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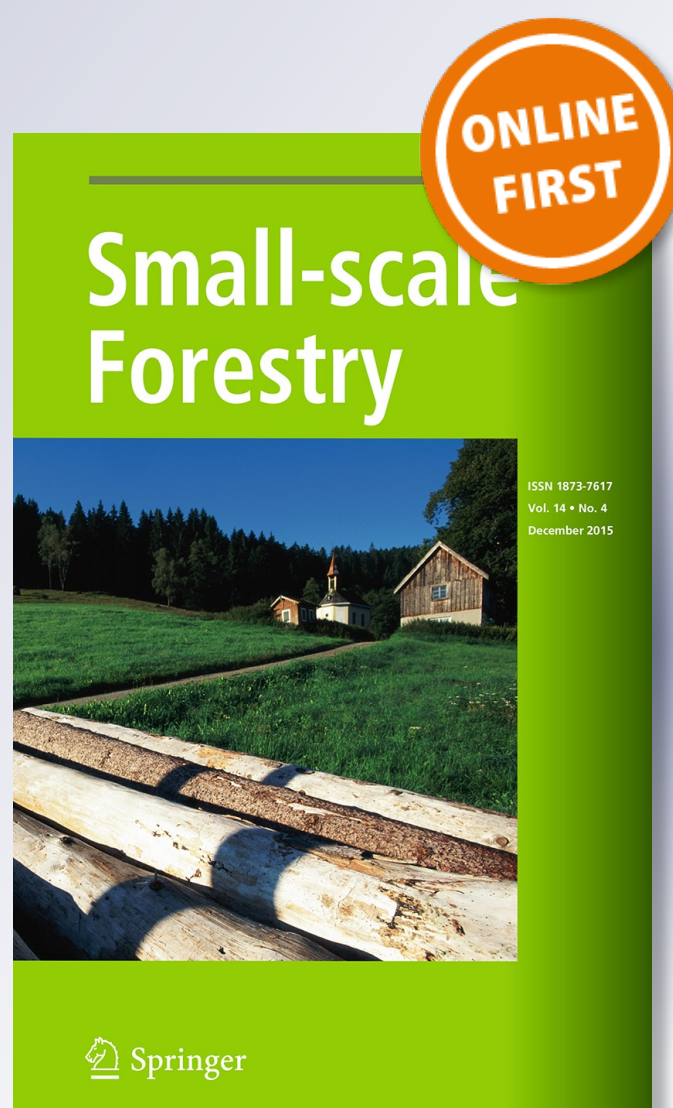
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An Empirical Study on Compatibility of Sarawak Forest Ordinance and *Bidayuh* Native Customary Laws in Forest Management

Julia Nelson¹ · Nur Muhammed¹ · Rosmalina Abdul Rashid¹

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Abstract This study was conducted to examine the compatibility between the Sarawak Forest Ordinance and *Bidayuh* Native Customary Laws in Sarawak and to gather the community members' opinions on the compatibility of these laws. This study was carried out using two research methods, viz. a literature review and a survey among the *Bidayuh* community in Bau, Sarawak. The documents reviewed were the Forest Ordinance Chapter 126 (1958) and the *Adat Bidayuh* Order, 1994. There are several notable differences between the two laws in terms of, forest ownership, losing of rights to forest or inheritance, and the management of forest. A list of statements with six interval scales was presented and a majority of *Bidayuh* community members neither disagreed nor agreed with the statement, (1) Forest Ordinance respects the *Bumiputera* people's rights (37.5 %; SD = 1.259) and (2) Forest Ordinance protects the *Bumiputera* people's rights (37.5 %; SD = 1.281). The community members are also not sure about the consistency between these two laws (28.1 %; SD = 1.182). These results indicated the need for the State to respect the natives' rights toward the forest land and its resources, recognize the *Bidayuh* Native Customary Laws and for the native people to learn about the constitutional provisions. Further studies are needed because the knowledge of Native Customary Law itself cannot guarantee the natives' future in terms of economic, social and environmental aspects and there is also a need to review the current laws to achieve the objective to protect and preserve the natives' rights.

