

**INTERNATIONAL JOURNAL OF LAW,
GOVERNMENT AND COMMUNICATION
(IJLGC)**www.ijlgc.com**THE ADAPTABILITY OF NATIVE TO LAND
ADMINISTRATION IN SARAWAK, MALAYSIA**

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Article Info:**Article history:**

Received date: 15.12.2021

Revised date: 13.01.2022

Accepted date: 25.02.2022

Published date: 09.03.2022

To cite this document:

Toh, M. L., Tan, L. C., Tan, W. V.,
Ujang, M. U., Azri, N. S., Thoo, A. C.,
& Looi, K. S. (2022). The
Adaptability of Native to Land
Administration in Sarawak, Malaysia.
*International Journal of Law,
Government and Communication*, 7
(27), 33-43.

DOI: 10.35631/IJLGC.727004.

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**Abstract:**

Sarawak, a home to natives which comprised more than two-third of the State's total population. Driven by the multi-ethnic, multi-religious and multi-cultural nature of the natives, the land administration in Sarawak is facing enormous challenges to bridge the gaps between modern land administration systems and native customary tenure. The perception of native towards land governance is a crucial aspect in determining the success of the land administration system. In light of this, the study aims to explore the adaptability of the natives to the current practices of native land governance in Sarawak. Being quantitative in nature, the first step involves the utilisation of Chi-Square test of independence to examine the relationships between two categorical variables (age and measurement of adaptability). The second step is to quantify the level of adaptability by using descriptive analysis. Based on the quota sampling method from 512 respondents, 8 out of 10 Chi-square tests implied that the adaptability towards the current native land governance is affected by the age of the natives; a trend which younger adults are more agreeable to the current native land governance compared to the groups with older age. However, results indicate that the overall rate of acceptance is still far from satisfaction, especially in terms of the issuance of native titles. Based on the findings, the paper ends with the recommendations to improve the native land governance in Sarawak.

Keywords:

Adaptability, *Adat*, Native Customary Rights, Native Land Governance

Introduction

Land administration is the integration of policy, process and procedure to cater and manage the need from land tenure, land use, land value and land development (Enemark, 2009; Williamson et al., 2010). Achieving a sustainable land administration system is the ultimate goal for most of the developing countries like Malaysia. However, the process is not straightforward, rather it is much more complicated especially for a country with multiple ethnic, cultural, social and religious background. Sarawak, the largest state in Malaysia, has a population with more than two-third are natives (DOSM, 2010). In this paper, the term 'native' is used interchangeably with indigenous people or *bumiputera* in Sarawak. The natives in Sarawak are practising their own unique custom, also known as *adat* system or native customary law (Fong, 2011). The traditional perception on land is contrasting with the modern land administration system, causing ineffective in the native land governance. For the natives, the land is perceived as a gift by the Almighty for their use in accordance with their customs and traditions (Richard, 1961). Apparently, this traditional perception is no longer applicable in this modernisation era where the government is vested with the power to control, administrate, and manage the land. Thus, it is always the government's goal to formalise and individualise customary land tenure; to bring the natives into development for the sake of the nation economy (Antonio & Griffith-Charles, 2019; Cramb, 2011; Osman & Kueh, 2010).

The formalisation of customary tenure is a long-term progress, with the need to understand and incorporate the nature of the native customary system into the statutory system. As stated by Bulan (2007), the court decisions on land matters should incorporate indigenous perspectives as the morally and politically defensible conception of native rights, at the same time seeking balance between customary system and the modern statutory system. Hence, it is imperative to study the perception of the natives towards the modern land administration system. Here, a question arises; to what extent do the natives in Sarawak adapt to the current practice of native land governance. In light of this, the study aims to explore the adaptability of the natives to the current practices of native land governance in Sarawak.

Rationale and Structure of the Study

This study advances with the following discussions. First, the conceptualising of native land governance in Sarawak into 4 main areas as the theoretical framework for the study. Second, the existence of relationship between the age of natives and their perceptions toward the native land governance in Sarawak. Third, the adaptability the natives towards the native land governance. Fourth, the lessons learnt. With that, the study proceeds as follows: The first part introduces the background of study, problem statement, and the study aim with its corresponding research question. The second part shed lights on the theoretical framework, focusing on the conceptualisation of land administration and native land governance in Sarawak. The third part presents the methodology of the study. The fourth part discusses the findings of the study. Lastly, the final part provides the recommendations and concludes the study.

