

## **In Search of Sustainable Forest Management and Social Solidarity in Sarawak**

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### **Introduction**

The tropical forest in Southeast Asia is regarded as important on a global scale because it is one of the world's richest eco-systems in terms of biological diversity. Despite various efforts, however, the area of forest has continuously decreased due to commercial logging and conversion to farmland or plantations.

In Sarawak, anti-logging movements by the native communities since the late 1980s led to international campaigns against commercial logging in Sarawak. The campaigns are now quieter than in the early 1990s, although NGOs are still active both in Malaysia and foreign countries. Many studies also stress a history of endangerment to native people's customary rights and access to forest resources (Hong 1987), and exploitation of the forest resources by timber industries in cooperation with local politicians (Jomo et al. eds. 2004; Fadzillah 1999; Ross 2001; Leigh 1998).

However, both governmental sectors and NGOs are found to have undergone considerable policy changes, though the basic relationships between stakeholders as described above are maintained. Government introduced a 'Sustainable Forest Management' (SFM) policy. NGOs and native people's groups now pursue their struggle with court cases demanding recognition of their 'native customary rights' rather than with blockades of the logging roads.

This article evaluates these changes from the viewpoint of sustainable forest use as a means of promoting biological diversity and social stability.

### **Forest Management in Sarawak**

#### ***Legal Framework of Forest and Land***

Modern land ownership was first introduced under Brooke rule in Sarawak, and has developed step by step since then. Customary land use by the native people that has been practiced since before the Brooke period is also recognized in the modern land law system to a certain extent: provisions of the Land Code of Sarawak of 1958 are currently applied. The Land Code of 1958 provides for the following categories: 1) Mixed Zone Land, in which both native and non-native people can obtain the ownership of the land, 2) Native Area Land, in which only native people can obtain the ownership of the land, 3) Native Customary Land, in which Native Customary Rights had been established by 1958, 4) Reserved Land, which the government reserved for various purposes, including Permanent Forest Estates for sustainable timber production and Totally Protected Areas as National Parks and Wildlife Sanctuaries, and 5) Interior Area Land, the area not falling into the other categories. Native Customary Land, Reserved Land and Interior Area Land are categorized as State Land.

The most controversial is Native Customary Land. This area is due to customary land use of the native people following their customary law and beyond modern land ownership. Ambiguous boundaries and

ambiguity of proof often cause conflicts with outsiders.

Forested areas within the State Land as above are under the control of the Forest Department of Sarawak State. The Forestland is classified into three categories: 1) Totally Protected Area, which includes National Parks and Wildlife Sanctuaries, 2) Permanent Forest Estate (PFE), the forest utilized for long-term sustainable timber production, and 3) State Land Forest, other forest area within the State Land. PFE comprises of Forest Reserves and Protected Forests provided for by the Forest Ordinance of Sarawak of 1953. The Permanent Forest Estates, however, are not limited to natural forests. Therefore, afforestation of, for example, *Acacia mangium* can also be included.

### ***Forestry Operation***

Forest areas within State Land are supposed to be utilized for timber production, and logging licenses are issued to those forests. For the Forest Management Units in Permanent Forest Estate, long-term licenses are issued and the logging operation follows the scheme developed by FAO's recommendations in the 1970s<sup>1</sup>. Other State Land Forests are subject to more short-term logging operation, not supposed to be reserved as forested areas, and might be converted into plantations of oil palm or rubber. As discussed below, reduced-impact logging with more attention to local people's welfare is also practiced in some pilot projects.

### ***Forestry and Society***

Forestry has long been the most important industry in Sarawak. According to the provisions of the Malaysian Constitution, forest and land, unlike other natural resources as oil, is under the State's control. In addition, Sarawak and Sabah are privileged in that they do not necessarily have to accept recommendations by the Federal Government's experts on the issues of forest and land. Therefore, the Sarawak State Government has an almost free hand over its forest resources. It is often pointed out that the forest resource is among most important rent for local politicians. Logging license holders' names are not open. Even officials responsible for logging management in Sarawak Forestry Corporation (SFC) do not know who owns the licenses<sup>2</sup>. However, it is commonly believed that a small number of local politicians hold the vast majority of licenses. The licenses are rented out for logging by the logging companies.

