Customary Land and the Indigenous People of Sabah: A Case Study of Sinumagang-Tinuman Toki

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Abstract. Customary land is a land that has been inherited from the ancestors and has been cultivated since time immemorial. Customary land is also the foundation of the life of the indigenous communities, and it is governed in accordance with their customs, known as adat. Unfortunately, the customary practices of the indigenous communities are often neglected and are not recognised by the state. This is due to opposing opinions and interpretations of customary land ownership and statutory land tenure as practised by the state. This study was mainly conducted to understand the differing perceptions, with the hope that the findings may provide an enlightenment on how these two opposing systems can be uniformized. A qualitative research method was used involving interviews with key informants from among the indigenous peoples living in Sinumagang and Tinuman Toki, Sabah, Malaysia. The preliminary findings revealed that the current state system does provide a window of opportunity to accommodate input from the customary practices of the indigenous communities to make it a part of the reformed land administration system of the state.

1. Introduction

In Sabah, Malaysia, customary land is inherited property and is often passed down from one generation to the next within the family. The ownership of customary land and the laws related to it are governed by the adat system of relevant local community. Currently, one of the most concerned issues in Sabah is the recognition of the rights of indigenous people in the traditional use of their land, property, customs, culture and beliefs [1]. The status of customary land is often disputed because of the differences in the definitions of land ownership between the adat (custom) and state law perspectives. The indigenous people have a unique trust and management system based on their adat. They have a cosmological system with regard to land management, especially in the aspects of customs and prohibitions they inherit from their ancestors. The indigenous people in this study still maintain some of these customary practices, such as certain agricultural customs, sogit (fine) and traditional hunting. They believe that these customary practices can protect them and their crops from catastrophes.

Customary land has been a source of livelihood for indigenous peoples [2], and it is one of their most important and valuable assets. Without land, their livelihood is complicated and catastrophic consequences will befall their future wellbeing. Land is at the centre of their socio-economic activities and is often associated with their farming system, conservation, forestry management and pantang larang (dos and don’ts).

In the study area, Sinumagang-Tinuman Toki, the indigenous people still practise the traditional way of farming and they depend on forest products for their daily livelihood. They stay in places that are close to virgin forests so that they can easily find forest produce such as rattan, herbs and edible animals. If their customary lands were to be seized by individuals or organizations, the life of the indigenous people would be completely affected both socially and economically. The indigenous peoples in the study area have sought to obtain legitimate ownership rights through customary law but the government keeps insisting that they must follow the procedures set by the Sabah Land Ordinance (Sabah Cap. 68), 1930.
In order to understand the depth of the customary practices of the indigenous communities, it is pertinent to understand the cosmological nature and belief systems of the indigenous communities. This can be easily understood through studying the way of life of a particular community such as the indigenous Kadazandusuns. Knowledge that is built on understanding the Kadazandusun community or through Kadazandusunology will pave the way to understanding the adat system practised by the indigenous communities. Kadazandusunology is strongly bound to the cosmological culture. Kadazandusunology, according to Benedict Topin [3], is the beliefs, culture, justice, spirituality and customs of the Kadazandusun people. Once people understand the Kadazandusuns, they will have no problem communicating with them even in different languages. This research was carried out in the study area using an in-depth interview to understanding of the subject matter. The study area that was chosen has four communities residing in four villages, as described in the following sections (Table 1).

Figure 1 shows the study area, which consists of four villages, namely Kampung Moingob, Kampung Sinalapak, Kampung Bongol and Kampung Rungus Nahaba. In between these four villages is a vast virgin forest called Sinumagang-Tinuman Toki. Sinumagang refers to a series of mountain ranges, while Tinuman-Toki refers to several interconnected river systems located between these villages.

![Figure 1. Map of Sinumagang and Tinuman-Toki Areas](image)

**Table 1.** Coordinates of each study area

| Village               | Coordinates                  |
|----------------------|------------------------------|
| Kampung Bongol       | Latitude : 6.110945° Longitude : 116.414500° |
| Kampung Moingob      | Latitude : 6.107564° Longitude : 116.367409° |
| Kampung Rungus Nahaba| Latitude : 6.046749° Longitude : 116.394910° |
| Kampung Moingob      | Latitude : 6.051495° Longitude : 116.366505° |

The four villages are located halfway between Kota Kinabalu and Ranau, and it will take about 1 hour and 30 minutes to drive there from the city of Kota Kinabalu. The distance between each village is about 10 km but due to the rugged terrain and physical conditions, it takes approximately 10 hours to
reach to each village by jungle trekking. The basic amenities available in this study area are electricity, water supply, gravity water supply, a primary school, a place of worship, cemetery, community hall and small grocery store. The study area was chosen as the cosmological elements of understanding related to the land and customary practices are present here.

