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Protection of Property Rights in Malaysian Civil Law: A Normative Study

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Abstrack	*Protection of property rights is one of the fundamental elements of civil law because it is directly related to legal certainty, social stability, and the guarantee of human rights. In Malaysia, the protection of property rights has distinctive characteristics due to the influence of a plural legal system that combines common law, Islamic law, and customary law. This condition creates its own dynamics, particularly in the regulation of land, inheritance, contracts, and the resolution of property rights disputes. This study aims to analyze the forms of property rights protection in Malaysian civil law, identify the normative foundations governing them, and assess the effectiveness of legal protection for vulnerable groups in ownership disputes. This research employs normative legal research methods using statutory, conceptual, and comparative approaches. The data used are secondary data obtained through library research, including primary legal materials such as the Federal Constitution, National Land Code 1965, Contracts Act 1950, and Specific Relief Act 1950, as well as secondary legal materials in the form of books, scientific journals, and relevant court decisions. The results of the study show that Article 13 of the Federal Constitution provides constitutional guarantees for property rights through the prohibition of arbitrary deprivation and the obligation to provide adequate compensation. The National Land Code 1965 strengthens this protection through the Torrens-based land registration system. However, the effectiveness of such protection still faces obstacles, including jurisdictional conflicts between civil courts and Syariah courts, weak recognition of indigenous peoples' land rights, and limited legal access for women and economically disadvantaged groups. In conclusion, the protection of property rights in Malaysia should not rely solely on formal legal certainty but must also be directed toward inclusive substantive justice. Therefore, harmonization of the legal system and the strengthening of affirmative policies are necessary to ensure fairer protection for all levels of society.*

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I. INTRODUCTION

The right to property is one of the fundamental rights that holds a very important place in the modern civil law system[1]. The protection of property rights is not only a matter of legal certainty regarding ownership of property, but also concerns social stability, economic security and the protection of human rights[2]. In the context of modern states, regulations governing property rights serve as a key instrument for ensuring legal relationships between individuals, legal entities, and between citizens and the state[3]. In Malaysia, the protection of property rights has unique characteristics as it is influenced by a mixed legal system—a combination of English common law, Islamic law and local customary law. This system creates a distinct dynamic in the regulation of property rights, particularly in the context of civil law, land law, inheritance law and contractual relationships[4].

The importance of property rights protection in Malaysia is becoming increasingly relevant as civil law relationships grow in complexity due to economic growth, urbanisation, foreign investment, and developments in the property and business sectors[5]. Disputes concerning property rights—whether relating to land, buildings, company assets or inheritance rights—are among the most common cases in civil court proceedings[6]. Furthermore, the issue of property rights protection is closely linked to the principle of social justice, particularly in ensuring that every individual receives equal legal recognition and protection for the assets they own[7]. In this context, civil law serves as the primary

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1 Muhamad Fadli Maghribi and Budi Ispriyarso, "Peran PPAT Terhadap Aspek Perpajakan Dalam Transaksi Jual Beli Tanah Dan Bangunan," *Notarius* 15, no. 1 (2022): 105–19, https://doi.org/10.14710/nts.v15i1.46027.

2 Mohd Syafiq Akmal Kasimun, Katmon and Azima Abdul Manaf, "Peri Pentingnya Pemilikan Tanah Adat Yang Diiktiraf: Memahami Keperluan Komuniti Bidayuh Serian, Sarawak," *Geografia : Malaysian Journal of Society and Space* 10, no. 6 (2014): 171–78, http://journalarticle.ukm.my/8340/.

3 Maqasid Shariah, "ASSESSING THE PRINCIPLE OF INDEFEASIBILITY OF LAND TITLE WITHIN THE FRAMEWORK OF MAQASID SHARIAH IN MALAYSIA," *Al-Qanatir: International Journal of Islamic Studies,* 34, no. 4 (2025): 34, https://doi.org/https://doi.org/10.64757/alqanatir.2025.3404/1197.

4 Noor Ashikin Hamid, "PENIPUAN DALAM URUS NIAGA TANAH DI MALAYSIA : SATU KAJIAN," *Kanun* 34, no. 1 (2022): 97–112, https://doi.org/10.37052/kanun.34(1)no5.

5 Maulana Malik, Abdul Qahar, and Yuli Adha Hamzah, "Hilangnya Hak Milik Tanah Akibat Perubahan Kewarganegaraan Dalam Perkawinan Campuran," *Jurnal* I, no. 2 (2026): 1–14.

6 Article Info, "THE EFFECTIVENESS OF MEDIATION IN RESOLVING LAND DISPUTES IN INDONESIA AND MALAYSIA," *ADHAPER: Jurnal Hukum Acara Perdata* 11, no. 1 (2025): 30–47, https://doi.org/https://doi.org/10.36913/adhaper.xxx.x.

7 Augie Pratama Wijaya, Mega Kartika, and Universitas Al Washliyah, "Penerapan Hukum Perdata Dalam Penyelesaian Sengketa Properti Di Medan : Studi Kasus Pengadilan Negeri Medan," *Judge : Jurnal Hukum* 05, no. 03 (2024): 86–90, https://doi.org/https://doi.org/10.54209/judge.v5i03.803.

mechanism for providing certainty, protection and dispute resolution in relation to infringements of property rights.

