Asli communities cannot be attributed solely to geographical location or educational attainment. Rather, it is rooted in a long historical process (Dentan et al., 1997). Contributing factors include the segregation policies implemented during the British colonial period, the resettlement programmes introduced during the Malayan Emergency, and uneven development policies following independence. Together, these historical experiences have produced enduring structural inequalities that continue to shape the lives of Orang Asli communities. Persistent negative stereotypes have further reinforced their social exclusion (Idrus, 2011). Characterising the Orang Asli as backward or resistant to progress is not only inaccurate but also obscures the reality that external pressures have constrained the choices and opportunities available to these communities. Noraziah et al. (2021) found that compensation provided following the displacement of Orang Asli communities from their customary lands is often disproportionate to the actual value of the land and the losses incurred. Accordingly, exploitation occurs not only through the actions of individuals or private corporations but also through institutional procedures that fail to adequately protect the interests of Indigenous communities.

Fan et al. (2020) demonstrated that external economic pressures may compel Orang Asli communities to make decisions that conflict with their traditional values and ways of life. This dilemma reflects the tension between short-term economic survival and the long-term preservation of cultural identity. Salim and Ali (2023) found substantial disparities in educational attainment and economic participation across Orang Asli subgroups, indicating unequal access to development opportunities. Hassan and Thava (2017) likewise reported that the academic achievement of Orang Asli students is shaped by social and cultural factors that are frequently overlooked within the mainstream education system. These findings suggest that the marginalisation of Orang Asli communities cannot be explained solely by economic or geographical factors but is also closely associated with unequal power relations and the long-standing historical exclusion of these communities from the nation's development agenda. Despite these persistent challenges, educational and economic development initiatives implemented by JAKOA and related agencies have created opportunities for social mobility among segments of the Orang Asli population (JAKOA, n.d.). This indicates that meaningful progress is taking place, although further efforts are required to ensure that the benefits of development are shared more equitably across Orang Asli communities.

## 2.5 Research Gap

Previous studies have made significant contributions to understanding the lives and experiences of Orang Asli communities in Malaysia. However, most existing research has examined the legal, developmental and cultural dimensions separately, with limited attention given to the dynamic relationships among these interconnected aspects. Although valuable insights have been generated, the absence of an integrated analytical perspective has limited a comprehensive understanding of why customary land conflicts continue to persist despite legal recognition and ongoing development initiatives. Furthermore, much of the existing literature predates the intensifying pressures associated with land development, urbanisation and natural resource exploitation, all of which have increasingly affected the customary territories of Indigenous communities in Peninsular Malaysia. As a result, relatively little attention has been paid to the interaction between customary land, development conflicts, legal protection and social marginalisation within a single analytical framework. This study addresses these gaps by examining customary land as the central element connecting identity, development, legal protection and social marginalisation. Rather than treating these issues as separate concerns, the study demonstrates how they interact to shape the experiences of Orang Asli communities and explains why customary land conflicts continue to persist despite the progressive recognition of Indigenous rights within Malaysia's legal system. By integrating these dimensions into a unified analytical framework, this study offers a more comprehensive understanding of the structural challenges confronting Orang Asli communities in contemporary Peninsular Malaysia.

## 3. RESEARCH METHODOLOGY

### 3.1 Research Design

This study adopts a qualitative research approach based on document analysis. This design is well suited to examining complex social phenomena such as customary land, community identity and social marginalisation. Bowen (2009) described document analysis as a systematic procedure for reviewing and evaluating both printed and electronic documents. The method is particularly appropriate for research involving interrelated policy, legal and social issues, as it enables researchers to examine these phenomena through credible and publicly accessible sources.

