



REVISITING THE DEFINITION OF NATIVE OF SABAH: A DOCTRINAL STUDY

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ABSTRACT:

Recently, there are claims by certain ethnic groups to be recognised as “natives” of Sabah. Such claims have turned into polemics. Many benefits accrue to those listed as natives such as land ownership are abused. It is timely for the definition of “Native of Sabah” to be revisited. This article deploys a doctrinal legal methodology which is commonly used by the legal fraternity. The researchers have thoroughly examined the three main legislation, namely, the Federal Constitution of Malaysia, the State Constitution of Sabah and the Interpretation (Definition of Native) Ordinance 1952 (Sabah Cap 64). Several issues are underlying the lack of having a clear definition of the natives of Sabah. The findings show that general interpretation, taking advantage of the loophole in the definitions has led non-natives to claim native status. In addition, there are also accompanying challenges with regards to jurisdiction of the court in deciding native status as well as the unclear provision of law pertaining to the onus of proving native status. It is understood that the challenges in defining the native are a daunting task; however, the abovementioned legislation needs to be carefully revised so that the rights and protective laws meant for Sabah’s Natives are safeguarded. This article suggests several recommendations warrant for consideration such as amendments to the existing ordinance, taking into account the definition put forward by the UNDRIP coupled with a referendum to obtain the views of Sabahans at large.

KEYWORDS: *Native of Sabah, Indigenious, Constitution, Statutes, Doctrinal study*

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1.0 INTRODUCTION

The Federation of Malaysia consists of thirteen states and three Federal Territories of Kuala Lumpur, Putrajaya and Labuan respectively and it has a total landmass of 329,847 square kilometres. Peninsular Malaysia is separated (by the South China Sea) from Borneo, where the states of Sabah and Sarawak of

Malaysia are located. The Borneo states of Malaysia shares land and maritime borders with Brunei Darussalam and the Republic of Indonesia, as shown in Figure 1 below. Looking back in history, the states of Sabah together with Sarawak were once part of the kingdom of Brunei until the 16th century.



The indigenous people of Malaysia can be found in most of the states of Peninsular Malaysia, as well as in the Malaysian Borneo states of Sabah and Sarawak. The terms used in the Malaysian statutes and Federal Constitution to represent indigenous peoples are 'Orang Asli' and 'natives'. This arises because the Federal Constitution of Malaysia has categorised the population according to explicit ethnic groups, such as the Malays, Chinese, Indians, and the Orang Asli and the natives in Sabah and Sarawak. Based on this categorisation, the Constitution stipulates rights and privileges that are attached to the different races. The term 'Orang Asli' refers to the indigenous peoples in Peninsular Malaysia, while 'natives' refers to the indigenous peoples in Sabah and Sarawak

Sabah is the second largest state in Malaysia, covering an area of over 74,000 sq. km. Sabah's population is 3,206,742 as of the 2010 Census and it is made up of an estimated 60 different

ethnic groups, speaking over 80 different languages and dialects, with varying belief systems, customs and law (Pugh-Kitingan, et al.,2018). The different indigenous ethnic groups are known as natives or *Anak Negeri* and constitute 61.22% of the population of Sabah (Department of Statistics Malaysia, 2010). The main groups are the various Dusunic, Murutic, Paitanic and Bajau groups, as well as the Ida'an/Bega'ak/Subpan, the Bonggi of Banggi Island and others. Archaeological and linguistics research indicates that peoples speaking languages from the Dusunic, Murutic and Paitanic Families of Austronesian Languages have inhabited northern Borneo for at least 6,000 years, while ongoing genetics research suggests they have been present for a much longer period (Harrisson & Harrisson 1971; King & King 1984; Yew et al. 2018). This paper, however, focuses on the legal definition of 'natives' of Sabah.



