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The Solution of Overlapping Claimed Areas Issue During Process of Issuing Native Customary Rights (NCR) Land Titles

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ABSTRACT

This article is related to the Native Customary Rights (NCR) lands in Sarawak which focuses on overlapping claimed areas while issuing NCR land titles. The purpose is to identify the factors of overlapping claimed areas issues during the process of land measurement before issuing the NCR land titles and to examine the solutions to the issues of overlapping claimed areas during the process of land measurement. This article has applied the qualitative approach based on the land administrators' and land surveyors' experiences in solving the overlapping claimed areas issue during the land measurement process. The findings were obtained by conducting semistructured interviews in focus group discussions with the Land and Survey Department in Bintulu. Analysis of the study found that native area lands and native customary lands are frequently involved in the overlapping claimed areas, where four factors are causing the issues as analysed in the literature review and current factors contributed by the land administrators. The focal point of the solutions to the overlapping claimed areas issues is the role of administrators in communication and negotiation with the native people during the dialogue session in disseminating the knowledge of NCR so that the native people can recognize their boundaries accurately. The parties involved must promptly rectify all weaknesses in carrying out the settlement action. It needs to be improved by making improvements that can further strengthen the existing settlement actions more effectively.

1. Introduction

Land and Survey Department Sarawak is responsible for confirming the boundaries of native rights' lands and bringing such lands onto the register for the security of tenure to protect as well as preserve Native Customary Rights (NCR) lands for native people. Most indigenous people have no written record of their 'menoa' boundaries. 'Menoa' is an Iban word that is defined as rural areas. They were assuming their boundaries through the verbal. Hence, understanding indigenous people against the meaning of delimitation and ownership is something that has its uniqueness. They are understood through verbal information inherited from one generation to another. Their rights to the land explored are indeed inherited as well as guaranteed by a society that was then marked by known

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natural boundaries as a 'line' like a river, a ridge, and other permanent landmarks. Therefore, the determination of the boundaries that determine the 'menoa' area for some communities with other communities is determined according to the characteristics of the terrain such as mountains, ridges, rivers, stones, or other signs such as 'tapang' trees and bamboo clumps.

Land and Survey has introduced a new initiative in protecting Native Customary Rights (NCR) land for native people. This new initiative has been implemented since 2010 to accelerate the process of issuing Native Customary Rights (NCR) land titles for ownership to the landowner. Superintendent Land and Survey throughout Sarawak encouraged Native Customary Rights (NCR) landowners to cooperate with the Land and Survey Department in carrying out land measurement works. All measurement costs will be borne by the Government and have no expiry period where it becomes permanent ownership as well as exempted from annual land tax.

However, the new initiative has led to overlapping claimed areas that occur during the land measurement and pausing acquisition process which has become an endless issue for the Land and Survey Department in Sarawak. Generally, the parties often involved in a dispute are the community or individual landowners and the development agency regarding the land acquisition or several different communities or two landowners.

1.1 Native Customary Rights (NCR) Lands

Section 6 of the Sarawak Land Code 1958 empowers the Minister to declare any area of state land to be a Native Communal Reserve for the use of any native community, in which case, rights in any such land shall be regulated by the customary law of the community for whose use it was declared to be reserved. However, the land shall continue to be state land and the native community for whose use it was reserved or any member thereof acquiring any rights therein shall hold the same as the licensee of the government. It protects the rights of the natives in the state over their land. A native communal title is to be issued to a native community in respect of the native territorial domain (virgin jungle) in which the native community have exercised and is exercising usufructuary rights.

The NCR system in Sarawak refers to the indigenous customary land rights recognised by the Sarawak Land Code 1958. These rights are defined under customary law, which is a custom to which the law of Sarawak gives effect. The NCR system has been a source of contention with amendments to the Land Code in 2000 and 2018 leading to protests from civil society organisations and native communities. Despite legal recognition, there have been systemic violations and concerns over the extinguishment of rights without free prior and informed consent of affected communities.

As for governance in Sarawak, the state government operates under the Federal Constitution of Malaysia and the Constitution of the State of Sarawak, it consists of two branches which are executive and legislative. The executive power is vested in the Cabinet led by the Premier, who is appointed by the Yang di-Pertua Negeri and commands a majority in the State Legislative Assembly. The legislative branch is a unicameral house called the State Legislative Assembly with all members elected from single-member districts by universal adult suffrage. Sarawak has no judiciary branch due to the federalisation of the court system in Malaysia, although it has jurisdictions over Sharia and Native Courts which are considered part of the state executive branch.

The present Native Courts were created under the Native Courts Ordinance, of 1992. This Ordinance prescribes the constitution, jurisdiction, and powers of the Native Courts— the procedures of proceedings before the native Courts are governed by the Native Court Rules, 1993. Mostly, the Native Courts heard Native Customary Rights (NCR) lands disputes effective from 1 July 2005 in the first instance by the District Native Court. However, the land administrator usually does not encourage the native people to bring this land dispute to the native court as it will highly cost

them, and the process of the hearing will take a long time. Generally, land disputes that are brought out to the native court are between native landowners and developer companies.

