DISPUTE RESOLUTION: RESTORATIVE JUSTICE UNDER NATIVE CUSTOMARY JUSTICE IN MALAYSIA

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Utai besai gaga mit (Big matter make it small)
Utai mit gaga nadai (Small matter make it nothing)
—An Iban saying on dispute resolution

Introduction

Dispute resolution is an important aspect of Indigenous Peoples’ legal traditions. Underpinning these traditions is the need to settle conflicts and controversies to ensure social cohesion and harmonious existence. These legal traditions are products of practice and deliberations over long periods of time. Through repetitious patterns of social interactions, they are accepted as binding by those who participate in them. In many Indigenous communities, customary laws constitute a very important source of Indigenous legal traditions through which justice is meted.

This paper looks at the character and administration of dispute resolution mechanism under the native customary justice system as a “court of first resort” for native peoples in Malaysia. “Native” is a

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2 John Borrows discusses sources of Indigenous legal traditions which would apply to Indigenous Peoples in other parts of the world in Canada’s Indigenous Constitution. (Toronto: University of Toronto Press, 2010).
4 The term “native” is used in article 161A (clause 6) of the Malaysian Federal Constitution to refer to the Indigenous Peoples of Sabah and Sarawak. Other legislation that define them as “natives” include the Schedule to the Sarawak Interpretation Ordinance (1958) and the Sabah (Interpretation) Ordinance (1953). Determination of native identity is important because of the entitlement to rights accorded to natives. For a detailed discussion on who is a native, see Ramy Bulan, Indigenous Identity and the Law: Who is a Native?, (1998) 25 Journal of Malaysian and Comparative Law, pp127–167.