



**SELINUS UNIVERSITY**  
OF SCIENCES AND LITERATURE

# **TRACING THE ORIGIN OF SULU CLAIM TO NORTH BORNEO**

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## DECLARATION

I do hereby attest that I am the sole author of this dissertation and that its contents are only the result of the readings and research I have done.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a cursive name.

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23rd October 2022

## **ACKNOWLEDGEMENT**

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## **ABSTRACT**

This research is an attempt to find out the truth of Sulu claim to North Borneo (now Sabah). The claim is in two facades, however, it is made to appear as one of the same. North Borneo was a territory of Brunei kingdom allegedly given to Sulu as a gift by Sultan Muhyiddin of Brunei for helping him to defeat his opponent in the battle at Chermin Island in 1673. Two hundred and seven years later, on 22 January 1878, Sultan Jamalul Alam of Sulu and Baron Von de Overbeck, the representative of British North Borneo Company made an agreement over a cession of an area measured from River Pandasan to River Sibuco, on the eastern part of North Borneo. Twenty-four days earlier, on 29 December 1877 the same area was contracted between the Sultan Abd Momin of Brunei and the same Baron Von Overbeck. This is an analysis and examination of the contents of available documents such as treaties, notes and letters of correspondences as well as materials; remnants of artefacts, cultural, religious rituals and costumes. Brief description of the rise and fall of the empire of Brunei which controlled about three quarters of the Malay Archipelago in the 16th century. No credible evidence found by scholars about the claim, some considered the claim as a myth. Brief highlights on the concept of self-determination- a prerequisite for a good claim under international law, among others: effective control of the territory, showing an international display of power and authority over the territory, by the exercise of jurisdiction and State functions on a continuous and peaceful basis.

## ACRONYMS

ASEAN-Association of Southeast Asian Nations

BARMM- Bangsamoro Autonomous Region in Muslim Mindanao

BCC-British Crown Colony

BIMP-EAGA-Brunei Indonesia, Malaysia, Philippines-East Asian Growth Area

BNBCC-British North Borneo Chartered Company

ICJ- International Court of Justice

MAPHILINDO-Malaysia Philippines Indonesia

MINLF-Moro Islamic Liberation Front

MNLF- Moro National Liberation Front

NB- North Borneo

NBCC-North Borneo Chartered Company

SEA-Southeast Asia

UMNO- United Malay National Organisation

UNHCR- United Nation Commission on Human Rights

KEY WORDS: Brunei, North Borneo, Sabah, Malaysia, Sulu, Spain, British Crown Colony, British North Borneo Chartered Company, Territorial Claim,

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# CHAPTER ONE

## INTRODUCTION

### 1.1 Overview

This is a study about territorial disputes between Malaysia and the Philippines. Where the heirs of the defunct Sultan Sulu of the Philippines claimed that North Borneo (now called Sabah) belonged to Sulu.

This ownership claimed derived from historical narrative that Sabah a territory of Brunei Kingdom was given to Sulu by Sultan Muhyiddin of Brunei as a gift for helping him (Sultan Muhyiddin) to defeat his enemy during the battle in Pulau Chermin in 1673.

But the above is not the only basis of Sulu claim, two hundred and five years (205) later Sulu claimed another, at the eastern part of Sabah, by virtue of a contractual agreement made in 1878 between Sultan Jamalul Alam of Sulu and Baron Gustav Von de Overbeck, a representative of British North Borneo

Chartered Company over an area in the eastern part of Sabah. Ironically in just twenty four days earlier, the same piece of land contracted between Sultan Abdul Momin of Brunei and the same Baron Von de Overbeck signed at Brunei Palace, Brunei Kingdom in 1877.

At the outset it looks quite a messy affair as most people think it is all about legality. But as discussion progresses issue on validity of the claim would not be difficult to grab. In another, much of legal contentious issues no longer relevant as it passes its time to be of any use except for academic purposes.

Two main issues mentioned above are going to be studied in order to discover the truth, credibility and reliability of the claims. The origins and the sources will be examined. At the same time, must not forget the era, this had been three hundred over years ago. It also involved the cultures and the characters of the society at that time. Other influencing factors were socio-economic, religion, political power and foreign influences in particular the westerners.

These two facades of claim had never been discussed openly, scholarly nor separately. Not just mysterious but were clothed with ambiguity, vague, confusing or even dubiously suspiciously. In all occasions so far, the two claims made to appear by the Sulu as one of the same thing.

The author will deal the topic by apportioning into five chapters that hope to answer the pertinent questions. This introduction chapter, Chapter One lays down the systemic approach, in a chronological fashion to enable readers to imagine the kind of atmosphere in the Malay Archipelago at that time- how politics shaped the region. It helps to see how power was used to control, how authorities behaved, how big and who controlled who, and what.

New era were at the offing, with the constant visit by the westerners. Among the earliest visitors around about the 1400s were; the Portuguese , the Dutch, Spain, British and American. All feuding to take control the lucrative spice trades, and also a must access to India and China to make ventures significance among other things, they made this region vibrant. Relevant issues will be expanded in the appropriate sections and chapters

Chapter One is an overview how the study is organised. Clarifying the misconceptions with regards to the statements of claims. Very tempting to jump into legal argument for example, on the issue of leasing contract or granting land area in the east coast of Sabah in 1878. But the main issue is to focus on the two basis of claims really.

The Chapter Two will discuss the objectives of the research, what the author wishes to achieve. Since this is Malaysians history, the author would want to say how the Malaysian authority neglects its own history, this statement will be expended later. But outrightly history lesson on Malaysian political history not quite balance against other priorities. Put Sabah and Sarawak-Borneo Malaysia together which is bigger than the mainland of Malaysia in size. Malaysia Borneo history subject has been neglected ever since the nation was formed- sixty years ago. It means Malaysia Borneo had been left behind. Borneo history has not been the Malaysian school children's syllabus as it should be. Not until the heirs of Sulu engaged a Spanish arbitrator Stampa Gonzalos<sup>1</sup> and his team from London, Paul Cohen and Elisabeth Mason put Malaysia off guard since 2020. Seeing how absurd legal process taking shape has been was, everything else is about law.

Chapter Two will discuss the methodology and methods used at very rudimentary level but not unusual for topic like this. As already mentioned, information about the three hundred years history of Borneo is limited. Written records are not many kept or available locally. Book depository or repository may not commonly heard in the region. Most authoritative documents were

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<sup>1</sup> See reference, URL no.18 in page 125

obtained from connections with colonial history centres and universities in the United Kingdom and colonial history centres in London<sup>2</sup>

Chapter Three is introducing Malay Archipelago in the region of Southeast Asia or some time called Nusantara by historians. A brief description of individual countries participating in the making of the history in the 15<sup>th</sup> to 19<sup>th</sup> centuries. A brief geography lesson, a brief on political history, socio-economy religions, culture that had played their roles in the making of the region.

The Chapter Four, analysis of the claims in chronological order, first claim originated in 1673 and followed by the second claim in 1878. Will discuss and examine the origin- the sources why it happened and how these agreements were created. A few crucial points to make on the issue of fraud, imposter and fakies, which were habitually presents over the last six hundred years in the history of the sultanate of Sulu.

Malay Archipelago is also world's main concentration of Malay stock, situated between mainland of Indochina and Australia, the lingua franca is Malay, see the contract agreements were written in Malay language.

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<sup>2</sup> See item 15, endnotes page 123

Countries in Malay Archipelago namely are: Indonesia, Philippine Malaysia, Brunei, East Timor, Papua New Guinea, Singapore this is the biggest archipelago in the world contained about twenty five thousand islands . Indonesia alone has 17,000 island , Philippines has 7,00 and Sabah has 394 islands.

The Chapter Three is the analysis of the origin of the claim. Two claims. How it were created and why? The roots of the 'problem' will be analysed based on the available written documents- predominantly secondary data, observation, talks, visits, internet forums and etc. Contents analysis could be a useful tool to weigh the claim but since the Claim One has nothing to weigh and it is absolutely none. The author tries to bridge between descriptive qualitative rather than the quantitative. Since there is no hard evidence the study will make do from the discussion with experts and local scholars. This historical research begins the from the time of Civil War of Brunei Kingdom 1673 till to another claim was alleged 1878.

Chapter Five is the conclusion of the study in which, views and opinions from the experts and scholars sought are included in the summing up statement. Remarks and suggestion for continuing research. Leaders of the feuding nations' may get a few pointers to assist in their policy making decision.

Toward the end of the paper some important points will be highlighted to enable us to understand briefly on the issues of territorial disputes and the concepts of self-determination. What noted are, a territory must be effectively controlled, has shown an international display of power and authority over the territory, by exercise of jurisdiction and State functions, on a continuous and peaceful basis that would be basic that a claimant must have before territorial claim can be considered to have any merit for a contest in the international court of law.

## **1.2 Statements of the Claims**

The statement of claim required explanation, as said earlier, to general people on who do not get opportunity to read further than what found floating in internet, socials media- WhatsApp, TikTok, Facebook alike, would find the statements by the Sulu can be confusing, vague, ambiguous and even dubious . For the purpose of the study the terminology used to describe the claim is, by simply using a term, Claim One meant, the Claim by Sulu based on earlier one that Sabah was allegedly to have been given to Sulu by the Sultan of Brunei, while Claim Two meant, claim was made based on the agreement signed in 1878 between Sultan Jamalul Alam of Sultan and Baron Von De Overbeck.

Claim One is the earlier claim originated during the Brunei Civil War on 1673 and the Claim Two is as the resulted of an agreement signed at Lipuk in Jolo 1878 between Jamalul Alam of Sulu and Gustave Vo de Overbeck

The phrases used in these statements of claim are not exhausted and in many variation, but these are what found in the printed media as well as internet and social media.

- 1. North Borneo was given to Sulu by the 14th Sultan of Brunei -Sultan Muhyiddin as a gift for helping Muhyiddin to defeat his enemy in 1673 at the battle in Chermin Island, thus ending the twelve years civil war in the kingdom*
- 2. The second claim was in 1878 of which source was from a contract (agreement) signed between Sultan Jamalul Alam of Sulu and Baron Von Overbeck over a piece of land ceded according to the British, but leased according to Sulu, to Baron Von Overbeck.*

Throughout the discussion these are the main issues that need to be elaborated, clarified and answered.



## CHAPTER TWO

### INTRODUCTION

#### 2.1 Objectives of the study

This research is an attempt to prove the credibility<sup>3</sup> of the claims by the Sultan Sulu<sup>4</sup> (the heirs of the Sultan) to Sabah<sup>5</sup>. The basis of the claim lies on two premises which the Sulu keep on saying from a historical perspective<sup>6</sup>.

These two claims, never been thoroughly examined, nor brought into proper academic or scholarly discussed but rather much as a source of political

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<sup>3</sup> Quality of being trusted, convincing, reliable and believable.

<sup>4</sup> Law of heir to the throne (their Islamic Law) only male has right to be the successor. By the demise of Sultan Kiram III 1936 the Sultan did not have male but seven females at the same Kiram had abrogated sultanate

<sup>5</sup> Name changed from North Borneo to Sabah on 16 September 1963

<sup>6</sup> It can be confusing by saying from a historical perspectives because both the claim are already more than two hundred years old and all are already history

jingoism<sup>7</sup>. Politicians talk for political reasons and they choose at every conceivable opportunity, in particular during the political party campaign in country's General Election every five years in the case of the Republic of Philippines. Much less talk in Malaysia apart from the issue of illegal immigrants from southern Philippines which is still unstoppable.

It is from the Sulu narratives that people from overseas get to hear or read about of Sulu claim rather than from Malaysia or Brunei alike. Online media plays very big role these days. The problem is no one can control even if it is completely wrong or utter rubbish.

Only until recently that Malaysian writers started picking and pitching the history of Borneo, they left Borneo Malaysia out for the past sixty years since the formation of Malaysia 1963. Among the reasons are, little enthusiasm about Borneo, many do not realise Borneo was Brunei and Brunei was Borneo at one time. The claim issues have been controversial and dangerous if not contained for the country as well as the region, having unfriendly 'nation' in the vicinity in particular with the agenda which is guessable, meaning all but about economic.

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<sup>7</sup> Orlando M Hernando ,1966 Philippines Claim to North Borneo (Master Thesis) University of Philippines

Malaysia outrightly does not consider the three hundred over years claim as serious issue [*sic*] for the reason no one can be sure the claim has bases at all or ever existed in reality. Partly people living in this region knew quite well of the culture and the characters of the tribe (Sulu) in this part of the region. Will be elaborated again in relevant sections in the dissertation. When Brunei itself throughout the history never said a word<sup>8</sup> about the claims.

Below are the contents summarised statements to make it clearer for readers. There are also many variations but roughly these are the most common statements. Two bases of Sulu claim:

*It happened during the Brunei Civil War when two Sultans fought each other, a nephew and uncle by the family line-up, in 1673. This was the time that Brunei had two living Sultans at the same time. Sulu the relatives of the two fighting Sultans were in attendance. During the meeting Sultan Muhyiddin alleged to have uttered to ‘Suluk’ for help. Muhyiddin would give North Borneo if they could help to capture Sultan Hakkul Mubin and instructed Suluk to attack from the nearby Kaingaran Island in the north, about two kilometres apart...*

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<sup>8</sup> See Pehin Jamil Al Sufi comment also other LR Wright

The Second claim did not involve the whole of Sabah but only the eastern part of Sabah. Arose from the purportedly an agreement made and signed between Sultan Jamalul Alam of Sulu and Baron Gustav de Overbeck, a representative from the British North Borneo Chartered Company on 22 January 1878.

The study will pay attention in getting the proof if Muhyiddin ever said that he ceded Sabah to Sulu. If Sabah was already belonged to Sulu by 1673. Then why must Sulu be claiming Sabah based on the leasing agreement made and signed between Sultan Jamalul Alam and Baron Overbeck in 1878?

The study is to establish the credibility and reliability of the claim which involved investigating , analysing, interpreting secondary data that are available. Most of material evidence referred were found<sup>9</sup> in London Commonwealth archives, local libraries and archives, museums and private collection of private collectors mentioned in the reference.