1.1.1 Land Law in Sarawak

The first phase of the new initiative is when the claimed area will be surveyed and measured on a large-scale perimeter within the community then given the Gazette notification to the head of the community under section 6 of Sarawak Land Code 1958 which is the Native Communal Reserves. According to section 6(1) of Sarawak Land Code 1958, the Minister signified in the Gazette declare any area of State land to be a Native Communal Reserve for the use of any community having a native system of personal law and may, by such order or by a subsequent order, declare that the customary law of such community about to the acquisition, transfer, and transmission of rights and privileges in or over land, land and in any building or other structure erected therein, shall apply with such modifications as may be specified or provided for in any such order. Any land that is declared to be a Native Communal Reserve under subsection (1) shall be regulated by the customary law of the community for whose use it was declared to be reserved. Notwithstanding subsection (2), but without prejudice to subsections (4) to (7) inclusive, any such land shall continue to be state land, and the native community for whose use it was reserved or any member that acquiring any rights therein shall hold same as a license from the government, and by the provision of this section including the provisions of any order made under subsection (1), any individual native customary rights become established, the issue of any document of title in respect shall be in the absolute discretion of the Director.

According to section 6(7) of Sarawak Land Code 1958, in any case, in which this section applies, the question as to whether any person or not a person is a member of a native community for whose use the reserve is or is deemed to be constituted, may exercise any rights or privileges within such reserve shall be determined by the customary law of such community and by such orders, may have been under this section, and save to the extent that any such person may be able to justify his occupation of any land comprised within such reserve, he shall be deemed to be in unlawful occupation of state land and section 209 shall apply. However, it is illegal for non-natives to acquire rights or privileges over the land of certain classes especially, Native Customary Rights (NCR) lands. According to section 8 of the Sarawak Land Code 1958, a person who is not a native of Sarawak may not acquire any rights or privileges whatsoever over any Native Area Land, Native Customary Land, or Interior Area Land.

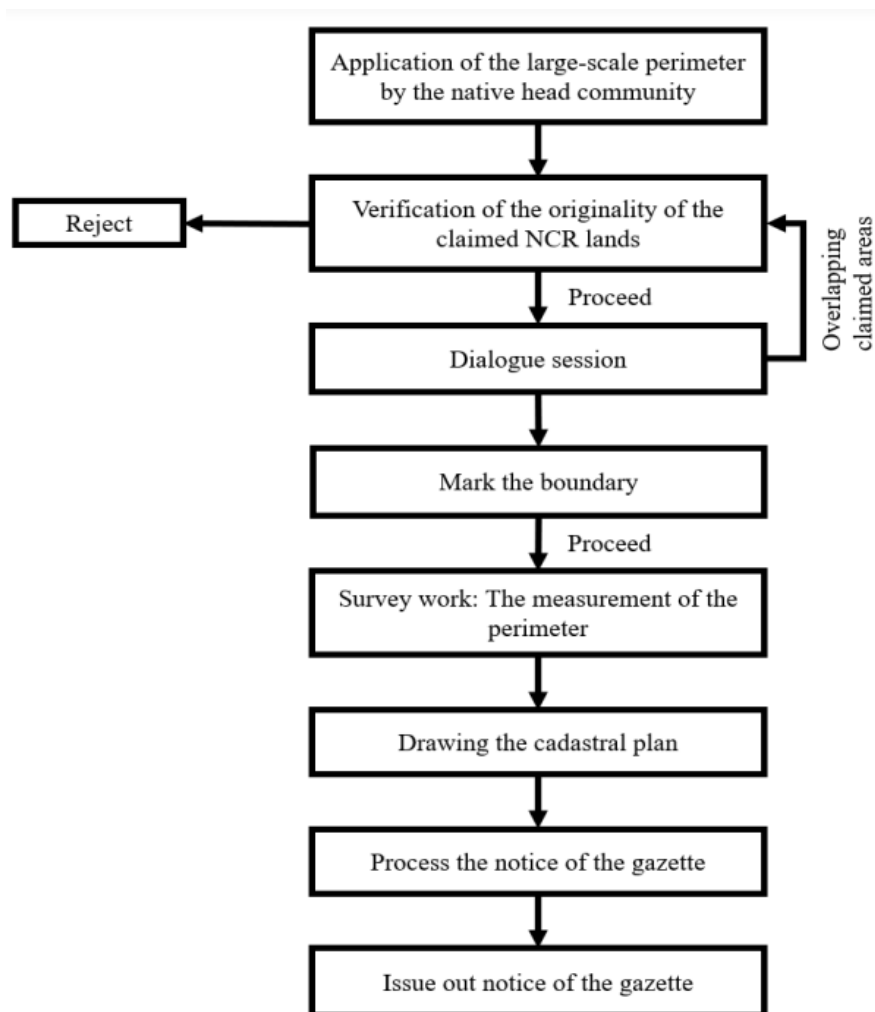


Fig. 1. Flow chart of the procedure of the first phase of the new initiative NCR program

After the perimeter is surveyed within the large scale of the community and given Gazette notification, the individual measurement will proceed after the individuals within the community claim their areas. Next, the land and survey department will issue the land title to the respective owners. According to section 18 of the Sarawak Land Code 1958, a native has occupied and used any area of unalienated state land by rights acquired by customary tenure amounting to ownership of the land for residential or agricultural purposes, he may, subject to section 18A, issue to the native a grant in perpetuity of that area of land free of premium rent and other charges. A grant in perpetuity shall be made for residential or agricultural purposes in such conditions, obligations, and restrictions, as the Director on the direction of the Minister may impose.

