

## Rethinking Civil Law Protection in Unequal Societies

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### Abstract

*Civil law is traditionally grounded in the assumption of formal equality among legal subjects, presuming that private autonomy and freedom of contract operate under conditions of equivalent bargaining power. In unequal societies, however, civil law relations are frequently shaped by structural disparities in economic resources, access to information, and social position. This article examines the normative foundations of civil law protection in the context of social inequality and questions the adequacy of formal equality as a basis for justice in private legal relations. Using normative juridical research with statute, conceptual, and case approaches, this study identifies normative ambiguity in civil law regarding the criteria for legally relevant inequality, the limits of restricting freedom of contract, and the consistency of legal protection across private relations. The analysis demonstrates that such ambiguity weakens legal certainty and renders civil law protection fragmented and ineffective. This article argues for a normative reconstruction of civil law protection grounded in substantive justice, treating private autonomy as a conditional principle and positioning civil law as a constitutional instrument for correcting structural inequality.*

**Keywords:** civil law, legal protection, social inequality, substantive justice, private autonomy

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### 1. Introduction

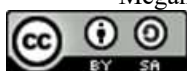
Civil law doctrine is traditionally grounded in the assumption of formal equality among legal subjects. This assumption underlies core principles such as freedom of contract, legal capacity, and the binding force of agreements. Within this framework, private autonomy is treated as the primary source of legitimacy for civil legal relations, while the role of the state is largely confined to guaranteeing enforcement rather than correcting imbalance.<sup>1</sup> The doctrinal commitment to formal equality positions civil law as a neutral framework that presumes equivalence between parties regardless of their social or economic conditions.

Social reality, however, reveals a fundamentally different picture. Civil law relations frequently take place in contexts marked by structural inequality, including disparities in wealth, education, access to information, and bargaining power. These inequalities significantly influence contractual consent, risk allocation, and access to remedies. As a result, private autonomy often operates in conditions that systematically disadvantage weaker parties, transforming formal freedom into a mechanism that legitimizes unequal outcomes.<sup>2</sup> The assumption of equality embedded in civil law thus becomes increasingly detached from social conditions in which private relations are formed.

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<sup>1</sup> Vanessa Mak, "Redefining Equality in European Contract Law," *European Law Open* 3 (2024).

<sup>2</sup> Megan Doherty Bea and E. Poppe, "Marginalized Legal Categories," *Law & Society Review* (2021).



The Indonesian legal system has responded to this tension through the expansion of legal protection norms within civil law. Consumer protection law, standard contract regulation, and sectoral socio-economic legislation illustrate state efforts to mitigate imbalance and protect vulnerable parties. These interventions implicitly acknowledge that formal equality alone is insufficient to ensure justice in private relations.<sup>3</sup> Nevertheless, such protective measures remain fragmented and are not anchored in a unified civil law doctrine that systematically addresses inequality.

This fragmentation gives rise to a central legal problem: normative ambiguity in civil law protection within unequal societies. Positive law does not clearly define which forms of inequality are legally relevant, nor does it articulate consistent criteria for determining when protection justifies limiting freedom of contract. Moreover, inconsistencies between the Civil Code and sectoral protection statutes obscure the orientation of civil law protection, creating uncertainty for courts and legal actors.<sup>4</sup> As a consequence, legal protection operates sporadically rather than as an integrated corrective mechanism.

From a normative perspective, this ambiguity weakens both legal certainty and substantive justice. Protection appears as an exception to private autonomy rather than an integral component of civil law in unequal societies. From a political perspective, the absence of clear standards reflects unresolved choices regarding distribution, vulnerability, and social responsibility within private law.<sup>5</sup> Civil law protection thus becomes contingent on legislative or judicial discretion rather than grounded in coherent normative principles.

