

# FACTORS THAT CAUSE THE DISPUTE OF LAND ALIENATION USING THE INSTITUTIONAL APPROACH

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## Abstract

Land management and community involvement are two main elements in ensuring the absence of conflict between landowners and agencies. Disputes between owners and agencies will be the biggest obstacle in the land development effort. Therefore, this article aims to address the cause of landowners' objections against land alienation using the institutional approach. To enable the researchers to understand the root causes of landowners' objections against the alienation of land using the Communal Grant method, the institutional approach has been adopted to identify the issue of the objection. Therefore, questionnaires for 100 landowners were distributed in two villages in Semporna district in Sabah. The purpose is to obtain their views on the cause leading to the dispute of land alienation using the Communal Grant method. The Likert scale was used to enable community rankings on issues that can be understood according to the level of seriousness of the population's views on the issue of using Communal Grants in native customary land alienation. The study results explain that there are four factors that drive objection of the Communal Grant land alienation which involves the formal factors. The findings explained that there are 4 formal provisions which lead to the community's objection against Communal Grants, namely the native customary lands (NCR) act, provision of Communal Grants, provisions in the land ownership and land allocation in Sabah Land Ordinance. Due to numerous objections among native customary peoples concerning the native customary land alienation using Communal Grants, the government has acted in substitution with a fair method of individual ownership for the native customary peoples. This situation explains that disputes in land ownership can be a threat to the country if it cannot be resolved in ways and methods acceptable to the native customary community. This study will benefit the government and NGO's to alert and focusing on barriers in the context of local community land laws. Communal grants are intended to address land issues in Sabah.

**Keywords:** Land dispute, land alienation, communal grant, native customary land, institutional approach

## INTRODUCTION

Native Customary Land (NCR) is a privilege granted to the Sabah natives who have resided and worked on government's land with subsistence activities for three consecutive years and subject to sections 5,6,13 to 16,65 and 88 (6). People in Sabah assumed that native customary land is not subjected to written laws but is based on the original practices practised by them since their ancestors. When there are settlements and daily activities such as agriculture and others, then there is native customary land. Article 160 of the Malaysian constitution provides that the Land of the Native Peoples and the community uses local custom to resolve the dispute (43).

There are 3 conditions which allow native customary land to be obtained. Firstly; the person who claims the land must be the origin and native of Sabah. Secondly, the land claimed is not land with a grant or reserve land and thirdly, the land must be vacant land. Prior to the British arrival, the lands had been inhabited by the native. Logically, native customary land ownership is stronger than land with a grant. It is clear that if the native customary land is encroached or has been issued to any party, the grant can be revoked and it is contained in the decision of the Federal Court. Although the Sabah Land Ordinance was enacted on 13 December 1930, the NCR claim could still be submitted under section 14 (44). This situation explains that the state government will work to increase ownership of property by the native people. Therefore, the state government has carried out fiduciary responsibilities to preserve and protect the rights of customary native land and ownership of customary native land. As of December 2011, about 24.7% (487,680 hectares) of total land ownership has been registered in Sabah (7;28;21)

To expedite the process of NT land condition alienation to the native of Sabah and resolving the NCR issues, Sabah State Government using the Sabah Land and Survey Department has established a new land alienation method,

using the Fast Track Planned Land Alienation for the issuance of Communal Grants. To enable Communal Grants to be issued, amendments to the provisions under section 76 of the Sabah Land Ordinance have been gazetted on 10 December 2009 (7;28). At the same time, issues related to private investors application for native customary lands opening large-scale agricultural projects arises. Besides, there are cases of gazetting and acquisition of native customary lands that occur beyond the knowledge of the native people who had occupied and worked on the land. This situation leads to a dispute among them when the native people who occupied the land from the beginning were recognized as illegally occupying their native customary lands. This problem exists because the land is not legally owned by them (44;27). Such cases have led to conflict 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 institutional approach.

The institutional approach involves discussions on the establishment of institutions, changes in the relationship between the economy and the legal system and the relationship between power, belief system and the impact of technical change on institutional structures (25;20). In the context of native customary land, this paradigm has been seen to provide a rational and dynamic concept to the policy implementers (24). Rational and dynamic conceptual frameworks can be used as a basis for scrutinizing obstacles to native customary land disputes. To examine the causes of land ownership disputes, this situation is closely linked to the development process that is normally influenced by formal and informal regulations in politics, law, economics and social system (20). However this study focuses on formal provisions that causes disputes among NCR landowners.

