

Customary Land Ownership Rights Need: Land Change Model Application

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Abstract

Similar to the indigenous peoples in other countries, the Bidayuh community in Serian, Sarawak are relying totally on the natural resources in practicing the traditional way of life. The relationship between the community and the customary land is a unique and complex relationship. This is because land is the heart and the identity of the Bidayuh community, it is very meaningful to their lives and it is not purely based on economy. Therefore, the rights of the customary land need to be protected in ensuring that all the needs related to their daily life is not denied. However, the absence of the customary land ownership rights has apparently affected the social, economic, cultural and political rights and consequently affected the well-being of the Bidayuh community. Accordingly, guided by the land change model with the driving force and actors, the approach has been able to unravel the communities needs on the recognition of the customary land ownership through the world view of the Bidayuh community. The data was collected using the qualitative methodology involving six villages in Serian, Sarawak. The primary data and information were obtained through the focus group discussions and in-depth interviews with the customary land owners and the highest administrators at the local level. The study results found that the need of the communities on the recognition of the customary land ownership is divided into four driving forces consisting of the social (pride, family values, symbols of hard work, community integration), economic (subsistence and commercial economy, competition for resources, development programme, economic conflicts, land acquisition), political (ownership, participation and empowerment, power holding) and ecological (survival, protection and the natural environment). The existence of various driving forces encouraged the communities to obtain a clearer customary land rights ownerships.

Keywords: Bidayuh community, customary land, land ownership issue, land ownership recognition need

1. Introduction

Pursuant to the United Nations' Declaration on the Rights of the Indigenous Peoples, every indigenous people in this world has an equal rights to life, especially rights over the land. Due to the full dependency on the natural resources in practicing the traditional way of life, the rights to the land must be protected in ensuring that all the daily life requirements are not denied. However, the existence of land issues in the context of land ownership that was not formally recognized has led to various conflicts and threats to the land owners in the indigenous communities (ILC, 2013; Hutchison et. al, 2006; Asnarti, 2014; Adams et. al, 1999; Burke, 2005; Ashikin et. al, 2011). Therefore, this study aims to examine the need for recognition of land ownership in the context of world view Bidayuh community, Serian Sarawak.

2. Literature Review

There are various factors causing these issues to occur, among others, the context of legislation that is not in favor of the indigenous community (Wood, 1999; Zainal Zulhlimi & Ta Wee Seow, 2013; Colchester et. al, 2014). In some countries, the law amendments were made in the interest of certain parties which will eventually complicate the processes towards the recognition of the customary land. This statement is also stated by Suparman (2008) that the existing land laws do not benefit the Indigenous landowners. According to the research conducted by Noraida & Ashikin (2010), the legislation created does not covers the collective rights of the indigenous peoples, the right to self-determination, the right of approval, consent feedback rights, the right to know and respect the values and social practices, culture and spiritual, and the right to determine their own priorities as stated in the Declaration of the United Nations (UN) on the Rights of Indigenous Peoples international law.

The weaknesses in the land administration and management system has caused the unresolved land issues, especially in the country's context itself (Sharma, 2009; Hutchison et. al; Colchester et. al, 2014). According to Azima et. al (2013), weaknesses in terms of registration, ownership application and land surveying work had caused the land to not have the valid ownership document and the situation will then cause the land to be at a high risk of being threatened by various land conflicts. In the economic context, the commercial economic development demand had threatened the land of acquisition and confiscations (Hutchison et. al, 2006; Sharma, 2009; Arfan Aziz, 2004; Suparman, 2008; Fuad et. al, 2012). The economic demand factor is supported by Colchester et. al (2014) when he states that the competition for resources has led many indigenous community lands to be sacrificed to the economic demands such as logging, plantations and constructions of mega-scale development. Changes in the development policies that prioritize social welfares to the policies that is aimed at boosting the economic development of the country has caused high risk to the land owned by the indigenous peoples to be threatened by a variety of threats and demands.

