

**SABAH DISPUTES:
IS THERE A LEGAL SOLUTION FOR SABAH?**

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**MASTER OF SCIENCE
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SABAH DISPUTES:
IS THERE A LEGAL SOLUTION FOR SABAH?

By

MOHD SYAHMI DAIM BIN ABDULLAH

Academic project paper submitted to the Unit of Graduate Studies,
College of Law, Government and International Studies,
Universiti Utara Malaysia
in Fulfillment of the Requirement for the degree of Master of Science
(Strategic Studies)

Jun 2014

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ABSTRAK (Bahasa Melayu)

Sabah merupakan sebahagian daripada komponen negeri dalam Malaysia sejak penggabungannya dengan Persekutuan Malaysia pada 16 September 1963; namun peraturan pilihan bebas oleh rakyat Sabah telah diabaikan dan masih dipertikaikan kedaulatannya oleh Filipina. Wujud juga isu wang penyerahan yang kekal dibayar oleh kerajaan Malaysia sehingga kini, walaupun Surat Ikatan 1878 digubal semasa zaman penjajahan British. Situasi bertambah buruk akibat serangan oleh pengikut Kesultanan Sulu di Lahad Datu pada bulan Mac 2013, yang dilihat sebagai satu cara penggunaan kekerasan untuk menuntut Sabah sehingga membawa kepada pertumpahan darah, dan kesan yang buruk. Penyelesaian melalui dari segi perundangan mengenai penentuan masa depan Sabah jarang dibincangkan walaupun ianya sangat relevan bagi mencapai penyelesaian ke atas pertikaian yang telah lama berlaku di antara Filipina dan Malaysia. Kertas ini akan mengakses kesahihan '*penentuan sendiri*' oleh rakyat Sabah dan menganalisis isu '*wang penyerahan*' dari perspektif undang-undang, khasnya melalui prinsip undang-undang antarabangsa dan peruntukan undang-undang lain yang berkaitan. Penyelesaian melalui Mahkamah Keadilan Antarabangsa (ICJ) dianggap perlu bagi mendapatkan keputusan muktamad untuk mengikat kedua-dua pihak dan secara tidak langsung memberi harapan baharu bagi masa depan Sabah.

Katakunci: Pertikaian Sabah, Konflik Sabah, Isu Sabah, Penyelesaian Pertikaian Wilayah, Penyelesaian Undang-undang, Undang-undang Antarabangsa, Penentuan Kendiri, Common Law, Peraturan Menentang Keabadian.

ABSTRACT

Sabah is part of the component states of Malaysia since its merger with the Federation of Malaysia on September 16, 1963; however the rule of independent choices by the people of Sabah were ignored and its sovereignty is still disputed by the Philippines. There is also an issue of cession money paid by the Malaysian government until today despite the fact that the Deed of 1878 has long been enacted during the British colonial era. Situation worsened as a result of incursion of the Sultanate of Sulu in Lahad Datu in March 2013, which may be seen as a form of use of force to claim over Sabah leading to bloodshed and severe adverse impact. A legal solution on the future determination of Sabah was rarely discussed although it is very much relevant in order to achieve settlement on disputes that have long occurred between the Philippines and Malaysia. This paper will access the validity of '*self-determination*' by the peoples of Sabah and analyze the issue of '*cession money*' from the legal point of view through the principles of International Law and other related legal provision. Solution through the International Court of Justice (ICJ) is deems necessary in order to obtain a final decision which will bind both parties and indirectly bring new hope to the future of Sabah.

Keywords: Sabah Disputes, Sabah Conflict, Sabah Issue, Territorial Disputes Settlement, Legal Solution, International Law, Self-Determination, Common Law, Rule Against Perpetuities.