## **2.2 Methodology**

The study is carried out in chronological order begins in 1673 the origin of Claim One. Started by analysing and examining the contents available document-

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<sup>9</sup> See citation no 15 Endnotes, page 120

treaties, literatures, letters and notes of correspondences as well as materials such as remnants, artefacts, records, traces of cultural, costume, religious ritual from political historical perspectives

Looking at the bigger picture of the region Malay Archipelago; by analysing the political history even as early as 9th century before the westerners arrived. In the context of Brunei, that it had interacted well with rest of the neighbouring countries, and positioning itself in international trades with Thailand, India and China.

The background of main players -countries involved in the study had been the Brunei Kingdom, Borneo Island , Sulu of the Philippines, Malaysia, British, Spain. America and Dutch. For this purpose, the observation only focuses from 1673 onwards, the year the Claim One was alleged created.

Limited sources, study is relying on the secondary materials and observation. There was also attitudinal issue found to be part and parcel in the culture that helps why this group of people behaved as they were hundred years ago. Among them the warring culture or character because of religion, Muslim Sulu in the south versus Christian on the north of the Philippines that began in the middle of 14<sup>th</sup> century.

There were also comments even among Philippines politicians that they were not keen to pursue the claim by bringing claim to the International Court of Justice this was after having experienced in their intervention during the Malaysian and Indonesian which contested at the International Court of Justice (ICJ) with regard to territorial dispute of Sipadan and Ligitan islands which the ICJ at Hague favour of Malaysia delivered in 17 December 2002.

The noise usually louder in around the time of country's General Election or country's Presidential Election politicians for the purpose of luring voters in particular in southern of the Philippines as one writer put it a kind of jingoism<sup>10</sup>

Now with the new development that Sulu heirs were engaging a Spanish solo arbitrator Stampa Gonzales opens up another dimension, question also asked by many people who sponsored for this shopping spares. Will be discussed again in the later chapter.

Other sources of proofs-evidence, alternatives record written document are remnants of cultural costume -tradition such as, ceremonial materials, dresses of marriages or any ceremonial activities like *kenduri* -Malay word for thanks giving.

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<sup>10</sup> As cited before

Information of this kind, if it were to be found, only likely around Brunei Bay<sup>11</sup> and Sulu, unfortunately none, for the purpose of uncovering the mystery of Sultan Muhyiddin in 1673 if he ever officially or unofficially gave Sabah to Sulu as a gift.

A literature reviews (not as much as expected) a collection of notes and small passages from published books and journals written by earlier by western explorers, correspondences (letters) sketches, graphical forms or narratives from Malay literature poems, *sayir*, *gurindam*, (Malay poems and literature) and folklores. Local archives, museums, private collectors have been consulted and addition of internet or webinars forums.

Analysis, evaluation, interpretations and consultation with experts in linguistics and dialects were sought for in this study.

## **2.3 Problems and Limitations**

The author must caution readers and critics that documented information is limited but conclusions have to be made based on what is found no matter how trivial ,after all that the product of labour.

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<sup>11</sup> Brunei Bay area around Sipitang, Menumbuk, Kuala Penyu and Lawas

The scarcity of written documents is an evidence that Claim One is very unlikely produce surprises as it was not real at first place.

Author have covered areas which if it did truly happen would likely to find 'traces' in as far as local Borneo is concerned. Brunei is the only place that could provide indicator on this particular topic. Others like Sarawak State, ,Kalimantan and Malaya equally do not keep much information as already mentioned .

Brunei institutions, such as the Museum, archive, PenBorneo Resource Collection, Brunei and University of Brunei Darussalam had been helpful in the course of the study and visit in 2019<sup>12</sup>.

Visits to Brunei Darussalam and met a few personalities, again this topic is not the best topic for ice breaking so to speak in Brunei other topics found no difficulty nonetheless to say. With that experience the earlier guess work likely to be true that Claim One is only claim, but never exists, the discussion will be continued in relevant section later.

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<sup>12</sup> See Endnote no.17



## **CHAPTER THREE**

### **INTRODUCTION**

#### **3.1 Background: Malay Archipelago**

The Malay Archipelago was such an important passageways to India and China.

Borneo is the midway shelter during Monsoon season. It is also

is the world's biggest archipelago in the world with roughly contains twenty-five thousand islands (25,000), Canada is the world's second biggest, Indonesia

alone has about 17,000 islands; the Republic of Philippines has 7,000 and Sabah has 394 islands.

Countries in Malay Archipelago are: Brunei, East Timor, Indonesia, Malaysia, Papua New Guinea, the Philippines and Singapore- this region is also known as Maritime Southeast Asia whose indigenous people are known as Austronesian people term used to identify those originated from Malay stock, similar group that are found in the southern part of Thailand and to some small groups in Cambodia and Vietnam.

Borneo Island is at the heart of Malay Archipelago among the twenty-five thousand islands, Borneo the third biggest island in the world, while New Guinea close by is the second world's biggest.

Sabah was once a territory of the Brunei kingdom from 14th century or even earlier, there had been no proper recording discovered but what apparent was, land during this era were divided into territories each territory headed by individual chieftains either directly or under the sultan's representatives who were allowed to collect taxes. Those living in the river, near the river or at river mouths were taxed; taxes levied at the river mouth slightly higher tax than at the upper river.

Brunei Kingdom is situated in the middle west of Borneo Island, the sole nation, while Kalimantan, part of the Republic of Indonesia occupies about three quarters of the island. On the south of Brunei is Sarawak, part of Malaysia while on the north is Sabah, the disputed territory is another part of Malaysia.

In the late 13th and late 14th of century Brunei Kingdom controlled the entire Borneo Island, expanded becoming an empire by the 15<sup>th</sup> up to 16<sup>th</sup> century. Brunei therefore controlled the entire northern part of Malay Archipelago<sup>13</sup> direct or indirectly and somehow the representative region that was closely in touch with China. No other places in the world that kept more records of Malay Archipelago or Borneo than China for any period before the 13<sup>th</sup> century

The midway and northern part of Malay Archipelago is Sulu Seas and on the western is Celebes Seas. Nearly the entire Philippines and all other lands and islands were under the dominion of Brunei Empire including the seas. Its peaks were in 1525. The glorious empire waned down as the modern era approached

### **3.2 Brunei Kingdom to Empire: Rise and Fall**

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<sup>13</sup> See

The history of Brunei Kingdom is the history of Borneo and North Borneo as it involved the entire Borneo Island which was from the late 15th century to early 16th century and this was the glorious era of Brunei Empire. While one hundred and forty-one years ago North Borneo was still part of Brunei and not until the British got it toehold in 1871. During the peak of Brunei Empire Brunei control almost all the coastal part of today's western part of the Philippines from Luzon, Visayas, Mindanao and most islands in the Sulu seas under watchful observation by Brunei administration centre based at Seludung now Manila will in some histograms displayed the entire Philippines archipelago.

Sabah, Sarawak and Labuan were Brunei territories. Sarawak was given to Rajah Brooke who later surrendered to the British in 1881, all the three territories became the British Empire's Crown Colony and under the protectorate of the British until 1963.

Brunei Empire was already by the 14th century or even earlier.

Brunei is also the name for the group or ethnic (people) if one lives in Sabah, but it does interexchange's with the term Bruneian. The maritime people considered to be seafaring people to begin with .

No means a small feat but by then when faced with the mighty European like Spain and Portugal that Brunei strategically did not manage to sustain the sheer determination or perhaps westerners had more experience in term of exposures dealing with outside world. And because change did not happen as quickly for Brunei, it lost the race, change was slow coming Brunei could not recover. Perhaps the psychological aspects still lingers and painful to even interferes in the disputes between Sabah and Sulu affairs.

The peak of their glorious era was from the middle of the 16th century to the middle of the 17th century, meaning about a hundred years were a productive period but waning largely due to civil war and family disputes among the royal. Other view suggests that palace was overcrowded with individuals competing to control what and perhaps Brunei was not big enough to provide the world with brains against the background of European in particular.

The Kingdom decimated to its current size -today began when Sarawak was ceded to Rajah Brooke on the 24 September 1841, but the actual declaration was only made on 18 August 1842. Charles Vyner Brooke then the Sarawak's Rajah ceded Sarawak to the British and became British Crown Colony in 1946.

Majapahit empire was peaked around 1350 to 1390 but lasted until 1527, while Brunei Empire was at its height around 1525 when Majapahit was declining.

By the early 17th century Brunei Empire started to wane down irrecoverably, and gradually disseminated to its present size. Brunei is only a nation on its own in the Island of Borneo, sandwiched between two Malaysian regions, Sabah and Sarawak.

The current Sultanate has been an unbroken chain for the last six hundred and fifty-four years (654) beginning with the first Sultan Muhammad Shah in 1368, this was also the period he embraced and installed as the first Sultan. By today Brunei has had thirty-one (31) kings headed the kingdom. The current King Hassanal Bolkiah is the 31st King.

As early as the year nine hundred 900 Brunei Kingdom had participated in trading or making contact with the outside world, namely Thailand, India and China. During the period of Srivijaya it was noted by historians that Brunei was already side by side with Srivijaya, by the time Srivijaya was overshadowed by Majapahit and looks at Brunei as friend rather than enemy or competitor

Malacca fell to Portuguese 1511 Portuguese had become Brunei close trading partner as described by one writer 1530 that the capital of Brunei was

surrounded by a stonewall during the reign of Sultan Bolkiah this is also frequently referred to as the golden age of Brunei.

If possession is a must as an exercise of sovereignty, then the historical claim made by Sulu over Sabah needs to be overwhelmingly strong; those reading Brunei and Borneo history would agree, there were no traces available to show if Sulu had administrative centre or command centre what had the Sulu main binding factor that could be construed Sabah part of Sul, let alone at the later period Sabah ceded to Sulu, after all Sulu was also a territory of Brunei. This issue is to be deliberated more in the next chapters.

As already mentioned legal discussion on the contract was mainly on the issue of eastern part of Sabah alleged owned by Sulu contracted infinity with Baron de Overbeck in 1878. But no discussion on contract if Sultan Muhyiddin ever ceded Sabah to Sulu in 1673 when the elements of contract is applicable to find out the answer either true or false, Contrasting this with the 1878. Not so much a legal analysis or interpretations of law to get to the root if Sabah was ever owned by Sulu.

By the 19th century European - Spanish, Portuguese, Dutch, British and American were feuding among themselves to control the Malay Archipelago as well as other countries in Southeast Asia in which later settled by establishing a

treaty known as Madrid Protocol of 1885. An agreement between the British (United Kingdom), German Empire and Spain to recognize the sovereignty of Spain over the Sulu Archipelago, denoted Spanish influence in the region. Under this agreement the Spanish relinquished all claims to British North Borneo and other territories held by the British.

Gradually, Brunei Kingdom including Sarawak, Sabah and Labuan<sup>14</sup> Island became the British protectorate until 1963. Kalimantan became part of Republic of Indonesian only from 1949. Brunei could have own Kalimantan if only Brunei interested. It was Portuguese earlier founded Kalimantan before Dutch and imagine it was only until 1949 the Indonesia reverted to taking Kalimantan

The earliest connection between Brunei Sultanate and British was on 27 May 1847, they made a treaty known as Treaty of Friendship and Commerce during the reign of Sultan Omar Ali Saifuddin who was also known as Sultan of Borneo. In the agreement, the Sultanate agreed not be letting its territories to any foreigners without first consulting the British.

About eighteen (18) years later, in 1865 Charles Lee Moses, the American Consul General of Brunei obtained a lease of an area in the western part of

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<sup>14</sup> Labuan also called Victoria now a Federal Territory of Malaysia of an area 36 square miles under Sultanate of Brunei in 15th century became Crown Colony 1946 to 1963



Sabah and for nearly ten years nothing much happened because after the civil war the United State wanted nothing to do with Asian Colonies. Charles Lee Mosses sold the leased area to the Hong Kong American Trading Company owned by Joseph William Torreys, Thomas Bradly Harris, Tat Ah Sing and Ah Pong. They then started settlement at the Kimanis River mouth western coast of Sabah named Ellena about fifty kilometres from the State capital, Kota Kinabalu.

Attempts to find financial backing for the settlement failed, disease, death and dissatisfaction by migrant labourers. Harris died in 1866 at Ellena, Torreys returned to Boston, USA

Within the imminent termination of lease in January 1875 Torreys managed to sell his right to the consul of the Austro-Hungarian Empire in Hong Kong Gustv von Overbeck (later bestowed the title as Baron). Baron Von de Overbeck<sup>15</sup> got a 10-year renewal lease from the Temenggong ( Security Minister) of Brunei.

This chain of events eventually led to the direct involvement of Baron Von Overbeck. He signed an agreement with Sultan Jamalul Alam of Sulu over a piece of land in the eastern part of Sabah. Will further discuss in the coming chapters.

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<sup>15</sup> See note 14, page 113

## **Connection: Brunei Kingdom and Sulu**

Sulu is a region of the Philippines in the southwestern part of the Philippines the eighty-two eighty (82) provinces of the Philippines. Sulu is made up of many islands among the bigger islands are, Basilan, Sulu, and Tawi Tawi southern most of the Philippines including the southwestern part of Mindanao.

Western part of Mindanao island is under Sulu province home of Bangsamoro Autonomous Muslim replacing autonomous region in Muslim Mindanao Region. Sulu has 178 islets around.

Sulu is in the Sulu Seas, on the south and Celebes Seas on the north in the western part of the Philippine, Luzon, Visayan and Mindanao were under the control of Brunei in the 14th and 15th centuries. While in the histogram of Brunei Kingdom at the peak of the Empire, it controlled the entire of the Philippines

Sulu was only given an independence by Brunei in 1578 . At that period Sulu was rule by the son of Brunei Sultan the nineth Sultan of Sulu known as Sultan Pengiran Shahbandar the youngest son of Sultan Muhamad Hassan of Brunei

1610-1650 while the Palawan Island on the north ceded to Spain in 1748 by Brunei, one hundred and seven years (107) later.

Spain ruled the Philippines for three and thirty-three years (333) from 1521<sup>16</sup> to 1898 and continued by the United States of America which ruled the Philippines from 1898 until 1946.