2. Methods
This study employed a qualitative method through in-depth interviews with people with knowledge concerning land issues among the indigenous people of Sabah. Two groups of key informants were selected. The first group comprised those selected from among the native communities, while the second group of people was from the state, especially state departments that deal directly with land matters. The purpose of interviewing these key informants was to collect information from members of the opposing sides who have first-hand knowledge about land ownership and other related land matters.

3. Results and Discussions
The main purpose of this research was to provide a better understanding of the land ownership system based on adat and the land ownership system based on the definition of the state.

3.1 Understanding Land Ownership System Based On Adat
The land ownership system of the indigenous people is embedded in their traditional belief systems and way of life. Their property and everything they own, including land, are subject to the rules and regulations established by their belief systems, which have been translated into adat. By extension, the adat has become the regulations that are generally accepted as behavioural guidelines for the indigenous communities.

The indigenous people in the study areas are mostly Kadazandusuns, also known as Kadazans or Dusuns. According to the elders, (Lumpisau Gompion, 89 years old and Gondilong Tungkang, 86 years old), the basic founder and caretaker of the communities is the Minamangun (God/the creator). Minamangun is also known by different names and is closely connected to Nabalu (Mount Kinabalu). They also believe that besides Minamangun, there are other spirits, including good and bad ones. During the fieldwork, it was revealed that some villagers still practise animism, but the majority of them have converted to modern religions, either Christianity or Islam. Those who still practise animism are often called Pagan and comprise mostly the elderly. One of the traditional ceremonies practised by the elderly is momurinait (ritual poetry), which is led by the bobolian (woman religious priest). Various chants and prayers are recited during the performance of ceremonial rituals, normally carried out by the bobolian. One of the ceremonies performed is morobuat (the process of planting paddy), which is associated with getting supplies and food for the family. They believe that the paddy has its own spirit, which they call bambarayon [5], and it is this spirit that cares for their paddy fields. Usually, before the indigenous people start to plant their paddy, they hold a ritual called popoguli (returning), which involves a sacrificial animal, usually a chicken. The blood of the animal is often mixed with a little water and then, the mixture is poured into a container with paddy in it. In association with this ritual, the elderly people also keep a collection of materials symbolising good omens called ‘Kemburongoh’ (Figure 2).

Another practice to ensure blessings for a good return of food and supplies for the family is called ‘laluan rayau’ or ‘laluan tradisional’, which is normally associated with the paths for hunting and farming. The indigenous people will usually follow a ritual involving the reading of poetry when walking along these paths. According to Madam Gondilong (one of the elders who still believes in Pagan), it is important to recite this ritual poetry to avoid getting lost in the jungle or being disturbed by a bad spirit. There are certain rules that must be obeyed, such as not saying bad things, when taking these paths.
Even though most of the people in the study area have converted to modern religions, they still practise part of the *adat* system called *sogit*. When someone commits a sin or is found guilty of doing something, he/she will have to pay the ‘*sogit*’ (fine). The amount of *sogit* is proportionate to the type and severity of the offence committed. Usually, the fine will be paid to the chief and villagers in the form of animals such as chickens, goats or buffaloes, which are carefully selected based on the type of offence committed. The fine is determined after the trial by customary law. After the offender has paid the fine, he/she will move to the next level, which is sacrificing the fine and offering it to all the villagers. The indigenous people believe that after sacrificing the *sogit* in the form of animals, ‘*Minamangun*’ (God) will forgive them and disaster or bad omens can be avoided. In the same token, for offences such as exceeding the boundary mark of someone’s land when cultivating, the guilty party will need to pay the *sogit* by giving some of his crops to the owner.

