

# CHAPTER 1

## Implication Of Communal Grant To Individual Grant In Sabah

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### ABSTRACT

The implementation of Communal Grant has been established in Sabah, but Individual Grant will also be practiced to the natives in replace of the Communal Grant. Communal Grant is a Native Title that forms in a group where it is involved in amalgamation group of land owner. Whereas Individual Grant is an individual or personal ownership in which the grant will only have one land owner. Individual Grant has been practiced so that the natives own the land under their name, develop their land and as a property to be inherited for generations. The issue that has been raise within the Communal Grant holder is dissatisfaction among the private companies and the overlapping in term of ownership will be happen in the future. The purpose of this study is to identify the implementation of Individual Grant towards the natives in the future and to evaluate the effectiveness of implementation of Individual Grant that able to reduce the land title issue in Sabah. The methodology of this study will conduct literature review and integrate quantitative data collecting through questionnaire and obtain relevant information from Sabah Land and Survey Department. Literature studies are used to better understand the concept of grant owned by the natives and Sabah Land Ordinance Chapter 68. The study was conducted to identify the effects of the Individual Grant enforced by the Sabah Lands and Surveys Department and Sabah Native Service Programme (PANTAS) on natives. The recommendations of the study found can be determine the abolition of Communal Grant is reasonable or unreasonable. Finally, it is hope that the conflicts regarding both of the Communal Grant and Individual Grant can be overcome. In the meantime, the abolition of Communal Grant may prove it will not affect Customary Land in Sabah.

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## 1.1 INTRODUCTION

Section 76, Land Ordinance Sabah, Cap 68 states in cases where any State land planned by the Government for the natives of Sabah or a claim to customary tenure of land has been established or a claim to native customary rights has been dealt with by a grant of land and such land is to be held or is held for the common use and benefit of natives and is not assigned to any individual as his private property, it shall be lawful for the Minister to sanction a communal native title for such land to be issued in accordance with the relevant provisions of this Ordinance in the name of the Collector as trustee for the natives concerned but without power of sale and such communal native title shall be held to be a title under this Part, but shall be subject to such rent as the Minister may order.

A total of 96 communal titles were issued, involving 152,268 acres to 13,789 beneficiaries in 15 districts in Sabah since 2010. Dissatisfaction arose amongst the people, when 51 communal titles were placed under joint venture with state and private companies for agricultural development (Edgeprop.my, 2018). The Land and Survey Department of Sabah is one of the agencies responded that the non-existing of individual title has become a major factor in against the implementation of Communal Grant. Besides the level of understanding about the Communal Grant is more likely unreachable towards the rest of the respondents. According to the findings states that 45.6% from the respondents are not completely acknowledge about the concept of communal land title and the rest tend to be wise about it (Lintan, 2018).

This study could be important to the natives, Sabah Land and Survey Department and Sabah Natives Land Service Programme (PANTAS). This study hopes to establish an understanding on the implementation of individual grant towards the natives that may from different district rural area. As is known, researcher will only focused in Keningau district, but communal grant has implemented in other rural area such as Tenom, Sipitang, Pensiangan, Ranau, Kota Merudu, Tongod, Tambunan, Pitas and etc. The natives will be realized the benefits and ill effect for both communal and individual grants in present and in the future. The findings of this study also will redound to the benefits of both Land and Survey Department Sabah and PANTAS in both practical and administration aspect. The study will help to enhance and develop better governance in handling the grants management. Thus,

this will be a guideline that will make use of in the present and in future to those who concerning with grants issue.

## 1.2 PROBLEMS

Application of communal grant has been issued back in the year 2010 for rural areas in several districts in Sabah. The purpose of the communal grant concept is to protect the rights of natives with regards to customary land ownership. A total of 96 communal titles were issued in 15 districts in Sabah, which totaling area of 152,268 acres and 13789 of beneficiaries with communal title holder. However, about 51 communal titles have been developed in the form of joint venture between the beneficiaries and state government agencies or private companies. Joint venture agreement can be described as business arrangements of two or more parties in agreement to pool their resources for the purpose of accomplishing a task. For lands that have joint venture development, land owner would be employed as workers in the plantation while enjoying profit sharing. Even so, dissatisfaction among the private companies for agriculture development had arisen. Some claimed their native customary rights to ancestral land had been reduced to just beneficiaries under a communal title. This had caused unhappiness to the natives.

