

# **A GENERAL OVERVIEW OF NATIVE COURTS IN SABAH**

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## **ABSTRACT**

The objective of this research is to strengthen the Native Court of Sabah in Malaysia. There are two Native Courts in Malaysia which are Native Court of Sabah and Sarawak. But this research will focus on the Native Court of Sabah. This has been done by examining the jurisdiction in the Native Court, analyses a few decided cases and we highlight the weaknesses of the Native Court. Among weaknesses of the Native Court is, the judges did not refer to the previous precedents when making decisions, the judges are lacking in terms of qualification. They are incompetent because they were mostly old men and they do not possess legal knowledge. Other than that, the system of native courts is unorganized. Under the previous laws, there are procedures laid down in the Native Court Ordinance 1953, but the judges tended to ignore them and use their own way in deciding cases. Furthermore, they use their own personal opinion and thus it creates injustice especially to the innocent party to the disputes. To encounter all these weaknesses, in this research, we also provide the solutions that can be done in order to strengthen the integrity of the Native Court.

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# CHAPTER ONE: INTRODUCTION

## 1.0 Introduction

The present Native Courts were created under the Native Courts Ordinance, 1992. This Ordinance prescribes, among others, the constitution, jurisdiction and powers of the Native Courts.

The procedures of the proceedings before the Native's Courts are governed by the Native Courts Rules, 1993.

Native Court hears matters pertaining to three divided category which are breaches of customs, Native Customary Land (NCR) disputes and applications from native to be identified with the native communities. The classes of the present Native Court shall be the following Native Courts of original jurisdiction which are the District Native Court, the Chief's Superior Court, the Chief's Court, the Headman's Court.<sup>5</sup>

The Native Court system has come under increasing public scrutiny recently. For example, in 2009, Sabahan in increasing numbers hold the view that the Native Court is not bound by any administrative order in "freezing" its functions on the native communities. Hence the State Government and the Native Court system may soon both find themselves in a mini constitutional dilemma.

Other than that, the appointment of Native's Court Judges is still vague. The appointment of the district and native chiefs is purely administrative. The enactment does not prescribe or state the minimum criteria for both positions. Enhancement of the quality of Native Court Judges is crucial. It is one of the matters that the natives hope to address in improving the quality of the Native Court.

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<sup>5</sup> [nativecourt.sarawak.gov.my/](http://nativecourt.sarawak.gov.my/)