



The politics of law and gender-skewing: The systematic weakening of indigenous women's property rights through legal formalization

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Received Date: January 13, 2026

Revised Date: February 22, 2026

Accepted Date: February 24, 2026

ABSTRACT

Background: This article analyzes the mechanisms and impacts of state legal intervention on the property rights of indigenous women in West Sumatra. Within Indonesia's legal pluralism, state-led legal formalization often collides with customary norms that protect matrilineal communal rights. While prior studies acknowledge this tension, they have not systematically linked the conservative character of macro-level politics of law with its gender-skewing impacts at the micro-level. This study fills that gap by examining how state legal formalization weakens women's rights previously guaranteed by custom. **Methods:** This study employs a socio-legal approach grounded in a multi-layered theoretical framework, combining macro-level politics of law and micro-level gender-skewing analysis. Data were examined through an in-depth review of statutes, court decisions, and relevant literature. **Findings:** The results show that state intervention in land governance imposes a formalistic and bureaucratic validation process for customary rights. This process prioritizes written proof, certification, and individual registration, which are structurally misaligned with communal and matrilineal land tenure systems. As a result, women's collective authority over pusako land becomes increasingly vulnerable to reinterpretation and reallocation under state law. Court decisions further reinforce individualized ownership models, indirectly legitimizing the transfer or fragmentation of communal assets. These dynamics illustrate how formalization, framed as legal certainty, systematically restructures power relations and diminishes women's substantive control over property. **Conclusion:** Legal formalization transforms communal matrilineal rights into individualized property regimes, facilitating gender-skewing and marginalizing customary dispute resolution. **Novelty/Originality of this article:** This research demonstrates that conservative politics of law at the macro-level directly contribute to the systematic weakening of indigenous women's property rights at the micro-level.

KEYWORDS: customary property rights; gender-skewing; legal formalization; legal pluralism; politics of law.

1. Introduction

State legal intervention into the social orders of indigenous communities in Indonesia represents an arena fraught with friction and negotiation. Specifically, efforts to formalize property rights, such as land certification programs, are often implemented under a uniform and 'neutral' assumption (Dewi et al., 2024). However, these interventions do not land in a vacuum; they intersect with a complex landscape of legal pluralism where customary law,

Cite This Article:

Armi, M. I. (2026). The politics of law and gender-skewing: The systematic weakening of indigenous women's property rights through legal formalization. *Lexovate: Jurnal Perkembangan Sistem Peradilan*, 3(1), 1-16. <https://journal-iasssf.com/index.php/Lexovate/article/view/2821>

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religious law, and state law overlap (Benda-Beckmann & Benda-Beckmann, 2006). In the context of a matrilineal society like the Minangkabau in West Sumatra, where customary law has historically provided robust protection for women's communal property (*harta pusako*), this normative collision carries profound gender implications.

To deconstruct this complexity, this research adopts a framework that moves from the macro-political level (power configurations) to the micro-social level (gendered impacts in the community). The analysis departs from the politics of law formulated by Mahfud (2017). This theory provides the basic postulate that legal products (outputs) are not born from a vacuum but are a reflection of the political configuration (input) that produced them. Mahfud (2017) distinguishes between two primary characters: a democratic political configuration, which yields 'responsive' legal products aligned with substantive public justice, and an 'orthodox' political configuration. The latter, typically dominated by bureaucratic alliances and capital owners, produces 'conservative' legal products that prioritize formal procedures, protect the status quo, and are unresponsive to social justice.

While the politics of law explains why the state employs conservative legal interventions, legal pluralism explains how these interventions operate and impact a complex social arena (Marglin & Letteney, 2024). The work of Benda-Beckmann (1990) is central to this framework. She critiques developmental interventions and legal formalization programs (such as land registration) that appear gender-neutral. She demonstrates that these interventions are often based on Western legal assumptions of individual ownership (which tend to favor men as heads of households). Consequently, rather than empowering, these interventions systematically "skew" or weaken women's rights previously guaranteed by customary norms (such as *hak ulayat* or communal tenure, use rights, or communal access), which remain unrecognized by the formal state system.

Positioning these two core theories as complementary, this study's theoretical framework is multi-layered. At the input (macro) level, the research identifies the dominant political configuration (Mahfud, 2017), particularly within the natural resources sector. This configuration is assumed to be 'orthodox,' driving an agenda of asset legalization and investment. At the process (meso) level, this configuration generates state legal interventions in the form of Social Forestry policies, the Omnibus Law, and land regulations. These interventions are understood as arenas of contestation within a landscape of legal pluralism (Benda-Beckmann & Benda-Beckmann, 2007) and "Conflicting Ecologies" (Großmann, 2022). Finally, at the impact (micro) level, the effects of these interventions are analyzed through the lens of 'gender-skewing' (Benda-Beckmann, 1990). The focus is to determine whether these interventions, through specific mechanisms, cause a gender-biased shift in property control at the local level.