Figure 1: Map of Malaysia

The natives of Sabah (formerly referred to as North Borneo) have been governed by their *adat* (customs) and customary laws long before the North Borneo Company administration in 1881. During the Company rule, the

then government introduced laws which recognised the customary land rights and customary law of the natives of Sabah. The natives of North Borneo, as it was then known, used a system of land tenure, which the British



accepted. Although their possession had always been honoured and great measures had been taken to protect them, there was no native title to land in a documentary form (Singh 1981; Tregonning 1958; Juprin Wong-Adamal, 1998; Doolittle, 2001; Azizah Mat Enh & Salbiya Jamaluddin, 2020). The rights and privileges of the natives in both Sabah and Sarawak are guaranteed in the Federal Constitution of the Federation of Malaysia and the State's constitution respectively, which will be discussed in turn.

Those who are listed as natives have numerous privileges, including land ownership and the opportunity to claim certain properties under native customary rights. Under state law, Sabah natives have the right to Native Customary Rights (NCR) land and enjoy the privilege of applying for native titled (NT) lands. The Sabah Land Ordinance recognises NCR, however, it is not automatic that the occupiers of the lands will be granted such rights. The Sabah Land Ordinance requires natives to lay their claim to NCR on the land, with the existence of such rights being determined by the Collector of Land Revenue or an Assistant Collector appointed under the said Ordinance. Thus, a person must be able to prove that he is a native of Sabah in order to enjoy such rights.

There are many concerns about the tendency of non-natives in getting documents easily and illegally that allowed them to qualify as indigenous people. The often-cited case of this instance is the case of *Datuk Syed Kechik Bin Syed Mohamed v*

Government of Malaysia & Anor [1978] 1 MLRA. In this case, Syed Kechik was born in Kelantan and hence by virtue of that should be a Kelantanese, had nonetheless gained a native status due to political ties. A non-native Sabahan can only possess country lease lands, whereas a native Sabahan can apply for native title lands, which are generally used for agriculture. There are many cases involving falsified or fraudulent Certificate of Anak Negeri (NST, 1/2/2016). Anak Negeri or natives are those who are indigenous to Sabah. As the number of natives is increasing over the year, while the size of the land is the same or decreasing of NT lands, there are many disputes related to land matters. Land disputes may arise in various forms, such dishonest family member(s) swindle land from their own family or mala fide alienation of native lands to others and/or companies, particularly large-scale resource extraction and the plantations of private companies and state agencies (*Sudi Kembang Sdn Bhd v. Alfeus Yahsu & Anor; Assistant Collector of Land Revenues, Beluran & Ors*, 2014, High Court)

2.0 OBJECTIVE AND RATIONALE

As earlier mentioned, there are many privileges attached to being recognised as 'natives' of Sabah. Therefore, it is pertinent to have a clear definition as to who is a native of Sabah. Without a clear definition of "who is the native of Sabah", the natives of Sabah will lose their rights especially land rights. Some of them might be



exploited/manipulated/ cheated. Thus, the main aim of this article is to revisit the definition of "native" of Sabah based on the doctrinal study. The study will analyse whether the existing definition is sufficient in defining the 'natives' of Sabah.

Of late, the need to provide a succinct definition of who is the native of Sabah has become even more crucial. This is due to never-ending debates with regards to repercussions of the influx of illegal immigrants coming into Sabah over the past decades. One of the points raised was the fear that those foreigners may have the chance to become the citizens of Sabah and eventually may become natives themselves through unscrupulous means (Wan Shawaluddin Wan Hassan & Ramli Dollah, 2011). The term 'Sabah Inland Foreigners' or the phrase 'citizens who are foreigners' are often raised in the discourse and this has inevitably led to some feelings of discomfort amongst the natives.

Another point of concern is the issue of identity. For Sabahans, being the natives of Sabah is a crucial identity and for that reason, there has to be a clear legal framework that would provide the basis of identification on who is a native of Sabah. In the past, there was one particular measure taken during the State Census and it was alleged that such action may have jeopardised the identity of Sabah natives (Zawawi Ibrahim, 2012). The measure in question was the introduction of one category named as '*Peribumi*' during the 1980 State Census and that category seemed to have included not only ethnic groups

such as *Kadazans*, *Muruts* dan *Bajaus* but also all Sabahans of Malay stock such as Filipinos, Indonesians, natives of Sarawak and the Cocos Islands (Ongkili, 2003). Although this may be a thing of the past; but encompassing categorisation like this should be avoided in the future. Thus, all these warrants for an unclouded definition of "who is the native of Sabah".

