

Deconstruction and Reconstruction of Native Customary Land Tenure in Sarawak

Dimbab NGIDANG*

Abstract

Contrary to commonly accepted principles of civil society and the ideology of self-determination and governance, the socio-cultural and psychological spaces, territory, boundaries, sovereignty, and customary rights to land resources of the indigenous peoples in Sarawak were not self-determined, but were defined during the course of the last century and a half by the Brooke and colonial administrations and by subsequent postcolonial governments. The first two regimes established their dominion and control over the indigenous peoples in Sarawak through autocratic rule and paternalism. In the pretext of protecting native rights to land resources, expatriate administrators deconstructed these rights, which do not owe their existence to statute, and reframed them on the basis of the land laws of their motherland. When customary rights were subjected to formal land codification under the Torrens land registration system, this codification impinged upon the natives' land inheritance system, their livelihood, their cultural identity, human dignity, and right to exist as discrete groups. Compounding effects of this land codification, the coming into existence of legal pluralism, as well as the exercise of administrative convenience in addressing sensitive land issues have become major sources of land conflict between the Dayak community and private developers and loggers in present-day, post-independence Sarawak.

Keywords: customary rights, territorial domain, lease, grant, crown land, state land and licensees, legal pluralism, codification and commoditization and joint venture

I Introduction

Land rights are a contentious issue in many former British colonies. Scholarly debates on land tenure arrangements in former British colonies range from those relating to property [[Cramb and Wills 1990](#); [Appell 1991](#); 1995] and human rights [[Hooker 1997](#); [Daes 2000](#); [Peang-Meth 2002](#)], social relations and ethnic identity [[Martin 1997](#); [Bulan 1998](#)], legal pluralism [[Marasinghe 1998](#); [Hooker 1997](#)], and state roles [[Adam 1998](#); [Edmund and Wollenberg 2001](#); [McCarthy 2000](#)], to issues pertaining to the stakeholders' perspective in resource conflict management [[Elias et al. 2004](#)]. All these former colonies inherited both formal and informal land tenure systems based on customary law.¹⁾ The presence of colonial legal systems in these

* Institute of South East Asian Studies, University Malaysia Sarawak, Jalan Dato Musa, 934000 Kota Samarahan, Sarawak, Malaysia. e-mail: dimbab@ieas.unimas.my

1) See [Adam \[1998\]](#), [Appell \[1971; 1991; 1995; 1997\]](#), [Langub \[1998\]](#), [Lang \[1998\]](#), [Bian \[2000\]](#), [Porter\[1967\]](#), [Richards \[1961\]](#), [Cleary and Eaton\[1996\]](#), [Eaton\[1997\]](#), and [Bulan\[2000\]](#) in Malaysia, [Chandrasena \[1993\]](#) in Sri Lanka, [Kingi and Maughan \[1998\]](#) and [Heremaia \[2000\]](#) in New Zealand, ↗