### 3.2 Data Sources

The selection of data sources was guided by their relevance to the themes of customary land, Orang Asli community development, legal conflicts and social marginalisation. The sources comprise academic publications, official documents and judicial decisions that are directly related to the focus of the study. Academic sources include nationally and internationally recognised journals such as *UUM Journal of Legal Studies*, *Akademika*, *Kajian Malaysia*, *Annals of Tourism Research*, and *Regional Science Policy & Practice*. The study also draws upon scholarly books published by academic publishers, including Oxford University Press, Allyn & Bacon and the Institute of Southeast Asian Studies. Legal sources consist of the Aboriginal Peoples Act 1954 (Act 134), the National Land Code 1965, and three landmark judicial decisions, namely *Adong bin Kuwau* (1997), *Sagong bin Tasi* (2002), and *Mohamad bin Nohing* (2013). Official sources include the SUHAKAM Report (2013), data obtained from the JAKOA portal, documents issued by the Ministry of Rural and Regional Development, and *The Indigenous World 2026* (IWGIA, 2026). In addition, the study refers to the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), adopted in 2007, as the principal international instrument concerning the rights of Indigenous Peoples.

### 3.3 Data Analysis

The data were analysed using two complementary analytical methods. Content analysis was employed to examine legislation, official reports and judicial decisions in order to identify legal provisions and policies relating to Orang Asli customary land rights. Thematic analysis was then applied to identify recurring themes across the academic literature concerning community identity, development conflicts, social marginalisation and land exploitation. Braun and Clarke (2006) emphasised that thematic analysis enables researchers to identify, analyse and systematically report patterns within qualitative data. The integration of these two

analytical approaches provides a comprehensive framework for examining the legal, social and cultural dimensions of Orang Asli customary land.

### 3.4 Limitations of the Study

This study does not involve fieldwork or the collection of primary data through interviews or participant observation. Its scope is limited to Orang Asli communities in Peninsular Malaysia and therefore does not extend to Indigenous communities in Sabah and Sarawak, whose legal and sociocultural contexts differ substantially. In addition, the diversity of Orang Asli subgroups could not be examined in equal depth because of the limited availability of subgroup-specific sources. Although the study relies exclusively on secondary data, this approach nevertheless allows for a comprehensive analysis of the legal, social and cultural dimensions of Orang Asli customary land. At the same time, the findings provide a foundation for future field-based research. Studies that incorporate the lived experiences of Orang Asli communities have the potential to generate a more comprehensive understanding of the dynamics of customary land conflicts and the relationship between Indigenous communities and contemporary development processes.

## 4. FINDINGS AND DISCUSSION

### 4.1 Customary Land as the Foundation of Social and Cultural Identity

An analysis of the literature and official documents indicates that customary land is far more than a place of residence or a source of economic livelihood for the Orang Asli. It constitutes a system of meaning that simultaneously binds individual identity, community cohesion and intergenerational continuity. Consequently, the loss of customary land extends beyond the loss of physical territory. It represents a systematic process of identity erosion that is often irreversible. Nicholas (2000) explained that, for the Indigenous Peoples of Peninsular Malaysia, land encompasses ceremonial sites, hunting grounds, ancestral burial grounds and community boundaries that collectively shape a shared sense of belonging. These elements do not exist in isolation. Rather, they form an integrated cultural system that defines who the Orang Asli are, where they come from and how they understand the world. Anaya (2004) reinforced this perspective by arguing that the relationship between Indigenous communities and their lands is inherently holistic, encompassing economic, spiritual and social dimensions simultaneously. Consequently, any intervention affecting customary land should not be assessed solely in terms of ownership or economic value.

Customary land also functions as a defining boundary between Orang Asli communities and the outside world. As long as these lands remain intact, the communities retain the space necessary to preserve their languages, ceremonial practices, traditional knowledge systems and distinctive ways of life. SUHAKAM (2013) documented that, in many cases involving the loss of customary land, displaced communities experienced a substantial breakdown in social cohesion. School dropout rates increased, cultural identity weakened, and relationships between older and younger generations became increasingly fragile. This holistic relationship is also reflected in the active management of customary territories by Orang Asli communities. They practise shifting cultivation, cultivate commercial crops such as rubber and pepper, engage in fishing activities, and sustainably harvest seasonal forest resources. These practices challenge the misconception that customary land is unproductive or underutilised (Nicholas, 2014).