In the context of ownership system, Azima et. al (2013) states that the existing ownership system that does not take into consideration the social aspects of the landowners has led to the waning of the civil communities' belief in the system. Often the process of development carried out by the agents of development is contrasting to the interests of the local community. Meanwhile, Hasrol (2012) states that the land issue also arises as a result of the attitudes of the landowners. He states that, the capitalistic value an opponent to the patriotic value has led to the occurrence of loss and depreciation of land ownerships as a result of the sale of land. Overall, Colchester et. al (2013) and ILC (2013) states that the obstacles and challenges in sustaining and protecting the communities customary land ownerships encompasses of social prejudice, land ownership laws, restrictions and competitions for resources, low awareness on land ownership, land administration inflexibility and economic competitions.

A clear and recognized rights to the land ownership in the context of formal legislation is important to the whole life of the Indigenous communities. Therefore, research on the community's perspectives on the need for recognized ownership is very important and became the major focus of this research. Several studies have been examined by the researcher in understanding the need of the communities on land recognition. Burke (2005) states that the three requirements including the guarantee of the land ownership rights being return, survival and perpetuation of the culture, and the current ownership system which refers to the history of early possession. While Norfolk & Liversage (2008) state that the delimitation and registration of land ownerships are important in ensuring the clarity for the landowners referral processes, improve security of land ownerships, and strengthen the role of local communities in the care and control over natural resources. BRIMAS (1999) also stated that the recognition of land ownership is important as a source of reference in the development process, conservation of natural resources and land use management, avoidance of conflicts of land ownership in the community, between the community and between the community and outsiders, preservation of the history, beliefs, cultures and customs and as an evidence for legal action in court. According to FAO (2002), the recognized land ownership is important to the indigenous community in the contexts of social, property, economic, cultural identity and increasing the level of involvement and empowerment of the community on land ownership. Overall, the need for the recognition of land ownership can be divided into four aspects including social, economic, political and legal, and ecological (Burke, 2005; Norfolk & Liversage, 2008; BRIMAS, 1999; FAO, 2002).

Coming back to the local issue, there is no ending and solution on the existence of the customary land ownership issues facing the Bidayuh community up until now. The existence of a gap of meaning in the context of customary land ownership and delimitation between the Bidayuh communities with the authorities has led to the native communities not getting a clear land ownership recognition in the context of formal legislation. Meanwhile, in terms of culture and tradition, the customary land ownership is recognized and acknowledged among the community and local leaders (Syafiq & Azima, 2014). Therefore, this problem has in turn exposed the customary lands to a variety of risks and threats, such as encroachment, land acquisition and exploitation thus affecting the social rights, economic, culture and politic of the native

communities. Accordingly, what would be clarified by the researcher in this study is the need for a clear recognition of land ownership, particularly in the context of formal legislation based on the local views and the culture of the Bidayuh community in Serian, Sarawak.

3. The Land Status Change-Driving Forces-Actors Model and Its Relations to the Need for the Land Ownership Recognition

Generally, the model of land change-driving forces-actors is a tool that supports the cause and effect analysis of land use change linking the functions of the driving forces and actors. The three main components in this model is the driving forces, actor and land change (Hersperger et. al, 2010). According to Burgi (2004), driving force is the power causing changes to the land change. Driving forces forming a complex system in which the elements categorized as the generator power will be interdependent and interacting with the Actors and further affects the land change.

Among the elements that are categorized as Driving Forces are socio-economic, demographic, political, technological, ecological environment, climate change, energy and cultural transition (Brandt et. al, 1999; Zondag & Borsboom, 2009). According to Gennio (2008) & Briassoulis (2000), driving forces are categorized into biophysical and socioeconomic or human driving force. The biophysical driving force includes the characteristics and processes of the natural environment and geomorphological. Meanwhile, the socioeconomic driving force includes demographic, social, economic, political and institutional processes such as population changes, technological changes, changes in values and norms and community organizations. Therefore, in understanding the need for the ownership recognition of the customary land, the driving force research conducted by researchers are from the social, economic, political, and ecological aspects. Overall, elements which are labelled as driving force will develop a complex and interdependent system interacting and gradually affecting the space either physical or non-physical (Blaikie 1985 in Burgi, 2004).

