

ISSUES AND FACTORS CAUSING NATIVE CUSTOMARY RIGHTS LAND DISPUTE IN SABAH

Azima AM,^{1*} Zaimah Ramli,¹ Suhana Saad,¹ Sarmila Md. Sum¹ & Faathirah
Jamaluddin²

*First & corresponding author

¹Development Science, Research Centre for Development, Social and Environment,
Faculty of Social Sciences and Humanities (FSSK), Universiti Kebangsaan Malaysia
(UKM)

²JR Statistics Research Centre, Cyberjaya, Malaysia

(azima@ukm.edu.my, zaimah@ukm.edu.my, suhanasaad@ukm.edu.my,
sarmila@ukm.edu.my, faathirah@gmail.com)

DOI: <https://doi.org/10.22452/jati.vol26no2.6>

Abstract

Disputes in land ownership can be a hindrance factor to the development effort to be implemented. Therefore, the level of an issue and factor which caused disputes among landowners must be examined so that the problem can be understood and handled well. This study employed the quantitative approach through the use of questionnaires which were distributed to 100 landowners in two villages in the district of Semporna, Sabah. The objective was to obtain the landowners' views regarding the level of an issue and factor that caused disputes among the landowners in the study area. A Likert five-point scale was used to identify the views of the landowners regarding the issues and factors that caused the disputes. Subsequently, average analysis was used to identify the level for each of the issues and factors that caused land disputes in the study area. The interpretation of the mean score was divided into three levels, namely low (1.00-2.33), moderate (2.34-3.66), and high (3.67-5.00). The research findings revealed that there were two main issues and four factors that caused the existence of disputes among the landowners in the studied area. Concerning issues, it was found that the mean score analysis of the two issues explained that the level of the local community's knowledge about the issues that led to the dispute was high (M=3.74) for the issue of the natives not knowing that they have rights, and moderate (M=2.38) for the issue of the ownership of the rights to the state customary land being given to outsiders. Meanwhile, for factors, it was found that for factors that have relationship with culture, the mean score obtained was at the high and moderate levels. This implies that a community's sentiment regarding customary land can have implications on the efforts of the government in handling dispute issues concerning land ownership.

Keywords: Native, Native Customary Rights, NCR lands, land disputes, Sabah

Introduction

Native Customary Right (NCR) to land is a special right that is given to Sabah natives or the native communities in Sabah for settlement and subsistence activities (Dewi, 2016; Tiung, Lunkapis, & Porodong, 2015). This highlights the importance of NCR to the natives in Sabah. It seems that the polemic that has stricken NCR land which has resulted in disputes against it seems never-ending. Disputes involving NCR land are caused by several issues that trigger NCR land conflict between the landowners and outsiders, land developers, companies (private) as well as the government (Luyan & Lunkapis, 2016). This situation is greatly related to excess development activities, population issues, and land intrusions that have caused the security of the natives' ownership to these lands including those of Sabah natives to be increasingly jeopardised (Erhman, 2014). This conflict then becomes more critical when the social ownership of land among the landowners surpasses the economic ownership benefit of the land. Consequently, this situation has resulted in development plans becoming an ongoing conflict between landowners and land-related agencies (New Zealand Land Institute, 2009).

For a long time, the natives have claimed justice regarding the private ownership issue of NCR land. However, due to the fact that these lands are the property of the state government, prolonged disputes continue to exist between both parties. Competition and concern for NCR lands that are increasingly lessened as a result of development have caused many parties to start taking the issue regarding the natives' customary land seriously. Literature seems to indicate that with respect to this affair, the existence of the local community seems to have always been neglected in solving disputes regarding the natives' land. As a result, the dispute between the natives and the state government continues to persist because of the failure to find a common ground that will benefit both parties involved in the conflict.

Therefore, the issue of native land ownership needs to be studied as the land and its ownership pattern are essential for the natives' social, economic, and political progress (Sarah, 2013). Marzuki, Rofe, and Hashim (2014) explained that for any country that has land dispute problems, studies often show that its development process becomes slow, and motivation and trust crisis would affect the development process. In the context of the natives' land conflict in Sabah, literature suggests that it is a structural one because the parties in conflict most often involve the native communities and the state government (Fransiskus, 2015; Marzuki, Rofe, & Hashim, 2014). This is evident from the many lawsuits that have been made regarding native land in Sabah which involved the natives and the state government. For this reason, it is important that the level of the issues and factors causing the disputes between the landowners and the stakeholders be identified.

Literature Review

Land Dispute Issues

The United Nations (2012) defined land dispute as a rift over land caused by a particular individual or collective interests leading to a conflict. It has been revealed that issues of native land disputation often revolve around natives not knowing they have rights to the land and state customary land rights, resulting in them giving ownership of the land to outsiders.

Natives Not Knowing They Have Rights

Basically, natives have their own rights to land. However, it has been revealed that natives often do not know their rights to customary land and this gives rise to land disputes. It has been argued that native communities must map their territories well before any government or corporate entities could make accusations against them (de Vos, 2018). The identification of native title begins with the identification of native legal customs and traditions on land, which could be demonstrated through the use of works of writers, public records, village oral traditions, and the opinion of people who are likely to be aware of the presence of certain traditions (Bulan, 2019). At the same time, it is commonly assumed that individuals and organisations would use their familiar tribal bonds to achieve dominance. Hence, intruding groups have been able to prevail over most other intruders as well as landowners and authorities by using various tribe links and corruption to receive information regarding the nature of the native title, the identity of the real owners, government intentions and legal cases regarding a landed property or its surroundings and the accessibility of a parcel (Obala & Mattingly, 2014).

Ownership of State Customary Land Being Given to Outsiders

State customary land rights are one of the issues of land dispute. The dispute that occurs is caused by the differences in the situation including land ownership overlaps which put pressure on the residents involved. This pressure on the residents often involves the provision by the state government for large-scale developments that are contradictory to the interest of the landowners (Napitu, Hidayat, Basuni, & Sjaf, 2018). This has been discussed by Lavers (2018) who mentioned the existence of land ownership overlaps and differences of interest from the legal aspect. The federal institution approach is seen to be more dominant with a particular party that strives to optimise ownership under the land principles established, which has a tendency to have an impact on land administration. Concurrently, issues would arise over private companies' petitions for native customary lands for large-scale agricultural projects. However, it is often the case that these native customary lands would have already been officially designated and obtained without the awareness of the indigenous people who previously lived on the parcel of land (Azima, Ramli, & Saad, 2020).

