

From Private Autonomy to State Regulation: Shifting Boundaries in Civil Law

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Abstract

Classical civil law is fundamentally grounded in the doctrine of private autonomy, which positions individual free will as the primary source of legal obligations. However, the evolution of the welfare state, the expansion of regulatory governance, and the increasing protection of public interests have significantly altered this paradigm. In Indonesia, this transformation has produced normative ambiguity regarding the boundary between freedom of contract and state regulatory authority, particularly due to inconsistencies between the Civil Code and sectoral regulatory statutes. This article employs normative legal research using statute, conceptual, and case approaches to examine the shifting relationship between private autonomy and state regulation in civil law. The analysis demonstrates that unstructured regulatory intervention risks undermining legal certainty and diluting the normative core of civil law, while absolutist private autonomy is no longer tenable in a modern regulatory state. This article argues for a reconstruction of civil law based on conditional private autonomy, supported by proportionality and accountability principles, in order to balance private interests and public objectives in a constitutionally coherent manner.

Keywords: private autonomy, freedom of contract, state regulation, civil law, proportionality

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1. Introduction

Classical civil law is historically grounded in the doctrine of private autonomy, which positions the free will of individuals as the primary source of legal obligations. Within this paradigm, contractual relations are legitimized by mutual consent, and the role of the state is largely confined to enforcing agreements voluntarily entered into by the parties.¹ The Indonesian Civil Code (*Burgerlijk Wetboek*) reflects this classical conception through its emphasis on freedom of contract and the binding force of agreements.

However, the expansion of the modern welfare state and the increasing complexity of economic and social relations have significantly altered this landscape. State intervention in civil law relations has intensified through regulatory instruments aimed at protecting public interests, correcting power imbalances, and ensuring social justice. Sectoral legislation governing consumer protection, labor relations, public procurement, and licensing regimes illustrates a decisive shift from purely private ordering toward regulatory oversight.² This transformation challenges the traditional boundaries of

¹ Stefan Grundmann, "European Contract Law and Regulation," *European Review of Contract Law* 21 (2025).

² O. Skvortsov, "State Capitalism and the Intervention of Public Law in Civil Legislation," *Zakon* (2025).



The interaction between classical civil law codification and modern regulatory statutes has generated a fundamental juridical tension. While the Civil Code continues to uphold freedom of contract as a foundational principle, sectoral regulations increasingly impose mandatory norms that restrict contractual freedom in the name of public interest. This coexistence has produced normative ambiguity regarding the extent to which private autonomy remains protected as an absolute principle.³

The core legal issue addressed in this article is the existence of normative ambiguity concerning the boundary between private autonomy and state regulatory authority in civil law. This ambiguity manifests in three interrelated dimensions: uncertainty regarding the limits of freedom of contract, lack of clarity on the legal grounds justifying state intervention in private relations, and inconsistencies between civil law codification and sectoral regulatory frameworks.⁴ As a result, legal certainty in contractual practice is increasingly compromised.

This ambiguity is particularly evident in the application of statutes such as Law No. 8 of 1999 on Consumer Protection and Law No. 11 of 2020 on Job Creation, which impose substantive and procedural constraints on private agreements. Although these laws pursue legitimate public objectives, their interaction with the Civil Code is not systematically regulated, leaving judges with broad discretion to determine when contractual freedom may be lawfully curtailed.⁵ This discretion, in the absence of clear normative boundaries, risks arbitrariness and uneven application of the law.

From a constitutional perspective, the expansion of state regulation in civil law must be reconciled with the principles of legal certainty and proportionality. State intervention that lacks clear normative justification may undermine the predictability of legal relations and weaken trust in private ordering. Conversely, an absolutist conception of private autonomy is no longer tenable in a regulatory state committed to public welfare and social justice.⁶

Existing scholarship has extensively discussed freedom of contract and regulatory intervention as separate themes. However, normative analysis that explicitly addresses the ambiguity arising from their interaction within the Indonesian legal system remains limited. Most studies focus either on doctrinal autonomy or on sectoral regulation without proposing an integrated normative framework capable of balancing private and public interests.⁷ This gap necessitates a systematic reassessment of the conceptual and normative boundaries of private autonomy.

Accordingly, this article aims to analyze the normative shift from private autonomy toward state regulation in civil law, to assess the juridical implications of this shift for freedom of contract and legal certainty, and to formulate an ideal normative construction that balances private and public interests in a proportional and constitutionally grounded manner.⁸

³ Jae Hyung Kim, "A Dialogue between Public and Private Law," *The Korean Association of Civil Law* (2023).

