



**PEKELILING PENGARAH TANAH
DAN GALIAN
NEGERI KEDAH DARUL AMAN**

BAHAGIAN 8

**LOT UNTUK ORANG
MELAYU**

PEJABAT PENGARAH TANAH DAN GALIAN NEGERI KEDAH

WISMA NEGERI, 05576 ALOR SETAR



**PEKELILING PENGARAH TANAH DAN GALIAN
NEGERI KEDAH DARUL AMAN
BILANGAN 1 TAHUN 2017**

TAKRIFAN MELAYU BAGI KES LOT UNTUK ORANG MELAYU

1. TUJUAN

- 1.1 Pekeliling ini bertujuan untuk memberi penjelasan berkenaan takrifan Melayu bagi kes-kes yang melibatkan lot untuk orang Melayu di Negeri Kedah.

2. LATAR BELAKANG

- 2.1 Pejabat ini telah menerima pandangan daripada Pejabat Penasihat Undang-Undang Negeri Kedah berkenaan status Lot Untuk Orang Melayu dan siapakah yang boleh membeli, membida atau menerima pindah milik tanah yang telah diendorskan Lot Untuk Orang Melayu.

3. TAFSIRAN

- 3.1 Lot Untuk Orang Melayu merupakan satu polisi Kerajaan yang dimasukkan dalam Sekatan Kepentingan untuk menjaga kepentingan orang Melayu dalam membeli hartanah. Oleh yang demikian, takrif Melayu untuk Lot Untuk Orang Melayu adalah lebih longgar berbanding dengan takrif Melayu dalam Enakmen Rizab Melayu Kedah [Enakmen 63].

3.2 Dalam hal ini, Perkara 160 Perlembagaan Persekutuan telah memperuntukkan seperti berikut:

“ 'Malay' means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and - (a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or (b) is the issue of such a person....; ”

3.3 Pejabat ini menarik perhatian bahawa endorsan dan sekatan dalam hakmilik sesuatu tanah yang memperuntukkan “Lot Untuk Orang Melayu” dan “Tanah Simpanan Melayu” hendaklah dibezakan. Pejabat ini seterusnya merujuk kepada terma “Melayu” atau “Malayan Race” yang sering kali digunakan oleh pembida-pembida berjaya mahupun pembeli yang ingin membeli Lot Untuk Orang Melayu dan Tanah Simpanan Melayu.

3.4 Dalam hal ini, Pejabat ini merujuk takrifan “Malayan Race” yang sebenar dapat dilihat dalam kes FAUZIAH ISMAIL & ORS v. LAZIM KANAN & ORANG-ORANG YANG TIDAK DIKETAHUI [2013 7 CLJ 37 di mana Mahkamah Rayuan dalam kes tersebut menyatakan:

“The words “Malayan Race” must refer to a race in our country, Malaysia (or Malaya previously). In other words, it must refer to a citizen of the country, but not to a non-citizen.

In this respect, the definition of the word “Malay” in art. 160 of the Federal Constitution can be a good guidance. In the article, “Malay” means a person who professes the religion of Islam, habitually speaks the Malay language, conforms to Malay custom and:

- (a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore; or*
- (b) is the issue of such a person.*

At the material the said Lazim bin Kanan may be someone who habitually “speaks the Malay language, professes the religion of Islam and conforms to Malay custom”. However, he did not qualify for the citizenship requirement either under paras. (a) or (b) of the definition – because he was born in Indonesia in 1946 (before Merdeka

Day) and not in the Federation or in Singapore. There is also no evidence to show that he was “born of parents one of whom was born in the Federation or in Singapore or is on that day domiciled in the Federation or in Singapore.”

In another Federal Court case of Haji Hamid Ariffin & Anor v. Ahmad Mahmud [1976] 1 LNS 36; [1976] 2 MLJ 79, Suffian LP in dealing with the same provision in the Kedah Malay Reservation Enactment had ruled that by virtue of s. 6(2) of the said Enactment the purported sale of the land, to a non-Malay was void ab initio and it could not be enforced by the purchaser. Every enactment must be looked at in the spirit in which it was enacted. In the case of the Malay Reservations Enactment, the aim was to safeguard Malay ownership of Malay reservation lands. To hold otherwise would be flying in the teeth of the clearest language used by the Legislature.”.

3.5 Kes tersebut di atas mengenal pasti isu-isu berikut:

- (a) Malayan race merujuk “bangsa Malaysia ataupun Malaya”; dan
- (b) individu yang digelar Melayu bukan sahaja wajib beragama Islam, beliau hendaklah bertutur bahasa Melayu dan mengamalkan budaya Melayu, individu tersebut tetapi mesti dilahirkan di Malaysia pada atau sebelum merdeka dan berdomisil di Malaysia.

3.6 Selanjutnya, ini juga dapat dilihat dalam kes LINA JOY v. MAJLIS AGAMA ISLAM WILAYAH PERSEKUTUAN, [2005] 4 CLJ 666, Mahkamah Rayuan memutuskan:

“The learned judge heard the originating summons and dismissed it. Among his reasons were the following. The appellant being originally a Malay, by reason of the definition of “Malay” in cl. (2) of art. 160 of the Federal Constitution, with its requirement of professing the religion of Islam, the appellant will remain a Malay to her dying day and cannot renounce Islam. The freedom to profess and practise the religion of one’s choice guaranteed by cl. Of art. 11 does not include freedom of choice of religion. Only the Syariah Court is competent to determine the question of renunciation of Islam by a Muslim. With the dismissal of the originating summons, the judge found the defendants’ striking-out applications to be academic and struck them out.”.

