

Revisiting British Malaya's Era: An Intriguing Historical Legal Analysis of Land Administration and Colonial Forestry

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Abstract

The land and forest administration system in Malaysia faces a complexity bias due to the misinterpretation of rules and legislation, leading to increased disputes. The reliance on British law for matters like land ownership amplifies this issue, and the intricacies of static and dynamic arrangements further compound the complexity. Previously, Malay rural land rights were based on usufructuary principles, but the colonial land alienation policy redefined unalienated land, land reserved for public purposes, and reserved forests as State Land. This study seeks to comprehensively review and analyse legal rules, cases, statutes, and regulations to understand ancient land law practices and the influence of British colonial land law on land administration. Conducted in Peninsular Malaysia, the study focuses on primary documents, cases, and critical analyses from three states: Perak, Penang, and Kelantan. The findings of the study highlight the contentious nature of land rights and autonomy in utilizing natural resources in Malaysia. The country inherits both formal and informal land tenure systems rooted in customary law, making dispute resolution challenging. The principal characteristic of ancient land law is based on a hypothetical model of the ancient customary land tenure system, encompassing different eras, missions, and principles. Significantly, the study reveals a direct and strong connection between colonial land law and current land law practices in the respective states. Additionally, Malaysia's land law has been influenced by Islamic law (Syariah) to some extent and blended with other ancient customary laws before the introduction of Torren in 1897.

Keywords: Malaya, colonial land law, land tenure system, forestland administration system, complexity bias

1. Introduction

1.1 Background

The study introduces the concept of land law as practised in Malaya. The definition of land and forest administration as interpreted by respective states and its constitutions was discussed. The law prior to the advent of the British in Malaya was the matriarchal law system of customary law (Mokhtar, 1979). The law in this context may be defined as the body of enacted or customary rules recognized by a community in binding. This law consists of matters related to social issues, including land heritage, government, economy, rules of laws and others (Md-Sharif, 1989). The evidence revealed that there had been a judicial system in existence. Therefore, the concept of the practice of land law and justice understood during those periods cannot be equated and understood with the current concepts of land law and justice. Law is the body of principles recognized. The state applies it in the administration of justice (Salmond, 1907). Law was described as a command set by a superior being (the state) to an inferior and enforced by sanctions. The superior being in the state. The inferior being is the individual.

The legal system in Malaya is a composite one. The main sources of the law are applied in English. The law is influenced by customary or native law. To some extent, there is the existence of Islamic law. In this part, the place of legislation and judicial precedent is also discussed. The importance of law reports and the interpretation of legislation is justified. The term law is defined both by Article 160(2) of the Federal Constitution 1957. In addition, Section 2 of the Interpretation Acts 1948 and 1967 and General Clauses Ordinance 1948 provides for the commencement, application, construction, interpretation and operation of written laws. It is to provide matters in relation to the exercise of statutory powers and duties and on issues connected.

The Interpretation Acts 1948 and 1967 consolidate the following revised the Interpretation Act 1967-Act No.23 enacted in 1967; Interpretation and General Clauses Ordinance 1948-M.U. Ordinance No.7 was enacted in 1948, and Interpretation (States of West Malaysia) Act 1967-Act No.57 of 1967. The revised Act came into force on October 19, 1989, to include; i. the written law where the Federal Constitution and the Constitutions of the States and subsidiary legislation made there-under; ii) the act of Parliament and subsidiary legislation made thereunder; ordinances and Enactments including any federal or State law styling himself an Ordinance or Enactment and subsidiary legislation made thereunder; and; iii) any other legislative enactments or legislative instruments, including Acts of Parliament of the United Kingdom or Great Britain and Northern Ireland and Orders in Council and other subsidiary legislation, made thereunder which are in force in Malaysia or any part thereof.