3.0 METHODOLOGY

The methodology used to write this paper is termed as doctrinal legal research. The word "doctrine" comes from the Latin word "doctrina," which meaning "education, knowledge, or learning" (Hutchinson and Duncan, 2012). In the legal field, doctrinal legal research is a well-established traditional genre of research. Any systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, topics, or questions, or a combination thereof, is referred to as doctrinal study. It is an addition to existing knowledge, or refute something into existing knowledge. It is also known as "black-letter law". It is used by judges, lawyers and law academics.

A doctrinal study is a research that looks at the legal concepts and principles in a variety of cases, statutes, and rules. It includes a study of legal theory and how it has been developed and applied. It also involves any systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal difficulties, and issues (Anwarul Yaqin: 2007).



Thus, it entails a methodical examination of legislative provisions and legal principles, legal arguments and court precedents, as well as other traditional legal documents like parliamentary debates, which disclose the legislative intent, policy, and history of the rule or doctrine (Ali, 2017). Despite the fact that data can be gathered from both primary and secondary sources, doctrinal research never deals with primary data from surveys, field studies, or other empirical methods (Jain, 1982; Anwarul Yaqin, 2007). The doctrinal researcher examines secondary data from reliable sources that has previously been gathered and analysed by others and legal documents such as statutes, precedents, and other legal documents, in order to verify the legal argument and establish a conclusion (Jain, 1982; Vibhute

and Aynalem, 2009; Hutchinson, 2018; Kharel, 2018).

To determine the definition of “native of Sabah”, the researchers have thoroughly examined the primary sources namely the Federal Constitution of Malaysia, the State Constitution of Sabah and the Interpretation (Definition of Native) Ordinance 1952 (Sabah Cap 64). The researchers rely upon the legal database known as CLJlaw.com to find supporting cases and legal articles. From the legal perspective, the cases and legal articles are categorized as secondary sources. Only selected decisions from the superior courts of Malaysia are reported in CLJlaw.com. In solving a specific legal problem by using a doctrinal legal research methodology, as described by Hutchinson and Duncan (2012) normally includes the following steps:

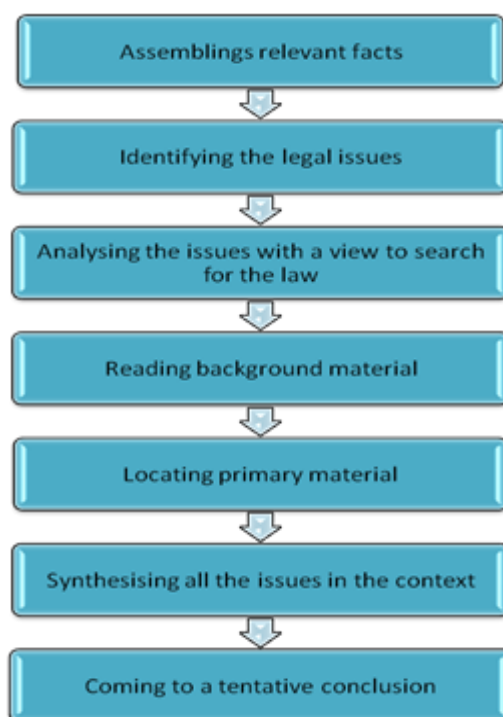


Figure 2: Process of doctrinal legal research methodology



(Source: Hutchinson & Duncan 2012)

4.0 DISCUSSION

To determine the definition of “native of Sabah”, the researchers have thoroughly examined the primary sources namely the Federal Constitution of Malaysia, the State Constitution of Sabah and Interpretation (Definition of Native) Ordinance 1952 (Sabah Cap 64).

The Federal Constitution of the Federation of Malaysia is the highest law in the Federation. Article 161A (6) provides that the term “native” means—

- (a) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as indigenous to the State or is of mixed blood deriving exclusively from those races; and
- (b) in relation to Sabah, a person who is a citizen, is the child or grandchild of a person of a race indigenous to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a father domiciled in Sabah at the time of the birth.