Factors Affecting Native Land Disputes

Communal Title Ownership Provision

Communal title ownership has been revealed as the primary factor of native land dispute. Various scholars (Azima et al., 2019; Azima, Lyndon, & Akmal, 2015; Azima, Sivapalan, Zaimah, Suhana, & Mohd. Yusof, 2015; Liang et al., 2019; Paaga, 2013) have recognised that communal title ownership is the primary cause of indigenous customary land conflict. As mentioned by Liang et al. (2019), community title ownership has a substantial effect on native land disputes. They showed that the lack of individual titles in Communal Grant led to its disapproval in Sabah. Land ownership and boundaries are critical for preventing invasion (Azima, Lyndon et al., 2015; Paaga, 2013). As a result, it is at present a requirement for a particular population to declare land ownership and paperwork is required as proof of possession (Azima et al., 2019). According to North (2005), the release of land papers may be a cause of contention among landowners. For example, the natives objected to Communal Grants because the gift contradicted the Native Customary Land Act (Naejel, 2011). As previously explained, it is this lack of individual land ownership in Communal Grants that has produced contention among landowners.

Authorities' Transparency

In their report, the Advisory Consortium on Conflict Sensitivity (ACCS) (2013) mentioned the disagreements regarding land involving disputes between native communities and the authorities as well as private investors or developers. They remarked that the disputes that occur are caused by different interpretations and understanding of land laws. The lack of knowledge on land laws has made it difficult for native communities to receive land ownership rights. This has made the communities susceptible to land ownership rights abuse by parties with vested interests. There are also cases linked to native community leaders selling the natives' land to the government and private investors without negotiation and fair compensation to the affected communities. This issue is driven by greed and the desire of the agency to obtain the land for private objectives. In such cases, the inability of the native community leader to handle the land ownership issues leads to the occurrence of land intrusion and land take over at their settlements. This situation eventually results in the native community losing their identity and customary rights. Moreover, when rival customary and contemporary jurisdictions coexist in nations with diverse social identities, the contrasting sources of legal authority create uncertainty as to which source will win. Since the source of law is challenged, the disputing parties could not rely on the judicial system to resolve the conflicts reliably, and this often leads to the employment of vigilante methods (Eck, 2014).

Local Community Customary Provision

Local community customary provision has also been revealed as a factor of native customary rights land dispute. Browning (2019) indicated that land disputes often involve natives and developers as well as government agencies. The dispute that happens is usually linked to development projects such as dam construction and others of similar nature. In this matter, the agency is said to fail in emphasising the aspect of the natives' interests when approving the project, causing the natives to lose their stake, and having to endure the loss of cost. The dispute between landowners and agencies is attributable to the failure of existing land laws provision to specifically protect land ownership of the natives. This situation continues to put pressure on the implementation principle which has resulted in the weakening of the native community's opportunity to gain changes in terms of recognition over land rights.

Cameron (2019) on the other hand found that government agencies' efforts and actions in reconciling residents in land issues also cause disputes to arise. Disputes between native communities and agencies often involve authorities that have power and full control over the natives' land ownership. This is caused by the different perspective or way of thinking regarding the occupied land which has influenced ownership among the natives. This situation has caused oppression to continue and spread. Additionally, the dispute becomes tenser when demonstrations that involve weapons by both parties transpire, leading to more disputes occurring. This will characterise the native community as being left out from any form of institutional and legal control as well as separated from rights over their land. This situation clearly explains the natives' view of legislation as the only way to protect their community's interest while the tension regarding land continues.

Whiteman (2009) explained that disputes between communities have led to widespread contention characterised by the exclusion of native communities from the waves of development. In the context of Sabah, despite the initiative taken by the government agency to integrate justice in the information system through monitoring of rural development, this situation has been found to be against the natives' interests. This resulted in a scramble over land ownership rights by all agencies even though there are legal provisions that recognise the natives' land rights. Thus, the perception and sense of injustice of the community regarding decision making in relation to land rights issues resulted in the natives always being left out, which gives rise to their backwardness when it comes to development. This situation tends to give rise to claims and subsequently contestation regarding their rights and need for land.

Community Cultural Provision

In addition to the aforementioned factors, community cultural provision has also been found to be a factor of land dispute. Persson, Harnesk, and Mine (2017) in their study examined the land dispute between natives and government agencies regarding a

mining project in Gállok, Sweden which was seen as a positively inclined development, but received continuous criticism. This is because the development activity disrupted the natives' traditional activities to the point that it caused a scramble over land ownership at their settlement. In the study, criticisms were voiced against the government agency that did not respond to the worries about the situation of the mining industry which was rampant and for not giving emphasis to the aspects contained in the constitution concerning natives' rights. This dispute was the outcome of the perception that the right in making decisions for land ownership should be given to the residents of the native land but doing so may be disadvantageous for the community's livelihood and welfare. The situation eventually disrupted the native community in defending their rights and interests over the owned land.

Ojala and Nordin (2015) in their study discussed land dispute between the native community and the government agency in the context of present-day Swedish part of Sápmi. Landowners of the indigenous land were exploited leading to insufficient resources that are needed to manage the residents' affairs for economic and social purposes. Additionally, the study also observed the increase in the number of native residents who neglected their land ownership rights when the government agency established a few administrative and legislative institutions or organisations that are more in favour of agricultural land which is seen to be more useful. This situation caused a transition in decision-making practices that reduced their land ownership rights. This issue led to the different interests over land ownership and resulted in a dispute between the parties involved.

Gassiy and Potravny (2019) argued that the disputes between native communities and the government or developers are caused by the impact of industrial activities. In the context of this dispute, the execution of development projects like exploration, mining, transportation, and infrastructure which opposes the lifestyle and customs of native communities is also worrying. This situation leads to the issue of compensation demands that is always seen as a loss for native communities. Although there is a provision in terms of land legislation regarding the guarantee of ethnic minorities' rights, it is still not able to control losses coming from the compensation process. This situation is caused by the fact that native communities are not gaining clear recognition over the land that they occupy. Furthermore, the land ownership system is weak, and the implementation of a shareholder system is ineffective even though social responsibility practice has been established well. However, due to the differences between the interests of the native communities and the local government or agencies, this situation leads to the emergence of disputes that arise out of concern and desire for the native lands by the parties involved.

