

“Double Squeeze”: Internal Colonialism, Intimate Exclusion, and Absence of Female Subjects in the Draft Bill on Customary Law Communities

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Abstract

Indigenous women serve as central custodians of ecological knowledge and social reproduction, yet they are systematically marginalised by a “Double Squeeze”: external pressure from state-led extractive expansion and internal patriarchal customary structures. This paper argues that the two-decade stagnation of the Customary Law Communities Bill (RUU MHA) needs to be understood as a manifestation of State Capitalism seeking to secure Indigenous territories as investment assets under the guise of Green Developmentalism. Through a Comparative Textual Analysis of the 2026 House Draft and the 2025 Civil Society version, using the lens of Feminist Political Ecology (FPE). This research reveals how the deliberate erasure of female subjects from legal texts facilitates “Intimate Exclusions”. In this process, the state effectively co-opts local patriarchal elites to legitimise land dispossession. The study concludes that passing the Bill without explicit gender affirmation and protection of women’s managed areas (*wilayah kelola*) risks legalising the dispossession of Indigenous women’s living spaces to ensure investment security. It calls for a fundamental reconstruction of the Bill to recognise women as equal legal subjects and to institutionalise their substantive veto power in land-related decision-making.

Keywords: Indigenous Peoples bill, indigenous women, feminist political ecology, state capitalism, green developmentalism

Introduction

To date, discussions regarding the Bill on Customary Law Communities (RUU MHA)¹ in Indonesia have so far often been trapped within a normative narrative: concerning human rights fulfilment, constitutional mandates, and law enforcement. While this perspective is valid, it is insufficient to explain why the Bill has suffered from chronic stagnation for more than two decades. This paper argues that the debate surrounding the RUU MHA should be understood as a symptom of State Capitalism intersecting with Internal Colonialism. This phenomenon stems from unequal power relations between the state, the market, and Indigenous communities.

Land holds different meanings and possesses contradictory strategic values for these three actors. In global political economy studies, land is understood by the market as an economic resource for capital accumulation. For the state, land is both a symbol of political sovereignty and an instrument of social redistribution. However, for Indigenous communities, land connects the material, cultural, and spiritual

dimensions of life. It is the foundation of their claims to autonomy, sustainability and the right to self-determination.

Consequently, the agrarian conflicts underpinning the urgency of RUU MHA cannot be understood merely as a matter of resource distribution, but rather as an expression of structural tensions within the global political-economic order (Harvey 2003; Fraser 2009; Coulthard & Alfred 2014). These tensions have intensified alongside the expansion of global capitalism, which places customary land at the crossroads between national development projects, global market integration, and the international human rights regime.

Politically, RUU MHA has been included in the National Legislation Programme (*Prolegnas*) for approximately two to three terms of government, including during the first term of the current administration under President Prabowo Subianto. However, discussions on the Bill have been slow and halting. This delay is in stark contrast to the rapid passage of pro-market legislation, such as the revision of the Mineral and Coal Mining Law (Minerba Law) and the Job Creation Law (Omnibus

Law). This reflects a political reluctance at the domestic level to seriously accommodate the rights and voices of Indigenous Peoples regarding land rights.

But who exactly are Indigenous Peoples, and what rights do they have? The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in 2007, is the key instrument for upholding Indigenous and community rights within the international human rights framework. The UNDRIP is the result of a long struggle by various actors within the international Indigenous Peoples' movement. Indonesia has been involved in this movement since the Working Group on Indigenous Populations (WGIP) was formed at the UN in 1982.

One of the most important aspects of the UNDRIP is its definition of 'Indigenous Peoples', which recognises historical continuity and territorial ties:

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories... consider themselves distinct from other sectors of the societies now prevailing in those territories" (UNDRIP 2007).

In addition to the UNDRIP, another crucial instrument is ILO Convention 169 (Convention Concerning Indigenous and Tribal Peoples) of 1989. Unlike the UNDRIP, ILO Convention No. 169 is legally binding, with strict ratification and monitoring mechanisms. This Convention emphasises the right to land (living space), cultural identity, employment, and substantive participation. ILO 169 obliges governments to consult with Indigenous Peoples in good faith. Unfortunately, to this day, Indonesia has not ratified ILO Convention No. 169, demonstrating an ambivalent stance by accepting a non-binding declaration but rejecting a legally binding convention.