## **Anti-logging Movement**

### ***Blockades***

Commercial logging and plantation development increasingly affected the lives of local native people largely dependent on the forest resources. They started to protest against commercial logging within the areas they had been utilizing since ancestral time<sup>3</sup>. In particular, the Penan people's blockades of logging roads, which started in 1987, became a matter of international concern.

Malaysian NGOs conducted interviews with Penan people in Upper Baram area during 1994 and 1995. Testimony by the local people in the report (IDEAL 1999) describes the various processes of blockade

<sup>1</sup> Interview at Sarawak Forestry Corporation (SFC) and Sarawak Timber Association (STA). The details of FAO's recommendation are not clear.

<sup>2</sup> Interview at SFC.

<sup>3</sup> Detail history is not clear.

struggles: When the logging company first came to their areas, the local people demarcated the forests from which they appropriated resources for daily life. They negotiated with logging companies not to fell in the demarcated areas and petitioned governmental authorities. Sometimes the logging companies agreed. But when such protests were neglected, they decided to blockade the logging roads following discussion among the neighboring communities. Blockading logging roads became clearly criminalized by the amendments of Forest Ordinance made in 1987. The government sent police to dismantle the blockades. Though there were no cases of serious bloodshed, a lot of local people were arrested. Logging companies might have offered to give 'goodwill money' in exchange for acceptance of logging. But local people did not accept it. Some groups continually constructed new blockades as soon as the old ones were dismantled by the police.

### ***International Bashing***

Blockade of logging roads to protest against commercial logging was not carried out solely by the local people. Foreign environmental activists like Bruno Manser as well as Malaysian domestic NGOs such as Sahabat Alam Malaysia (SAM) provided much assistance to the local people<sup>4</sup>. James Ritchie (1994) describes the detail the process from the point where the Penan people in Upper Baram first decided to carry out blockade until its expansion into a worldwide bashing campaign, especially with regard to engagement by outsiders. At the very beginning, Bruno Manser played a role as an organizer: He first facilitated meetings of Penan communities' headmen<sup>5</sup>. After that, in cooperation with SAM, an Australian activist released a Penan public statement to the international mass media demanding an immediate stop to logging and warning that if logging did not stop they would blockade the logging roads. The blockade was implemented on 23 March 1987, the date previously announced. After that, foreign activists secretly visited the site and donations were made from Western countries and Japan to support the movement. The international campaign finally led to a boycott of Malaysian timber in the EU (Ross 2001; Kanazawa 2005).

### ***Impacts of the Movement***

The anti-logging campaign was much dependent on the support of outside environmental activists, especially in Western countries. Accusations from international society fueled by the activists might have been a pressure for Sarawak government to amend its policy to pursue 'sustainable forest management'. But it is quite doubtful that these movements substantially improved local people's livelihoods.

Indeed, there was a divergence between foreign environmental activists and local Penan people in terms of what they saw as the main concern. For Penan people, securing the necessary resources for daily subsistence was the main issue. They demanded the government recognize their native customary rights over the forest resources following the Land Code as a tool for survival. Penan do not refuse development projects by the government regarding agriculture, education, public health and so on, which is not related to acceptance of logging (IDEAL 1999). Some communities even accepted collateral financial support or development programs from the logging companies (Samling Plywood n.d.).

<sup>4</sup> The local people's testimony above (IDEAL 1999) did not refer to outsiders' assistance. Those cases did not occur in the initial stage in the late 1980s, but in the 1990s. Therefore, it is not clear if outsiders also assisted those cases.

<sup>5</sup> Bruno denied his direct involvement in the blockades (Harago 1989).

On the other hand, foreign environmental activists' concern is mostly about the conservation of rich nature, tropical rainforests. When the movement was most active in the late 1980s and the early 1990s, the activists did not seriously consider the Penan people's actual benefits and the improvement of their livelihood. For example, in 1991, a Penan village headman and his vice-head visited 31 Penan villages to collect their opinions on the blockade. The main answer was that Penan did not want blockades and, if assistance were available, they would like outsiders to instruct them in farming methods. A volunteer group consisting of three members from Canada and Australia working in that village reported this result to the activists committed to the anti-logging campaign. However, the activists responded that they knew the Penan did not want blockades but that was not a problem (Richie 2004). In short, the Penan were symbolized as nature loving for the purpose of promoting an international environmental campaign.