Massawe and Urassa (2016) found that native land disputes are the result of the exploitation of land and the destruction of natural resources in the region of the natives' settlements. Although there are legal provisions that give consideration and negotiation related to the impact of industrial development, government agencies

have been noticed to put less emphasis on these activities, causing native communities to suffer the impact. This situation causes concern and dissatisfaction among native communities, giving rise to their fight to defend interests over their land. This situation demonstrates how government agencies commit violations of natives' rights in terms of land laws, and this eases stakeholders to take advantage of the situation. In such cases, the development executed places constant pressure on the native community which would eventually influence and disrupt their traditional lifestyle.

Understanding Native Customary Rights (NCR) in Sabah

Land ownership rights based on State Customary Land Rights or Customary Land have been established since the beginning of 1889 and still exist in the land legislation today. The title of customary land was incorporated into the legislation through Proclamation III of 1889 (For the protection of Native Rights to Land), Land Laws of 1913, and Sabah Land Ordinance 1930, Cap 68. Land alienation in Sabah is under the jurisdiction of the State Government through the Land Ordinance Chapter 68.

The Native title can only be owned by the natives of Sabah. This is considered as the privilege given to Sabahans who have settled and are working on government land for subsistence activities. Three conditions enable the customary land to be acquired by the owner. First, the owner must be an indigenous of Sabah. Secondly, the land claimed is a non-grant land and not a reserved land. Lastly, the land to be claimed should be vacant.

In the early stages, these lands were inhabited by the indigenous people. Although the Sabah Land Ordinance was enacted on 13 December 1930, NCR land claims can still be submitted under section 14. Presently, about 24.7% (487,680 hectares) of land titles are registered in the state of Sabah. To increase the number and breadth of Native Title (NT) land rights to the native people, the government has expedited the process of approval and measurement of land application and the provision of land rights. The steps taken include the method of awarding the land alienation to the native using Communal Grants. Land Alienation Policy practiced in the State of Sabah is an open policy, whereby every applicant whether an individual or a company may apply for government land in any district and at any time. This has resulted in the overlapping of the number of land applications in every government's land area that has been previously applied, causing delays and backlogs. These delays have brought about dissatisfaction among the land applicants, especially among the Sabah Customary Native land applicants. The constraints give rise to issues related to Native Customary Rights (NCR) claims that cannot be properly addressed (Rooshida, Jady @ Zaidi, Wan Roslan, & Hanani, 2016). For example, the High Court's decision prompted the state government to award the existing NCR lands within the Forest Reserve area with government status to the people who are entitled to have it using Communal Grants. However, the land alienation by Communal Grants was rejected by the Murut Tribe, especially the people in the area of Rudum *mukim* who were

generally not interested in Communal Grants but wanted a private grant instead (Naejel, 2011). Such cases have led to conflicts between the local people and the agencies involved. In this regard, discussions on the causes of native customary land disputes can be addressed using the level of mean for each cause.

Methodology

This study employed a quantitative approach to analyse the factors that lead to the occurrence of conflict between landowners in the district of Semporna with the state government. Purposive sampling was used to sample respondents for data collection. The distribution of questionnaires was conducted face to face with respondents who were willing to be interviewed. Many of them were reluctant to cooperate as they were concerned that their land would be taken should they participate in the interview. This constraint resulted in only 100 respondents from a few villages to be successfully interviewed for this study.

The Likert scale is a unidimensional scale used to measure the attitude, opinion, and perception of an individual or a group of people regarding the social phenomenon under study. In using the Likert scale, two forms of questions are posed, namely the positive question form which measures the positive scale and the negative question form which measures the negative scale. Positive questions are given scores of 5,4,3,2 and 1. In this study, the questionnaire prepared by the researcher utilised responses which were phrased as Strongly Disagree (1), Disagree (2), Unsure (3), Agree (4), and Strongly Agree (5). The mean analysis was used to answer the objective that is related to the level of a particular issue and factor that causes disputes. The average score interpretation was divided into three levels, namely low (1.00-2.33), moderate (2.34-3.66), and high (3.67-5.00). The mean score interpretation for this study was sourced from Yusof, Zakaria, and Maat (2012). The mean score scale rating is presented in Table 1.

Table 1: Mean Score Interpretation Table

Score Range	Mean Score Interpretation
1.00 to 2.33	Low Level Disagree
2.34 to 3.66	Moderate Level Moderately Agree
3.67 to 5.00	High Level Strongly Agree

(Source: Yusof, Zakaria, & Maat, 2012)

This study aimed to understand the reasons that lead to land disputes among landowners in the study area. Survey research was used so that data can be collected from the NCR landowners involved in several villages in the district of Semporna, Sabah using the institutional approach. Semporna is a small town in the eastern part of Sabah, Malaysia. Most of the residents in this area are involved in agricultural and fishing activities. The population of the district comprises smallholders who use

communal and private land in their daily activities. However, samples were selected based on the availability of respondents to participate in this study. The criteria for respondent selection included those with communal and NCR land. The questionnaires were distributed to residents in two different villages, namely Menteritip and Nagus in the district of Semporna. A total of 100 respondents managed to complete the questionnaires. The selection of these villages was appropriate and logical because most of the villagers are owners of the NCR land in the study area. The survey questionnaire was developed based on past studies. In total, 65 questions were formulated, and the questionnaire composition is presented in Table 2.

The questionnaire was divided into four sections. Section A which contained 15 questions covered the respondents' demography while Section B with 10 questions was related to the factors that led to the issue of land disputes in the study area. Section C contained questions regarding the reasons for the formal rules that led to the disputes in land ownership. Meanwhile, Section D covered questions of factors that encouraged the disputes in the context of informal rules. Sections C and D contained twenty questions each and the five-point Likert scale was used in both the sections (Refer to Table 2). The data collected from the questionnaires were analysed using SPSS version 16.