In legal terms, the protection of property rights in Malaysia is governed by various legal instruments, such as the Federal Constitution, the National Land Code 1965, the Contracts Act 1950, the Specific Relief Act 1950, and various court rulings that establish legal precedents[8]. Article 13 of the Federal Constitution expressly guarantees that no one may be deprived of their property except in accordance with the law and with adequate compensation[9]. This provision demonstrates that the protection of property rights is not merely a standard civil law issue, but also has a strong constitutional dimension[10]. However, in practice, various issues still arise, such as the lack of clarity regarding the boundaries of jurisdiction between civil law and Sharia law, conflicts over customary land ownership, the expropriation of land by the state for public interest, and the lack of protection for vulnerable groups in land ownership disputes[11].

Several previous studies have examined the protection of property rights within the Malaysian legal system. The first study highlighted the constitutional guarantees of property rights in the Federal Constitution and emphasised that Article 13 provides a strong basis for protection against expropriation by the state[12]. This study emphasises the importance of judicial review of government actions that may potentially infringe upon citizens' property rights. The second study examines the implementation of the National Land Code 1965 in the

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8 Anatol Garioud et al., "FLAIR-HUB : Large-Scale Multimodal Dataset for Land Cover and Crop Mapping," *ISPRS Journal of Photogrammetry and Remote Sensing* 237, no. August 2025 (2026): 271–300, https://doi.org/10.1016/j.isprsjprs.2026.04.017.

9 Anem Dupré et al., "Revisiting the Dynamic Simulation Model of Land-Use Changes in the Sudano-Sahelian Countries of Africa (SALU): An Open-Access Application To," *Ecological Modelling* 510, no. August (2025): 111310, https://doi.org/10.1016/j.ecolmodel.2025.111310.

10 Tom Lavers, "Land Use Policy Revolution and Evolution in Ethiopian Land Tenure : Strategic Interests and Ideological Shifts during 50 Years of Reform," *Land Use Policy* 164, no. September 2025 (2026): 107979, https://doi.org/10.1016/j.landusepol.2026.107979.

11 F Yuniyanti, S. S., & Siska, "Enhancing Legal Certainty for Consumers in Apartment Unit Trade: A Comparative Analysis of Dispute Settlement Agreements in Indonesia and the Netherlands," *Journal of Law and Legal Reform* 5, no. 1 (2024): 333, http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI.

12 C Valero et al., "Past Trajectory of a Northwest Europe Socio-Ecosystem at the Land-Sea Interface : Case Study of the Northern Watersheds of the Bay of Brest over the Last 150 Years," *Palaeogeography, Palaeoclimatology, Palaeoecology* 690, no. February (2026), https://doi.org/10.1016/j.palaeo.2026.113703.

resolution of land disputes, particularly with regard to the principle of the indefeasibility of title, which affords protection to registered owners. This study demonstrates that Malaysia's land registration system provides a relatively high degree of legal certainty compared to several other developing countries[13]. The third study focuses on conflicts between the jurisdictions of civil courts and Sharia courts in cases concerning inheritance and family property, particularly those involving converts to Islam or mixed marriages[14].

Nevertheless, previous studies still have a number of limitations. Most studies have focused solely on sectoral aspects, for example, addressing only land issues, inheritance, or land expropriation by the state, without examining the protection of property rights comprehensively within the civil law system as a whole. Furthermore, some studies place greater emphasis on an empirical approach to specific cases without conducting an in-depth normative analysis of the relationship between constitutional norms, sectoral laws, and general principles of civil law. Another limitation is the lack of discussion regarding the harmonisation of civil law, Islamic law, and customary law in providing effective protection for property rights. In fact, the existence of a plural legal system in Malaysia is a key factor determining the effectiveness of such legal protection.

Given these limitations, this study seeks to fill the research gap by conducting a more comprehensive normative analysis of the protection of property rights under Malaysian civil law. This study not only examines constitutional norms but also examines the systematic relationship between various civil law instruments governing ownership, possession, protection, and the restoration of rights to property. Thus, this study is expected to provide a more comprehensive understanding of how Malaysian civil law establishes mechanisms for the protection of property rights, as well as the challenges faced in their implementation.

The scientific contribution or novelty of this study lies in its integrative approach, which links constitutional, civil law and legal pluralism dimensions within a single normative analytical framework. Unlike previous studies, which

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13 Samuel Guerreiro et al., "Updating Legacy Soil Maps through Digital Delineation of Homogeneous Land Units Based on Soil Formation Factors : Experiences from Portugal," *Catena* 258, no. May (2025), https://doi.org/10.1016/j.catena.2025.109275.

14 Bina Agarwal and Shruthi Naik, "Do Courts Grant Women Their Inheritance Shares ? An Analysis of Case Law in India," *World Development* 182, no. May (2024): 106688, https://doi.org/10.1016/j.worlddev.2024.106688.

tended to be fragmented, this study positions the protection of property rights as part of an interrelated legal system comprising constitutional guarantees [15], *statutory protection*[16], and *judicial enforcement*[17]. Furthermore, this study also highlights the importance of the principle of substantive justice in the protection of property rights, particularly for groups vulnerable to legal marginalisation, such as indigenous peoples, women in inheritance cases, and traditional landowners who do not yet hold formal title deeds. This approach offers a new perspective: that the protection of property rights cannot be viewed solely in terms of formal certainty, but must also be assessed in terms of the social justice produced by the legal system.

The primary objective of this study is to analyse the forms of property rights protection under Malaysian civil law and to assess the effectiveness of the applicable legal norms in ensuring certainty and justice for rights holders. Specifically, this study aims to: first, identify the normative basis for the protection of property rights within the Malaysian legal system; second, analyse the relationship between constitutional law, land law, contract law, and inheritance law in the protection of property rights; third, examine the legal obstacles arising from legal pluralism; and fourth, formulate a normative approach that can strengthen the protection of property rights in a fairer and more effective manner.