This article argues that civil law protection must be rethought in light of persistent social inequality. Rather than treating protection as a deviation from classical doctrine, civil law should be reconstructed to recognize inequality as a structural condition that affects the legitimacy of private autonomy. The central thesis advanced is that protection should be grounded in substantive equality and distributive justice, with freedom of contract operating as a conditional principle rather than an absolute norm.<sup>6</sup>

Existing scholarship on civil law protection tends to focus on specific domains or doctrinal adjustments without developing a comprehensive normative framework. Dewi, Lestari, and Nurjanah (2025) emphasize the urgency of protecting weak parties in contemporary contract law but do not theorize inequality as a systemic condition shaping civil law doctrine.<sup>7</sup> Altwicker (2022) and Matijević (2024) develop substantive equality theories largely within public and anti-discrimination law, leaving their implications for private law underexplored.<sup>8</sup> Mak (2024) redefines equality in European contract law from a consumer perspective but does not address broader socio-economic inequality beyond market relations.<sup>9</sup> This article fills the gap by offering a normative reconstruction of civil law protection that integrates substantive equality, social inequality, and private autonomy within a unified analytical framework.

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<sup>3</sup> Law No. 8 of 1999 on Consumer Protection.

<sup>4</sup> Diki Dikrurahman, "The Role of Courts in Addressing Social Inequality," *Journal of Law and Social Politic* (2025).

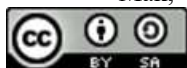
<sup>5</sup> Yahya Abdul Habib and J. J. Gilalo, "Social Justice Theory in Indonesia," *International Journal of Business, Law, and Education* (2025).

<sup>6</sup> Tilmann Altwicker, "Social Justice and the Judicial Interpretation of Equal Protection Law," *Leiden Journal of International Law* 35 (2022).

<sup>7</sup> Candra Dewi, Indah Lestari, and Siti Nurjanah, "The Urgency of Legal Protection for Weak Parties," *Advances in Social Humanities Research* (2025).

<sup>8</sup> Milica Matijević, "Navigating through the Substantive Equality Doctrine," *Pravni zapisi* (2024)

<sup>9</sup> Mak, "Redefining Equality," 2024.



## 2. Method

This study employs normative juridical legal research with a critical and prescriptive character. Normative research is appropriate because the analysis focuses on legal norms, doctrinal structures, and their coherence in addressing social inequality within civil law. The prescriptive dimension aims to formulate normative recommendations for reconstructing civil law protection in unequal societies.

The statute approach is used to examine constitutional and statutory norms governing civil law protection. The primary legal materials analyzed include the 1945 Constitution of the Republic of Indonesia, particularly Article 28D paragraph (1) concerning legal certainty and justice and Article 28H paragraph (2) concerning special treatment to achieve equality, the Civil Code (*Burgerlijk Wetboek*), Law No. 8 of 1999 on Consumer Protection, Law No. 11 of 2020 on Job Creation, and Law No. 30 of 2014 on Government Administration.<sup>10</sup> This approach enables identification of normative gaps and inconsistencies between classical civil law doctrine and protective legislation.

The conceptual approach is applied to analyze key concepts such as formal equality, substantive equality, legal protection, and distributive justice. These concepts are examined through civil law doctrine, socio-legal theory, and political-legal analysis to assess their compatibility and normative implications. This approach allows critical evaluation of private autonomy as a foundational principle within unequal social contexts.<sup>11</sup> The case approach is employed to analyze judicial decisions in which courts intervene in private relations to correct inequality or protect vulnerable parties. Judicial reasoning is examined to assess how judges balance freedom of contract against considerations of fairness, vulnerability, and social justice. This approach illustrates the practical consequences of normative ambiguity in civil law protection.<sup>12</sup>

Legal materials consist of primary, secondary, and tertiary sources. Primary materials include statutes and court decisions, secondary materials comprise academic journals and doctrinal writings, and tertiary materials include legal dictionaries and encyclopedias. Analysis is conducted through deductive reasoning using systematic and teleological interpretation to evaluate normative coherence and propose prescriptive reform.