## Changing Movement

### *Increasing Court Struggle*

Today, the international campaign against the logging in Sarawak is still continued by environmental NGOs in the West and in Japan. However, when we look at domestic NGOs, especially Sarawak-based ones, significant changes can be found. Recently, conflicts over forests or land between native communities and outsiders such as companies or the government are increasingly brought before the court rather than pursued through illegal means such as blockades. The natives legally claim the native customary rights following the Land Code of 1958. More than 100 cases are now in court<sup>6</sup>.

The Land Code of 1958 (Part II Section 5) provided that native customary rights may be created in accordance with the native customary law in Interior Area Land before the 1st day of January, 1958 by the following methods: (a) the felling of virgin jungle and the occupation of the land thereby cleared, (b) the planting of land with fruit trees, (c) the occupation or cultivation of land, (d) the use of land for a burial ground or shrine, or (e) the use of land of any class for rights of way. Regarding the natural forestlands, the history of the land usage for agriculture or residence is critically important. The major interpretation, followed by the government as well, has been that the native customary rights cannot be claimed over the forestlands that do not have such history. But the native people have challenged this interpretation: utilizing natural forest resources without clearing the land would be included in 'the use of land of any class for rights of way'.

### *'Rumah Nor' Case*

Many cases regarding native customary rights, as with any other kinds of court cases, are pending in the court for long periods because there are not enough judges. So far, only three cases of native customary rights have reached decision by the court. Among them, the judgment of the 'Rumah Nor' case by the High Court in 2001<sup>7</sup> was epoch-making. Pulp and plantation companies acquired the land title over the forestland issued by the Land and Survey Department, which included 'pemakai menoa' forest, the forest customary used for hunting and gathering. The High Court ruled for the native customary rights over pemakai menoa

<sup>6</sup> Interview with lawyer Baru Bian.

<sup>7</sup> Suit no. 22-28-99-I.

land as well. Principally this decision was in accordance with the native people's interpretation of the clause 'the use of land of any class for rights of way' as shown above. The Appeal Court reversed this decision in 2005, and now the case is still in the Federal Court. But the High Court's decision has an impact to all sectors concerned by showing the possibility that various kinds of forest usages can be recognized as native customary rights.

### *Involvement of Domestic NGOs*

The court struggle as a way for the native people to protect their customary rights was first put into practice in 1989 in a Lun Bawan community in Limbang Division. Baru Bian made the initiative. He was working as a lawyer in Kuala Lumpur but returned home to assist his homeland community. The case of his community was settled out of court in the end. Afterward, native communities confronting disputes with companies or the government regarding native customary rights all across Sarawak asked him for legal assistances. He is now based in Kuching, handling over half of the total of more than 100 cases regarding native customary rights currently in court<sup>8</sup>.

Three more lawyers other than Baru undertake native customary rights cases. Three of the four, including Baru, are from the native communities. Harrison Ngau is one of them. He founded the Sarawak branch of SAM in 1981 and played an important role in assisting the Penan communities' blockades and other related activities in anti-logging campaigns during the later 1980s and the early 1990s. He was elected a Member of Federal Parliament in 1990 until 1995. Then he studied law and became a lawyer in 2001<sup>9</sup>. Harrison's switch of career symbolically reflects the change of characteristics of the movement, especially of domestic NGOs. Substantial benefits for the local people are now given more emphasis than global advocacy of environmentalism. The legal struggle is above all not illegal. Even though it might take time, fighting in the court can lead to the most secure protection of rights, and a court decision in favor of the local people would have a significant social impact.

Domestic NGOs, such as, Borneo Research Institute (BRIMAS) and SAM, are now committed to assisting the native communities' legal struggles. They have been carrying out projects to instruct the local people in 'community mapping' using GPS instruments. Community mapping figures out local people's customary land or forest uses in a way that can be used as proof in the court. The change from physical protests to legal struggle means a triumph for resolving the problems of Sarawak within Sarawak society.