Literature Review

Adat in Land Administration

In this paper, the term 'adat' is used interchangeably with custom, customary law, or native customary rights. In fact, they are distinguishable. *Adat* or custom are the accepted norm or law excluded in the ordinary law which are established through long usage (Antonio & Griffith-Charles, 2019; Bulan, 2007). When a tribe wishes to maintain a pattern of custom that has become a part of their life, the tribe elders may use their power to 'codify' such custom into customary laws (Joseph, 1968). In Sarawak, the formal codification of the customary laws is carried out by the Council for Customs and Traditions (Majlis Adat Istiadat Sarawak). As for native customary right, it refers to the rights based on the customary laws. Among these rights, the one related to land is known as native customary tenure, which is problematic to the modern land administration.

Aforementioned, the core function of land administration is to cater the need from land tenure, land use, land value and land development. However, from the perspective of native land governance, land value is considered irrelevant as the native lands are restricted from land dealings and it is free of land taxes (Sarawak Land Code, 1958). First of all, land tenure is the most pertinent aspect in native land governance. It involves the process and institutions related to secure the access to land by formal land registering, land title issuance, cadastral and mapping, and adjudication of land disputes regarding land rights and parcel boundaries (Enemark, 2009; FAO, 2007). Second, land use involves the control of land for the optimum usage through the adoption of planning policies, at the same time manage and adjudicate land use conflicts (CIFOR, 2014; Enemark, 2009). Third, land development involves the public acquisition of land, granting of land use permits for the purpose of building physical infrastructure and utilities (Enemark, 2009). Land tenure, land use and land development are interrelated and play a significant role in native land governance. Through the lens of above paradigm, native land governance involves the recognition and safeguard of customary rights; customary land development; customary land information and survey practice; dispute resolution and conflict management.

Recognition of Native Customary Rights

The recognition of native customary tenure (hereafter NCR land) commences with the formulation of land policies, drafting of land legislations and the implementation of the legal framework. In short, they are categorised as policy, legal and institutional framework. Land policy reflects the way government deal with land issues. Ideally, it should include the objectives to eradicate poverty and help the vulnerable groups such as the natives (Enemark & Molen, 2008; FAO, 2007). Equally important is the legal recognition of NCR land through land legislations. As pointed by FAO (2007), it is the State' responsibility to recognise and respect all legitimate tenure rights including the NCR land. In Sarawak, the recognition of NCR land is held under the Sarawak Land Code (Cap. 81). To a certain extent, the law does recognise NCR land, provides the basic requirements to create NCR land, extinguishment of NCR with adequate compensation, issuance of native communal title and native grant (Bian, 2007; Liang et al., 2019a). However, policies are never been directly translated into practices without undergo certain changes. The failure of statutory law in protecting the NCR land gave way to the encroachment of customary land in Sarawak (SAM, 2019). Hence, safeguarding NCR land remains one of the indispensable aspects in native land governance.

Customary Land Development

In Sarawak, land-use is based on 5 classifications of land: mixed zone land, native area land, native customary land, government reserved land, and interior area land (Sarawak land Code, 1958). 4 out of 5 classifications of land are subjected to native customary rights except for the government reserved land. To put it simply, mixed zone land refers to the land held under private titles by both native and non-native; native area land can only be occupied by natives under a native grant; native customary land encompasses land with claimant of NCR but without any formal land titles; interior area land is a form of state land which means the land excluded in the four other categories (SAM, 2019). As a land development program to bring economic development to the natives, an initiative known as the 'Konsep Baru' is lunched to promote the conversion of native customary land into oil palm plantations by the joint venture scheme (JVS) between native communities and private oil palm plantations (Cramb, 2011; Majid-Cooke, 2006). However, the effectiveness of the scheme is questionable and biased and in favour of the investing company (Ngidang, 2002).