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LIST OF ABBREVIATIONS

ACLR	Assistant Collector of Land Revenue, Sabah.
ESSCOM	Eastern Sabah Security Command.
ESSZONE	Eastern Sabah Security Zone.
Deed of 1878	Agreement between Sulu Sultanate and Overbeck on 22 Jan 1878.
DOSM	Department of Statistics Malaysia.
ICJ	International Court of Justice.
LUC	Land Utilisation Committee of Sabah.
NCL	Native Customary Land of Sabah.
NCR	Native Customary Rights of Sabah.
SLO	Sabah Land Ordinance.
SUHAKAM	Suruhanjaya Hak Asasi Manusia, Malaysia.
UN	United Nations.
US	United States of America

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CHAPTER ONE

INTRODUCTION

1.1. Chapter Overview

This is an introduction chapter that involved the background of the study and background of the disputes, problem statement, research question, objective of the study, significant of the study, study limitation, conceptual framework that divide into subsection, chapterization and the summary for this chapter.

1.2. Background of the Study

Sabah also referred to as North Borneo, fell into the hands of the British under Anglo-Dutch Treaty in 1824 (IDE Asian Law, 2003). Generality is about 73,620 square kilometers¹ and 3,496,600 total of population (Department of Statistics Malaysia [DOSM], 2013). The island is very title of economic value and strategic location in Asia Pacific.

North Borneo was an independent state and a British protectorate under the sovereign of the British North Borneo Company since 1882 to 1946, and subsequently a crown colony of the United Kingdom from 1946 to 1963 (Starner, 1963). In the meantime, the Sultanate of Sulu ceded North Borneo to Baron De Overback in 1878. In 1963, people will of Sabahans to join the Federation of

¹ Source: Lands and Surveys Department, Sabah. Figures extracted from Sabah Area, by Administrative District 2012 (DOSM 2013). The figures not include the island of Labuan, 92 Sq. Km - because Labuan considered the Federal State of Labuan since 1 February 1984.

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APPENDICES

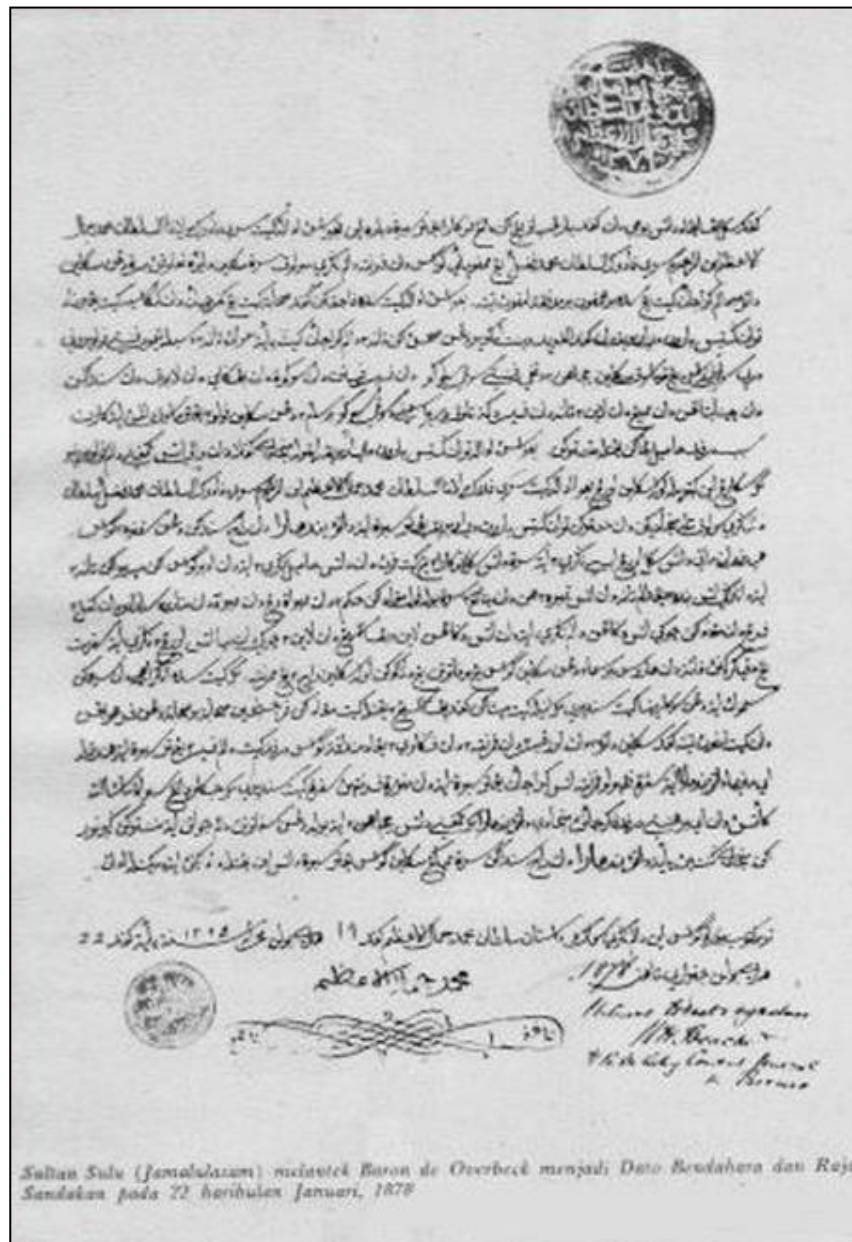
Appendix A Grant of Brunei and Overbeck (in Arabic letters)