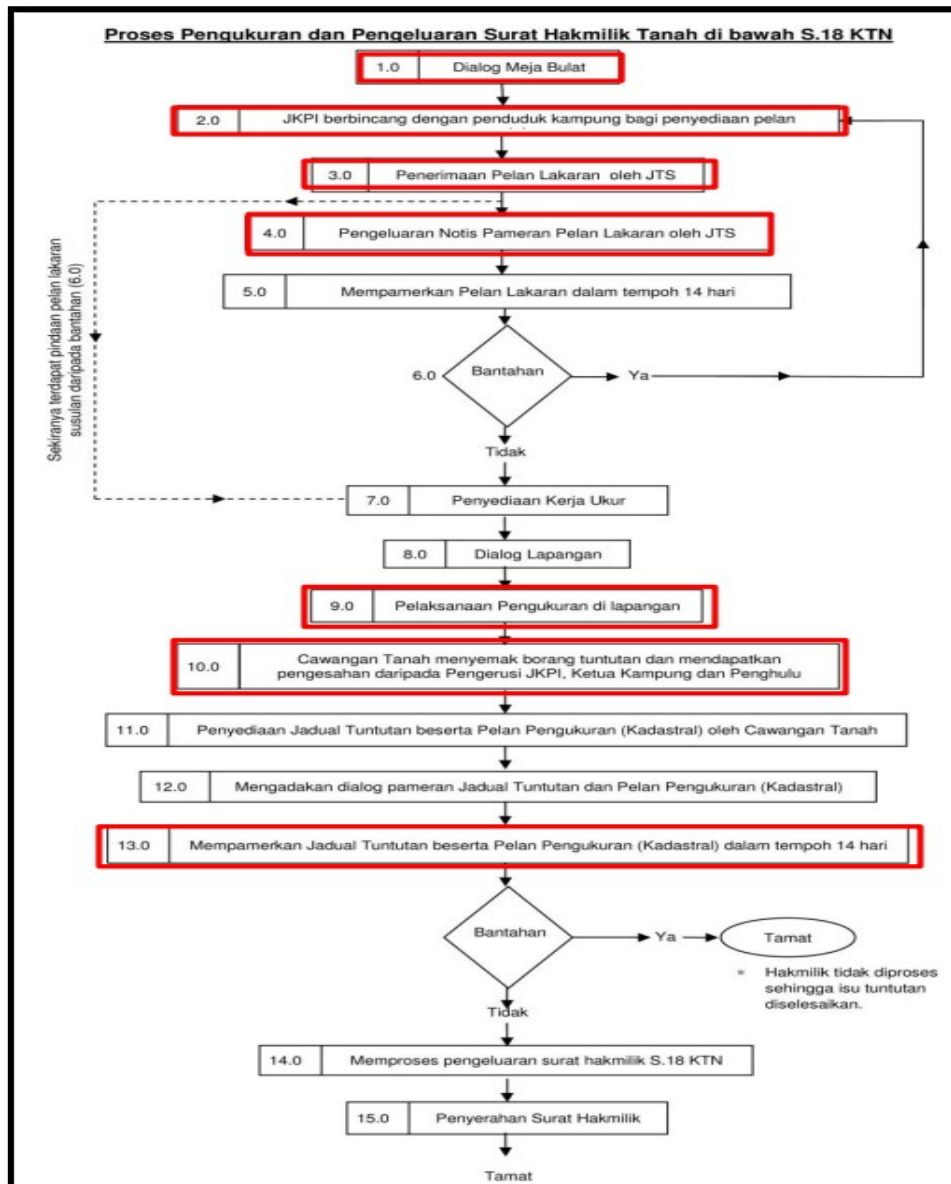


Fig. 2. Flow chart of the process of measurement and issuing NCR land titles under section 18 of the Sarawak land code 1958

1.1.2 Overlapping Claimed Areas

Overlapping is defined as two separate areas intercepting the same geographical areas shown in a cadastral plan whereas claimed areas are defined as when landowners or communities are entitled and have rights to the areas that are shown in the Cadastral plan according to the International Journal of GeoInformation. Therefore, the meaning of overlapping claimed areas is two separate areas on several different landowners claiming the same or intercepted areas.

1.1.3 Factors to the Overlapping Claimed Areas

Overlapping claimed areas are described as a schism over territory produced by a specific individual or group interest that results in a dispute. It is also characterised as a social reality involving at least two parties due to differences in the parties' interests in the land, whether motivated by need or greed [2]. This is supported by evidence indicating that the reason arises from its view of land

ownership [3]. The first step in examining land conflict scenarios is to establish the purpose and importance of the land to the parties involved. Fears and desires will dictate emotional and financial requirements in this psychological setting, imposing an interest determined by attitude and authority [2]. This subject will give rise to certain contentious actions. It has been discovered that concerns of natives overlapping claimed areas sometimes stem from natives not understanding their rights to the land and state customary land rights, resulting in their losing land ownership and privileges.

The major cause of the overlapping claimed areas issue is when native people claim to the land and survey department that they are entitled to a particular area despite the lack of strong proof. As noted in the opening, most indigenous people have no written record of their 'menoa' boundaries. They only comprehended through verbal instruction passed down from generation to generation [21]. As a result, when another party possesses strong proof, such as a cadastral map or any crucial papers, the land administrator may have difficulty looking for their claimed areas and defending their rights over the land. The difficulty arises when the land administrator is required to define the borders that designated their areas for certain communities with other communities that are formed by topography features such as rivers, relatives' cemeteries, and so on [5]. This has prompted the native population to express unhappiness with other groups when their claimed regions overlap, and it is impossible to identify their bounds without any concrete evidence because verbal information is not genuine.