Customary Land Information and Survey Practice

Cadastre is the engine of land administration which provide the spatial and legal information to support the need from land tenure, land value, land use and land development (Williamson et al., 2010). Similar to modern land administration, the roles of cadastre in native land governance involve the survey of boundaries and the registration of land parcel. The final output of cadastral survey and land registration is the document of title which is indefeasible. The lack of native title is the root issue in native land governance, causing tenure insecurity and land disputes (Azima et al., 2015; Bian, 2007). In Sarawak, the cadastre system is known as the Land and Survey Information system (LASIS) which is managed by Sarawak Land and survey department (Liang et al., 2019b; Osman & Kueh, 2010). Thus, the success of the native land governance is highly depending on the functionality of the department.

Dispute Resolution and Conflict Management

Dispute resolution is an indispensable aspect in native land governance to restore justice and balance through both formal legal institutions and informal customary justice systems (Bulan, 2014). Generally, there are two types of land disputes involving the natives in Sarawak, namely, internal dispute and external dispute. Internal dispute happens among the family members or the neighbors next to their land; external dispute involves the encroachment of native land by the outside companies (Azima et al., 2015). As stated by FAO (2012), dispute resolution mechanism should be accessible in terms of location, language and procedures. This reflects the need to empower and enhance the capacity of local communities to have an accessible informal dispute resolution mechanism (Bulan, 2014). This could be done by the establishment of specialised tribunals that only deal with disputes over tenure rights (FAO, 2012).

The Dynamic of Adat

Adat or customary practices are dynamic and undergo changes over time (Fitzpatrick, 2005). As most of the customary laws are being pass down by oral method, the laws are not necessarily from ancient origin, instead they got adopted over time (Roy, 2005). The customary laws that survived and evolved are now part of the formal legal system that protect the native rights in Malaysia (Bulan, 2007). The land tenure system based on *Adat* was existed prior to the arrival of James Brooke in Sarawak. Until present, part of it has been formally codified into the

Sarawak Land Code 1958 (Cap.81). In terms of dispute resolution mechanism, the dynamic nature of customary justice enables it to accommodate changes as the society evolves (Bulan, 2014). Similar to land administration system, evolutions and changes of the *Adat* system are inevitable to ensure the competency in fulfilling the current needs.

Methodology

Sampling Method

With the study area in Sarawak, this study utilised quota sampling method for a better result generalisation. Quota sampling is a non-probability strategy with the relevant characteristics of a population is first identified, followed by the selection of subjects in the same proportion which represent the characteristics of the whole population (Leavy, 2017). Despite quota sampling is a non-probability sampling method which may causes sampling bias, it is practical when dealing with large population or when the probability sample is not available (Sharma, 2017). A total of 512 native respondents participated in the study. The quota for each of the ethnic groups (Iban, Bidayuh, Melanau, Melayu and Orang Ulu) are selected based on their respective population against the total native population in Sarawak. This resulted in 42% of Iban, 11% of Bidayuh, 7% of Malanau, 32% of Melayu and 8% of Orang Ulu (DOSM, 2010). Additionally, the native respondents are categorised into 'district' and 'sub-district' with the quota of 50% each.

Achieving Quota Sampling

The main instrument for data collection is via questionnaire survey. The strategies used to distribute the questionnaires include internet survey and direct contact. The google link for internet survey is distributed via social media and emails. Additionally, the direct passing of questionnaires happens in long houses, marketplaces, churches and personal residences. To achieve the desire quota, the particulars like residence location and ethnic group are monitored from time to time. The monitoring process took part every week for a total of 5 weeks during the data collection. Insufficient ethnic groups were given priority based on the weekly updates. At the end of the period, the total respondents are 551. However, to balance up the respondents from district and sub-district and achieve the desired quota for the ethnic groups, a total of 33 Iban and 6 Bidayuh from district are discarded randomly. This make the final count of 512 respondents in the study with 9 respondents of age less than 18, 132 respondents aged between 18 to 35, 225 respondents with age 36 to 55, and 146 respondents whom is older than 55. However, there are insufficient data for the natives with age less than 18, constrained by their limited understanding on the land-related issues.

Hypotheses Testing

To explore the adaptability of the natives, two nominal variables involved are the age variable with 4 categories (less than 18, 18-35, 36-55, and more than 55) and the measurement of adaptability with 3 categories (Yes, No, and Not Sure). The measurements of adaptability are shown in Table 1.