Prior to the advent of the Europeans, Malay customary land law was enforced in the states of Malaya. The ebb and flow of regional empires and the extensive trading network had created multi-ethnic communities (Hirschman, 1986) in this archipelago (Lamb, 1964; Reid, 1980; Wheatley, 1961). The law in force showed traces of Hindu and Islamic influences. The arrival of Hinduism affected the existing Malay legal and governance. As a result of Hindu influence, Malay society has been divided into patrilineal and matrilineal.

The objectives of this study are This study seeks to comprehensively review and analyse legal rules, cases, statutes, and regulations to understand ancient land law practices and the influence of British colonial land law on land administration during the British Malaya era. This study applies;(i) comparative legal research methodology involves critical analysis of different bodies of law to examine how the outcome of a legal issue could be different under each set of laws and (ii) doctrinal legal research methodology on the letter of the law.

1.2 The Implementation of Islamic Law

The brief and comprehensive form of the character of ancient land law practices in Peninsular Malaysia now has been discussed through its historical evidence with the aid of law cases. Throughout the history of land legal analysis of land administration in Peninsular Malaysia, a hypothetical model is rooted in adapting the ancient customary land tenure system through the influence of Hinduism, Buddhism and Islam. The principal characteristic of ancient land law practices is based on the hypothetical model of the ancient customary land tenure system, era, mission, and principal characteristics.

The Islamic land law (1414-1511) introduction was to uphold justice and maintain peace in the land of Malacca under the implementation of Islamic law. Malacca Sultanate became the government and Islamic authority which had influenced the Southeast Asia region. The principle character is a collated legal system and acted as a regulation law back in the 15th century of the Melaka Empire, which regulated personal relationships, behaviour and property. It is a written law established in the form of Malay customary law that is compatible with Islamic law. Islamic values; “Justice, equality, humanitarianism, protection and consultation.”

It is understood the introduction of Islamic law in the peninsula has absorbed the elements of the Malay *adat*. Hence, the legal system mentioned above was not solely derived from Islamic law. The laws outlined in the aforementioned codes were believed to be influenced by the Islamic law of the *Shafii* School, in addition to incorporating elements of local customs (Ahmad, 1995). British legislation of the past century has made significant changes to land law. Most of the law derives from a strange duality in the legal system. Different courts operated different principles and sometimes reached different results (Smith, 2010). The legalistic façade created by the artificial language and technical concepts of land law tends to conceal the fundamental issue (Davys, 2015)

1.3 Development of European Law

As recorded by Tom Pires, the Portuguese arrived in the peninsular in 1511 and the Dutch in 1641. Both early European powers did not so much affect Malaya's legal system. In 1518, Duarte Barbosa, a Portuguese writer, wrote about Malay in detail (Ahmad, 2016). After they arrived in 1641, the Dutch East India Company *Verenigde Oostindische Compagnie*, VOC implemented a standard regulation in all its territories in the Indian Archipelago. Through the Charter of Freedoms and Exemptions of 1629, the Dutch West India Company first started to grant this title and land to some of its invested members. These inducements to foster colonization and settlement known as the Rights and Exemptions are the basis for the patroon system. The Malacca written codes were responsible for the growth of other written codes in other states of the Peninsula: Pahang Legal Digest (1595), the laws of Quedah (1605), the Laws of Johore (1789), and the 99 Laws of Perak (1878). The process of assimilating Islamic law and legal values has taken place.

Prior to the advent of the Europeans and the introduction of colonial law, Malay customary land law was practised in the states of the Malay Peninsula. In *Sahrip v. Mitchell & Anor*, Maxwell C.J. held that it is well-known the old Malay law or customs of Malacca, while the sovereign was the owner of the soil, every man had nevertheless the

right to clear and occupy all forest and wasteland subject to the payment to the sovereign of one-tenth of the produce of the land so taken (Abdul Latif v. Mohamed Meere Lebe (1829) 4 Ky. 249). Based on the study, from the perspective of legal history, an argument could be made that the British colonization of Malaya left a legacy of laws and a legal system due to a difference of opinion on the issue of interpretation of the First Charter of Justice in 1807. Furthermore, the characteristics of the Malay customary tenure were studied in detail by Maxwell in his treatise “Law and Customs of the Malays regarding the Tenure of Land” in the 19th century.