Keywords Statutory recognition · Indigenous people · Forest community · Policies

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Introduction

Sarawak, or also known as the Land of Hornbill, is the largest state in Malaysia, with a total area of 12.445 mill ha (FDS 2013). Within this huge area of land, the forested area occupies almost 8.7 mill ha (70 %) of the total land area (FDS 2013). The forested areas are divided into three categories, namely, Permanent Forest Estate (PFE) (6.0 mill ha), State land (forest land which is not reserved permanently as forest) (1.7 mill ha) and Totally Protected Area (TPA) (1.0 mill ha) (FDS 2013). The forested areas are managed by two main departments, namely, the Sarawak Forest Department and Sarawak Forestry Corporation. The Sarawak Forest Department (SFD) is responsible for the licensing and regulatory functions and the Sarawak Forestry Corporation (SFC) is responsible for the operational functions (Liew 2007). These departments have been following the Forest Ordinance Chapter 126 (1958) as a guideline to manage the forest on a sustainable basis. The Forest Ordinance Chapter 126 (1958) has incorporated all of the amendments and modifications up to 31st July 1998 (SGP 1997). This ordinance is used to provide the protection and management plan and action of the Sarawak's forest, and to regulate the extracting of the forest resources (Ibid.). The SFC also uses three other ordinances namely, the Sarawak Forestry Corporation Ordinance 1995, the National Parks and Nature Reserves Ordinance 1998 and the Wildlife Protection Ordinance 1998 (SFC 2006). Although there are four major ordinances so far enacted, the laws related to native people only consist of a small section within these ordinances (Ngidang 2005).

Generally, the native people are those who have lived in a particular region in a country at the time when people of different ethnic origins or cultures arrived and they have distinct characteristics from those of other parts of the country (UNPFII 2006). The ethnic groups include the *Dayaks* in Indonesian and Malaysian provinces of Borneo, the *Orang Asli* in Peninsular Malaysia, the *Akha*, *H'mong*, *Lisu*, *Khmu* and others in southwest China and mainland Southeast Asia and the *Bataks* and *Tagbanua* in the Philippines (Fox et al. 2009). The community relevant to this study is the *Dayak-Bidayuh* in Sarawak. The reasons for choosing the *Dayak-Bidayuh* community for this study because they are among the early settlers in Sarawak and are the natives of Sarawak. The natives in Sarawak are locally known as the *Bumiputera*. The total population of the *Dayak-Bidayuh* community is 192,960 or approximately 8 % of the total population in Sarawak (2.4 mill) (Department of Statistics Malaysia 2010).

The term *Dayak* is a colonial construct that was used to distinguish between the Malay group and the non-Malay groups of people in Sarawak, generally the *Iban* and *Bidayuh* communities (Mason and Jawan 2003). *Dayak* is also used to refer to the *Dayak* natives in West Kalimantan (Jong 1998). During the British colonial, the *Iban* community was called the *Sea Dayak* because they mostly settled along the major rivers in Sarawak. In contrast, the *Bidayuh* community were referred as the *Land Dayak* because they inhabited the upland areas, although after the establishment of Malaysia, which comprises of Sarawak, Sabah and Malaya (Malaysian Constitution), these communities became known as the 'native people' or the *Bumiputera* of Sarawak (Tan 1997b; Mason and Jawan 2003).

The *Bidayuh* community is spread over Sarawak but mostly can be found in the Kuching Division (Department of Statistics Malaysia 2010). Originally from western Kalimantan of Indonesian Borneo, today the *Bidayuh* population is mainly concentrated in the southwest zone of Sarawak or the areas surrounding the state capital of Kuching, including Bau, Lundu, Padawan, Penrissen, Siniawan and Serian (Mason and Jawan 2003; Friends of the Earth 2007). The *Bidayuh* speak a number of dialects, and which differentiates one each local *Bidayuh* group from the others (Tan 1997a). They are divided into four main groups, namely *Biatah*, *Bukar-Sadong*, *Bau-Jagoi* and *Selako-Lala* (Tan 1997b). Although they are differentiated through their dialects, all *Bidayuh* groups believe in egalitarian, in which they believe in the principle that all people are equal and deserve equal rights and opportunities (Mason and Jawan 2003).

