

Taib weakened by authoritative court ruling

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ANTIDOTE Sarawak Chief Minister Abdul Taib Mahmud has been pummelled by two blows within eight days. Umno president Najib Abdul Razak will be able to exploit this to demand Taib's support for him in public and in private, given Najib's uncertainty over party elections later this year.

On June 21, the Court of Appeal delivered a crushing ruling against Taib's land policies. In a suit filed by Iban plaintiffs, led by village chief Sandah anak Tabau against Kanowit Timber Company and Taib's government, the court recognised the natives' claim that pemakai menoa - communal land allowed to lie fallow for future use - falls under Native Customary Rights (NCR).

azlanThis precedent is likely to inflict further defeats on Taib's government in 200 NCR cases awaiting their day in court. An 'NCR tsunami' would potentially deprive Taib's corporate allies in the oil palm and logging industries of hundreds of thousands of hectares.

The other insult to Taib was delivered last Saturday by the Malaysian Anti-Corruption Commission.

It took the unusual step of holding a press conference to announce it had formed a "new team" to investigate the Global Witness video released on March 19. The video featured Taib's family and business partners, allegedly making crooked land deals.

The MACC then made a new excuse for dragging its feet over the probe into corruption charges against Taib, lamenting that it was working through a mountain of documents. In the past, it had blamed loopholes in the MACC Act, and Taib's background as a lawyer, for its failure to act.

Happily for Taib, the MACC did not cite his remarks on April 4 - stating his contempt for the MACC and his refusal to cooperate with its probe - as yet another excuse.

NONEThe MACC said Taib had denied that he had made the comments, even though his outburst had been captured on video. Perhaps Taib should simply deny he is corrupt, so that the MACC can take him on his word, and close its investigation.

Najib would certainly have had some say in these two setbacks for Taib, and may well be exerting influence to remind Taib that the federal government can make his life difficult, if relations sour.

Although a few of Malaysia's judges remain defiantly independent, Umno's influence in the judiciary and the MACC is well documented.

The troubled relationship between Najib and Taib, punctuated by repeatedly broken promises that Taib will soon resign, is also on public record.

NCR legal precedents damaging to Taib

The unanimous Court of Appeal ruling, delivered by Justices Mohd Hishamudin Mohd Yunus, Abdul Wahab Patail and Balia Yusof Wahi, has far-reaching implications.

They upheld the finding by High Court judge, Justice Yew Jen Kie, that Sandah anak Tabau's community owned over 5,512 ha of land, including pemakai menoa, and that native rights were not restricted to 2712 ha of temuda, or cultivated land.

This judgment added to the weight of NCR precedents, such as the Court of Appeal decision in favour of Iban landowners in *Nor ak Nyawai vs Borneo Pulp* in 2006, and the Federal Court ruling in favour of Malay villagers in *Madeli bin Salleh vs the Sarawak Government* in 2005.

These rulings all agree that NCR applies to pemakai menoa (fallow land) and pulau galau (forests and rivers crucial for hunting, fishing and gathering).

The response of Taib and his ministers has been shambolic: mostly bald-faced denial of the authority of the highest courts in the country.

State Land Development Minister James Masing (right) told the local press on June 15 that pemakai menoa and pulau galau should not be included in natives' NCR claims. He advised native landowners to have their temuda surveyed, but to forfeit their claims on uncultivated land.

Masing was quoted as saying pemakai menoa and pulau galau make up only 10 percent of all NCR land in the state, an entirely illogical assertion and one that he cannot possibly prove.

"Why fight for the 10 percent only to lose the 90 percent in the end?" he asked.

In response, PKR land rights lawyer Abun Sui Anyit told Malaysiakini that Masing

"should be considered a traitor to the Ibans and Dayaks if (these lands are) really excluded by the government".

"It is very sad to have this statement come out from a senior Iban Minister. He should protect the Ibans' NCR land, including pemakai menoa and pulau galau."

Abun Sui said the state government's attitude towards NCR court actions is mala fide: "The rakyat must show that people's power is greater than people in power."

Even after the decisive Sandah anak Tabau ruling, Masing doggedly reiterated his anti-judicial stance on June 28, insisting that "the court decision on the case is not a blanket recognition on all pulau galau and pemakai menua claims by natives throughout Sarawak".

Taib's limited choices

Taib's options are desperately limited. If his administration recognises NCR land, he will lose most of the political patronage that has kept him in power for 32 years.

NCR recognition would allow rapid 'bottom-up' land development, boosting local economies, instead of enriching urban cronies and fuelling capital flight, as described in the Global Witness video.

Community-centred land development would provide many natives independence from handouts, and reduce the sting of BN threats to withdraw state funds, when the state assembly elections roll around in 2016.

ncr land sarawak and palm oil plantation
If Pakatan Rakyat is to progress in Sarawak, its component parties must ramp up support for native landowners in lawsuits against powerful logging and oil palm corporations.

The new state DAP chairperson Chong Chien Jen has said his party will adopt a two-prong strategy in rural seats, by improving political education and economic status. Fighting for NCR would certainly advance both objectives.

DAP state assembly representative for Piasau, Alan Ling Sie Kiong, has rebuked the Taib administration for its "lack of sincerity" in providing land security, as evidenced by inexcusably slow NCR land surveys.

"It's sad that in Sarawak, many natives have to resort to legal action ... BN has failed to resolve NCR issues, resulting in affected parties bringing land matters to court, which is often delayed, time-consuming, and costly," he said.

Land disputes can easily be settled if the current mechanisms are people-friendly, rather than crony-friendly.”

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