In light of these objectives, the research questions posed are as follows: what form does the protection of property rights take under Malaysian civil law? To what extent are the applicable legal instruments capable of ensuring legal certainty and substantive justice for rights holders? How does legal pluralism affect the effectiveness of such protection? These questions form the basis for understanding the relationship between legal norms and the reality of property rights protection in practice.

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15 Palak Jagtiani, "Reshaping Fiscal Federalism : The Constitutional Evolution of Taxing Powers and Its Implications for Economic Governance," *Social Sciences & Humanities Open* 13, no. May (2026): 102905, https://doi.org/10.1016/j.ssaho.2026.102905.

16 Jordan White, Phillipa Evans, and Ilan Katz, "Children Dually Involved with Statutory Child Protection and Juvenile Justice in Australia : A Developmental Cascade Framework," *Children and Youth Services Review* 161, no. July 2023 (2024): 107645, https://doi.org/10.1016/j.childyouth.2024.107645.

17 Atikah Mardhiya Rohmy, I Gusti Ayu, and Ketut Rachmi, "Judicial Mafia and Ecological In-Justice : Obstacles to Policy Enforcement in Indonesian Forest Management and Protection," *Trees, Forests and People* 17, no. June (2024): 100613, https://doi.org/10.1016/j.tfp.2024.100613.

II. METHODOLOGY

This study employs a normative legal research method *(normative legal research)*[18] through a legislative approach *(statute approach), (conceptual approach)* [19] and *(comparative approach).*[20] A legislative approach is employed to analyse the various legal instruments governing the protection of property rights within the civil law system in Malaysia, such as the Federal Constitution—in particular Article 13 concerning the right to property—the National Land Code 1965, the Contracts Act 1950, the Specific Relief Act 1950, as well as various other regulations relating to property rights, land, inheritance, and the resolution of civil disputes. The conceptual approach is used to understand the fundamental principles of property rights protection, the principles of legal certainty and justice, as well as the relationship between private rights and the public interest within the context of civil law. Meanwhile, a comparative approach is used to examine how the Malaysian legal system integrates elements of common law, Islamic law, and customary law in the protection of property rights.

The data used in this study consists of secondary data obtained through library research. Primary legal sources comprise the constitution, statutes, regulations, and court rulings relevant to the protection of property rights in Malaysia. Secondary legal materials include legal textbooks, academic journal articles, previous research findings, and expert doctrines discussing civil law, land law, and the protection of property rights within the Malaysian legal system. In addition, tertiary legal materials such as legal dictionaries, legal encyclopaedias, and other supporting academic sources were also used to strengthen the analysis[21].All the data were analysed qualitatively using a descriptive-analytical approach, which involved interpreting the applicable legal norms, relating them to relevant legal theories, and identifying the strengths and weaknesses of the

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18 Muhammad Ilham Arisaputra Saharuddin, Andi Suryaman M. Pide, Yunus Wahid, "Legal Construction of Land Rights Transfer Under the Indigenous System (Tayade) in Gorontalo in Relation To The Principle Of Horizontal Separation," *Russian Law Journal* XI, no. 5 (2023): 3033–39.

19 Z. Ali, "Metode Penelitian Hukum." (Jawa Timur: Sinar Grafika., 2021), hlm 99.

20 Eril Boli and Muh Nur Hidayat M, "Agrarian Law Reform in Indonesia : Between Legal Certainty and Social Justice," *Indonesian Civil Law Review (ICLR)* 11, no. 1 (2025): 53–68, https://ejurnal.mgpublishing.co.id/index.php/iclr/article/view/5/6.

21 Saharuddin Sahar et al., "Transfer of Land Rights in the Tayade System," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 1 (2025): 196, https://doi.org/10.22373/petita.v10i1.412.

property rights protection system under Malaysian civil law in order to produce a systematic and comprehensive legal argument.

III. THE CONSTITUTIONAL BASIS AND LEGAL FRAMEWORK FOR THE PROTECTION OF PROPERTY RIGHTS IN MALAYSIAN CIVIL LAW

A. Guarantee of the Right to Property in the Federal Constitution of Malaysia

The right to property is one of the fundamental rights that enjoys strong protection under the Malaysian legal system[22]. In the context of a modern constitutional state, the protection of property rights is understood not only as a guarantee of private ownership of property, but also as a form of recognition of human dignity, economic freedom and legal certainty[23]. The Federal Constitution of Malaysia enshrines the right to property as a constitutional right of citizens that must be respected by the state and by other legal entities[24]. This protection is important because property rights are closely linked to social stability, economic growth, investment and the protection of human rights more broadly[25].

The primary basis for the protection of property rights in the Federal Constitution of Malaysia is found in Article 13, which expressly states that no person shall be deprived of their property except in accordance with the law, and that no law shall provide for the compulsory acquisition or use of property without the payment of adequate compensation[26]. This provision indicates that the Malaysian Constitution recognises property rights as rights that are not absolute, but which must nevertheless be protected through the principles of due

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22 Poowin Bunyavejchewin and Franklin D Roosevelt, "Malaysia – Singapore Airspace Dispute , 2018 – 2019 : A Legal and Political Analysis," *Social Sciences & Humanities Open* 9, no. December 2024 (2024): 100802, https://doi.org/https://doi.org/10.1016/j.ssaho.2023.100802.