Having experienced seeing how the Tausug' group behaved culturally in many occasions there is this peculiar characters and habit. For the last six hundred years their livelihood always in the waring mode and never settled; they spent less time managing their country but spent much time marauding in the seas, in other words, pirating is in their DNA, how many times had the Sulu region given chances to govern themselves by their own Republics of Philippines to manage their region all but failed. Nur Masuari, Moro leader, the Governor of The Autonomous Region of Muslim Mindanao for less than five years but nothing tangible was achieved. Moro National Liberation Front, MNLF later overshadowed by MINLF-Moro Islamic National Liberation Front and now another group by the name, Bangsamoro autonomous region an example of how volatile and capricious the group is or are to deal with.

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<sup>16</sup> Philip II of Spain ordered a conquest of Philippines in 1564

The claim has created confusion and unnecessary anxiety for the people of the State of Sabah in particular, and Malaysia and the region in general. Over the last sixty (60) years there have been attempts to invade Sabah. Criminal activities in the seas are on the rise and other deviances marauding the Sulu Seas, though may not be directly about invasion but nonetheless disturbing. The Sulu continues to mislead the Sulu people who are already in Sabah numbered about a million or so.

The Republic of Philippines enacted the law specifically to enable it on behalf of the heirs of Sultan Sulu claim this is because the Sultanate no longer has international recognition, Republic Act No 5446 of the Philippines would enable the Philippines to proceed with the claim.

Sulu people or sometimes also called Moro people, had always been associated with piracy and masculinity in the context of this region the Malay Archipelago-Southeast and notably also connected to Muslim inhabitant of the Southern Philippines but really brought about in Spanish history where Moors refers to the Moors. The Moors were North African people who invaded southern Spain who brought about the caliph rule which ruled Spain in 711-1492. To Spanish Moro is a derogatory word who resisted colonisation and Christianisation but the Moors were inhabitants of Maghreb is what Northwest Africa comprised of Algeria, Libya, Mauritania, Morocco and Tunisia Mali. Note, Moors were Muslim

but historically they were the first non-Arab people who established Islamic State while in the case of Southern Philippines the origin or the so called from the descendants of Arab, Indian Malay and others

Though the origin of word Moro Muslim inhabitant of the Philippines people of ethnolinguistic Austronesian groups of Mindanao, Sulu and Palawan known as Bangsamoro in historical context sign of resistance against Spanish, American and Japanese rule over 400 years while for Spanish its rather the term Moro is a derogatory remark usually with reference to Muslim rule in Iberian Peninsula from 711-1492. Bangsamoro not the indigenous people but rather the followers of religion Islam who fought along Philippines American war 1899-1902

About ninety percent (90%) that fall under the Sulu term is of the Tausug group they are also called Jaloano, Moro and Suluk most comes from the Southern Philippines the Southwest of Mindanao. They were the earliest tribe in contact with Islamic preachers that came to Philippines and non-other than Mindanao, among the earliest Islamic preachers was Karim Mukhdam an Arab descendant from Malacca who arrived in Simunul island in 1380- 141 years before Portuguese Ferdinand Magellan arrived

While the Bajau Sama are not quite the same though, theoretically some resemblance but cultural attitude is milder. Looking at the a bigger picture

together with other tribes or groups that are found in the archipelago all fall under the denotation of language spoken in the area extending from Madagascar to island in the Pacific Oceans including Taiwan refers to Austronesian ethnic group of the Maritime Southeast Asia found in all three Philippines, Indonesia Malaysia they horse riding people, agricultural husbandry in the Southern part of Philippine they are in Tawi Tawi can be quite a different tribe most observation Bajau/Sama traders were already side by side even as early as Sung Dynasty in 960 they were by nature a mild

The current President of the Philippines Marco Jr in his remark recently which may not be favoured by the larger Sulu group, his spokesperson Ruth Abbey Carlos<sup>17</sup> said, not abandoning the claim but claim could not be considered as a sovereign or territorial at the moment this private claim not an issue of sovereignty

Though the Philippines government has been making claims over the years, the signs were that many of her top federal leaders reluctant to act to the wishes of the Sulu, as the claim is the voice of Southern Filipinos, mainly the Sulu-Tausug group.

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<sup>17</sup> PNA Ruth Abbey Gits Carlos August 2, 2022

Claim on North Borneo was Sulu and the Southern Philippines affairs whose indicated that the basis of claim is shaky foundation by any means in other words, it's for political expediency that the central leaders have to follow the tune of the Muslims leaders in the south.

But perhaps, the most astonishing dubious and an apparent motive as said all alone under took by the Sulu was when they engaged with Spanish lawyers led by Stampa holding a bipartisan arbitration and later declaring bipartisan judgement. Stampa attempted to seizure Malaysia Oil Corporation the Petronas in Azerbaijan in July 2022 but the Paris High Court in Paris, France on where the adjudication was originated from disallowed the process of acquiring Malaysia's Petronas Oil Corporation.

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The claim of North Borneo by the defunct Sultan Sulu surfaced the moment Malaysia was about to be formed, a merger of Sabah, Sarawak, Singapore and Malaya in 1963, Brunei did not commit though thought about teaming up at the very beginning. Indonesian opposition to the project and there was a rebellion in Brunei that could be the contributing factor that Sultan Omar Ali Saifuddin dropped the idea. So too began the Sulu claim which was seen a bargaining

chips at that time still as it is now, about money just as what had happened when Jamalul Alam signed an agreement with Overbeck in 1878.

Former President of the Philippine Ferdinand Marcos began his public relation at the earlier part of his tenure to drop the claim, and slowed down the drumming but big change took place in the heart of the former president which led to the unpredictable leaded that led to the killing many Filipinos in the Project Merdeka or what is called as Jabidah Masacare. The drumming continued until today claiming the basis of claim rooted from the two sources as mentioned earlier, first was in 1673 and the second in 1878 which will be further explained in the coming Chapters.

Until and unless the issue of claim is well understood it would continue to cause dissension and would like to create uneasiness, as already experienced the Sulu people were not hesitant to take matters to their own hand without the Philippines' Federal Government sanction

Sulu is only about four hundred and eighty-three kilometres (483) apart from Sabah, Malaysia a few attempts by the so-called Sultan Sulu Army to invade Sabah accumulated by the more serious one when the Sulu army landed in the Eastern District of Lahad Datu where 11 army were killed and 2 Malaysian security officers were died.



As for the Sulu it would be interesting to know a little bit more of their origin, tribal group, religion, cultural behaviour and habit. Baron Overbeck was aware how unpredictable this tribe was. This is perhaps why Overbeck turned to Sultan Sulu for protection and for security hoping that with the Sultan protection environment could be safer.

Ironically not much mentioned by early explorers about this part-the Sulu scenario specifically on Sulu by the earlier writers and explorers - write up or notes only on Brunei - Brunei Kingdom<sup>18</sup> suspect though Brunei meant to be the bigger Brunei at that time not as what Brunei is known today , see observation below:

An observation by westerner of Brunei Kingdom:

We arrived at the Island of Brunei which is distant from the Moluch about two hundred mile (three hundred kilometres and found that it was somewhat larger than the aforesaid and much lower. The people are pagans and are men of goodwill. Their colour is whiter than that of the others sort..in this island justice is well administered \*\*\*

\*\*\**Pinafetta, the Italian chronicler of the Magellan mission visited Brunei in July 1521 observation.*

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<sup>18</sup> Courtesy by Vibe.com

Baron von Overbeck was appointed by the Sultan of Brunei Sultan Abd Momin as Maharajah of North Borneo . And at the same occasion four (4) agreements signed with regard to territories leasing but writings on the leasing or granting were quite different unlike that of Sultan Jamalul Alam and Baron Von Overbeck of 1878. Cannot rule out if the document was fake or the person who the document was originated from was a fake Sultan, the document did not all too often supply with witnesses attesting the agreement as of today's practices. In that agreement with Sultan Sulu Overbeck was appointed as Rajah Sandakan, for details earlier discussion. When Sandakan was only one of the territories of Sabah when then there was a need for Overbeck to become a Rajah of Sandakan when he was a Maharajah of Sabah ?

### **3.3 Power of Brunei Kingdom waning down**

The main reasons why Brunei decimated to its original size, not just geographical -physical but in terms of other fields and human expertise, trade, diplomatic know-how. Physical size may not necessarily be significant as yardstick when talking about s advancement in human civilization. Other factor like human intelligent can still be found and progressing and in continuity can

take many shapes. What really is astonishing Brunei does not display its historical background in the fullest sense for example the remnants of maritime supremacy were discussed and talked about that Brunei and Majapahit were a thalassocracy nations as well as dominant in conquering other nations, that is very little in historically showcase yet compared with what said about them during the 13th century to the late 18th.

As in other countries in particular the olden '*Islamic countries*' where gender based was distinctively divisive, men could have as many wives as they wish with little resistant. This was what happened in the early kingdom system of society. In Brunei the royal and nobilities inherited *Pengiran* (noble title) played a role that led to the collapse of the empire- where king had many wives that did not necessarily come from royal had the sons also call *Pengiran* because of the nobility via title *Pengiran* therefore eligible to hold prestige positions in the government the problem soon palace became overcrowded and situation became chaotic create conflict and discordance among themselves for example the twelve years of civil war which created further upheaval of the nation which Brunei never able to recover to a stage of its glorious day.

The nobility title *Pengiran* is the most popular in the Brunei nobility it can be originated from two sources, one, inherited from royal family and another was

bestowed by the palace but *Pengiran* also found in other neighbouring nations such as Indonesian and or parts of the Philippines.

Turmoil created the civil wars was very much internal factor, no outsiders much interference to dislocate the government of the kingdom. One interesting 'folklore' but had connection with part of the Spanish and Brunei war in the 1500s when Brunei was almost collapsing except saved by little trick that was when Spanish reconvened attacking Brunei because earlier Brunei won the battle easily but this time not, the Brunei palace was emptied Sultan was not found at the palace meaning Spanish could find the enemy, except a group of indigenous -tribe known Kadayan pretended to be the Sultan but Spanish did not interested in believing and left the place, the moral of the story was Sultan -the king was saved by the tribe Kadayan it is until today Kadayan known to be the greatest asset and most loyal subject to the Kingdom of Brunei.

Nonetheless Brunei can still be proud of it found luck, natural resource in particular oil which was discovered in 1899 by the British Malaysian Petroleum

Company that was the first exploration, followed by the discovery of the Seria field in 1929 Brunei oil expected to last another 188 years<sup>19</sup>

Brunei decided not join in the formation of Malaysia unlike Sarawak and Sabah though it was rumoured, at the time Brunei had to sort out a rebellion led by AM Azahari<sup>20</sup> a Labuan born Brunei politician 3 September 1928. While Indonesia opposed to the formation of Malaysia and it was also known AM Azhari was graduate from Indonesia Bogor University and an admirer of Indonesia President at that time was Sukarno. Nonetheless Brunei is still considered among the richest countries with its petrodollar. The Sultan is the absolute ruler with only 2200 square miles and with 400,000 people. Not joining Malaysia could be the right decision after all Singapore left the federation two years later.

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<sup>19</sup> Statistical Review of World Energy-British Petroleum

<sup>20</sup> Hussaymiya , Historian

## **CHAPTER FOUR**

### **4.1 The Origins of Claim: Civil War, 1673**

#### **Claim One**

Territorial claim means dispute. A dozen examples, in Ukraine is one at present, in Israel another of which no one bothers much, international law provides rules, a noble ideas to settle disputes but implementation may not as easy as say.

The case in hand, this Philippines and Malaysia it is not difficult since many including scholars have said its but a myth. But what will this entail to..?

Perhaps it is useful to understand the culture of the tribe that has the overriding control of the politics of this region. Sulu people have not changed much from

their main traditional routine activities may sound too much but that is the reality, involved in marauding the seas, legal or illegal in today's context may have still have the bearing of the olden period. This is living in the archipelago; Sulu alone has many islands and hundreds of islets.

The Sulu basis of claim came from two separate sources and happened in separate periods one in 1673 and another in 1878 but the difference had never been made clearer or spelled out separately. Often when the issue of claim is surfacing the two are blurred and end up in discussing the interpretations of the contract created in 1878. This chapter will give some brief analysis, the basis to form an opinion. Trying to investigate, how credible or believable the claims are.

About two hundred and seven years apart. This topic is to examine each one of them, Sulu reasons for claiming Sabah as their territory based on historical account, indirectly to mean their historical relationship with the kingdom of Brunei not Malaysia. From the available materials relation between the two regions only markedly began in the 15th century. Bonding through marriages and religion of Islam. Will be discussed later that Sultan of Sulu royalties were also by origin from the Brunei's royalties, there was also incident the Brunei royalty embraced Christianity.

The decline of the Empire was contributed very much due to failure to manage the empire and as observed largely because of internal turmoil among the royal family. The royal palace became overcrowded one male in the earlier days married more than four wives only after the king embraced to Islam they tried to follow Islamic law with maximum four wives.

It was also suggested when Sulu claimed Sultan Muhyiddin announced that Sabah was given to Sulu that Sultan was not at the best sober environment at the time but drunk, it is not as what Islam is practised as today.

#### **Basis of Claim One:**

*North Borneo was given to them by Sultan of Brunei -Sultan Muhyiddin as a gift in for reason, in return to the assistance given to Sultan Muhyiddin to win the battle again another elder Sultan -Sultan Abdul Hakkal Mubin in 1673 that took place in the Chermin Island about 22 kilometres from Bandar Sri Begawan (the mainland of Brunei).*

Brunei was in civil war for twelve years 1660-1673 which began from sporting festivity among the royal household, the sport was none other than the cockfighting competition which was so popular here during the period but in many other areas . The history of fowl fighting goes back 600 years. It is illegal in



many states in America States yet still quite popular even in the modern world. First recorded was in 1634 and by the way President Trump of the USA signed the banning of cock fighting only in 2018.