The greed of individuals occurred after the gazetted perimeter had been issued out and ready for individual measurement and claiming their areas to issue out the individual land titles under section 18 of the Sarawak Land Code. This frequently produces unhappiness and disputes among original peoples as they interpret their claims, resulting in overlapping [5]. Individuals who hunger for land resources desire greater regions for agricultural purposes or invest in the land when there is an investor or land acquisition for recompense concerns [12]. In this case, the land and survey department will require that the persons concerned present documentation to support their claims against the land. As a result, the land administrators will extensively study the papers and validate them using the department's land system.

Several parties involved consist of the native community, native landowners, land administrators, the Chairman of the Individual Measurement Committee (JKPI), Penghulu, the Head of the Village, "Tuai Rumah" and the native court [14]. Each of these parties has a role and obligation in assisting native people, which is critical to the successful completion of the process of awarding Native Customary Rights (NCR) titles to land. However, when overlapping claimed areas difficulties arise during the land measuring procedure, and some of these parties provide the least cooperation. As a result, the occurrence of the overlapping claimed areas issue is caused by the concerned parties themselves and delays the process of survey work as well as the issuance of Native Customary Rights (NCR) property titles. The head of the native community needs to give full cooperation with the land administrator in such a way that it may avoid the overlapping claimed areas issue as well as native individuals by pinpointing the claimed areas accurately and precisely [5]. All the evidence of their early settlement to prove their native land is genuine Native Customary Rights (NCR) must be presented to the land administrators as it will solve the misunderstanding and confusion between the claimants that are involved in the overlapping claimed areas issue.

Development initiatives are typically exploited by native peoples and government entities participating in development projects. Indigenous landowners were exploited, resulting in insufficient resources to address people's issues for economic and social reasons. Due to the influence of industrial activity, overlapping claimed areas emerged between local people and the government or development firms [4]. The execution of development projects such as exploration, mining, transportation, and infrastructure that are detrimental to indigenous populations' lifestyles

and the environment is especially problematic [5]. Even though there is a portion of land legislation that guarantees ethnic diversity and minorities' rights, it is nevertheless unable to regulate the losses caused by the reparations system. This issue is created by native populations not receiving explicit recognition of the place in which they live. Nonetheless, due to differences in the interests of native people and the local government or agency, this situation leads to the formation of disputes amongst the parties concerned who have a concern and desire for the native lands.

2. Methodology

The methodology is described as the overall approach to the full research study procedure [7]. The researcher will concentrate on the data-collecting procedure and the approach that will be utilized to analyse the results in this chapter. These methods are fundamental in selecting the research technique for the subtopics in the literature review and data analysis. Furthermore, the researcher who intends to conduct research in an orderly manner must develop a complete study design to reach the study's target by the objectives and goals of the study. However, to develop objectives, the research must first identify the problem. Therefore, the focus of this research is on the issues of overlapping claimed areas during the process of land measurement, the location of the study area is Sarawak but the data collection was gathered in the Land and Survey Department Bintulu because the state is recorded as the second lowest in issuing land titles. Solution suggestions carried out by each party are also studied including solutions under the relevant authority such as the Land and Survey Department in Bintulu which can find effective solutions to the issue of overlapping claimed areas within the Bintulu district.

2.1 Qualitative Method

This research uses a qualitative method as it is the most suitable for data collection in this study. This is because the purpose of this research is to identify the issues of overlapping claimed areas during the process of land measurement and to examine the solutions to the issues from the perspective of land administration. This research is mainly focused on the overlapping claimed areas that occurred within the Bintulu district and are covered by the Land and Survey Department in Bintulu only. The respondents for the data collection interview were land administrators and land surveyors who have experience of more than five years in handling the overlapping claimed areas issue. These research objectives can be achieved with experts and experienced administrators from the Land and Survey Department Bintulu.

2.2 Data Collection Method

Data is divided into two which are primary data and secondary data. In this study, secondary data collection was used to analyse the gathered information from the relevant resources in the literature review. Meanwhile, the primary data collection is to gather all information from someone else perspective. This data collection research is primarily based on interviews with experienced land officers in the land branch of the Land and Survey Department in Bintulu. It is significant because the meaning of an occasion may be perceived and interpreted by the respondents. The methodological approach should be to develop research questions that examine the nature of the encounter, conduct surveys, analyse the data to find meaning clusters and conclude with a document that fosters readers' comprehension of the basic framework of the experience (Creswell, 1998) [8]. The study

collects information that leads to the discovery of common themes in people's perspectives. The subtopics below will explain thoroughly the data collection methods for this research.

2.2.1 Primary Data Collection

The primary data for this research is based on an interview with the land administrators from the Land and Survey Department in Bintulu. The interviews are conducted with the experienced land administrator handling all the matters regarding the Native Customary Rights (NCR) lands within the Bintulu district. An interview is a useful option for gaining insight into the overlapping claimed area issue. This qualitative interview had five interviewees. The list of interviewees is shown in Table. 1.