Communal title concept was not actually a new concept but it is already had existed in the Sabah Land Ordinance. Before the implementation of the individual title where now the state decided to abolish the communal title, according to the findings, the majority of the natives are not completely acknowledging the concept of the communal title. Generally, both government and the natives shall engage each other so that the natives are well informed with the communal title. As time pass by with the change of native's lifestyle, some of the people will not concern about the other right. The issue of overlapping in terms of ownership will <sup>happen</sup> ~~be happening~~ <sup>who???</sup> in the nearest future. Meanwhile, they will only gain beneficiary among themselves. Besides, the conflict that getting arises which is the native aim at ensuring they can pass down the lands they are working to the future generations. This has been difficult to ensure their land to be given to the next of kin.

### 1.3 OBJECTIVES

There were two main objectives of this study:

- (i) To identify the implications of abolition for communal grants to individual grants towards the natives in the future.
- (ii) To evaluate the effectiveness of implementation of the individual grants that able to reduce the land title issue in Sabah.

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### 1.4 LIMITATION OF STUDY

The scope of the study involves in understand the impacts of replacement for the individual grants into communal grants among the Sabah natives, Land and Survey Department Sabah and Sabah Native Land Services Programme (PANTAS). This study will only focus in some of the rural area in one of the ~~district~~<sup>districts</sup> in Sabah, which is Keningau. The data collection will be conducted in the Land and Survey Department in Kota Kinabalu, Keningau Land Office and some relevant villages located in Keningau. This study will not technically cover the practical of surveying the study area but would be done through the utilization of questionnaire and interview to the villagers and Land Office Officer as a survey and reference. By both of the strategy used, the researcher will be able to know the effectiveness of the replacement of the grants.

### 1.5 LITERATURE REVIEW

Sabah Land Ordinance Cap. 68 is the main legislation in Sabah for the classification of land and the provision of rights and titles over land. ~~The~~<sup>This</sup> Ordinance also governs matters relating to the collection of revenue, land survey and demarcation, enforcement and penalties for offences related to land and land ownership. A literature review is a survey of scholarly sources on a specific topic. It provides an overview of current knowledge, allowing you to identify relevant theories, methods, and gaps in the existing research.

According to Section 15, Land Ordinance Sabah Cap. 68, the definition of Native Customary Right (NCR) is includes:

- (a) Land possessed by customary tenure;

- (b) Land planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare;
- (c) Isolated fruit trees, and sago, rotan, or other plants of economic value, that the claimant can prove to the satisfaction of the Collector were planted or up kept and regularly enjoyed by him as his personal property;
- (d) Grazing land that the claimant agrees to keep stocked with a sufficient number of cattle or horses to keep down the undergrowth;
- (e) Land that has been cultivated or built on within three years;
- (f) Burial grounds or shrines;
- (g) Usual rights of way for men or animals from rivers, roads, or houses to any or all of the above.