The native community still depends on the forest and its resources for their livelihood (Fox et al. 2009). The *Dayak* are riverine communities of the interior areas who by tradition practice swidden agriculture and live in villages dwell in one or more *rumah panjang* or literally, longhouses (Fox et al. 2009). The *Dayak* built their permanent settlements in close proximity to navigable stretches of rivers or confluences and are highly skilled in shifting agriculture while still maintaining a dependence on forest and river resources. According to Jong (1998), traditionally both the *Bidayuh* community in Sarawak and the West Kalimantan *Dayak* share the same practices, which are the cultivation of hill rice and growing of rubber trees and they also depend on the forest produce to support their livelihood. Even though the *Bidayuh* and West Kalimantan *Dayak* community practices hill rice cultivation, the shifting cultivation on virgin forests is not practiced nowadays due to the legislative restrictions imposed by the Forest Department (Ngidang 2005).

While the long history of governance has directly affected the lives of people, the customary law or the *adat* system that has existed even long before the sultanate¹ of Brunei has been used as the basic of traditional law making system by the indigenous people and this law has also been used as a basis for traditional land tenure system (Ngidang 2005). The native people preferred the *adat* system because it has long governed their lives compared to the various law systems used due to the multiple power shifts. The *Bidayuh's* Native Customary Law has been incorporated and amended into the *Adat Bidayuh* Order, 1994 and has came into force on 1st of June, 1994 (Majlis Adat Istiadat 2009). The amendment of this law has been carried out after consulting the Chiefs and Headmen of the *Bidayuh* communities in the administrative areas including the Kuching, Bau, Lundu and Serian districts of Sarawak (Ibid.).

Some of the biggest conflicts between the Forest Department and the native people are the gazettement the forest reserves by which, the gazettement of forest reserves has caused the natives to lose control over their traditional land (Su and Grace 2005) and the native customary rights practiced in Sarawak is found to be in conflict with the traditional open system of land ownership, better known as *Adat* (Xanthaki 2003). Therefore, this paper compares the existing law instruments. The main objective of this study is to examine the compatibility of current laws by comparing the contents of the Sarawak Forest Ordinance and *Bidayuh* Native Customary Laws Ordinance. The second objective is to gather the community member's opinions on

¹ A *sultanate* is a country that is ruled by a sultan or the period during which a sultan rules.

the compatibility of the Sarawak Forest Ordinance and *Bidayuh* Native Customary Laws Ordinance.

The Study Area

This study has been conducted in *Kampung* Bobak, a small *Bidayuh* village in Bau district, one of the main districts in Kuching Division (Fig. 1). The total area of this district is 884.4 km² (State Planning Unit 2012) and it covers 86 villages (Bau District Office 2013). The primary rainforest, mostly the infertile limestone hills and higher mountains, covers about 40 % of the total land area in this district (Pour et al. 2013). The main attractions in Bau are its caves (i.e. Fairy Cave and Wind Cave), and Bau Lake, or locally known as *Tasik Biru* (Chang 1999). Bau is mainly populated by the *Bidayuh*, Chinese and Malay communities, and the total population is 51, 599 (Department of Statistics Malaysia 2010). Other minority groups of communities are also present, including Indian, *Iban* and *Melanau* people.

Research Method

An empirical study has been conducted using two approaches—a literature review and a survey among *Bidayuh* community in Bau, Sarawak. The data collected have been analyzed quantitatively (frequency analysis) and qualitatively (content



Fig. 1 Location of study area. (Source: <http://allworldtowns.com/>)

analysis). In the survey, heads of households were interviewed using the questionnaire, a sample size of 96 being taken. Documents reviewed are including the Forest Ordinance Chapter 126 (1958) and the *Adat Bidayuh* Order, 1994. Figure 2 illustrates the steps in the research method.