Table 1 The list of interviewees

Respondent	Position	Branch	Period of Services
R1	Senior Land Officer	Land	25 years
R2	Assistant Land Officer	Land	5 years
R3	Assistant Land Administrator	Land	6 years
R4	Land Administrator (Land Titles)	Land	30 years
R5	Assistant Surveyor	Survey	5 years

One-on-one interviews with experienced land officers and survey officers are used to collect data, which is based on a conceptual framework built through a more suitable literature review. The semi-structured questions are conducted with experienced land officers and survey officers from the Land and Survey Department in Bintulu. Semi-structured interviews are suitable for this study because the method relies on asking questions within a predetermined thematic framework (Tegan George, 2022). However, the interview questions are not fixed and are flexible. This method can explore more on the interviewees' thoughts, feelings, and ideas about particular topics. Thus, this is to gain insight into the current issues of overlapping claimed areas during the process of land measurement and examine the effective solutions to the overlapping claimed areas issues from the perspective of the Land and Survey Department in Bintulu. With the interviewees' agreement, the interview will be documented and transcribed. The interview is recorded by phone recorder. If there is no online archive of the meeting, taking notes is one alternative. A short digital recording allows the respondent to participate more completely in the discussion and concentrate on the next question rather than writing down replies. Nonetheless, if the topics being discussed are sensitive in any way, a recording device will impede responders. The documented audio and transcript are the outcomes of the research as well as finding the solution with the experienced land administrators.

Four respondents of the interview are land administrators from the land branch under the Department of Land and Survey Bintulu which is R1, R2, R3, and R4. The land branch's scope of work

is to provide professional advice and services on land administration to internal and external clients; to administer and manage land effectively and efficiently; to administer land by government aspirations and policies; to manage the alienation of state land so that maximum benefits can be accrued to the community at large; to regulate the registration dealing and other transactions on land; and to generate and collect revenue. In this case, the land administrator needs to carry out a survey on all land in Sarawak and bring them onto the Land Register; to confirm the boundaries of rights of natives to land and to bring such land onto the register for the security of tenure; to identify the boundaries of state land not subject to claims for planning and development; and to replace Pre-Land Code titles such as various types of Occupation Tickets, Rubber Garden Certificates and Squatter's License. One respondent is a representative from the survey branch as a land surveyor. The survey branch is fully responsible for the monitoring of surveys for all government development projects and ensuring that the surveys are completed on schedule and as budgeted. This branch is also entrusted to plan, prepare, issue, check, and approve cadastral controls, land acquisition surveys, or perimeter surveys under contract survey jobs issued to Licensed Land Surveyors.

2.2.2 Secondary Data Collection

Secondary data is information that has already been gathered from primary sources and made readily available for use by researchers in their research. It is a type of data that has previously been collected. A researcher may have gathered data for a specific project and then made it available for use by another researcher (Blog. F, 2020) [6]. Data designated as secondary for one study may be considered primary for another. This is the scenario where data is reused, making it the main data for the initial research and the secondary data for the subsequent research. Secondary data sources include books, personal sources, journals, newspapers, websites, government documents, and so on. Secondary data is known to be more easily available than original data. This research mainly uses academic journals, articles, relevant websites, and the official websites of the Land and Survey Department in Bintulu for data collection in the literature review in answering the first objective of this study which is the issues of overlapping claimed areas during the process of land measurement in issuing the Native Customary Rights (NCR) land titles.

2.3 Analysis Data Method

Content analysis is focused on content generated by another qualitative method such as in-depth interviews, focus group discussions, or observations in ethnography which plays a supportive analytical role with these methods [9]. Content analysis is conducted to analyse the secondary data collected from the literature review. As previously mentioned, secondary data collection mainly used journals, articles, academic papers, and relevant websites. All the information gathered from the resources is reviewed and analysed to identify the issues of overlapping claimed areas during the process of land measurement in issuing the Native Customary Rights (NCR) land titles in Sarawak.

3. Results

This chapter will discuss the results of the interview after the interview with the respondents from the Land and Survey Department in Bintulu District. This chapter uses the results of the interview as a main source for discussing the two study objectives of this research that have been discussed. Hence, this chapter will mainly focus on analysing the issues and examining the solutions

to overlapping claimed areas during the land measurement process in issuing the Native Customary Rights (NCR) land titles from the land officers and surveyors' perspectives.

3.1 Overlapping claimed areas cases

Twelve districts in Sarawak have the issue of overlapping claimed areas that are determined by the individual areas that have not been surveyed and the land titles have not been issued. The areas of individual lots of NCR land that have not been surveyed meant that the perimeter under Section 6 of the Sarawak Land Code is not being gazetted yet whereby the land surveyor cannot proceed with surveying the individual lots. For instance, if the perimeter has not been gazetted, there are overlapping claimed areas within the communities. Bintulu district has 43,673 hectares of individual lots not been surveyed yet. Besides, the Bintulu district has the second lowest in issuing land titles for 52 titles where the overlapping claimed areas occurred during the process of marking the boundaries of individual lots.

Table 2 Data of individual lots under section 18 of the Sarawak land code

No.	Divisions	The areas of an individual lot of NCR land that have not been surveyed (hectares)	The areas of an individual lot of NCR land that has been surveyed (hectares)	NCR Land Titles that have been issued
1	Kuching	47,205	2,576	1,372
2	Sri Aman	40,258	2,063	1,357
3	Sibu	108,165	1,551	63
4	Miri	29,791	2,130	859
5	Limbang	15,836	1,051	72
6	Sarikei	141,189	3,718	857
7	Kapit	61,493	1,222	137
8	Samarahan	3,468	658	24
9	Bintulu	43,673	2,318	52
10	Mukah	8,737	1,584	433
11	Betong	90,829	2,022	696
12	Serian	65,730	1,921	1,286
Total		656,374	22,814	7,208