### 1.5.1 Communal Title

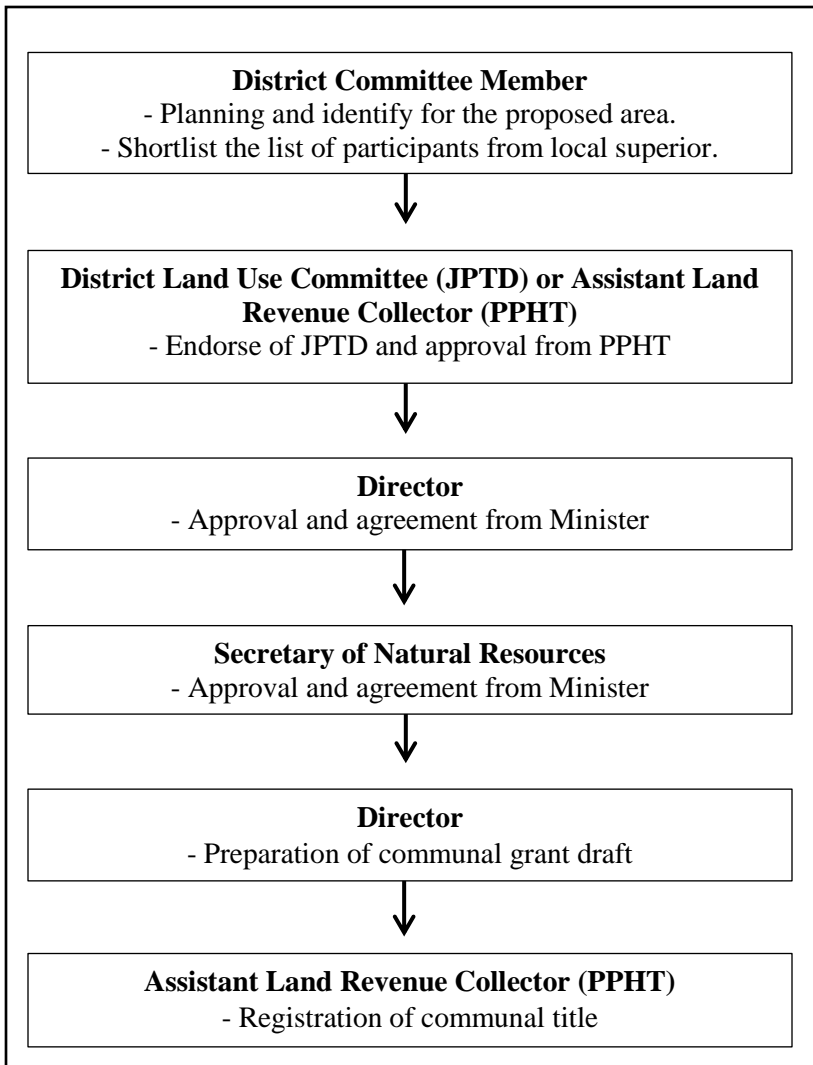
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**Figure 1.1:** Communal Grant

The concept of Communal Grant is similar to the customary right grant which apply in ordinance. The application of Communal Grants made in group instead of individually. The implementation of Communal Grants planned in accordance with legal procedures and anyone found to be trespassing may be subject to legal action (Lintan, 2018).

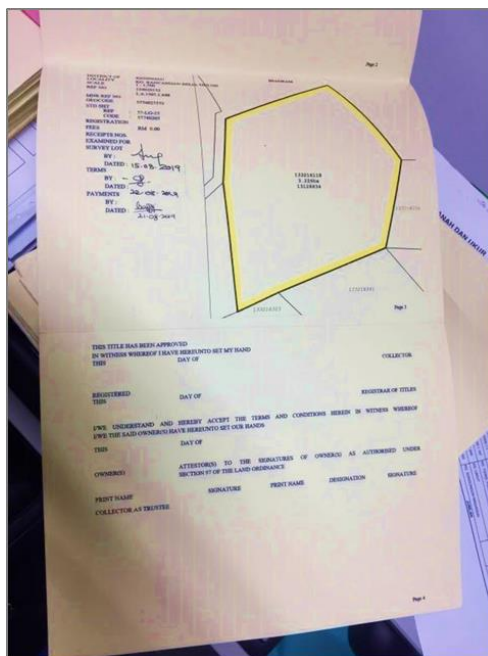
Flow chart below shows the process of acquire Communal Grant through a system called Organized Land Fast Track which is one of the innovations by government in order to speed up the production of communal title. Fast Track system takes within 6 months to complete Communal Grant compared with previous Open Land system, which take up to 10 years for completion.