A comprehensive review of relevant studies confirms a 'science-policy-community interface gap' and provides strong empirical support for the study's propositions, while simultaneously highlighting the specific gap this research intends to fill. First, studies confirm that formalization is a problematic process. Existing research consistently shows that state formalization interventions, such as Social Forestry (*Perhutanan Sosial*, PS), are not simple technical solutions but rather contested arenas fraught with problems (Sahide et al., 2020). PS implementation faces complex bureaucratic challenges, conflicts of interest, and ultimately fails to provide substantial economic benefits to farmers (Mangkunegara et al., 2024). The formalization process for recognizing customary forests is excruciatingly slow, hampered by complex regulations, ambiguous standards, and stereotypical state views reluctant to share power with customary law communities (Simarmata, 2024). Even when formal recognition (such as a *hutan hak* or title) is achieved, it is often the result of political maneuvers by civil society coalitions (Swardhana & Jenvitchuwong, 2023), and the resulting recognition tends to be ceremonial without guaranteeing genuine autonomous control (Hendra et al., 2025). Consequently, instead of legal certainty, the outcomes are legal fragmentation (Rumpia, 2024) and spatial planning dualism and misalignment (Rustiadi & Veriasa, 2022).

Second, studies confirm commodification as a consequence of formalization. The literature review also confirms that formalization often serves as a gateway to resource

commodification (Smessaert et al., 2020). The PS program appears to have evolved from an empowerment objective to a market-based solution, where the concept of equity is reduced to mere "fair market access" (Wong et al., 2020). This market rationality is evident in corporate Environmental, Social, and Governance (ESG) practices, which often function more as "window dressing" for market legitimacy than as genuine ethical transformation (Juanda et al., 2025). This commodification is a primary driver of conflict, where oil palm expansion creates dilemmas (Halomoan et al., 2023) and even encourages communities to leverage legal pluralism to justify claims over communal land for conversion purposes (Rudy et al., 2021). Ultimately, this process triggers violent tenurial conflicts due to the disregard for customary rights (Sufriadi et al., 2024).

Third, existing literature begins to touch upon systemic erosion and gender issues, yet herein lies the most crucial research gap. Although these studies confirm the propositions of formalization and commodification, they tend to stop at macro-structural analyses (corporations vs. customary law communities) or at formal representations of gender, without deconstructing the mechanisms of systemic erosion against indigenous women's property rights (Errico, 2021). Existing studies see women, but in limited roles: (a) as corporate leaders, focusing on career barriers in state-owned forestry enterprises (Larasatie & Ulifah, 2023); (b) as targets for economic empowerment, where women are positioned as micro-credit recipients to reduce forest dependency (Aprylasari et al., 2022); or (c) as unequal recipients of benefits, where studies identify that PS benefits are unevenly distributed (Toumbourou et al., 2025).

Collectively, these studies confirm the science-policy-community interface gap. They excel at analyzing macro-conflicts (Rumpia, 2024; Sufriadi et al., 2024) and formalistic policy weaknesses (Simarmata, 2024; Wong et al., 2020). However, no studies explicitly connect these dots. The literature stops at gender participation or benefit distribution, not at the integrity of property rights themselves. These studies often treat customary law communities as a monolithic collective. Analysis of how state legal interventions impact the internal differentiation within communities, specifically their impact on the internal structure of women's property rights, remains severely limited.

To fill this gap, this framework is operationalized through three research propositions that identify the specific causal mechanisms of gender-skewing. First, formalization as a gateway. State intervention promotes the formalization of rights. This process transforms communal, relational, and often unwritten rights (governed by custom) into written, individual, and state-recognized legal rights. While framed as providing "legal certainty," this formalization often misidentifies or oversimplifies local ownership structures. Second, commodification as a consequence. Once a right is formalized, it becomes detached from its social context and customary obligations. The right becomes an asset that can be monetized, collateralized, or alienated (sold). This commodification shifts the resource from use-value (subsistence) to exchange-value (market). Third, systemic erosion as the final impact. The combination of formalization (a change in the form of the right) and commodification (a change in the function of the right) results in the systemic erosion of customary norms that previously protected both the resources and the women's rights tied to them. State and market logic systematically displace customary logic.

In this complex landscape of legal pluralism, state intervention through formalization policies cannot be viewed merely as an administrative unification effort. However, it must be understood as an arena of ideological contestation. This study argues that 'conservative' legal products—as manifestations of orthodox political configurations—inherently clash with local matrilineal structures in West Sumatra. This clash triggers the phenomenon of 'gender-skewing,' in which the state's legal formalization program systematically weakens women's property rights, which are traditionally protected by customary law. Through this lens, this article aims to answer the main research question: How do the mechanisms of state legal formalization, as a product of conservative legal politics, operate within a landscape of legal pluralism to marginalize the property rights of indigenous women systematically? By dissecting this dialectic, this study makes a significant theoretical

contribution by mapping a precise causal chain: from legal-political orientation (as input) to formalization mechanisms (as process) to the degradation of women's rights (as output).