The Straits Settlements, which included Penang, Singapore, and Malacca, were British colonies directly governed by the British. The Charters of Justice (1807, 1826, and 1855) introduced English law and established courts of justice. These settlements were regarded as part of the British Indian Empire and fell under the legal, political, and executive authority of the Bengal Presidency. Consequently, the laws implemented were based on similar laws introduced and applied by the British administration in India, particularly in 1826 and later after acquiring Malacca and Singapore in 1855. In the 19th century, the English deeds land administration system was introduced in Penang. The Straits Settlements ceased to be under Indian administration from April 1867, following the enactment of the Government of the Straits Settlements Act 1866 (29 & 30 Victoria c. 115). The Legislative Council of the Straits Settlements was granted legislative powers, and ordinances began to be promulgated and published with the establishment of the Straits Settlements government gazette on April 1, 1867.

The existence of misinterpretation rules and legislation in Malaysia's land and forest administration system is a complex bias. Land administrators at the state level have different interpretations and descriptions of rules than at the federal level. The disputes become more acute when the recognition and definition in interpreting British law in the United Kingdom continue to be a legal reference in this country, especially in the aspects of land ownership, disposal and acquisition. Every dimension of land law and administration requires both static and dynamic arrangements. The basis of Malay rural land rights prior to colonial intervention was usufructuary. Colonial land alienation policy defined all land that had not been alienated, nor reserved for a public purpose, nor reserved forest, as considered State Land. The absolute ownership rested in the state's ruler in which the land was located. It is considered prerogative, paramount and subservient to none.

1.4 Patrilineal and Matrilineal Social Systems

The establishment of these two distinct social systems resulted in the existence of the law of *adat Temenggung* (patrilineal) and *adat Perpatih* (matrilineal). With the arrival of Islam during the Malacca Sultanate in the 14th century, the patrilineal system of *adat Temenggung* was strengthened when the laws were codified in the form of Maritime Laws of Malacca (*Undang-Undang Laut Melaka*). According to the Malay customary law, a state was established only with the presence of a Sultan. Tun Seri Lanang (1536) prescribed in Malay Annals (*Sejarah Melayu*) frequently used expressions; the declaration of loyalty for the Malays became formally phrased as Long Live the Sultan (*Daulat Tuanku*) and not (Long Live the Nation (*Daulat Negara*) - incidentally making use of the word sovereignty (*Daulat*). In a war, according to the Malay tradition of royalty, a state would readily admit defeat if the ruler or its Sultan was dead. This was made clear in the Malay Annals by its reference to the words of Sultan Muhammad Shah of Malacca (1424-1444) – “It is because of the tradition of royalty; the country is defeated when its Sultan is dead.”

2. Method

2.1 Study Area

The study was carried out in Peninsular Malaysia (formally known as Malaya). The geographical location of the study area lies between 1° and 6° N in the northern latitude and between 100° to 103° E longitude. The total land area is 131,732 sq. km. The selected states for the study are three, namely Penang (Strait Settlement), Kelantan (Unfederated Malay State) and Perak (Federated Malay State). Figure 1 shows the location of the states in Peninsular Malaysia. The justification of the states as a case study is based on the British divide-and-rule policy on establishing colonial administration through the separation of powers. The Federated Malay States (FMS) are Perak (represented in this study due to this state being the first FMS introduced by the British Military Administration), Selangor, Negeri Sembilan and Johor.



Figure 1. The selected states represent the study area in Peninsular Malaysia

Note: (Perak-grey, Penang- orange and Kelantan-yellow)

2.2 Data Collection, Analysis and Interpretation

Appropriate identification of research participants is critical to the science and practice of psychology, particularly for generalizing the findings, making comparisons across replications, and using the evidence in research syntheses and secondary data analyses. If humans participated in the study, report the eligibility and exclusion criteria, including any restrictions based on demographic characteristics.