Table 2: Questionnaire Composition

Section	Question Title	Number of Question	Description
A	Respondents' background	15 questions	The background of the respondent. Gender, age, status, race, education level, monthly income, land area and land status.
B	Land dispute issue	10 questions	Factors leading to the land dispute issue.
C	Economic institutions approach - formal regulations	20 questions	The section which involves several formal rules such as the Customary Land Act (NCR), communal grant, land ownership and land distribution.
D	Economic institutional approach – informal regulations	20 questions	The division involving several informal rules such as transparency of authorities, pacostustrust, customs and culture.

Respondents' Profile

A total of 100 respondents answered the questionnaire distributed for this study. The majority of the respondents were NCR landowners. Based on Table 3, the majority of the respondents, at nearly 90%, are Bajau. This is because the majority of the population in the district of Semporna is of Bajau ethnicity. Additionally, the majority

of the respondents were male (74%). This is because most of the land is owned by men and they largely cultivate their land with palm oil.

Most of the respondents who answered the questionnaire were between 40 and 49 years old, which account for 32 respondents (32%). Meanwhile, 24% of the respondents were between the age of 50-59 years old and only 9% of the respondents were over 60 years. The majority of the respondents (80 people or 80%) were married, while 17% were single and 3% were a divorcee/widow. On average, the majority of the respondents have received some kind of formal education. More than 50% of the respondents received secondary school education up to Form 5, followed by 24% who received primary school education. The number of respondents with a bachelor's degree was relatively small at less than 5%.

Table 3: Respondents' Profile

Item	Frequency
Gender	
Male	74(74%)
Female	26(26%)
Race	
Bajau	87(87%)
Others	13(13%)
Age	
20- 29 years	19(19%)
30-39 years	16(16%)
40-49 years	32(32%)
50-59 years	24(24%)
> 60 years	9(9%)
Monthly Income	
RM500 and below	28(18.6%)
RM501 – RM600	43(28.6%)
RM601 – RM700	25(16.6%)
RM701 –RM800	37(24.6%)
> RM800	17 (11.3%)
Land Area Owned	
< 5 hectares	13 (13%)
6-10 hectares	44 (44%)
11-15 hectares	43(43%)
Marriage Status	
Single	17(17.0%)
Married	80(80%)
Divorced	3(3%)
Education Level	
Did not go to school	7(7%)
Primary School	24 (24%)
Secondary School	51(51%)

STPM/Diploma	13(13%)
Degree	5(5%)
Main Occupation	
Self-employed	88(88%)
Private	9(9%)
Government	3(3%)
Status of the land owned	
Communal	44(44%)
Private	56(56.0%)

In terms of monthly income, about 19% of the respondents earned income of RM500 and below, followed by nearly 29% who earned between RM501 to RM600. Meanwhile, 16.6% of the respondents reported earning monthly income between RM6001 and 700, and 24.6% reported earning income between RM701 and RM800. A small percentage of the respondents (11.3%) earned more than RM800 per month. Concerning land ownership, 13% reported having less than 5 hectares of land, 44% owned land between 6 to 10 hectares, and 43% owned land between 11 and 15 hectares. Most of the landowners inherited the land from their parents.

Results and Discussion

Findings from the data analysis revealed two issues encountered by the respondents. The issues include the natives not knowing they have rights to the customary land and state customary land ownership rights being given to outsiders. Additionally, the results revealed that four factors were involved in the native customary land rights dispute, namely communal title ownership provision, authorities' transparency, local community's customary provision, and community cultural provision.

Land Dispute Issue

The pattern of customary land ownership dispute in Semporna, Sabah is greatly related to the state government and the landowners who are collective owners of the land. For example, the Department of Lands and Surveys, Sabah received as much as 615 cases of claims for customary land in 2014. From the total, 207 cases were recognised as customary land occupation, 70 cases were rejected, and 338 cases are still under investigation. The survey of 100 customary landowners in Menteritip village and Nagus village in Semporna revealed the existence of a few land disputes among the respondents. Based on the analysis, two issues that lead to land disputes in the community were found; one of them involved the natives not knowing that they have rights over the land and the other is the ownership of the rights to the customary land being given to outsiders. Mean score analysis of the two issues explained that the knowledge level of the local community concerning issues that lead to disputes was high ($M=3.74$) for the issue of the natives not knowing they have rights and moderate

(M=2.38) for the issue of the state customary land ownership rights being given to outsiders.

Natives Not Knowing They Have Rights

Mean score analysis on the issue of the natives not knowing they have rights showed a high cumulative mean score level for causing the existence of a dispute (Refer Table 4). This dispute is mostly caused by the lack of knowledge of the natives regarding customary land rights. Many among the customary landowners were less aware of the existence of customary land provisions and particular sections in customary land. The majority of the landowners said that they have never heard about or be told by anyone about the customary land rights as written in Sections 1, 14, 15,16, and 17 Part IV of the Sabah Land Ordinance Chapter 68. The lack of awareness among the customary communities is one of the main reasons that they experience disappointment in defending their customary land rights when there is an intrusion to their land. Many of them have the perception that the birth land of their ancestors is naturally and subsequently theirs based on their culture and customs. This results in the customary communities not taking any actions to verify their customary land ownership earlier (Human Rights Commission).

This is clear when the customary communities gave a score of 4.46 (high level) saying that “my ancestors’ land will automatically be my right partly, based on customs” (see Table 4). This situation explains that their knowledge of the land is influenced by verbal information that is received from their ancestors. To them, the customs and culture that they have and follow are the basis for their land resource procurement. For this reason, the customary communities tend to defend their rights over the land using only verbal information received from the head of the family and the head of the family themselves.

Table 4: The natives not knowing they have rights over the land

Statement	Mean	Level
My ancestors’ land will automatically be my right partly based on customs and culture.	4.46	High
My ancestors’ land is naturally mine, so I do not verify its ownership.	4.28	High
I clearly understand the conditions of customary land.	4.06	High
I often feel oppressed in customary land ownership affairs.	3.82	High
I have been informed that there are particular land areas that I own.	2.12	Low
Cumulative Score 3.74 (High)		

Note: Low (1.00-2.33), Moderate (2.34-3.66) and High (3.67-5.00)

This finding indicates that if the customary communities' land is taken or given to a third party, they need to be informed, and the discussion will need to consider all members of the community involved in their tribe. However, often they are not brought for negotiations, and they are not even informed regarding the acquisition of their land. This is because the information that is available at the Land Office identifies that the tribe's land is included in the natural forest reserve. Hence, this matter will undoubtedly cause dispute between both parties.