To construct this argument systematically, this article is divided into four main sections. The second section outlines the research methodology with an emphasis on the socio-legal approach to analyze the synchronization between legislative policy and the reality of court decisions. The third section presents findings and discussions, contrasting empirical data with theoretical propositions to show how formalization becomes an instrument of gender injustice. Finally, the conclusion summarises the findings and formulates the theoretical and practical implications for protecting women's rights within the framework of dynamic legal pluralism.

2. Methods

2.1 Research design and approach

This study employs a qualitative socio-legal research methodology. The research design is explicitly theory-driven, moving deductively from a theoretical framework to a specific corpus of data. Its objective is to test the validity and implications of the three primary propositions (derived from the theory) when applied to this data. In line with a non-doctrinal legal research approach (Bhat, 2020), this methodology enables the analysis to move beyond mere doctrinal (textual) descriptions of law toward an explanation of how law operates and generates impact within its social context.

2.2 Data sources and legal corpus

The data for this research comprise primary legal documents and secondary data. Primary legal documents were selected as the principal locus of analysis due to their operational significance in the formalization of customary rights. These documents are categorized hierarchically. At the apex, the 1945 Constitution of the Republic of Indonesia (UUD 1945) serves as the primary juridical and philosophical foundation, particularly through the mandate for recognizing Customary Law Communities in Article 18B(2) and the principle of state control over natural resources for public prosperity in Article 33(3). Below the Constitution, policy operationalization is governed by statutes (*Undang-Undang, UU*), including Law No. 41 of 1999 (Forestry Law), Law No. 5 of 1960 (Basic Agrarian Law, UUPA), Law No. 6 of 2014 (Village Law), and Law No. 6 of 2023 (Omnibus Law on Job Creation), which revised various sectoral regulations.

This hierarchical structure is dynamically refined by Constitutional Court (*Mahkamah Konstitusi, MK*) decisions, which function to clarify constitutional norms. In this context, MK Decision No. 35/PUU-X/2012 constitutes crucial data, as it fundamentally altered the Forestry Law by removing Customary Forests (*Hutan Adat*) from the category of State Forests. At the operational level, implementing regulations include Government Regulations (*Peraturan Pemerintah, PP*) and Ministerial Regulations (*Peraturan Menteri, Permen*). At the local implementation level, Regional Regulations (*Peraturan Daerah, Perda*) serve as formal instruments for recognizing customary law communities, thereby completing the legal framework under analysis. Secondary data consist of a systematic literature review of relevant studies used to construct the theoretical framework and map the research landscape.

2.3 Analytical framework

The selection of legal products is guided by a hierarchical-constitutional approach. Statutes (UU) and Constitutional Court (MK) decisions are examined as a unified normative unit, since the constitutionality of statutes in the Indonesian legal system is determined and amended through the MK's judicial review authority. Emphasizing MK Decision No. 35/PUU-X/2012 establishes methodological credibility by clarifying that the analysis is de

jure. This approach provides a transparent mapping of the legal framework underlying rights erosion. While it does not ethnographically capture law in action, it offers an essential structural mapping of the legal architecture that enables rights erosion.

2.4 Data analysis procedure

Data analysis was conducted through a three-stage socio-legal content analysis, grounded in the methodologies of Bhat (2020) and Banakar (2015). First, the theoretical framework—politics of law and gender-skewing—was operationalized into the three specific propositions outlined in the Introduction. Second, consistent with Bhat’s non-doctrinal approach, the analysis involved scrutinizing the texts of the primary legal documents to identify their underlying assumptions, internal logic, and procedural requirements (Bhat, 2020). Third, drawing on Banakar’s justification for normativity in socio-legal studies, the findings from the textual analysis were systematically confronted with the three propositions to interpret their broader implications (Banakar, 2015). The objective was to determine whether the textual evidence—including its conspicuous silences—supports, challenges, or refines the theory-driven arguments.

2.5 Methodological limitations

This study has explicit methodological limitations. As a socio-legal study focused on public policy, the analysis centers on the *de jure* framework (law on paper) and the procedural logic that facilitates the weakening of rights, without examining *de facto* implementation or “law-in-action” through ethnographic fieldwork. Accordingly, the findings should be understood as a structural and normative mapping of the legal architecture enabling rights erosion rather than an empirical assessment of how these norms are negotiated in practice, and future research employing ethnographic or socio-anthropological approaches would be necessary to capture the lived experiences of indigenous women within this formalization process.

