

## Civil Law in Market Governance: Legal Instruments, Economic Policy, and State Power

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### Abstract

*Modern market governance is no longer shaped solely by free market mechanisms but increasingly relies on state intervention through legally institutionalized economic policies. In this context, civil law—particularly through contracts, property rights, and civil liability—has become a strategic instrument for directing market behavior. This development generates normative ambiguity in positive law concerning the boundary between civil law as private law and as a tool of market governance, the legitimacy of using private law instruments to implement economic policy, and the relationship between freedom of contract and public interest-based economic regulation. Employing normative legal research with statute, conceptual, and case approaches, this article examines the role of civil law in market governance and the juridical implications of state intervention through private law instruments. The analysis demonstrates that unstructured instrumentalization of civil law undermines legal certainty and private autonomy while obscuring the limits of state power. This article argues for a normative reconstruction that positions civil law as a limited instrument of economic policy, grounded in conditional private autonomy, proportionality, and accountability, in order to balance economic efficiency, legal certainty, and social justice within market regulation.*

**Keywords:** civil law, market governance, economic policy, state power, legal certainty

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### 1. Introduction

Modern market governance is no longer shaped solely by mechanisms of free competition and private ordering. Contemporary economic systems increasingly rely on state intervention through legal norms designed to guide, correct, and stabilize market behavior. In this context, civil law plays a strategic role, not merely as a framework for private relations but as a legal instrument through which economic policy objectives are operationalized.<sup>1</sup> Contracts, property rights, and civil liability have become key mechanisms for structuring market conduct.

In Indonesia, this transformation is closely connected to the constitutional orientation of the economy. Article 33 of the 1945 Constitution mandates state involvement in regulating economic resources to achieve social justice and collective welfare. This constitutional mandate legitimizes state intervention in market relations, including through civil law instruments that traditionally belonged to the domain of private autonomy.<sup>2</sup> Consequently, civil law increasingly functions at the intersection of private ordering and public economic governance.

<sup>1</sup> Stefan Grundmann, “European Contract Law and Regulation,” *European Review of Contract Law* 21 (2025).

<sup>2</sup> The 1945 Constitution of the Republic of Indonesia, art. 33.



The growing use of civil law instruments for economic regulation, however, generates a fundamental juridical tension. While the Civil Code (Burgerlijk Wetboek) continues to uphold freedom of contract and private property as core principles, sectoral economic legislation imposes mandatory norms that significantly reshape private legal relations. Laws on competition, consumer protection, investment, and labor introduce substantive constraints on contractual freedom in pursuit of economic policy goals.<sup>3</sup> This coexistence creates uncertainty regarding the normative identity of civil law.

The central legal issue examined in this article is the existence of normative ambiguity in positive law concerning the use of civil law as an instrument of market governance. This ambiguity manifests in three interrelated dimensions: the unclear boundary between civil law as private law and as a regulatory tool, the legitimacy of employing private law instruments to implement economic policy, and the unresolved tension between freedom of contract and public interest-based economic regulation.<sup>4</sup> These ambiguities undermine legal certainty in market relations.

Normative ambiguity has tangible consequences for business actors and market participants. Contracts increasingly operate under the shadow of regulatory objectives that may override private agreements without clear doctrinal justification. As a result, parties face uncertainty regarding the enforceability of contractual arrangements, while courts are left with broad discretion to balance private autonomy against economic policy considerations.<sup>5</sup> This condition weakens predictability and risks uneven application of the law.

From a rule-of-law perspective, the instrumentalization of civil law for market governance demands clear normative limits. While economic regulation is constitutionally justified, the absence of explicit criteria governing state intervention through civil law instruments raises concerns about proportionality and accountability. Without such criteria, civil law risks becoming an extension of regulatory power rather than a stable framework for private economic interaction.<sup>6</sup>

Existing scholarship has explored civil law, economic regulation, and market governance as related but often separate fields. However, normative legal analysis that explicitly interrogates the ambiguous boundary between private law autonomy and economic policy implementation within the Indonesian context remains limited. Most studies focus on regulatory effectiveness or economic outcomes without addressing the doctrinal implications for civil law coherence.<sup>7</sup> This gap necessitates a systematic reassessment.

Accordingly, this article aims to examine the role of civil law in market governance, assess the juridical implications of state intervention through private law instruments, and formulate a normative framework capable of preserving legal certainty while accommodating the regulatory function of the state in a market-oriented legal system.<sup>8</sup>

<sup>3</sup> Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition; Law No. 8 of 1999 on Consumer Protection; Law No. 11 of 2020 on Job Creation.