## 'Sustainable Forest Management'

### *From ITTO Mission until MTCC*

The Sarawak government changed its forest policy with the introduction of 'sustainable forest management' in 1990s. This change was partially a response to international bashing and to efforts to restore the image of Sarawak forestry.

The policy change began with the mission sent to Sarawak by the International Tropical Timber Organization (ITTO) in 1989. The Malaysian government, in informal consultation with the Sarawak

<sup>8</sup> Interview with Baru Bian.

<sup>9</sup> Interview with Harrison Ngau.

government, decided to request ITTO to send a mission. As the result of the field investigations by the mission during 1989 to 1990, the mission report recommended reducing annual felling from the existing 1,300m<sup>3</sup> to 920m<sup>3</sup> and expanding Permanent Forest Estate (PFE) (Mission Established Pursuant to Resolution I (IV) 1990). The Sarawak government started to follow this recommendation. However, annual felling has never fallen below the recommended level of 920m<sup>3</sup> (Graph 1). According to an interview at ITTO, annual felling in the PFE area has been less than 920m<sup>3</sup><sup>10</sup>. The area of PFE has been expanded from 4.50 million ha in 1989 to 5.2 million ha in 2000. The government has a policy for further expanding the PFE area to six million ha and TPA to one million ha (Poore 2003).

Furthermore, the government made it policy to obtain certification of sustainable timber all over the State. This policy has been under debate since the early 1990s, but, as logging companies did not easily agree, the policy was not realized until 2002 when each of six major companies set up a pilot site, applying for certification from the Malaysian Timber Certification Council (MTCC). MTCC developed its own scheme in cooperation with the Forest Steward Council, one of the most popular timber certification organizations in the world. MTCC's latest 'Malaysia Criteria and Indicators 2002' (MTCC 2002) provides for concrete guidelines for certification by applying the FSC's principles to Malaysian social, legal and ecological contexts. MTCC requires almost the same standards as FSC in the aspects of the relation to indigenous people or local societies, biological diversity and tracking back of the origin of timber. These, however, are basically within the existing legal framework, such as, the recognition of native customary rights. Thus NGOs are opposing MTCC as shown below.

After preliminary implementations of MTCC's guidelines, the first certification was given in 2004 for the Sela'an Linau area operated by the Samling group. In that area, zones for nature conservation and local community utilization are reserved, and reduced-impact logging is practiced. Some NGO staff and local people have also recognized the differences from conventional logging. However, some communities within the area are still refusing any kind of logging and protesting by blockade. The company does not operate in the disputed area, and is trying to negotiate with those communities against the logging.

### ***Logic of the Logging Companies***

'Sustainable forest management' policy conflicts with logging companies' interests. In particular, sustainable timber certification requires them to incur more costs for reduced-impact logging and measures to cope with the local communities as well as for third-party inspection. Despite this, the international timber market does not pay a sufficient price premium for certified timber to cover these costs. There are several reasons why the logging companies agreed to apply for certification, even though it only covers a small portion of their total logging sites.

First, they aimed to improve their international image. If certified as sustainable timber, they could expand their market to Europe where Sarawak timber was boycotted. Beyond a few Western countries, the global market still demands as cheap timber as possible regardless of its origin<sup>11</sup>. Thus the company's image restoration is more motivating than the market expansion for them.

<sup>10</sup> Interview at ITTO.

<sup>11</sup> Interview at Sarawak Timber Association (STA).

Apart from this, there was a pressure for sustainable forest usage from the government or within the timber industry. The government would like to secure loyalty and revenue in the future through assuring sustainable forest resource use by certification. Within the industrial sector, plywood companies that are not group companies of logging companies also demanded certification for securing future timber supplies<sup>12</sup>. The logging companies decided to pay the additional cost to respond to the pressures from international society, and from the government and industrial sector within Sarawak. At present they can put up with this situation because applications for certification only cover a small portion. The remaining conventional logging can cover the loss from certified areas. However, the government really wishes to go ahead with having certification cover the whole State, not by enforcement but on a voluntary basis by the companies. However, this might not be achieved if the market does not change to pay a sufficient price premium for certified timber.