23 Latifah Abdul et al., "Trapped in Transition ? A Multi-Level Analysis of Implicit and Explicit Challenges in Malaysia ' s e-Waste Management System," *Waste Management Bulletin* 4, no. 2 (2026): 100294, https://doi.org/10.1016/j.wmb.2026.100294.

24 Siti Zaharah et al., "Strategies in the Prevention or Reduction of Elder Abuse In," *Procedia - Social and Behavioral Sciences* 172 (2015): 42–48, https://doi.org/10.1016/j.sbspro.2015.01.333.

25 Annika Lonkila and Suvi Huttunen, "Legal Rights of Private Property Owners vs . Sustainability Transitions ?," *Journal of Cleaner Production* 323, no. September (2021): 129179, https://doi.org/10.1016/j.jclepro.2021.129179.

26 Emilio Carnevali, Marco Veronese, and Dongna Zhang, "Balance of Payments and Currency Policy in China ' s Development," *Structural Change and Economic Dynamics* 74, no. April (2025): 405–15, https://doi.org/10.1016/j.strueco.2025.04.010.

process of law and fair compensation[27]. The state has the power to expropriate private property in the public interest, but such action must be carried out in accordance with lawful procedures and with guarantees of justice for the rightful owner.

Article 13(1) enshrines the principle of protection against arbitrary deprivation of property, namely the prohibition on the arbitrary deprivation of property rights. This provision serves as a check on state power, preventing the excessive use of public authority in relation to citizens' private property. In practice, this principle is of paramount importance in cases of land acquisition for infrastructure development, investment projects, or other public policies. The state cannot simply take people's land without a clear legal basis, valid administrative procedures, and an opportunity for owners to seek legal redress. Thus, Article 13 serves as a constitutional instrument to maintain a balance between the public interest and individual rights.

Meanwhile, Article 13(2) emphasises the obligation to provide adequate compensation for the compulsory acquisition of property. The concept of adequate compensation does not merely refer to a monetary payment, but also reflects the principle of substantive justice in relation to the losses suffered by the owner. In many land cases, the main issue is not merely the expropriation itself, but public dissatisfaction with the amount of compensation, which is deemed disproportionate to the economic, social, or historical value of the land in question. Consequently, the interpretation of 'adequate compensation' has become a central issue in the protection of property rights in Malaysia.

Within the Malaysian legal system, this constitutional guarantee is reinforced by various sectoral regulations, notably the National Land Code 1965 and the Land Acquisition Act 1960. These two pieces of legislation serve as implementing instruments for the principles enshrined in the Federal Constitutio[28]. The National Land Code provides certainty regarding land ownership through a formal registration system, whilst the Land Acquisition Act governs the procedures for land acquisition by the state and the associated

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27 Lawrence O Gostin et al., "Commissions The Legal Determinants of Health : Harnessing the Power of Law for Global Health and Sustainable Development," *The Lancet* 393, no. 10183 (1857): 1857–1910, https://doi.org/10.1016/S0140-6736(19)30233-8.

28 Kasper Hoffmann et al., "On Violent Conflict , Land Scarcity , and Power in an Urban Frontier in Congo ☆" 201, no. February (2026), https://doi.org/10.1016/j.worlddev.2026.107337.

compensation mechanisms[29]. Thus, the Federal Constitution serves as the normative foundation, whilst sectoral legislation acts as the operational instrument for the implementation of such protection.

However, constitutional guarantees of property rights do not always work ideally in practice. One issue that frequently arises is the broad interpretation of the concept of 'public purpose'. The government frequently invokes the rationale of national development to carry out land expropriation, including for projects involving private interests or commercial investors. This has drawn criticism because land expropriation, which should be carried out for the public good, can shift into an instrument that benefits specific economic groups. In such situations, Article 13 serves as a crucial basis for the public to seek justice through the judicial review mechanism in the courts.

The judiciary plays a vital role in interpreting and upholding the protection of property rights under the Federal Constitution. Civil courts have the authority to assess whether government actions are in accordance with constitutional principles or, conversely, infringe upon citizens' rights. In several rulings, the courts have affirmed that property rights must not be curtailed solely on the basis of administrative interests without strong legal justification. Judicial review serves as an instrument of constitutional control, ensuring that the executive branch operates within legal boundaries and does not violate the principles of justice.

In addition to the issue of land acquisition, the guarantee of property rights in the Federal Constitution also relates to the protection of inheritance rights, contractual rights and family property. In this context, legal pluralism in Malaysia presents its own challenges. The Malaysian legal system accommodates both civil law and Sharia law, particularly in family and inheritance matters. For the Muslim community, the distribution of inheritance is often subject to the laws of faraid, whilst for non-Muslims, the principles of general civil law apply. These differing legal regimes sometimes give rise to jurisdictional conflicts, particularly in cases of mixed marriages, religious conversion, or disputes between heirs operating under different legal systems.

Furthermore, the protection of property rights also has a social dimension relating to vulnerable groups, such as indigenous communities and traditional

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[29] Opeyemi Olanrewaju, Temilolu Bamiwuye, and Abiodun Olusola, "Impact of Conflict Shocks on Land Rental Market Dynamics : Panel Evidence from Nigeria," *Land Use Policy* 158, no. August (2025): 107748, https://doi.org/10.1016/j.landusepol.2025.107748.

landowners. In some cases, indigenous communities face difficulties in defending their rights to ancestral lands because they lack the formal proof of ownership required by modern registration systems. Although historically they have occupied the land for many years, formal legal recognition often favours those holding official certificates. This situation demonstrates that the protection of property rights cannot rely solely on legal formalism, but also requires a substantive approach to justice that takes into account the social realities of the community.

