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
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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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Approved by,

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ABSTRAK (Bahasa Melayu)


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 deemed 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.
ACKNOWLEDGEMENTS

Alhamdullilah, be grateful for the divine mercy and grace of time, life and energy that is awarded, I was able to complete this task successfully.

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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 kilometers\(^1\) 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.
The contents of the thesis is for internal user only
BIBLIOGRAPHY:


Kuptsoff, Adel (2014). East, West, Centre and South Province of Kalimantan, Indonesia by Company KGIS. Available at: http://big-big-city.com


Tarling, Nicholas (1978). Sulu and Sabah: A Study of British Policy towards the Philippines and North Borneo from the Late Eighteenth Century. Political Science, the University of California: Oxford University Press.


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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 Yunos on September 24, 2008 at http://bruneiresources.blogspot.com
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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 Yunus on September 24, 2008 at http://bruneiresources.blogspot.com
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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.
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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.

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 Al Sultan Mohammed Jamalul Alam, Son of Sri Paduka Marhum Al 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 Jamalul 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 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 by 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 Al 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. HaroId 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

NOW, THEREFORE, in view of all ongoing negotiations and in the interest of permanent peace in the region and contrary to the precedent,

RESOLVED, AS IT IS HEREBY RESOLVED, that the Sulu Provincial Government urge the Malaysian Government to resolve the Sulu Proprietary Rights issue of the Sultan with legal heirs of the Sultan of Sulu submitted in the High Court judgment of 1910;

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

RESOLVED PERTHUMAH, the sum of Five Hundred Million USD ($500,000,000) is appropriated to be implemented this resolution

CARIED UNANIMOUSLY.

ADOPTED on the 25th day of June 2013 at the SPS Session Hull, Provincial Capital, Ilaga, Sulu.

[Resolution text continues with details and signatures]

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