Cross-regional comparative studies show that the effectiveness of international instruments depends heavily on the degree of harmonisation with domestic law. In Latin America, Alva-Arevalo (2019) highlights Peru as a *role model*, where the ratification of ILO Convention No. 169 and the adoption of the UNDRIP have not merely remained on paper, but have become an effective foundation of case law for winning Indigenous land disputes against corporations. Similar success is evident in Asia, particularly in the Philippines, which has successfully translated abstract international principles

into positive law through the Indigenous Peoples' Rights Act (IPRA) 1997, thereby providing legal certainty for ancestral territories. Conversely, developments in Africa serve as a stark warning. Mitchell and Yuzdepski (2019) note that without fundamental agrarian reform, the implementation of the UNDRIP actually triggers new friction as it clashes with national land policies that remain centralised.

These empirical variations imply one crucial point for Indonesia: ratification of or support for global norms will have no substantive meaning without robust domestic legislation (such as RUU MHA) capable of breaking down the rigidity of the state's agrarian regime. Unlike the Philippines, which provides legal certainty through the IPRA, Indonesia insists on maintaining the model of Conditional Administrative Recognition. The government employs a "politics of denial" towards the UNDRIP definition to avoid the obligation to automatically recognise territorial rights. For Indigenous women in Indonesia, this convoluted administrative regime constitutes a form of multi-layered institutional violence. As women often have the least access to bureaucratic literacy, financial resources and formal political spaces at the village level, imposing onerous conditions for recognition is tantamount to shutting the door on legal protection for the territories they manage. This comparative table shows that Indonesia's decision to maintain legal "complexity" is not accidental, but rather a systematic strategy to delay the recognition of rights that ultimately harms grassroots women the most.

Contemporary academic literature on Indigenous women in Indonesia reveals a significant paradigm shift, moving from narratives of victimisation to recognition of 'living agency'. Recent studies collectively challenge the stereotype of Indigenous women as passive objects in the management of natural resources. Rahmatia (2025) and Masruroh (2024), in their research in North Lombok and Banten, found that Indigenous women play a central role as forest guardians and skilled negotiators amidst patriarchal customary rules. These findings are reinforced by Kabes' (2025) documentation of the *Joom Jak Sasi* tradition in Raja Ampat, which demonstrates women's leadership capacity in marine conservation governance. Furthermore, this agency is not limited to the domestic-ecological sphere, but has extended into the realm of substantive politics, as demonstrated

by Dian Ratna Sari, Nur Iman Subono, and Kurniawati Hastuti Dewi (2025) through their analysis of the *PEREMPUAN AMAN* movement, which has been able to articulate political interests in the national public sphere.

However, this optimistic narrative regarding such agency stands in stark contrast to an increasingly oppressive economic and political reality. A second body of literature issues a stark warning regarding the structural vulnerabilities resulting from the expansion of state capitalism. Manoby, Siscawati, and Dewi (2023), as well as Rupita and Niko (2020), argue that the transition in modes of production from subsistence to extractive industries (such as palm oil and mining) systematically uproots the material foundations of Indigenous women, transforming cultural poverty into structural poverty. This process is exacerbated by technocratic interventions in environmental restoration projects which, according to Warah and Hamid (2025), actually erode values of femininity and local wisdom due to their masculine and top-down approach.

The convergence of these two strands of literature implies a critical urgency for the drafting of RUU MHA. There is a clear negative correlation: the greater the penetration of the state and the market without specific legal protection, the weaker the agency of Indigenous women that has developed organically. This research aims to fill this analytical gap by linking international standards, comparative national implementation, and the dynamics of women's agency. Specifically, the paper seeks to understand how shifts in the global political economy (such as Green Developmentalism) influence the substance of RUU MHA, and how Indigenous women—as the most vulnerable group—are positioned within the tug-of-war of interests between the state's ambition to secure investment and demands for the recognition of Indigenous rights.

Research Methodology

This study employs a qualitative approach using a *Critical Policy Analysis* framework. This approach was chosen to unpack the ideological assumptions, power relations, and sociological implications hidden within legal texts (Bacchi 2009). Specifically, the study applies the *Comparative Textual Analysis* method to trace shifts in meaning and the "politics of omission" within

the legislative process. This analysis does not view legal texts as neutral documents, but rather as '*sites of contestation*' between the interests of the state, the market, and Indigenous communities.