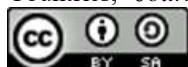
<sup>4</sup> Ioannis Kampourakis, "The Postmodern Legal Ordering of the Economy," *Indiana Journal of Global Legal Studies* 28 (2021).

<sup>5</sup> O. Skvortsov, "State Capitalism and the Intervention of Public Law in Civil Legislation," *Zakon* (2025).

<sup>6</sup> Law No. 30 of 2014 on Government Administration.

<sup>7</sup> Wenzhou Shu, "Dynamic Adaptation of the Basic Principles of Civil Law," *Journal of Historical, Cultural and Social Sciences* (2025).

<sup>8</sup> Intan Meitasari, Suratno, and Yuniwati, "Normative Approach to Law and Economics in Developing Countries," *Journal of Law and Economics* (2025).



## 2. Method

This study employs normative legal research with a critical-prescriptive character. Normative methodology is appropriate for analyzing the coherence, limits, and legitimacy of legal norms that position civil law as an instrument of market governance. The research focuses on identifying normative ambiguity and constructing doctrinal solutions rather than evaluating empirical market performance.<sup>9</sup>

The statute approach is used to examine constitutional provisions and statutory instruments that integrate civil law with economic policy, including Article 33 of the 1945 Constitution, the Civil Code, Law No. 11 of 2020 on Job Creation, Law No. 5 of 1999 on Competition Law, Law No. 8 of 1999 on Consumer Protection, and Law No. 30 of 2014 on Government Administration. This approach allows assessment of how economic governance objectives are embedded within private law structures. The conceptual approach draws on theories of market governance, freedom of contract, and the role of the state in economic regulation. These concepts provide the analytical framework for evaluating whether the use of civil law instruments for policy implementation remains consistent with the normative foundations of private law. The case approach complements statutory and conceptual analysis by examining judicial decisions concerning contractual disputes and market regulation. Through case analysis, the study illustrates how courts navigate the tension between private autonomy and economic policy objectives in the absence of clear normative boundaries.<sup>10</sup>

Legal materials consist of primary sources (statutes and court decisions), secondary sources (peer-reviewed legal and law-and-economics literature), and tertiary sources (legal dictionaries and encyclopedias). Systematic and teleological interpretation is employed to formulate prescriptive conclusions regarding the appropriate limits of civil law in market regulation.<sup>11</sup>

## 3. Results and Discussion

### Civil Law as an Instrument of Market Governance

Civil law has increasingly assumed a functional role in shaping market governance by structuring the legal conditions under which economic actors operate. Traditionally understood as a framework governing private relations, civil law now operates as a regulatory medium through which the state influences market behavior indirectly. Contracts, property rights, and civil liability no longer merely reflect private autonomy but are employed to advance broader economic policy objectives.<sup>12</sup> This functional shift marks a significant transformation in the normative role of civil law.

Market structures are fundamentally constituted by civil law rules. The allocation of property rights determines control over productive resources, contractual doctrines shape transactional risks, and liability regimes influence incentives and compliance behavior. By designing these legal instruments, the state effectively configures the architecture of the market. Civil law thus becomes an instrument of governance, guiding economic conduct without relying exclusively on direct administrative regulation.<sup>13</sup> This indirect mode of governance is often perceived as less intrusive yet equally effective.

In the Indonesian context, the use of civil law instruments for market governance is constitutionally grounded in Article 33 of the 1945 Constitution, which mandates state involvement in organizing economic life to promote social welfare. This constitutional orientation legitimizes the deployment of private law mechanisms to achieve distributive and corrective economic objectives.<sup>14</sup> Consequently, civil law functions not merely as a neutral facilitator of exchange but as a vehicle for implementing state economic policy.

Sectoral economic legislation further illustrates this transformation. Competition law, consumer protection statutes, and investment regulations impose mandatory standards that reshape contractual freedom and redefine private rights. Although formally framed as civil law obligations, these norms

<sup>9</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2017).

<sup>10</sup> Bayu Mogana Putra, "Legal Politics of Regulating Special Economic Zones," *Lex Renaissance* (2025).

<sup>11</sup> Philipus M. Hadjon, *Introduction to Indonesian Administrative Law* (Yogyakarta: Gadjah Mada University Press, 2020).

<sup>12</sup> Stefan Grundmann, "European Contract Law and Regulation," *European Review of Contract Law* 21 (2025).

<sup>13</sup> Ioannis Kampourakis, "The Postmodern Legal Ordering of the Economy," *Indiana Journal of Global Legal Studies* 28 (2021).

<sup>14</sup> The 1945 Constitution of the Republic of Indonesia, art. 33.

pursue regulatory objectives such as market fairness, consumer welfare, and economic efficiency.<sup>15</sup> The boundary between private law and economic regulation thus becomes increasingly porous.