## LITERATURE REVIEW

Land ownership disputes issue occurs when there is a change taking place within a community. This situation began to trigger conflict when native peoples found that the land that had been part of their lives encroached in the name of development (32). The situation becomes increasingly crucial if the rights of the native peoples to land are exclusively and incentively deprived (23; 14). This is greatly related to the authority by the state government and also by investors to the land. In this case, the state government gives attention to areas that can be inhabited by native peoples. The dissatisfaction of the native peoples had triggered the dispute between the two parties who clearly have a particular interest in the land (30).

(47) defines land dispute as a social fact which involves at least two parties as a result of differences in the interest towards the land whether it is based on the need or greed of the parties involved. This is supported by (42) stating the cause is from its own meaning to land ownership. Therefore, to study cases of land disputes, the first base to be known is the purpose and importance of the land to the parties involved. (47) outlines the psychological position that fears and desires will determine the emotional and material needs and thus impose an interest that is influenced by attitude and power. This matter will give birth to certain acts that trigger conflict. By knowing the importance of a piece of land, the researcher will be able to find the root of the emergence of the same conflict due to the concern or desire for the land by the parties involved.

The study by (24) in Ethiopia found that land disputes usually surged from several factors: customary rights contrary to political rights, political rights disputes, inheritance, trade, land lease and racial land boundaries. In the context studied by (24), customary rights are rights to land acquired using inheritance of patriarchal property (of a local nature) versus political rights obtained from the framework provided by the ruling party. Researchers found that the main cause of the customary rights dispute was usually caused by the absence of a black and white agreement and it often contradicts with clear political rights in the existing laws and acts.

The (46) discusses the context of land dispute when the dispute becomes a violent conflict. The opinion of this organization is that land dispute is dynamic in nature and its emergence is greatly related to the surrounding resources. This organization introduces a conflict cycle that has five important stages, namely dissatisfaction, insecurity, conflicts, negotiation and conciliation, and post-conflict (33). The cycle begins with dissatisfaction which occurs when there is an issue or claim on land from one party to another. A dissatisfaction occurred will cause the party to feel threatened and unsafe, this is the second stage. The third stage is the trigger of the conflict that changes the form of negative feelings into acts, violent conflicts. The third step affects the evolution of the conflict over time. The fourth stage refers to problem-solving using negotiation. Lastly, post-conflict (fifth stage) is a conflict that has been completed and the assistance can be implemented smoothly.

(17) reported that land disputes can be classified into two stages, namely normal level and conflict level. Low level refers to cases without political involvement such as property inheritance and small-scale border disputes between neighbours (31;34).. Stages of conflict involve political factors and wider community involvement. This level is difficult to resolve with policies and laws because the problem itself is beyond the existing legal circle (36).

In summary, several factors that prevent the naive local community from defending their rights against land which include social prejudice, land ownership laws, resource constraints, abilities, lack of awareness, social assimilation policies, racial elements and land administration (31). In the context of native land, it was found that the land ownership law that they obtained is not safeguarding their welfare in the context of ownership. This situation

certainly invites conflict and further disrupts the process of land development by the state government. To prevent further disputes, the formulation of a more dynamic, efficient and effective land management system is needed (37). The institution is a system established and structured by social rules (12) and subsequently produces the institutional facts that are only understood by the members (45). (1) and (45) agree that human economy is influenced by the institutional system. It can be noted that there is a difference in practice between one place and another such as land inheritance; Malaysia practices the civil and Syariah system while in Thailand it is under civil code. Although Malaysia and Thailand are geographically a Southeast Asian country, different cultural structures have produced different systems in line with the context of their respective communities (41;4). The difference in cultural structure is certainly able to trigger internal conflict between the government and local communities. Therefore, disputes in land context implicate the development process. In this context, there is certainly a constraint in the institution which ultimately limits the power of the agency. In an effort to develop native customary several actors who are responsible for determining the efficiency of the land property sector (8;5). Among the parties involved are individuals, the public sector and professional bodies responsible for providing the best facilities for development needs (47;9;10).