The primary data forming the main focus of the analysis are two draft legislative documents representing opposing poles of interest: the Draft Bill on Customary Law Communities (House of Representatives Initiative Version) dated 21 January 2026, which represents the state's perspective, and the Draft Bill on Indigenous Peoples (Civil Society Coalition Proposal Version) dated June 2025, which represents the aspirations of social movements. In addition to these legal documents, the research also uses secondary data in the form of *situation reports* from national and international human rights organisations, position papers on *Living Law*, and the latest academic literature on agrarian conflicts. This triangulation of data sources is carried out to provide a robust material context for the textual analysis, ensuring that the interpretation of legal texts is not detached from the sociological realities on the ground.

The data analysis process was carried out in three systematic stages. Firstly, thematic coding was applied to both draft bills to identify crucial keywords, such as 'definition of the subject', 'women', 'customary rights', 'committee', and 'investment'. Secondly, a juxtapositional comparison was carried out by placing equivalent provisions (an 'apple-to-apple' comparison) from both drafts side by side to identify substantive divergences. The primary focus was on the definition clause (Article 1), the recognition mechanisms (Articles 9-14), and the empowerment provisions. Thirdly, these comparative findings were analysed through a theoretical lens using the analytical framework of *Feminist Political Ecology* to explain the implications of the structural marginalisation of Indigenous women.

The State, Capitalism, and the Global Economy from the Perspective of Political Ecological Feminism

To unpack the complexities of RUU MHA, which extend beyond mere legal issues, this paper combines the macro lens of Global Political Economy with the micro lens of Feminist Political Ecology (FPE). A synthesis of these two theories is necessary in order to explain how state policies, driven by global market dynamics, 'land' and impact the bodies and living spaces of Indigenous women.

In this context, the concepts of *State Capitalism* and *Internal Colonialism* are used to examine the role of the state. Since the 2008 global financial crisis, the global political-economic landscape has undergone a fundamental shift with the resurgence of the state's role - a phenomenon referred to as *State Capitalism*. Alami and Dixon (2020) and Bremmer (2010) define *state capitalism* as a strategy whereby the state plays an active role as a key economic actor—no longer merely a regulator (referee), but also as an owner, investor, coordinator, and determinant of market direction. In this model, the state uses instruments such as State-Owned Enterprises (SOEs), Sovereign Wealth Funds (SWFs), and strategic industrial policies to control key sectors such as energy, minerals, and infrastructure.

However, in the Indonesian context, the operation of *state capitalism* intersects with what Soetjipto (2024) terms '*internal colonialism*'. Drawing on postcolonial analyses of Papua, the relationship between Jakarta (the centre) and resource-rich peripheral regions (such as customary territories) replicates patterns of colonialism: the exploitation of natural resources for the benefit of the centre, the imposition of a foreign legal system, and the marginalisation of Indigenous Peoples. Within this framework, RUU MHA can be interpreted as an instrument of internal colonialism designed to 'bring under control' customary territories so that they can be exploited for the accumulation of state capital. The recognition of customary rights is no longer based on the principle of historical justice, but is instead negotiated in a subordinate manner in relation to the interests of national development. The state acts as a *gatekeeper*, determining which territories may be recognised as 'Indigenous territories' and which must be made available for global investment (Peluso & Vandergeest 2011; Li 2014).

The contemporary variant of state capitalism most relevant to RUU MHA is *Green Developmentalism*. This is a development strategy whereby the state combines an economic growth agenda with energy transition and environmental protection (Scoones, Leach, & Newell 2015). However, this strategy often operates within the logic of '*green grabbing*' — or land grabbing under the guise of environmental protection. Projects such as geothermal energy, nickel mining for electric vehicle batteries, and carbon trading require extensive and exclusive territorial control.

Siscawati (2025) offers a sharp critique of this approach, labelling it one characterised by "Gender Blindness". Through the lens of Green Development, forests or customary lands are assessed solely on the basis of formal economic or ecological metrics (carbon stocks, mineral deposits). Subsistence values and women's spiritual relationships with nature, such as the forest as a living pharmacy or a source of water, are deemed "unproductive" or invisible. Consequently, recognition of customary rights is often granted only if the community is willing to integrate into these environmental market schemes, whilst women's claims based on the care economy are marginalised (Fairhead, Leach, & Scoones 2012; Borras et al. 2016).