The actors are instrumental in decision-making, action, and influencing other actors and the environment with their actions. Actors can be individual, community, agency, institution and organization. Firstly, actors that give direct impact on the driving forces. For example, policy, market, political entity and administration. Secondly, actors that directly change the land such as farmers and investors (Hersperger et. al, 2010). Therefore in this study, actors who became the main research of the study consists of the customary land owners among the Bidayuh community.

In understanding the concept of land change, research can be conducted through two angles that is from the physical and non-physical context. According to Anisara & Rajendra (2007), land change is driven by the interactions in the biophysical dimensional space and human that will have an impact on the human physical and social dimensions. From the physical standpoint, Brandt et. al (1999) states that the land change is often described as a parameter indicator such as divisions or fragmentations, crop patterns and compositions of the original land. Verburg et. al (2004) states that the land change model is a component that supports a causal change in the land use in understanding the land use system functions that have been planned by the land development policy. At the same time, this model is used to explore the future effects of land use (Hersperger et. al, 2010). In a more profound context, the understanding of land change is not only limited to the physical context. In the non-physical context, the land change process that occurs in a community will lead to social changes, whether positive or vice versa (Kathryn & J. Schirmer, 2012). Should the social change threatens their lives, it causes the land owners to react in various aspects either collectively or individually (Wu, 2008; Anisara & Rajendra, 2007). Therefore, in this study, the researchers examined the communities' social reactions as an effect of the process of driving force-actors on the community customary land ownership.

As emphasized in the Hersperger et. al (2010) model, land change is a physical parameter indicators such as divisions or fragmentations of land use, crop patterns and the land compositions. However in this study, the research is not on the land or physical changes as emphasized by Hersperger et. al (2010). Land change use by Hersperger et. al (2010) was applied by the researchers as the land status change to examine the 'post' processes that occur between the driving force elements and actors beside the customary landowners themselves. The researchers presuppose that the role and influence of both elements will eventually give a strong pressure and thus forming certain values, understanding, the communities' behaviours and attitudes towards the customary land in the context of the need for land ownership recognition (Land Status Change).

Overall, these three components will interact and influence each other. Change in land status change studied by the researchers is the actors' actions caused by the pressures of the existing driving forces. Therefore, to control these pressures, recognition of the customary land ownership is examined to understand the needs of the Bidayuh community. As a conclusion, the elements of driving forces (pressures) and actors (customary land owners) are closely interrelated and hence influence the process of land status change as shown in Figure 1.

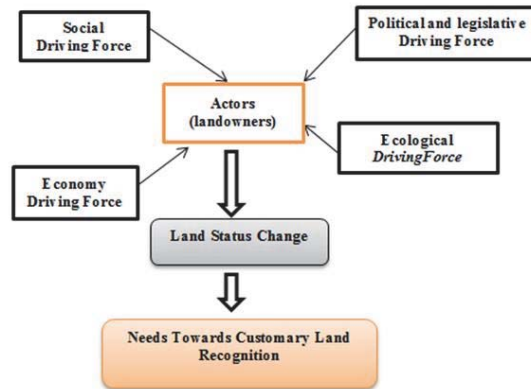


Figure 1: Bidayuh community customary land: Land status change model with the driving force and actors.

Source: Adapted from Hersperger et. al, 2010; Burgi, 2004; Burke, 2005; Norfolk & Liversage, 2008; Brandt et. al, 1999; Zondag & Borsboom, 2009; Gennaio, 2008; Briassoulis, 2000; Blaikie, 1985; Anisara & Rajendra, 2007; Verburg et.al, 2004; Kathryn & J. Schirmer, 2012; & Wu, 2008.