This development generates a normative tension within civil law doctrine. While the Civil Code continues to uphold freedom of contract and private property as foundational principles, the instrumental use of civil law for governance purposes alters their meaning and scope. Private autonomy is no longer an end in itself but a means conditioned by regulatory objectives.<sup>16</sup> This shift challenges the coherence of classical civil law theory.

From a governance perspective, the instrumentalization of civil law offers advantages. It allows the state to steer market behavior through decentralized enforcement and private litigation, reducing the need for extensive bureaucratic control. However, this approach also obscures the exercise of power, as regulatory objectives are embedded within ostensibly private legal relations.<sup>17</sup> Such opacity raises concerns regarding transparency and accountability.

Normatively, recognizing civil law as an instrument of market governance requires explicit doctrinal acknowledgment. Without clear normative articulation, the governance function of civil law operates implicitly, producing uncertainty about its limits. Civil law risks losing its identity as a framework of private autonomy and becoming an unexamined extension of economic regulation.<sup>18</sup> This ambiguity necessitates doctrinal clarification.

Prescriptively, civil law should be conceptualized as a dual-function legal domain: a system that protects private autonomy while simultaneously enabling legitimate market governance. This duality must be governed by explicit criteria that define when and how civil law instruments may be employed for regulatory purposes. Absent such criteria, the instrumental use of civil law undermines legal certainty and doctrinal integrity.<sup>19</sup>

### Normative Ambiguity between Economic Policy and Private Law Autonomy

The increasing reliance on civil law instruments to implement economic policy has produced significant normative ambiguity regarding the limits of private law autonomy. While economic regulation is constitutionally justified, positive law often fails to articulate clear boundaries between legitimate governance and excessive intervention in private relations. As a result, freedom of contract operates under uncertain conditions shaped by fluctuating policy priorities rather than stable doctrinal standards.<sup>20</sup>

This ambiguity is particularly evident in the use of private contracts to advance public economic objectives. Public-private partnerships, state-influenced investment agreements, and regulated standard contracts embed policy goals directly into private legal relations. Although formally consensual, such contracts often reflect asymmetrical bargaining power and regulatory compulsion, raising questions about the authenticity of private autonomy.<sup>21</sup> The distinction between voluntary agreement and regulatory imposition becomes blurred.

Inconsistencies between the Civil Code and sectoral economic legislation further exacerbate normative uncertainty. While the Civil Code emphasizes contractual freedom, statutes such as Law No. 11 of 2020 on Job Creation impose mandatory provisions that override negotiated terms. These interventions are rarely accompanied by explicit doctrinal explanations reconciling them with civil law principles, leaving courts to resolve conflicts on an ad hoc basis.<sup>22</sup> This fragmentation undermines coherence.

<sup>15</sup> Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition; Law No. 8 of 1999 on Consumer Protection.

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

<sup>17</sup> Wenzhou Shu, "Dynamic Adaptation of the Basic Principles of Civil Law," *Journal of Historical, Cultural and Social Sciences* (2025).

<sup>18</sup> Intan Meitasari, Suratno, and Yuniwati, "Normative Approach to Law and Economics in Developing Countries," *Journal of Law and Economics* (2025).

<sup>19</sup> Stefan Grundmann, "European Contract Law and Regulation," (2025)

<sup>20</sup> Davorin Pichler and Marija Pavošević, "Civil Law Aspects of the Conflict of Private and Public Interests," *EU and Comparative Law Issues and Challenges Series* (2025).

<sup>21</sup> O. Skvortsov, "State Capitalism and the Intervention of Public Law in Civil Legislation," (2025).

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

The juridical implications of this ambiguity are substantial. Business actors face diminished predictability in contractual enforcement, as regulatory objectives may retroactively affect private agreements. Weaker parties may benefit from protective regulation, yet stronger parties may leverage regulatory complexity to their advantage. The uneven impact of intervention thus risks creating new inequalities within market relations.<sup>23</sup> Legal certainty is compromised.

From a power perspective, normative ambiguity enables the expansion of regulatory authority without clear accountability. When economic policy objectives are pursued through civil law instruments, the exercise of power becomes diffused and less visible. This diffusion complicates legal control mechanisms and weakens the capacity of courts to scrutinize the proportionality of intervention.<sup>24</sup> Private law becomes a site where power operates indirectly.

Administrative law principles offer partial guidance. Law No. 30 of 2014 on Government Administration emphasizes legality, proportionality, and accountability in the exercise of public authority. However, these principles are not systematically applied to civil law-based economic governance. Courts frequently enforce regulatory constraints on private agreements without assessing whether such intervention satisfies proportionality requirements.<sup>25</sup> This disconnect perpetuates ambiguity.