While the State Capitalism approach explains the state's motives for controlling land, Feminist Political Ecology (FPE) grounds this analysis in the real-life experiences of those most affected: Indigenous women. According to Elmhirst (2011; 2025) and Siscawati (2025), environmental degradation is not gender-neutral; it is specifically experienced through women's bodies (Embodied Political Ecology). In this context, energy transition policies and land use conversion are not merely technocratic macro-level issues, but are phenomena that are experienced directly by women's bodies (embodied). The loss of access to forests due to 'green' concessions means losing living pharmacies and sources of clean water. This automatically increases women's physical and domestic workload, as they must ensure that the community's social reproduction and food security continue amid the pressures of the ecological crisis. As emphasised by Purbandani and Mahaswa (2022), a critical ecofeminist approach is necessary to avoid essentialism, which merely romanticises women's closeness to nature, and instead focus on the political analysis of power inequalities within the ecological crisis.

The central concept used in this paper is "Intimate Exclusions". Elmhirst (2011) shows that the deprivation of women's rights is often not carried out directly by "outsiders" (such as the state or corporations) through physical coercion alone, but is facilitated by patriarchal kinship structures, households, or customary authorities. In the context of RUU MHA, the formalisation of customary law that disregards gender dimensions has the potential to reinforce this "intimate exclusion". When the state grants sole authority to the "Customary Chief"

(who is male) to represent the community in land-release negotiations, it effectively enlists the aid of local patriarchy to exclude women from their management rights.

Furthermore, FPE emphasises the importance of viewing the "Ethics of Care" as a form of resistance. As articulated by Siscawati (2025) and Rahmatia (2025), women's relationship with nature often transcends extractive logic. It encompasses spiritual and subsistence dimensions that ensure the community's survival (social reproduction). However, within the logic of Green Development, this care work is undervalued. Consequently, rather than portraying women as mere victims, FPE's analysis in this paper also highlights how the erasure of their roles in legal texts such as RUU MHA constitutes a systematic attempt to silence non-capitalist alternatives to natural resource management. Thus, FPE serves as an analytical bridge, linking critiques of global capital accumulation with women's local-level struggles.

Customary Land at the Crossroads of Global Geoeconomics

Before analysing the articles of RUU MHA, it is crucial to understand the context of the shifting global political economy that shapes the state's 'appetite' for customary land. The tensions within RUU MHA are a reflection of the fragmentation of the global geo-economy. Over the past two decades, globalisation has proceeded not through the integration of homogeneous markets, but rather through economic fragmentation and reterritorialisation, which are reshaping spaces of production and investment (Sassen 2014; UNCTAD 2023). Geopolitical and economic security considerations have once again become determining factors. The phenomena of reshoring (the return of production activities to the country of origin), nearshoring (relocation to geographically neighbouring countries), and friend-shoring (the organisation of supply chains amongst strategic allies) reflect the efforts of developed nations to protect their supply chains from global uncertainty (OECD 2021; IMF 2023).

The implications for countries in the Global South, such as Indonesia, are significant. To capitalise on these industrial relocation opportunities (such as battery factories or smelters), the state is required to provide

large tracts of land that are legally 'secure' (clean and clear) and free from social conflict. It is this pressure to provide 'ready-to-use' land that is driving the state to tighten its land regime, including through RUU MHA, so that 'unregulated' customary claims can be brought under administrative control.

This shift in the global political economy is also marked by a shift in the world's economic centre of gravity from the West to Asia. IMF data (2024) shows that the Asian region accounts for around 60 per cent of global economic growth. Consequently, Asian countries, including Indonesia and the Philippines, have become strategic locations for infrastructure expansion, resource extraction, and large-scale energy transition projects.

It is in this context that a fundamental paradox arises for Indigenous Peoples, who find themselves caught between two contradictory value systems. Discursively, on the global stage, such as at UN climate forums or in reports by the IPCC (2023) and IPBES (2019), Indigenous Peoples are romanticised and positioned as 'ecological guardians'. Their local wisdom is recognised as a vital pillar of global sustainability for mitigating the climate crisis. This narrative places them on a moral high ground as key allies in saving the planet.