Results

Bidayuh Community's Socio-Economic Profile

Based on the socio-economic profile (Table 1), it is found that almost half of the community members (46.9 %) have at least the Malaysian Certificate of Education. The employment status with the highest percentage is unemployed (21.9 %). The highest range of the estimated monthly income is less than RM1000 (71.9 %). About two thirds (67.7 %) of the community members have lived more than 20 years in the current living areas. The majority (79.2 %) of the *Bidayuh* community respondents were found to own less than 4 hectares of land. 78.1 % of the community respondents lands are being occupied for housing purposes.

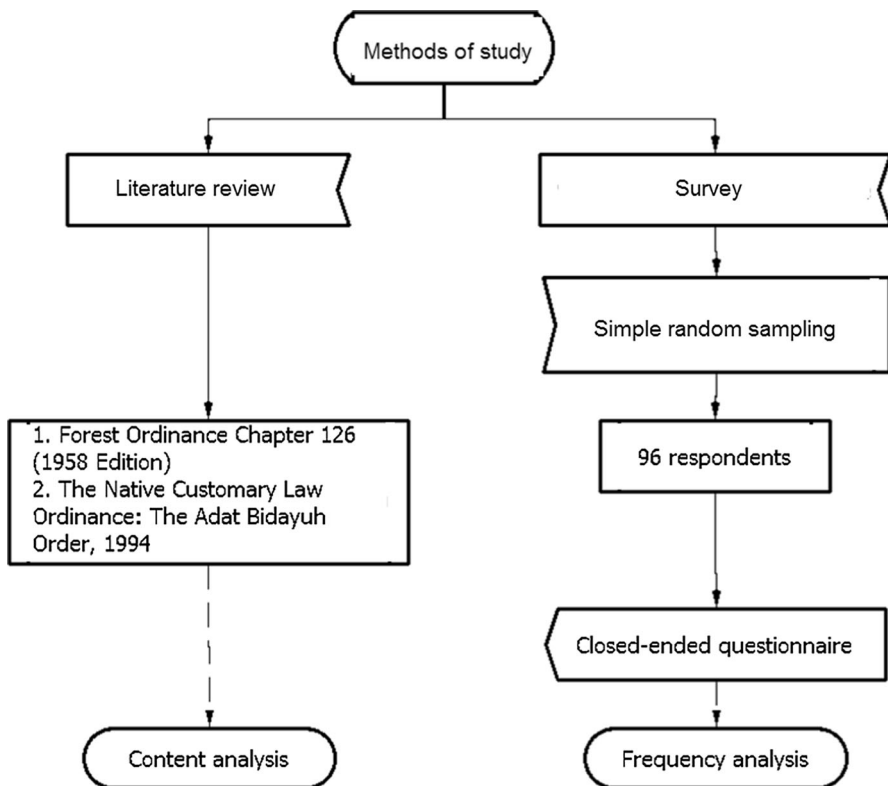


Fig. 2 Steps in the research method

Table 1 *Bidayuh* community's profile

Socio-economic profile	Frequency (n = 96)	Percentage (%)	Minimum	Maximum
<i>Education qualification</i>				
No formal education	2	2.1	1	9
UPSR/Primary 6 Assessment Test	8	8.3		
PMR/LCE	9	9.4		
SPM/MCE	45	46.9		
STPM	8	8.3		
Diploma	10	10.4		
A-level	1	1.0		
Bachelor's degree	12	12.5		
Master's degree	1	1.0		
<i>Employment status</i>				
Unemployed	21	21.9	1	10
Agriculture sector	10	10.4		
Forestry sector	2	2.1		
Business sector	6	6.3		
Service sector	19	19.8		
Retirees	7	7.3		
Self-employed	6	6.3		
Private sector	14	14.6		
Housewife	2	2.1		
Others	9	9.4		
<i>Estimated income monthly (RM)</i>				
<1000.00	69	71.9	1	7
1000.01–2000.00	8	8.3		
2000.01–3000.00	7	7.3		
3000.01–4000.00	8	8.3		
4000.01–5000.00	2	2.1		
5000.01–6000.00	1	1.0		
6000.01+	1	1.0		
<i>Residential period</i>				
<5 years	10	10.4	1	4
5–10 years	8	8.3		
10–20 years	13	13.5		
More than 20 years	65	67.7		
<i>Land area</i>				
<4 ha	76	79.2	1	3
4–20 ha	17	17.7		
More than 20 ha	3	3.1		
<i>Land utilization purposes</i>				
Housing	75	78.1	0	1
Agriculture	34	35.4	0	1
Paddy field	12	12.5	0	1