Source: Brunei Times, under the Golden Legacy column (21 September 2008). Also available in "Sabah, Brunei's Former Northern Territory" posted by Rozan Yunus on September 24, 2008 at <http://bruneiresources.blogspot.com>

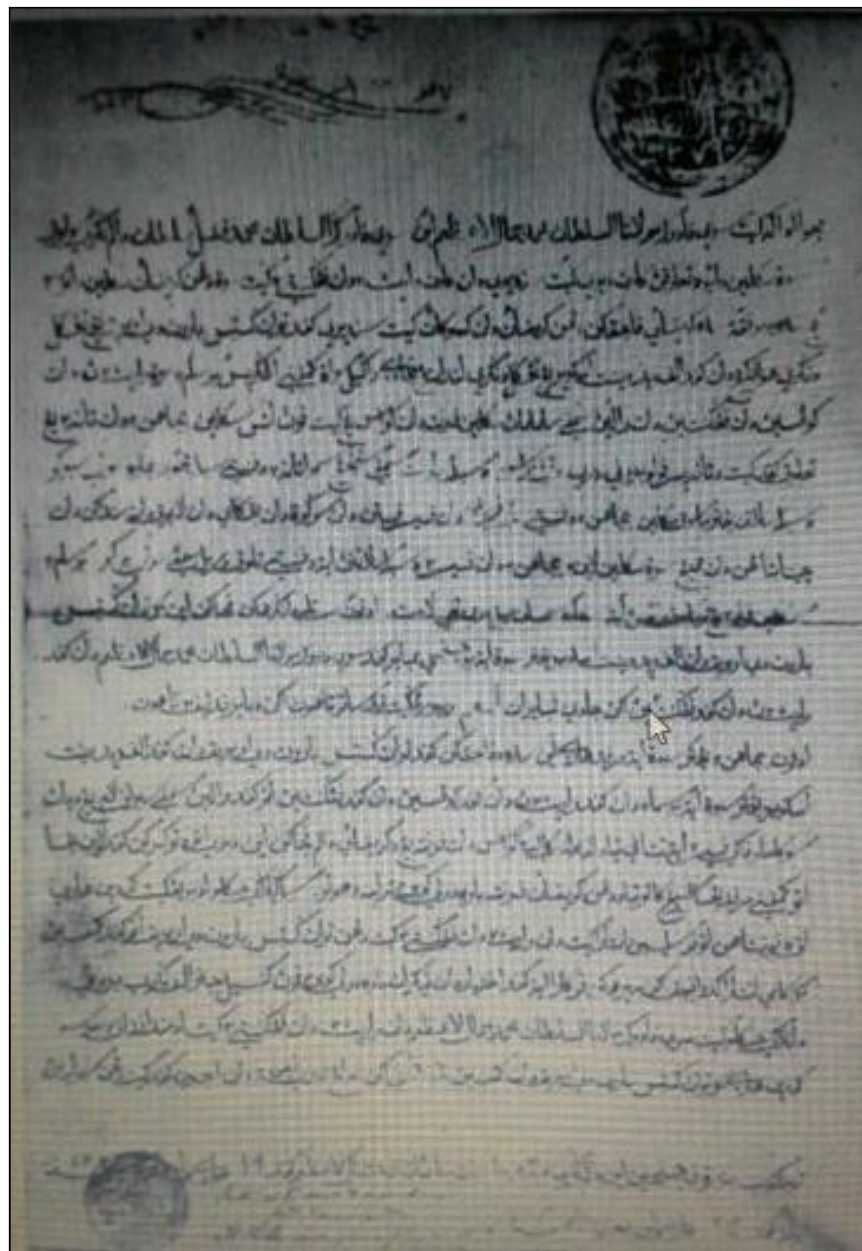
Appendix B

Deed of 1878 (in Arabic letters)



Source: Brunei Times, under the Golden Legacy column (21 September 2008) – grant of Sulu Sultanate and Overbeck, 1878. Also available in “Sabah, Brunei’s Former Northern Territory” posted by Rozan Yunos on September 24, 2008 at <http://bruneiresources.blogspot.com>

Appendix C
Deed of 1878 (in Arabic letters)



Source: The original photocopy of 'Deed of 1878' by Ortiz (1963) in *Philippines Studies* – grant of Sulu Sultanate and Overbeck, 1878.

Appendix D
Translation of Deed of 1878 (British Version)

**GRANT BY SULTAN DE SULU OF TERRITORIES AND LANDS ON THE
MAINLAND OF THE ISLAND OF BORNEO.**

Dated 22nd January, 1878.

We Sri Paduka Mauh Al Sultan Mohamet Al Alam Bin Sri Paduka Almarhom Al Sultan Mohamet Fathlon Sultan of Sulu and the dependencies thereof on behalf of ourselves our heirs and successors and with the consent and advice of the Datus in council assembled hereby grant and cede of our own free and sovereign will to Gustavus Baron de Overbeck of Hong Kong and Alfred Dent, Esquire, of London as representatives of a British Company co-jointly their heirs, associates, successors, and assigns forever and in perpetuity all the rights and powers belonging to us over all the territories and lands being tributary to us on the mainland of the island of Borneo commencing from the Pandassan River on the northwest coast and extending along the whole east coast as far as the Sibuco River in the south and comprising amongst others the States of Paitan, Sugut, Bangaya, Labuk, Sandakan, Kina Batangan, Muniang, and all the other territories and states to the southward thereof bordering on Darvel Bay and as far as, the Sibuco River with all the islands within three marine leagues of the coast.