The competition was arranged between the sons of two Sultans. Sultan Mohamad Ali the 12th Sultan who ruled in 1660 to 1661, the shortest period in the history of Brunei. In another was the son of Bendahara (Chief Minister) of the Kingdom Pengiran Abdul Hakkul Mubin whose son was stabbed by Pengiran Muda Bongso the son of Muhammad Ali on 7 November 1661.

The reason for stabbing was because he was jeered for losing the fight and could not withstand being shamed, shortly after the stabbing the Pengiran Bongso escaped to Sambas Indonesia Kalimantan.

While the revenge of losing the son could not be left unchallenged, Sultan Muhamad Ali was according to the narrative, garrotted and paraded and killed by this typical of Spanish's shaming in 1661. Abdul Hakkul Mubin shortly proclaimed as the 13th Sultan Brunei Kingdom.

It did not take that long, from this episode Sultan Abdul Hakkul Mubin faced a problem. The avenger was only about to take place as the enmity from the followers of Sultan Muhamad Ali brewing. To pacify the situation, Mubin

appointed Muhyiddin as the Bendahara (chief minister). Muhyiddin was the grandson of the late Sultan Muhammad Ali -there is a conflicting story -one article mentioned that Muhyiddin was as his son in law (no details) the enmity continued though several written document mentioned Muhyiddin was reluctant to take revenge but the supporters of Muhammad Ali continued forcing Muhyiddin to take revenge and they started making disturbances.

Muhyiddin then either tricked or advised the Mubin (not sure) asking Sultan Mubin to move his palace to Chermin Island which is about 22 kilometres off the mainland of Bandar Seri Begawan. Soon Mubin reached the island Muhyiddin declared himself as the 15th Sultan. The battle between the two competing Sultans ensued. The beginning of the Brunei civil war.

It would be intolerable perhaps for Mubin living on a small island, when at the time Brunei was still big enough. Muhyiddin went for self-exile to Sabah, a place called Kinarut on the eastern part of Brunei, today as western coast of Sabah. Mubin was in Kinarut for around twelve years and still as a Sultan of Brunei (King). Many attempts to kill him, and an army was sent by Muhyiddin to capture him but never succeeded.

When came to final attempt by Muhyiddin did not succeed to capture Mubin. He, Mubin decided that twelve years living in Kinarut was long enough, according to

local narratives Abdul Hakkal Mubin was popular among Bruneians and ethnic of Borneo in Sabah, in particular from territories like Mengkabung, Kamanis, Sulaman, Sepanggar -noticed these parts all typical Brunei speaking dialect until to these days

Mubin must have thought Muhyiddin's group was not good enough after all, that in another Mubin was already an ageing statesman, might as well rest and come home to his palace in Chermin Island, for him the war had been dragging far too long.

Soon after Mubin was known to be on the island, Muhyiddin assembled his men for a meeting. That meeting was attended by a few Sulu men<sup>21</sup> It was at this meeting that according to the popular narratives, from the Sulu's writings found in the internet, Wikipedia and the social media Muhyiddin asked his Sulu relatives to help him to capture Mubin - no credible recorded passages, written or otherwise available much was from words of mouths or partly as a joke a form of an entertainment of the era if any. Market talks among the Suluk could be another different things but cannot expand the story a sentence longer. In Brunei, it is totally dismissed and called the narrative a day dreaming of the Sulu.

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<sup>21</sup> Visiting relatives, Sulu was under the rule of Brunei..further explain ..definition of Sulu

During that meeting, according older people that lived in Brunei , Sultan Muhyiddin uttered 'invitation' to Sulu relatives to help in the forthcoming battle, no specific a remark not even mentioned the name of Sabah but merely pointing his like this, "...you ought to be helping ..if you captured Mubin will give the that area..." pointing to towards the direction of North Borneo. Someone also mentioned that the Sulu attack must be launched from Pulau Kaingaran in the north about 3.6 kilometres apart.

There is also local narrative at that meeting many were drunk, having a feast earlier no one seemed to be aware.

The next day the battle at Pulau Chermin ensued, Muhyiddin triumphed this time against Mubin. Once the battle subsided, no sight of Sulu (army ) was found , they only landed on the island after Muhyiddin was sure a victor. These Sulu started rampaging and looting the war booties as well as properties belonging to Sultan Mubin. Muhyiddin was infuriated and refused to talk to any one of them ever.

Do people honestly believe giving out a gift such a magnitude just simply to be forgotten without traces or in Muslim community in this region the sure thing is kanduri as well as always with commemorations and token of any form.

It was then learnt that according to some people<sup>22</sup> the reason for Sulu staying put and merely watched the battle from distance was that the two fighting were their cousins and they therefore did not want to take any side<sup>23</sup>

Ever Since the civil war ended in 1673 Brunei Kingdom has had sixteen (16) Sultans including the current one, non except one, the twentieth (20th) Sultan - Sultan Omar Ali Saifuddin 1, in 1771 mentioned<sup>24</sup> a group of Sulu came to the palace in Brunei pretended to look for fresh water, the *wazir* (minister) alerted the Sultan, and Sultan said, *“if they came to talk about Sabah will get their heads chopped off...”* apart from that no other Brunei Sultan ever mention issue of Sabah given to Sulu

This remarks were the only time mentioned of Sulu not the politest way, and there has been no other incident be in written forms or verbally the Brunei leaders talk about this gift issue. Strangely no Brunei academics would ever reply a query on this topic

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<sup>22</sup> Looking for clues who says..

<sup>23</sup> Historically without Brunei assistance there would be Sulu in existence in the struggle to exist.

<sup>24</sup> Cited elsewhere earlier

During the reign of Sultan Mubin and Sultan Muhyiddin was also the only period in the history of Brunei that it had two living Sultans at the same time, another strange situation and volatile kingdom. When Mubin went into self-exile in Kinarut, North Borneo for twelve years or so he was still the Sultan . The remnants of his stay could still be traced<sup>25</sup> Likewise, he took the throne by killing his predecessor while Muhyiddin proclaimed himself by backstabbing Abdul Mubin tricking him to move his palace to the Chermin Island thinking removing him from the mainland would remove his authority and the title as sultan.

Since North Borneo was territory of Brunei the strategy did not seem to work. In fact, Mubin had many followers and sympathisers in Sabah. Many older people lived along the western part of Sabah and Brunei Bay area keen to talk about it.

Abdul Mubin lost the battle, thus the war ended in 1673. No single authority that could say the fate of Mubin but many of local around Brunei Bay area said the Mubin did not die or surrender but committed suicide before ending the battle, he instructed his people together his valuables to throw them into the sea around

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<sup>25</sup> It has been made into a tele movie titled Dayang, an old illustration of the life of Mubin in Kinarut. The tele movie was made by Sabahans, launched and officiated by the wife of Sultan of Brunei in 2011.

the Chermin island and it was a legend in which many still believe there an old treasure beneath the sea. If only one could discover a part of the treasure may not have much a historical value but would help verified part of the mystery of the Sulu claim to North Borneo and the battle was real.

From a documentation point of view; obtaining papers, ink, keeping, restoring , and printing documents at the time 1673 onwards were already accessible. Many treaties , contracts , letters were already in printed form. Ceding a territory was such an important occasion for a kingdom in particular the receiver (the Sulu) and it was incomprehensible to discover that no records were kept if it was true.

No shred of document, no remnants left behind none that could form indicator if event ever took place with regards to allegation made by the Sulu that Sultan Muhyiddin had given Sabah-North Borneo as a gift to Sulu. It's a legendary mystic part of folklore of the people in this part of the region.

In as far as Sulu is concerned if this is not true perhaps many others unsubstantiated narrative related to this Sulu history hard to believe.

## 4.2 The Origins of Claim: Confusing Time, 1878

### Claim Two

*... that North Borneo belonged to the Sulu, following the strange event that took place after two hundred and seven years (207) Sultan Jamalul Alam of Sulu and Baron Gustavus de Overbeck a representative of the British North Borneo Chartered Company made an agreement and signed on 22nd January 1878 at Lipuk in Jolo. That Sultan Jamalul granting an area measured or marked from River Pandasan to River Sibuco the eastern part of North Borneo*

NOTE:

The said area was from River Pandasan to River Sibuco is the same area called as Paitan<sup>26</sup> appeared twenty-four (24) days earlier signed on 29 December 1877 between Sultan Brunei and Baron Gustav de Overbeck

*As claimed by Sulu, North Borneo (Sabah) belonged to Sulu, following the 'strange' event that took place after two hundred and seven years (207) was that*

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<sup>26</sup> Paitan is at the southeast of Sabah the map is wrong but a dreamed map of Sulu



*an agreement made between Sultan Sulu Jamalul Alam and Gustave de Overbeck signed in Lipuk Jolo on 22 January 1878.*

Just to recall, the earlier claim (Claim One), where Sultan Muhyiddin the 14th Sultan of Brunei alleged to have given the North Borneo a Brunei's territory to Sulu as a gift because Sulu warriors helped Sultan Muhyiddin to win the battle against his enemy Sultan Abdul Hakkal Mubin. Which was not proven true.

With this second basis of claim-Claim Two is equally as dubious as Claim One, it could be taken as logical if Sultan Jamalul Alam did not know that there had been an agreement made between Sultan Abdul Momin of Brunei and Baron de Overbeck on 29 December 1877 this was because of the infrastructure in those era. But Baron de Overbeck was cheating if this occasion or this arrangement was amount to a normal contract. In another , since it was written in Arabic Jawi script and Malay language it could be, what were written was different than what was told to Baron de Overbeck. Jamalul had other motive . In other words, both of them completely having different agenda<sup>27</sup> with this contract.

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<sup>27</sup> Based on numerous contracts and treaties signed , reconfirmed and signed , in particular with foreigners, the Sultanate of Sulu was one of the most difficult to be trusted. The main objectives of signing the agreement as observed, were for money for the Sultan and his relatives. It happened 500 years ago and still happens today. See other notes

Legal debate for this second basis of claim is not necessary if contract is to mean the legal and good contract. It was not but *void ab initio* what needed is strengthen the ownership argument by proving whether Sulu had or had not. The argument would end. Whatever it was, the arrangement and the way the contact was made suggested it was highly suspect of a true and genuine agreement but fake written signed document.

As already discussed in the previous chapter that the legal doctrine *nemo dat quod non habet* one cannot give something one does not have-equally means no one gives what they do not have. To ascertain the rights of ownership is by possessing title document the same in contractual agreement but it has also been discussed on the issue of common, rampant faking and cheating in Sulu and with Sulu people not just in those eras but still is today.

**Baron Gustavu de Overbeck met Sultan Jamalul Alam in Jolo on 22 January 1878** and made an agreement on the same subject he signed with Sultan Abd Momin of Brunei on 29 January 1877-twenty-four days after. Answer can be on anyone guessed

For the sake of academic discussion- since Sulu did not own Sabah. Sulu's interpretation, linguistically it was leased<sup>28</sup> that piece of area to Baron Overbeck, an area marked from River Pandasan to River Sibuco while the English interpretation was a cession or grant (see map for location)

The area covered in the agreement with Sultan Brunei Abd Momin signed on 29 December 1877 was called Paitan which means the same thing as an area marked as from River Pandasan to River Sibuco

Baron Von Overbeck was appointed as Maharajah<sup>29</sup> Sabah on 29 December 1877 which meant for the entire North Borneo-Sabah. Beside signing four territories namely Kimanis, Sulaman and Sepanggar and Paitan (Paitan was the area called from Pandasan River to Sibuco River) eastern part of North Borneo in this agreement<sup>30</sup> His appointment indicated that he was given authority to control the entire Sabah with the title Maharajah which could be equated as Prime Minister. While little given to Baron Von Overbeck in the later agreement by Sultan Sulu as Rajah Sandakan, where the territory of Paitan, River Pandasan and River Sibuco were under the jurisdiction of greater Sandakan.

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<sup>28</sup> See explanation of word lease

<sup>29</sup> Words Maharajah is equivalent to the King the chief or Prime Minister while Rajah is also the chief below Maharajah the origins of the words were from Indian prince-ruler

<sup>30</sup> Many instances' agreements (Treaties) made to make money..

Thus, quite ironic why Baron Von Overbeck wanted Rajah Sandakan since he was already Maharajah Sabah.

By the way, it is noticeable, Brunei had been quite organised on land registrations, whoever was given authority to control the territory usually held a documented title of the land, in other words, the title holder would benefit from it for leasing or renting to whoever interested. This is a good example, compared with the claim by Sulu earlier assertion yet no proof at all and no shred of documents ever found to prove that North Borneo was given by Sultan Brunei to Sulu.

Many discussions were held to find out what was or were the reasons for this agreement. Most of the time as the major suspect, Overbeck was looking for security reasons having Sultan Sulu over his shoulder could help to oversee any encroachment to his properties by the Sulu people, and pirates means Sulu subject -his people were also pirates by the way. In the earlier experience no westerners had succeeded in their business and even religious preachers were not tolerated by the Tausug tribe. Till to this date there is animosity between Muslims and the Christians in the southern region of the Philippines, see earlier chapter.

For Sultan Sulu this occasion was an opportunity of getting money and other things that have value for example giving someone an award title like *Datu*, *Rajah*, etc were ways of getting deal by the way Baron Von Overbeck, was Rajah (business proposition) since he was in dire need of money being deprived of power by the Spanish administration, among the earliest agreement with Sulu was signed in 1836 where Sultan only retained his power on matters related to religions and customary cultures, otherwise all else it had been referred to Spanish jurisdiction.

The contention on the issue of legality of the contract – already discussed the apparent lack of understanding about history of Borneo. The response to Sulu claim could be made easier if the country's history lesson has given space for younger generation.

On the Malaysians' side, even the former Attorney General of Malaysia was not aware of what rumouring in the online media correctly or wrongly. Many Malaysian historians never bother to know, until Sulu heirs engaged an arbitrator in Spanish High Court though annulled by but Stampa Gonzales weirdly able to convince French Arbitration Court<sup>31</sup>, by making a self-declaratory judgement on the ground that Malaysia was in breach of an agreement in 1878 already

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<sup>31</sup> As discussed in Chapter Three

discussed and because Malaysia is also a signatory to New York Convention of arbitration.