Table 1 continued

Socio-economic profile	Frequency (n = 96)	Percentage (%)	Minimum	Maximum
Orchard	21	21.9	0	1
Pepper field	7	7.3	0	1
Rubber plantation	17	17.7	0	1
Oil palm plantation	1	1.0	0	1
Pond	6	6.3	0	1
Animal husbandry	2	2.1	0	1

UPSR, *Ujian Penilaian Sekolah Rendah* (Primary School Assessment Test); PMR, *Penilaian Menengah Rendah* (Lower Secondary Assessment Test); LCE, Lower Certificate of Education; SPM, *Sijil Pelajaran Malaysia* (Malaysian Certificate of Education); MCE, Malaysian Certificate of Education; STPM, *Sijil Tinggi Persekolahan Malaysia* (Malaysian Higher School Certificate)

Compatibility Between the Forest Ordinance Chapter 126 (1958) and *Adat Bidayuh* Order, 1994

Two types of document have been reviewed viz. Forest Ordinance Chapter 126 (1958) and the Native Customary Laws Ordinance. Three themes have been found in both documents, namely ownership, loss of rights to forest, and inheritance and management of forest. The ownership theme shows that the documents are inter-related in terms of how the community can gain ownership toward the land or forest. The community can make a request for a forested area to be constituted as communal forest except for forest reserve, protected forest or other government reserve under the Forest Ordinance. On the other hand, the Native Customary Laws Ordinance states that the community members have to refer to the Land Code (Cap. 81) 1958 for any matters regarding their land, be it titled or native customary land.

As stated in the Land Code (Cap. 81) 1958, as from 1 January, 1958, the native customary rights toward the land may be created in accordance with the Native Customary Law of the community or communities concerned by any of the methods specified in Section 5, subsection (2), if a permit is obtained under Section 10, upon the Interior Area Land² (SGP 1999). The methods by which the native customary rights may be acquired as in subsection (2) of the Land Code include; (a) felling of virgin jungle and the occupation of the land thereby cleared; (b) planting of land with fruit trees; (c) occupation or cultivation of land; (d) use of land for a burial ground or shrine; (e) use of land of any class for rights of way; and (f) any other lawful method (Ibid.). However, the Land Code also states that, no recognition shall be given to any native customary rights over any land in Sarawak created after the 1st day of January, 1958, and if the land is State Land, any person in occupation thereof shall be deemed to be in unlawful occupation of State Land and Section 209 shall apply thereto (Ibid.). Section 6, subsection (1) of the Land Code then states that the Minister may by order signified in the Gazette declare any area of State Land to be a Native Communal Reserve for the use of any community having a

² Interior Area Land—The unsurveyed land, not falling under any of the other four categories (Mixed Zone Land, Native Area Land, Native Customary Land and Reserved Land).

native system of personal law and may, by such order or by subsequent order, declare that the customary law of such community in relation to the acquisition, transfer and transmission of rights and privileges in or over 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 (Ibid.).

Besides the ownership toward the land, the community's ownership toward the forest and its resources is also being mentioned in the *Adat Bidayuh* Order, 1994. The *Adat Bidayuh* Order, 1994 states that every *tapang* (*Koompassia excelsa*) tree is owned by an individual or family. However, there is no such specification of the ownership of *tapang* tree in the Forest Ordinance Chapter 126 (1958).