The guarantee of property rights in the Federal Constitution is also closely linked to the principle of the rule of law. A state governed by the rule of law requires restrictions on government power, protection of individual rights, and equal access to justice. The right to property cannot be separated from this principle because ownership is part of civil liberties that must be guaranteed by the constitution. When the right to property is violated without a valid legal basis, it is not only the individual's economic interests that are disrupted, but also the legitimacy of the legal system as a whole. Therefore, constitutional protection of the right to property is an important indicator of the quality of democracy and the rule of law in Malaysia.

Overall, the Federal Constitution of Malaysia has provided a strong normative foundation for the protection of property rights through Article 13. This provision demonstrates the state's constitutional commitment to ensuring that citizens' property rights cannot be arbitrarily deprived and that any expropriation must be accompanied by fair compensation. However, the effectiveness of such protection depends heavily on the consistent implementation of sectoral legislation, the integrity of the judiciary, and the state's ability to balance development interests with social justice. Thus, the constitutional guarantee of property rights is not merely a normative issue, but also a real test for Malaysia's civil law system in delivering fair legal protection.

B. Provisions on Property Rights in the 1965 National Land Code

The National Land Code 1965 is the primary legal instrument governing the land system in Malaysia and plays a central role in protecting land ownership rights. This legislation was enacted to consolidate the various land regulations that were previously scattered and varied from region to region, thereby creating a land administration system that is more structured, uniform and provides legal

certainty. In the context of civil law, the National Land Code 1965 serves as a vital foundation for determining the status of ownership, possession, transfer of rights, encumbrance of rights, and the resolution of disputes relating to land as the primary object of property rights.

One of the key principles enshrined in the 1965 National Land Code is the land registration system, which is based on the Torrens System. This system treats the registration certificate as the primary evidence of lawful ownership and provides strong legal protection to registered owners. This principle is known as the 'indefeasibility of title', meaning that a legally registered title cannot be challenged except under specific circumstances provided for by law, such as fraud, forgery, or serious procedural defects. Consequently, this system provides a high degree of legal certainty for landowners and minimises ownership disputes arising from competing claims.

The application of the principle of indefeasibility of title constitutes a concrete form of protection for property rights under Malaysian land law. A person whose name is recorded as the owner in the land register enjoys strong legal recognition and can assert their rights against third parties. This is of paramount importance in supporting economic activity, property investment and contractual relationships where land is the primary subject of the transaction. Both domestic and foreign investors tend to require legal certainty regarding the assets they own, and the National Land Code 1965 provides such assurance through a clear and centralised registration system.

In addition to regulating ownership, the National Land Code 1965 also governs the process of transferring land rights through sale and purchase, gift, inheritance, or other forms of transfer. Every transaction must be carried out in accordance with the prescribed legal procedures, including through official documents, the consent of relevant parties, and registration in the land register. Without a valid registration process, such a transfer of rights does not have full legal effect against third parties. This provision demonstrates that Malaysian law places great emphasis on administrative formalities as part of the protection of property rights. In other words, ownership is determined not only by physical possession but also by formal legal recognition through registration.

The 1965 National Land Code also provides provisions regarding derivative rights over land, such as leases, charges, easements and tenancies. These rights demonstrate that legal protection is afforded not only to absolute owners, but also to parties who have specific legal relationships with the land. For example, creditors who receive land as security for a debt obtain legal protection through the mechanism of a charge, whilst long-term tenants also enjoy legal certainty based on lease provisions. This illustrates that Malaysia's land system is comprehensively structured to protect all legal interests relating to land.

Nevertheless, the implementation of the 1965 National Land Code has not been without its challenges. One of the main issues is the conflict between formal ownership and the customary rights of local communities, particularly indigenous communities who have long held the land through generations but lack formal registration documents. In many cases, customary land that is socially and historically recognised by the local community loses its protection when confronted with a formal legal system that prioritises written certificates. This situation creates a tension between legal certainty and social justice, as positive law does not always fully reflect the social realities of the community.

Furthermore, administrative bureaucracy and registration costs also pose obstacles to the protection of property rights. Not all members of the public, particularly those from economically disadvantaged groups and rural communities, have easy access to land legalisation processes. Consequently, there is still a significant amount of land that is under de facto control but has not yet been legally registered, leaving it vulnerable to disputes and seizure by third parties. In this context, the effectiveness of the 1965 National Land Code is determined not only by its normative force, but also by the public's accessibility to the legal system.

Overall, the National Land Code 1965 forms the cornerstone of land ownership protection within Malaysia's civil law system. Through the principles of the Torrens System and the indefeasibility of title, this legislation provides a high degree of legal certainty for registered owners and supports economic stability and civil relations. However, challenges regarding the recognition of customary rights, disparities in access to land registration, and conflicts between formal certainty and substantive justice indicate that the protection of property rights still requires improvement. Therefore, more inclusive land law reform is

essential so that the National Land Code 1965 not only guarantees legal certainty but is also capable of realising social justice for all sections of society in Malaysia.

C. Protection of Property Rights through Contract Law, Inheritance Law and Civil Litigation

The protection of property rights within the Malaysian civil law system is not only based on constitutional provisions and land laws, but is also reinforced through the legal mechanisms of contract law, inheritance law, and civil litigation in the courts. These three instruments have interrelated functions in safeguarding the continuity of property rights, whether in respect of movable or immovable property. In everyday life, ownership often arises, transfers, or is maintained through private legal relationships that require clear legal certainty and protection.