Table 1: Measurement of Adaptability

Measurement of Adaptability	Variable	Categories
The objective of land policy is helping the natives	Adapt 1	Yes, No, Not sure
NCR land is getting more and more recognisable	Adapt 2	Yes, No, Not sure
Government is showing their efforts in safeguarding NCR land	Adapt 3	Yes, No, Not sure
Land development scheme such as the 'konsep baru' is beneficial	Adapt 4	Yes, No, Not sure
Land readjustment initiative is necessary	Adapt 5	Yes, No, Not sure
Current way of native land registration by the land office	Adapt 6	Yes, No, Not sure
Procedures and ways of cadastral surveying of native land	Adapt 7	Yes, No, Not sure
Dispute resolution with the formal court	Adapt 8	Yes, No, Not sure
Establishment of native tribunal	Adapt 9	Yes, No, Not sure
Acquisition of land if given adequate compensation	Adapt 10	Yes, No, Not sure

Hypotheses testing by using Chi-square test of independence ($\alpha = 0.05$) are first carried out to examine whether there are any relationships between the two mentioned nominal variables. This process is repeated for all of the variable in Table 1. To begin with, the null hypothesis (H_0) and alternative hypothesis (H_1) of the Chi-Square (X^2) test are expressed as:

H_0 : Age (Variable 1) not associated with Adapt 1 (Variable 2)

H_1 : Age (Variable 1) is associated Adapt 1 (Variable 2)

After the confirmation of relationship, descriptive analysis was adopted to quantify the level of adaptability; at the same time enables the formulation of recommendations to improve the native land governance in Sarawak. The data was processed by using The Statistical Package for the Social Sciences version 24 (SPSS 24) which yielded the following results.