The community has the risk of losing their rights to forest or inheritance through different ways. The Forest Ordinance Chapter 126 (1958) states that the community may lose their communal forest or land if the Minister, by notification in the Gazette, directs the termination of that communal forest. The *Adat Bidayuh* Order, 1994, on the other hand, states that the community member may lose his/her inheritance if he/she married a non-*Bidayuh* man not in accordance of *Bidayuh* custom. Last but not least, the Forest Ordinance Chapter 126 (1958) provides a separate part for the management of communal forests in Part IV of the ordinance. The maintaining of communal forest is the responsibility of the community but through the method and extent regulated by the forest officer. The community is also allowed to use the forest produce for the purpose of their own use only and not for sale, exchange or direct profit. However, a strict restriction has also being stated for the utilization of any forest produce for the purpose of research, study, experiment, process or test in relation to the production or development or intended production or development of any pharmaceutical product or medicinal compound. On the contrary, the *Adat Bidayuh* Order, 1994 do not provides a separate section for the management of communal forest as in the Forest Ordinance Chapter 126 (1958) but only one section relating to farming in the communal land (Table 2).

Community Members' Opinions on the Compatibility of the Two Laws

A majority of *Bidayuh* community members are neither disagreed nor agreed with the statement that say the Forest Ordinance respects (37.5 %; SD = 1.259) and protects the *Bumiputera*' people rights (37.5 %; SD = 1.281). And they also are not sure about the consistency between the Forest Ordinance and the Native Customary Law (28.1 %; SD = 1.182) (Table 3).

Discussion and Conclusion

The content analysis shows that there are differences in terms of ownership, loses of rights to forest or inheritance and management of forest between the Sarawak Forest Ordinance and *Bidayuh* Native Customary Laws. Although the Forest Ordinance stated that the community can make a request to the Minister for the communal land, there is no similar section within the *Bidayuh* Native Customary Law. There is only a section that specifies how the community have to handle the transfer of title

Table 2 Comparison between Forest Ordinance and Native Customary Law

Details	Forest Ordinance	Native Customary Law
Document	Forest Ordinance Chapter 126 (1958)	The Native Customary Laws Ordinance: The <i>Adat Bidayuh</i> Order, 1994
Definitions	"Permanent forest" means all forest reserves, protected forests, communal forests, State land forests, Government reserves and planted forests in the State	<p>i. <i>Buah</i> (Bau and Kuching) refers to articles such as eastern-wares, brass wares, bronze articles, land or fruit trees for settling disputes, but for the purpose of this <i>Adat Bidayuh</i>, one <i>buah</i> is given a monetary value of one Malaysian ringgit (RM1.00)</p> <p>ii. <i>jojak nyomba</i> (Bau) means communally owned grove of fruit trees (Serian, <i>jajak namba</i>; Kuching, <i>jajak nyamba</i>; Lundu, <i>kompong kungsi</i> or <i>ta' mahu kongsi</i>)</p> <p>iii. <i>pulau tu' aan</i> (Serian and Bau) means communal forest</p> <p>iv. <i>Takud</i> means a form of restitution which covers two important ingredients: first, it covers the idea of providing settlement between individuals; second, it covers the idea of appeasement, atonement or restoration of the physical and spiritual well being of the community; there is no element of punishment in <i>takud</i></p> <p>v. <i>tana nyomba</i> (Bau) means communal land (Serian, <i>tana namba</i>; Kuching, <i>tana nyamba</i>)</p>