Contract law serves as the primary means in the process of acquiring and transferring property rights. The Contracts Act 1950 provides the legal basis for the creation of legal relationships based on the agreement of the parties. Through contracts of sale, gift, lease, loan for use, or other forms of transaction, a person may lawfully acquire or transfer rights to an object. The validity of a contract is crucial to the strength of the protection afforded to those rights, as a contract that fulfils the elements of consent, capacity, a specific subject matter, and a lawful purpose will receive full recognition under the law. Conversely, an agreement containing elements of duress, fraud, or abuse of circumstances may be voidable and give rise to a dispute over ownership[30].

In contractual relationships, protection for owners is also enshrined in the principle of pacta sunt servanda, which holds that every validly entered into agreement is binding on the parties as law. This principle ensures that a party who acquires ownership rights through a valid transaction is entitled to demand the fulfilment of obligations from the other party. For example, in a property sale, the buyer is entitled to demand delivery of the property for which payment has been made, whilst the seller is entitled to receive payment as agreed. If one party breaches the contract, the aggrieved party may seek damages, specific performance, or the rescission of the contract through legal channels.

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30 Mahmoud Fayyad, "Reconstructing Lease-to-Own Contracts : A Contemporary Approach to Islamic Banking Standards," He 9, no. 9 (2023): e19319, https://doi.org/10.1016/j.heliyon.2023.e19319.

In addition to contracts, inheritance law also plays a vital role in ensuring the continuity of ownership across generations. When a person dies, their assets must be transferred to their heirs through lawful legal mechanisms. In the Malaysian context, inheritance arrangements are complex due to the coexistence of civil law and Islamic law. For Muslim citizens, the distribution of assets follows the principles of faraid as governed by Sharia law, whilst for non-Muslims, civil law provisions apply through the Distribution Act and the applicable probate rules. This distinction creates different systems of protection in accordance with each individual's personal status[31].

Problems arise when disputes occur between heirs regarding the determination of shares, the status of joint ownership, or unilateral control over the estate. In such circumstances, the courts act as a dispute resolution body to ensure that the distribution of assets is carried out fairly and in accordance with the law. Inheritance disputes concern not only economic value but also have strong social and emotional dimensions, particularly within extended families. Therefore, legal protection in the field of inheritance must strike a balance between legal certainty and a sense of justice for all interested parties[32].

Civil proceedings are the final recourse available to defend or restore property rights in the event of a breach. Owners who feel they have been wronged may bring a claim before the courts to seek recognition of their rights, the return of property, the cessation of interference, or compensation for any losses incurred. Common types of claims include breach of contract claims, tort claims, and applications for specific relief under the Specific Relief Act 1950. Each mechanism serves a distinct purpose depending on the nature of the infringement in question[33].

Tortious acts form an important basis when property rights are infringed without any prior contractual relationship. For example, unauthorised occupation

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31 Karen Parry et al., "Institutions Influencing Plot Access and Intergenerational Land Transfer : Policy Insights from a Smallholder Irrigation Scheme in Zimbabwe ☆," *Journal of Rural Studies* 114, no. July 2024 (2025): 103576, https://doi.org/10.1016/j.jrurstud.2025.103576.

32 Fahimeh Abedi, Abbas Rajabifard, and Davood Shojaei, "Enhancing Access to Justice for Land and Property Disputes through Online Dispute Resolution and Artificial Intelligence," *Computer Law & Security Review: The International Journal of Technology Law and Practice* 59, no. September (2025): 106194, https://doi.org/10.1016/j.clsr.2025.106194.

33 Radhika Palkar et al., "Cooling Relief of Acute and Chronic Itch Requires TRPM8 Channels and Neurons," *Journal of Investigative Dermatology* 138, no. 6 (2018): 1391–99, https://doi.org/10.1016/j.jid.2017.12.025.

of land, destruction of assets, or the unlawful use of another person's property may constitute grounds for bringing a claim. In such situations, the claimant must prove the existence of a breach of rights, actual loss, and a causal link between the defendant's actions and that loss. The court's ruling may take the form of financial compensation or an order to cease the harmful actions.

The Specific Relief Act 1950 also provides additional protection through remedies such as injunctions and specific performance. An injunction is used to prevent another party from taking actions that threaten ownership, whilst specific performance can compel the fulfilment of contractual obligations where monetary compensation is deemed insufficient. In property cases, these remedies are particularly important because the value of an item is often not merely economic, but also holds strategic, historical, or emotional value that cannot be replaced by money alone[34].

Consequently, contract law, inheritance law and civil litigation form a comprehensive network of protection for property rights within the Malaysian legal system. Together, they ensure that ownership can be lawfully acquired, transferred in an orderly manner, and maintained through effective legal mechanisms. This protection demonstrates that property rights are not merely a relationship between an individual and an object, but also form part of the social order that must be upheld through legal instruments that are fair, consistent, and responsive to the needs of modern society.