In consideration of this grant the said Baron de Overbeck and Alfred Dent promise to pay as compensation to His Highness the Sultan Sri Paduka Maulana al Sultan Mohamet Jamal Al Alam, his heirs or successors the sum of five thousand dob per annum.

The said territories are hereby declared vested in the said Baron de Overbeck and Alfred Dent, Esquire, co-jointly their heirs, associates, successors, or assigns for as long as they choose or desire to hold them. Provided however that the rights and privileges conferred by this grant shall never be transferred to any other nation or company or foreign nationality without the sanction of Her Britannic Majesty's Government first being obtained.

In case any dispute shall arise between His Highness the Sultan, his heirs or successors, and the said Gustavus Baron de Overbeck or his, Company, it is hereby agreed that the matter shall be submitted to Her Britannic Majesty's Consul-General for Borneo.

The said Gustavus Baron de Overbeck on behalf of himself and his Company further promises to assist His Highness the Sultan, his heirs or successor with his best counsel and advices whenever His Highness may stand in need of the same.

Written in Likup in Sulu at the Palace of his Highness Mohamet Jamalul Alam on the 19th Moharam A.H. 1295, answering to the 22nd January, A.D. 1878.

Source: Ortiz (1963), Philippines Studies in a translation of 'Deed of 1878', by Maxwell and Gibson, (London 1924) in Treaties and Engagements Affecting the Malay States and Borneo.