3. Results and Discussion

3.1 Conservative politics of law and subordination through formalism

The first argument of this study, derived from Mahfud’s (2017) theory of politics of law, posits that the state’s land policy implementation is inherently “conservative.” In practice, this policy prioritizes formalistic, technocratic legal certainty over the substantive protection of matrilineal communal rights (*pusako*). Findings from the primary document analysis strongly support this argument through two primary mechanisms: (1) procedural subordination via performative legal language, and (2) a reductionist shift in legal subject terminology that effaces customary complexity. The most fundamental formalization mechanism is procedural subordination, whereby the state imposes its own validity over the existence of custom (de Sousa e Brito, 2020). A close textual analysis of the primary data corpus reveals that the legal language employed is not one of recognition, but rather of performative constitution—that is, the state does not merely acknowledge custom but actively establishes it through formal legal acts. This pattern is consistently reflected across legislative and executive instruments. For instance, Law No. 6 of 2014 on Villages Art. 116(2) states that “the Regency/City Regional Government stipulates a Regional Regulation concerning the establishment of Villages and Customary Villages in its territory.” Similarly, Ministry of Agrarian Affairs Regulation No. 18 of 2019 (Art. 3) provides that “the establishment of recognition and protection of Customary Law Community Units shall be implemented in accordance with the provisions of laws and regulations,” while article 5(2) of the same regulation affirms that “the administration of Ulayat Land is carried out based on the establishment of recognition and protection.” Moreover, Constitutional Court

Decision No. 35/PUU-X/2012, citing Law No. 41 of 1999 Art. 67(2), emphasizes that “the affirmation of the existence and abolishment of a customary law community... is stipulated by a Regional Regulation.” Collectively, these provisions demonstrate that customary existence is framed not as inherent, but as contingent upon formal state validation.

Empirical evidence demonstrates (Bhat, 2020) that repetitive terminology such as ‘establishing,’ ‘forming,’ and ‘confirming’ functions not as neutral administrative jargon, but as discursive actions that fundamentally alter the ontological status of customary law communities. Before state recognition, indigenous communities and their customary rights existed in a state of legal uncertainty; while they may have existed sociologically, they lacked formal legal recognition. This logic is a precise empirical manifestation of the “conservative-orthodox” politics of law (Mahfud, 2017), which prioritizes state-controlled formal legality over substantive, community-based legitimacy.

This is an embodiment of Weberian rational-legal bureaucracy imposing its framework onto a traditional order of authority. The key phrase “stipulated by a regional regulation” effectively transforms the customary law communities from a sovereign, socio-legal entity whose rights are pre-existing (predating the state) into an administrative entity that is post-existing (dependent on state bureaucratic validation). A fundamental shift in the authority of recognition occurs: the burden of proof is transferred from the state (which, under the Constitution, should protect antecedent rights) to the customary community (which must now prove its existence through costly and politically complex formal procedures).

These findings demonstrate a systematic failure within the state’s legal system to uphold the antecedent rights that the constitution is intended to protect. The phrase “determined by local regulations” transforms customary law communities from sovereign, pre-state socio-legal entities into administrative entities that are dependent on bureaucratic validation. This shift has altered the authority of recognition, placing the burden of proof on indigenous communities, which are now required to demonstrate their existence through expensive and politically complex formal procedures. This framework involves measurement, mapping, and registration in land ledgers (Singirankabo & Ertsen, 2020). This confirms the study’s argument: the logic of procedural formalism has effectively subordinated the substance of communal justice, precisely as predicted by Mahfud (2017) theory when the political configuration is dominated by technocratic, status-quo interests that deify procedural certainty.

Formalization also operates through what may be described as a “forced translation” of who is recognized as a legal subject. The document analysis reveals a significant simplification of complex communal–customary terminology into individualistic or formal-bureaucratic categories characteristic of modern state law. Within customary law, collective entities such as *Hak Ulayat Kesatuan Masyarakat Hukum Adat* or *hak ulayat* collectively controlled by customary law communities reflect layered, relational, and communitarian conceptions of rights. However, when state law intervenes, it reduces this complexity into rigid, binary subject classifications that are structurally incapable of accommodating indigenous communal ontologies.

This reduction is evident in several regulatory instruments. Government Regulation No. 22 of 2021 (Art. 1(95)) defines “Every Person” as “an individual or a business entity,” while Article 1(24) of the same regulation stipulates that “Business Actors are individuals or business entities.” Likewise, Ministry of Environment and Forestry Regulation No. 7 of 2021 Art. 167(1) provides that subjects eligible to receive TORA (*Tanah Objek Reforma Agraria*) consist of: (a) individuals; (b) community groups; and (c) legal entities. These formulations illustrate how communal customary subjects are translated into pre-existing modern legal categories, thereby subordinating indigenous collective identities to the classificatory logic of state administrative law.

An interpretation of this shift indicates that the state legal system is epistemologically “blind” to kinship-based communal legal subjects. The state’s legal imaginary can only “see” and interact with two entities: the individual (possessing a state ID number) or the corporation/legal entity (possessing a Notarial Deed). Even the “community group”

category often requires formalization into a legal entity like a cooperative. This binary logic effectively erases all forms of collective ownership based on kinship, gender, or lineage, such as the *pusako tinggi*.