To develop agricultural land, for example, the agent has identified several feedbacks through the activities of political institutions, laws, economics and social regulations that influence the offerings of available land (42;15). In the meantime, the institutional competence in developing land should take into account market potential and at the same time considering the possibility of institutional constraints (18). The development process model uses an institutional approach to holistically discuss the land development process through an emphasis on the dynamics of social, economic and political aspects (3;22), and (13). The institutional approach emphasizes the importance of formal and informal institutions rather than function, evolution and implications aspects for institutional changes which occur in societies (20), (26), (2). The institution also refers to changes and dynamics of formal and informal rules and regulations such as a culture that involve relationships and integration within society. Hence, the institutional approach focuses on various institutional changes which cover the organization, market and individual behaviour in the context of politics, social and economic

Therefore, this study emphasizes on the alienation of land using Communal Grants in Sabah. The original purpose of alienating the land titles using the communal method is to address the issue of native land ownership in Sabah. However, the efforts undertaken by the state government has resulted in a dispute among the native customary landowners. In response to the question of the existence of dispute between the landowners and the state government, the institutional approach has been used to illustrate the reasons for the dispute which took place.

## METHODOLOGY

This study aims to understand the reasons that lead to land disputes among landowners in the study area. Survey research has been used so that data can be collected from the NCR landowners involved using the institutional approach in several villages in the district of Semporna, Sabah. In the institutional context, changes which apply to formal and informal regulations may affect the offering of native customary land to be developed. However this article only focuses on the formal factors that cause disputes among landowners. In the process of land development, changes in development institutions can be linked to the transformation that takes place in the policy and the community itself. There was a dispute that caused negotiations between landlords and agencies to not run smoothly as there was a change in ownership of land from collective to just as a participant. Consequently, there is a dispute which forces the implementation of land alienation method through Communal Grant to be suspended. Institutional reforms on land ownership does not produce results if the majority of the native customary landowners believe that native customary lands belong to their ancestors and must be inherited by the next generation. Failure of negotiations arises from the status of multiple land ownership; this means that family and social institutions play a role in determining their consent.

Semporna is a small town in the eastern part of Sabah Malaysia (21). Most of the residents in this area are involved in agricultural and fishing activities (11). The population of the district are smallholders who use communal and private land in their daily activities. However, samples are selected based on the availability of respondents to participate in this study. The respondents' criteria are those with communal and NCR land. A total of 100 respondents had completed the questionnaires in five different villages. Land ownership disputes among landowners are associated with dissatisfaction, concern and doubts of the landowners towards development agencies. To enable the understanding of factors that trigger the disputes over the alienation of land using Communal Grant, the institutional approach has been used. The institutional approach classifies the causes of disputes which occur in the process of land development into formal regulatory constraints (26;39;45). The purpose of the questionnaire was to obtain their views on the issues which led to the dispute of land alienation using Communal Grant method. Respondents were then asked to answer the factors which lead to the land ownership dispute using Likert scale 1 to 5. That is, 1 strongly disagree, 2 less disagree, 3 disagree, 4 agree and 5 strongly agree. Mean for each item was

obtained for each factor which leads to the disputes over native customary land alienation based on formal. The survey was developed based on past studies which are grouped into four themes under formal regulation approach. The section which involves four formal rules such as the customary land act (NCR), communal grant, land ownership and land distribution.

## .RESULT/FINDINGS

An analysis of the formal regulatory constraints found that there were some formal provisions which had raised the NCR landowners' objection against the granting of land alienation using Communal Grants. The objection was due to some provisions of the law such as;

### Provisions in the Native Customary Land Act (NCR)

The views from landowners explains that the root cause of native customary community disputes over Communal Grants is related to native customary land act. Basically, the landowners are with the opinion that native customary land act is the privilege granted to the native (Refer to Table 1), it was found that the mean of this item explains the cause of community disputes over Communal Grants. Many of the owners think that if the Communal Grants method is used in land alienation implemented, then the privilege in the context of native customary landownership will be lost. In Table 1 the mean of item 1 explains that landowners strongly agree that landowners will lose their rights through Communal Grants. This is because in Chapter 64 of the native Communal Grants, they become beneficiary/participant to the Communal Grants. This will undoubtedly trigger a dispute between the landowner and the state government.