Appendix E
Translation of Deed of 1878 (Sultanate of Sulu Version)

**GRANT BY THE SULTAN OF SULU OF A PERMANENT LEASE
COVERING HIS LANDS AND TERRITORIES ON THE ISLAND OF
BORNEO.**

Dated January 22, 1878.

We, Sri Paduka Maulana A1 Sultan Mohammed Jamalul Alam, Son of Sri Paduka Marhum A1 Sultan Mohammed Pulalum, Sultan of Sulu and of all dependencies thereof, on behalf of ourselves and for our heirs and successors, and with the expressed desire of all Datus in common agreement, do hereby desire to lease, of our own free will and satisfaction, to Gustavus Baron de Overbeck of Hong Kong, and to Alfred Dent, Esquire, of London, who act as representatives of a British Company, together with their heirs, associates, successors, and assigns forever and until the end of time, all rights and powers which we possess over all territories and lands tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the east, and thence along the whole east coast as far as the Sibuku River on the south, and including all territories, on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, Chinabatangan, Mumiang, and all other territories and coastal lands to the south, bordering on Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast.

In consideration of this (territorial?) lease, the honorable Gustavus Baron de Overbeck and Alfred Dent, Esquire, promise to pay His Highness Sultan Maulana Mohammed Jumalul Alam and to his heirs and successors, the sum of five thousand dollars annually, to be paid each and every year.

The above mentioned territories are from today truly leased to Mr. Gustavus Baron de Overbeck and to Alfred Dent, Esquire, as already said, together with their heirs, their associates (company) and to their successors and assigns for as long as they choose or desire to use them; but the rights and powers hereby leased shall not be transferred to another nation, or a company of other nationality, without the consent of Their Majesties, Government.

Should there be any dispute, or reviving of old grievances of any kind, between us, and our heirs and successors, with Mr. Gustavus Baron de Overbeck or his Company, then the matter will be brought for consideration or judgment to Their Majesties, Consul-General in Brunei.

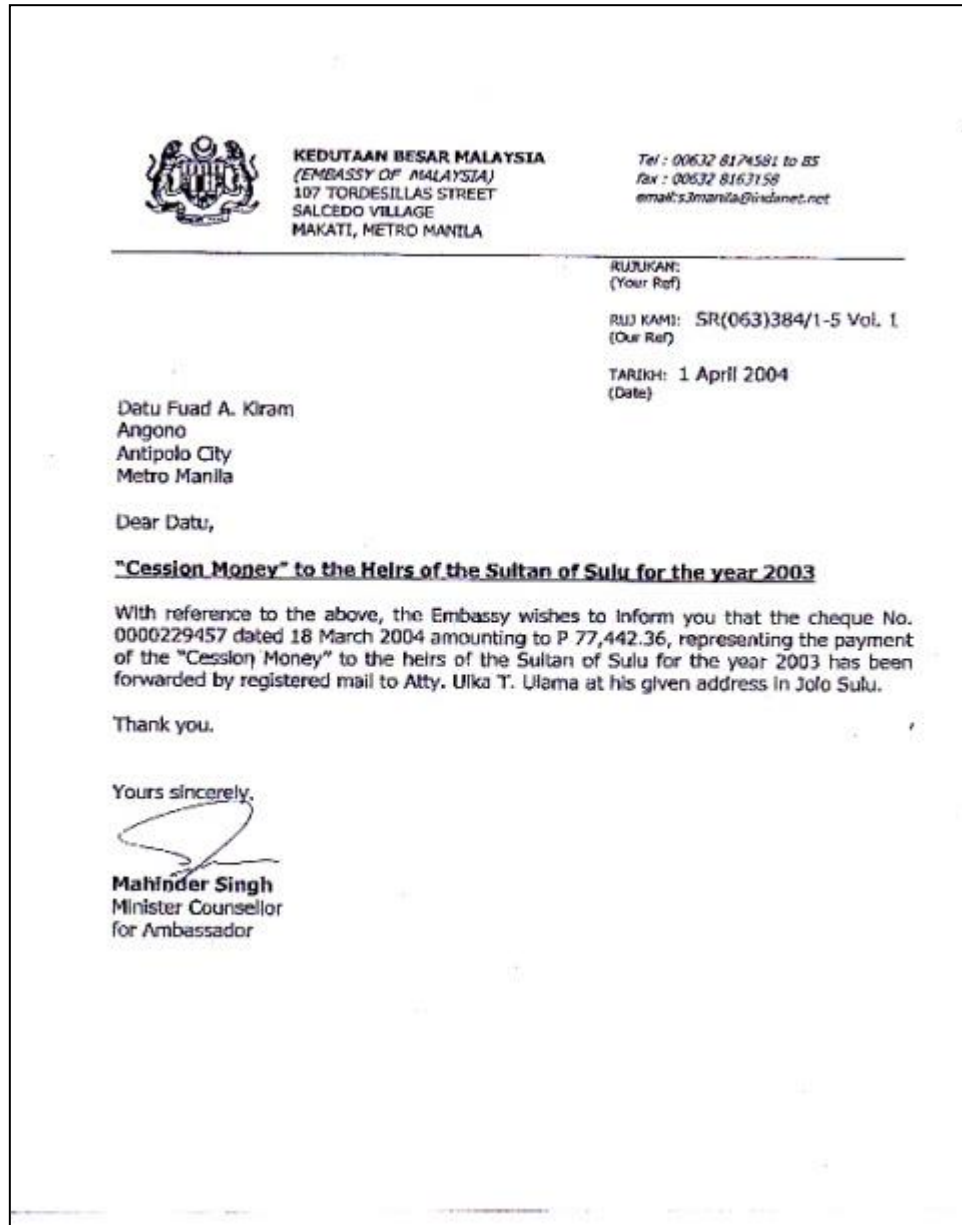
Moreover, if His Highness Maulana A1 Sultan Mohammed Jamalul Alam, and his heirs and successors, become involved in any trouble or difficulties hereafter, the said honorable Mr. Gustavus Baron de Overbeck and his company promise to give aid and advice to us within the extent of their ability.