The former Malaysian's Attorney General involved in communication with lawyers, in particular the Sulu lawyers admitted that North Borneo- Sabah was once part of Sulu Kingdom in his book "My Story: Justice in the Wilderness", when asked in a Webinar forum recently since this author was one of the members of the panel, his reply to the question was that he did not get the information, meaning he did not do research for his book and no information from Malaysia but from Sulu. In a research carried out by the author, North Borneo had never been under the rule of Sulu nor was North Borneo given to anyone including Sulu. There were always the Sulu people around in Sabah since memorial time but there had no administration centres or centre of any respective territories, any systems by the rulers other than the British. Brunei had system of land registrations, system of collecting taxes or levies, etc

Another extraordinary approach taken by Malaysian lawyers is, they were pushed to the wall by the Sulu thus only dancing to Sulu tune. Malaysian lawyer becomes defensive, legal argument based on what Sulu dictation that is too narrow the argument.

For the sake recapturing what said earlier, the agreement was written in *Jawi* Arabic script but in Malay language or classic Malay<sup>32</sup> the Philippines claims that Sabah was only leased. The Malaysian relies heavily on British interpretation that *pajak* meant, cede or grant, thus the annual payment from Malaysia inherited from the British North Borneo Chartered Company was RM 5300.00 (US\$1118.62) a cession payment as per Malaysia in Attorney General's replies already discussed, there was a contract being in breach. The reason for the breach was due the invasion by the Sulu in 2013 thus agreement was terminated, a milestone argument emanated from a contract made 1878. Was it a good contract? Invasion to another country ?

Word used *pajak gadai* (old Malay spelt as *padjak*) was the contentious issue. In Malay language word *pajak* is not equitable or exact meaning to English or Spanish's English interpretation of lease doubtful as the basis of Sulu's the author already explained elsewhere. Suggestion in English means pawn - however pawn is made in collateral, item deposited means as collateral of money given in advance, failure to pay the interest or charges item can be forfeited. But one wants to take the item back he then must pay in full sum unless there was a mutual agreement to bypass.

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<sup>32</sup> Malay was and is still the lingua franca for people in this region

Word *pajak* in Malay has not changed for the last three hundred years or so. It is still practised as today, say, if one wants his Rolex watch at the pawn shop and deposits it say for ten thousand ringgits for agreed duration (RM10,000) the person who pawned the Rolex has to pay certain amount until certain period or if he wants to take back the Rolex in between time before end of the agreement has to pay what agreed. Did not happen because in as far as British is concerned *pajak* means cession and cession money was paid infinitely that's what agreed surrendering or granting of land used by Sulu was in perpetuity can be translated to mean till the end of the time that was why it looks only nominal value.

The contract written in *Jawi* script using Malay language was an amusing effort usually they used metaphors a lot, for example *selagi ada bulan dan bintang* which means you can have or use the property where and when there is still the moon and stars - till the end of time also means forever.

A few experts were involved in interpreting the agreement, what was known to be Spanish interpreter *pajak* to mean lease but it is viewed that at that time Spanish being connected with the affairs of Sulu- Spanish linguists and American anthropologist H Otley Beyer and Harold Conklin said it a lease, while the British historian interpreters Najeeb Mitri Saleeby 1908, William George



Maxwell and William Summer Gibson 1924 translated word *pajak* as to grant and cede.

The Americans later leant to the British interpretation. Thus, relying on the interpretation of the contract is only an academic exercise

In the legal debate the cause of the breach agreement because Malaysia stopped paying the cession money, that Malaysia stopped paying since 2013 because Sulu invaded Sabah in 2013.

That Stampa and Paul Cohen argument was solely on 22 January 1878 they did not know that twenty-four days **earlier** on 29 December 1877 there was another earlier agreement of the same area<sup>33</sup> was made and signed between Sultan Momin of Brunei and Baron Von de Overbeck .

The Sulu's claim is seen dubious, it can only be guessed, as strategy should the first ground of claim failed, second claim is to fall back on, a way of keeping the issue afloat and to make the issue alive <sup>34</sup> Already a history of three hundreds over years.

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<sup>33</sup> *Ibid.*,

<sup>34</sup> Understanding the culture and character of the Sulu over many hundred years

Brunei's Royal historian Pehin Mohamad Jamil al Sufri says in many of his writings it's only claim. While "some even say a myth" [sic]. Strangely for the last three hundred and forty-nine years the Philippines represented the Sulu drumming the claim when researchers and scholars in Brunei could not find any. While the contract signed on 22 January 1878 meant that the land was meant to be surrendered infinitely with the idea behind in those days was that the Sultanate will ever receive RM5,300.00 (US\$ 1122.00) a month infinitely. In another argument, word to in insertion to receive by the Sultan his successors but the Sultan had no successor if and when successor meant only from the blood lineage

Having examined the sources Claim One in 1673 and compared it with the Claim Two made in 1878 which is two hundred and five years apart it did not hold much water. To understand more perhaps it would also be interesting to study the characters, habit and culture of these people if it is consistent, meaning if they were a reliable kind of society or not.

The Sulu tribe has a cultural tradition to fake things -there are no less than fifty people claiming the Sultan Sulu's heirs around in Sabah alone. One of the most notorious by the name of [Abjan](#) who recently proclaimed as Sultan Sulu and conducted a ceremonial ceremony at his residence in kampung Likas, Kota Kinabalu. The idea behind as suspected by many was Abjan having got the title

as Sultan so that could declare that he on behalf of his subjects would drop the Sulu claim, but Malaysia must pay him money. Is this not ridiculous?

### 4.3 Time Changed

Having analysed what comes out for the Claim One, it is nothing tangible or concrete that makes any one believes if Sabah was ever under the rule of Sulu or Sulu ever had sovereignty over Sabah<sup>35</sup>

One interesting feature of Brunei Sultanate administration in those days their ability to document or record the area and always had someone to be in charge for example Sembulan, Mengkabung , Paitan, Kinarut and etc Someone was holding the title of the 'territories' thus it would be unbecoming of the administration at that time not making proper record should Sultan genuinely gave Sabah to Sulu. Partly during this period ink and paper were already accessible and used in many occasions and it was usually writing in *Jawi* script but Malay language because Malay had always been the lingua franca for people in Malay Archipelago see how even modern Philippines was envious of Malaysia as the choice of name. Based on the Claim One, there is no evidence to

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<sup>35</sup> Territorial sovereignty denotes a political and legal expression as enshrined in Article 2 (4) of UN Charter and recognized as customary international law

support the claim several writers have mentioned of claim is merely a myth see below:

"... indeed, the legitimacy of the Sultan of Sulu claim to the territory North Borneo is in considerable doubt partly because of the unreliability of tarsilas such as 'Selesilah', which in many cases are nothing more than written - down legends to enhance the status of the royal house which produced them. Succeeding Sultans of Brunei have denied that Northern Borneo was given to Sulu, and only the weight of Sulu tradition supports the claim. The weight of Brunei tradition challenges it"

*Professor Leight R Wright*

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**Of all 29 Sultans Brunei, only one Sultan ever mentioned of Sabah issue that was Sultan Saifuddin Omar Ali I, in 1771**

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One of the Sulu's chiefs went to Brunei 1777 in the pretence of looking for fresh water. His group was actually seeking an audience with the then ruler of Sultan Omar Ali Saifuddin I, to pursue the claim on North Borneo. Sultan ordered his chief *Wazirs* to deal with them, and threatened that if they persisted in their attention, he would have them killed. The Sulu left immediately but thereafter continued to maintain their claim

*Pehin Dr Hj Awang Mohd Jamil Al Sufri*

Discussion on the issue of contract agreement between Sultan Jamalul Alam of Sulu and Baron Von Overbeck 22 January 1878 might not sufficiently be argued here, for the purpose of establishing whether Sulu had possessed sovereignty but just to mention the main objective of this research.

After the civil war ended, Sultan Muhyiddin never said a word of his upset that Sulu supposed to assist did not help and of all the nineteen (19) Sultan there was only one in 1771, Sultan Omar Ali Shaifuddin I, who made a remark

For Philippines -Sulu persistent claim to Sabah is quite a daunting and futile mission because none of the grounds of claim provided sufficient strength. Now let's briefly discuss what choices Sabah has.

After the second world war Britain like any other colonial countries had run out of steam, the economy was in bad shape. While countries ruled colonial masters learnt the lesson that change must take place. Some with bloodbath but for Sabah no blood was spilled in Sabah unlike in Malaya after the Japanese occupation the communist s insurgency began. Fortunately, the British and Australian were around.

Sabah never experienced a single the communist rebellion , communist infiltrated Sarawak the neighbour. But it was Sulu -piracy that is the typical of current Abu Sayyaf, and Al Qaeda which is highly suspectedly still around somewhere in the seven thousand islands in the Sulu and Celebes seas.

Much talk about the British did not complete the decolonising process but rather handed it to Malay by design. Malaysia Federation was formed in 1963, supervising the process was the Secretary General of United Nation, the independent of North Borneo-Sabah was brought about as result of the expressed wish of the majority of the people of Sabah and the basic rules and procedures were adhered to just like many of countries got their independent

underwent the same processes. For Sabah in which Cobold Commission was the body that supervised whether the process laid by the UN charters being followed or not by this , if it meant to be revoked, it be madness in making?

Situation in those days was not as modern as today

infrastructure was bad sample taken to represent the population may now not sufficient, lack of understanding of politics and time was a factor but nonetheless preparation for self-independent only could go thus far. Malaya and Singapore were a head when compare with Sabah and Sarawak or Brunei this war of the same background under the British rule from 1888 about 80 years under the British Borneo Chartered Company administration before under the British Crown Colony of North Borneo until 1946

Though the process of decolonising was speedily done as the origin of idea to form a new nation was not originated from Sabah but the leader from Malaya but nonetheless to make the most of the possess Sabah it spearheaded by Sabah leader at the as prime mover Donald Stephen -later Fuad Stephen and Lee Kuan Yu the then Prime Minister of Singapore perhaps played very important role in convincing Donald Stephen while Tengku Abd Rahman, being British graduate who spent many years in England had easier way manoeuvre called it grand design you like by British and Malaya

Among the topics that picked the Sulu supporters were Sabah who distasted or even the extent to get out of Malaysia and the same voice heard from Sarawak. But that does not mean if these two state are out of the federation of Malaysia

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By the 19th century the Brunei Empire declined markedly , began by the cession of Sarawak to James Brooke then North Borneo (Sabah) to North Borneo Chartered Company. Brunei was to become British protectorate the first British resident assigned was in 1906. Arm rebellion revolted in 1962 against the monarch of Brunei. But at last Brunei got it Independence from British 1984. Having opted not to team with neighbouring states, Sultan Omar Ali the father of the present of Brunei withdrew the attention to be part of Malaysia. The rebellion led by Azahari must be one of the factor a Labuan born Azahari a Brunei citizen .

Some parts of people in Borneo were not happy, this could be influenced by the Indonesian leader at that time was President Sukarno. Another determining factor was on the issue of distribution of the country's wealth Brunei was already a richer country compare with the rest its natural resources likely to be surrendered to Kuala Lumpur a part from the position of the Sultan position against the other Malayan sultans.

For Sabah the idea of teaming with Sulu and becomes part of the Philippines is the last thing that Sabahans could imagine. Definitely is not going to be a peaceful nation by any standard. Having known the nature of people in the Southern Philippines. That is unimaginable to think, that the Sulu can comprehend the predicament of people in Sabah. Sabah and Sarawak are still far better off on their own than merging with the Sulu and that Sulu people should understand..

In Malaysia some people include the elites in the particular, the Malays do sympathise with the plight of Sulu but it because Sulu are Muslim. Having the same religion to some of them all are in the same equation even not from the same county which really absurd.

### **4.3.1 Self Determination**

Sabah therefore has the right to choose its destiny, whichever way it chooses, self-determination is a costly affair, sticking what it has is still the best choice as per declaration of United Nations Charter Chapter 1, Article 1, part 2 states that the purpose of the UN Charter is: “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and



to take other appropriate measures to strengthen universal peace. Insisting, asserting, instigating and invading are acts of aggression, while under international law self-determination denotes the legal right of people to decide their own destiny in the international order.

Self-determination is a core principle of the international law, arising from customary international law also recognised as a general principle of law that enshrined in a number of international treaties

Issue on territorial claim, which is dispute a disagreement between two states about which State exercises sovereignty over a certain part of the territory, very commonly dispute is related to the possession of natural resources in this respect about jealousy connected to economy, affluency of living, ability to manage a country, attitude, characters, and cultural inheritance.

The Sulu region had never been at peace for the last six hundred years. See earlier discussion.

International Law on issue of Self-determination -law & history

As already mentioned that the Malaysian government has never responded as much as what the Sulu wanted. But that may not be the correct strategy.

At the early stage when the former president of the Philippines Marcos Sr<sup>36</sup> himself was not enthusiastic about the idea of teaming Sulu claim to Sabah but changed his mind later. In fact, he created the “Operation Merdeka” and prepared and trained Philippine’s commando to invade Sabah. Some of them were already at the very heart of Sabah ,Likas, Kota Kinabalu headed by commadore by the name Abdul Latiff -Eduardo Martelino a converted to Islam Filipino when the mission was later discovered 200 young Tausug killed on 18 March 1968 at the height of Marcos also known as Jabidah Massacre. That incident is enough to scare Malaysia, let alone people in the state of Sabah.

Dismissing that Sabah not legally proper to be part of Malaysia is ridiculously ignorance when all processes and procedures required by the world body none other than United Nation. Saying Malaysia had not conducted a proper referendum but referendum did happen no matter how small the samples were. With the condition of Sabah had at that time 1963 the lack of infrastructure, anyone would find no better way.

Based on the tiny voice of preferring Sabah to be outside Malaysia does not mean Sabah people want to be part of Sulu as mentioned earlier. Having been part of Malaysia to be part of Sulu would be the last to be thought out.

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<sup>36</sup> President Marcos idea

What is self-determination in international law, many areas but in the context of from sovereignty point of view and human right to mean legal right of people to decide their own destiny in international order. Self-determination is the core principle of international law arising from customary international law as well as a general law in most countries in particular in regard to treaties.