2.3 Sampling Procedures

This study employed a narrative analysis methodology to investigate individuals' personal stories and narratives, aiming to understand their experiences. The research methodology encompassed a range of approaches derived from diverse sources. Primary data collection techniques encompassed conducting interviews with participants, making field observations, and engaging in in-depth discussions with key informants. Secondary data were obtained from printed reports and local authorities.

The data collection process involved capturing non-written formats such as interviews or speeches, which were transcribed or recorded and subsequently converted into written form. The interpretation of the data involved identifying connections among various themes and patterns, examining the deeper meaning conveyed through the words, and striving to comprehend the intended message of the narrator. The analysis primarily focused on unveiling the underlying values, beliefs, or attitudes that may be disclosed within the narrative.

3. Results and Discussion

3.1 Characteristics of Ancient Land Law Practices in Peninsular Malaysia

The history of Malaysia is believed to have originated from the Sultanate of Malacca around 1400 AD. During its zenith, the Sultanate's territories encompassed a significant portion of the East Coast of Peninsular Malaysia and Sumatra. Malacca rose to prominence due to its strategic location as a convergence point between East Asia and the Middle East. This advantageous position propelled Malacca to become a major hub for spice trade, particularly in Southeast Asia. The ruler of Malacca embraced Islam, which subsequently became the predominant religion among the populace.

In 1511, the Portuguese seized control of Malacca, marking the onset of the colonial era in Malaya. Subsequently, the Dutch assumed dominance in 1641, followed by the British in 1824 through the Anglo-Dutch Treaty. Among the colonizers, the British had the longest period of colonization. They consolidated the entire Malayan administration, including the management of land law previously overseen by the Malay rulers and state dignitaries.

In ancient times, there was no topic more vital to those responsible for governing legal matters than the laws governing the land (Miller, 1995). Throwback the ancient law and overview of the land regimes that the peoples of Mesopotamia, Egypt, and Israel created by law and custom between 3000 B.C. and 500 B.C. The evidence suggests that law and economics can be timelessly valuable heuristics for analyzing human affairs (Robert et al., 1995). Hence, the effectiveness of private property is contingent on social factors, making law crucial in this regard. The reasons for the significance of land law are not difficult to comprehend. Ownership of substantial land equated to wealth, while those without land relied on others who possessed it. The land was where all the important activities took place.

During that time, the land served as the primary source and reservoir of wealth. Since gaining independence in 1957, the land tenure system in Peninsular Malaysia has undergone changes. Amendments to land laws and regulations have been frequent, aiming to ensure a comprehensive understanding of their provisions and rationale, while continuously evaluating them to meet current requirements. This study examines the nature of ancient land law practices in Peninsular Malaysia in a concise and comprehensive manner. It relies on historical evidence and legal cases to shed light on the subject. Despite the widespread implementation of the modern system of land tenure and land law, customary land tenure systems continue to hold significant influence and remain practised.

Such laws must be ancient, specific, and reasonable, deviating from general legal principles and interpreted strictly. This study uncovers the intertwining and interaction of both systems, developed by the colonial powers to supplant indigenous Malay customary land tenure. The development of the modern land tenure system is explained in the context of different entities, separate from the historical study of previous land laws before the current act came into effect. Thus, this study combines ancient Malay customary tenure with the colonial period and the post-independence land tenure system.

The character of characteristics of ancient land law practices in Peninsular Malaysia are debated in the light of their right and wrong. The question for the concept of ancient law is, how did the ancient laws arise? What were the functions and purposes of ancient codes and law collections? Through the history of land legal analysis of land administration in Peninsular Malaysia, a hypothetical model is rooted in the adaptation of the ancient customary land tenure system through the influence of Hinduism, Buddhism and Islam to the State of Malacca (Pakhriazad et al., 2010). Figure 2 illustrates a hypothetical model of adapting the ancient customary land tenure system through the various influences of Hinduism, Buddhism and Islam to the State of Malacca in Peninsular Malaysia.