Result and Discussion

Existence of Relationship Between Age and Measurements of Adaptability

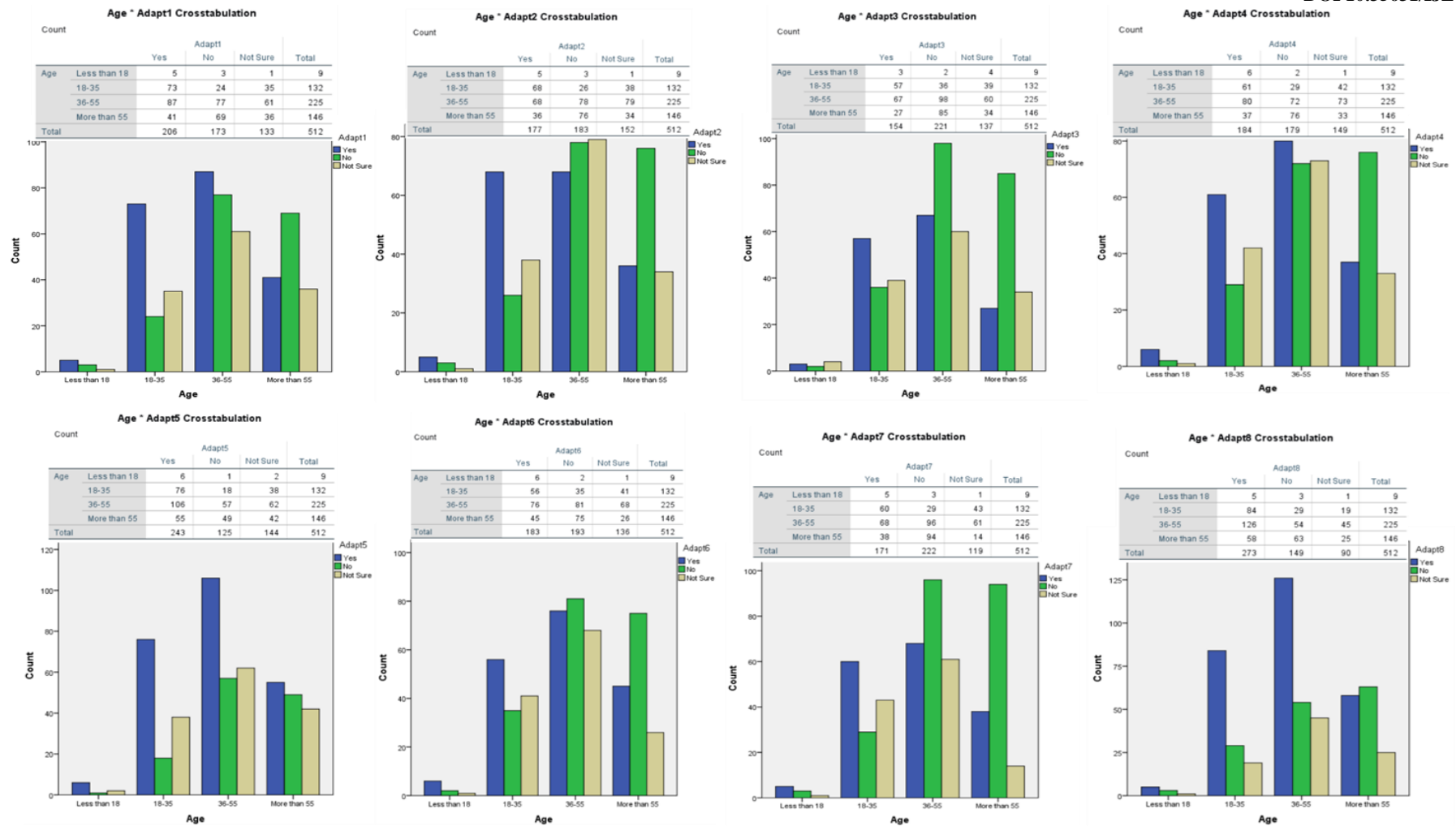


Figure 1: Descriptive Analysis of Variables Adapt 1 to Adapt 8

Chi-square tests are repeated for each of the 10 measurements of adaptability as shown in Table 1. Results show that 8 out of 10 tests rejected the null-hypothesis (there is no association between the age of natives and the measurement of adaptability). In other words, the perception towards the current land governance is affected by the age of natives in the cases of variable *Adapt 1* to *Adapt 8*. Whilst for the variable *Adapt 9* and *Adapt 10*, the tests failed to reject the null hypothesis. The following figures quantify the data for variables *Adapt 1* to *Adapt 8* with null hypothesis rejected (Figure 1) as well as *Adapt 9* and *Adapt 10* with null hypothesis accepted (Figure 2).

Based on Figure 1, there is an obvious trend for the variables; which further affirm the existence of relationship between age of natives and their respective perception towards the current native land governance. Interestingly, the trend shows that younger adults (age 18-35) tend to be more acceptable to the current land governance if compared to the older group (age more than 55). For the younger adults (age 18-35), their range of acceptance for *Adapt 1* to *Adapt 8* is between 42.4% (*Adapt 6*) to 63.6% (*Adapt 8*). For adults (age 36-55), this range is reduced to 29.7% (*Adapt 3*) and 56% (*Adapt 8*). For elders (age more than 55), it is further declined to 18.5% (*Adapt 3*) and 39.7% (*Adapt 8*). Here, the results indicate 3 facts. First, the age of natives does influence their perception in a way that younger generations are more adaptative to the current native land governance. Second, regardless the influence of age, *Adapt 8* still received the most acceptance by the natives in their own respective age groups. This means that 63.6% of young adults, 56% of adults, and 39.7% of elders prefer to solve land disputes by using the formal native court system. Third, in contrast, *Adapt 3* received the least acceptance by the natives of age 36-55 and age more than 55. Only 29.7% of natives with age 36-55 and 18.5% of natives with age more than 55 agree that their lands are being safeguarded by the government.