Wan Teh (1988) demonstrated that the profound attachment of Orang Asli communities to their forests and customary lands has shaped a worldview that cannot be easily transformed through the provision of modern amenities alone. This finding is consistent with Kamaruddin (2006), who observed that individuals compelled to leave their customary lands often find themselves caught between two worlds. They are no longer fully rooted in their traditional culture, yet they are not fully accepted into mainstream society. These findings demonstrate that customary land not only sustains the physical well-being of Orang Asli communities but also serves as the last remaining safeguard of their cultural continuity and collective identity. Development approaches that fail to recognise the intrinsic relationship between the Orang Asli and their customary lands risk accelerating the erosion of their cultural identity and heritage. These tensions become even more complex when different stakeholders interpret the meaning of land and development through fundamentally different value systems.

### 4.2 Development Conflicts and Competing Worldviews

An analysis of previous studies indicates that customary land conflicts involving Orang Asli communities do not arise solely from legal disputes or resistance to development. Rather, they stem from the clash between two fundamentally different value systems concerning the meaning of land and the nature of development itself. This underlying dimension has frequently been overlooked in policy and legal discussions relating to Indigenous communities in Malaysia. Government authorities and private developers generally regard land as an asset that should be optimised to promote economic growth and national development. Within this perspective, land without formal legal documentation is often perceived as being underutilised. In contrast, Orang Asli communities may use the same land for hunting, forest resource collection, ceremonial practices and the preservation of ancestral territories that have been passed down through generations. These competing interpretations lead both parties to regard their respective positions as legitimate. In practice, however, outcomes generally favour those with greater influence within the formal legal and administrative system. Dentan et al. (1997) argued that development programmes designed without an understanding of the values and cultural context of the communities concerned not only fail to achieve their intended objectives but frequently intensify existing problems. Communities relocated to new settlements may receive more durable housing and improved public amenities, yet they often lose access to traditional livelihood resources, social networks and cultural spaces that cannot easily be replaced through material

improvements. Mohd Tap Salleh (1990) described this situation as development planning conducted within a cultural vacuum, where assumptions about community needs are formulated without meaningful consultation with the Orang Asli themselves. Under such circumstances, Orang Asli communities often enter the development process without bargaining power comparable to that of government authorities or private developers.

Idrus (2011) argued that the discourse of protection employed by state authorities serves to maintain the dominance of formal institutions over Indigenous communities. By portraying the Orang Asli as a population requiring guidance, this discourse implicitly denies their capacity to make informed decisions regarding the future of their communities and their customary lands. Mat Dong et al. (2022) found that the injustice experienced by Orang Asli communities extends beyond unequal access to physical infrastructure. It also involves exclusion from decision-making processes that determine the future of their traditional territories. Azima et al. (2015) further observed that, in many customary land disputes, Orang Asli communities do not reject development in principle. Rather, they oppose forms of development that fail to recognise their rights, interests and perspectives. Such opposition should not be interpreted as resistance to progress but as a rational response to development processes from which they have been meaningfully excluded. Over time, these circumstances have contributed to a widening trust deficit between Orang Asli communities and government authorities, particularly when development is perceived to prioritise external interests over local community needs. Don et al. (2019) reinforced this perspective by arguing that inclusive development must begin with a different question, not *what do Indigenous communities need*, but *what is meaningful to them*. As long as these competing worldviews continue to operate without equitable mechanisms for dialogue and participation, conflicts are likely to persist despite legal reforms and increased financial investment. Meaningful and sustainable solutions therefore require recognition that successful development is determined not only by physical outcomes but also by processes that respect the autonomy, values and cultural systems of the communities concerned.