This treaty is written in Sulu, at the Palace of the Sultan Mohammed Jamalul Alam, on the 19th day of the month of Muharam, A.H. 1295; that is on the 22nd day of the month of January, year 1878. Seal of the Sultan Jamalul Alam. Witness to seal and signature (Sgd.) W. H. Treacher H.B.M. Acting Consul General in Borneo.

Source: Ortiz (1963), in *Philippines Studies*, a translation of 'Deed of 1878' by Prof. Harold C. Conklin of Yale University in 1946.

Appendix F


Malaysian 'Cession Money' Payment for Sabah year 2003



Source: Annual "Cession Money" payment by Malaysian Embassy to the heirs of Sultanate of Sulu as posted by Drs. Khalil Idham in "Hentikan Segera Bayaran Ufti Kepada Kesultanan Sulu - Karpal Singh" (Bernama, 12 March 2013). Available at: <http://www.idhamlim.com>

Appendix G

Resolution urging Malaysian Government to settle the Proprietary Rights of the legal heirs of the Sultan of Sulu


 Republic of the Philippines
 Autonomous Region in Muslim Mindanao
PROVINCE OF SULU
 Patikul
Sangguniang Panlalawigan Ng Sulu

RESOLUTION NO. 27-2008
 10th Session

Sponsored by: *Hon. Hector M. Buclao*

RESOLUTION URGING THE MALAYSIAN GOVERNMENT TO SETTLE THE PROPRIETARY RIGHTS OF THE LEGAL HEIRS OF THE SULTAN OF SULU AS EMBODIED IN THE 1939 JUDGEMENT OF CHIEF JUSTICE C.F.C. MACASKIE OF DECEMBER 18, 1939.