Customary land ownership disputes also occur because the majority of the natives think that they do not need to formally verify their ownership at the Land Office. This is why the score for their view of "my ancestors' land is naturally mine, so I do not need to verify its ownership" obtained a high score of 4.28 (Refer Table 4). This situation indicates that the natives tend to strongly hold on to their customs and culture. As a result of the strong observance of their customs, titled land verification was never stressed by their ancestors. This is because the natives and their ancestors were the first to open up the forest for settlement purposes since many decades ago. Therefore, for them, the understanding is that as long as they practise the customs, their ownership over the land will continue to prevail as well. To the customary landowners, even though there is a new provision introduced in the aspect of land alienation, if it is not according to their customary laws, then the land has to be defended. Thus, when the government began to introduce land alienation through communal titles, many of them opposed it. This is because the majority of the customary landowners find the method as something that does not follow their customary provision which they have held on to for such a long time. Eventually, this situation results in land ownership disputes among the landowners and the state government.

State Customary Land Ownership Rights Being Given to Outsiders

The cumulative score for the factor of ownership of the rights to state customary land being given to outsiders was at a moderate level (M=2.38) in relation to occurrence of disputes among landowners. However, the average score for the statement "I understand customary land laws and do not face much problem in customary land affairs" was at a high mean score of 3.23. Land disputes between landowners and the state government occur when their land rights are given to outsiders for plantation and other development projects. In this case, there are several situations that lead to land ownership disputes. One of them is the government, either without inspection or deliberately, giving land title approvals to outsiders when the area is a Native Customary Land (NCR) area that has been occupied and worked on as well as inherited since the time of the ancestors of the customary landowners, even before the formation of Malaysia. Such an action would surely spark anger because the landowners claimed that they completely understand and are discerning about customary land laws. Most of them claimed that they understand the ownership

hierarchy and land borders that they have acquired since the Japanese era. Thus, when their land borders are disturbed by outsiders like plantation owners, it definitely causes disputes to occur.

Table 5: Customary Land Ownership Rights Being Given to Outsiders

Statement	Mean	Level
I understand customary land laws and do not face much problem in customary land affairs.	3.23	High
The use of the power of attorney does not cause me to lose rights over customary land.	2.81	Moderate
There is no deception by a middleman that causes land ownership to change.	2.35	Moderate
I am informed that my land is given to a private company to be developed.	1.79	Low
The gazette of my customary land to a private company is in my knowledge.	1.73	Low
Cumulative Score 2.38 (Moderate)		

Note: Low (1.00-2.33), Moderate (2.34-3.66) and High (3.67-5.00)

Based on Table 5, the landowners agreed that they are really clear about the existing provision and do not need land control procedures through a land title by the government. However, when there is interference by the government, this often causes conflict. The reason for the occurrence of the conflict is that the customary landowners maintained that they understand the customary land laws for the land that they own.

Additionally, customary land ownership dispute is also linked to the use of the power of attorney, where the statement regarding this obtained a mean score of 2.81. The use of the power of attorney causes customary landowners to lose their land. Many of the cases that were referred to the power of attorney are linked to the presence of a middleman who acts by persuading the landowners to sign the agreement with a few incentives. However, after the power of attorney is signed, only then do the landowners realise that they have been cheated. Moreover, it is often the case that the method of getting the agreement or even the joint venture agreement is not transparent and is bribery oriented whereby cash as much as RM500 is given to everyone when they sign the agreement. Such enticement pushes people to sign the agreement straight away without even knowing the contents of the agreement.

Meanwhile, land grants through the method of communal land title have also caused conflicts between the customary communities and the state government. Conflicts arise because through communal titles, the customary communities find that they have lost their residence and the area to search for forest products and resources to support their lives. There are a few problems that have been identified in land alienation through this communal method, and some of them include laws that are difficult to understand, ownership that cannot be denied, land requests that are

overdue, and rights over land recognition. On account of the landowners' dispute issue, the state government decided to put out the land alienation method through the communal title. However, land alienation through the communal title has also caused dissatisfaction among the customary communities. Therefore, the next sub-topic focuses on the factors that drive the customary communities' dispute over communal land title using the institutional approach.

The Factors That Drive the Dispute Over Land Alienation Using the Communal Title

Land ownership dispute among landowners is highly linked to dissatisfaction, concern, and doubts of landowners towards development agencies. In this respect, identifying the level of each factor that causes the occurrence of land issue disputes in the studied area is of great importance. Thus, the findings of this study explained the level of the factors that can cause disputes between the landowners and the agencies. The factors identified were communal title ownership provision, authorities' transparency in giving information regarding the implementation of the communal title, local community's customary provision, and cultural provision.

Communal Title Ownership Provision

Communal Title is a special condition for native title. Only Sabah natives who are defined under Native Interpretation Ordinance Chapter 64 can be beneficiaries of Communal Title. Fundamentally, the communal title has a few objectives and these include eradicating rural poverty through planned land alienation and optimum land development; protecting Sabah natives' interests over government lands around Sabah's native settlement areas; solving Sabah Natives Customary Rights land claim issue without land investigation process; speeding up the process of issuing type NT/FR land ownership to Sabah natives in groups (Communal) while being able to solve land claim overlap issues through a transparent, fair and impartial land alienation process; and preventing Sabah natives from selling land ownership and land claim approval.

The average mean score for most of the statements (or items) showed a low level for communal title ownership provision dispelling the occurrence of disputes in the study area. This suggests that the majority of the respondents disagree with the view that land alienation through communal title can solve the issues of overlapping land claim. This is clear when the mean score for most of the items under the statement "communal title provision that causes landowners' dispute" was low $M=2.04$, $M=1.94$, $M=1.85$, $M=1.8$, $M=1.77$. Analysis on the causes of dispute in relation to communal title provision showed that the landowners in the study area disagreed with a few provisions contained in this communal title (Refer Table 6). They were of the opinion that awarding communal land rights through communal titles would not be able to protect their rights over the customary land. This is because, through communal titles,

they only play the role of participants, and their rights on the land will decline. The worry that they will lose their land through the provision of communal title causes the land ownership disputes to be unresolved.