According to Clause (7), the races to be treated for the purposes of the definition of “native” in Clause (6a) as indigenous to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabits, Kayans, Kenyahs (including Sabups and Sipengs), Kajangs (including Sekapans, Kejamans, Lahanans, Punans, Tanjongs and Kanowits), Lugats, Lisums, Malays, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits. However, there is no similar provision for the purpose of the definition of “native”

in Clause (6b) as indigenous to Sabah.

Article 41(10) of the State Constitution of Sabah also defines the word “native” and includes citizenship as one of the requirements of such a definition. “Native” means a person who is a citizen, is the child or grandchild of a person indigenous to the State, and was born (whether on or after Malaysia Day or not) either in the state or to a father domiciled in the State at the time of birth”. It is noted that the provisions in the Federal Constitution and the State Constitution are word for word the same except for the word “State”, the word “Sabah” is used in the definition in the Federal Constitution. Both Constitutions, however, do not define the term “indigenous”. In addition, both definitions of ‘native’ in the Federal Constitution and State Constitution are specifically confined to the relevant Articles and do not extend to other purposes.

As far as the definition of native for the state of Sabah is concerned, the Interpretation (Definition of Native) Ordinance (Sabah Cap. 64), Section 2(1) provides:

- (a) any person both of whose parents are or were members of a people indigenous to Sabah; or
- (b) any person ordinarily resident in Sabah and being and living as a member of a native community, one at least of whose parents or ancestors is or was a native within the meaning of paragraph (a) hereof; or
- (c) any person who is ordinarily resident in Sabah, is a member of the Suluk, Kagayan, Simonol, Sibutu or Ubian people or of a people indigenous to the



State of Sarawak or the State of Brunei, has lived as and been a member of the native community as well as borne good character for 3 years preceding to the date claiming to be native, and applicant's stay is not limited under the Immigration Act 1959/63;

Provided that if one of such person's parents is or was a member of any such people and either lives or if deceased is buried or reputed to be buried in Sabah, then the qualifying period shall be reduced to 2 years; or

(d) any person who is an indigenous to Republic of Indonesia, the Sulu group of islands in the Philippines, the States of Malaya and the Republic of Singapore, has lived and been a member of the native community as well as borne good character for 5 years preceding to the date claiming to be native, and applicant's stay is not limited under the Immigration Act 1959/63.

Under section 3(1) of the Interpretation (Definition of Native) Ordinance (Sabah Cap. 64), *any person claiming to be a native may apply to a Native Court established under the Native Courts Enactment, 1992 and having jurisdiction in the area in which such person resides to declare –*

(a) that such person is recognised by native law and custom as the parent or child, as the case may be, of any other person; or

(b) that such person is a member of a native community, has so lived during any stated period, and while so living has borne a good character; or

(c) that such person is a member of a people named in paragraphs (c) or of subsection (1) of section 2; or

(d) that a parent of such person is or was a member of a people named in paragraph (c) of subsection (1) of section 2 and living, or if deceased is buried or reputed to be buried, in Sabah.

In other words, apart from those persons (both of whose parents

are or were members of a people indigenous to Sabah) who are automatically natives by virtue of the definition under section 2(1)(a) of the said Ordinance, the persons falling under the definitions in paragraphs (b), (c) and (d) of section 2(1) are not automatically natives unless they satisfy the requirements under the respective paragraphs and obtain a declaration from the Native Court to that effect (*Surat Anak Negeri*). Here, the provisions under section 2 of the said Ordinance have been drafted and worded in those terms because the Ordinance was enacted in 1952 when Sabah was still a colony of the British Crown and the concept of citizenship has not yet been introduced into the State. The Immigration restrictions were only introduced in 1963. Hence, it is timely to revisit the above provisions and an amendment to the said provisions is hereby critical.

Under section 2(2) of the said Ordinance, it is provided that the definition of "native" set out in subsection (1) hereof-

(a) "ancestor" means progenitor in the direct line other than a parent;

(b) "native community" means any group or body of persons the majority of whom are natives within the meaning of paragraph (a) of subsection (1) and who live under the jurisdiction of a Local Authority established under the provisions of the Rural Government Ordinance* [Cap. 132.] or of a Native Chief or Headman appointed under the provisions of that Ordinance;

(c) "parent" includes any person recognised as a parent under native law or custom.