3.2 Current Factors to the Overlapping Claimed Areas Issue during the Process of Land Measurement in Bintulu

The factors of overlapping claimed areas issues during the land measurement process from the literature review are agreed upon by the five respondents and give some insight from their experiences and perspectives. All five respondents agreed that the frequent factors for overlapping claimed areas issues are no written record and the greed of individuals because of marking the boundaries inaccurately under different reasons respectively. Meanwhile, the least frequent factor for overlapping claimed areas experienced by the land administrators is the exploitation of the development project as the stakeholder engagement before any proposed development project approval, native people's rights will be considered as well based on section 9 of the Sarawak Land Code 1958, acquisition of land by non-natives. This analysis has answered the thesis's first objective, which is to identify the issues of overlapping claimed areas during the land measurement process before issuing the Native Customary Rights (NCR) land title from the perspective of land administrators and land surveyors. In addition, according to the five respondents the perspective of land administrators and surveyors from the Land and Survey Department Bintulu, they have experienced current factors of overlapping claimed areas issues during the land measurement process before issuing the Native Customary Rights (NCR) land titles within the Bintulu district. The current factors of the overlapping claimed areas issues mostly involved the native people, surveyors, and private companies. These are the current factors of overlapping claimed areas issues during the process of land measurement before issuing the Native Customary Rights (NCR) land titles listed below:

3.2.1 Perception of New and Old Generation

According to the R1 statement, the perception of the new and old generations towards the native lands has different understandings. The perception of the individual viewed by the new and old generations are different whereby the new generations gain knowledge about their native rights based on the Sarawak Land Code 1958, meanwhile, the old generations are less educated about their native rights towards the native lands. Based on the data on the level of native people's knowledge of the Native Customary Rights (NCR) from Table 2.1, most native people that understood Native Customary Rights (NCR) are the new generations and the minority do not understand the old generations within the three districts in Bintulu according to the land administrators. This issue can lead to overlapping claimed areas when there are disputes between a few different communities or among individuals as they have different understandings in the process of issuing the Native Customary Rights (NCR) while claiming their areas where land administrators need to assist them in explaining the process. When different understandings towards their native rights are separated by new and old generations, it is difficult for the land administrators to bring the involved parties into the same understanding and agreement when solving the overlapping claimed areas issue.

3.2.2 Incitement

R2 stated that one of the current factors to overlapping claimed areas issues that came forward to the Land and Survey Department Bintulu is the native people being incited by other people regarding their native rights toward their native lands. R2 mentioned that non-native people have incited native people by giving the wrong perception of the role of the Land and Survey Department regarding the new initiative that encourages the native people to apply for their native land

ownership and persuades the native people not to apply for the ownership. This is because they interpret that the Land and Survey Department take over their native land for development and this has stirred up fear within the native people that their native land will be taken by the government without their permission. However, it was opposite from their interpretation regarding the new initiative that was implemented by the Land and Survey Department, it was to give native people protection towards their native rights. Besides, native people get incited for claiming more than their areas to receive more benefits in the future by pinpointing their claimed areas inaccurately. Therefore, this can lead to overlapping claimed areas issue when any development company overlap with the native land for development purposes as it is convenient to overlap or trespass on their native lands without permission since their native lands are not registered under Section 18 of the Sarawak Land Code 1958. Native people also may take advantage to receive benefits by getting more compensation when their claimed areas are involved in land acquisition for government development projects which the land administrators will investigate thoroughly before approval of the compensation.

3.2.3 Primary Forest Reserved

R3 stated that the current factors with the overlapping claimed areas issue are when the claimants claimed their areas overlapped with the primary forest reserved under the document of title by the Federal or State Government that lawfully constituted to deserve the land. The disputes between the native people and the primary forest reserve are complicated to resolve as the land administrators need to make the native claimants understand the primary forest reserve cannot be claimed under any circumstances as it is lawfully protected by the State Government. Firstly, the land administrators will check the claimant-claimed area through the topography system for the genuine Native Customary Rights (NCR) land then study the cadastral plan thoroughly whether the claimed areas overlap with the primary forest reserved. This occurred when the early settlement was hard to trace by the claimant based on their landmarks only. Besides, this also led to the land surveyor trespassing on the primary forest reserved areas accidentally during the survey work due to inaccurately claimed areas and differences from the cadastral plan on the actual site. Therefore, the overlapping claimed areas occurred when the claimants cannot pinpoint their claimed areas accurately which may lead to overlapping claimed areas with the primary forest reserved.

3.2.4 Private Sector Taking Advantage

R4 stated that the current factors with overlapping claimed areas issues involved with the plantation companies are quite common nowadays. Plantation companies tend to overlap with the native land that is vulnerable which is not lawfully registered and not protected under the Sarawak Land Code 1958. This has occurred when the plantation is in the rural areas which is rarely being monitored by the enforcement authorities and without the acknowledgement of the owners. This has caused disputes between the native people and plantation companies that each area overlapped. Plantation companies with no empathy take advantage of the native lands for the ignorance of the native people about their native rights by overlapping with adjoining native lands at will. Thus, native people showed dissatisfaction towards this current factor as the plantation company did not approach them by offering a joint venture contract as a reward as well as without asking the native people's permission. The native people can come forward to the Land and Survey Department to report regarding these overlapping matters and to seek solutions from the land administrators.