⁴ A. Mills, "The Privatisation of Private (and) International Law," *Current Legal Problems* (2023).

⁵ Law No. 8 of 1999 on Consumer Protection; Law No. 11 of 2020 on Job Creation.

⁶ Pichler and Pavošević, "Civil Law Aspects of the Conflict of Private and Public Interests," (2025).

⁷ Hanoah Dagan and Sagi Peari, "Choice of Law Meets Private Law Theory," *Oxford Journal of Legal Studies* (2023).

⁸ Stefan Grundmann, "European Contract Law and Regulation," (2025).



2. Method

This study employs normative legal research with a prescriptive and conceptual orientation. Normative research is appropriate for examining the coherence, limits, and interaction of legal principles governing private autonomy and state regulation within civil law. The analysis focuses on identifying normative ambiguity and formulating doctrinal solutions rather than describing empirical contractual practices.⁹

The statute approach is applied to analyze the Indonesian Civil Code alongside regulatory statutes that restrict private autonomy, including Law No. 30 of 2014 on Government Administration, Law No. 8 of 1999 on Consumer Protection, and Law No. 11 of 2020 on Job Creation and its implementing regulations. This approach enables an assessment of normative consistency between civil law codification and sectoral regulation.¹⁰

The conceptual approach is used to examine foundational concepts such as freedom of contract, public interest, proportionality, and the social function of civil law. These concepts provide the analytical framework for evaluating whether state intervention remains justified within a system that formally upholds private autonomy as a core principle.¹¹

The case approach complements statutory and conceptual analysis by examining judicial decisions in which courts have annulled, modified, or restricted private agreements due to regulatory considerations. This approach illustrates how normative ambiguity manifests in judicial reasoning and affects legal certainty in practice.¹²

Legal materials consist of primary sources (statutes and court decisions), secondary sources (civil law doctrine and peer-reviewed journals), and tertiary sources (legal dictionaries and encyclopedias). The analysis employs systematic and teleological interpretation to construct a normative framework capable of balancing private autonomy and state regulation in a proportionate and constitutionally sound manner.

3. Results and Discussion

The Classical Doctrine of Private Autonomy in Civil Law

Private autonomy constitutes the conceptual foundation of classical civil law. It rests on the assumption that individuals are rational actors capable of determining their own legal interests through voluntary agreements. Within this framework, the role of law is primarily facilitative: it provides a structure within which private parties may freely arrange their affairs, while state intervention is limited to enforcing consensual obligations.¹³ This doctrine reflects liberal legal thought, which prioritizes individual freedom and legal certainty.

The Indonesian Civil Code embodies this classical doctrine through the principle of freedom of contract. Article 1338 paragraph (1) of the Civil Code affirms that legally formed agreements bind the parties as law, thereby elevating private will to a normatively authoritative position. This provision has traditionally been interpreted as granting broad contractual freedom, subject only to minimal statutory constraints.¹⁴ The legitimacy of civil obligations is thus derived from consent rather than regulatory approval.

Within this paradigm, the will of the parties functions as the primary source of legal legitimacy. Contracts are presumed to be fair expressions of mutual interest, and the law refrains from substantive evaluation of their content. Judicial intervention is limited to ensuring formal validity, such as capacity, consent, and lawful cause, rather than assessing distributive justice or power asymmetry between the

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

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

¹¹ Stefan Grundmann, "European Contract Law and Regulation," (2025).

¹² Mohammad Adzan, "Legal Protection of Business Actors in Government Procurement Contracts," *JISPENDIORA* (2025).

¹³ Stefan Grundmann, "European Contract Law and Regulation," *European Review of Contract Law* 21 (2025).

¹⁴ Burgerlijk Wetboek (Indonesian Civil Code), art. 1338(1).

parties.¹⁵ This approach reinforces predictability and stability in civil relations.

However, the classical doctrine of private autonomy is conceptually limited in addressing modern social and economic realities. It presumes equality of bargaining power and access to information, assumptions that no longer hold in complex market structures. Standard-form contracts, mass transactions, and monopolistic practices expose structural imbalances that undermine the voluntariness underlying contractual consent.¹⁶ In such contexts, formal freedom of contract may mask substantive inequality.

