



The Sarawak Museum Journal

Vol. XL No. 61

December 1989



ISSN: 0375-3050

E-ISSN: 3036-0188

Citation: Gala, G & Ding J. L. W. (1989). Orang Ulu Customary Laws (Orang Ulu Customary Code of Fines). The Sarawak Museum Journal, XL (61): 303-356

ORANG ULU CUSTOMARY LAWS (Orang Ulu Customary Code of Fines)

Gerawat Galla (LLB Hons) and James Luhut Wan Ding

INTRODUCTION

The term "Orang Ulu" as defined in the Orang Ulu Customary Code of Fines refers to the KAYAN and KENYAH community and expressly exclude the Kelabits, Penans, Punans and Sabans and makes no reference whatsoever to the Bisaya and Lun Bawang communities. For the purpose of this paper, any reference to Orang Ulu will include the Kelabit, Saban, Penan, Punan, Bisaya and Lun Bawang as all these communities are commonly classified as belonging to the Orang Ulu groups. These communities have their own distinct customary laws and practices which will be referred to in various parts of this paper. However, special attention is given to the "Orang Ulu Customary Code of Fines" as it is the only existing piece of formal legislation incorporating the customary laws of part of the Orang Ulu Community, namely, the KAYAN and KENYAH communities.

This paper will give a brief historical account of the development of the general customary law system in Sarawak with specific reference to the Orang Ulu customary law. The existing status of the Orang Ulu customary law and its administration will also be discussed. Particular deficiencies and weakness in the various customary law systems currently practised by the various communities will be highlighted. Several propositions on adjustments to the existing customary codes applicable to the Orang Ulu and the administration system will form the conclusion of this paper.

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The Orang Ulu Customary Code of Fines (then translation of Bahasa Melayu), the Native Court Ordinance and Native Customary Law Ordinance (English Version) are annexed to this paper in view of the numerous references made thereto.

GENERAL BACKGROUND

The customary laws of the Orang Ulu forms part and parcel of the general customary law system currently practised amongst the various native communities in Sarawak which forms part of the recognised legal system in Sarawak. As early as the start of the Brooke era the customary laws of the

various native groups in Sarawak had been in existence and accorded recognition. The deed of transfer of Sarawak which James Brooke received from Raja Muda Hashim on 24th September, 1841 stipulated that:

“ . . . The country and government of Sarawak is made over to Mr. Brooke (to be held under the Crown of Brunei) with all its revenues and dependencies. . . . That Mr. Brooke is not to infringe upon the customs and religion of the people; and in return, that no person is to interfere with him in the management of the country.”¹

During the Brooke regime the government gave due consideration to the customary laws of the natives and attempts were made to incorporate the customary laws into the general judicial system eg. The Native Courts Order 1940 which provided for the establishment of native courts and the Undang-Undang Mahkamah Melayu in 1915 to establish native courts to administer the *adat* Melayu then. When the Colonial Government took over the administration of Sarawak formal legal provisions were made to provide for the application of the customary laws of the various natives.² With the formation of the Federation of Malaysia, limited provisions were made in the Federal constitution to accord recognition to the status of customary laws in Sarawak and Sabah (see Articles 150(6A) and 76 which essentially limits the legislative powers of parliament to legislate on matter of native custom). The formation of the Majlis Adat Istiadat under the Majlis Adat Istiadat Ordinance in 1977 with the stated objectives of the Majlis as an advisory body on all customary and adat laws of the non-muslim natives of Sarawak should further enhance the development of the native customary law system in Sarawak.

CURRENT STATE OF THE ORANG ULU CUSTOMARY LAWS

The customary laws as practised amongst the various Orang Ulu communities have legal recognition as part of the wider system of personal law recognised in Sarawak. With the incorporation of native law and custom in the formal legal system there is a trend towards codification of these customary laws.

Part of the Orang Ulu customary law has been formally codified in the Orang Ulu Customary Code of Fines, which is applicable only to the KAYAN and KENYAH communities. The customary laws of the other Orang Ulu communities have not been codified at this point in time. The Majlis Adat Istiadat is currently in the process of compiling a draft Code each for the Bisaya, Kelabit and Lun Bawang communities with a view of having the final drafts issued as subsidiary legislations by the Governor-in-Council pursuant

¹ S. Baring Gould & C.A. Bampfylde, *A History of Sarawak Under Its Two White Rajahs*, London: Henry Southern & Co., 1909, p. 85.

² Native Courts Ordinance (Cap. 43),
Native Customary Laws Ordinance (Cap. 51) and
subsidiary legislations thereunder, eg.

Tusun Tunggu (Third Division) Order,
Tusun Tunggu (Fourth Division) Order,
Orang Ulu Customary Code of Fines.