This transformation reaches its most concrete manifestation in the land registration practices concerning *Tanah Ulayat* in West Sumatra, where complex communal rights are effectively “translated” into formally legible and administratively manageable legal subjects. In this process, layered customary relationships are reconstituted into identifiable representatives who can function within the bureaucratic logic of state law. For *Tanah Ulayat Nagari* (communal-territorial), the recognized rights-holder subject is the *ninik mamak* of the Kerapatan Adat Nagari (KAN), serving as a formal-administrative representation of the community. In the case of *Tanah Ulayat Suku* (communal-genealogical), the rights-holder subject is vested in the *Penghulu-penghulu Suku*, who function as formal genealogical chiefs. Meanwhile, for *Tanah Ulayat Kaum* (communal-matrilineal), the rights-holder subject is the *mamak kepala waris*, representing a hybrid form that combines formal recognition with individualized representation through the maternal uncle.

Through this administrative restructuring, communal land—originally embedded in collective, relational, and intergenerational customary frameworks—is rendered into discrete, state-recognizable legal subjects. The result is not merely technical registration, but a substantive transformation of customary tenure into a format compatible with modern property administration. Empirical evidence demonstrates that the practice of customary land registration, particularly in West Sumatra, compels complex communal rights to be redefined as formal legal subjects. For instance, *Nagari* Customary Land is represented by *Ninik Mamak KAN*, Tribal Customary Land by *Penghulu Suku*, and *Kaum* Customary Land by *Mamak Kepala Waris*. This transformation shifts legal control and representation from matrilineal internal structures centered on women to masculine customary authorities formally recognized by the state. The marginalization of *Bundo Kanduang’s* role in formal land registration documents illustrates this shift, despite their sociological status as guardians and controllers of high ancestral property (Sebastian, 2022).

Normatively, these findings reveal a systematic failure of state law to account for the complexity of kinship-based legal subjects and to protect the economic rights of indigenous women. The state's epistemological disregard for matrilineal collective subjects has resulted in the de jure elimination of collective ownership based on female descent. By designating *Ninik Mamak* or *Mamak Kepala Waris* as the sole legitimate legal subjects for state interaction, the state indirectly perpetuates gender-biased social engineering (Benda-Beckmann, 1990). This process is not merely a technical administrative matter; it constitutes the empowerment of male elites and the disempowerment of female lines of authority. Consequently, the formalization process directly contributes to the systematic erosion of women's rights by excluding them as relevant legal subjects in state transactions.

3.2 Commodification as a consequence of formalization

The second core argument is that formalization functions as a prerequisite for commodification. Once a customary property right is “translated” into formal state language and its legal subjecthood is “tidied up,” it becomes detached from its socio-religious context and subsistence obligations. It becomes vulnerable to market logic, shifting from a use-value and social-value basis to an exchange-value basis. The findings substantiate this through two indicators: the shift of disputed objects toward monetary values and the adoption of market rationality in legal reasoning.

The first indicator is the shift in the arena of dispute. An analysis of the legal facts presented in Constitutional Court Decision No. 35/PUU-X/2012 reveals that when customary communities enter the formal courtroom, they are compelled to “translate” their losses into the only language the court can institutionally process: the language of economic damages. Customary territories, which within the community are understood as *pusako*

tinggi, must therefore be monetarily quantified in order to attain legal standing before the bench. For example, the decision notes that state actions “caused Petitioner II to lose access, use, and control over their customary forest area, and also caused other attendant problems, namely the loss of income and livelihood.” Moreover, witness testimony by Yoseph Danur quantified “economic losses of 29 (twenty-nine) *lingko* (plots) of coffee plants,” specifying production averages in kilograms per hectare and total tonnage per *lingko*. In addition, Kaharudin testified regarding “wood taken from the land,” detailing that the chip fee amounted to IDR 1,500 per ton, while logs were valued at IDR 5,000 per cubic meter. Similarly, Jamaludin referred explicitly to “compensation for damages owned by residents.”

Taken together, these statements demonstrate that once customary claims enter the judicial arena, they must be reformulated into measurable financial terms. What is normatively constructed within the community as ancestral, communal, and inalienable heritage is procedurally reconstructed as calculable economic loss, thereby aligning indigenous grievances with the evidentiary and compensatory framework of modern adjudication. The interpretation of this data is crucial. This is not merely a list of damages; it is evidence of symbolic violence (Ganuza et al., 2020) This is the language of technocracy. The logic of formal law, dominated by market rationality, compels the community to articulate its claims not in customary terms (loss of sacred value, damage to social cohesion, or violation of the *bundo kanduang*'s oath), but in market terms (tonnage of coffee, chip fee per ton, compensation for damages). This is a semiotic shift. The *pusako* as a signifier of communal identity and matrilineal continuity is destroyed and replaced by a new signifier: “an asset that produces X tons of coffee” or “a concession worth Y rupiah per cubic meter.” Land that was once a basis for subsistence and identity is now forced into the realm of exchange value and monetization.

This commodification is reinforced when the regulatory framework and the state's legal reasoning (*Ratio Decidendi*) explicitly adopt economic calculation as their fundamental justification. The state's Right to Control (*Hak Menguasai Negara*, HMN), grounded in the principle of “the greatest prosperity for the people” (Article 33(3), UUD 1945), becomes the state's primary justification. However, this “prosperity” is interpreted by the state (as in the Government's arguments in MK Decision 35/2012) within a narrow, developmentalist framework, “to achieve the people's welfare and prosperity through the effective and efficient allocation of natural resources.” (Government's Statement, MK Decision 35/2012). The interpretation of the phrase “effective and efficient” is critical. This is the language of technocratic management and neoliberal governance, not the language of socio-customary justice (Dent, 2022). It is a rationality that views the forest as an under-utilized asset if only used for customary subsistence, deeming it “effective and efficient” only when allocated for Industrial Timber Plantations (HTI) or mining. This “conservative” logic (Mahfud, 2017) of the politics of law directly adopts market rationality as an unquestionable truth. This rationality is operationalized technically in sectoral regulations.

An interpretation of these findings confirms this line of argument. The state, through its legal apparatus, actively promotes market rationality. The “Fair Market Value / *Nilai Pasar Wajar*” (NPW) is a legal fiction. This value is not objectively “found” but is performatively “created” by the “benchmark price set by the government.” This is the mechanism by which the state claims the authority to determine the economic value of the forest, while simultaneously erasing all non-economic values (social, spiritual, subsistence) guarded by customary women. The formal legal system has effectively subjugated customary social logic to market economic logic, rendering property rights (even communal ones) as fully commodifiable assets.

3.3 Systemic erosion through legislative omission

The third core argument is that Systemic Erosion of customary property rights, leading to specific gender-skewing impacts (Benda-Beckmann, 1990), occurs through the mechanism of legislative omission. The analysis demonstrates that gender-skewing

happens not because state law actively prohibits women's rights, but because state law systematically ignores or fails to 'see' the specific categories of property rights controlled by women (Blandino et al., 2023). This is a structurally deliberate silence.

An analysis of the Basic Agrarian Law of 1960 (UUPA) and the Forestry Law No. 41 of 1999 demonstrates that these foundational regulatory frameworks remain structurally "blind" to the internal categories of customary rights. Both statutes employ generalized legal terms such as "Every Person" or "Customary Law Community," without differentiating the layered and gendered dimensions embedded within indigenous normative systems. This legislative silence produces a discriminatory gap, as it fails to accommodate specific customary configurations—particularly those relating to women's authority and tenure.

First, the laws omit recognition of ownership and control rights over *pusako tinggi* as a *sui generis* legal entity. In Minangkabau customary law, *pusako tinggi* is characterized by its communal, matrilineal, and inalienable nature. Its legal ontology does not correspond to individual property ownership nor to corporate legal personality; rather, it represents an intergenerational custodial regime anchored in maternal lineage. The absence of explicit acknowledgment of this category effectively erases its distinct normative status within state legal discourse.

Second, the statutes fail to formally recognize customary women's legal representation, particularly the institutional role of *Bundo Kanduang* (or equivalent female authority figures). Within customary governance structures, these figures hold normative authority parallel to that of the *ninik mamak* (male chiefs). However, in formal-legal processes, only generalized communal representation is acknowledged, thereby marginalizing women's institutional standing. The omission of *Bundo Kanduang* as recognized legal subjects with equivalent procedural capacity reinforces a structural asymmetry between customary practice and state recognition.

Collectively, this doctrinal abstraction—framing indigenous communities as undifferentiated legal subjects—conceals internal normative hierarchies and results in the systemic invisibilization of customary women's rights within national land and forestry law. The implications of this omission are profound. With no legal category for *pusako tinggi*, the state legal system has no tools to protect it. When a dispute arises, a court cannot "find" a law protecting this non-transferable property, causing it to be treated as a generic, alienable *ulayat* right. Furthermore, this omission privatizes the *pusako* right: it is reduced from a legitimate property right to a mere "cultural affair" or "internal inheritance matter" that has no standing against formal state property law.

The most fatal impact is seen in derivative laws at the regional level. As identified in the formalism analysis, the West Sumatra Regional Regulation No. 6 of 2008, despite acknowledging the Unilateral Principle and *Tanah Ulayat Kaum*. The interpretation of this finding is clear: formalization operates as the precise mechanism for gender-skewing. The state, in its quest for a formal, singular, and "legible" legal subject (e.g., for land acquisition negotiations), engages in social re-engineering. It bypasses the collective-matrilineal leadership structure (the *Bundo Kanduang*) and recognizes only the formal-masculine authority (the *Mamak Kepala Waris*).

It is a political choice consistent with the "conservative" theory of politics of law (Mahfud, 2017). The *Bundo Kanduang*-led structure, focused on keeping the *pusako* non-transferable, is an obstacle to the commodification and investment agenda. Conversely, the *Mamak Kepala Waris*-led structure, now granted formal legal authority by the state, becomes more vulnerable to political pressure or market co-optation to release the land. Thus, legislative omission at the national level is not an oversight; it is the structural prerequisite that enables gender-skewing and commodification to occur at the local level.

3.4 The causal synthesis: Erosion through judicial silence

The causal synthesis of the entire argument, how formalization and commodification collaborate to systematically eliminate customary property claims, particularly their

gendered dimensions, is most evident in the analysis of Constitutional Court (MK) Decision No. 35/PUU-X/2012. An in-depth analysis of this ruling provides judicial evidence, both explicitly and implicitly, of this rights-erosion mechanism. The claim over *pusako tinggi* (matrilineally-controlled, non-commercial customary property) represents the specific gendered customary right. The legal mechanism that converted this right into an asset that the state could allocate to corporations, namely, by subordinating it under the "State Forest" category, is the core of the formalization-commodification nexus.

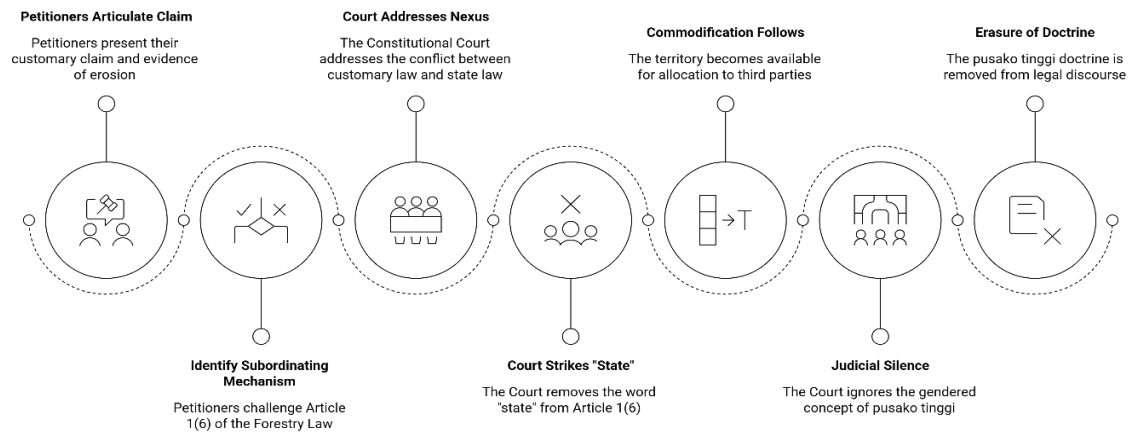


Fig. 1. The causal synthesis of legal formalization and gender-skewing: A pathway of erosion through judicial silence (Author synthesis, adapted from Mahfud, 2017; Benda-Beckmann, 1990; Constitutional Court Decision No. 35/PUU-X/2012).

An analysis of the court documents in Constitutional Court Decision No. 35/PUU-X/2012 presents this systemic conflict in a structured and sequential manner. First, the petitioners articulate the customary claim alongside the factual account of erosion. They argue that land and forest hold profound significance for the customary law community of Kenegerian Kuntu, not merely in economic terms but as *pusako tinggi*—assets of elevated socio-cultural value that sustain communal prosperity and, by definition, cannot be sold. They further contend that industrial timber plantation activities conducted by PT. RAPP within their customary forest resulted in the loss of access, use, and control over the territory traditionally governed under customary law.

Second, the petitioners identify the subordinating formalization mechanism that enabled such commodification. They challenge Article 1(6) of the Forestry Law No. 41 of 1999, which defined "customary forest" as "state forest located within the territory of a customary law community." This classificatory move, they argue, allowed the state to grant exploitation rights over *ulayat* land, including forest concession rights (HPH), industrial timber plantation permits (HTI), the designation of protected forest areas, and land allocation for transmigration projects. In effect, the statutory definition operated as the legal gateway through which customary territories were absorbed into the regime of state administrative discretion.

Third, the Constitutional Court directly addressed this causal nexus. The Court held that the word "state" in Article 1(6) of the Forestry Law was inconsistent with the 1945 Constitution (UUD 1945), thereby affirming that the petitioners' arguments were legally well-founded. By removing the designation of customary forest as "state forest," the Court dismantled the core formalization mechanism that had facilitated the erosion. Interpreting this evidence reveals how formalization and commodification operate institutionally. Formalization functioned as the subordinating key: prior to judicial revision, Article 1(6) legally transferred authority over *pusako tinggi* from the internal customary system to the state by redefining it as state forest. This statutory transformation—although ultimately deemed unconstitutional—shifted control from a matrilineal, inalienable tenure regime to a centralized bureaucratic framework. Importantly, this reclassification was inherently

gender-skewed, as it ignored the matrilineal structure that renders *pusako tinggi* non-transferable and collectively inherited by women.

Commodification followed as a structural consequence. Once categorized as state forest, the territory became available for allocation to third parties through concessionary instruments such as HPH or HTI permits. In this process, the socio-cultural and subsistence value embedded in *pusako tinggi*—intended to remain inalienable—was converted into extractive exchange value. The transformation of customary forest into a concession-based asset represents the conversion of communal heritage into a market-oriented resource. The resulting erosion and delegitimization disproportionately affected women, who are the primary collective holders and inheritors of *pusako tinggi* within the matrilineal system. When customary land was converted into extractive concessions through state formalization, women's tenurial security was effectively nullified. By striking the word "state" from Article 1(6), the Constitutional Court implicitly acknowledged this destructive causal chain, undertaking a judicial intervention aimed at dismantling the subordinating formalization that had served as the precondition for commodification.

The most powerful and subtle evidence of gender-skewing is found not in what the Constitutional Court decided, but in what it did not discuss. This judicial silence represents a form of translation as erasure (Clark, 2020). Petitioners explicitly argued that their land was *pusako tinggi*: a "thick" communal, matrilineal, and sacred right defined by its inalienable (non-transferable) nature, which forms the basis of women's property security. Yet, this crucial, gendered concept completely "vanished" from the court's *ratio decidendi*. The justices' legal reasoning ignored *pusako tinggi* entirely, reducing the complex claim to a generic, "thin" conflict over *ulayat* rights.

This silence can be interpreted as both an epistemological limitation, where the judges' positivist training rendered them "blind" to a non-individualistic, gendered right, and a "conservative" political choice. The court performed the juridical minimum by striking the word "state," but consciously refused to affirm the "radical" internal structure of *pusako tinggi* because it would challenge the market-based foundations of national property law. By subordinating the specific, gender-sensitive tenure framework beneath a generic, gender-neutral concept, the MK's silence had a devastating consequence. It created an "empty shell" of "Customary Forest" that lacks any specific legal mechanism to prevent the internal erosion of women's rights. It effectively "erased" the *pusako tinggi* doctrine from formal legal discourse, leaving state-recognized male leaders free to commodify the land. In this way, the court's, rather than protecting women's rights, perfected the gender-skewing process by granting it the highest judicial legitimacy.

4. Conclusions

This research has demonstrated how state legal formalization operates as a mechanism for the systematic erosion of indigenous women's property rights. A coherent causal chain has been shown: first, a conservative macro politics of law has produced land law products that prioritize procedural formalism and subordinate customary rights under state validation. Second, these ostensibly neutral legal instruments, when interfacing with the Minangkabau social order, operate as a gender-skewing mechanism by forcibly translating communal-matrilineal *pusako* rights into individualized, gender-biased property rights. Third, the combined consequence of this process within a landscape of legal pluralism is the marginalization of customary mediation authority and the shift of the dispute arena to state forums. In these forums, formalistic logic overrides substantive customary justice, a process evidenced in the 'judicial silence' analysis of MK Decision 35/2012.

These findings carry significant theoretical, practical, and methodological implications. Theoretically, this research contributes to legal pluralism studies by refining gender-skewing. The findings indicate that gender-skewing is not merely an unintended side effect of neutral development interventions. Instead, this study demonstrates that gender-skewing is a predictable micro-level consequence directly rooted in a conservative macro

politics of law. The contribution is the connection of these two levels: the erosion of women's rights at the micro-level is systematically facilitated by the procedural subordination of customary rights at the macro-level.

Practically and politically, these findings urge policymakers, particularly at the Ministry of ATR/BPN and the legislature, to move beyond the illusion of gender neutrality and procedural formalism in land politics. If the goal is to substantively protect customary law communities rights (in accordance with the mandate of MK Decision 35/2012), policy cannot stop at establishment via Regional Regulation (as stipulated in the Village Law). A truly affirmative policy must design specific legal instruments capable of recognizing and registering *pusako tinggi* on its own terms, rather than forcing it into a destructive, individualistic 'Property Right' category. Without affirmative recognition of this gender-specific internal normative order, state formalization will only continue to function as legalized dispossession.

Finally, these findings must be understood within their methodological limitations. As detailed in the method section, this research is a document-based socio-legal study focused on de jure analysis (law on paper) and the procedural logic that facilitates rights erosion. The analysis did not examine de facto implementation or 'law-in-action' ethnographically. Therefore, future research is essential to test these de jure findings empirically. Ethnographic studies are urgently needed to investigate how actors (women, *niniak mamak*, and state officials) actually negotiate, resist, or leverage these 'neutral' formalization mechanisms in daily disputes and practice.

Acknowledgement

The author expresses sincere gratitude to the Social Environment, Community Empowerment, and Environmental Economics Research Cluster, School of Environmental Science, Universitas Indonesia (SIL UI), and the 6th JESSD Symposium committee for the valuable opportunity to participate in the Research Assistant Assignment Selection. This manuscript has been prepared and submitted as part of the requirements for this selection process.

Author Contribution

Not available.

Funding

This research received no external funding.

Ethical Review Board Statement

Not available.

Informed Consent Statement

Not available.

Data Availability Statement

Not available.

Conflicts of Interest

The author declare no conflict of interest.

Declaration of Generative AI Use

During the preparation of this work, the author used Grammarly to assist in improving grammar, clarity, and academic tone of the manuscript. After using this tool, the author reviewed and edited the content as needed and took full responsibility for the content of the publication.

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