WHEREAS, the Sulu Sultanate has been in existence as an independent Sovereign State since 14th Century;

WHEREAS, North Borneo known as the **SABAH**, became part of Sulu, and has been under the dominion of the Sulu Sultanate since 1705;

WHEREAS, in January 22, 1875, the Sabah has been leased by the Sultan of Sulu to Gustavos De Overbeck and Alfred Dent of the North Borneo Company;

WHEREAS, Sultan Jamalul Kiram II had succeeded to the Sultanate of Sulu in the year 1894, he died on June 7, 1936 without any children but survived by heirs;

WHEREAS, in the year 1939, Dayang-Dayang Hadji Piandao, Putih Tarhata Kiram, Putih Sakinur-in Kiram, Esmail Kiram, Punjungan Kiram, Siti Mariam Kiram, Siti Rada Kiram, Siti Jahara Kiram and Mora Napsa filed a Civil Suit against the Government of the North Borneo and others;


WHEREAS, in the judgement of Chief Justice C.F.C. Macaskie of 1939, all the above heirs of the Sultan of Sulu were named as the successors to the Sultan of Sulu and has since then been receiving the Annual Customary Payment from the North Borneo Government in the amount of 5,300 ringgits or equivalent to Seventy Thousand Pesos (P70,000.00);

WHEREAS, the heirs of the Sultanate of Sulu through counsel has been demanding for the increase of the Annual Customary Payment to at least Five Hundred Million USD (USD 500,000,000.00), but Malaysian Government has never entertained such request;

WHEREAS, Sabah became part of the Federation of Malaysia since 1963, and has since then been renting the Annual Customary Payment to the heirs of the above mentioned names heirs but only RM 5,300 annually;

WHEREAS, last May 25, 2008, during the meeting of the MNLF in Davao City, attended by MNLF all over Mindanao, MNLF Chairman Nur P. Misuari call the attention of the Malaysian Government to settle the Sabah issue, or he will ask this matter be brought to the International Court of Justice;

WHEREAS, the statement of MNLF Chairman Misuari has triggered various reactions from the Sabahans, and therefore require immediate resolution to avoid any repercussion in the future;


 Republic of the Philippines
 Autonomous Region in Muslim Mindanao
PROVINCE OF SULU
 Patikul
Sangguniang Panlalawigan Ng Sulu

Page 2/Res. 27-2008

NOW THEREFORE, in view of all foregoing considerations and in the interest of permanent peace in this jurisdiction and untoward in incident;

RESOLVED, AS IT IS HEREBY RESOLVED, that the Sulu Provincial Government urge the Malaysian Government to resolve the Sabah proprietary rights claim of the Sultan with legal heirs of the Sultan of Sulu embodied in the Macaskie Judgement of 1939;

RESOLVED FURTHER, that this resolution be officially presented to the proper authority of the Malaysian Government;

RESOLVED FURTHERMORE, the sum of Five Hundred Million USD (USD500,000,000.00) be appropriated to fully implement this Resolution

CARRIED UNANIMOUSLY.

ADOPTED this 24th day of June 2008 at the SPS Session Hall, Provincial Capitol, Jolo, Sulu.

Hon. NADZALY H. MALDISA
 Board Member, 1st District

Hon. AL KHADAR T. LOONG
 Board Member, 1st District

Hon. LYNDEN S. TULAWIE
 Board Member, 1st District

Hon. NURIHATA M. SALAHUDDIN
 Board Member, Rep. Women Sector

Hon. KHALIL T. HAJIBIN
 Board Member, 2nd District

Hon. HECTOR M. BUCLAO
 Board Member, 2nd District

Hon. MALCON T. TULAWIE
 Board Member, FACB President

Hon. BASARON M. BURAHAN
 Board Member, Rep. Urban Poor, Indigenous People & Disabled Sector

CERTIFIED CORRECT:

Esther U. Hassan
 Provincial Board Secretary

TESTED:
Hon. AL-BAKIL D. JIKIRI
 Board Member, 1st District
 Temporary Presiding Officer

Certified true xerox copy from the original:
(Signature)
AIDA S. ABURAKAR
 Board Secretary II

APPROVED:
(Signature)
HON. ABDESKUR M. TAN
 Provincial Governor
 Date: *27-06-08*

Source: Approval of payment to the sultanate of Sulu by Muhamad Zaki Mustafa in "Kisah Kesultanan Sulu 'Memajak Sabah' kepada Malaysia" (22 February 2013). Retrieved at <http://inisekadarinfo.blogspot.com>