4. Methodology

This qualitative study emphasizes on the interpretivist paradigm using the case study approach. The researcher is trying to understand the cultural meaning constructed by the Bidayuh community, how the community give meaning as well as the experience and knowledge about the customary land. Therefore, using the qualitative narrative method, the researcher has taken into consideration the social experience and world view of the Bidayuh community to understand the meaning of culture built on the customary land issues. The main target of the population for this study is the landowners among the Bidayuh community. Therefore, the semi-structured interviews through focus group discussions and the in-depth interviews were conducted in some selected villages in Serian to obtain a more detailed and an in-depth information. In addition, the in-depth interview was also conducted on the highest administrative parties at the local level. Among them are the village head, headman, Administrative Officer (Bidayuh) at the Majlis Adat Istiadat Sarawak and Dayak Bidayuh National Association (DBNA). Overall, research on the customary land issue is conducted based on the main perspective through the world view of the customary landowners and supported by the views of the political parties (district administration), non-government organisation and the village-level leaderships.

5. Finding and Discussion: Need for the Bidayuh Community Land Ownership Recognition

The relationship between the Bidayuh community and the customary lands is a unique and complex relationship (Dapatan Sarawak, 2013; Syafiq & Azima, 2014). Based on the model proposed by the researchers in Figure 1, four types of driving forces are instrumental in influencing the actors attitudes (customary land owners) towards the land status change to obtain a recognized customary land ownership. Based on the world view of the Bidayuh community in the field, the need for land ownership recognition is divided into four types of driving forces; social, economic, political, and ecological.

5.1 Social Driving Forces

In the social context, customary land is closely related to the elements of custom and culture of the Bidayuh community's life. Among them including the belief system, culture, tradition and inheritance practices, which are fundamental to the way of life and collective identity of the people. Therefore, the need for a recognized customary land ownership is important to them due to several factors. Among others, the land ownership has created a sense of pride to the land owner due to the ability to maintain and sustain the heritage of their ancestors for the new generation. Therefore, the land ownership recognition is important to them to retain a sense of pride. According to some landowners in the study area, they stated:

"...a sense of pride, we can retain the descent. Able to continue legacy. Fear our grandchildren will say, 'oh ... our forefathers were lazy ... so no land."

In addition, to the Bidayuh community, the customary land is also considered as a family value. Customary land is a gift from the previous descent to the land owner which is very important to the family. Due to the factors of low education and limited opportunities to work in the city, the land is very important as a source of economic and other basic needs. The customary land ownership recognition is important in an inter-generation aspect to maintain the identity, continuity, tradition and cultural heritage of the Bidayuh community. According to some informants, they stated:

"...it is important in family values la. It is hereditary, it is a gift from mom dad, from grandmother to grandchildren, that is hereditary..."

"... yes...it is inherited because mom and dad handed over the land to me, I keep this land for my son for my grandchildren someday. In future it will be like that. This land should be taken care of. For it is difficult to get the land, because it has no'seed' right, that's our intention to live in the village"

The customary land ownership is a symbol of "hard work" to the Bidayuh community. Based on the method of ownership by the previous generations, they obtained the customary land by opening new areas and clearing the virgin forests and made tagging as signs of ownership. Therefore, the willingness and hard work of the ancestors affect the amount of land owned by him and his descendants. According to some informants:

"... that land was opened by our forefathers ... it means our ancestors are very able and hardworking. If he was hardworking, he was great. But not only in a single place. He has lands in many places"

Land ownership in the Bidayuh community is also instrumental in uniting them. In the family context, land ownership is a factor that retained children or grandchildren living in the family group without migrating to other areas for the purpose of various factors especially the occupational factor. With the availability of land ownership, new generation are able to live in the village and doing agricultural work without having to move to another area to get jobs and economic resources. In the community context, the customary land is instrumental in uniting and raising the level of community involvement in the Bidayuh tradition activities. For example, in agricultural activities planting the hill padi. One of the informants stated:

"...planting collaboratively. Today my farm, tomorrow another farm. If ten people in our collaboration, then it will be ten days. Each a day. Clearing collaboratively, but if clearing done only by five to six people, it will be difficult, moreover digging the soil using wood, ladies will plant the seeds..."