Table 2 continued

Details	Forest Ordinance	Native Customary Law
Ownership	<p>Part IV Communal Forests</p> <p>i. Section 40—The Minister may, at the request of a community, constitute any State land, not being a forest reserve, protected forest or other government reserve, a communal forest in the manner provided in this part.</p>	<p>i. Chapter 5 Customs relating to property Section 213(6) Titled land—In the case of the property involving a titled land, the transfer of title and interest in respect of that land shall be made in accordance with the provisions of the Land Code (Cap. 81)</p> <p>ii. Chapter 5 Customs relating to property Section 207 Property—Property includes all possession which may be;</p> <p>(a)...</p> <p>(b) Immovable such as land (titled or native customary land and)...</p> <p>i. Chapter 4 Customs relating to living in the <i>kapuo</i> Section 46 (1) <i>Tapang Tree</i>—Every <i>tapang</i> tree is owned by an individual person or a family. Therefore no other person is allowed to <i>nyopuh</i> it without consent of its owner</p> <p>ii. Chapter 4 Customs relating to living in the <i>kapuo</i> Section 46 (2) <i>Nyopuh</i> another person's <i>tapang</i> tree without permission—Whoever <i>nyopuh</i> another person's <i>tapang</i> tree without the consent of its owner shall be fined three <i>pikul</i>. All collection from the <i>tapang</i> tree shall be given back to the owner. If the collection has been sold or eaten its equivalent value in cash shall be paid to the owner</p> <p>iii. Chapter 4 Customs relating to living in the <i>kapuo</i> Section 46 (3) Felling another person's <i>tapang</i> tree (<i>pingasung</i>)—Whoever fells another person's <i>tapang</i> tree shall provide <i>takud</i> as stated below: (a) mature and productive <i>tapang</i> tree where bee hives are always found, one hundred <i>buah</i>; (b) less productive <i>tapang</i> tree where bee hives have only recently been found, fifty <i>buah</i>; and (c) young <i>tapang</i> tree where bees have not settled yet, twenty <i>buah</i></p>
Loses of rights to forest or inheritance	<p>Part IV Communal Forests</p> <p>i. Section 48—The Minister may, by notification in the <i>Gazette</i>, direct that from the date specified in such notification, any communal forest or part thereof shall cease to be a communal forest, and any such direction shall have effect accordingly</p>	<p>i. Chapter 4 Customs relating to matrimonial or sexual matters Section 181</p> <p>Marrying a non-<i>Bidayuh</i> man not in accordance of <i>Bidayuh</i> custom—If a <i>Bidayuh</i> woman marries a non-<i>Bidayuh</i> man not in accordance with <i>Bidayuh</i> custom, she is deemed to have relinquished all her rights to the <i>tana nyomba</i>, <i>jajak nyomba</i> and all other properties which are commonly owned by the people of the <i>kapuo</i> except land (whether titled or untitled), fruit trees, robber garden or other cash crops belongs to her parents</p>

Table 2 continued

Details	Forest Ordinance	Native Customary Law
Management of forest	<p>Part IV Communal Forests</p> <p>i. Section 46 (1)—The community shall undertake to maintain the communal forest in a condition of sustained yield in such a manner as the Director or any forest officer specially authorized by him may reasonably direct and, for this purpose, the Director or any forest officer specially authorized by him may regulate the method and extent of any felling or other operations</p> <p>ii. Section 46 (2)—It shall be an offense for any member of the community to do any act which the Director or any forest officer specially authorized by him has the power to prohibit, and has expressly prohibited in writing under subsection (1)</p> <p>Part IV Communal Forests</p> <p>i. Section 47 (1)—Subject to any conditions imposed in writing by the Director or any forest officer specially authorized by him under Section 46, any member of the community may remove, free of royalty or fee, any forest produce for his own use and not for sale, exchange or direct profit</p> <p>ii. Section 47 (2)—No other person shall remove any forest produce for any purpose whatsoever</p> <p>iii. Section 65A (1)—Subject to any rules made under Section 95, no person shall, without the written authorization granted by the Director with the approval of the Minister—(a) cut, remove or take any tree found in any State land or in any forest reserve, protected or communal forest for undertaking or conducting any research, study, experiment, process or test in relation to the production or development or intended production or development of any pharmaceutical product or medicinal compound</p>	<p>i. Chapter 3 Customs relating to farming and infringement of farming rites</p> <p>Section 99(3) Clear space between one's padi farm and the <i>pulau tu'aan</i> (<i>pulau tu'aan</i> means communal forest in Serian and Bau dialects)—Whoever farms next to a <i>pulau tu'aan</i> shall be required to make <i>oran tokan</i> of a reasonable width along the <i>trah</i>, to ensure that the fire will not spread to the <i>pulau tu'aan</i> during <i>nyouh</i>. If he fails to do so and the fire spreads to the <i>pulau tu'aan</i>, he shall provide <i>takud</i> of one hundred <i>buah</i></p>