Table 1: Native Customary Land Act and Communal Grant

No	Item	Mean
1	Native Customary land Act is a privilege granted to the native people.	4.61
2	The basis for native customary land claims cannot be disputed from the legal point of view.	4.34
3	If native customary land is encroached on or given to any company, the grant will be revoked.	4.31
4	Chapter 68 of The Sabah Land Ordinance is the acquisition of land according to customary/tribal tenure.	4.16
5	Native Customary land is stronger than grant land.	4.13

### Provision for Communal Grant Ownership

An analysis of the causes of disputes in the provision of Communal Grants explains that landowners in the study area disagree with some of the provisions contained in the Communal Grant (Refer to Table 2). The majority of respondents disagree with the alienation using Communal Grants to resolve the issue of duplication of land applications. In the meantime, they also believe that the granting of communal land rights cannot protect their rights against the land. This is because using the Communal Grants they only serve as participants and their rights to the land is written off (16;38). Concerns that they will lose the land through Communal Grants had caused the failure in resolving the disputes over land ownership

Table 2: The provision of Communal Grant that caused the landowners disputes.

No	Item	Mean
1	Communal Grant can resolve the issue of Native Customary Rights claims without the land investigation process.	2.04
2	Communal grants can expedite the release of NT/FR land titles in groups.	1.94
3	Communal grants can prevent Sabahans Natives from selling land titles.	1.85
4	The awarding of communal land rights aims to protect the interests of the Natives of Sabah.	1.83
5	Communal grants can resolve the issues of overlapping land applications.	1.77

### Provisions in the Land Ownership Act Article 161 A

The findings also clarify that the Communal Grant incorporated several villages of Native Customary Land (NCR) (Refer to Table 3). This is evident when landowners responded strongly agree to the statement that Communal Grants have combined several villages. For native people, this situation should not occur. They argue that ownership should follow the owner's own village and the existence of participant/beneficiary is not necessary because the land ownership rights are according to native customary land ownership, namely the Native Customary Land Rights (NCR). This is certainly found to be very contradictory to the existing native customary land provisions (27;50). Land Offices that manages the communal land grants explains that it does not violate the existing provisions. This is because the land alienation to Sabahans natives is still subjected to section 9 (1) of the Sabah Land Ordinance. For the government, the provisions in the Communal Grant are intended at preventing the sale of native customary land. However, to the native customary landowners there is no such term as a sale of land that occurs but only involves the leasing of land within a certain period. And for them in the event of a sale, it is just among members of their tribe.

Table 3: Native Customary Land ownership and the Native People

No	Item	Mean
1	The landowner loses rights over his native customary land.	4.70
2	In the Communal Grant, NCR landowners are only considered as participants or beneficiaries.	4.70
3	Communal Grants contradict with the NCR land concept.	4.64
4	Awarding of Communal Grant involves a combination of several villages.	4.44
5	There is a guarantee of freehold ownership in Communal Grant.	1.78

### Land Allocation in Sabah Land Ordinance

The findings from the land allocation in the study area indicate that native customary landowners agree with the procedure of land handling by the state government. They generally agree and understand that the approval of their application depends largely on the availability of existing land (Refer to Table 4). But they are disappointed that the approval takes a long time even though Sabah has more than one land alienation methods. Landowners also agree that the land which they applied for cannot be developed before the application is approved. Thus, due to the long approval period, often there are encroachments on government-owned vacant land. However, as seen in the customary context, it is permissible with an evidence to prove that some plants and plots have been worked on by the community. This is contrary to government provisions (44; 43). Such a situation has created a dispute when in the customary provisions it is legal but in the existing formal provisions, it is unlawful (48;33). Therefore, a number of the landowners try to obtain the land grant but the problem arises when the application for grant involves a high cost which includes land survey, premium payment and others. Referring to Table 4, it is found that landowners do not agree with an open land alienation item and applicants may apply for government land at any time.