IV. LEGAL CHALLENGES AND THE EFFECTIVENESS OF PROPERTY RIGHTS PROTECTION IN THE MALAYSIAN CIVIL LAW SYSTEM

A. Conflict of Jurisdiction between Civil Courts and Sharia Courts

The legal system in Malaysia is known as a plural legal system that combines elements of common law, Islamic law and customary law within a single constitutional framework. This structure gives the administration of justice a distinctive character, particularly due to the existence of two judicial institutions operating in parallel: the civil courts and the Sharia courts. Civil courts have

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[34] S Ravindra Bhat, "Innovation and Intellectual Property Rights Law — an Overview of the Indian Law," IIMB Management Review 30, no. 1 (2018): 51–61, https://doi.org/10.1016/j.iimb.2017.12.003.

general jurisdiction over civil, criminal, and administrative matters, whilst Sharia courts have jurisdiction over specific matters relating to Muslims, such as marriage, divorce, inheritance, gifts, waqf, and the division of family property. In practice, this division of powers does not always run smoothly and often gives rise to jurisdictional conflicts that have a direct impact on the protection of property rights.

Issues of jurisdiction typically arise when a property dispute involves elements of both Islamic family law and general civil law simultaneously. For example, inheritance disputes involving Muslim and non-Muslim heirs, cases concerning the religious conversion of one spouse in a mixed marriage, or disputes regarding the status of joint property following a divorce. In such situations, the question arises as to which judicial body has exclusive jurisdiction to adjudicate the case. This uncertainty often leads to protracted and inefficient proceedings, and may even result in conflicting rulings between the two judicial systems.

In the context of property rights, jurisdictional conflicts are particularly sensitive as they concern the certainty of ownership over assets such as land, houses, savings, shares, and other forms of wealth. When both civil courts and Sharia courts claim jurisdiction, the disputing parties may face serious legal uncertainty. Conversely, if the two institutions instead deny each other's jurisdiction, protection for rights holders is hindered. This situation demonstrates that the issue of jurisdiction is not merely a procedural matter, but also touches upon the substance of justice and the effectiveness of legal protection.

The Federal Constitution of Malaysia stipulates that Sharia courts have limited jurisdiction over matters of Islamic law falling within the jurisdiction of the states and apply only to Muslims. However, the distinction between religious and civil matters is often unclear. For example, in inheritance cases, determining who is entitled to receive a share of the inheritance under the law of faraid falls within the jurisdiction of the Sharia courts, but the formal transfer of ownership of land and other assets still requires validation through civil legal procedures. Consequently, the resolution process must involve two distinct systems, which frequently leads to administrative obstacles and uncertainty regarding the enforcement of rulings.

Cases of religious conversion also present a source of considerable complexity. When one spouse in a civil marriage converts to Islam, the status of the marriage, child custody, and the division of joint property often become points of contention between civil and Sharia jurisdictions. In many cases, non-Muslim spouses feel aggrieved because they do not have full access to proceedings taking place in Sharia courts, whilst the resulting rulings have a direct impact on their economic and property rights. This situation has given rise to criticism regarding the protection of human rights and the principle of equality before the law within the Malaysian legal system.

Furthermore, jurisdictional conflicts also arise in cases involving gifts, waqfs and trusts that incorporate elements of Sharia law and modern civil transactions. Assets that have been transferred through specific religious instruments may give rise to disputes when heirs or third parties challenge their validity under general civil law. Differences in principle between Islamic law and civil law regarding ownership, control, and the distribution of wealth are often a source of disputes that are difficult to resolve simply. This demonstrates that legal pluralism requires stronger institutional coordination so as not to disadvantage those seeking justice.

The role of the supreme court is crucial in interpreting the boundaries of these jurisdictions. Through various rulings, the court seeks to clarify the scope of each institution's jurisdiction to prevent overlap. However, resolving issues on a case-by-case basis has not yet been fully capable of eliminating structural problems. Many academics and legal practitioners believe that clearer legislative reform is needed to regulate the relationship between civil courts and Sharia courts, particularly in cases concerning property rights and family interests that span legal systems.

The effectiveness of property rights protection depends heavily on clarity regarding access to justice. Rights holders must know the appropriate legal forum to defend their interests without having to face protracted proceedings due to issues of exclusive jurisdiction. If the judicial system is unable to provide certainty regarding the forum, then constitutional guarantees of property rights become weak in practice. Therefore, harmonisation between the two judicial institutions is an urgent necessity so that legal protection is not hindered by institutional issues.

Overall, jurisdictional conflicts between civil courts and Sharia courts represent one of the greatest challenges to the protection of property rights in Malaysia. The dualism of the legal system, which on the one hand reflects respect for religious identity and societal pluralism, can on the other hand lead to uncertainty if not clearly regulated. The protection of property rights requires procedural certainty, consistency in rulings, and fair access for all citizens without discrimination. Thus, the resolution of jurisdictional conflicts is not merely a technical judicial matter, but also a vital part of the effort to realise a legal system that is fair, effective, and oriented towards the certainty of rights.

Table 1. Comparison of the Jurisdictions of Civil Courts and Sharia Courts in the Protection of Property Rights in Malaysia

Aspect	Civil Court	Sharia Court
Legal Basis	Federal Constitution and general civil law	Federal Constitution and state Islamic law
Scope of Jurisdiction	Civil cases, criminal cases, state administrative matters, contracts, land issues, business, and general disputes	Matters concerning Muslims such as marriage, divorce, inheritance, grants, waqf, and family property
Legal Subjects	Applicable to all citizens regardless of religion	Applicable only to Muslims
Object of Property Rights Disputes	Land, buildings, business assets, contracts, compensation, and torts	Islamic inheritance, jointly acquired property, grants, waqf, and division of Muslim family property
Forms of Protection	Breach of contract claims, tort claims, specific performance, and injunctions	Determination of faraid, distribution of inheritance, and settlement of joint property based on Islamic law
Main Issues	Overlapping jurisdiction with Sharia courts in family and inheritance matters	Jurisdictional conflicts with civil courts, especially in mixed cases
Impact on Property Rights	Provides formal legal certainty through civil judgments and legal enforcement	Provides religious legitimacy for the distribution and ownership of property
Challenges	Decisions may conflict with Sharia court rulings	Limited access for non-Muslims in cases affecting property rights