**Table 2.** Types of observances (*pantang*) that are still practised by indigenous people

| No. | Type of pantang (observances)                                      |
|-----|-------------------------------------------------------------------|
| 1.  | Pantang Morobuat (Respect for farming rites)                      |
| 2.  | Pantang Kodupatan (Respect for wild life/animals spirit)          |
| 3.  | Pantang Kosunduan (Respect for assigned divinities & spirit)      |
| 4.  | Pantang Kosongonuan (Respect for ownership)                       |
| 5.  | Pantang Kotolunan (Respect for forest/plants spirit)             |
| 6.  | Pantang Pisasawaan/Piangayan (Respect for marriage)              |

Source: Fieldwork Interviews

The *adat* system covers some dos and don’ts or *pantang*, which must be appropriately observed or obeyed. There are a few examples of such observances (*pantang*) that the indigenous people still practise.
until today. These are necessary for disciplining their way of life and in managing their cultural and natural resources. This was revealed especially during an interview with the indigenous people in the study area. Table 2 provides some examples of these observances.

Ownership of land through customary practices is based on the adat system of the native people. To qualify as landowners, they must meet certain conditions such as they must have been cultivators of the said land for years, and planted temporary and permanent crops. According to Wood and Moser (1958), even though, some of the indigenous people have left their hometowns, they still know where their land is or they can ask the elders or the head villagers to locate the land for them. The land they once cultivated and the trees on it still belong to them even though they are no longer living permanently in the village [6].

A similar view was advanced by Creagh in 1889, when he introduced 7 mechanisms for determining the type of land to which natives can assert claims [7]. These are:

(i) land under cultivation or land being used for housing;
(ii) land planted with fruit trees at the rate of twenty or more per acre;
(iii) isolated fruit trees, if enclosed by a fence;
(iv) grazing land stocked with animals;
(v) wet and dry paddy land, so long as it was cultivated for at least three years prior to registration;
(vi) burial grounds; and (vii) rights of way.

3.2 Understanding Land Ownership System Based on State Definition

The Lands and Surveys Department of Sabah has the authority to issue land titles on behalf of the Sabah State Government. The land tenure system that is being practised here is a modified Torrens system. All land titles are prescribed with specific terms and conditions aimed at providing a balance between development and conservation. However, the lack of local input and a lack of transparency on the part of the state in land dealings have become a source of contemporary conflict [8]. In order to understand this conflict, it is necessary to look at the system of land titles and its implications, especially for indigenous communities.

Under the Sabah Land Ordinance, 1930, land is registered under various categories: NT for Native Title, FR for Field Register, CL for Country Lease and PL for Provisional Lease. These categorizations are deemed to protect the interests of the natives of Sabah, as NT and FR lands can only be owned by natives in perpetuity, whereas CL and PL lands can be leased by others for a period of 99 years. However, the rights of the natives over NT and FR lands are not absolute as those titles can be acquired by the government for cash compensation based on the government’s valuation of the land and the crops on the land. Lately, several sections of the Sabah Land Ordinance, 1930 that deal with native land have been amended without any consultation with the natives. In 1989, for example, this ordinance was amended to allow NT and FR lands to be leased to non-natives for a maximum of 99 years; this period was later shortened to 30 years. A further amendment in 1995 authorized the use of NT and FR lands for commercial purposes or for uses other than originally intended.

Section 15 of the Sabah Land Ordinance, 1930 spells out the conditions under which indigenous peoples can claim Native Customary Rights (NCR). Section 15(a), for example, gives detailed criteria for the establishment of NCR over a plot of land. These provisions appear to protect various rights of Sabah’s native communities; however, if one examines the ordinance closely, there are a number of drawbacks, as outlined in the following section.

Firstly, the indigenous ‘fallow land’ system [9] is not properly addressed. Under Section 15, land must be continuously occupied and cultivated for three or more consecutive years. Under the indigenous fallow system, land must be left idle for at least eight years or so in order to accumulate the nutrients of the forest biomass and shade out weed species [10]. Thus, a fallow system is not covered under any section of the ordinance and so Native Customary Rights [11] and indigenous access rights to land [12]
are not adequately addressed under the current legislation. As a result, in the states of Sabah and Sarawak, lands under the indigenous domain and NCR are often converted into large-scale oil palm plantations. These plantation companies are privately owned and are often linked to the elite in the state [13]. In short, the Sabah Land Ordinance, 1930 must clearly define Native Customary Rights in order to safeguard the interests of the indigenous communities.