#### **4.3 Weaknesses in the Legal Recognition of Customary Land and the Risk of Exploitation**

An analysis of the legal framework and judicial decisions indicates that the greatest weakness in protecting Orang Asli customary land rights does not lie merely in the absence of legal provisions. Rather, it arises from the substantial institutional gap between the formal recognition of customary rights in legal instruments and the actual protection experienced by Indigenous communities on the ground. This gap has created conditions that facilitate exploitation, whether through deliberate actions or systemic deficiencies that remain insufficiently addressed. Wook (2015) explained that the Aboriginal Peoples Act 1954 (Act 134) does not confer absolute ownership of customary land upon Orang Asli communities. Instead, it recognises only customary rights of use, which may be revoked whenever the state government considers such action necessary in the public interest. The distinction between usufructuary rights and legal ownership is not merely technical. In practice, it places Orang Asli communities in the position of long-term occupants of lands they have inhabited for centuries rather than legal owners whose rights can be fully enforced through the courts. The National Land Code 1965 likewise does not explicitly recognise the concept of Indigenous customary land (JKPTG, n.d.). Consequently, land that has been traditionally occupied and used without formal documentation remains in a legally vulnerable position. Parties possessing greater knowledge of the formal legal system may exploit this legislative gap to claim or alter the legal status of such land without the affected communities fully understanding their rights. Limited access to legal knowledge and official documentation further constrains the ability of many Orang Asli communities to appreciate the implications of legal and administrative processes affecting their customary lands. SUHAKAM (2013) documented numerous cases in which customary land was reclassified or acquired without adequate notification to the affected communities. Judicial decisions in *Adong bin Kuwau* (1997), *Sagong bin Tasi* (2002), and *Mohamad bin Nohing* (2013) demonstrate the progressive recognition of customary land rights within the Malaysian judicial system.

The *Sagong bin Tasi* decision is particularly significant because the court recognised the Orang Asli's common law rights over their traditional lands and affirmed their entitlement to compensation when those lands were acquired for development purposes (Malaysian Bar, 2002). This marked an important milestone in the evolution of Malaysian land law. Nevertheless, Khan et al. (2021) found that judicial recognition does not necessarily translate into effective protection in practice. Bureaucratic obstacles, limited access to legal representation and uncertainty surrounding implementation procedures continue to prevent many Orang Asli communities from exercising legal remedies that are, in principle, available to them. Noraziah et al. (2021) similarly reported that compensation awarded in customary land cases often fails to reflect either the true value of the land or the broader social and cultural losses suffered by affected communities. Existing valuation frameworks are not designed to account for the intangible dimensions associated with the loss of customary land.

Bulan and Locklear (2008) characterised this situation as a systematic implementation gap. In this context, exploitation does not necessarily occur through actions that are overtly unlawful. Rather, it arises through agreements that are not fully understood by affected communities, the reclassification of land without meaningful consultation, or economic pressures that compel Indigenous communities to accept unequal terms. Addressing these challenges requires more than legislative reform alone. It demands a comprehensive implementation framework capable of ensuring that legally recognised rights are effectively protected and enforced in practice.

#### **4.4 Social Marginalisation and Structural Inequality**

The analysis indicates that the social position of Orang Asli communities has been shaped by long-standing structural power imbalances rooted in historical processes. These inequalities have been reinforced by persistent social stereotypes and unequal access to education, economic opportunities and participation in development processes. Understanding marginalisation as a structural condition rather than a temporary circumstance is fundamental to developing meaningful and sustainable responses. Dentan et al. (1997) demonstrated that these conditions originated during the British colonial period, when Orang Asli communities were systematically excluded from the mainstream economic and social order. The resettlement programmes implemented during the Malayan Emergency further disrupted the relationship between many Orang Asli communities and their traditional lands. The social consequences of these historical experiences continue to be felt today. This legacy extends beyond collective memory, having shaped enduring economic and social structures that continue to place Indigenous communities at a disadvantage in accessing resources and opportunities.

