



The Federal Court has dismissed appeals by two groups of indigenous people who challenged the State Government of Sarawak over native customary rights (NCR) lands for the construction of Bakun Dam (Bato Bagi & Ors) and a proposed pulp mill factory in Tatau (Jalang ak Paran & Anor).

The unanimous decision was led by Justice Tun Zaki Azmi presiding together Chief Judge of Sabah and Sarawak Tan Sri Richard Malanjum and Federal Court judge Datuk Seri Md Raus Shariff. The Federal Court has affirmed the decision made by the Court of Appeal last year and the High Court of Sarawak in April 2008 which dismissed the natives' claim.

The issue that arose from the judgment of the case is the refusal of the judges (Zaki and Malanjum) to interpret the constitutional questions of “whether section 5(3) and (4) of the Sarawak Land Code relating to the extinguishment of native customary rights are ultra vires because it the basic rights guaranteed under the Federal Constitution.

We feel strongly that justice system has failed to protect and recognize the rights of indigenous peoples especially in Sarawak. Land and natural resources are very crucial to the natives and they are protected under the constitutional rights of the natives. The decision of the Federal Court will adversely affect another 200 or more similar NCR cases in Sarawak and we are afraid that this will set a precedent for other NCR cases.

Malaysia supports the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted by the UN on 13 September 2007. However the court has failed to take into consideration this fact which states clearly the close relationship of the natives and their rights to own and develop their lands & resources.

We hereby strongly urge the Federal Government, the Sarawak State Government and also the Courts to uphold the NCR rights of the natives and to ensure that these rights enshrined in the Federal Constitution of the country is applied!

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