Secondly, Section 13 of the Sabah Land Ordinance, 1930 is aimed at protecting indigenous land from being alienated to ‘others’ and requires all land applications to be displayed, normally for about 30 days, so that objections can be lodged. If no objections have been received during this period, the land can be alienated and awarded to the applicant(s). Unfortunately, this section does not specify the manner in which the notice is to be posted. Although the Forest Enactment clearly provides for notices to be posted to the communities as to where a forest reserve is to be gazetted in order to allow for objections, this procedure is not generally followed [14]. Very often, indigenous communities are not aware that their native customary land has been included in a forest reserve or alienated to others until the companies come to extract the trees.

Thirdly, Native Customary Rights (NCR) are not taken into consideration in the alienation of land for plantations. About 12 percent of the total area of Sabah has been reserved for government statutory bodies such as the Sabah Forestry Department (SAFODA), Sabah Forest Industry (SFI), Sabah Land Development Board (SLDB) and Federal Land Development Authority (FELDA) for commercial *acacia mangium*, oil palm and cocoa plantations. Land is alienated to these agencies through gazette notifications under Section 28 of the Sabah Land Ordinance, 1930. People are neither notified nor are their objections considered as the government treats all untitled land as state land. In other cases, lands that were initially alienated to government agencies for ‘public purposes’, were later converted to private use [15]. For example, the Sabah Forest Industry (SFI) was a government-owned company and therefore, it was within the discretion of the state to allocate land for the purposes of the SFI. However, when the SFI was privatised in 1994, the 288,623 hectares of land previously alienated under Section 28 of the Sabah Land Ordinance, 1930 became the property of a private company. Most of these lands belong to the indigenous Lundayehs in the Sipitang District, but by virtue of Section 28, these lands have now been transferred to a private company [14]. As a result, the indigenous Lundayehs, who previously used the land for hunting and gathering, are now prevented from entering these areas. Land management and land legislation in the state of Sabah need to be revived to allow native customary land to be recognized and defined according to the terms agreed to by the state and indigenous communities.

The recognition of the *adat* system is currently confined to customs and traditions. Matters related to land and natural resources are excluded and are decided at the discretion of the state government. For the indigenous communities, the practice of managing land and natural resources is closely tied to the *adat* system [16], whereas for the state, land management is strictly under the provisions of state laws and regulations.

The findings of this research also revealed that the land administration system in Sabah has been implemented without due consideration for local interests and the historical background of the indigenous land use system. It is clear that national interests must be respected within the state land management system. On the other hand, there is no clear indication as to how the indigenous peoples’ land use and practices can be allowed and respected under the current system. The only means of doing this is under Section 15 of the Sabah Land Ordinance, 1930, which permits claims under Native Customary Rights. However, Section 15 is subject to abuse and does not properly address all indigenous land use practices.

4. Conclusion
This paper provided a brief overview of the land ownership system from the perspective of the state and the indigenous peoples. It is clear that the indigenous peoples’ contributions in shaping the policies of the land ownership system have not been properly addressed. The ideas presented here may be useful as
reference points for the state land office to mediate in land ownership disputes between the indigenous communities and the state agencies. Besides that, these findings are also useful for the indigenous communities to gain an understanding of how the government’s land administration works are applied. For future study on this field, researcher should understand how the law and adat works. Limitation of this research are language that the informant used. The informant use their mother tongue language which is Bahasa Dusun and some of the word are hard to understand. In addition, the distance of each village is quiet far.

It is evident that the indigenous people are heavily dependent on customary land as the land is their source of livelihood. The loss of their customary land will affect the entire life of the community. Although the cultural cosmology system of the indigenous people is not being consistently carried out due to their own religious beliefs, it is necessary for it to be documented because the cultural cosmology of this society has been almost forgotten by the new generation.

It is pertinent to note here that the kadazandusunology of the indigenous people is very important for their community because it is one of the ways in which they interact with the environment that they have lived in since time immemorial. In addition, the rights of the indigenous people should be respected and their customary adat should be considered as part of the conditions in the land ownership process because the indigenous people are the ones who know their land and the environment.

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