However, the material reality on the ground reveals a diametrically different picture. Their land rights are brutally negotiated under the pressure of market logic and energy security. Indigenous lands are no longer seen as living spaces, but are being targeted as strategic commodities to underpin the global energy transition, from nickel mines for electric vehicle batteries, to giant dams, to energy plantations. Consequently, Indigenous peoples—particularly women—find themselves trapped in a deadly dilemma: they are expected to protect the forests to absorb the world's carbon, yet the land on which they stand is being seized by the state for 'green' projects funded by global investors. Instead of resolving this paradox, RUU MHA risks perpetuating it through mechanisms of selective recognition and market bias.

The Trajectory of Recognition: Indonesia in a Comparative Perspective

Each country responds differently to these global political and economic pressures. The following table

illustrates Indonesia's position compared to other countries with regard to the recognition of Indigenous land rights, highlighting a distinctive pattern of relations between the state and Indigenous communities.

Table 1.

Pathways to the Recognition of Indigenous Peoples' Land Rights from a Comparative Perspective

Country	Legal Pathway	Dominant Form of Recognition	Main Economic and Political Constraints
Indonesia	Constitutional and sectoral legal recognition	Conditional and administratively fragmented	The logic of the developmental state and extractive accumulation
Philippines	Statutory codification (IPRA 1997)	Normatively progressive, procedurally vulnerable	Market liberalisation and investment pressures
New Zealand	Constitutional pluralism based on agreements	Strongly institutionalised	Neoliberal governance and asset regimes

Source: Author's synthesis based on legal documents and secondary literature, 2025

Indonesia exhibits a pattern of conditional and fragmented administrative recognition. Although Article 3 of the 1960 Basic Agrarian Law recognises customary rights, this recognition is limited by a 'national interest' clause that grants the state the final authority to determine the validity of customary law. Constitutional Court Ruling No. 35/PUU-X/2012 was indeed a normative breakthrough as it distinguished customary forests from state forests. However, its implementation is still being hindered by the sectoral forestry regime and lengthy administrative procedures (Myers et al. 2017).

The administrative verification process carried out by local governments has effectively redefined Indigenous communities' territories as objects of regulatory management, rather than as autonomous jurisdictions. In a number of provinces, this recognition has coincided with the introduction of carbon offset schemes, through which customary lands are incorporated into environmental markets without affecting the centralised authority of the state. The main empirical tension in the Indonesian context lies in the stark disparity between legal legitimacy and material realisation. Data from AMAN (2024) indicates that recognition is proceeding very slowly due to the process of territorialisation: the state's reorganisation of space to expand its control over strategic resources. Indonesia exemplifies the pattern of 'recognition without redistribution' (Fraser 2009) - legal recognition without any real redistribution of power.

Legislative Politics: Asymmetry of Priorities

The most evident reflection of the state's alignment with the logic of State Capitalism is seen in the asymmetry of legislative policy priorities. Politically, RUU MHA has been included in the National Legislation Programme (Prolegnas) for almost three consecutive government terms, including during the current administration of President Prabowo Subianto. However, its deliberation has been slow and halting. Currently, RUU MHA is a House of Representatives (DPR) initiative proposed by the parliamentary groups of NasDem, PKB, and PDIP.

This slow pace stands in stark contrast to the rapid deliberations on the TNI Bill, the Minerba Bill, and the Job Creation Law (Omnibus Law). The enactment of the Job Creation Law has centralised a great deal of authority, with permits for mining, plantations and forestry now being issued without the consent of local governments or Indigenous communities. By broadening the definition of National Strategic Projects (PSN), investments and economic growth interests are often 'disguised' as public interests, leaving Indigenous territories to bear the brunt. The new Minerba Law also removes the requirement for Indigenous communities' consent before mining permits are issued.

It is against this backdrop of inequality that civil society organisations (the Coalition to Monitor the Indigenous Peoples' Law) are advocating for RUU MHA to ensure the protection of both subjects and collective/individual rights. It is crucial to clarify the definition of 'Indigenous Peoples' in order to avoid the perception

that it refers to kingdoms or sultanates possessing colonial feudal privileges. The standpoint of Indigenous women's struggle is respect for the principles of human rights and substantive justice, in order to prevent the resurgence of discriminatory primordialism.

Building on these structural inequalities, the subsequent analysis will examine the text of the draft RUU MHA in more detail to revisit the main issues. This will involve unravelling how the definition of 'Indigenous Legal Communities' is constructed to serve investment interests, examining the plight of Indigenous women caught between regulatory frameworks, and emphasising the urgent need to explicitly protect women's rights in order to prevent a new form of feudalism.

