

CHAPTER V

THE FUTURE

The present system whereby due importance is given to the administration of native customary law should continue. This is because native customary law governs the way of life of the natives. Due importance was given to the system by the British because besides other things they saw the need to continue with a way of life the natives are accustomed to. These rules and regulations of native customary law are known to all natives and they would be aware when they breach any customary law. This knowledge keeps the peace in a village community.

The Natives on their part take pride in the institution of Native Courts. Sabah is a multi-cultured country and every native is proud of his heritage. By the system of Native Courts they felt that due importance is given to native customs which would be disregarded if the native courts are abolished.¹

¹ Interview with Haji Mohd. Noor Mansoor on 20th February 1976, at the Parti BERJAYA headquarters.

It is the opinion of all those in touch with the native customs that the system of Native Courts and the institution of native chiefs should go on.

But a number of changes are necessary in many fields.

Firstly, the efficiency of the Native Courts depends on the ability of the Native Chiefs. Too often the Native Chiefs are old with very old fashioned moral standards. This may cause unnecessary hardship on the defendant or plaintiff. In the case of Horieri Tani v. Tony Simol, a witness for the plaintiff was discredited when he said he had no evil intent when he and a friend of his went with two women to the seaside in the afternoon. I noticed that the President of the Native Court then took a less sympathetic attitude to his whole testimony. It may be because he is old and it was difficult for him to accept the fact that what was immoral in his young days may not be regarded as such now. Muzik Yassin Burrow, a Community Development Officer at the Community Development Centre was of the opinion that native chiefs should not be allowed to remain as such when he exceeds the retirement age of fifty five. This suggestion has its merits but also demerits. As previously stated, age commands respect in a native community. However, regular courses for native chiefs might help solve this problem of non-awareness of present social standards.

Secondly, there is a necessity to provide training for the Native Chiefs. Datuk Benedict Shim, the West Coast Resident recommended courses on

- (1) simple administration and organisation of Native Courts,
- (2) maintainance of records of Native Courts,
- (3) procedure of a trial in a Native Court.

He said that at the present time, Native Chiefs frequently fail to state the evidence of breach of custom and the reasons for the judgement in the record. He felt that a good record should show the custom and the law of the parties involved so that in the long run the customs and laws of the various districts and tribes can be compiled based on these records. Datuk Haji Abdullah Hassanat, the Resident of the Sandakan Residency holds the same view.

The Resident of the Kudat Residency Datu Haji Bistari bin Haji Jimrain recommended the following:

- (1) there should be one Native Court building for every district in the State,
- (2) legal training courses should be given to all District Chiefs and Native Chiefs so that they can be familiar with the country's legal system and implement them in the Native Courts,
- (3) studies to be taken towards the unification of all the native customs so that a common procedure and penalty could be obtained. There will then be only a judge presiding fully aware of the customs of the

people and less need to rely completely on the assessors.

The Native Chiefs have intervening powers and as such they can take action on their own initiative when a breach of native custom arises. Care must be taken that this power is not abused. I have been told of incidents where the Native Chiefs were aware that a couple are living in the same house without there being any form of marriage between them. This is an offence according to native laws. It is the duty of the chiefs to deal with such couples usually by way of fine as soon as it occurs. However, it is not uncommon in such cases that the chiefs only take action when the couple have a family. This will expose the culprits to more shame and more fine. It will also lead to ill feelings between the family of the man and his mistress towards the chiefs. They would feel that if the chiefs were to take action, they should do so as soon as they know about it and not to delay it unnecessarily.

There is also a need to have as nearly as possible a uniform system of native customs in the country. This can be obtained by having an Annual Native Chief Conference or even one every two years. This had been done in 1958 up to 1971. In the Native Chief Conference, all the laws of each district are noted. Discussions will be held on the differences with a view to eliminating them.² At the moment,

² Observed from the Minutes of the Native Chief Conference, 1968.

the Mahkamah Adat Orang Islam by O.K.K. Seman is being used as a guide in the Kudat Native Court and the Kota Kinabalu Native Court. The Conference also discussed these rules and these rules served as a guide in the Native Courts.

Datuk Abdul Hamid Egeh, the State Secretary, has sent a directive to the Ministry of Local Government to hold the Native Chief Conference annually starting this year. This will pave the way in reducing the too many differences not only in the customs but in the penalties involved in the breach of the customs.

It should be noted that the Native Chiefs Conference in addition also discussed the day to day role of the Native Chiefs in the village affairs. Thus the revival of the Conference was mentioned by the Yang di Pertua Negara in his Policy Speech during a special State Assembly meeting after the formation of the BERJAYA Government in Sabah. He said, "The Native Chiefs Conference will be revitalised and made meaningful as this is one important avenue through which the Bumiputres can air their views and aspirations and put forward their requirements so that action can be taken to meet them."³

The Conference can also study the various native laws and aim to remove laws or reduce their penalty to a bare minimum, or even to discourage a custom which would be a barrier to economic progress.⁴ The Native Chief Conference of 1968 was attended by

³ Kinabalu Sabah Times, Page 1, 27th April 1976.

⁴ Such as subdivision of land among members of the family on death as this would lead to smaller fractions which in the end will be too small to be used for cultivation.

Native and District Chiefs from Lahad Datu, Kudat, Kota Kinabalu, Sandakan, Pensiangan, Bekran, Tambunan and Membakut. It covers a large part of Sabah.

The minutes of this Conference are valuable to those involved in the administration of native affairs. This is because customs are not written and the minutes help them to obtain a record of the various laws and development of them.