## 3. Results and Discussion

### Formal Equality and Its Limits in Civil Law Protection

Classical civil law doctrine is firmly anchored in the principle of formal equality, which presumes that all legal subjects possess equal legal capacity and freedom to determine their private relations. This principle underlies freedom of contract and the binding force of agreements, positioning civil law as a neutral framework that refrains from assessing the substantive conditions under which consent is formed. Formal equality thus functions as a justificatory device that legitimizes private ordering without regard to socio-economic context.<sup>13</sup>

In unequal societies, however, formal equality proves normatively insufficient. Civil law relations are often concluded under conditions of structural disparity, where differences in economic resources, education, and access to legal information significantly shape bargaining outcomes. In such contexts, the presumption of equal autonomy obscures the fact that weaker parties frequently lack meaningful choice. Formal equality therefore risks legitimizing domination rather than consent, as private autonomy becomes a vehicle through which inequality is reproduced.<sup>14</sup>

The limitations of formal equality are particularly evident in standard-form contracts and mass transactions. Here, contractual terms are unilaterally determined by economically dominant actors, leaving weaker parties with little opportunity to negotiate. Civil law's reliance on abstract consent fails to capture this imbalance, allowing formally valid agreements to produce substantively unjust outcomes. This disconnect highlights the inadequacy of equality understood solely in formal terms.<sup>15</sup>

Indonesian civil law reflects this tension between doctrine and reality. While the Civil Code

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<sup>10</sup> Law No. 11 of 2020 on Job Creation; Law No. 30 of 2014 on Government Administration.

<sup>11</sup> Erjona Molla et al., "Philosophical Aspects of Social Justice and Equality," *Discusiones Filosóficas* (2024).

<sup>12</sup> Taqwanda Aulia Mahfud and M. S. Borman, "Justice and Justice," *Journal of Law, Politic and Humanities* (2025).

<sup>13</sup> Vanessa Mak, "Redefining Equality in European Contract Law," *European Law Open* 3 (2024).

<sup>14</sup> Megan Doherty Bea and E. Poppe, "Marginalized Legal Categories," *Law & Society Review* (2021).

<sup>15</sup> Benjamin R. Weiss, "Anticipatory Discrimination," *Criminology* (2025).

continues to emphasize freedom of contract and equal legal standing, protective statutes increasingly depart from this framework by acknowledging vulnerability and imbalance. Consumer protection law, for instance, imposes mandatory standards and invalidates unfair terms, thereby implicitly rejecting the sufficiency of formal equality as a basis for justice in private relations.<sup>16</sup>

Normatively, the coexistence of formal equality and protective intervention creates ambiguity. Civil law lacks a clear doctrinal explanation for when and why equality must give way to protection. As a result, protection appears as an exception rather than a principled component of civil law. This weakens doctrinal coherence and renders protection contingent on legislative choice rather than grounded in a systematic understanding of justice in unequal relations.<sup>17</sup>

From a prescriptive standpoint, civil law must move beyond the myth of formal equality. Equality should be reconceptualized as a relational and contextual principle that takes into account the actual conditions under which legal relations are formed. Without such reconceptualization, civil law protection remains conceptually unstable and normatively incomplete.<sup>18</sup>

### **Normative Ambiguity in Civil Law Protection within Unequal Societies**

The gradual incorporation of protective norms into civil law has not been accompanied by a coherent normative framework. Instead, Indonesian civil law exhibits persistent ambiguity regarding the criteria, scope, and limits of legal protection in unequal societies. This ambiguity undermines the effectiveness of protection and generates uncertainty in the application of civil law.<sup>19</sup>

One manifestation of normative ambiguity lies in the absence of a clear juridical definition of inequality relevant to civil law protection. While statutes frequently refer to “weak parties” or “consumers,” these categories are defined inconsistently and without reference to a general civil law doctrine of vulnerability. Protection thus depends on statutory labeling rather than a substantive assessment of inequality, resulting in fragmented and selective intervention.<sup>20</sup>