Analysis

Building on the context of State Capitalism and Green Developmentalism outlined in the previous section, this chapter presents an in-depth analysis of the text of the Draft Bill on Customary Law Communities (House of Representatives Initiative 2026), critically juxtaposed with the Draft Bill on Indigenous Peoples (Civil Society Coalition Proposal 2025). This analysis focuses on examining how legal texts are constructed to serve the interests of investment (top-down pressure) whilst simultaneously perpetuating patriarchy (bottom-up pressure), which ultimately leads to the marginalisation of Indigenous women. The most fundamental and ideological difference lies in the terminological framework used to define legal subjects.

Table 2.
Comparison between the Civil Society Coalition's draft Bill on Indigenous Peoples and the House of Representatives' version

Aspects of Comparison	Civil Society Coalition Draft (June 2025)	House of Representatives Draft (January 2026)
Terminology	"Indigenous Peoples"	"Customary Law Communities" (MHA)
Definition of the Subject	Emphasises ancestral origins, strong ties to the land and its resources, and distinct values (Article 1). Adopts the principle of self-identification.	Emphasises the existence of customary legal norms that are observed, clear customary institutions, and independent assets (Article 1).

Source: DPR Initiative (2026) & Civil Society Coalition Proposal (2025)

The shift from the sociological term 'Indigenous Peoples' to the formal legal term 'Customary Law Communities' in the House of Representatives' version is a form of linguistic manoeuvre within the agenda of internal colonialism. The addition of the word 'Law' suggests an absolute requirement for a coercive legal system and a state-like structure. This has particularly severe implications for Indigenous women, as it reinforces a masculine structural bias. In many traditions across the archipelago, 'legal' structures such as customary courts and fines are public spheres that have historically been dominated by male elders. Conversely, Indigenous women often play a central role in everyday practices such as seed preservation, the safeguarding of springs, and planting rituals. These practices are fluid and not codified as rigid 'law'.

Furthermore, the MHA definition also functions as an exclusionary filter. By adopting this definition, the state automatically validates formal, male-

dominated customary structures while marginalising women's livelihood practices. Communities whose legal structures have eroded or become fluid, which often comprise groups of women forest guardians, will fail to meet these administrative criteria. This is the state's strategy for 'screening' claims, whereby only customary communities that are 'orderly' and possess a clear hierarchy, and are thus easier to negotiate with regarding land relinquishment, will be recognised.

The second striking difference concerns the mechanism for recognising the existence of Indigenous communities. The House of Representatives' draft (Articles 9 and 14) establishes a cumbersome bureaucratic regime involving mandatory recognition through the 'Committee on Customary Law Communities', which is chaired by the Regional Secretary (Sekda) and comprises members from relevant regional government agencies (OPD), including those responsible for forestry and mining.

Within the logic of State Capitalism, this Committee functions as a gatekeeper, implicitly tasked with deciding who is entitled to participate in the discussion forum and who is excluded. A Committee staffed by regional bureaucrats has an inherent conflict of interest. These are the same people who issue mining permits, oil palm plantation licences, and forest concessions in the same area, all in the name of Local Own-Source Revenue (PAD).

Rationally speaking, it is impossible to expect this Committee, chaired by the Regional Secretary, to recognise customary territories that overlap with concessions they have already issued or with National Strategic Projects (PSN). This mechanism ensures that the recognition of customary rights will not disrupt 'investment security'. For Indigenous women, who have more limited access to literacy and financial resources compared to the male elite, overcoming the bureaucratic barriers of this Committee is a structural impossibility.

The most ideological and dangerous difference between the two drafts concerns how they treat women as subjects within the body of the legislation. The Civil Society Coalition's draft explicitly refers to 'a group of people, both men and women...' in its definition of a subject. It also contains a specific clause that guarantees the full and effective participation of Indigenous women in decision-making processes. The House of Representatives' draft: The term 'women' is almost entirely absent from crucial clauses. Legal subjects are replaced with gender-neutral terms such as 'Members of the Customary Law Communities' or simply 'Members'.

The House of Representatives' draft requirements for 'own assets' and 'a legal institution that is adhered to' reflect a corporatist logic biased towards men. The state is effectively acting as an agent of local patriarchy through 'Intimate Exclusion'. By only recognising formal, male-dominated customary structures, the state enables male elites to unilaterally mortgage customary territories to corporations - often for National Strategic Projects (PSN) - under the pretence of respecting customary autonomy, which has in reality been co-opted.