However, it should be noted that under section 2(3) of the said Ordinance, *no claim by any person to be a native by virtue of the provisions of paragraphs (b), (c) and (d) of subsection (1) shall be recognised as valid unless supported by an appropriate declaration made by a Native Court under section 3.* Hence, the above provisions in section 2 must be read together with the provisions enunciated in section 3 of the said Ordinance.

Section 3(2) of the said Ordinance provides that *subject to the provision of subsection (3) of this section, any Native Court referred to in subsection (1) to whom an application is properly made under such subsection shall have exclusive jurisdiction to entertain and determine any such application and to make such declaration as the case requires.*

Section 3(3) provides that *any declaration of any Native Court made in the exercise of the jurisdiction conferred upon it by subsection (2) shall be subject to review and scrutiny by, and appeal to the District Officer or a Board of officers appointed by the Yang di-Pertua Negeri for the purpose.*

According to section 3(4) of the said Ordinance, *the final decision on any application made under subsection (1) shall be conclusive evidence for all purposes in respect of the matter or matters to which it relates.*

The definition in the above Ordinance leads to two main issues. Firstly, the Ordinance explicitly mentioned five ethnic groups as natives: the Suluk, Kagayan, Simonol, Sibutu and Ubian, all of whom are to be found mainly on

east coast areas. What about other ethnic groups? Secondly, there is no cut-off point in Section 2(1)(a) and (b).

The first issue must be seen in the proper light as the definition of 'native' in the State Ordinance is far from clear. The Kadazan-Dusun, Murut, Bajau, Bisaya, Rungus, Lotud, and many other ethnic groups are currently grouped together in two sub-clauses of the Interpretation Ordinance, although their names are not specified. The Kadazan-Dusun and Murut peoples have particularly urged that their ethnic group be included in the definition of native.

As there is no definition of ethnic groups indigenous to Sabah in the Constitution of Sabah, there are claims from various ethnic groups that they should be considered as natives or indigenous people of Sabah. During a Royal Commission of Inquiry (RCI) into illegal immigrants in 2013, a Suluk community leader, Datu Akjan Datu Ali Muhammad, stated that the Suluk's inclusion in the Ordinance proved that they are first-class natives in Sabah (Suhakam, 2013). The Bugis have recently demanded that they be recognised as natives under the Ordinance (Anna Vivienne, 2019).

The problem is the current Interpretation (Definition of Native) is too general and many said there should be a list of Sabah natives, as in Clause (7) which provides the races to be treated for the purposes of the definition of "native" in Clause (6) as indigenous to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabits, Kayans, Kenyahs (including Sabups and Sipengs), Kajangs (including Sekapans, Kejamans, Lahanans, Punans, Tanjongs and Kanowits), Lugats,



Lisums, Malays, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits.

Another point of concern is the absence of the word 'citizen' as part of the definition of Sabah natives provided in the Interpretation (Definition of Native) Ordinance (Sabah Cap. 64). Although Article 161(A)(6) of the Federal Constitution and Article 41(10) of the State Constitution of Sabah include citizenship as one of the requirements of such a definition, such omission in section 2(1) of the Interpretation (Definition of Native) Ordinance (Sabah Cap. 64) is something that is a misnomer and at odd with the definition of Sabah Natives as stipulated in both Federal Constitution and State Constitution of Sabah. However, the absence of the word 'citizen' in the Sabah ordinance was a cause of concern raised by Shad Saleem Faruqi as he pointed out that such situation could allow foreigner to claim native status (Santos, 2019). It is clear that under the said constitutions, citizenship stands as the first prerequisite in the sense that one cannot be a Sabah native unless one is a citizen of Malaysia. The reason for such absence may be due to the fact that the said section 2(1) have been drafted and worded in those terms because when the Ordinance was enacted in 1952, Sabah was still a colony of the British Crown and the concept of citizenship has not been introduced into the State.