3.2.5 Confusion on the Actual Site

R5 as a surveyor stated that the current factors with the overlapping claimed areas issue are pinpointed in the claimed areas accurately. The land surveyor will be brief regarding the marking of the boundaries by the land administrators beforehand to avoid any overlapping claimed areas. However, when the land surveyor comes to carry out the survey work, the actual site is different from the cadastral plan that has been prepared by the land administrator, although with the presence of the land administrators and the claimants as well as their witnesses. This has confused the actual site to the land surveyor as it can lead to the overlapping claimed areas issue. For instance, R5 has experienced that the small river was on the actual site, but not showing in the cadastral plan that was given by the land administrators which confused the land surveyor during the survey work. This matter led to the overlapping claimed areas because of the inaccurate pinpointed claimed areas as well as the accuracy of the landmarks. Due to the inaccurate marking of boundaries shown on the cadastral plan and the actual site, it is easier for the land surveyor to make the mistake of overlapping the areas with the other adjoining lands. Therefore, the land surveyor needs to postpone the survey work and the issuing of land titles will be delayed due to the land administrator's need to reconfirm with all the native claimants of their native lands before continuing the survey work again.

3.3 Solutions to the Current Factors of Overlapping Claimed Areas Issue During the Process of Land Measurement in Bintulu

R1 stated that the solution to the no written record factor is educating the claimants on recognizing the areas, which they have been occupying and marking their claimed areas accurately by teaching the claimants to use a handheld Global Positioning System (GPS). Thus, the claimants able to trace and pinpoint their claimed areas accurately and precisely that required for applying for the Native Customary Rights (NCR) land title. Land administrators can teach one of the community representatives who is their appointed head of the Land Steering Committee. R2 stated the solution to the no written records that caused the overlapping claimed areas was the land administrators could trace the claimants' Native Customary Rights (NCR) lands by the topography for the verification of their early settlement before the year 1958. Besides, the land administrators can trace the claimants' Native Customary Rights (NCR) lands with the support of the district office as they have records of the native lands.

The solution to the greed of individuals factor causing the overlapping claimed areas issue is disseminating the knowledge about the Native Customary Rights (NCR) to the native people as stated by R1. The native people need to know their rights to protect their lands from any disputes. The importance of the native rights knowledgeable to give them the insight of claiming within what they own only. R1 also mentioned that ketua masyarakat and ketua kaum must be equipped with the knowledge of the Native Customary Rights (NCR) because they are the representatives of the native community and attend the dialogue session held by the land administrator when discussing the overlapping claimed areas issue.

The solution to the least given cooperation involved parties' factor of overlapping claimed areas issue is the performance of land administrators in bringing the involved parties to give full cooperation in honest behaviour during the dialogue session. Therefore, the land administrators have important roles and are responsible for bringing all the involved parties by encouraging them to give full cooperation based on their roles during the dialogue session in discussing the solutions of the overlapping claimed areas issue to prevent prolonging the process of issuing the Native Customary Rights (NCR) land titles.

R1 stated that the role of the resident and district offices must be highlighted because these are the agencies that are significant in disseminating information on the development happening in the district as the solution to the factor of exploitation of development projects. Subsequently, the planning authority can organize stakeholder engagement with the committee leaders regarding the proposed development project that will develop in their native lands. R2 stated that any native land that overlaps with the areas of the proposed development project will be acquired by the state government or offered joint venture agreements from the development companies. Land acquisition of the native land will be compensated fairly by the state government even if the native land has not been surveyed as long as it is genuine Native Customary Rights (NCR) that have been verified by the land administrators.

The solution to the perception of new and old generations and incitement factors of overlapping claimed areas issue stated by R1 and R2 is to disseminate the knowledge about the Native Customary Rights (NCR) to the native people. Educating the new and old generations on the importance of acknowledging their native rights over their lands when claiming their areas gives them insight into claiming within what they own only. The dissemination of knowledge of Native Customary Rights (NCR) was able to give them protection from any disputes that occurred without defending their lands blindly by including violence. Therefore, the dissemination of knowledge regarding the Native Customary Rights (NCR) can bring both generations to the same understanding without having different interpretations as well as avoid the incitement from non-native people that can cause disputes.

The solution to the primary reserved forest factor is the land administrators need to make the native claimants come to understand the primary forest reserve cannot be claimed under any circumstances as it is lawfully protected by the State Government. Subsequently, the land administrators must verify the claimed areas through the topography of the early settlement before issuing the cadastral plan. The land administrators need to ensure the cadastral plan of the claimed areas provided is accurate before carrying out the survey work. Besides, the land administrator can seek support from the district office to provide information on the claimed areas.

The solution stated by the R1 is to advise the plantation company to make a joint venture contract with the native people that overlapped with the claimed areas. Both parties must negotiate the terms and conditions of the contract regarding the payment as well as the period of the term. The land administrator is only the mediator of both parties involved by giving consultation for better negotiation. Subsequently, both parties must sign the contract after agreeing with all the terms and conditions and each party need to keep one copy of the contract documentation in case is issue occurs as a record.

R5 stated that when there is confusion on the actual site during the survey, the solution is R5 as the land surveyor will postpone the survey work as they have no authority to carry it out without the permission of the land administrator. Hence, the land surveyors can prevent themselves from mistakenly marking the boundaries that lead to overlapping claimed areas issues. Besides, R2 stated that the solution to this confusion on the actual site is to organise another dialogue session with representatives of the native community and the land committee to revise pinpointed claimed areas more accurately as well as with the assistance of the records provided by the district office.