A second dimension of ambiguity concerns the boundary between protection and restriction of freedom of contract. Protective measures often limit contractual autonomy through mandatory rules or judicial intervention. However, civil law provides no consistent standard for determining when such limitations are justified. This lack of normative guidance creates tension between legal certainty and social justice, leaving courts to navigate protection on an ad hoc basis.<sup>21</sup>

Inconsistencies between the Civil Code and sectoral protection legislation further exacerbate this problem. The Civil Code continues to project an image of neutral autonomy, while protective statutes operate on assumptions of inequality and corrective intervention. The absence of systematic harmonization between these norms results in doctrinal fragmentation and interpretive uncertainty for judges and practitioners.<sup>22</sup>

From a political perspective, this ambiguity reflects unresolved distributive choices within private law. Decisions about which inequalities merit protection and how far autonomy may be constrained are inherently political, yet they are rarely articulated as such. The lack of explicit normative justification allows economic efficiency and contractual freedom to dominate, while protection remains reactive and limited.<sup>23</sup>

Judicial practice illustrates the consequences of normative ambiguity. Courts vary widely in their willingness to intervene in private relations to protect vulnerable parties. Some adopt a substantive justice approach, while others adhere strictly to formal autonomy. This inconsistency weakens predictability and perpetuates inequality by making protection contingent on judicial disposition rather

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<sup>16</sup> Law No. 8 of 1999 on Consumer Protection

<sup>17</sup> Tilmann Altwicker, “Social Justice and the Judicial Interpretation of Equal Protection Law,” *Leiden Journal of International Law* 35 (2022).

<sup>18</sup> Milica Matijević, “Navigating through the Substantive Equality Doctrine,” *Pravni zapisi* (2024).

<sup>19</sup> Diki Dikrurahman, “The Role of Courts in Addressing Social Inequality,” *Journal of Law and Social Politic* (2025).

<sup>20</sup> Candra Dewi, Indah Lestari, and Siti Nurjanah, “The Urgency of Legal Protection for Weak Parties,” *Advances in Social Humanities Research* (2025).

<sup>21</sup> Law No. 30 of 2014 on Government Administration.

<sup>22</sup> Law No. 11 of 2020 on Job Creation.

<sup>23</sup> Yahya Abdul Habib and J. J. Gilalo, “Social Justice Theory in Indonesia,” *International Journal of Business, Law, and Education* (2025).

Prescriptively, addressing normative ambiguity requires articulating a coherent doctrine of civil law protection grounded in social inequality. Civil law must explicitly recognize inequality as a juridically relevant condition and define proportional limits on intervention. Without such reconstruction, protection remains fragmented and insufficient to address the structural realities of unequal societies.<sup>25</sup>

### Reconstructing Civil Law Protection toward Substantive Justice

The persistence of inequality within civil law relations demonstrates that legal protection cannot be conceptualized merely as a corrective exception to private autonomy. In unequal societies, protection performs a structural function by mediating the distributive consequences of private law. A normative reconstruction of civil law protection must therefore begin by recognizing inequality not as an external social problem, but as an internal condition that affects the legitimacy of private legal relations themselves.<sup>26</sup>

From the perspective of substantive justice, civil law protection must move beyond abstract neutrality. Formal equality assumes that identical legal treatment produces fairness, yet in contexts of unequal power such treatment often entrenches disadvantage. Protection becomes normatively justified when it corrects factual inequality that distorts consent, allocation of risk, or access to remedies. Without this recognition, civil law remains formally coherent but substantively unjust.<sup>27</sup>