These limitations reveal an internal tension within civil law. While private autonomy promotes certainty and individual freedom, its absolutist application risks legitimizing exploitation and systemic imbalance. The classical doctrine lacks intrinsic mechanisms to correct these distortions, as it treats intervention as an exception rather than an integral component of justice in civil relations.¹⁷ This conceptual rigidity necessitates reevaluation.

Normatively, the persistence of classical private autonomy without adaptation leads to doctrinal inadequacy. Civil law that remains exclusively consent-based fails to respond to evolving societal needs and economic structures. As a result, the doctrine of private autonomy must be reconceptualized to accommodate protective and corrective functions without abandoning its foundational role.¹⁸ This shift sets the stage for increased state regulation.

Normative Ambiguity in State Intervention over Civil Law Relations

The increasing involvement of the state in civil law relations has generated significant normative ambiguity regarding the boundaries of regulatory authority. While modern legislation seeks to protect public interests and weaker parties, it often does so without clearly redefining the scope of private autonomy. As a result, civil law operates within an uncertain normative space where contractual freedom and regulatory control coexist without clear hierarchy.¹⁹

This ambiguity is evident in the interaction between the Civil Code and sectoral statutes. The Civil Code continues to affirm freedom of contract, yet laws such as Law No. 8 of 1999 on Consumer Protection and Law No. 11 of 2020 on Job Creation impose mandatory norms that override contractual terms. These statutes restrict private autonomy on substantive grounds, but they do not articulate a coherent doctrinal framework explaining when and why such restrictions are justified.²⁰

The lack of normative clarity places judges in a difficult position. Courts are frequently required to determine whether a private agreement should be upheld or invalidated due to regulatory considerations, often without explicit statutory guidance. This situation expands judicial discretion and increases the risk of inconsistent outcomes, as similar contractual arrangements may be treated differently depending on interpretive approach.²¹ Legal certainty, a core objective of civil law, is thereby compromised.

Normative ambiguity also affects the balance between the parties. When state intervention is unpredictable, contracting parties cannot reliably assess the legal consequences of their agreements. This uncertainty discourages private ordering and undermines trust in contractual mechanisms. At the same time, unchecked regulatory intervention risks transforming civil law into an instrument of administrative control rather than a framework for private cooperation.²²

From a rule-of-law perspective, state intervention in civil law must satisfy clear normative criteria. Law No. 30 of 2014 on Government Administration emphasizes legality, proportionality, and

¹⁵ Jae Hyung Kim, "A Dialogue between Public and Private Law," *The Korean Association of Civil Law* (2023).

¹⁶ O. Skvortsov, "State Capitalism and the Intervention of Public Law in Civil Legislation," *Zakon* (2025).

¹⁷ A. Mills, "The Privatisation of Private (and) International Law," *Current Legal Problems* (2023)

¹⁸ Hanoch Dagan and Sagi Peari, "Choice of Law Meets Private Law Theory," *Oxford Journal of Legal Studies* (2023).

¹⁹ Pichler and Pavošević, "Civil Law Aspects of the Conflict of Private and Public Interests," *EU and Comparative Law Issues and Challenges Series* (2025).

²⁰ Law No. 8 of 1999 on Consumer Protection; Law No. 11 of 2020 on Job Creation.

²¹ Mohammad Adzan, "Legal Protection of Business Actors in Government Procurement Contracts," *JISPENDIORA* (2025).

²² O. Skvortsov, "State Capitalism and the Intervention of Public Law in Civil Legislation," (2025).

accountability in the exercise of public authority. However, these principles are not systematically integrated into civil law doctrine, resulting in fragmented application across different regulatory regimes.²³ This fragmentation intensifies doctrinal incoherence.

Prescriptively, the persistence of normative ambiguity necessitates doctrinal recalibration. State intervention should not negate private autonomy but should operate within clearly defined limits grounded in public interest, proportionality, and fairness. Without such limits, civil law risks oscillating between formal autonomy and excessive regulation, neither of which adequately serves justice or legal certainty.²⁴

Redefining the Boundary between Private Autonomy and State Regulation

The progressive expansion of state regulation in civil law necessitates a normative redefinition of the boundary between private autonomy and public authority. The classical dichotomy between private ordering and state intervention is no longer adequate to explain contemporary civil law relations, which increasingly operate within a hybrid regulatory environment. Rather than perceiving state regulation as an external intrusion, modern civil law must reconceptualize regulation as a structural component that conditions, but does not eliminate, private autonomy.²⁵

This reconceptualization requires abandoning the notion of absolute freedom of contract. In a regulatory state, private autonomy can no longer function as an unconditional principle detached from social consequences. Instead, it must be understood as conditional private autonomy, whereby contractual freedom is preserved as a starting point but remains subject to legitimate public interest limitations.²⁶ Such limitations must be normatively justified, clearly articulated, and proportionate to the objectives pursued.