Table 4: Sabah Land Allocation in Sabah Land Ordinance

No	Item	Mean	SD
1	Land applications should not necessarily be approved as approval is subjected to land readiness, land suitability, economic needs and abilities and government interests.	4.13	.812
2	The government's land cannot be developed before the land application is approved.	4.04	.790
3	Land alienation through farmland development in a smart partnership between the Sabah Natives and the Government Agencies exist.	2.89	1.278
4	The land alienation system practised in Sabah is an open system	2.51	1.367
5	An applicant can apply for a government land area at any time.	2.47	1.235

## DISCUSSION

Based on the findings disputes that occur among NCR land owners are driven by formal factors. Formal regulatory constraints factors touch the constraints in the form of act, policy and others (25;26). (25), the provision of land deeds may be a cause for community disputes. For example, native peoples' objections in the study area were evident when many among them stated that there was a contradiction between the Communal Grants and native customary land act (27). Hence, in the constraint of the formal regulation, there are four formal provisions which have been identified as contributing to the community's objection of the Communal Grant including the native customary land act (NCR), Communal Grant provision and land alienation system.

The strength of the existing Native Customary Act led them to dispute the necessity of ownership using the Communal Grants (21;27). This is evident through Table 5 when the majority of the landowners strongly agree that items 2 to 3 are very powerful causes that lead to disputes over land alienation using Communal Grants. The majority acknowledged that the Communal Grant has resulted in the acquisition of land through the Land Ordinance Chapter 68 through customary and tribal tenure would be affected. This grant will also cause the native customary land function in the context of the grant to slowly begin to deprive(31;49). Concerns that the community will lose their identity without native customary land had caused a dispute over the use of Communal Grants has never been able to resolve the issue of overlapping claims against native customary land (29;31;32) .

Communal Grants have several objectives, among them are to eradicate poverty in the rural areas through a planned land alienation and optimal land development; Protecting the interests of the Natives of Sabah on government land in the vicinity of Sabah Native villages; Solve the issue of land claim of the Native Customary Land of Sabah without going through the process of Land Investigation; Expedite the process of issuing NT/FR land titles to the Sabah Native in a group (Communal) (27;19). In addition to resolving the issue of duplication of land applications and transparent land alienation, fair and equitable; as well as preventing the Natives of Sabah from selling the land title and approval of land applications (28;7).

The issuance of Communal Grant through the alienation policy and method practiced is found to be contradicting with the Federal Constitution as in Article 13 (rights to property) which states that (1) No person can be deprived of property unless in accordance with law. (2) No law may provide for the acquisition or use of property by force without adequate compensation as well as in Article 161A concerning the Special Position of the Native of Sabah and Sarawak (43). Act 161 A is clearly against the acquisition of land ownership through the Communal Grant method (40; 44). Basically, the land alienation practiced in Sabah is an open system (28; 44). In detail, the provision explains that the applicant can apply for a government land area in any district and at any time. However, land applications should not necessary be approved as approval is subjected to land readiness, land suitability, economic needs and abilities and government interests. In addition, the requested government land cannot be developed before the land application is approved or given the permission to enter.

Since native peoples consider land as social status, this behaviour will certainly affect the attitudes and views of the landowners towards the land (48; 35; 34). In this regard, it can be explained that institutions play an important role in influencing the dynamics of institutional change processes (24;12; 20;18). Institutional approaches believe that this approach is one of the approaches that can play a role in the determination and distribution of existing resources (20). The strengthening of the native customary land ownership as an institution will be directly affected by the institutional (25;26).

## CONCLUSION

In conclusion, the native peoples' disputes on land can be categorized into main causes – formal. The native peoples' disputes with these agencies are largely due to dissatisfaction and uncertainty and concern of the landowners about the formal provisions such as land law and act. An analysis of the formal provisions finds that provisions in the Communal Grant do not provide any benefit in the social and cultural context of the community. They found that land alienation through this method would lead to the deprivation of native customary land ownership among native customary landowners. This situation may lead to the existence of changes in the native customary people's institutions and ultimately change the culture of the native customary peoples.

## LIMITATION

This research was limited to the despite many constraints in the provision of formal law but there are also barriers in the provision of informal regulations that could trigger disputes in land ownership. The important thing for further research is related to the informal provisions that encourage disputes in land ownership are the natives' custom and culture.

## ACKNOWLEDGEMENT

Thank you for the Research Incentive Grant (Geran Galakan Penyelidikan (GGP 2017-073) National University of Malaysia

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