A reconstructed framework should be grounded in the concept of factual inequality as a juridically relevant condition. This requires civil law to explicitly acknowledge disparities in bargaining power, socio-economic position, and informational access as triggers for intervention. Protection should not depend solely on statutory categories, such as consumer or tenant status, but on an assessment of vulnerability within concrete legal relations. Such an approach enhances coherence while avoiding rigid formalism.<sup>28</sup>

Central to this reconstruction is the recalibration of freedom of contract. Rather than treating contractual autonomy as an absolute principle, civil law must recognize it as conditional upon the presence of meaningful choice. Where inequality undermines voluntariness, contractual freedom loses its justificatory force. Limiting freedom of contract in such cases does not negate autonomy, but restores its normative credibility by aligning consent with substantive fairness.<sup>29</sup>

Proportionality constitutes an essential normative safeguard in this framework. Protective intervention must pursue legitimate social objectives, be necessary to address inequality, and remain proportionate to the harm corrected. Law No. 30 of 2014 on Government Administration provides a general normative basis for proportionality and accountability, yet these principles must be systematically integrated into civil law adjudication. Courts should be required to articulate proportionality reasoning when intervening in private relations.<sup>30</sup>

Judicial institutions play a decisive role in operationalizing substantive protection. Judges act as interpreters of inequality, translating abstract norms into concrete decisions. Without clear normative guidance, judicial discretion risks inconsistency. A reconstructed doctrine would equip courts with principled criteria for identifying inequality and calibrating intervention, thereby enhancing predictability and legitimacy.<sup>31</sup>

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<sup>24</sup> Taqwanda Aulia Mahfud and M. S. Borman, "Justice and Justice," *Journal of Law, Politic and Humanities* (2025).

<sup>25</sup> Erjona Molla et al., "Philosophical Aspects of Social Justice and Equality," *Discusiones Filosóficas* (2024).

<sup>26</sup> Tilmann Altwicker, "Social Justice and the Judicial Interpretation of International Equal Protection Law," *Leiden Journal of International Law* 35 (2022).

<sup>27</sup> Milica Matijević, "Navigating through the Substantive Equality Doctrine," *Pravni zapisi* (2024).

<sup>28</sup> Vanessa Mak, "Redefining Equality in European Contract Law," *European Law Open* 3 (2024)

<sup>29</sup> Candra Dewi, Indah Lestari, and Siti Nurjanah, "The Urgency of Legal Protection for Weak Parties," *Advances in Social Humanities Research* (2025).

<sup>30</sup> Law No. 30 of 2014 on Government Administration.

<sup>31</sup> Taqwanda Aulia Mahfud and M. S. Borman, "Justice and Justice: A Study of the Role of Judges," *Journal of Law, Politic and Humanities* (2025).



Prescriptively, civil law reform must integrate substantive justice into its doctrinal core. This includes harmonizing the Civil Code with protective legislation, formulating explicit criteria for identifying relevant inequality, and embedding proportionality analysis in civil adjudication. Through such reconstruction, civil law protection can function as a coherent and sustainable response to inequality rather than a fragmented series of exceptions.<sup>32</sup>

## Conclusions

This article demonstrates that civil law operates within societies characterized by structural inequality, rendering the assumption of formal equality normatively insufficient. While legal protection has expanded through sectoral legislation, its fragmented and inconsistent orientation reveals persistent normative ambiguity. Such ambiguity weakens legal certainty and limits the effectiveness of civil law in protecting vulnerable parties.

The analysis shows that the absence of clear criteria for identifying inequality, unclear limits on restricting contractual autonomy, and lack of doctrinal harmonization undermine civil law protection. From a normative standpoint, these deficiencies allow private autonomy to legitimize unequal outcomes rather than function as an expression of genuine consent.

This article argues for a paradigm shift from formal equality toward substantive justice in civil law protection. By treating freedom of contract as conditional and grounding protection in factual inequality, civil law can be reconstructed as a constitutional instrument for correcting social imbalance. Such reconstruction ensures that civil law remains coherent, legitimate, and responsive within unequal societies.

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