Table 6: Communal Title Provision that Causes Landowners' Dispute

Statement	Mean	Level
Communal Title can solve the Natives Customary Rights land claim issue without the land investigation process.	2.04	Low
Communal Title can speed up the issue of NT/FR type of land ownership in groups.	1.94	Low
Communal Title can prevent Sabah natives from selling land ownership.	1.85	Low
Awarding communal land rights in communal aims to protect Sabah natives' interests.	1.83	Low
Communal Title can solve overlapping land claim issues.	1.77	Low
Cumulative Score 1.88 (Low)		

Note: Low (1.00-2.33), Moderate (2.34-3.66) and High (3.67-5.00)

Authorities' Transparency

Transparent laws and policy implementation can help distribute the abundance of the nation's natural resources in the fairest way (Hamid, Pauzani, & Nong 2011). In this matter, the administration must implement administrative principles and policies fairly, openly, and transparently to prevent the act of embezzlement as well as abuse of power, and to ensure every individual is given their rights. The state government can clearly explain the goal of an introduced policy so that society can accept it openly and not doubt the introduced policy.

Analysis of authorities' transparency obtained a cumulative score of 2.74 (moderate). The statements "obtaining agreement in a transparent and not bribery-oriented method", "the administration is transparent in implementing land laws", and "policy in communal title portrays the effort of the administration in overcoming customary land ownership issue" obtained mean scores of M=3.48, M=3.40, and M=2.36, respectively. The results explained that the respondents did not deny that the government has played its role the best it can in taking responsibility to ensure land ownership through communal title can be performed.

However, the situation regarding authorities' transparency causes disputes between the natives and the government when many of the respondents were of the opinion that they did not have a clear knowledge about the communal title until they signed the agreement to partake in the title. This is clear when the mean score was 2.12 (low level) for the statement "the land administration clearly explains the goal of giving ownership using the communal title" (see Table 7). This means that the landowners were not given proper explanation about the concept of communal title prior to signing the agreement.

Table 7: Authorities' transparency

Statement	Mean	Level
The method of obtaining agreement is transparent and not bribery oriented.	3.48	Moderate
The land administration is transparent in implementing land laws.	3.40	Moderate
Policy in communal title portrays the effort of the land administration to overcome customary land ownership issues.	2.36	Moderate
Landowners know about the communal land title.	2.35	Moderate
The land administration clearly explains the goal of giving ownership using the communal title.	2.12	Low
Cumulative Score 2.74 (Moderate)		

Note: Low (1.00-2.33), Moderate (2.34-3.66) and High (3.67-5.00)

This situation caused them to feel cheated as they were not given clear explanation of how the ownership title operates. Meanwhile, the customary landowners also disagreed in terms of whether this title can portray the effort of the government in overcoming customary land ownership issues. This matter is clear when the mean for this item (Policy in communal title portrays the effort of the land administration to overcome customary land ownership issue) was $M=2.36$ (refer to Table 7). For the customary landowners, communal title has caused the issue related to land ownership to be more complicated. Although the Land Office states that this method is the best to overcome land ownership problems, for the landowners, however, it is the opposite. Many among the landowners are angry as the majority of them have not been awarded the land that they requested. Some land even changed owners as soon as the title is approved. This clearly demonstrates the customary community's dissatisfaction with the state government. This situation eventually lead to a prolonged dispute between both parties.

Local Community's Customary Provision

Based on the analysis, local community's customary provision was at a moderate level ($M=2.49$) cumulatively in influencing disputes over land ownership. In the context of customary land ownership, a community has its provision in determining borders and ownership. However, the customary community's informal information often contradicts with the information obtained from the Land Office. Hence, this situation certainly becomes the cause of dispute between the landowners and the agency when the landowners cling to the customary provision that has become synonymous with the context of land ownership for the customary community.

Analysis of the customary provision showed that the statement on their "ancestors' customs and beliefs of customary land will be eroded" was at a high-level in relation to causing disputes to occur between the landowners and the state

government. Many of the landowners felt insecure about the awarding of land through the communal title. This is because this title will combine a few Customary Land (NCR) villages under one title. This triggered the dissatisfaction of the landowners. They were of the opinion that ownership should follow the owner's village and that there is no need for participant/beneficiary because ownership rights are under the customary way of land ownership, which is Native Customary Rights Land (NCR). This matter is certainly contradictory to the existing customary land provision.

Table 8: Constraints to the Customary Provision

Statement	Mean	Level
Ancestors' customs and beliefs of customary land are not diminished.	4.03	High
The communal title will not diminish the continuity and heritage value of customary land.	2.23	Low
The communal title will not cause traditional values and ancestors' beliefs of the land to change.	2.21	Low
The communal title will not cause customary practices in land distribution to be forgotten.	2.08	Low
The communal title will not abolish the community's rights over the land explored by their ancestors.	1.94	Low
Cumulative Score 2.49 (Moderate)		

Note: Low (1.00-2.33), Moderate (2.34-3.66) and High (3.67-5.00)

The mean obtained for the statement “communal title does not diminish the continuity and heritage value of customary land” which was 2.23 (see Table 8) clearly indicates the landowners’ acceptance that the communal title will be contraining the customary provision of their land.

Meanwhile, communal title is also seen to abolish the community’s rights over the land explored by their ancestors. This is clearly evident from the mean score obtained for this item which was M=1.94. (see Table 8). In this regard, the landowners demonstrated a low acceptance level for the statement that the communal title will not abolish the community's rights over the land obtained from their ancestors. Although the communal title has the aim of protecting Sabah natives’ interests over customary land, the landowners, however, do not share such views. This is because land alienation tends to lead to a partnership between Sabah natives and the government agencies in the plantation development.

As a result, this situation is perceived to eventually lead to changes in the traditional values and beliefs practiced by their ancestors. This situation is clear when the landowners gave a low mean score level (M=2.21) for the statement “the communal title will not cause traditional values and ancestors’ belief of the land to change” (see Table 8). This is because their rights over the explored land are indeed inherited as well as guaranteed by the community. Moreover, for customary landowners, they

strongly believe that customary land has heritage continuity value in the Bajau community. For the Bajau community, land ownership among the community members allows their community to keep expanding.

