

INTRODUCTION

Objectives

The main objective of this paper is to examine and consider outstanding aspects in native land administration in Sarawak. This will be undertaken by detailed study of existing procedures under statute law. Areas of ambiguity in land legislation and its resulting implications will be discussed and proposals to improve existing law will be assessed. It is also proposed to highlight major problems faced by the authorities in native land administration. The peculiar problems presently experienced will be shown to bear on policy underlying native land administration in the future.

Scope

Native land tenure in Sarawak can be approached from two aspects: the substantive aspect and the procedural aspect. This paper will be concerned with the procedural aspect.

A broad definition of the nature of native customary rights in land was contained in the 1939 Memorandum on Land Tenure, Secretariat Circular No. 12/1939 addressed to all Government officers. It was stated that all natives in Sarawak followed Indonesian "adat" to a greater or lesser extent and land tenure adat was based on the following principles:

- (i) The right to cultivate cleared land rested in the community with priority to the heirs of the original feller of big jungle.

- (ii) Where not inconsistent with the above, the existence of permanent cultivation of a reasonable density was evidence of customary ownership as opposed to customary rights of user.
- (iii) Individual ownership was limited by the customary right of the community to a say in the matter of disposal to anyone outside the community.
- (iv) No community or individual might hold up land in excess of requirements and in the extreme case, removal to another district automatically extinguished all rights of user.

The Sarawak Land Code (hereinafter referred to as the Land Code), is the principal statute governing most day-to-day aspects of land administration.

Land settlement under the Land Code constitutes the single largest operation affecting native customary rights in land. Chapter I of this paper will consider land settlement and its implications on native land administration.

The native Courts Ordinance, Cap. 43 enacts a separate hierarchy of native courts exercising jurisdiction inter alia on the determination of land disputes between native litigant. Chapter III of this paper will attempt a critical analysis of this legislation in terms of its bearing on arbitration of land disputes among natives.

Part II of the Land Code has as one of its underlying aims

the protection of native customary rights in land by statutory force. Chapter III of this paper will be a study of the present system of land classification, criticisms against its retention and assessment of one major alternative proposal.

Finally, some insight as to future trends of development in the administration of native customary rights in land will be undertaken. Chapter IV of this paper will be devoted to land consolidation and rehabilitation with particular emphasis on native customary land. This aspect will assume greater importance in the event that the proposed Sarawak Land Consolidation & Rehabilitation Authority Bill be passed by the Council Negri.

Methodology

The chief means by which material in writing out this paper were obtained were by interviews and detailed study of Land Legislation (of which the Land Code was most important) and related statutes as well as reliance on the findings of various committees (such as the Report of the Land Committee, 1962). In the matter of interviews, the writer had the opportunity to interview officers of the Land & Survey Department (1st Division) at Kuching and the Department's Headquarters. Manuals on land administration which were compiled by this Department were utilised in locating the general principles on which the Land Code operated with particular reference to policy as regards native land administration. During one excursion to the Serian District the writer attended a meet-the-people session where local representatives, mostly from the native group called Bidayus, met land officers from the Land & Survey Department to discuss problems relating to native land tenure prior to the implementation

of a land settlement operation. It is estimated that a great number of potential disputes as to establishment of native customary rights in land would arise in that instance.

The Report of the Land Committee, 1962 was much influenced by the nature of criticisms on the retention of the present system of land classification. In incorporating such criticisms in Chapter IV of this paper the writer interviewed some native community leaders including politicians and native businessmen. There was general consensus that the present land classification system based on inalienability of native title in native area land and native customary land was necessary to maintain native land proprietorship.

In connection with land arbitration, the District Officer at Kuching was interviewed during which information obtained drew attention to the serious backlog of native cases regarding land disputes due to lack of qualified arbiters to hear such cases. The learned opinion of the Attorney-General of Sarawak was sought during the process of research conducted at the Attorney-General's Chambers in Kuching and is incorporated in this paper.

Limitations and Problems

The main problem encountered in writing this paper and in obtaining research material is the lack of reliable, up-to-date references on the specific subject of native land administration. Very little critical analysis or publications are available on this subject. This may be attributed to the vast scope and complicated nature of native customary rights in land which have so far remained the strict concern

of the Land & Survey Department.

Records on decisions of native courts in land disputes are not kept or have never been compiled. A large number of land disputes are disposed of in the Headman's Courts but there are no records kept of such decisions. Hence, it is difficult to discover from records the nature of common land disputes among natives.

There is also, on the whole, a lack of up-to-date statistics especially as regards total acreage of land classified as native area land and native customary land during the previous two years. Such statistics are still in the process of being compiled.