**Figure 1.2:** Flow Chart of Process of Acquire Communal Grant by Organized Land Fast Track

## 1.5.2 Individual Title

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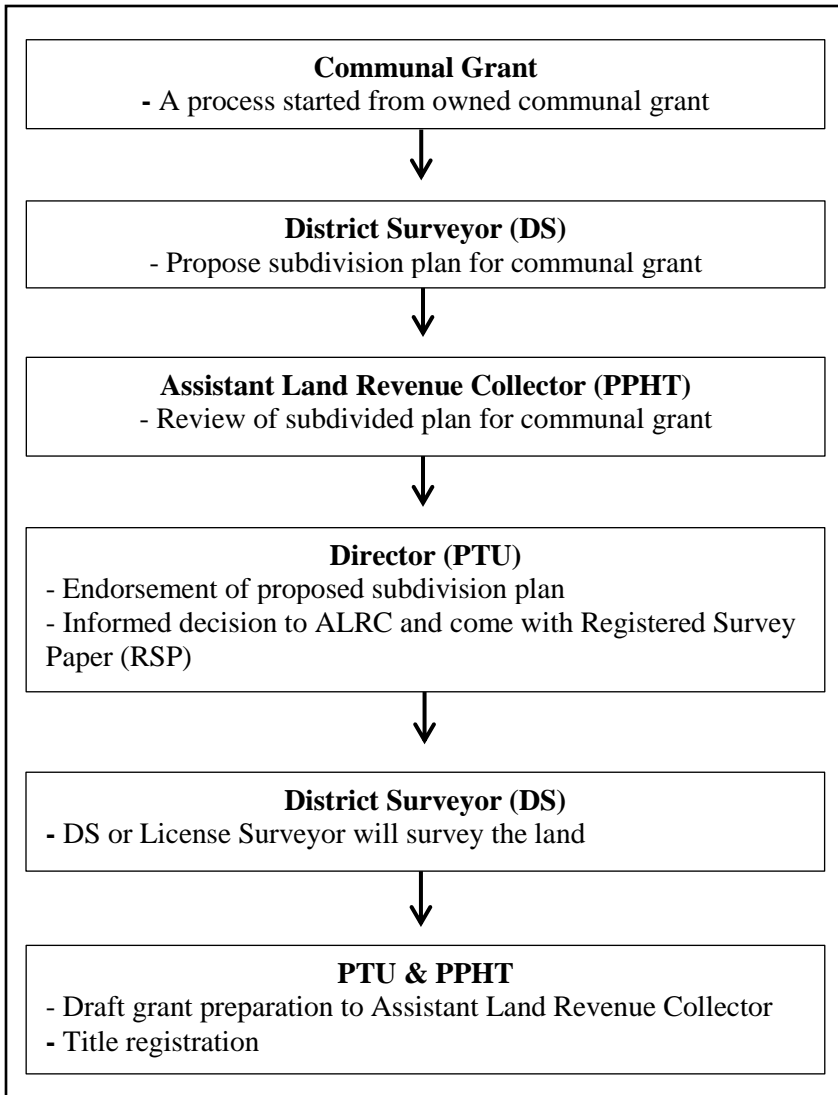


**Figure 1.3:** Individual Grant

Individual Title also known as sub-division of Communal Title. The right in Individual Title is opponent from Communal Title which is the right to use the property entitled by the land owner.

Section 77 stated a communal title may, with the sanction of the Collector, be sub-divided and wholly or in part assigned to individual owner~~x~~ who shall thereupon receive native title~~x~~ in their own name~~x~~. In such cases, it shall be lawful for the Collector to sign a transfer on behalf of the community.

Individual native title~~x~~ cannot be charged, transferred or assigned to a new party, with the exception of the owner's children. The individual native title~~x~~ also cannot be dealt with through the power-of-attorney, this has happened before causing some complications when the title holder passes away. These measures are to protect the land owner, said Chief Minister Datuk Seri Mohd Shafie Apda (Edgeprop.my, 2018).



**Figure 1.4:** Flow Chart of Produce Individual Grant



### 1.5.3 Special Terms Of Grant

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#### 1.5.3.1 Communal Grant

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**Table 1.1** Special Terms of Communal Grant

1.	The said land is demised herein expressly as a communal title for the purpose of cultivation of agriculture crops of economic value
2.	The said land shall be cultivated, developed and maintained in accordance with good husbandary practice as stated hereunder throughout the whole period of tenure of the said land only plants or trees approved by the director of agriculture, shall be planted or cultivated on the said land
3.	The Collector shall act as the trustee of the said land for the beneficiaries
4.	The Collector shall abide with the directions and decisions of the Director of Lands And Surveys who shall solely determine the terms for the administration of the trust.
5.	Transfer or charge of this title is prohibited.
6.	Sublease of the said land is prohibited except to a state government agency, a company or body corporate registered under Malaysia Law, which shall be first approved by the Director Of Lands And Surveys with the sanction by the Minister.
7.	Subdivision of the said land is prohibited except with the written permission of the Director Of Lands And Surveys.
8.	The government may at any time, excise from any lot, an area for use and benefit of the community without compensation.
9.	The beneficiaries shall at all times comply with the directions of the Collector in relation to the use and occupation of the said land by the beneficiaries and their families and also in all matters relating to rights of way, drainage, irrigation canal, bridges or any other easements and allocation of lots shall determine any lot boundary disputes.
10.	The addition removal or replacement of any beneficiary to the said land shall be subject to the approval of the Director Of Lands And Surveys upon due enquiry by Collector.
11.	No dealings by the beneficiaries of their interest shall be recognized unless and until approved by the Director Of Lands And Surveys and no beneficiary or other person shall have any caveatable

interest over the said land save in respect of an interest claimed by the government.