However, the legal ancient land law is a belief that comes from the collective responsibility of the society that may have a modest presence in a wide-ranging legal system (Lindgren, 1995). This may be supported by the uniformity in legal rules across ancient, modern, and local societies. Table 1 illustrates the principal characteristics of ancient land law practices based on the hypothetical model of the ancient customary land tenure system, era, mission and its principle characteristics. The British presence in Malaya reflected several patterns: direct colonial rule in the Straits Settlements, relatively indirect control in some of the peninsula's east-coast sultanates, and family or corporate control in Borneo. However, British rule brought profound changes regardless of the political form, transforming the various states socially and economically.

The historical progression of land law in Peninsular Malaysia can be understood by examining the indigenous Malay customs pertaining to land prior to the arrival of the British colonial powers, as well as the subsequent development of the modernized land law system through the implementation of the Torrens system. Regrettably, there are only a few available records concerning Malay customary land and heritage. This scarcity of information is due to the fact that the Malays never documented their customary law in writing or in manuscripts. Consequently, our understanding of ancient laws and past customs is limited and primarily reliant on historical arbitration, evidence, legal documents, and legal cases as primary sources (Wong, 1975).

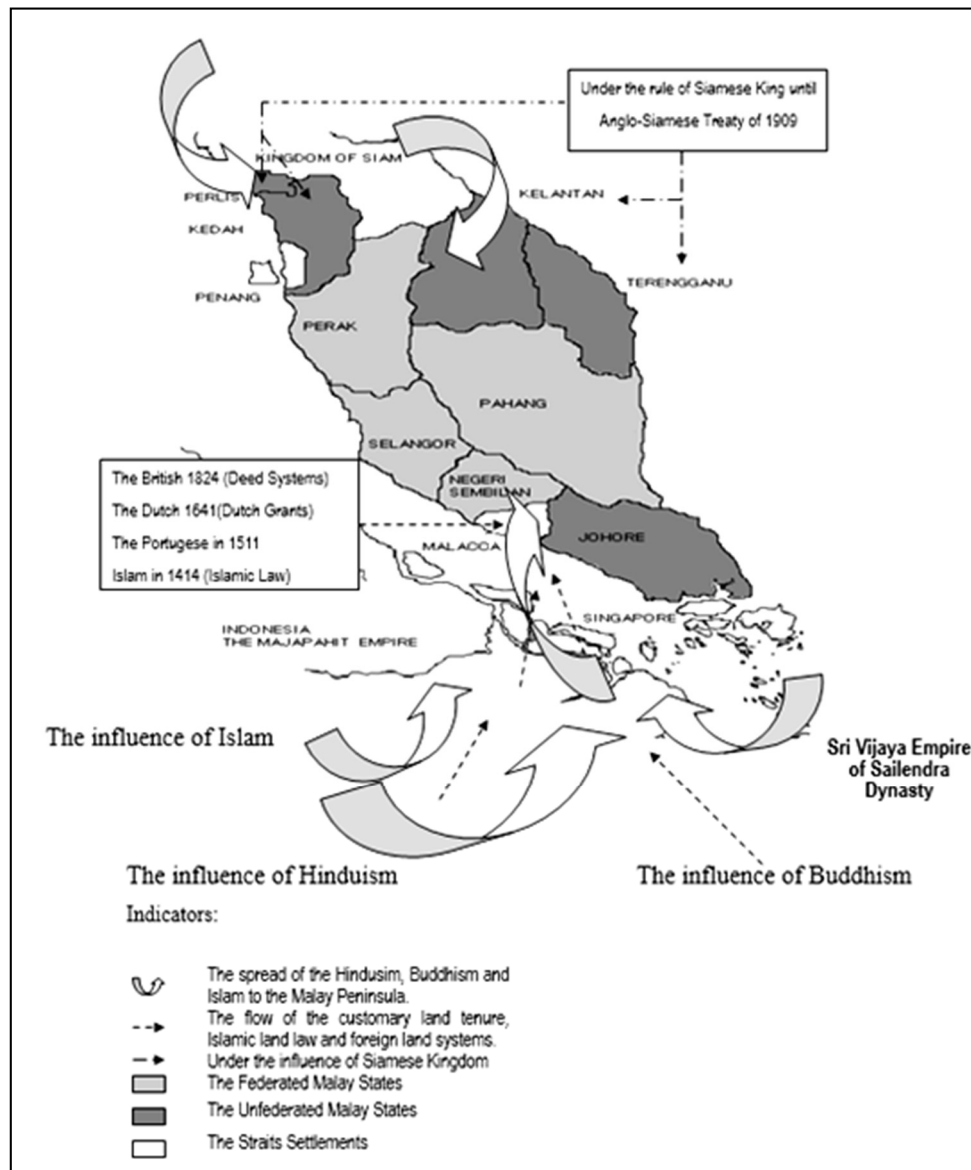


Figure 2. A hypothetical model of ancient customary land tenure system adaptation through the influence of Hinduism, Buddhism and Islam to the State of Malacca

Source: Pakhriazad et al., 2010.

Therefore, the literature review conducted in this study on Malaya land law, specifically focusing on Malay reservation land, serves as a distinct example of a special law superseding or prevailing over a general law, in accordance with the maxim *generalia specialibus non derogant*. In simpler terms, the current land law and Malay reservation can be seen as a result of British economic dominance, which disregarded the ancient customary land law to fulfil socio-political and economic interests. Additionally, the establishment of the "new government" prompted the British to introduce a new administrative system, including a land law framework. Consequently, colonial officers had to formulate a new strategy to address the challenges faced by their colonies and territories, as well as the changing economic needs.