The principle of proportionality plays a central role in redefining this boundary. State intervention in civil law relations should satisfy cumulative requirements of legitimacy, necessity, and proportionality in the strict sense. Regulatory measures that restrict contractual freedom must pursue a constitutionally legitimate aim, address a demonstrable public interest concern, and impose the least restrictive means available.²⁷ Without proportionality, regulatory intervention risks degenerating into administrative overreach that undermines legal certainty.

In the Indonesian context, proportionality and accountability are implicitly embedded in Law No. 30 of 2014 on Government Administration, which governs the exercise of public authority. However, these administrative principles are not systematically integrated into civil law adjudication. Judges frequently apply sectoral regulations without explicit proportionality analysis, resulting in decisions that prioritize regulatory compliance over balanced consideration of private interests.²⁸ This gap underscores the need for doctrinal harmonization.

Normatively, an ideal model for balancing private autonomy and state regulation must operate on three levels. First, civil law codification should continue to recognize freedom of contract as a general principle. Second, sectoral legislation must explicitly justify restrictions on private autonomy by reference to defined public interests. Third, judicial reasoning must incorporate proportionality as a standard evaluative tool when assessing the validity and enforceability of private agreements affected by regulation.²⁹ These layers collectively ensure coherence and predictability.

Such a model does not diminish private autonomy but recalibrates it within a constitutional framework. By treating private autonomy as conditional rather than absolute, civil law can accommodate regulatory objectives without collapsing into administrative dominance. This approach preserves the normative identity of civil law as a domain of private cooperation while acknowledging the legitimate role of the state in safeguarding public interests.²⁹

²³ Law No. 30 of 2014 on Government Administration.

²⁴ Stefan Grundmann, "European Contract Law and Regulation," (2025).

²⁵ A. Mills, "The Privatisation of Private (and) International Law," *Current Legal Problems* (2023).

²⁶ Stefan Grundmann, "European Contract Law and Regulation," *European Review of Contract Law* 21 (2025).

²⁷ Pichler and Pavošević, "Civil Law Aspects of the Conflict of Private and Public Interests," *EU and Comparative Law Issues and Challenges Series* (2025).

²⁸ Law No. 30 of 2014 on Government Administration.

²⁹ Jae Hyung Kim, "A Dialogue between Public and Private Law," *The Korean Association of Civil Law* (2023).

Prescriptively, legal reform should focus on harmonizing civil law doctrine with regulatory practice. This includes clarifying the normative status of sectoral regulations vis-à-vis the Civil Code, developing judicial guidelines for proportionality assessment, and fostering doctrinal integration between private law and public law principles. Without such reform, the shifting boundary between private autonomy and state regulation will continue to generate uncertainty and doctrinal fragmentation.³⁰

Conclusions

The shift from private autonomy toward increased state regulation in civil law represents an inevitable normative transformation driven by welfare-state objectives, economic complexity, and public interest considerations. This study demonstrates that while classical civil law continues to uphold freedom of contract as a foundational principle, contemporary regulatory frameworks increasingly constrain private autonomy without providing a coherent normative boundary. The resulting ambiguity undermines legal certainty and consistency in civil law relations.

This article concludes that private autonomy can no longer be treated as an absolute principle within a modern regulatory state. However, unstructured state intervention risks eroding the normative core of civil law and transforming private relations into objects of administrative control. Therefore, a balanced approach is required—one that preserves private autonomy as a primary principle while subjecting it to clearly defined, proportionate, and accountable regulatory limitations.

Prescriptively, Indonesian civil law must adopt a conditional autonomy framework supported by proportionality-based judicial review and harmonized statutory interpretation. Such a framework would allow civil law to remain responsive to public interests without sacrificing predictability, fairness, and the autonomy of private actors. Without this normative reconstruction, the shifting boundary between private autonomy and state regulation will continue to generate uncertainty and doctrinal incoherence.

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³⁰ Hanoch Dagan and Sagi Peari, "Choice of Law Meets Private Law Theory," *Oxford Journal of Legal Studies* (2023).

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