Another point to consider is on the jurisdiction and power of the Native Court to make a declaration that a person is a native upon application under section 3(1) of the Ordinance. The loopholes in the Ordinance have seen many non-natives claiming 'native status' as

discussed by Ramy Bulan (2005). Several cases have been decided by the Sabah Native Court on the question of native status. In *Liew Siew Yin v District Officer, Jesselton* (Native Court Appeal No. 2 of 1959), the applicant was of Chinese and Dusun parentage. The applicant's father failed to justify a claim of having lived as a member of the native community because he was not resident in the community; he had married according to Chinese custom; his children bore Chinese names; and, he had never paid door tax in the village. On the other hand, in the case of *Ong Seng Kee v District Officer, Inanam* (Native Court of Appeal No 28 of 1959), the local native officials vouched that the applicants had always been considered members of the native community in their eyes. Thus, the applicant was successful though that his children were given Chinese names and attended Chinese schools. Such discrepancy may lead to a confusion in an application for declaration as a native.

The law has also placed the onus upon the person who claims that he/she is a native of Sabah to substantiate the claim. In the High Court decision of *Masbaka Bin Hj Hassan & Ors v. The Government of Malaysia & Ors* [2010] MLJU 1632. it was held that neither the Interpretation (Definition of Native) Ordinance nor the Constitution of Sabah defines what is meant by "people indigenous to Sabah." The Plaintiffs claimed to be ethnically Sabah natives and filed a lawsuit against the Defendants for demolishing their homes on state land. The court found that none of the Plaintiffs testified that both of their parents are or were members of a people indigenous of Sabah.



Hence, a person is not defined as a native under paragraph (a) if just one parent is or was a member of a Sabah indigenous people. Plaintiffs have the burden of proving that they are natives of Sabah in conformity with Sabah's laws. Under section 2(1)(a) of the Interpretation (Definition of Native) Ordinance, they have failed to do so.

In the case of *Julita Tinggal v Kwan Ah Hee (deceased) and Ors* [2020] 3 CLJ 712. the applicant filed an application for judicial review and certiorari to quash the decision of Native Court of Appeal (NCA). In 1979, the second and third respondents replied to Kota Kinabalu District Native Court (DNC) to be declared as natives of Sabah under section 3(2) of the Interpretation (Definition of Native) Ordinance 1952 (Sabah Cap 64). Their applications were granted by DNC. In 1992, the respondents bought 46 parcels of native land title from 46 landowners. In 2001, land titles were issued to the landowners. Unknown to the respondents, the landowners sold the lands to a third party who subsequently sold to a non-native by the name of Vun Yun Law, who caused the lands to be registered in the name of his sister-in-law, the applicant. In 2005, the applicant sold the lands to one Hiew Kon Fah who commenced an action against the respondents at the High Court to recover the possession of the land. The respondents' status as natives were challenged, thus the purchase of the lands by respondents were invalid. However, the High Court dismissed the applicant's claim on the ground that the High was not a proper forum to challenge the validity of native certificates. The applicant then applied to DNC to revise the

decision of DNC in 1979 in issuing the native certificates to the respondents. DNC concluded that the native certificates were forged and invalid, thus ordered the respondents to surrender the certificates. The respondents appealed to the Native Court of Appeal (NCA) comprising of Judicial Commissioner of the High Court (JC) and two Native Chiefs. The two Native chiefs concurred that the appeal should be dismissed on the ground that DNC has the jurisdiction to review and the authenticity of the native certificates was highly doubtful. However, the JC, in a dissenting judgment allowed the appeal and set aside DNC's order which was then recorded as the final decision of the appeal. The applicant filed for the judicial review that the JC has erred in his decision and prayed for certiorari order to quash the NCA's decision. The High Court has allowed the appeal on the ground that the decision should be based upon the majority.

The High Court's decision in the case of *Julita* emphasises the jurisdiction of DNC to review every Native Court's proceedings to ensure the correctness, legality or propriety of any order recorded. *Julita's* case is expected to open the gate for more review on the legality of native certificates. However, it must be forewarned that the High Court's decision might be overruled by the Court of Appeal due to the application of the *doctrine of stare decisis* (judicial precedent) had the losing party appealed to the Court of Appeal.

5.0 CONCLUSION AND RECOMMENDATIONS



The above discussion has shown that the expression “people/person indigenous to Sabah” is not specifically legally defined. Several recommendations are put forth in this paper to resolve this issue.