B. Legal Certainty and Protection for Vulnerable Groups in Land Ownership Disputes

Legal certainty is a fundamental element in the protection of property rights, as it provides a guarantee that every person can know, retain and enjoy their rights over the property they own without the threat of arbitrary expropriation. In the Malaysian civil law system, legal certainty is realised through constitutional provisions, land administration, contract law, and dispute resolution mechanisms in the courts. However, in practice, this certainty is not always felt equally by all sections of society. Vulnerable groups often face structural barriers that result in weak protection of property rights, even when legal norms are formally in place.

Vulnerable groups in the context of land rights disputes include indigenous peoples, women, children, economically disadvantaged groups, rural residents, and individuals who lack adequate access to the formal legal system. They are often at a disadvantage due to a lack of legal documentation, low levels of legal literacy, economic power imbalances, and a lack of representation in legal proceedings. Consequently, the protection that should be guaranteed by the state is difficult to realise in practice. This situation demonstrates that legal certainty must not be understood merely as the existence of written rules, but also as the legal system's ability to reach and protect the most vulnerable parties.

One of the main issues concerns indigenous communities who have held land for generations without formal title deeds. In many areas, customary land holds social, cultural and economic value that is vital to the survival of local communities. However, modern land administration systems tend to prioritise written evidence through official registration. When disputes arise with large companies, investors, or government development projects, indigenous communities often struggle to defend their rights because they lack the formal evidence required by positive law. Consequently, their historical and social rights are frequently overridden by stronger administrative legality.

Women are also a group that frequently faces injustice in ownership disputes, particularly in matters of inheritance, divorce, and the division of family assets. Although the law provides certain provisions regarding women's economic rights, in social practice there are often cultural barriers that affect access to ownership. In some cases, women do not receive a fair share of family

assets due to the dominance of patriarchal structures or an imbalance of power within domestic relationships. Disputes over joint property following divorce also frequently place women in a vulnerable position, particularly when domestic contributions are not recognised proportionally as part of the creation of family wealth.

Economically disadvantaged groups face distinct challenges, particularly regarding the costs of legal proceedings and access to legal aid. Many individuals who de facto hold rights to land or housing are unable to complete the legalisation process due to high administrative costs, taxes and complex bureaucratic procedures. When disputes arise, they also struggle to pay for legal representation or face lengthy litigation. In such circumstances, parties with greater financial resources tend to find it easier to retain or even seize the property rights of others through formal legal channels.

Children and those under guardianship also require special protection in the management of assets. Inherited assets that should rightfully belong to children are often managed by guardians or adult family members who do not always act in the child's best interests. Without effective legal oversight, the potential for abuse is significant, whether in the form of unilateral control or the transfer of assets without valid consent. Therefore, legal certainty in this context must be accompanied by robust oversight mechanisms from the courts and social protection agencies.

The protection of vulnerable groups is also closely linked to access to fair justice. The courts serve not only as a forum for dispute resolution, but also as a corrective mechanism against social inequality. Judges play a vital role in interpreting the law substantively, rather than focusing solely on procedural formalities. In property disputes, an overly legalistic approach may overlook the social realities faced by vulnerable groups. Conversely, an approach that considers substantive justice can provide more balanced protection in line with the very purpose of the law itself.

The state also bears a responsibility to ensure that land and civil law policies do not create social exclusion. Land legalisation programmes, the simplification of administrative procedures, free legal aid, and the recognition of the communal rights of indigenous communities are important steps in strengthening legal

protection. Without such affirmative policies, legal certainty will only be enjoyed by groups that already possess economic power and access to formal institutions.

Thus, legal certainty in the protection of property rights must be understood as a combination of legal certainty and social justice. A sound legal system is not only capable of determining who the lawful owner is according to formal documents, but is also capable of protecting those who have a legitimate social and historical connection to an asset. The protection of vulnerable groups is a key measure of the success of civil law in achieving inclusive justice. In Malaysia, this challenge demonstrates that legal reform is not sufficient at the level of norms alone, but must also address social structures and ensure genuine access to justice for all citizens.

V. CONCLUSION

The conclusions of this study indicate that the protection of property rights within the Malaysian civil law system is established through a combination of constitutional guarantees, land regulations, contract law, inheritance law, and civil litigation mechanisms. Article 13 of the Federal Constitution provides the fundamental basis that no one may be arbitrarily deprived of their property rights without legal grounds and adequate compensation. This provision is reinforced by the National Land Code 1965 through a Torrens-based land registration system that guarantees legal certainty for registered owners. Furthermore, the protection of property rights also operates through contractual relationships, the distribution of inheritance, and legal proceedings in court when rights are infringed.

However, the effectiveness of such protection still faces serious challenges, particularly jurisdictional conflicts between civil and Sharia courts, the lack of recognition of the rights of indigenous peoples, and limited access to justice for women and economically disadvantaged groups. The novelty of this research lies in its integrative approach, which links constitutional, civil law, and legal pluralism dimensions within a single comprehensive normative analysis. This research emphasises that the protection of property rights should not be understood merely as formal certainty, but must be directed towards substantive justice that is inclusive of all sections of society.

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The authors will be asked to sign this statement once the submission has been accepted.

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