It would be ridiculous for the Sulu to assume that Sabahans preferred the Philippines to Malaysia.

Another staggering political failure of Sulu actually Sulu own making, Philippines central government did they part for example the establishment of Autonomous Region of Moro, changing group from MMNLF, to MINLF now Bangsamoro to this day does not provide good picture that the region can manage to run a nation. No way to be certain.

In another suggestion, the better way would be for the Malaysian government to negotiate payment of the compensation to the Sulu that would settle the issue.

But research shows there is not a need

By virtue of the status of Sulu Sultanate is no longer recognised by international community and having no legal power to deal with international law. The pressure was all the time to revive the power. But how many nations can really manage to survive in such system that had be fractured by wars and infighting among themselves, no country can back to the feudalism system they had hundreds years ago.

### **4.3.2 Views on issues of claims-territorial disputes**

Most public debates on the issue evolved into the legal interpretations of a contract already mentioned, between Sultan Jamalul Alam of Sulu and Baron Von Overbeck, the British representative of North Borneo Chartered Company. This author considers many missing parts not touched especially on the question of why agreement was made, strange arrangement, because there was another agreement signed on the same subject twenty-four days earlier and earlier still in 1673 was claimed Sabah was given to Sulu, will be analysed closely in the coming chapters.

To the general Sulu people and supporters Sabah belongs to them based on their historical narrative. Sabah was given as a gift for helping to defeat the

Sultan of Brunei's opponent at that time. But the reasoning seldom goes beyond this remark.

The contractual issues, the agreement between Sultan Sulu and British business entrepreneurs signed in 1878 which is two hundred over years apart and had no nexus to the earlier claim that Sabah was a gift given by the Sultan of Brunei to Sulu made to look like the same one in as far as common people on the street are concerned.

Bearing in mind the Philippines was already under the rule of Spain since 1521. Sulu had made several agreements (treaties) with Spain first in the 1836 a Treaty a decree where Spain claimed jurisdiction over the entire Sulu Archipelago and 1851 another Sulu and Spain treaty signed reconfirming of Spain control of the Philippines and Sulu, which reminded the Sultan not to allow piracy, and not to let anyone carry on piracy, it could also mean that the Sultan was involved in piracy.

In another Treaty between Sulu Sultanate and Spain 1883 to clarify the position of North Borneo where Spain had sovereignty over Philippines and Sulu Archipelago and also made it clear that North Borneo was relinquished to the British North Borneo Company this was reconfirmed in the Madrid Protocol 1885.

Malaysia does not recognise the claim from the beginning; the claim was meted out by the Republic of the Philippines in 1962. This research contribution to the subject should be valuable. Malaysia did not respond to the claim though many Malaysians do want the government to make it clear but perhaps that was how a regional group like South East Asia handles diplomatic issues, abided by the earlier agreement but again that does not give reason good or bad decision other than saying as per discussed in the Manila Accord on 31 July 1963. There is a logic of not responding to such clamorous noise-discuss later.

Issue of territorial claims made by the Sulu only surfaced shortly before Malaysia was formed on 12 September 1962<sup>37</sup>. It was also the time when neighbouring Indonesia opposed led a confrontation between Malaysia and Indonesia which lasted for three years 1963-1966. The former President, Sukarno accused Malaysia of being a British puppet state and a threat to Indonesia national security.

The Philippine likewise broke the diplomatic relation between the two countries over the Philippine Claim to North Borneo in 1968. Name Malaysia also became a competing issue. The Philippines was about to adopt the same name

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<sup>37</sup> Discussion was mooted by the President of the Philippines Diosdado Macapagal

Malaysia to replace the Philippines but they said Malaya snatched it. A Bill was presented to the senate but taken over time.

The reason for Philippine's keen to adopt the name they said its Malay heritage of Philippines other name proposed was Rizalia derived from the name of a revolutionary Jose Rizal more recently name Maharlika which President Rodrigo Duterte said in Malay 'peace in security'

There are several statements found written by the Filipinos who somehow read beyond the parameters the Sulu group want them to know, for example phrases below:

*For any Sultanate Sulu claim, political sovereignty was formally abolished in 1915. The descendants of the royal family are only recognised as honoured de facto royalty by the Sulu people.*

*Despite what the commonly known as Philippine claim to Sabah the Republic of the Philippines has no justifiable claim to Sabah and never did. Manila's claim derives only from the defunct Sulu Sultanate's disputed earlier claim to North Borneo when it was part of the Brunei empire. Quora.com*

Republic Act No 5446 of the Philippines , which was passed by the legislature on 26 August 1968 and signed by Marcos on 18 September, regards Sabah as a territory “ over the Republic of the Philippines has acquired dominion and sovereignty”

On the issue of whether the outcome of legal contest is good for the Sulu? It has not helped much though every time there is a Presidential Election in the Philippines Sulu claim has been the talking point but as what explained by Marcos Jr the Philippines leaders recently from the central government point of view, they are not in hurry. It also explains perhaps they read more relevant materials now than before or resorting to law or ICJ- International Court of Justice may not be crystal clear Philippines could win. Big lesson had been with regard to the Sipadan and Ligitan case which was thrown away when they intervened during the legal contest between Malaysia and Indonesia which in the end IJC favoured Malaysia over Indonesia, that being the scenario even if Philippines brought Sulu Claim's issue to IJC the grievance and issues of claim still based on historical argument.

The Manila Accord 1963 by Indonesia, Malaysia and the Philippines as an agreement reached to solve the territorial dispute over Sabah peacefully

The formal presentation of claim by Philippines was made in 1962. The real problem, Sulu Sultanate has no longer had international recognition it seems leaders at the centre are pressured from the Muslim group of the southern Philippines which the whole Philippines could not ignore. The volatility and notoriousness of the tribe is this group, history has taught the people for the last six hundred years, they are still practising the 'trade'.



It was not until the 19th century that the demarcation of the respective territories in North Borneo (Sabah) became necessary otherwise Brunei is Borneo and Borneo is Brunei meant the same nation. Name Borneo was derived from the word Varun, a Sanskrit by origin which means water, tropical, or even monsoon.

The Sulu claim is based on two premises. First, Sulu claim<sup>38</sup> based on historical accounts that Sultan Muhyiddin of Brunei gave his territory of North Borneo to Sulu in return for helping to defeat the enemy of Sultan Muhyiddin in the battle that took place in Chermin Island in 1673. That battle in fact concluded the end of the civil war of Brunei which lasted nearly twelve years (1660-1673)

This was the only era in which the Kingdom of Brunei had two surviving Sultans at the same time, Sultan Muhyiddin and Sultan Abdul Hakkal Mubin.

The dispute between the two royals began at the occasion which was supposed to be a happy event of an old traditional sporting festivity, the cock fighting competition between two royals but ended up ruining the nation, caused the country's civil war from 1660 to 1673.

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<sup>38</sup> Sulu here refers to the claim by the defunct Sultan of Sulu the people who made the claim

It was during this occasion that Sulu capitalised their basis of claim by saying Sultan Muhyiddin uttered the momental verbal promise of a gift to Sulu in front of Sulu 'warriors' who were also Sultan's cousins. According to hearsay not written, but even the verbal communication was not sure if it did happen that North Borneo was given as gift to Sulu. This part will be further discussed in the next chapter.

It is Sulu the principal player, one of the eighty-two provinces of the Philippines, but uniquely termed Bangsamoro Autonomous Region in Muslim Mindanao is region (BARMM). It has been changing names several times for the purpose of the group's name. Earlier was called Autonomous Region in Muslim Mindanao under Nur Misuari leadership of MNLF-Moro National Liberation Front then overshadowed by MINLF-Moro Islamic Liberation Front.

The present is Bangsamoro Autonomous Region<sup>39</sup> (BARMM) comprised of Maguindanao, Lanao del Sur, Basilan, Solo and Tawi Tawi.

The nearest point to Malaysia from the Philippines is Tawi Tawi island on the eastern part of Sabah about four hundred kilometres across the Sulu Seas.

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<sup>39</sup> See also earlier MNLF, MINLF

The Philippines claimed to Sabah from Malaysia as their territory originated from the Brunei as Sabah was a territory of Brunei Kingdom in 17th century.

The question is why Philippines did not claim from Brunei before Malaysia was formed or why did they not claim during the time when Sabah was under British Crown Colony? The short answer is, Sulu was under the rule of Spain for more than three hundred years and it was agreed under several treaties with Spain, that Sulu had no sovereignty authority to any parts of Sulu archipelago except for religion and their cultural maintenance.

Sulu Sultanate claim is not recognised by international community, it is not recognised under the international law, in order to gain legal recognition in the eyes of the world the heirs of the Sulu Sultan transferred the heir ownership claim to the Philippines government by enacting a law called Republic Act No 5446 to enable Philippines acts on behalf of Sulu.

Over the last sixty years or so, the Sultan Sulu heirs had been persistently bugging Malaysia, accelerating their campaign telling the world Sabah belonged to Sulu.

The continuing threatening behaviour and politics of browbeating by neighbours is not a healthy environment for the nation and for the region in general.

Never ending misinformation inevitably creates anxiety to people in Sabah , this is what happened for the last fifty years. Sulu people resorting to invasion which will be further discussed.

There had never been an aggressive act before the formation of Malaysia, under the British Crown Colony or when Sabah was still under the Kingdom of Brunei.

Claim only surfaced in 1962 a year before Malaysia was formed on 16th September 1963. Malaysia never recognised the claim as was already discussed and agreed upon with the Philippines government<sup>40</sup> .

It is observed the Philippines politicians at the central level were very much pressured by the Sulu leaders from the South, issue on territorial claim has always been popular for group of politicians in southern Philippines.

In the 1962 the idea was mooted out by its former President of the Philippines Diosdado Macapagal in response to the pressure by the Sultan's Sulu heirs to

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<sup>40</sup> See note, Manila Accord

claim back the purported transfer of sovereignty rights to the Philippines government<sup>41</sup>

The assertion of claim to a point of invading Sabah, none more serious act than what they did in 11 February 2013<sup>42</sup>, when 200<sup>43</sup> armed Sultan Sulu army landed in Tandao at the east coast of District of Lahad Datuk, Sabah led by the brother of the self-proclaimed Sultan Sulu Jamalul Kiram III. Besides this, many attempts had been carried out before and after the Tandao tragedy but much like a routine piratical activities which Malaysians well understood as Tausuq<sup>44</sup> had been doing for the last six hundred years or so.

The Tandao incursion lasted for 30 minutes with the shootout killed two Malaysian police officers and twelve Sulu gunmen. Before that there had been massacre of Philippines citizens by Philippines leaders themselves known as Jabidah Massacre<sup>45</sup> took place in Caballo Island 18 March 1968

The Sulu endeavours had been in many forms and fronts, the latest was when the heir descendent of Sulu engaged an arbitrator from Spain a sole arbitrator

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<sup>41</sup> Frank Larigo, Enquirer.net

<sup>42</sup> The Tandao incident on 21 of March 2013 a group claimed Sultan Sulu's army land in Lahad Datu.

<sup>43</sup> CSIS Centre For Strategic International Studies , March 8. 2013

<sup>44</sup> Also called Joloano, Sulu, Suluk, Moro ethnic group of the southwestern Philippines

<sup>45</sup> See note on Jabidah massacre an execution of Moro army during the administration of Marcos 1968, led by Eduardo Martelino "Abd Latiff"

Gonzalos Stampa who started at High Court to Madrid but was annulled by the High Court of Madrid, Stampa then moved to Paris Arbitration Court for arbitration proceedings thereby in Paris, the French arbitration court ordered Malaysia to pay the descendant of Sulu US\$14.92 billion on the 28 February 2022 all this on the issue of breach of contract of cession money created in 1878 between Sultan Jamalul Alam of Sulu and BNBC British North Borneo Chartered Company representative Baron Gustv de Overbeck. Originated from one dubious contract<sup>46</sup> signed in Jolo between them

Malaysia equally gave lousy<sup>47</sup> responses by saying the payment of session money RM5,300 (US\$1118.62) was stopped in 2013 because Sulu's aggressive attitude, unfriendly neighbours [*sic*] to a point of invading Sabah.

Despite the shock, the arbitration proceeding was not challenged in court but rather left it with minimum response because Malaysia takes a stand of not recognising the claim. Rightly or wrongly yet to be seen what it will end up to.

Malaysia was granted leave by the Paris Court of Appeal and suspend the arbitration ruling from seizing property of Malaysia Petronas. The Malaysian

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<sup>46</sup> There was even a suggestion the contract could be a fake one or a fake Sultan or a fake document that happened in the past.

<sup>47</sup> There are a few Sabah scholars who knew more about the history of Sulu claim to Sabah or history of Brunei and Borneo. An apparent lack of effort by the authority

government also filed for Stampa removal as the arbitrator by Madrid High Court.

Disputes here are driven by jealousy seeing the development of Sabah being part of Malaysia, the infrastructure development has been milestone, quality of life of the people and potentiality to advance more to discovering natural resources, particular oil and gas and, geopolitical competition, affluent cultural differences makes Sabah as the main destination, already more than a million people of the southern Philippines residing in Sabah and plenty more without proper legal document, sent them in the morning they would come back via back door in in the evening.

Misleading historical information partly because of not much written studied material available, those found floating in internet or Sosial media today are mostly written by Sulu supporters or Malaysians whose interests are in more writing but less in researching. Even the highest legal officer in the country did not seem to be interested in finding beyond what was found in the social media, agreeing unagreeable.

Sabah had never been ruled by the Sultan of Sulu.

Sulu people that are already in Sabah believe the claim is true this must be the reason why they could not care or less, imagining soon Sabah is part of Sulu hope is therefore believable. These people are less sophisticated because of their leaders did not lead them, see how they managed their own autonomous region over the years. Preoccupied with wars among themselves the population suffer that has been the background at home.

In Malaysia, some Muslim leaders in particular those are based in the Malaya have lackadaisical attitude when involving with religion Islam even criminal are acceptable or regardless the quality- law breakers or piracy alike. Three quarters of offenders in the Sabah state's police locked ups or prisons are foreigners from Southern Philippines.