Table 3 *Bidayuh* community's opinions

Responds	Forest Ordinance respects <i>Bumiputera's</i> right		Forest Ordinance protects <i>Bumiputera's</i> rights		Forest Ordinance has a consistent contents with Native Law	
	Frequency	(%)	Frequency	(%)	Frequency	(%)
Very disagree	2	2.1	2	2.1	0	0
Disagree	17	17.7	15	15.6	11	11.5
Not sure	21	21.9	20	20.8	31	32.3
Neither disagree nor agree	36	37.5	36	37.5	27	28.1
Agree	9	9.4	10	10.4	16	16.7
Very agree	11	11.5	13	13.5	11	11.5
Total	96	100.0	96	100.0	96	100.0
SD	1.259	1.281	1.182			
Variance	1.586	1.640	1.396			

and interest in respect of the titled land. These have to be made in accordance with the provisions of the Land Code (Cap. 81). There is also a difference in both legal documents in terms of losing of rights to forest and their inheritance. It is stated in the Forest Ordinance that the community may lose their communal forest if the Minister directed it to be ceased. However, there is no similar statement within the *Bidayuh* Native Customary Law. It only specified how the community members might lose their rights through marriage. Despite the differences, both documents share the same feature in terms of management of forest. The community has the right to manage the communal forest and land but with a condition that they are not allowed to sell, exchange or gain direct profit from it.

The statistical results also show that the community members chose to not comment on both statements that read Forest Ordinance respects and protects the *Bumiputera'* people rights. They are also not sure about the consistency between the Forest Ordinance and the *Bidayuh* Native Customary Law.

The differences between both documents and the lack of positive responses from the community members are most probably resulted from the lack of communication between the Forest Department and the community. The main principle in the Native Customary Law lies within the community and the rights to land by an individual or family are nested in the fundamental rights of the community (Colchester et al. 2007). However, the Native Customary Rights and Laws are still considered as inferiority to the State management and the State can restrict or extinguish these rights and laws at their will (Xanthaki 2003). The traditional laws also are often being over-shadowed by the colonial rule and the current statutory laws (Colchester et al. 2007; Jalong 2012). The rising recognition toward the community's right from the State Government was only a minor compromise to the larger process of converting all 'unoccupied land' or the untitled land into the State land (Majid Cooke 2005). This recognition gave power to the State to control the native's lands (Majid Cooke 2005). Thus, gradually, the Native Customary Laws

will lose its authorities and power to protect and preserve the native rights (Majid Cooke 2005).

Supposedly, securing the human rights is the duty of the State and other parties are responsible to respect such rights (de Man 2012). If the State being the highest authority continues to ignore her duty, the native people of the region will be struggling for their existence. It is also important for the natives to learn about the constitutional provisions as there is a huge gap between what is written in legal documents and what the natives think they know through the Native Customary Laws (Haarlov-Johnsen et al. 2008).

This study clarifies that there are still gaps between the current Forest Ordinance and the *Bidayuh* Native Customary Law. Further studies are needed because the knowledge on *Bidayuh* Native Customary Law itself cannot guarantee the *Bidayuh* native's future in protecting and preserving their rights. This law does not provide a strong legal basis as compared to the constitutional laws. There is a need to review the formal laws that do not threaten to alienate the land and the natives living within the land (Moran et al. 2002). The "theory of access" proposed by Egay (2007) can be a baseline for law and policy making especially, when it involves the indigenous people versus the State policies.

The study on the compatibility of the existing laws (i.e. the Sarawak Forest Ordinance and *Bidayuh* Native Customary Laws Ordinance) will provide a reference for future law making process in taking and addressing the native people's rights as are recognized in the international human rights and international native right system. The results will also be helpful to recognize the legitimate indigenous rights of the *Bidayuh* community. It is assumed that the result of this study will create avenues for further research and discussion among the academia and professionals.

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