3.7 Pejabat ini seterusnya merujuk kepada [2009] 1 MLJ cxxix, Malayan Law Journal Articles, 2009, Malay And Islam In The Malaysian Constitution, Dato Faiza Tamby Chik menyatakan:

“Article 160(2) of the Malaysian Constitution defines Malay as meaning a person who professes the religion of Islam, habitually speaks the Malay language, conforms to the Malay custom and:

- (a) was before Merdeka Day born in the Federation or in Singapore or born of parents one of whom was born in the Federation or in Singapore, or on that day domiciled in the Federation or in Singapore; or*
- (b) is the issue of such a person.*

Why is Malay, as a race defined in the Malaysian Constitution? ‘The Political testament of the Alliance’: Memorandum by Tunku Abdul Rahman for the Reid Commission dated 25 September 1956 stated that for the purpose of providing for the special position of Malays, it is necessary to have a definition of Malay. The privileges derived from the special position outlined above are intended only for existing nationals of Malay descent and their descendants. We therefore suggest the following as a definition:

A person shall be deemed to be a Malay, if –

- (1) he practices the religion of Islam;*
- (2) he habitually practices Malay customs;*
- (3) he habitually speaks the Malay language; and*
- (4) he is a person, or the descendant of a person, who at the commencement of this Constitution:*
 - (a) was domiciled in the Federation of Malaya, or*
 - (b) had been born in the territories comprised in the Federation of Malaya, or*
 - (c) had been born of parents one of whom had been born in the territories comprised in the Federation of Malaya.*

Who were the members of the Alliance at the time? It comprised the three main political parties in the Federation of Malaya; the United Malay National Organisations, the Malayan Chinese Association and the Malayan Indian Congress, which have allied themselves into a single movement for the sacred purpose of achieving independence for Malaysia. The political testament reflects the firm desire of the majority of the people of Malay for a form of government which will ensure freedom,

equality and unity of the new nation. For this reason, the Alliance set out the special positions of Malays as 'while we accept that in the independent Malaysia, all nationals should be accorded equal rights, privileges and opportunities and there must not be discrimination on grounds of race or creed, we recognised the fact that the Malays are the original sons of the soil and that they have a special position arising from this fact, and also by virtue of the treaties made between the British Government and the various sovereign Malay States. The Constitution should, therefore, provide that the Yang di-Pertuan Besar should have the special responsibility of safeguarding the special position of the Malays. In pursuance of this, the Constitution should give him powers to reserve for Malays a reasonable proportion of lands, posts in the public service, permits to engage in business or trade, where such permits are restricted and controlled by law, Government scholarships and such similar privileges accorded by the Government; but in pursuance of his further responsibility of safeguarding the legitimate interests of the other communities, the Constitution should also provide that any exercise of such powers should not in any way infringe the legitimate interests of the other communities or adversely affect or diminish the rights and opportunities at present enjoyed by them.

The Federation of Malaya Agreement 1948, provides under art 19, that the High Commissioner in the exercise of his executive authority shall have the following special responsibility, that is to say:

The safeguarding of the special position of the Malays, of the legitimate interest of other communities.”.

3.8 Dalam hal Lot untuk Orang Melayu/Bumiputera, definisi Melayu merangkumi mana-mana individu yang berketurunan yang beragama Islam dan bertutur bahasa Melayu serta mengamalkan adat Melayu secara amnya sebagaimana yang diperuntukkan dalam Perkara 160 Perlembagaan Persekutuan. Ini juga merupakan satu dasar ekonomi dalam memberi peluang kepada orang Melayu untuk membeli hartanah. Ini juga selaras dengan Dasar Ekonomi Baharu sebelum ini.

3.9 Sehubungan kes seperti ini, pihak tuan/puan bolehlah membuat siasatan berhubung ciri-ciri yang dinyatakan dalam Perkara 160 Perlembagaan Persekutuan

dan sekiranya Pendaftar Hakmilik atau Pentadbir Tanah berpuas hati bolehlah mendaftar hartanah tersebut.

3.10 Pentadbiran ini berharap perkara ini jelas dan dapat mengelakkan isu kekeliruan berkenaan isu takrif Melayu bagi lot untuk orang Melayu.

4. PEMAKAIAN

4.1 Pekeliling ini adalah terpakai kepada **Pendaftar Hakmilik** dan semua **Pentadbir Tanah Daerah di Negeri Kedah Darul Aman.**

5. KUATKUASA

5.1 Pekeliling ini berkuatkuasa pada tarikh ianya dikeluarkan.

(DATO' HAJI MD. ZUKI BIN HAJI SIRU, DSDK.,AMK., AMN.,BCK.)
Pengarah Tanah Dan Galian
Negeri Kedah Darul Aman.

No. Fail : PTG.KED.U/33(P)/2009

Bertarikh : 24 Jamadilawwal 1438

21 Februari 2017