In addition, many of the newcomers to Sabah from Southern Philippines were eligible to vote because they hold Malaysian Identity cards this was the work of unscrupulous politicians and business people, is not surprising when the very top leader in the country is now in prison.

The infamous Royal Commission of Inquiry - RCI was established on 11 August 2012 to investigate the problems relating to citizenship and immigrants in the state of Sabah. The inquiry was given a byname Project IC, which was alleged a



systematic granting of citizenship to foreigners in which until to this day the findings had not been disclosed, yet everyone knew.

These new Malaysia Identity Card holders were known as the fixed deposit that helped UMNO political party staying afloat for sixty years as a government

A year ago, a group of Filipinos infiltrated to the west coast and interior of Sabah like Keningau and Beaufort; these were deep in the interior of the State they erected camps for 'training' at the very nose of Malaysian authority and ever getting bolder and disrespecting the law of the country.

Issues like this created anxiety and uneasiness to Sabah in particular and Malaysians in general. Sabah is only three hundred kilometres away from Sulu-Tawi Tawi.

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After the first contact with westerner British Captain Cowley in 1665 it was not until 1844 when James Brooke visited Brunei to discuss about the surrender of Labuan where he proposed Labuan be made as British port to supply coal for British navy to curve piracy in particular originate form Sulu.

Earlier was a westerner an English Alexander Dalrymple in 1773 created a settlement in Balambangan who had deal with Sultan Sulu which was learnt later the Sultan was fake Sultan, his business ventures did not succeed due rampant marauding piracy from here though much to learn about culture of Suluk -the people

It was during the reign of Sultan Abd Momin 1865 that the eagerness of British business venturers energised and accelerated.

Charles Lee Moses the United State Consul in Brunei negotiated with the Sultan of Brunei in 1865 managed to lease a land from the Sultan of Brunei but he did not hold long nor did much for several years, since America just had a civil war and wanted nothing to do with its colonies in this region-Southeast Asia.

Moses passed his right to Joseph William Torreyes, Thomas Bradly Harris, Ah Sing an Ah Chong in 1866.

Torreyes, Harris, Ah Sing and Ah Chong opened up an area around Kimanis in 1877now about forty kilometres from Kota Kinabalu, capital of Sabah.

The ventures did not last long nor did they succeed. The remains of the ruin of the fort they built still can be seen today, buried by heavily in semi- jungle .

Their failures were largely because of diseases, like Malaria, dengue fever and rampant destruction by pirates.

Harris died at Kimanis while Torreys went back to Boston, USA and died in 1879. But just before he left for the USA Torreys managed to pass the lease to Gustavo Baron de Overbeck and his associate Alfred Dent, in fact they not only managed to continue the lease but a bigger concession when they made an agreement with Sultan Abd Momin of Brunei on 29 December 1877.

This agreement, between Sultan Abdul Momin and Baron von Overbeck<sup>48</sup> contained five pieces of documents, one was the appointment of Overbeck as Maharajah Sabah, while the four pieces of documents were for four individual territories of Brunei North Borneo, uniquely, Brunei had established a well registration land system usually headed by Sultan's representative who in return head of the territory entails to receive the lease money, sometimes depended on how high was the social status in that area, titles such as Damong (the bottom), OKK (Orang Kaya Kaya) or Datuk Brunei, Pengiran, Pehin, etc

The Sultan usually had representatives and also received payment. In 18th century Brunei already a system in managing land, that was through registration

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<sup>48</sup> The full name is Gustav de Overbeck, sometimes also called Baron Overbeck. Baron is the European nobility title, for this purpose it would be written sometimes just as Overbeck

which were under the control by individual appointed by Sultan or high-ranking official from the palace.

Below is list of territories that was contracted between Sultan Abd Momin of Brunei and Baron de Overbeck signed at the Brunei Palace on 29th of December 1877<sup>49</sup> as follows:

- 1, Grant of Sepanggar, \$4,000.00 per annum.
  - 2, Grant of Sulaman and Paitan River for \$6,000.00.
  - 3, Grant of Paitan to Sibuco River \$2,000.00 per annum and
  - 4, Grant of Kimanis and Benoni \$3,000.00
- (Grant 4, was signed between Pengiran Temanggong and Baron de Overbeck)

These materials had not been seen or discussed elsewhere, agreement was seldom brought to light by the Sulu and Sulu supporters. Twenty-four days later on the 22nd January 1878 Baron von Overbeck sailed to Lipuk , Solo, to meet Sultan Jamalul Alam, thereby made an agreement to lease in Sulu version and grantor cession in English of an area in the eastern part of North Borneo from the River Pandasan to River Sibuco southward. Gustav de Overbeck, having experienced seeing the failure of earlier around the coast of Borneo caused in particular by the rampant and notoriousness of piracy from the Sulu Seas. For Baron Overbeck therefor tried to make sure the venture was safe having Sultan

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<sup>49</sup> See Appendix 3, page 122

Sulu overseeing and influence at the sea may be safe from the attack , kidnapping, extortion in the seas and on the land.

*3. It was claimed: North Borneo was given to Sulu by the 14th Sultan of Brunei - Sultan Muhyiddin as a gift for helping Muhyiddin to defeat his enemy in 1673 thus ending the twelve years civil war in the kingdom*

The very question that readers want to know is, whether it was true?

Whether the evidence is convincing enough. The methodology in the study is; by examining, analysing, translating the contents as well as checking the authenticity of documents. The next question, why must there be another parley by saying that Sabah belongs to Sulu because of the contract of lease or cession in the later date. That Sultan Jamalul Alam of Sulu and Baron Gustav de Overbeck in 1878 made an agreement of an area in the east coast of Sabah. While for Baron Overbeck he had already signed an agreement with Sultan Abdul Momin of Brunei only twenty-four days earlier of the same area in 1877

The confusing issue is, before even discussion the agreement made in 22 January 1878 was good. Its pertinent to ask if Sultan Sulu had the right to lease. Did he own that piece of area? This can only be answered by referring to the earlier question on the ownership derived from 1673.

There was no problem in identifying the validity of agreement made between Sultan Abdul Momin and Baron Overbeck. But surely something needs to be explained by Baron de Overbeck why did he made an agreement with Sultan Sulu of the same area twenty-four days after.

Briefly, if Sultan Sulu neither own Sabah nor the eastern part of Sabah the contract( the agreement ) was void from the beginning-*a void ab initio agreement*-not valid. Sultan Jamalul Alam had no authority to lease that piece of land which did not belong to him. Applying the *Nemo Dat Quod Non Habet Rule* the British common law system which says the transferor of goods cannot pass better title that he himself possesses-simply means the legal principle that a person he who does not have adequate ownership of property does not have the ability to transfer the ownership of that property to another person

*After two hundred and seven years (207) Sultan Sulu-Sultan Jamalul Alam and Gustavus de Overbeck a representative of the British North Borneo Chartered Company made an agreement and signed on 22nd January 1878 at Lipuk in Jolo whereby Jamalul Alam granted an area measured from River Pandasan to River Sibuco, the eastern part of (North Borneo) Sabah*

NOTE:

The said area was from River Pandasan to River Sibuco is the same area called as Paitan appeared twenty-four (24) days earlier signed on 29 December 1877 between Sultan Brunei and Baron Gustav de Overbeck

These two parts of the claim come from two different sources which will be dealt separately in each one of them.

Sulu never elaborate nor provide any form of proof and evidence to the first claim which they say Sulu owned Sabah because it was given by Sultan Muhyiddin as a gift in 1673

On the second statement<sup>50</sup> why they say they owned Sabah because of the contractual agreement signed between Sultan Abdul Momin and Baron Gustav de Overbeck on 22 January 1878 for an area which measured from the River Pandasan to the River Sibuco of the eastern part of Sabah

### **Security Reason**

Security reason was the only plausible reason why Baron Overbeck sailed to Jolo from Sandakan to meet Sultan of Sulu and in ended up in signing an agreement on 22 January 1878. Was he oblivious of the earlier agreement he

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<sup>50</sup> There are minor inconsistencies on some dates after final inspection, referencing and cross referencing with available materials -documents especially documents obtained from the Sulu sources, nonetheless the author is standby with his materials for examination and authenticity of the materials the latest cross referencing was significant material collection by private collector Shari Jeffri...

signed with the Sultan of Brunei only twenty days past or was this a deliberate mission?

Sultan Jamalul Alam was in the dilemma he was not in joyful moment, having lost power, his activities were curtailed by Spanish authority. Sulu had an agreement earlier with Spain too, as Spain in a full control over Philippines. Sultan lost revenues and income but the presence of Baron Overbeck could provide him a breathing space (received money from Overbeck)

It was normal with Sultan status foreign agents looked for these of people before actually landing on the unknown territory.

Balambangan Island earlier provided a good lesson of how volatile the atmosphere in the Sulu seas. Alexander Dalrymple failed to make Balambangan as trade hub but instead became a centre for opium, munitions, slave trade and fabrics with Tausug and Maguindanao as pirates (also known as Moro pirates) pirates infested areas those days were in Mukah, Sarawak May 1862, Bintulu 1847, Tampasuk also called Iranun attack 1845. It must be for security reasons why Overbeck made an agreement with Sultan Jamalul Alam, Jamalulau was desperate of money.



The Sultan had made several agreements in the past and well known for breaking promises which never meant to adhere to it for example, in 1936 Sulu and Spain had an agreement where Sulu agreed to relinquish her power, except on religious and customary matters the rest left to Spanish to advise and administrator since Philippines was then ruled by Spain

## **CHAPTER FIVE**

### **Conclusion**

The claim by the Sulu to North Borneo was only accelerated close to the date to the formation of Malaysia; it was rather seen as competition with Malaya. But as required by the international convention under the eyes of the United Nation, no matter how unsatisfactory in the eyes of others, the choice is for Sabahan to make.

By logic the Philippines had three hundred over years (349) to claim from Brunei the first claim that Sabah was given as a gift. The second claim by virtue of agreement made between Sultan Jamalul Alam and Baron Gustav Von Overbeck was two hundred and seven years (207) years to this date. Strange way of dealing a claim and inconsistency caused more to create suspicion rather than genuine motive.

The argument made by the former President of the Philippines, Diosdado Macapagal was that Malaya had no valid claim or right for the sake of security

of the whole region. And for this is territorial disequilibrium<sup>51</sup> and form stabilising factor and he also said for the self determination of Sabah- in his message to Congress of Philippines on January 28, 1963. This statement does not make sense to Sabahans.

Many leaders in the Philippines are not aware about the history of Brunei, Borneo and North Borneo which are of the same thing. What happened over the years for the sake of politics, many of them are dictated by the politicians from the southern region, that is Sulu, of their obsession for another territory knowing very well they could not even live-in peace among themselves for the last six hundred years from the time under Spanish until Philippines turned republic.

At the same token Malaysians- Sabahans do have suspicion about Malaysian leaders, called conspiracy theory if you would like. Where Malaysian leaders used this Sulu issue as a fear factor for Sabahans. If Sabahan are loyal to Malaysia Sabah is going to be invaded by Sulu which happened to be true but under different agenda and context altogether, the idea of leaders for Kuala Lumpur the way to make the united together to the Malaya<sup>52</sup> or Peninsula Malaysia

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<sup>51</sup> Cited elsewhere previously

<sup>52</sup> There was not any change to the name of Malaya but to Peninsula as officially by law

Sabahan are fearful having seen and experienced living with the Tausug tribe.

The Sulu must have been aware that there are sections of Sabahans-nationalists and Sarawak too who talk about getting out of Malaysia. The Sulu used this space as an opportunity to add fuel to ignite the seemingly ready fire that Kuala Lumpur does not treat Sabah well. Thus, Sabahans do not like Malaya. But of course, that is not correct. The correct guess would be that no single Sabah wants to live under the order of Sulu or the Philippines.

The Philippines was under Spanish rule for three hundred and thirty-three years 1565-1898 followed by American rule for forty eight (48) years until 1899-1946. For hundreds of years Sulu fought Spanish, foreigners, even by the time the Philippines gained its independence the fighting habit still exists. None other than Brunei that kept Sulu intact, in other words, without Brunei Empire there was no Sulu as today. We can now see which of the Kingdoms that had power, authority, jurisdiction and most importantly had more right to claim Sabah. Assuming Sabah is not part of Malaysia today, the country that Sulu has to deal with is Brunei, no one else

The Brunei Kingdom began around 1300s till end the 1500s it was during the reign of Sultan Bolkiah the 5th Sultan 1485-1528, till towards the end of 16th century the nation started dwindling down. The Brunei Empire covered the whole

Borneo at one time and all the Sulu Archipelago the among the satellite centres to oversee the territories were Serudung the Kingdom of Maynila and another Serudung in Indonesia.

Today Brunei is the only sovereign nation entirely on Borneo; the rest of the Island is divided between Malaysia and Indonesia which has a population of about four hundred and fifty thousand (450) in 2020 under the rule of an absolute monarchy by the Sultan.

Brunei rose as thalassocracy nation together with Majapahit in 15000-1600s and the two empires had more or less had an understanding, Majapahit Empire controlled the southern part of Malay archipelago, expanded its empire from east to west, from Aceh to Celebes and New Guinea while Brunei Empire controlled the north and northeast part of Malay archipelago almost the entire coastal of Borneo island, while northeast up to Seludung now Manila and all islands in Sulu Seas, including western part of Luzon, Visayan and Mindanao.

According to Chinese annal , Nanhai zhi reported that Brunei administered Sarawak and Sabah and Philippines kingdoms of Butuan, Sulu Malilu -Manila Mindanao of Brunei 2011 was given as a gift. About seventeen years (17) after the war ended 1688 a group of Sulu royal came to Brunei waters in an attempt to attack Brunei led by Datu Dacula was in fact the son of Abdul Mubin the

person who repulsed the attack was by the name of Pengiran Amir Bendahara of Brunei at the time it was the in the course of ensuing he fight began with war of words in the sea both Dakula and Amir were brothers later compromised Dacula was made as Pengiran Temanggong<sup>53</sup> of Brunei.