### ***Opposition to MTCC by NGOs and Local People***

Native people and the NGOs supporting them are opposing the MTCC scheme. They insist that the scheme does not give enough respect to native's customary rights, and that the opinions and interests of those native people who would be directly affected by the logging were not well represented when building up the MTCC scheme. Since MTCC was established in 1998, NGOs representing native people and supportive NGOs network, 'Jaringan Orang Asal – NGO Tentang Isu Hutan (JOANGO Hutan)', participated in the debate over setting up the MTCC scheme. They continuously stressed native customary rights over the forest resources, but such opinion was rejected as unrealistic. Finally, in 2001, JOANGO Hutan dropped out of the argument, as they felt their participation might have been utilized to legitimize the MTCC process (JOANGO Hutan n.d.). They also pointed out that MTCC was dependent on the governmental sectors financially and for personnel, and thus, tended to support the government or companies' side. After this NGO exited, other native group organizations were invited as the representatives of native people. However, they were organizations working for traditional arts and cultures, and did not really represent the stakes of the natives affected by logging. Progressive ideas on native customary rights by the court as shown above are neglected. Considering these facts, JOANGO Hutan insisted that the MTCC scheme only looks after sustainability of timber production and dismisses sustainability of society and culture. JOANGO Hutan demands complete realization of the FSC's principles, such as ensuring that representatives of local people who are substantially affected by logging are involved in the process of certification and assessment, and insisting that logging needs informed consent in advance by those local people really affected (JOANGO Hutan 2004).

### **Conclusion**

Examining the socio-political structure surrounding forest resources as above reveals part of the reason why Sarawak had to suffer from such enormous bashing by international society. In short, only foreign environmental activists were reliable in supporting Penan people against the logging, and could appeal to the Sarawak government and to international society. No politicians, even from other native groups, paid

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<sup>12</sup> Interview at STA.

attention to Penan. There were domestic NGOs like SAM within Sarawak. But they are quite minor in Sarawak and Malaysian society, and have been strongly oppressed by the government. In Malaysia, 'urban middle class' people are divided by ethnic group, such as, Malay, Chinese, and Indian in the case of Peninsular Malaysia, and Malay/Melanau, Chinese, and other non-Muslim natives (Dayak and Orang Ulu) due to the Bumiputra policy, which, in fact, treats the Malay better than others. Otherwise these middle class people could be sympathetic with the Penan's protest as a human right concern. If the government had been more tolerant with social activism within the State and the middle class people united to share a public debate on social justices, various controversies could be resolved within the country and much less international bashing would arise. That might have been much more beneficial for both the Penan and for all other people in Sarawak.

The situations are now changing. Both the government and NGOs have changed their policies. Even though the principal policy and legal framework is not changed, sustainable forest usage began to be taken into consideration, and the local people's livelihood began to be respected to some extent. Because the government still refuses full recognition of native's rights over the forests they are claiming, bashing by both domestic NGOs and international society does not stop, but is quieter. On the other hand, NGOs and the native people also changed, now taking legal measures in their struggle with the companies and the government instead of blockades, although these have not yet totally disappeared. Involvement of foreign environmental activists is now smaller than the domestic NGOs' assistance for the native people in legal struggles or in negotiations with the companies and the government.

These changes reflect the triumph of resolving conflicts within Sarawak society without utilizing international pressure. Substantial and practical improvement of the native people's living environment is addressed rather than the ideological progression of human rights or nature conservation. But there is still a large gap between the local people supported by NGOs and the government. Local people stick to full recognition of their native customary rights over the vast area of forests. The government and the companies insist on existing laws. This conflict might be resolved only by the court decision. But social solidarity cannot be restored by legal judgments. What is most needed is a place for continuous dialogue in an equal partnership. Every stakeholder should be involved, to think about the most meaningful usage of forest resources in both an ecologically and socially sustainable way. A built-in conflict resolution system in the society is the most important infrastructure for sustainable forest management.

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