Recognizing the existence of a unique social relationship between the community and the customary land, the land ownership recognition is important to the Bidayuh community to maintain their social rights and culture.

5.2 Economic Driving Forces

Total dependency on the land resources in carrying out the subsistence and commercial economic activities causes the community to desire to obtain formal recognition of the customary land for proof of land ownership and guaranteed land security. Lack of the customary land recognition would deny them the rights to carry out agricultural activities, sourcing of forest products and hunting. According to the informants:

"... indeed this is how we are, how we live in the rural areas. We who have no education live in the village. Land ownership is important to us for our food. Plant a little palm oil, a little pepper, a little padi, like that..."

Nowadays, the land resource is becoming increasingly scarce. The existence of competition from various angles causes stress to the community to obtain the recognition of land ownership. Competition exists in the family, competition of economic activities and development such as logging, plantations and construction of mega-projects. According to the informants:

"... because the family is becoming bigger, the children. Latest children, grandchildren, the land is depleted. That is why need to share the land ... but siblings are all okay ..."

In the context of land development, land recognition is important as a condition for landowners to be engaged in

the agricultural projects from the government agencies such as RISDA. These programs are instrumental in helping the community improve their productivity to enhance their income, particularly in commercial agriculture such as rubber and pepper. However, due to lack of the land ownership documents, the opportunity to obtain assistances such as fertilizers, seeds and other incentives is limited. According to some respondents:

"... like I said earlier, make a tag, make grants then, develop it. For now, if we apply for projects such as planting of agricultural from RISDA if want rubber, palm oil. They will ask whether we have grants. But now, there is no grants ..."

Recognition of land ownership is also important to avoid conflicts related to the economic activities by the private companies especially the logging and plantations that have entered and encroach the customary land belonging to the Bidayuh communities. The absence of the customary land ownership documents made it difficult for the Bidayuh community to defend the rights of ownership and subsequently the situation is taken advantage of by the companies to simply encroach their land. Therefore, the need for recognition of land ownership is essential to ensure the security of their land. According to some informants, they state:

"... yes recognition is important. For now, my dad had earlier planted oil palm on our land. We have planted 800 oil palm but now the plantation has been cleared. They need the grant for fear of encroachment ..."

'... true, the grant is needed. I think the time is now is different, last time there was no problem. Nowadays there are also people who want to steal our land. It is easier if we have grant..."

In addition to the threat from outsiders, recognition of land ownership is also important to prevent the loss of community land ownership due to the internal conflict factors. Based on the field conspiracies between the private companies and the local leaders has caused the land owned by communities been mortgaged in favour of money. According to the informants:

"... the grant is important because sometimes they deceived us... just like the village chief with this group la... he (the village chief) said "the government will acquire our land for development"... but not the government. The truth is, the company... companies such as the Chinese companies ... Because they dared to do, have money, they are not afraid... gave money to the village head, up to the village head to manage ..."

Besides, the absence of land ownership recognition has exposed the customary land owners to the risk of land acquisition. The customary land inherited from one generation to another through the traditions and customs systems are not included in the land registration system and placed under the jurisdiction of the state authorities. On the ground of the development objectives, the risk for the customary land to be acquired is high. Therefore, for the community, the land ownership recognition is important to maintain their rights, and if acquired, compensation should be awarded on the evidence of the customary land ownership. According to some informants:

".. So if there is a grant, we are happy to land ownership. If the government conduct development, we can claim compensation. Like that la. That's the most important thing la ..."

