

Bahan asal dari Arkib
Negara Malaysia

'Malay'

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as defined in the States Malay Reservation Enactments

The definition 'Malay' in Article 160(2) of the Federal Constitution is as follows:

"'Malay' means a person who professes the Muslim religion, habitually speaks the Malay language, conforms to Malay custom and—

(a) was before Merdeka Day born in the Federation or born of parents one of whom was born in the Federation or is on that day domiciled in the Federation; or

(b) is the issue of such a person;"

It will be noted that this definition makes no mention of 'race'.

Each of the State Enactments concerning Malay Reservations defines 'Malay' and these State definitions are, by virtue of Article 89(6) of the Federal Constitution, to be applied for the purpose of Article 89, i.e. "and Malay includes any person who, under the law of the State in which he is resident, is treated as a Malay for the purposes of the reservation of land".

The State Enactments to be considered are:

- (a) F.M.S. Cap. 142 applicable to Negri Sembilan, Pahang, Perak and Selangor.
- (b) Johore Enactment No. 1 of 1936.
- (c) Kedah Enactment No. 63.
- (d) Kelantan Enactment No. 14 of 1930.
- (e) Perlis Enactment No. 7 of A.H. 1353.
- (f) Trengganu Enactment No. 17 of A.H. 1360.

While there are some differences in phrasing in these Enactments the definition

'Malay' more or less follows that of F.M.S. Cap. 142, namely:

Section 2:

Malay means a person belonging to any Malayan race who habitually speaks the Malay language or any Malayan language and professes the Muslim religion.

In Johore the word 'Malaysia' is used instead of 'Malayan', in Kelantan the definition expressly includes: "(a) the Majlis Ugama Islam; (b) the Official Administrator when acting as Administrator or trustee of the estate of a deceased Malay". The Kedah definition is rather wider in its terms, namely:

a person professing the Muslim religion and habitually speaking the Malay language of whose parents one at least is a person of Malayan race or of Arab descent.

Both Kedah and Perlis also make specific provision for 'Siamese agriculturalists permanently resident in the State' to be treated as Malays for the purposes of the Enactments.

It is readily apparent that the words 'Malayan race' or 'Malaysian race' are not capable of any precise legal definition, nor is the expression 'belonging to' any easier to interpret. It appears that in Kedah a person 'belongs' if one of his parents is of 'Malayan' race. It is however quite clear from the general purport of these Enactments (most of which were passed in the early thirties of this century) that 'Malayan' does not have the modern meaning of 'citizenship' and would certainly not include Chinese or Indians however long their ancestral domicile had been in Malaya. There is a definition by Wilkinson: *Bangsa asing di-bawah angin* which he takes to mean persons from "Malaya, Burma, etc., countries to which people come from the west during the south-west monsoon".

It is therefore to the objects of the legislation that we must turn to find what the definition 'Malay' is intended to mean. The objects have been sufficiently illustrated by the policies followed by the various State Governments in giving effect to the Enactments. These policies are based on the assumption that persons living in a rural economy require protection from other persons—particularly strangers to the State who are economically superior. In other words the desire of the State Governments is to ensure that the local born *ra'ayat* are not deprived of their stake in the land. This policy is not necessarily implemented with the rigidity that would seem a necessary concomitant of the definition 'Malay'. All the Enactments contain a Section more or less worded as Section 20 of F.M.S. 142 which is as follows:—

Section 20:

If any doubt shall arise as to whether any person is a Malay within the meaning of this Enactment or as to the mode of operation of the Enactment or the manner in which the provisions thereof are to be construed or carried into effect or otherwise in relation thereto, the same shall be referred . . . to the Ruler in Council who shall

decide the same, and every such decision shall be final and shall not be questioned or revised by any Court.

It is submitted that the terms of this Section are sufficiently wide to enable very great discretion to be exercised by the Ruler in Council. The Kelantan Enactment has a Section 13A which specifically permits the Ruler in Council to exercise his discretion in the case of non-Malays though semble the Section quoted above could be invoked for this purpose. Similar provision exists in Section 19 of the Kedah Enactment.

In conclusion therefore it would seem that the policy followed by the States is to interpret the Enactments, so as to benefit the *ra'ayat* including in that expression even persons of non-Malay 'race' (e.g., Siamese in Kedah and Perlis) provided that such non-Malays are integrated into the community of their Malay neighbours. Since the Federal Constitution came into force Articles 89 and 90 govern the question of Malay Reservations. However the State Enactments remain in force and there seems no reason why the present State policy should not continue.