1.5.3.2 Individual Grant

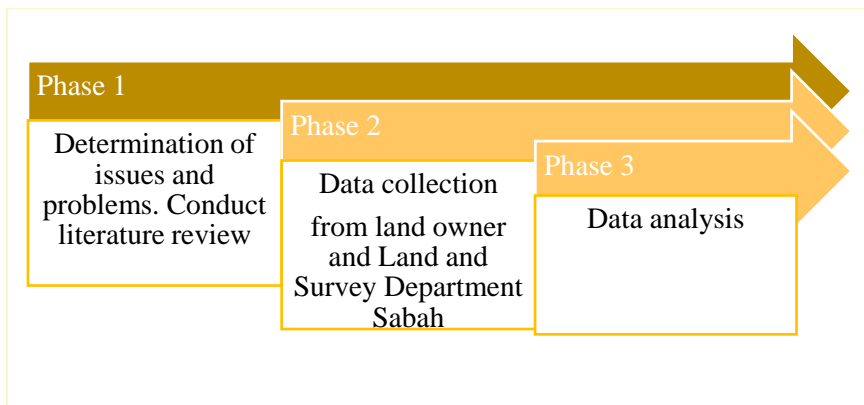
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Table 1.2 Special Terms of Individual Grant

1.	The said land is demised herein expressly and only for the purpose of the cultivation of an agricultural crop of economic value.
2.	The said land shall be cultivated or developed and maintained in accordance with good husbandry practice throughout the whole period of tenure of the title;
3.	The owner shall comply with all directions which may from time to time be given to him by the director of agriculture with regard to the prevention of soil erosion and control of pests and diseases;
4.	Transfer of this title is prohibited except to the next of kin and with the written permission from the director of lands and surveys;
5.	"THE NEXT OF KIN" which term shall include and limited only to owner's native spouse or owner's native lineal descendant and ascendant;
6.	Charge or sublease of this title is prohibited unless with the written permission of the director of lands and surveys is first obtained.
7.	Subdivision of this title is prohibited except with the written approval of the director of lands and surveys.
8.	No rights or powers granted by the issue of this title shall be transferred by the appointment of power of attorney or other means

1.6 METHODOLOGY

The methodology used in this study is divided into three phases. Firstly, the researcher will identify the problem statement and conduct literature review from relevant <sup>theses</sup> ~~theses~~, journals, articles, news, acts and <sup>regulations</sup> ~~regulation~~. Secondly, researcher will <sup>conduct</sup> ~~be integrate~~ quantitative data <sup>collection</sup> ~~collecting~~ through questionnaire and obtain information form Land and Survey Department. Lastly, responded questionnaires will be <sup>analyzed</sup> ~~analyze~~ and <sup>finalized</sup> ~~finalize~~ with conclusion.



**Figure 1.5:** Methodology Flow Chart

### 1.6.1 Phase 1 of the Study

Phase one is the early stage that need to be done before ~~the~~ decision making for ~~the~~ next phase. This phase will tell the approach from topic selection, determination of research objectives and identification of problem statements. The selection of the topic needs to be <sup>concerned</sup> ~~concern~~ as current issues. Research objectives have to match <sup>those problems</sup> ~~the problem~~ found for the selected topic. The matter of Communal Grant and Individual Grant has turned an important issue among the native in Sabah since year 2018 and become the reason <sup>of</sup> ~~for~~ the selected topic. The source of relevant information has been done by conducting literature review which includes newspaper, websites, <sup>theses</sup> ~~theses~~ and Land Ordinance Sabah.

### 1.6.2 Phase 2 of the Study

Second phase describe method of data collection and research instrument. In this phase researcher describe how, where and what <sup>is</sup> ~~are~~ the data <sup>to</sup> ~~will~~ be collected. Research instrument <sup>presents</sup> ~~present~~ the subject of each section in the questionnaire. In this phase, researcher will carry out data <sup>collection</sup> ~~collecting~~ by quantitative method. This method <sup>includes</sup> ~~include~~ integration of questionnaire by land owner and data collection from Sabah Land and Survey Department.