First, the Interpretation (Definition of Native) Ordinance 1952 be amended to give a more accurate definition of “native” of Sabah. It is recommended that the Ordinance to provide for the schedule to specify, classify and enumerate the ethnic groups which are indigenous to Sabah. The proposed Schedule should incorporate all the known indigenous ethnic tribes of Sabah. Having the schedule or list of ethnic groups who are indigenous to Sabah would clearly settle the issue as to who is a “native” once and for all.

Second, the definition of ‘native’ needs to be amended and strengthened so as to remove any doubt in its intention and interpretation, in particular, to delete/remove subsection (c) and (d) from section 2(1) as abovementioned. Had those subsections been removed, there will be less confusion as to who can be classified as “natives” of Sabah.

Third, it is recommended that the definition of ‘native’ should incorporate the requirement for ‘citizenship’ as well, meaning that a ‘native’ of Sabah must be a citizen of the Federation of Malaysia. In addition, the procedures as well as the conditions that need to be considered by a Native Court in an application for a native status under section 3 of the Ordinance need to be revamped taking into consideration of the abovementioned. Having said that, perhaps it is also apt to amend the definition of ‘native’ provided in Article 161A(b) of the Federal

Constitution and Article 41(10) of the State Constitution of Sabah in particular on the terms of ‘races indigenous to Sabah’ to finally remove any doubt as to who is a native of Sabah.

Finally, it is also highly recommended that the legislator to substitute the term of “native” with “indigenous” to comply with UNDRIP (United Nation Declarations of Rights of Indigenous Peoples) as Malaysia is one of the signatories of UNDRIP. It is also proposed that the amendment to the Sabah Interpretation (Definition of Native) Ordinance 1952 (Sabah Cap. 64) and both the State and Federal Constitutions to incorporate the term “indigenous” replacing “natives”.

Man-made laws are not so sanctimonious as to be untouchable because they are not perfect. They might be perfect at the time when they were enacted. Nevertheless, societies change over time. The once perfect law may no longer be effective, that is why they are subject to amendments. However, one could not simply amend the laws at one’s whim and fancy. Hence, a referendum to obtain the views of all Sabahans might be beneficial before the amendment of the Interpretation (Definition of Native) Ordinance 1952 and the Federal and State Constitutions. In conclusion, it is inevitable for the definition of who is native/indigenous of Sabah to be revised so that the rights and protective laws meant for Sabah Natives are safeguarded.