During the process of gathering and analyzing ancient law codes and compilations, we frequently encountered two contrasting impressions regarding the primary objective of the colonial administration with regard to land law. Indeed, in ancient perspectives on property and land ownership, monetary penalties and the attainment of status and prestige were of utmost importance. However, we observe more similarities with modern law than anticipated, despite the disparities in knowledge, culture, and technology.

Table 1. The principle characteristic of ancient land law practices based on the hypothetical model of the ancient customary land tenure system, era and mission

| Land Law Introducer | Era | Mission | Principle Characteristic |
|------------------------|---------------|---|--|
| Islamic land Law* | 1414- 1511 | To uphold justice and maintain peace in the land of Malacca under the implementation of Islamic law, and Malacca Sultanate became the government and Islamic authority which had influences in the Southeast Asia region. | The codified legal system acted as a regulation law back in the 15 th century of the Malacca Empire, which regulated personal relationships, behaviour and property. It is a written law established in the form of Malay customary law that is compatible with Islamic law. Islamic values; “Justice, equality, humanitarianism, protection and consultation.” |
| Portuguese | 1511- 1641 | Three G’s – <i>God, Gold and Glory</i> . Attempts to gain control of trade in the region. | Implement administration through Christianity factor in Malacca. Military and civil administration was established. |
| Dutch | 1641- 1824 | Trading control and putting an end to the Portuguese dominion in the region | The Dutch control trades passing through the Straits of Malacca and the export of tin from the Malay Peninsula. Imposed a stifling monopoly on all aboriginal trade in the region. Laws and regulations were issued by the government in Holland, Batavia or Java, and by the local executive. |
| British | 1824- 1957 | Economy, status, prestige. | British economic hegemony insulted the ancient customary land law to achieve socio-political and economic interests. |

*Implementation of Islamic land law refers to the great Malacca empire.

3.2 Understanding the Characteristic Ancient Land Laws and Practices

The origins of English land law in Europe can be traced back to ancient Rome and continued to evolve through the Early Middle Ages under Saxon monarchs, where land was the primary source of personal wealth. However, English land law went through significant changes from the Saxon era to the post-Norman Invasion feudal system and throughout the Industrial Revolution and the 19th century as the political power of the landed aristocracy declined. Today, modern legislation increasingly regulates land as a social form of wealth subject to extensive social regulations, such as land, national parks, and agriculture.