### 1.6.3 Phase 3 of the Study

This is the final phase of the research study. In this phase, the data analysis will be done based on the data acquired from second phase. Researcher will use Statistic Packaging for Science Social (SPSS) software to process the collected data. After the data has been analysed, researcher will discuss and review the result. Lastly, researcher will complete the study by conclusion and recommendation.

## 1.7 ANALYSIS RESULT

This section summarizes the analyzed result from distributed questionnaires. A total of 60 questionnaires have been received from respondents. There are 5 sections of the question prepared in the questionnaire. Only 4 sections of feedback from questionnaires have been analyzed through SPSS software, which includes the respondent's demography, general information, impact assessment, and understanding toward the individual title.

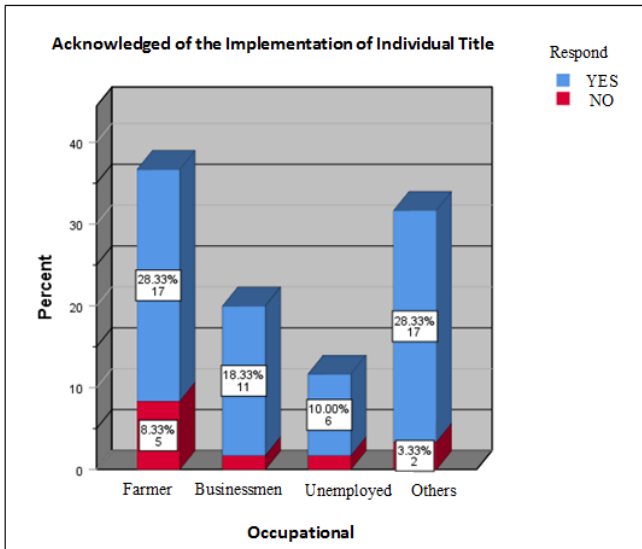


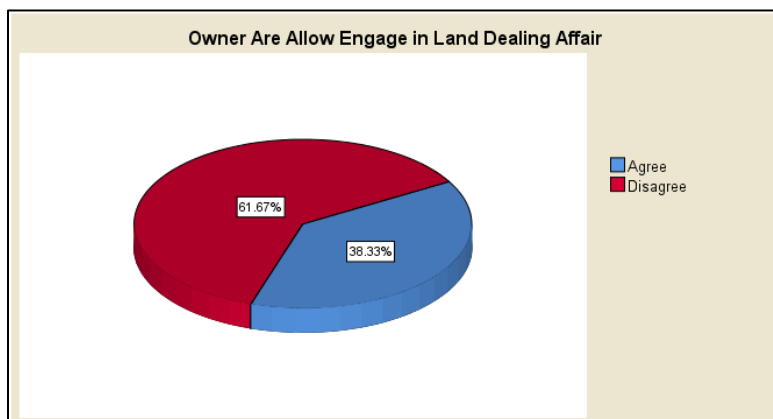
Figure 1.6: Frequency and Percent of Respondents on Acknowledged of the Individual Title

According to the analyzed result, figure 1.7 ~~showed~~ <sup>shows</sup> majorities of the respondents are acknowledged the implementation of Individual Title. Based on the findings from the responses in general information component, there are few respondents still do not realize the production of Communal Title has been completed by the government.

**Table 1.3:** Conflicts Occurred Among Joint Venture

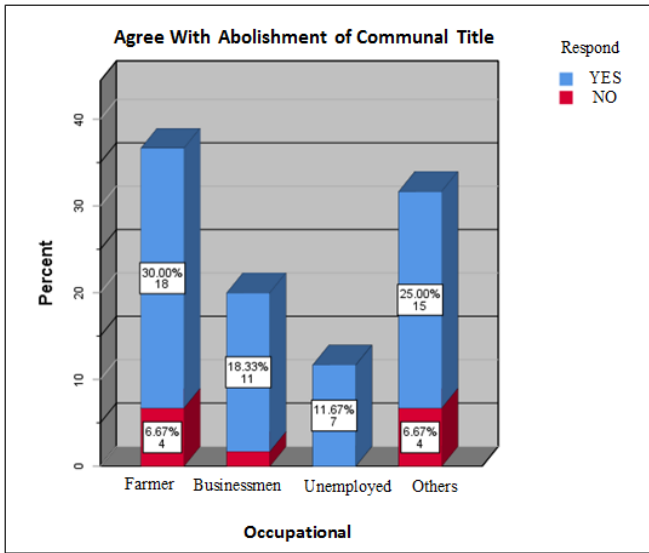
Conflicts Occured Among Joint Venture					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	1	1.7	1.7	1.7
	Disagree	2	3.3	3.3	5.0
	Neutral	17	28.3	28.3	33.3
	Agree	23	38.3	38.3	71.7
	Strongly Agree	17	28.3	28.3	100.0
	Total	60	100.0	100.0	

