

Law on Native Customary Land in Sarawak



JC Fong

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This book examines the rather unique system of land held under native customary rights within the Torrens System which accords protection of proprietary rights to land based upon the registration of titles and of interests in land.

It provides a comprehensive account on the development of the law on native rights and ownership over land since the assumption of sovereignty, in the early 1840s, by the first Rajah of Sarawak, Sir James Brooke, over what are now the Kuching and Samarahan Divisions. Sarawak was, then, a sparsely populated country. However, the natives already had their own customs and land ownership tradition, based largely on Indonesian Adat which had been well documented in the Secretariat Circular No 12/1939.

The author carefully analyses what has received judicial recognition, that is, the common law "respects the pre-existence of rights under native laws or customs though such rights may be taken away by clear and unambiguous words in a legislation" and considers whether the common law or international customary law creates rights for natives over areas which were not occupied by them or their forefathers, at the time when the Rajah assumed sovereignty over the respective regions of what is now modern Sarawak.

The law relating to creation, acquisition, dealings over, loss and extinguishment of native customary rights over land is set out in detail and with accuracy. The author also addresses the perception gap between what the natives view as practices or customs which enable them to claim rights to land, and the customs which the law recognises or have the force of law, for the purposes of creating or acquiring rights over land. What gave rise to this perception gap is explained, together with the pertinent point as to whether the civil courts have the jurisdiction to modify, discard or change well established native customs which the courts have a duty to take judicial notice of.

All the recent judgments relating to native customary land are analysed and their effect on native claims to land professionally scrutinised. The efforts by the State to develop native customary land, deemed valuable assets to the natives, to enhance their economic value and potentials, are considered in the last chapter.

This book will be of great interest to lawyers, owners and developers of native customary land and those who are keen to acquire more knowledge of the land system of the State of Sarawak or to understand how the laws passed by the Rajahs and later by the Legislature of Sarawak have restricted or set conditions for the creation and recognition of native customary rights over land.

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