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REFERENCES

- [1] A. A. Doolittle. "From Village Land to "Native Reserves": Changes in Property Rights in Sabah, Malaysia, 1950-1996", *Human Ecology*, vol. 29, pp. 69-98, 2001.
- [2] A. Kharel, *Doctrinal Legal Research*. 2018. Available: <http://dx.doi.org/10.2139/ssrn.3120525>.
- [3] A. Vivienne. (2019, Feb 2). *Government Reminded Not to Recognise Other Races as Sabah Natives*, Available: <https://borneonews.net/2019/02/02/government-reminded-not-to-recognise-other-races-as-sabah-natives/>.
- [4] Anwarul Yaqin. *Legal Research and Writing*, Kelana Jaya: LexisNexis, 2007.
- [5] Azizah Mat Enh and Salbiya Jamaluddin. "Pentadbiran British di Sabah: Kesejahteraan Anak Negeri melalui Penubuhan Mahkamah Anak Negeri 1884-1965", *Malaysian Journal of Society and Space*, vol.16, pp.155-167, 2020.
- [6] D.. Marno, (ed). *The Indigenous World 2020*, the International Work Group for Indigenous Affairs, Available: http://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf, 2020.
- [7] Department of Statistic, Malaysia. 2010. *Census of Population and Housing*. Available: http://www.statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf.
- [8] J. Wong-Adamal, "Native Customary Land Rights in Sabah", *Jurnal Undang-undang*, pp. 232-240, 1998.
- [9] J. F. Ongkili. "The Problems of Kadazandusun Bumiputeraism: Promises, Privileges and Politics" *Kajian Malaysia*, vol. 21, pp.197-209, 2003.
- [10] J. K. King, and J. W. King (eds.). "Languages of Sabah: A Survey Report". *Pacific Linguistics, Series C, No. 78*. Canberra: The Australian National University, 1984.
- [11] J. Pugh-Kitingan, et al., Report on the Project 'Review of *Ethnologue*® Descriptions of Languages in Sabah'. *Borneo Research Bulletin* 49:221-240, 2018.
- [12] J. Santos, (2019, January 22). *Loopholes in Sabah Law allows foreigners to claim 'native status'*. Available <https://www.themalaysianinsight.com/s/127460>
- [13] K. G. Tregonning, *Under Chartered Company Rule (North Borneo 1881-1946)*. Singapore: University of Malaya Press, 1958.
- [14] K. Vibhute, and F. Aynalem, *Legal Research Methods, Teaching Material*, Ethiopia: Justice and Legal System Research Institute, 2009.
- [15] New Straits Times. (2016, March 1) "New ideas mooted to tackle the issue of fake native certs in Sabah", Available: <https://www.nst.com.my/news/2016/03/130403/new-ideas-mooted-tackle-issue-fake-native-certs-sabah>.
- [16] Rafidah@Malissa Binti Datuk Hj Salleh. "Native Courts System in Sabah: Will It Continue to Survive?", Available: https://www.researchgate.net/publication/269255102_Native_Courts_System_in_Sabah_Will_it_Continue_to_Survive, 2014.
- [17] Ramy Bulan. "Native Title in Sarawak, Malaysia: Kelabit Land Rights in Transition", PhD Thesis, The Australian National University, 2005.
- [18] Ranjit Singh. *The Making of Sabah (1865-1941): The Dynamics of Indigenous Society* (Third Edition). Kota Kinabalu, 2011.
- [19] S. I. Ali, et al, "Legal Research of Doctrinal and Non-Doctrinal". *International Journal of Trend in Research and*



- Development (IJTRD), vol.4, pp. 493-495, 2017.
- [20] S. N., Jain, "Doctrinal and Non-Doctrinal Legal Research". Journal of the Indian Law Institute, vol. 24, pp. 341-361, 1982.
- [21] Suhakam. "Report of the Commission of Enquiry on Immigrants in Sabah", Kuala Lumpur: SUHAKAM, 2013.
- [22] T. C. M. Hutchinson, and N. Duncan, "Defining and Describing What We Do: Doctrinal Legal Research", Deakin L. Rev, vol. 1, pp.83-119, 2012.
- [23] T. C. M. Hutchinson, *Researching and Writing in Law* (4th edition). Pyrmont, NSW: Thomson Reuters/ Lawbook Co, 2018.
- [24] T. Harrison, and B. Harrison. "The Prehistory of Sabah". Sabah Society Journal Monograph IV. Kota Kinabalu: Sabah Society, 1971.
- [25] Wan Shawaluddin Wan Hassan and Ramli Dollah. *Pendatang dan Isu Keselamatan di Sabah*. Kota Kinabalu: Universiti Malaysia Sabah, 2011.
- [26] Yew Chee Wei, Mohd Zahirul Hoque, Jacqueline Pugh-Kitingan, Alexander Minsong, Christopher Lok Yung Voo, Julian Ransangan, Sophia Tiek Ying Lau, Xu Wang,, Woei Yuh Saw, Rick Twee-Hee Ong, Yik-Ying Teo, Shuhua Xu, Boon-Peng Hoh, Maude E. Phipps & S. Vijay Kumar. "Genetic relatedness of indigenous ethnic groups in northern Borneo to neighboring populations from Southeast Asia, as inferred from genome-wide SNP data", *Annals of Human Genetics*, pp. 1-11, 2018. DOI:10.1111/ahg.12246.
- [27] Zawawi Ibrahim. "The New Economic Policy and the Identity Question of the Indigenous People of Sabah and Sarawak", in Terence Gomez & Johan Saravanamuttu (eds), *The New Economic Policy in Malaysia: Affirmative Action, Ethnic Inequalities and Social Justice*, Singapore: SIRD; NUS & ISEAS, 2013.