In feminist legal theory, laws that claim to be 'gender-neutral' are, in essence, 'male-biased' because they treat

male experience as the universal norm (Stamile 2025). The removal of the word 'women' from the House of Representatives' draft confirms the analysis by Lutfi and Wahyuningroem (2023) that cultural practices and traditions often serve as arenas for the oppression of women's bodies, perpetuated in the name of communal compliance. When plans are made to relinquish customary land rights (for example, for a Food Estate or a nickel mine), corporations need only secure the approval of the "Customary Consultation".

Without an explicit legal mandate stating that "women must be involved and heard", customary consultations will revert to the patriarchal default of being attended only by male tribal chiefs and elders. As Manoby (2023) discovered in Papua, male elites frequently sell sago forests without consulting the women who rely on them for their daily livelihoods. By refusing to recognise women as equal rights holders, the House of Representatives' draft effectively legalises this practice of 'unilateral mortgaging'. The state 'washes its hands' of the matter under the pretext of respecting customary autonomy, while in fact facilitating capital transactions with the patriarchal elite. Without such protection, the creation of a 'safe space', as defined by Astuti, Pasaribu and Anggraini (2024), becomes impossible, leaving Indigenous women vulnerable to sexual and structural violence amidst the pressures of investment.

Another notable aspect is the significant portion of the House of Representatives' draft devoted to the chapter on 'Empowerment' (Articles 25-28), which focuses on economic capacity building. The extent of these empowerment provisions reflects the logic of Green Development, which is presented as a mainstream agenda. Under this regime, forests and Indigenous territories are no longer considered as living spaces but as strategic assets, such as carbon reserves or sources of transitional energy. However, this narrative suffers from acute 'gender blindness' as it values only formal economic metrics while disregarding the 'ethics of care' practised by Indigenous women. Rather than recognising their sovereignty, the draft Bill transforms Indigenous women's role from landholders to providers of cheap labour within global supply chains, such as plantation or mine workers. This attempt at domestication strips women of their political rights

over land, replacing them with hollow promises of market-driven economic growth.

The House of Representatives' draft recognises neither the concept of "Women's Managed Territories" nor "Food Sovereignty". Forests safeguarded by women (for medicine, natural dyes, water) are deemed "unproductive" through the lens of the state's economy. Conversely, such forests become valuable if they are converted into nickel mines (for EV batteries) or energy plantations. The Bill is designed to facilitate such conversion by minimising legal resistance from women's groups, transforming them from "landholders" to "labourers" on their own land.

Closing

This paper's comparative textual analysis, grounded in the frameworks of Feminist Political Ecology and Global Political Economy, suggests that the stagnation and distortion of substance in the draft Bill on Customary Law Communities (House of Representatives version, 2026) is not an administrative coincidence. Rather, it is a structural manifestation of the 'Double Squeeze' on Indigenous women. The first source of pressure is external, stemming from the capitalist structure endorsed by the state and the market. Under the regimes of State Capitalism and Green Developmentalism, the state requires Indigenous lands as strategic assets to accommodate the reshoring of global industry and the energy transition. To this end, the state has created the mechanisms of 'Customary Law Communities' and bureaucratic 'Committees' to filter out Indigenous claims that could impede investment.

Unfortunately, the problem does not end there. The internal sphere - Indigenous communities - is still unable to provide a space for women's equality. Social structures that are subject to patriarchal values are formally legitimised through the 'politics of omission' - namely, when the DPR's draft removes women as subjects from the legal text. This grants the male Indigenous elite state legitimacy to monopolise decision-making over customary lands, enabling 'Intimate Exclusions' when women are excluded from their own living spaces by their own communities. Consequently, rather than serving as an instrument for the protection of human rights, the DPR's version of RUU MHA risks becoming a technology of power that legalises the dispossession of living spaces (legislating dispossession). While it

regulates land administration in the interests of market certainty, it does so at the expense of substantive justice for Indigenous women.