Apart from the food and traditional economic and commercial resources, land is also a significant long-term assets to the Bidayuh community. It cannot be sold, let alone taken or simply encroached by outsiders. Therefore, the importance of economic activities traditionally carried out causes the customary land to be important to them and the lack of recognition could lead to a variety of threats to the customary land rights in the context of their economies.

5.3 Political Driving Force

In the legal context, recognition of the customary land ownership is important as a symbol of absolute ownership to the Bidayuh community. Lack of recognition of the customary land rights is a denial of the rights to the Bidayuh community in their efforts to sustain and protect their cultural heritage from generation to generation. Therefore, recognition of land ownership is important to provide opportunities to the Bidayuh community in using the rights to determine the pattern of life based on their traditional culture without outsiders' interference. With it, they can preserve and protect their custom heritage. According to some informants:

"... Because I see it like I have already spoken. The Chinese people have grants, the Malays have grants, but Dayak (Bidayuh) didn't have. I am surprised. How's the Dayak? Don't want to make this grant whereas the Chinese are new

here and they have land too. Where is your land I have land, look here I have a letter. We the Dayaks lose. If the villagers want to make, I do agree. If people encroach, we have evidence, it is our land. Our rights ..."

In addition, the recognition of land ownership is important in enhancing the level of community involvement and empowerment, particularly in the context of land development. The absence of recognition clearly limiting their rights in decision making and the power to control the resources and in shaping the development according to their needs. Therefore, the land ownership recognition is important to restore and further protect the rights of participants in a real development. With the existing power of holdings, the level of the Bidayuh community involvement can be empowered through the processes of decision making during planning, consultation and implementation of the development involving their customary land. In the context of administration, recognition of land ownership is important to the traditional institutions and local organizations in the communities to operate in a democracy, without intervention, especially in matters pertaining to the customary land management. With these, the level of community empowerment can be improved in order to achieve the development according to their custom and culture mold and further maintain the identity of the Bidayuh community.

5.4 Ecological Driving Force

Land is a natural resource that is important in the life of the Bidayuh community. Dependency on the land covers all aspects of life, not only limited to the food and economic resources, in fact, important to their faith and cultural aspects. Therefore, priority of emphasis should be given to the protection of the land and the environment so that the customary land will be respected and its wealth preserved. Recognition of the customary land ownership rights will give a real power and rights to the Bidayuh community on control of the land, forest resources, water resources and catchment areas are protected and maintained according to their traditions.

"...so we on the Mongkos side are defending this place. We love this place because we want to restore the water, so that it is not contaminated. Indeed there is no wood there, the water is not good anymore laa. The people there did not ask anything from the people here, they keep cutting. Recently inside there they made. That's why here is shallow now. Increasingly worried, maybe in a few years our river become shallower, become land. We've made several complaints, the police, the Hon. I talk to the Serian court. My reason for making complaints, because they make the farm. They sprayed using poison, the poison waste they threw into the river ..."

With the recognition, the land conflicts involving loggings, plantations and development projects can be avoided. The exploitation activities had destroyed the ecology, animal extinction and cause pollution and further affect food resources and the environment where they live. The community well-being will be affected due to the dependency and the close relationship between the Bidayuh community and the land. Therefore, the recognition of land ownership is important to restore the right as 'guardians of nature' in order to sustain the survival of the Bidayuh community.

6. Conclusion

Overall, lack of formal recognition of the land ownership had effects on the physical and environmental aspects, socioeconomic and sociocultural impact of which can create injustice and insecurity to the Bidayuh community land ownership. Therefore, issues related to the customary land ownerships need to be given due attention in ensuring that their rights are not denied. The land delimitation work should be conducted immediately and thoroughly so as to create a customary land ownership in a system that is systematic and clear. However, the transformation to be performed should take into consideration aspects relating to the knowledge of the Bidayuh community on their customary land. Four driving forces discussed should be examined by the agents of development, especially in the context of land development involving the customary lands so that the development undertaken are in accordance to the requirements of the customs and culture of the Bidayuh community.

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