The land that is owned through heritage gives the Bajau community the space to build settlements and grow crops for their livelihood from one generation to the next. Thus, the land is something akin to life for them, and without the land, it would be difficult for them to survive. Therefore, it is no surprise that the average mean for the statements “the communal title will not cause customary practice in land distribution to be forgotten” and “the communal title will not abolish community’s rights over the land explored by the ancestors” were all at low levels (M=2.08 and M=1.94), suggesting that the constraints to customary provision as a result of communal title causes disputes to happen. This is because as long as they cling to the customary provision that they have been holding on to for a long time, indisputably any new provision that is to be introduced will be hindered.

Community Cultural Provision

The land is important in the Bajau community. The land is considered their symbol of identity that is inherited from generation to generation. Land ownership and preservation from one descendant to the next is a pride of the Bajau tribe in Semporna. This is because customary land is a hereditary land inherited from generation to generation from their ancestors. Results of the analysis of community cultural provision showed the cumulative mean score for this factor was at a moderate level (M=2.70) in causing disputes over land ownership in the studied area. This situation indicates that in the context of customs practised, community cultural provision is one of the reasons for disputes that occur between the customary landowners and the state government or the agencies.

Table 9: Community Cultural Provision

Statement	Mean	Level
The land is important in the Bajau community.	4.83	High
The communal title brings pride towards the inherited land.	2.28	Low
The identity of the community will not be lost/will not disappear as soon as land alienation through communal title is executed.	2.21	Low
The communal title will make land ownership and preservation from the ancestors continue to persist.	2.11	Low
The communal title will not encourage accidental stripping of land ownership among customary landowners.	2.08	Low
Cumulative Score 2.70 (Moderate)		

Note: Low (1.00-2.33), Moderate (2.34-3.66) and High (3.67-5.00)

As can be seen in Table 9, the statement “the land is important in the Bajau community” obtained a mean score of 4.83. This situation clarifies how important land is in the Bajau community to the point that it causes many issues that are related to land in this area. Some of the apparent issues include ownership overlap, land border issue, and the latest which is related to the issue of awarding land through the communal title.

For the Bajau tribe, the land is seen as a symbol that holds a very high familial value. The land is a gift that is of big value to the generation that inherits it. Therefore, it is not surprising if there is a resistance towards the communal title as the communal title does not emphasise the collective ownership culture. Instead, communal title owners are considered as participants in the communal title. Hence, this situation is seen as something that will eventually diminish the customary communities’ culture. This matter is clear when many of the landowners only provided low level feedback ($M=2.28$) for the factor that causes disputes (see Table 9). This is because for a communal title, any addition, removal and replacement of participants can only be executed through a detailed investigation by the district’s Assistant Land Revenue Collector, and it is subjected to the approval of the director of the department of lands and surveys. Thus, issues regarding the community’s customary land ownership no longer arise as they are now merely ‘participants’ of the communal land. Based on the analysis, the customary landowners mean score for the statement “the communal title will not encourage accidental stripping of land ownership among customary landowners” was $M=2.08$. Based on my understanding, since the statement was a negative one (will not) and the mean score was low (meaning they disagree with the statement), this suggests that the respondents see this as something that can cause dispute as they disagree with the statement (i.e., they believed that communal title will strip them of their customary land ownership, and thus this is a point of contention between them and the state government/ agency). This becomes clear when respondents classify this statement as having a low level (2.08) in leading to disputes between landowners and the state government or agencies (see Table 9). This could be because changes in values and usage of NCR land would also change the community's culture towards the land.

Conclusion

The conclusion regarding the disputes and issues that occur in relation to NCR land is that it is greatly linked to the effort of the customary communities in strengthening the custom and culture that they practice in land ownership. Generally, the landowners have the view that the government’s effort to unravel customary ties in the context of customary land existence will cause ownership issues to become more serious when there are resistance towards the new provision that wants to be introduced. In the context of this study, awarding of land through communal title is seen as something

that can change the view and ways of the future generations concerning land. In this regard, analysis on the level of issues and factors that cause land dispute was found to be high for the aspects of culture and customs and moderate and low for the aspects relating to the agency. This situation is a result of the feeling of concern and uneasiness of the community that would lose their land which has been inherited for a long time if a new land ownership award like the communal title method is introduced. For this reason, it would not be surprising if at the end of 2019 (when this study is already completed), land award through communal title by the government would have already been revoked and replaced by individual land ownership.

This study has several paramount contributions for the government, policy makers, and indigenous communities, especially the natives. The findings can be used as a guidance for the government and policy makers to introduce new policies or grant. Importantly, our findings emphasise the importance of land ownership status to the indigenous people. They believe that individual land ownership is preferable to group or communal grant ownership. As a consequence, recognition of land ownership is becoming a vital need, and documentation is required as confirmation of possession. As the issue of communal title ownership provision seems to have the strongest influence on native customary rights land disputes, the government must take this issue into account when making new grants and promptly provide native customary land rights (NCR) to the natives. Moreover, the findings bring a new angle in comprehending and debating the difficulties confronting today's indigenous populations, including those faced by the native people.

Acknowledgements

The researchers would like to extend their gratitude to UKM Research Grant for funding this study under the Research Incentive Grant (Geran Galakan Penyelidikan) (GGP 2017-073).

References

- Advisory Consortium on Conflict Sensitivity (ACCS). (2013). *Conflict Analysis for Northern Uganda*. Kampala: Refugee Law Project, International Alert and Saferworld.
- Azima, A. M., Lyndon, N., & Akmal, M. S. (2015). Understanding of the meaning of native customary land (NCL) boundaries and ownership by the Bidayuh community in Sarawak, Malaysia. *Mediterranean Journal of Social Sciences*, 6(5S1), 342–348. <https://doi.org/10.5901/mjss.2015.v6n5s1p342>