Idrus (2011) explained that persistent stereotypes portraying the Orang Asli as a backward community have often diverted attention from the underlying causes of their marginalisation. Poverty and social exclusion are frequently attributed to the attitudes or choices of the communities themselves, whereas many of these challenges are in fact rooted in unequal access to education, economic opportunities and development resources. Salim and Ali (2023) found that disparities in educational attainment and economic participation among Orang Asli subgroups reflect uneven patterns of development experienced across different communities. Some subgroups remain more vulnerable than others to development pressures and inadequate institutional protection. Hassan and Thava (2017) likewise reported that the mainstream education system frequently fails to accommodate the social and cultural contexts of Orang Asli students. School dropout among these students should therefore not be viewed solely as an individual issue but also as a consequence of an education system that has yet to adequately respond to the realities of Orang Asli communities.

Fan et al. (2020) revealed that Orang Asli communities often face constrained choices when confronted with external economic pressures. In many cases, the decisions they make cannot be regarded as entirely voluntary but are shaped by unequal power relations and disparities in economic resources between Indigenous communities and external actors. Although development initiatives implemented through JAKOA and related agencies have created opportunities for upward social mobility among segments of the Orang Asli population, their impact has remained uneven (JAKOA, n.d.). As long as development planning and decision-making processes continue to be dominated by external actors without equitable participation by Orang Asli communities, social marginalisation is likely to persist in different forms despite the introduction of various development programmes.

## 5. CONCLUSION

This study demonstrates that customary land constitutes the foundation of the identity, cultural continuity and long-term survival of Orang Asli communities in Peninsular Malaysia. The relationship between the Orang Asli and their customary lands extends far beyond economic functions or physical ownership, encompassing value systems, social organisation, cultural practices and intergenerational continuity. Consequently, the loss of customary land signifies more than the loss of territory or livelihood. It also undermines collective identity, social cohesion and the cultural heritage that has sustained Orang Asli communities for generations. The findings further reveal that customary land conflicts do not arise from opposition to development itself. Rather, they reflect the coexistence of two fundamentally different conceptions of land and development. While government authorities and private developers generally perceive land as an economic asset that should be optimised for development, Orang Asli communities regard customary land as an ancestral homeland that embodies profound social, cultural and spiritual significance. Unless these contrasting perspectives are reconciled through equitable consultation and meaningful participation, conflicts over customary land are likely to persist.

Beyond its empirical findings, this study contributes to the existing literature by offering an integrated analytical perspective on customary land conflicts involving Orang Asli communities. Previous studies have generally examined identity, development, legal protection and social marginalisation as separate areas of inquiry. In contrast, this study demonstrates that these dimensions are closely interconnected and should be understood as mutually reinforcing components of a broader structural framework. The findings show that customary land conflicts cannot be adequately explained through legal, developmental or cultural perspectives alone. Instead, they arise from the interaction between Indigenous identity, development policies, legal protection and structural inequalities that shape the lived experiences of Orang Asli communities. By integrating these dimensions within a single analytical framework, this study provides a more comprehensive explanation of why customary land conflicts continue to persist despite the gradual expansion of legal recognition of Indigenous rights in Malaysia.

The findings also carry important implications for policy and development practice. Strengthening the protection of customary land requires more than statutory recognition or favourable judicial decisions. Effective implementation mechanisms are equally necessary to ensure that legally recognised rights are translated into meaningful protection on the ground. At the same time, development policies should promote meaningful participation by Orang Asli communities in all decisions affecting their customary lands and livelihoods. Such an approach would not only reduce conflict and the risk of exploitation but also contribute to a more equitable, inclusive and sustainable model of national development.