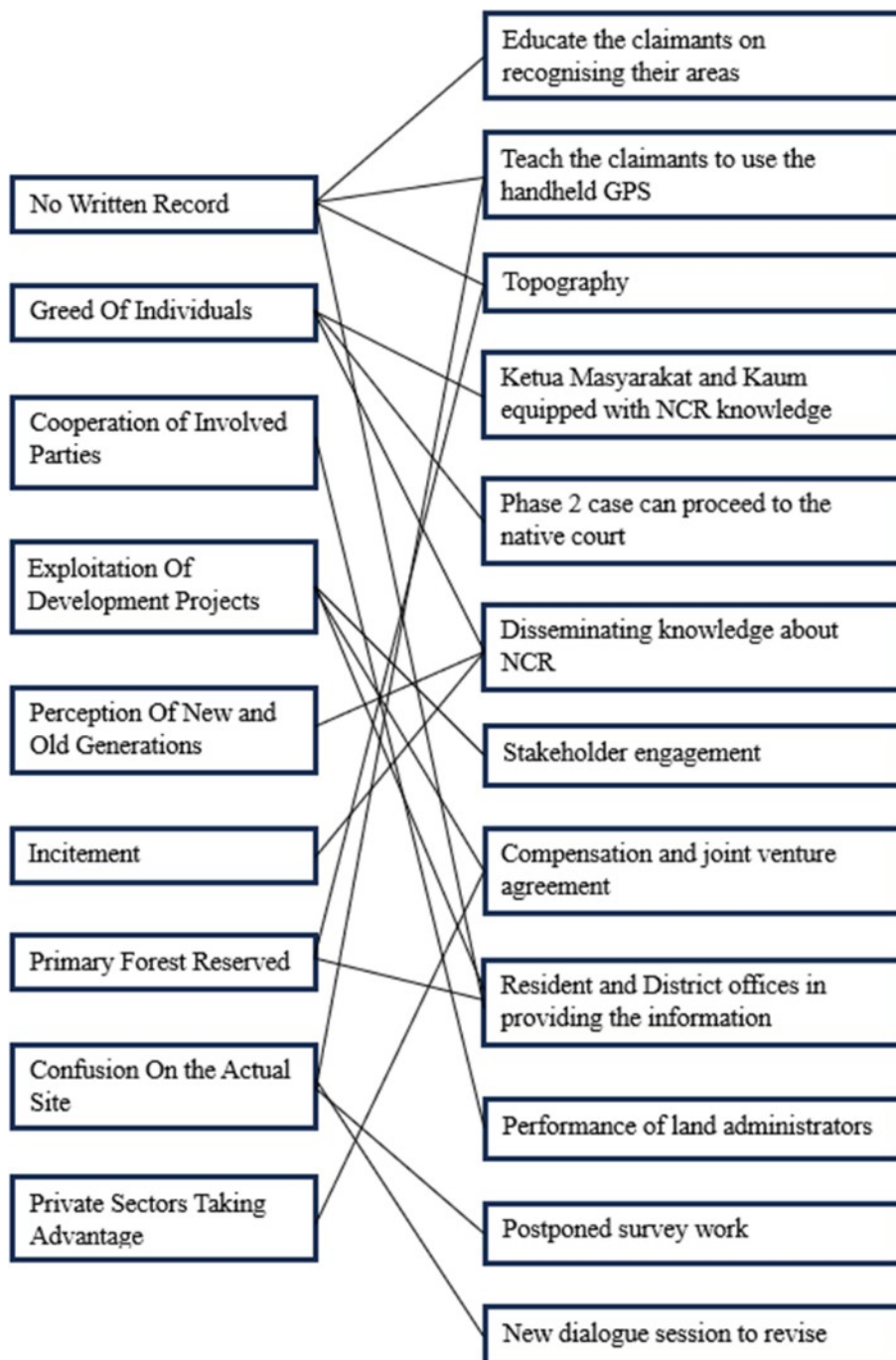


Fig. 3. Cross match of factors and solution to the overlapping claimed areas issue

In summary, Figure 3 above shows the cross-match of the factors and solutions to the overlapping claimed areas issue during the land measurement process in Bintulu. V.

4. Conclusions

To summarise, the need to solve this crisis indeed involves intervention from the Land and Survey Department as a responsible government agency in providing solutions to this issue by empowering legislation of the Sarawak Land Code 1958. The involvement of other agencies also shows that each agency is aware and sensitive in carrying out its efforts in solving the overlapping claimed areas issue such as the Residence Office and District Office in assisting land administrators by providing the relevant documentation. Thus, the overlapping claimed areas issue can able solved with effective

communication and negotiation with the native people by suggesting several approaches to the issue that satisfy the involved parties. Although it is not a guaranteed solution for every overlapping claimed area issue, in most cases, it can solve the issue. In conclusion, all weaknesses in carrying out the settlement action taken must be promptly rectified by the parties involved, especially by the Land and Survey Department by inventing more advanced technology devices in marking the boundaries other than drones and GPS. Furthermore, the system can be improved with the creation of a communication networking solution method between the government agencies involved and the communities. Also, the creation of land committees to assist the relevant government agencies in executing the survey work and administering the process of land titles. The land administrators must overcome the weaknesses during the land measurement process to prevent postponement. It needs to be improved by making improvements that can further strengthen the existing settlement actions in the Land and Survey Department. This requirement is indeed a reasonable initiative so that the issue of overlapping claimed areas can be solved more effectively and most importantly in a short period.

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