- Azima, A. M., Ramli, Z., & Saad, S. (2020). Factors that cause the dispute of land alienation using the Institutional Approach. *Preprints*, 1–8. <https://doi.org/10.20944/preprints202012.0456.v1>
- Azima, A. M., Sivapalan, S., Zaimah, R., Suhana, S., & Mohd. Yusof, H. (2015). Boundry and customary land ownership dispute in Sarawak. *Mediterranean Journal of Social Sciences*, 6(4S3), 17–25. <https://doi.org/10.5901/mjss.2015.v6n4s3p17>
- Azima, A. M., Zaimah, Ramli, Sarmila, Md. Sum, Suhana, S., & Ismail, O. (2019). Native customary land and ownership disputes among owners. *International Journal of Advanced and Applied Sciences*, 6(11), 81–91. <https://doi.org/10.21833/ijaas.2019.11.011>
- Browning, Z. (2019). A comparative analysis: A legal and historical analysis of protecting indigenous cultural right involving land disputes in Japan, New Zealand and Hawai'i. *Washington. International Law Journal Association* 28(1), 209-239.
- Bulan, R. (2019). The civil courts and determination of native customary land rights: Merely declaring or making laws? *Borneo Research Journal*, 13(1), 1–23. <https://doi.org/10.22452/brj.vol13no1.1>
- Cameron, K. (2019). Resolving conflict between Canada's indigenous peoples and the crown through modern treaties: Yukon case history. *New England Journal of Public Policy*, 31(1), 1-11.
- de Vos, R. (2018). Counter-Mapping against oil palm plantations: Reclaiming village territory in Indonesia with the 2014 Village Law. *Critical Asian Studies*, 50(4), 615–633. <https://doi.org/10.1080/14672715.2018.1522595>
- Dewi, R. (2016). Gaining recognition through participatory mapping? The role of adat land in the implementation of the Merauke integrated food and energy estate in Papua Indonesia. *Austrian Journal of South-East Asian Studies* 9 (1): 87-106
- Eck, K. (2014). The law of the land: Communal conflict and legal authority. *Journal of Peace Research*, 51(4), 441–454. <https://doi.org/10.1177/0022343314522257>
- Fransiskus, X. G. (2015). Negara vs masyarakat: Konflik tanah di Kabupaten Nagekeo. *Jurnal Politik dan Masalah Pembangunan*, 11(2), 1657-1666
- Hamid, N. A., Pauzai, N. A., & Nong, S. N. S. (2011). Konsep kepenggunaan mengikut syariah dan aplikasinya dalam perundangan di Malaysia. *Jurnal Kanun*, 23(1), 1–20.
- Gassiy, V., & Potravny, L. (2019). The compensation of losses to indigenous peoples due to the arctic industrial development in benefit-sharing paradigm. *Resources*, 8, 71.
- Lavers, T. (2018). Responding to land-based conflict in Ethiopia: The land rights of Ethnic minorities under federalism. *African Affairs*, 117(468), 462–484. <https://doi.org/10.1093/afraf/ady010>

- Liang, T. M., Choon, T. L., Vern, T. W., Assat, L., Ujang, M. U., & Chin, T. A. (2019). Understanding the challenges of native communal titles in Sarawak: A lesson from Sabah. *GBES*, 1–7.
- Luyan, M., & Lunkapis G. (2016). Konflik hak tanah adat di Kampung Imahit, Tenom, Sabah. *Malaysian Journal of Society and Space*, 4(1), 69-79.
- Massawe, G. D., & Urassa, J. K. (2016). Causes and management of Land Conflict in Tanzania: A case of farmers versus pastoralists. *Journal of Management and Development Dynamics*, 27(2), 45-68.
- Marzuki, A., Rofe, M., & Hashim, N. A. M. (2014). Disputes on nature-based tourism development in northern peninsular Malaysia. *Tourism Analysis*, 19(4), 525–530. <https://doi.org/10.3727/108354214X14090817031314>
- Naejel, N. (2011). *Kaum Murut tolak geran komunal*. Jendela Sabah. https://jendelasabah.blogspot.com/2011_05_25_archive.html
- Napitu, J. P., Hidayat, A., Basuni, S., & Sjaf, S. (2018). Conflict resolution concept: Implementation of Cca-Fm Model in Meranti Forest Management Unit, South Sumatra. *Indonesian Journal of Forestry Research*, 5(2), 103–118. <https://doi.org/10.20886/ijfr.2018.5.2.103-118>
- North, D. C. (2005). *Understanding economic change*. Cambridge: Cambridge University Press.
- Obala, L. M., & Mattingly, M. (2014). Ethnicity, corruption and violence in urban land conflict in Kenya. *Urban Studies*, 51(13), 2735–2751. <https://doi.org/10.1177/0042098013513650>
- Ojala, J., & Nordin, M. (2015). *Mining Sapmi: Colonial histories, Sami archaeology, and the exploitation of natural resources in Northern Sweden*. Madison: Board of Regents of the University of Wisconsin System.
- Paaga, D. T. (2013). Customary land tenure and its implications for land disputes in Ghana: Cases from Wa , Wechau and Lambussie. *International Journal of Humanities and Social Science*, 3(18), 263–270.
- Persson, S., Harnesk, D., & Mine, I. M. (2017). What local people? Examining the gallok mining conflict and the right of the sami population in terms of justice and power. *Geoforum*, 86, 20-29.
- Rooshida, M. A. R. M., Jady @ Zaidi, H., Wan Roslan, W. S. A., & Hanani, A. H. (2016). *An introduction to Sabah Native Land Law*. Bangi: UKM Press.
- Sabah Land Ordinance (Chapter 68) with relevant subsidiary Legislation. (2016). 2nd Edition. n.p.: Lexis Nexis.
- Sarah, D. L. (2013). Penegakan hukum agraria dan penyelesaian sengketa pertanahan dalam proses peradilan. *Journal Hukum*, 1(6), 100-113.
- Tiung, L. K., Lunkapis, G. J., & Porodong, P. (2015). Pembikaaian berita isu tanah Adat Anak Negeri (NCR) dalam akhbar tempaan Sabah: Analisis perbandingan antara *Daily Express* dan *New Sabah Times*. *MANU*, 22, 107-135.

- Yusof, Y. M., Zakaria, E., & Maat, S. M. (2012). Teachers' general pedagogical content knowledge (PCK) and content knowledge of algebra. *Social Sciences (Pakistan)*, 7(5), 668–672. <https://doi.org/10.3923/sscience.2012.668.672>
- United Nations. (2012). *Land and conflict*. New York: UN Interagency Framework Team for Preventive.

How to cite this article (APA):

Azima A.M., Zaimah Ramli, Suhana Saad, Sarmila Md. Sum & Jamaluddin, F. (2021). Issues and factors causing Native Customary Rights Land dispute in Sabah. *JATI-Journal of Southeast Asian Studies*, 26(2), 132-155.

Date received: 13 October 2020

Date of acceptance: 16 December 2021