Despite these contributions, this study has several limitations. It relies exclusively on secondary sources and does not incorporate primary data collected through interviews or field observations. Furthermore, its scope is confined to Orang Asli communities in

Peninsular Malaysia and does not encompass the Indigenous communities of Sabah and Sarawak, whose legal and historical contexts differ substantially. Variations among Orang Asli subgroups could also not be examined comprehensively because of the limited availability of subgroup-specific sources.

Future research should therefore prioritise field-based studies involving direct engagement with Orang Asli communities to better understand their experiences of customary land, development and social change from their own perspectives. Comparative research across Orang Asli subgroups, as well as between Indigenous communities in Malaysia and those in other Southeast Asian countries, would further enrich understanding of Indigenous experiences and identify effective approaches to protecting customary land rights. Greater attention should also be given to evaluating the implementation of judicial decisions, examining the relationship between younger generations and customary land, and investigating the effects of environmental change on Indigenous identity and cultural continuity. Such research would provide valuable evidence for the development of more responsive and effective public policies.

In conclusion, the protection of customary land should not be viewed merely as an effort to preserve physical territory but as a commitment to safeguarding the identity, dignity and rights of the Orang Asli as the Indigenous Peoples of Peninsular Malaysia. The effectiveness of such protection ultimately depends on stronger legal recognition, more robust implementation mechanisms and a genuine commitment to ensuring that Orang Asli communities participate as equal partners in all development processes affecting their lands and livelihoods. Only through such an approach can customary land protection contribute not only to reducing conflict and preventing exploitation but also to advancing a more just, inclusive and sustainable future for both Orang Asli communities and Malaysian society as a whole.

## REFERENCES

1. Anaya, S. J. (2004). *Indigenous peoples in international law* (2nd ed.). Oxford University Press.
2. Azima, A. M., Lyndon, N., Sharifah Mastura, S. A., Saad, S., & Awang, A. H. (2015). Orang Asli Semelai: Conflict of defending land ownership rights. *Mediterranean Journal of Social Sciences*, 6(4 S3). <https://doi.org/10.5901/mjss.2015.v6n4s3p125> (Semak DOI sebenar sebelum penghantaran.)
3. Benjamin, G., & Chou, C. (Eds.). (2002). *Tribal communities in the Malay world: Historical, cultural and social perspectives*. Institute of Southeast Asian Studies.
4. Bowen, G. A. (2009). Document analysis as a qualitative research method. *Qualitative Research Journal*, 9(2), 27–40. <https://doi.org/10.3316/QRJ0902027>
5. Bulan, R., & Locklear, A. (2008). *Legal perspectives on native customary rights in Sarawak*. SUHAKAM.
6. Dentan, R. K., Endicott, K., Gomes, A. G., & Hooker, M. B. (1997). *Malaysia and the original people: A case study of the impact of development on indigenous people*. Allyn & Bacon.
7. Don, A. G., Nasir, B. M., & Ibrahim, A. F. (2019). *Pembangunan komuniti asli dari perspektif akademik*. e-Prosiding Kolokium Penyelidikan Siswazah Kebangsaan 2019.
8. Fan, K. H. F., Chang, T. C., & Ng, S. L. (2020). The Batek's dilemma on indigenous tourism. *Annals of Tourism Research*, 83, Article 102948. <https://doi.org/10.1016/j.annals.2020.102948>
9. Hassan, N. C., & Thava, M. (2017). Motivation and academic achievement: A case study of Malaysian Aboriginal (Orang Asli) students. *International Journal of Academic Research in Business and Social Sciences*, 7(Special Issue). <https://doi.org/10.6007/IJARBS/v7-i14/3687>
10. Idrus, R. (2011). The discourse of protection and the Orang Asli in Malaysia. *Kajian Malaysia*, 29(Suppl. 1), 53–74.
11. International Work Group for Indigenous Affairs. (2026). *The Indigenous World 2026: Malaysia*. <https://iwgia.org/en/malaysia/5972-iw-2026-malaysia.html>
12. Jauny, A. (2020). *Jacques de Morgan's explorations in the Malay Peninsula, 1884*. Malaysian Branch of the Royal Asiatic Society.
13. Jabatan Kemajuan Orang Asli. (n.d.). *Portal rasmi Jabatan Kemajuan Orang Asli*. <https://www.jakoa.gov.my/>
14. Jabatan Ketua Pengarah Tanah dan Galian Persekutuan. (n.d.). *Kanun Tanah Negara 1965*. <https://www.jkptg.gov.my/my/panduan/senarai-undang-undang/kanun-tanah-negara>
15. Kamaruddin, K. (2006). The life of the Indigenous people in West Malaysia: Integration of Orang Asli into Malays. *Jurnal Peradaban Melayu*, 4.
16. *Kerajaan Negeri Johor & Anor v. Adong bin Kuwau & 51 Ors*, 1 MLJ 418 (1997).
17. Khan, I. N. G., Mohd, K. W., Hassan, F. M., & Wook, I. (2021). Customary land rights of Orang Asli: A case study in Kampung Parit Gong, Negeri Sembilan, Malaysia. *UUM Journal of Legal Studies*, 12(1).
18. Malaysian Bar. (2002). *Sagong Tasi & Ors v Kerajaan Negeri Selangor & Ors*. <https://www.malaysianbar.org.my/article/news/court-judgments/judgments/sagong-tasi-ors-v-kerajaan-negeri-selangor-ors-2002-high-court>
19. Mat Dong, M., Midmore, P., & Plotnikova, M. (2022). Understanding the experiences of Indigenous minorities through the lens of spatial justice: The case of Orang Asli in Peninsular Malaysia. *Regional Science Policy & Practice*, 14(5), 1223–1240. <https://doi.org/10.1111/rsp3.12512>