In light of the findings concerning the gender justice deficit and the dominance of market logic in the DPR's draft Bill, the narrative "Pass RUU MHA Immediately" requires critical revision through a series of fundamental amendments. The first and most urgent step is to reconstruct the definition of legal subjects. The phrase "men and women" must be reinstated in the definition of Indigenous communities, as proposed in the Civil Society Coalition's draft. This explicit recognition is not merely a redactionary flourish, but a legal safeguard to prevent a singular, masculine interpretation and ensure that women are recognised as equal rights holders, not merely an adjunct to the community.

In addition to being recognised as legal subjects, women must be granted substantive protection through the affirmation of their right of veto in strategic decision-making processes. Legislation must include a clause requiring the consent of Indigenous women as a collective entity in any plan to relinquish customary rights or reallocate land. This would ensure that the principle of Free, Prior and Informed Consent (FPIC) is not interpreted in a gender-blind manner, but rather requires the inclusive participation of Indigenous women to prevent unilateral decisions by male Indigenous elites, who may be co-opted by corporate interests. Structural reform is also essential, including the abolition of the bureaucratic committee system. The recognition mechanism via the Regional Secretary's Committee, which is rife with conflicts of interest, must be replaced with a self-identification mechanism verified by an independent non-governmental organisation. This shift is necessary to break the chain of gatekeeping at the regional level, which has long held the recognition of customary territories hostage for the sake of Local Own-Source Revenue (PAD) from the extractive sector.

Finally, to ensure the long-term sustainability of women's livelihoods, RUU MHA must provide absolute protection for territories managed by women. Specific utilisation zones, such as water sources, food forests, and ritual areas, must be recognised as customary conservation areas that are off-limits to extractive industry concessions. This will prevent the state's green development agenda from undermining communities'

food sovereignty. However, when formulating such legal protections, the state and policymakers must be careful not to essentialise Indigenous communities. Legal recognition must not fix Indigenous identities as static, anti-modern entities or merely as romanticised “guardians of nature”. This is dangerous because it can be used to deny Indigenous Peoples’ rights when they adapt to changing times or when Indigenous women demand equality that may be deemed “non-traditional” by local elites. Therefore, RUU MHA must be designed as a dynamic instrument, recognising ancestral rights while allowing for democratic and gender-just social transformation within Indigenous communities.

Furthermore, the struggle to incorporate a gender perspective into this Bill is a genuine test of the quality of Indonesian democracy in the post-reform era. Disregarding the voices of Indigenous women reflects a democratic deficit, whereby substantive citizenship is sacrificed for the sake of investment stability and macroeconomic growth. The state can no longer hide behind the pretext of “respecting Indigenous autonomy” when such autonomy is selectively used to perpetuate internal oppression. In fact, state intervention through gender-responsive legislation is necessary to dismantle unequal power relations and ensure that “custom” does not become a shield for patriarchal impunity or an extension of internal colonialism that marginalises women from the process of nation-building.

It is also important to note that recognising women’s managed territories has strategic implications for mitigating the global climate crisis. Studies in Feminist Political Ecology consistently demonstrate that Indigenous women possess unique knowledge of biodiversity, water management, and food security, which is essential for adapting to climate change. Excluding them from the legal framework of RUU MHA would weaken our last line of ecological defence. Without protection for women’s access to and control over natural resources, the government’s much-touted “Green Developmentalism” agenda risks becoming a fragile, exploitative, and unsustainable false solution.

Ultimately, RUU MHA should be the foundation for a new civilisation that prioritises social and ecological justice over profit. We need a legal framework that resolves land disputes and restores the human dignity of Indigenous women, who have long been marginalised

by the double squeeze of the state and tradition. Enacting an inclusive, dynamic, and progressive Bill is a historical debt that must be repaid for the sake of Indigenous women’s welfare and the preservation of our shared living space in the face of a planetary crisis. Protecting women-managed territories is our last line of defence against the climate crisis. Without this protection, the state’s development agenda is nothing more than a fragile, masculine, and exploitative false solution. Therefore, RUU MHA can only be transformed from a tool for the dispossession of living spaces into a true instrument of liberation by integrating these perspectives of gender and ecological justice.

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Footnotes

- 1 This article was written while the House of Representatives (DPR) was still using the term 'Customary Law Communities' in the initial draft of the academic paper and its bill (8 December 2025). In this article, the term 'Draft Bill on Customary Law Communities' is used to highlight the ongoing issues with the DPR's draft bill and its lack of support for Indigenous Peoples, in contrast to the Draft Bill on Indigenous Peoples proposed by the Civil Society Coalition.