The Industrial Revolution began in Great Britain, leading to numerous technological and architectural advancements that originated in the country. By the mid-18th century, Britain was the world's leading commercial nation, controlling a global trading empire with colonies in North America and the Caribbean, as well as significant military and political influence on the Indian subcontinent, especially with the proto-industrialized Mughal Bengal. However, the early adoption of the Industrial Revolution's innovations caused an economic recession from the late 1830s to the early 1840s.

The first phase of European colonization of Southeast Asia occurred throughout the 16th and 17th centuries, with the British attempting to monopolize the spice trade due to its high demand. This resulted in the arrival of Portuguese, Spanish, Dutch, French, and British marine spice traders in the region. British colonial land law had a significant influence on and domination of state land administration in Southeast Asia, with its historical evidence traced back to the question of why the British colonized Malaya and were interested in land administration under the divide-and-rule policy.

The history of Malaysia began with the Sultanate of Malacca around 1400 AD, covering most of the East Coast of Peninsular Malaysia and Sumatra. Malacca became a significant trading centre for the spice trade, particularly in Southeast Asia, due to its strategic location at the meeting point of East Asia and the Middle East. Islam emerged as the dominant religion of the area because the ruler himself professed the religion. In 1511, the Portuguese successfully captured Malacca, marking the commencement of the colonial period in Malaya. The Dutch subsequently assumed control in 1641, followed by the British in 1824 as stipulated by the Anglo-Dutch Treaty. Among the colonizers, the British had the longest period of colonization, during which they assimilated the entire Malayan administration, including land law, to advance their sociopolitical and economic interests. The history of land law in Peninsular Malaysia can be understood by examining the indigenous Malay customs concerning land prior to the arrival of the British colonial powers. This was followed by the development of a modernized land law system with the introduction of the Torrens system. The British presence in Malaya manifested in various forms, including direct colonial governance in the Straits Settlements, relatively indirect control in some of the east-coast sultanates of the peninsula, and familial or corporate control in Borneo.

In summary, the evolution of land law in Europe and Southeast Asia was shaped by various social, political, and economic factors. The British had a significant influence on land law in Southeast Asia, particularly in Malaysia, where they introduced a modernized system through the Torrens system. The history of Malaysia began with the Sultanate of Malacca and was marked by the arrival of various colonizers, including the Portuguese, Dutch, and British.

4. Conclusion

The study highlights the contentious nature of land rights and autonomy in utilizing natural resources in former British colonies, including Malaya. These colonies inherited both formal and informal land tenure systems rooted in customary law. However, contrary to principles of civil society and self-determination, the definition of socio-cultural and psychological spaces, territory, land boundaries, sovereignty, and people's rights to land resources were determined by colonial administrations and subsequent post-colonial governments. The colonial regimes exerted dominion and control over the people in Malaya through autocratic rule and paternalism. The people fought to protect their rights to land and resources, but the expatriate administration dismantled these rights, reframing them based on the land laws of the colonizers' motherland. The codification of customary rights under the Torrens system imposed by the British government infringed upon the people's land inheritance system or ancient land law, resulting in impacts on their livelihoods, economic disparities, human rights, dignity, and access to resources. To further advance this research, a comprehensive study encompassing the ancient, colonial, and post-British Malaya eras should be conducted to develop a holistic theory and philosophy in land law-related forestry. Enhanced collaboration and cooperation among stakeholders involved in forest and land law issues are crucial. This will foster integration, reduce conflicts of interest in forest jurisdiction, and facilitate the effective implementation of forest law principles. Establishing an efficient and integrated network, as well as promoting collaboration between federal and state governments and other forest-related agencies, will be instrumental in sustaining and conserving forests while harmonizing the complex relationships among forest stakeholders.

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