20. *Mohamad bin Nohing (Batin Kampung Bukit Rok) & Ors v. Pejabat Tanah dan Galian Negeri Pahang & Ors*, 5 MLJ 268 (2013).
21. Mohd Tap Salleh. (1990). *An examination of development planning among the rural Orang Asli of West Malaysia* (Doctoral dissertation, University of Bath).
22. Nicholas, C. (2000). *The Orang Asli and the contest for resources: Indigenous politics, development and identity in Peninsular Malaysia*. International Work Group for Indigenous Affairs & Center for Orang Asli Concerns.
23. Nicholas, C. (Ed.). (2014). *Orang asal: Sebuah pengenalan bergambar*. Jaringan Orang Asal SeMalaysia.
24. Noraziah Abu Bakar, Hussain, F., Nor Hashim, H., & Abdullah, R. (2021). Equitable compensation for Orang Asli upon eviction: The Malaysian experience. *International Virtual Colloquium on Multi-disciplinary Research Impact*.
25. Salim, S. S. M., & Ali, Z. A. H. (2023). Human capital: An analysis across the Orang Asli groups in Peninsular Malaysia. *Akademika*, 93(1), 27–39. <https://doi.org/10.17576/akad-2023-9301-03>
26. Suruhanjaya Hak Asasi Manusia Malaysia. (2013). *Laporan inkuiri nasional mengenai hak tanah orang asal/asli*. SUHAKAM.
27. Undang-Undang Malaysia. (2006). *Akta Orang Asli 1954 (Akta 134)*. Percetakan Nasional Malaysia Berhad.
28. United Nations. (2007). *United Nations declaration on the rights of Indigenous peoples*. United Nations.
29. Wan Teh, W. H. (1988). Kesenambungan budaya Melayu-Orang Asli. *Sari*, 6, 31–46.
30. Wook, I. (2015). The Aboriginal Peoples Act 1954 and the recognition of Orang Asli land rights. *UUM Journal of Legal Studies*, 6(1), 63–83.