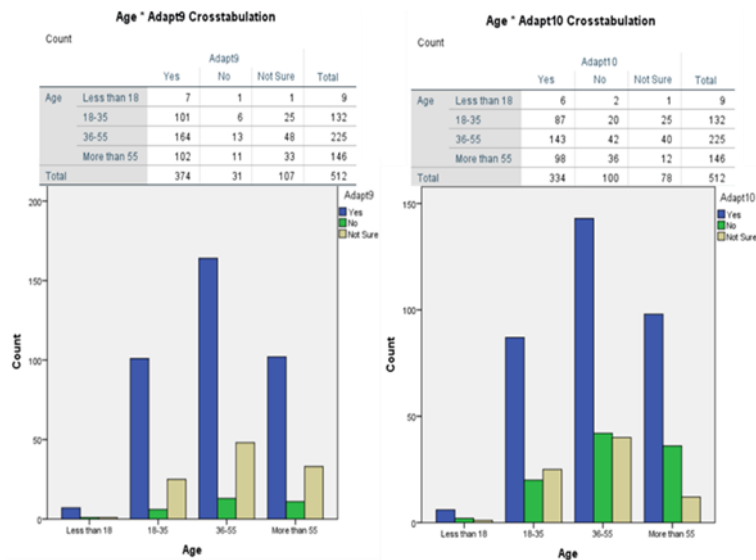


Figure 2: Descriptive Analysis of Variables *Adapt 9* & *Adapt 10*

On the other hand, Figure 2 shows the cases where there is no association between the age of natives and the measurement of adaptability. Age is no longer a factor in shaping the perception of natives towards variables *Adapt 9* and *Adapt 10*. Regardless the age, most of the natives agree to variables *Adapt 9* and *Adapt 10*, indicating the importance of establishment of native tribunal and the acquisition of land based on fair compensation.

Analysis of Adaptability

To make the finding more meaningful, this sub-section delves into the overall level of acceptance for the natives with reference to their age groups, namely, young adults (age 18-35), adults (36-55) and elders (more than 55). Before that, it is worth stressing on the variables *Adapt 9* and *Adapt 10* which is not influenced by the age of natives. Variables *Adapt 9* and *Adapt 10* has a high acceptance rate of 73% and 65.2% amongst the natives. Establishment of specialised tribunals to adjudicate and administrate customary land is an effective way to deal with disputes over tenure rights (FAO, 2007; Williamson, 2000). For instance, Customary Land Tribunal in Melawi (Zuka, 2019), Orang Asli Land Tribunal proposed for Peninsular Malaysia (Subramaniam, 2012), Arbitration Tribunal under the Alternative Dispute Resolution act 2010 in Ghana (Onyema, 2012), National Title Tribunal under the Native Title Act 1993 in Australia (Palmer, 2018). Also, a fair compensation is indeed necessary in the event of native land acquisition. Although it is mandatory under the Federal Constitution of Malaysia 1957 and Sarawak Land Code 1958, there are many cases reported on the unfair compensation (Azima et al., 2015; Phoa, 2009; SAM, 2019; SUHAKAM, 2013). The natives are willing to cooperate in the event of land acquisition provided they are given adequate compensation with proper valuation process. Hence, it is the government responsibility to ensure fair compensation, for the sake of the native's welfare and to facilitate the whole land acquisition process.

With reference to Figure 1, 273 out of 512 natives (53.3%) preferred the usage of formal native court system to solve dispute (*Adapt 8*). Interestingly, the percentage is higher for the young adults (63.6%) compared to the elder (39.7%). This indicates that the elders preferred informal dispute resolution mechanism over the formal system. Formal court system might be an alien concept to the natives, associated with the lengthy and costly process (Bulan, 2014; SACCESS, 2012). However, formal court system is more common to the younger generation, indicating the adaptability of the young natives to the modern dispute resolution mechanism. As for the adults, slightly more than half of them (56%) preferred formal system over informal system. On the other hand, out of the 10 variables, *Adapt 7* is rejected by most of the natives with 222 out of 512 (43.4%) chose 'no' in response to the current procedures and ways of cadastral surveying of native land. Among them, the percentage of elders is the highest (64.4%), followed by 42.7% of adults and 22% of young adults. The elder natives might be overly protective and sensitive when there are surveyors conducting perimeter survey on their land, afraid that their land could be 'grab' by outsiders. Hence, in practical, proper consultation process is needed for any activities conducted on the native land to avoid misunderstandings. Again, the younger generations tend to be more acceptable, prove that they are capable to adapt and response to the current native land governance.

Conclusión

In achieving the research aim, this study revealed 3 crucial findings. Firstly, the age of the natives does influence their perceptions towards the current native land governance in Sarawak. This is because the customary or *Adat* system is fluid and dynamic in nature, it continues to evolve and capable to adapt to the current changes. Secondly, youngsters are more open-minded and tend to be more supportive to the current native land governance. This could be a positive finding for the government, indicates the current native land governance is on the right track. Thirdly, the areas of land governance that required immediate actions. For instance, 43% of the respondents disagree to the current procedure of cadastral survey and the effort of government to safeguard their native land. Such dilemma could be rectified by ensuring proper

consultation with the natives before conducting any activities on their land. Additionally, the issuance of native title must seek balance between the traditional tenure system and the modern land registration system. Further research should be conducted on the establishment of native tribunal to resolve land disputes.

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