

**NATIVE CHIEFS' OBSERVATION AS A NEW APPROACH IN SOLVING
THE CONFLICT OF JURISDICTIONS IN THE ADMINISTRATION OF
JUSTICE: A CASE STUDY OF THE NATIVE COURTS OF KOTA
KINABALU AND PENAMPANG, SABAH**

BY:

**RAFIDAH@MALISSA BINTI SALLEH
NUR ASMA BINTI YAHAYA
FAZLIN MOHAMED ZAIN**

NOVEMBER 2011

Contents

1.	Letter of Offer (Research Grant).....	ii
2.	Acknowledgments.....	iii
3.	Enhance Research Title and Objectives.....	vi
4.	Report.....	1
4.1	Proposed Executive Summary.....	1
4.2	Enhanced Executive Summary.....	2
4.3	Introduction.....	3
4.4	Brief Literature Review.....	6
4.5	Methodology.....	10
4.6	Results and Discussion.....	11
4.7	Conclusion and Recommendation.....	16
4.8	References /Bibliography.....	19
5.	Research Outcomes.....	22
6.	Appendix.....	23

2. Acknowledgements

First of all, we wish to express our sincere gratitude to **Jawatankuasa Pembaharuan Undang-undang Malaysia (JPUUM), Bahagian Hal Ehwal Undang-undang, Jabatan Perdana Menteri** for providing us an opportunity to do our research on “NATIVE CHIEFS’ OBSERVATION AS A NEW APPROACH IN SOLVING THE CONFLICT OF JURISDICTIONS IN THE ADMINISTRATION OF JUSTICE: A CASE STUDY OF THE NATIVE COURTS OF KOTA KINABALU AND PENAMPANG, SABAH”. This project bears on imprint of many peoples.

We would like to thank all respondents especially to Kota Kinabalu District Chief, OKK William Majimbun and Penampang District Chief, OKK Christopher Mojungkim, KAN Hj Jaafar, KAN Daniel and KAN Hj Matsah for their co-operation and assistance throughout the research. We also wish to express our gratitude to the officials and other staff members of Native Courts in Kota Kinabalu and Penampang, Sabah who rendered their help during the period of our project work. We would also like to sincerely thank Dr. Nuraisyah Chua Abdullah, Deputy Dean (Research and Industrial Linkages), Faculty of Law, UiTM for her guidance and encouragement in carrying our this project. Special thanks should also be given to our dedicated Research Assistant, Mohammad Hafiz Pakri, who helped us in many ways.

Last but not least, we wish to avail ourselves of this opportunity, express a sense of gratitude and love to our beloved husbands; Armizan Mohd Ali, Mohd bin Md Ali and Ahmad Feisal Bin Ahmad Rosli, beloved parents, family members and friends for their manual support, strength, help and for everything. Praise to Allah the Al Mighty for His blessings and guidance that He gave throughout the completion of our research.

5. Report

5.1 Proposed Executive Summary

Native law is administered by the Native courts established under the Sabah Native Courts Enactment 1992, which replaced the Native Courts Ordinance 1953. One of the problems faced by the courts is the conflict between the Native law and the Penal Code, in particular cases of rape and incest, where the choice is given to the victim, whether or not to have the rape or incest cases to be heard by the civil court or the Native court.

This conflict of jurisdiction receives different responses from legal practitioners, the Native Chiefs and some of the NGOs. The Sabah Muslim Women Lawyers Association (Salwa) believes that Native Courts have no jurisdiction to hear cases involving rape and incest. The former Chairperson of the Sabah Women's Advisory Council (MPWS), Datuk Noni J. Said also endorsed Salwa's view. She also concurred with Assistant Minister of Community Development and Consumer Affairs, Jornah Mozihim who said punishment meted out by the Native Court is minimal and does not act as a deterrent. By simply using the buffalo to settle a rape case only allows potential perpetrators to take advantage of innocent village girls.

This research aims to critically analyse the conflict of jurisdictions and other problems in the administration of the Native law and to make recommendation that would address legal problems in the administration of the Native Law. The research will be a qualitative research, where semi-structured interviews will be conducted with relevant respondents.

It is expected that the outcomes of the research will contribute to the literature and enhance legal knowledge on the conflict of jurisdictions and other problems in the administration of Native law, and benefit the policy makers to review its existing laws into a more comprehensive framework in enhancing the administration of the Native law in Sabah.