Sulu was made independent by Brunei in 1578 it was also the same time Spaniards attacked and captured Brunei in 16 April 1578 but by 23rd June 1578 Brunei Bandahara chase out the Spaniards that was in Brunei out because of such confidence Brunei under Sultan Hass, expanded his territory that covered Sarawak, Kalimantan , sulu, Luzon, Cagayan karma lan Island. Sultan Hassam married the daughter of sultan sulu declared sulu independent his son became sultan in 1610 his son kwon as sultan Mawallil Wasit. Sulu independent from Brunei when Sultan Hassan's son was installed as the sultan

The idea of research to trace the origin of the claim problem that both Malaysia and the Philippines feel uneasy diplomatically thus uncovering the real story would ease down as it was entirely correct as the claim historical account never was really brought to light.

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<sup>53</sup> Equivalent to Minister of defence in charge of security of the nation in Malay system but also called as wazir in particular Brunei Caliph in Arabic from Persian language

The anxiety continues to bug the nation and the state of Sabah in particular. The motive of continuing the bug has been a suspect all the while. Let it be known there has been many publicity even the Sulu people criticising the bogosity<sup>54</sup> The weirdest one, an already naturalised Sabahan lived in Likas dared to claim. But there is also a great suspicion in the making, that was the easy the Malaysian federal government handling the issue in which should it this group of people it could have long in prison but was happening that needs to securitised what behind this dubious questionable attitude coming from the gatekeeper.

Several efforts have been made in the past but were not viewed as serious nor concise enough for lay people to understand the re[succession in local political terms. Therefore, the continuing tardiness would put the State in risk partly because there are already close to million people from the Sulu archipelago swamping in Sabah. The Peninsula is not serious because they are Muslim brothers...

The analysis on claim based on the two premises the earlier one whereby that the claim that a territory of Brunei the North Borneo which now known as Sabah a part of Malaysia since 1963 should help to provide a hindsight of the credibility of the claimed and the reliable of the so-called historical perspectives Claimed

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<sup>54</sup> No less fifty name of people claiming to be Sultan Sulu heirs see list

by the Sulu. Since there has been not a shred of material evidence of the claim but merely as no more than a legend or folklore or mystic created as part of the earlier entertainment for the people of the local of the island around the Sulu. Claim was created out of jealousy, in particular seeing that Sabah has been far more affluent than the Sulu region in economy, political and social. Compare this with a warmongering attitude that has to do with culture.

There has been no discovery of proof that Sultan Brunei had given North Borneo to Sulu. If it were to be real it could be manifested in any form of records document or insignia for the occasion of such magnitude and importance for the country and people. To make the important occasion on paper where paper and ink were already easily accessible and available in that era many of such events were recorded by way of writing. Brunei was a country in this region that was prone to put things on paper by writing in Jawi script.

Brunei Sultanate has been in existence for close to seven hundred years. The unbroken chain was seven hundred years with twenty-nine Sultans. Began with Muhammad Shah embraced Islam 1368 to Bolkiah today.



These studies concentrated only from 1660 which began from the reign of Muhamad Ali that is three hundred and forty-nine year involving nineteen sultans.

Of all the nineteen Sultan of Brunei since 1673 none ever mentioned in public of the Sulu claim except one Sultan Omar Ali Saifuddin 1, that was in one occasion a group of Sulu came to the palace pretended to look for freshwater but the guard altered the wazir and conveyed to Sultan of the Sulu wanted an audience, before long Sultan Omar Ali to do the wazir if they came to see and talk about territorial claim of North Borneo he would get their heads chopped off. This was narrated in an old gurindam (poem) of Brunei folklore

suggested by one writer<sup>55</sup> who thought pajak is rent with the idea sultan Sultan was riding with the idea of getting annual rent. He proposed Malaysia should be with regard to the claim that Sultan Muhyiddin had given Sabah to the Sulu as a gift for helping to defeat Sultan Abd Mubin to win in the battle at Chermin Island in 1673. Records of evidence is too pertinent as proof for a claim of such

Since the answer to the question if Sulu ever had sovereignty over Sabah from the period 1673 to 1888, the answer was highly likely not.

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<sup>55</sup> Ahmad Nazzam Abdullah

How good was the agreement? Before discussion on the content of the contract alone, the question should be asked: how true was the claim that Sabah was given as a gift to Sulu? Since the truth of the claim had not been proven thus Sulu never owned Sabah and therefore Sulu had no right to lease Sabah to anyone.

With regard to the agreement (treaty) signed between Sultan and Baron Von Overbeck on 22 January 1878 cannot be taken as conclusive evidence because this is not the only document that related

which to many people conveys that was signs when looking at bigger picture that one document that was heavily relied on in order to prove or disprove validity of agreement,

How concerned we are about the interpretation of the contract. For the sake of argument. Sultan Jamalul Alam and Baron Von Overbeck did sign the piece of document that stated an area granted /leased from River Pandasan to rivers Sibusco and all coastal areas included. In this document the word *Padjak* or *Pajak* would help to determine if translation from Malay to English is correct. As per observation, word *pajak* to mean pawn in English has not changed since the last three hundred over years -word *pajak* if one deposited a Rolex watch in a

pawn shop usually time period in the agreement is included, the amount one has to pay monthly of yearly assuming one wants to get back the Rolex one had to redeem what was due otherwise it would remain in pawn shop.

\*The agreement with the Sultan was time was mentioned to be as long one wishes to have .. *selagi ada bulan dan bintang* to mean infinitely that obviously to mean cession. The word cession was actually in the receipt during British North Borneo company and even altered during the visits of a congressperson to London but he did not.

It's also worth mentioning another contentious issue in which Sulu supporters like to bring as an argument if Sulu has no right to claim Sabah or claim has no basis. The judgement delivered by Chief Justice of North Borneo C.F.C Mackaskie allowed the nine heirs of Sultan Kiram II<sup>56</sup> which simply has nothing to do with government to government, perhaps close to what the current President of the Philippines remarked recently.

A mention was made during the discussion at MAPHILINDO<sup>57</sup>, held in Manila in 1962 with the former Prime Minister of Malaya then Tengku Abd Rahman Putra Alj in which quoted to have said when asked what about the cession money

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<sup>56</sup> See Note number 12

<sup>57</sup> Regional Group comprised of Malaysia, Philippines and Indonesia

paid to Sulu , Tengku Abd Rahman replied he would look into the matter once he came back home in Kuala Lumpur

Having examined the available materials (documents) in hand , having observed the movement of Brunei Kingdom until the time it became empire , Brunei was no doubt had more power of control over vast area than any other countries in the Malay Archipelago. It can also be construed that Brunei had more right if it were to make any claim based on history. Sulu for having failed to provide proofs in as far as Claim One is concerned make it more likely as said as hearsay or legend in the making. While as for the Claim Two of the east coast of Sabah the agreement made and signed by Sultan Jamalul Alam and Baron Von de Overbeck was void and voidable contract, no legal effect from the inception-*void ab initio*. Discussion on the interpretations made sparingly in this study partly legal discussion on the agreement of 1878 and 1877I are less significant but good only for legal academic discussions.

## Summary

### Findings

Having examined the available documents both the contents and authenticities, which is not many, apart from a small portions found - remarks and comments from writers both local and foreign , whether Sultan Muhyiddin of Brunei in 1673 had ever given (ceded) North Borneo-Sabah the territory of Brunei to Sultan Sulu or Sulu which is termed as Claim One, the answer is not possible and not true in the absence of record and evidence.

As for the answers to Claim Two, on the contractual legal issues two approaches were deployed: first based on purely legal argument by sticking to agreement signed between Sultan Jamalul of Sulu and Baron Von de Overbeck dated on 22 January 1878 on the interpretations of the contents of the contract words *Padjak* in Malay, (in English pawn) has been the same for last three hundreds over years, it could slightly different connotation due to translations from Malay to English but this was written in classic Malay *dipadjakan selama lamanya* -metaphorically in English means, '*you can have till the end of time*'

that must be very close to cession, surrendered not leased. Cession money of payment means was an intentionally to mean 'forever' .

The second approach, the contract made on 22 January 1878 was defective based on the Claim One Sulu did not own Sabah. It also means he had no right over wholly or partly of Sabah.

With the presence of earlier contract between Sultan Mobin of Brunei and Baron Vo de Overbeck signed at the Brunei Palace on 29 December 1877 , twenty four days earlier. Sultan Sulu might not aware but Baron Von de Overbeck was.

Baron Von de Overbeck was acting in bad faith (cheating) impossible for him not to know the contract he made with Abdul Momin on 29 Decemeber1877.

Overbeck unlikely to be genuine, suspectedly with motives , the issue of contract was also taken overtime to be of any good and most importantly of all, Sultan Jamalul Alam had no right to lease or grant or cede the land, he did not own.

## ENDNOTES

1. At the [ASEAN Summit](#) August 1977 President Ferdinand Marcos of the Philippines announced that he would take “definite steps to eliminate one of the burdens of ASEAN” he said. But nothing really got through despite negotiations and Marcos’s assurance which repeated in 1984, can refer to discussion of what actually Marcos did instead . Following the overthrow of Marcoa President Corazon Aquino sought to drop the claim before the 1987 ASEAN Summit yet again.. Aquino unable or obtained consensus so too President Ramos but every Bill to repeal the Republic Act 5446 but failed but in 2009 The Philippines baseline ;aw does not appear to include Sabah within Philippines ...It was
2. Extracted below are the most common statements made by the Sulu/Philippines as reasons for their claim to Sabah over the years “The Philippines, presenting itself as the successor state of the Sultanate of Sulu retains a "dormant claim" on Eastern Sabah on the basis that the territory was only leased to the British North Borneo Company in 1878, with the sovereignty of the Sultanate”
3. “The Philippines maintains its territorial claim over Sabah based on the 1878 "Lease Treaty" and based on the historical account that Sabah is a gift from the Sultan of Brunei

to the Sultan of Sulu, which is now a region and part of the sovereign territory of the Philippines”

4. The Philippines derives its claim to Sabah from the Sultanate of Sulu, which once ruled the southernmost region of the Philippines. The sultanate asserts that the territory of North Borneo was a gift I
5. Contention on the issue of word pajak others translate as rent without referring to experts' view also by saying Sultan intention was just that when the British meant it to be cession though was written in Jawi script in Malay language two good guesses worth pondering, first, English legal experts in that group could be one of the Alfred Dents. Founder of North Borneo Chartered Company also known as BNB Company formed in 1881 the same co also admin Labuan temporarily administered Spanish... Thomas Dent...Baron von Overbeck..Brunei 15,000 Spanish dollar
6. Overbeck withdrew in 1879 failing to attract his country leaving to Alfred Dent to Manila.. Dent decided Brit NB provisional Association Chartered Company established and settled on Gaya Island raided by Mat Salleh
7. are of the lackadaisical attitude though it has been in open for public debate a part form a few in group like what that discussed but some in the academic field did mentioned in tier writing of the importance to settle via payment or to the Sulu which to me this is for the reason they in fact have not followed the history and my suggestion they sound the find out feel it if only they visit Brunei may hear the whisper through Bruneians never opened their .... See study of the Sultan mummied



8. The bill was widely criticised for effectively dropping the country's claim over the territory. Muslim members of Congress also voiced their strong opposition to the measure for fears it would "endanger" the proprietary rights of the Sultanate of Sulu. This eventually led Shahani to not pursue the bill's passage. While Aquino's successor was similarly unable to obtain consensus to drop the claim, he officially put the dispute aside in order to improve ties with Malaysia.
9. "Philippines Republic Act No 5446 took effect in 1968 September 18, regards Sabah its territory over which the Republic of the Philippines has acquired dominion and sovereignty " on July 16, 2011 the Philippines Supreme court ruled that the Philippines claim over Sabah is retained and may be pursued in the future according to...
10. There are minor inconsistencies on some facts as well as dates after final inspection, referencing and cross referencing with available materials -documents especially documents obtained from the Sulu sources, nonetheless the author is standby with his materials for examination and authenticity of the material. The latest cross referencing was against material collected by a private collector Shari Jeffri...
11. Baron von Overbeck.. Colin Crisswell, Disputes Between the Colonial Power arising from the Establishment of the NBCC 1881-1905. P452,
12. Mccaskie -North Borneo Chief Justice C.F.C Macaskie December 18th 1939 state that the heirs of the sultan were legally entitled the payment for North Borneo the cession money. English translation b Maxwell and Gibson. The High Court of North Borneo designated 9 heirs of Sulu entitled. But note, however, did not establish the legal precedent since the Commonwealth Government has abolished the Sultanate of Sulu.

13. The difference between Treaties and Agreements: Treaties are an international agreement defined by the Vienna Convention on the Law of Treaties ``treaties of the treaties, rules, procedures and guidelines it can be: Convention, a Protocol, a Pact, an Accord, etc. International Agreement means formal understanding our commitment between two or more countries called bilateral or multilateral international agreement. May differences based on the Constitution the countries
  
14. Be noted, the inconsistency of using full names Baron Gustav Von Overbeck, Baron de Overbeck or Overbeck and interchanged use of the name of country old and new name. North Borneo or Sabah this study.
  
15. Centre for the Study of Colonialism, Empire and International La as SOAS, National Archives; London; South East Asian-The Cabinet Papers School of Advanced Study University London; British Museum of British Colonial; South east Asia Collection-The British Library are among the places popular looking for references
  
16. The nearest vaguely, if Sulu could claim of Sabah was based on a letter addressed to Ferdinand Blumentritt date on February 23, 1892 was thought to consider relocating his family to North Borneo plan to established a Filipina settlement
  
17. Discussion with a few friend professors, in particular meeting with Associate Professor in History Dr B.A. Hussainmiya, Associate Professor in Historical and International Studies HJ Awang Asbol Bin Hj Mail, and brief meeting with Dr Hjh Asiyah az-Zahra Hj Ahmad Kumpoh Deputy Dean of Art and Social Science. My meeting was introduced arrange by another friend Dr Yabit Alas of the same University whose support was invaluable.

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## **Appendixes**

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2. Statement made by Professor LR Wright, below:



3. Chronological notes compiled by private collector Shari Jeffrei on Borneo History below:



