

The Political Life of Civil Law: How Power Shapes Private Legal Relations

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Abstract

Civil law is doctrinally positioned as a neutral legal domain governing private relations among legal subjects. In practice, however, the formation and application of civil law are inseparable from political, economic, and institutional power relations. Legislative interventions, state policies, and judicial decisions demonstrate that civil law operates as an instrument of legal policy through which public interests are articulated and enforced within private legal relations. This article examines the political dimension of civil law and its juridical implications for private autonomy in the Indonesian legal system. Employing normative legal research with statute, conceptual, and case approaches, the study identifies normative ambiguity in positive law concerning the limits of state power over private relations, the legitimacy of using civil law as a policy tool, and the criteria for restricting private autonomy on public interest grounds. The analysis shows that such ambiguity undermines legal certainty, reduces autonomy of will, and creates the risk of unaccountable state intervention. This article argues for a normative reconstruction that treats private autonomy as a conditional principle subject to proportionate, transparent, and accountable state intervention, in order to balance individual protection with public objectives within civil law.

Keywords: civil law, legal politics, private autonomy, state power, legal certainty

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1. Introduction

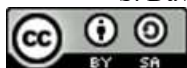
Civil law is doctrinally presented as a neutral legal domain governing private relations between formally equal legal subjects. Classical civil law theory portrays private law as autonomous from politics, grounded in individual will, property rights, and contractual freedom, with the state acting merely as a guarantor of private ordering.¹ This narrative of neutrality has long shaped both legal education and doctrinal interpretation in civil law systems, including Indonesia.

In practice, however, civil law does not operate in a political vacuum. The formation, interpretation, and enforcement of civil law norms are deeply embedded in relations of political, economic, and institutional power. Legislative interventions, regulatory policies, and judicial decisions reveal that civil law functions not only as a framework for private cooperation but also as an instrument for governing markets, allocating resources, and advancing policy objectives.² The claim of civil law neutrality therefore obscures its political life.

This tension becomes particularly visible in contemporary Indonesian legal practice. While the Civil Code (*Burgerlijk Wetboek*) continues to formalize private autonomy and contractual freedom,

¹ Maeve Cooke, "Private Autonomy and Public Autonomy: Tensions in Habermas' Discourse Theory of Law and Politics," *Kantian Review* 25 (2020).

² S. Davis, "The Private Law State," *McGill Law Journal* 63 (2018).



sectoral legislation increasingly reshapes private relations in pursuit of public policy goals. Laws governing consumer protection, labor relations, investment, licensing, and economic restructuring impose mandatory norms that directly affect contractual content, property relations, and liability allocation.³ These interventions challenge the traditional boundary between private law and public power.

The central legal issue addressed in this article is the existence of normative ambiguity in Indonesian positive law regarding the relationship between political power and private legal relations. This ambiguity concerns three core questions: the extent to which state power may legitimately influence private law relations, the boundary between protecting private autonomy and advancing political legal objectives, and the legitimacy of using civil law as an instrument of public policy.⁴ As long as these boundaries remain unclear, claims of civil law neutrality become normatively unstable.

This ambiguity has concrete juridical consequences. In contractual and property disputes, courts are increasingly required to balance private autonomy against regulatory objectives without a clear normative framework. Judicial reasoning often oscillates between formal adherence to civil law codification and deference to sectoral policy considerations, producing inconsistent outcomes and undermining legal certainty.⁵ The absence of explicit criteria for evaluating political intervention in private relations intensifies this uncertainty.

From a constitutional perspective, the political use of civil law must be reconciled with the principles of the rule of law and democracy enshrined in the 1945 Constitution. State intervention in private relations cannot rely solely on policy expediency but must be normatively justified, proportionate, and accountable.⁶ Without such justification, civil law risks becoming an opaque vehicle of power rather than a predictable framework for private interaction.

Existing scholarship has extensively examined private autonomy, regulatory governance, and the politicization of law as separate phenomena. However, normative legal analysis that explicitly interrogates the political character of civil law and its implications for private legal relations within the Indonesian context remains limited.⁷ Most studies either accept the neutrality of civil law or critique regulation without offering a coherent normative framework for balancing power and autonomy.

Accordingly, this article aims to expose the political dimension of civil law, assess the juridical implications of state power over private legal relations, and formulate a normative framework that preserves private autonomy while subjecting political intervention to clear constitutional and doctrinal limits.⁸

³ Law No. 8 of 1999 on Consumer Protection; Law No. 11 of 2020 on Job Creation.

⁴ A. Bator, "Law and Jurisprudence in the Face of Conflict: Between Neutrality and the Political," (2020).

⁵ I. Gde and Pantja Astawa, "Convergence of Administrative Law and Civil Law," *Litigasi* (2024)

⁶ The 1945 Constitution of the Republic of Indonesia.

⁷ Jacquelyn D. Veraldi, "Private Power, the Rule of Law and the European Union," *Hague Journal on the Rule of Law* 15 (2023).

⁸ Tim Bartley, "Power and the Practice of Transnational Private Regulation," *New Political Economy* 27 (2021).



2. Method

This study employs normative legal research with a critical-prescriptive orientation. Normative research is appropriate for examining how civil law norms interact with political power and for identifying doctrinal ambiguities that arise when private law functions as an instrument of public policy. The analysis focuses on evaluating legal norms rather than describing empirical political processes.⁹

The statute approach is used to analyze constitutional provisions and statutory instruments that shape private legal relations, including the 1945 Constitution, the Civil Code, Law No. 30 of 2014 on Government Administration, Law No. 11 of 2020 on Job Creation, and Law No. 8 of 1999 on Consumer Protection. This approach allows assessment of how legislative power intervenes in private law and whether such intervention is normatively coherent.¹⁰

The conceptual approach examines theories of legal neutrality, political power, legal pluralism, and the social function of civil law. These concepts are employed to critique the assumption that civil law operates independently of political influence and to construct a framework for evaluating the legitimacy of state intervention in private relations. The case approach complements statutory and conceptual analysis by examining judicial decisions that reflect the influence of state policy on civil law disputes. Through case analysis, the study identifies patterns in judicial reasoning that reveal how political considerations are embedded in the adjudication of private law conflicts.¹¹

Legal materials consist of primary sources (statutes and court decisions), secondary sources (peer-reviewed journals and doctrinal writings), and tertiary sources (legal dictionaries and encyclopedias). Systematic, historical, and teleological interpretation are employed to formulate prescriptive conclusions regarding the normative limits of power in private law.¹²

3. Results and Discussion

Civil Law beyond Neutrality: The Political Foundations of Private Law

The traditional portrayal of civil law as a neutral domain obscures the political foundations underlying private legal relations. Classical doctrine assumes that civil law merely facilitates voluntary interaction among formally equal parties, while political power is confined to public law. This assumption is normatively problematic because it ignores the fact that the very structure of property, contract, and liability is shaped through legislative and institutional choices reflecting political priorities.¹³ Civil law does not merely reflect social relations; it actively constructs them.

The political character of civil law is evident in the way legal norms distribute power and resources among private actors. Rules on ownership, contractual enforceability, and civil liability determine who bears risk, who controls assets, and whose interests receive legal protection. These distributions are not value-neutral outcomes of private will but the result of deliberate normative design influenced by economic policy, social priorities, and institutional power.¹⁴ The neutrality claim thus masks a substantive political ordering embedded in private law.

State involvement in civil law formation further demonstrates this political dimension. Codification itself is a political project, selecting certain interests for protection while marginalizing others. In Indonesia, the continued application of the Civil Code coexists with extensive sectoral legislation that modifies private relations in accordance with state policy objectives, such as consumer protection, labor standards, and economic restructuring.¹⁵ This coexistence reflects a layered political influence rather than a separation between private law and public power.

⁹ Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017).

¹⁰ Law No. 30 of 2014 on Government Administration; Law No. 11 of 2020 on Job Creation; Law No. 8 of 1999 on Consumer Protection.

¹¹ V. Poddubna, "Legal Forms of State Participation in Civil-Legal Relations," *Uzhhorod National University Herald* (2024).

¹² Philipus M. Hadjon, *Introduction to Indonesian Administrative Law* (Yogyakarta: Gadjah Mada University Press, 2020).

¹³ S. Davis, "The Private Law State," *McGill Law Journal* 63 (2018).

¹⁴ Jacquelyn D. Veraldi, "Private Power, the Rule of Law and the European Union," *Hague Journal on the Rule of Law* 15 (2023).

¹⁵ Law No. 8 of 1999 on Consumer Protection; Law No. 11 of 2020 on Job Creation.

Judicial interpretation reinforces this dynamic. Courts do not merely apply neutral rules but interpret civil law norms through the lens of prevailing policy considerations. Decisions concerning unfair contract terms, abuse of rights, or public interest limitations often reveal implicit political judgments about acceptable market behavior and social justice.¹⁶ Judicial discretion thus becomes a conduit through which political values permeate private law adjudication.

The persistence of the neutrality narrative creates normative ambiguity. If civil law is assumed to be apolitical, political intervention appears as an exception requiring minimal justification. Conversely, recognizing the political foundations of civil law demands explicit criteria for legitimate intervention. The absence of such criteria leaves the boundary between private autonomy and political power underdefined, allowing power to operate implicitly rather than transparently.¹⁷ This ambiguity weakens accountability.

Normatively, acknowledging the political foundations of civil law does not entail rejecting private autonomy. Rather, it requires reframing autonomy as a principle operating within a politically constructed legal order. Private law must be understood as a site of continuous negotiation between individual freedom and collective priorities, rather than as a neutral background immune to power relations.¹⁸ This reframing is essential for doctrinal coherence.

Prescriptively, civil law theory and doctrine should abandon the fiction of neutrality and adopt an explicit framework for evaluating political influence in private relations. Such a framework would enhance transparency, allow principled justification of state intervention, and strengthen the legitimacy of civil law as a domain that balances autonomy and power rather than concealing their interaction.¹⁹

Normative Ambiguity in the Exercise of State Power over Private Legal Relations

Normative ambiguity becomes most apparent in determining the limits of state power over private legal relations. While modern civil law accepts that private autonomy is not absolute, positive law often fails to articulate clear criteria governing when and how state intervention is justified. As a result, regulatory authority expands into private law without a coherent doctrinal boundary, blurring the distinction between lawful regulation and excessive control.²⁰

This ambiguity is reflected in the inconsistent use of “public interest” as a justificatory concept. Sectoral legislation frequently invokes public interest to restrict contractual freedom or property rights, yet the concept itself remains undefined or overly elastic. Without clear normative parameters, public interest operates as an open-ended justification that can legitimize extensive intervention in private relations without proportional scrutiny.²¹ This elasticity undermines predictability.

In Indonesia, laws such as Law No. 30 of 2014 on Government Administration emphasize legality, proportionality, and accountability in the exercise of public authority. However, these administrative law principles are not systematically integrated into civil law adjudication. Courts often enforce regulatory constraints on private agreements without explicitly assessing whether such intervention satisfies proportionality or necessity requirements.²² This disconnect intensifies normative ambiguity.

The consequences of this ambiguity are juridically significant. Private parties face uncertainty regarding the enforceability of their agreements, while weaker parties may experience inconsistent protection depending on judicial interpretation. Moreover, unchecked intervention risks instrumentalizing civil law as a tool of political expediency rather than a stable framework for private cooperation.²³ Legal certainty and substantive justice are thereby compromised.

¹⁶ I. Gde and Pantja Astawa, “Convergence of Administrative Law and Civil Law,” *Litigasi* (2024).

¹⁷ A. Bator, “Law and Jurisprudence in the Face of Conflict: Between Neutrality and the Political,” (2020).

¹⁸ Maeve Cooke, “Private Autonomy and Public Autonomy,” *Kantian Review* 25 (2020).

¹⁹ Tim Bartley, “Power and the Practice of Transnational Private Regulation,” *New Political Economy* 27 (2021).

²⁰ V. Poddubna, “Legal Forms of State Participation in Civil-Legal Relations,” *Uzhhorod National University Herald* (2024).

²¹ Ioannis Kampourakis, S. Taekema, and A. Arcuri, “Reappropriating the Rule of Law,” *Jurisprudence* 14 (2022).

²² Law No. 30 of 2014 on Government Administration.

²³ S. Davis, “The Private Law State,” (2018).

This condition also affects power asymmetry among private actors. Regulatory intervention may correct certain inequalities but may simultaneously create new forms of dependence on state discretion. When private rights are contingent upon shifting policy priorities rather than stable legal standards, autonomy is replaced by vulnerability to power.²⁴ This dynamic contradicts the protective function of civil law.

Normatively, the absence of clear limits on state power reflects a failure to reconcile civil law doctrine with political reality. Recognizing the political life of civil law requires explicit criteria for legitimate intervention, including defined public interest objectives, proportionality analysis, and transparency in regulatory justification.²⁵ Without such criteria, political influence remains implicit and unaccountable.

Prescriptively, civil law must incorporate control mechanisms over political power analogous to those applied in public law. Judicial review of regulatory intervention in private relations should explicitly engage proportionality and accountability principles to ensure that state power operates within constitutionally acceptable bounds.²⁶ This integration is essential for restoring doctrinal coherence.

Reconstructing a Normative Framework for Power and Private Law Relations

Recognizing the political life of civil law necessitates a normative reconstruction that neither denies the role of power nor dissolves private autonomy into state control. Civil law must be understood as a legal field in which private relations are structured through politically constituted norms, yet remain oriented toward protecting individual freedom and legal certainty. This dual character requires a framework capable of disciplining power while preserving the autonomy of private actors.²⁷

The first element of such a framework is the reconceptualization of private autonomy as a conditional principle. Private autonomy cannot operate as an absolute shield against state intervention, but neither can it be subordinated entirely to policy objectives. Instead, autonomy should function as a *prima facie* principle that may be limited only when state intervention pursues a legitimate public interest grounded in constitutional values.²⁸ This reconceptualization aligns private law with democratic accountability without erasing its protective function.

The principle of proportionality constitutes the central normative tool for mediating between power and autonomy. Any state intervention in private legal relations must satisfy cumulative requirements of legitimacy, necessity, and proportionality in the strict sense. Regulatory measures that affect contracts, property, or civil liability must be demonstrably connected to public objectives and must impose the least restrictive means available.²⁹ Without proportionality analysis, political intervention risks becoming an instrument of unchecked power rather than a mechanism of lawful governance.

In the Indonesian context, proportionality and accountability are embedded in Law No. 30 of 2014 on Government Administration, which regulates the exercise of public authority. However, these principles are rarely articulated explicitly in civil law adjudication. Courts often apply regulatory constraints to private relations without assessing whether such intervention is justified, necessary, and proportionate.³⁰ This gap highlights the need for doctrinal integration between public law control mechanisms and private law reasoning.

A reconstructed framework must also emphasize transparency and justification. Political intervention in private law should not be obscured behind claims of neutrality or technical regulation. Instead, legislative and judicial actors must articulate the public interests at stake and explain why

²⁴ Jacquelyn D. Veraldi, "Private Power and the Rule of Law," (2023).

²⁵ Maeve Cooke, "Private Autonomy and Public Autonomy," (2020).

²⁶ Antoni Abat i Ninet, "Freedom and Personal Autonomy as the Foundation of Private International Law," (2025).

²⁷ S. Davis, "The Private Law State," *McGill Law Journal* 63 (2018).

²⁸ Maeve Cooke, "Private Autonomy and Public Autonomy," *Kantian Review* 25 (2020).

²⁹ Ioannis Kampourakis, S. Taekema, and A. Arcuri, "Reappropriating the Rule of Law," *Jurisprudence* 14 (2022).

³⁰ Law No. 30 of 2014 on Government Administration

interference with private autonomy is normatively warranted.³¹ Such transparency enhances democratic legitimacy and allows meaningful scrutiny of power.

Normatively, civil law should be reaffirmed as a space of individual protection rather than a mere extension of regulatory governance. While state intervention is sometimes necessary to correct market failures or protect vulnerable parties, it must remain bounded by clear criteria that prevent instrumentalization of private law for shifting political agendas.³² Civil law loses its normative identity when it becomes indistinguishable from administrative regulation.

Prescriptively, Indonesian civil law doctrine should integrate political awareness with legal restraint. This includes developing judicial standards for proportionality review in private law cases, harmonizing sectoral regulations with civil law principles, and incorporating political-law analysis into doctrinal development. Through such measures, the political life of civil law can be acknowledged and disciplined rather than denied or left unchecked.³³

Conclusions

This study demonstrates that civil law possesses a distinct political life that shapes the formation, interpretation, and enforcement of private legal relations. The assumption of civil law neutrality obscures the reality that private law norms are constituted through political choices that distribute power, allocate resources, and advance policy objectives. In the absence of explicit normative boundaries, political influence operates implicitly, weakening legal certainty and substantive justice.

The analysis concludes that normative ambiguity in the relationship between state power and private law undermines both private autonomy and the legitimacy of regulation. When state intervention lacks clear justification and proportional limits, civil law risks becoming an instrument of power rather than a framework of protection. Conversely, denying the political dimension of civil law prevents meaningful control over how power operates within private relations.

Prescriptively, this article argues for a reconstructed normative framework in which private autonomy is treated as a conditional principle subject to transparent, proportionate, and accountable state intervention. Such a framework requires harmonization between civil law doctrine and public law principles, particularly proportionality and accountability as reflected in Law No. 30 of 2014 on Government Administration. Without this reconstruction, the political life of civil law will continue to generate uncertainty, imbalance, and erosion of trust in private legal relations.

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³¹ Tim Bartley, "Power and the Practice of Transnational Private Regulation," *New Political Economy* 27 (2021).

³² Jacquelyn D. Veraldi, "Private Power, the Rule of Law and the European Union," *Hague Journal on the Rule of Law* 15 (2023).

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