A result in table 1.3 reveals the factor of implementation of the Individual Title from impact assessment of respondents. The issue of joint venture activities has become the main factor of the implementation of the Individual Title. Respondents believe that joint venture activities might raise conflicts among the beneficiaries in a Communal Title. Hence, the result shows land overlapping between beneficiaries also considered as the cause of Individual Title implementation.



**Figure 1.7:** Title Owner in Land Dealing Affair

After all, the government has revised the special terms in the grant as a consequence of the abolishment of Communal Title and replaced by Individual Title. Based on the analysis of the understanding of respondents towards Individual Title, figure 1.8 showed 61.67 percent of respondents are disagreed about the landowner is allow engaged in land dealings affair. In view of this, respondents are mindful of the purpose of the land title.



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Figure 1.8: Agree With Abolishment of Communal Title

Table 1.4: Cross Tabulation Result

D2 * B2 Crosstabulation					
			Agree with abolishment		Total
			Communal Title		
			YES	NO	
A	UNDERSTAND	Count	49	8	57
		% within B2	96.1%	88.9%	95.0%
	DO NOT	Count	2	1	3
	UNDERSTAND	% within B2	3.9%	11.1%	5.0%
Total		Count	51	9	60
		% within B2	100.0%	100.0%	100.0%

In brief, a cross tabulation between general information and the comprehension towards the implement Individual Title on respondents has been analyzed. Figure 1.9 and table 1.4 <sup>state</sup> ~~states~~ most of the respondents are well known regarding the Individual Title and agreed with the abolishment of Communal Title. Meanwhile, there are <sup>some</sup> ~~the~~ respondents who do agree with the abolishment but not comprehend the implementation of Individual Title.

## 1.8 DISCUSSION AND CONCLUSION

This part will summarize and conclude the study. Based on the findings, 75 percent of the respondents have agreed with the replacement for the Individual Title into Communal Title. Respondents believed that the implementation of the Individual Title could be a help to lessen or solve <sup>those</sup> ~~the~~ issues that occurred among the beneficiaries in a Communal Title. In other words, the conflict over land overlapping between beneficiaries and the right of title transfer has been considered as capable of resolve such issues. Refer to table 1.2, special terms in Individual Title stressed that transfer of the title is prohibited except to the next of kin, the term of the next of kin shall be limited to the family relation includes owner's spouse or, owner's parents or, owner's child.

Generally, a number of implications can be formed throughout the study. All of the beneficiaries in Communal Title will own their Individual Title as well as their land registered in the Individual Title with <sup>the name of one owner only.</sup> ~~only one owner name~~. Therefore, <sup>owners</sup> ~~the land owner~~ can have their land and grant with no worries. However, joint venture activities might happen and increase since the land owner <sup>has</sup> ~~have~~ <sup>his</sup> ~~their~~ own grant. The worst when the joint <sup>venture</sup> ~~venture~~ activities are engaged in logging in the coming years.

In fact, the implementation of the Individual Title also given some implications to the Land and Survey Department Sabah, especially Land Development Division, Land Administration Division, Land Revenue Collector, Sabah Native Land Services Programme, and District Surveyor. Land surveyor encountered some constraints during field surveys such as steep areas and difficulty of boundary detection because most of the Communal Title is located in rural areas. Besides, the government would take a longer time to issuance Individual Title compare with Communal Title, because the production of a Communal

Grant is equal of up to 100 pieces of Individual Grant. To sum up, the government ensured and stressed that Individual Grant <sup>owners</sup> ~~owners~~ did not have the right to engage in sales and purchase dealing affairs and the grant should be a property to be inherited to the next of kin.

### ACKNOWLEDGEMENT

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