Normatively, the absence of clear criteria governing the interaction between economic policy and private law autonomy reflects a failure to integrate civil law doctrine with market governance realities. Freedom of contract cannot remain an abstract principle detached from regulatory practice, yet it must not be emptied of content through unchecked intervention.<sup>26</sup> Balancing these concerns requires doctrinal reconstruction.

Prescriptively, Indonesian civil law must articulate explicit boundaries for the use of private law instruments in economic regulation. Such boundaries should require clear public interest justification, proportionality analysis, and transparency in policy objectives. Without these safeguards, the instrumentalization of civil law risks eroding autonomy, certainty, and trust in market relations.<sup>27</sup>

### Reconstructing the Normative Boundaries of Civil Law in Market Regulation

The increasing role of civil law in market governance necessitates a clear normative reconstruction of its boundaries. While civil law has become an effective instrument for implementing economic policy, its expanded function raises fundamental questions regarding legal certainty, private autonomy, and the limits of state power. Without a coherent normative framework, the instrumentalization of civil law risks blurring the distinction between private law and public economic regulation.<sup>28</sup>

In the Indonesian constitutional context, Article 33 of the 1945 Constitution provides the normative foundation for state involvement in economic organization. This provision legitimizes regulatory intervention aimed at ensuring social justice, economic equity, and public welfare. However, constitutional legitimacy does not automatically translate into unlimited regulatory authority. The use of civil law instruments to implement economic policy must remain consistent with the principles of legality, proportionality, and protection of private autonomy.<sup>29</sup>

A reconstructed framework must therefore recognize civil law as an instrument of economic governance with inherent limits. Civil law should not operate as a substitute for public regulation nor as an unrestricted vehicle for policy enforcement. Instead, its regulatory function must be auxiliary and conditional, employed only where it enhances market fairness and efficiency without undermining the normative foundations of private law.<sup>30</sup> This approach preserves the functional contribution of civil law

<sup>23</sup> Bayu Mogana Putra, "Legal Politics of Regulating Special Economic Zones," *Lex Renaissance* (2025).

<sup>24</sup> Ioannis Kampourakis, "The Postmodern Legal Ordering of the Economy," (2021).

<sup>25</sup> Law No. 30 of 2014 on Government Administration.

<sup>26</sup> Stefan Grundmann, "European Contract Law and Regulation," (2025).

<sup>27</sup> Intan Meitasari, Suratno, and Yuniwati, "Normative Approach to Law and Economics in Developing Countries," (2025).

<sup>28</sup> Ioannis Kampourakis, "The Postmodern Legal Ordering of the Economy," *Indiana Journal of Global Legal Studies* 28 (2021).

<sup>29</sup> The 1945 Constitution of the Republic of Indonesia, art. 33.

<sup>30</sup> Stefan Grundmann, "European Contract Law and Regulation," *European Review of Contract Law* 21 (2025).

while preventing its overextension.

Central to this reconstruction is the concept of conditional private autonomy. Private autonomy should remain the default principle governing market relations, but it may be legitimately restricted when necessary to protect clearly defined public economic interests. Such restrictions must be explicitly grounded in statutory authority and subject to proportionality analysis. The absence of these requirements transforms regulation into discretionary power rather than lawful governance.<sup>31</sup>

Proportionality serves as the key evaluative standard for assessing state intervention through civil law instruments. Regulatory measures affecting contracts, property, or liability must pursue legitimate economic objectives, demonstrate necessity, and impose the least restrictive burden on private actors. In the absence of proportionality review, market regulation through civil law risks producing arbitrary outcomes and eroding trust in private legal relations.<sup>32</sup>

The principles of proportionality and accountability are embedded in Law No. 30 of 2014 on Government Administration, yet their application remains largely confined to administrative law. A coherent normative framework requires extending these principles into civil law adjudication, particularly where private law instruments are used to implement economic policy. Courts must explicitly assess whether regulatory interference in private relations satisfies constitutional and statutory standards.<sup>33</sup>

Normatively, civil law must retain its identity as a framework for private cooperation rather than becoming indistinguishable from economic regulation. While market governance objectives are legitimate, they must not obscure the core function of civil law in protecting autonomy, predictability, and reciprocal fairness. A reconstructed boundary ensures that civil law contributes to market governance without sacrificing its doctrinal coherence.<sup>34</sup>

Prescriptively, Indonesian civil law requires doctrinal and institutional reform. This includes clarifying the relationship between the Civil Code and economic legislation, developing judicial guidelines for proportionality assessment, and integrating market governance considerations into civil law theory. Through such reform, civil law can operate as a disciplined instrument of economic policy rather than an unbounded extension of state power.<sup>35</sup>

## Conclusions

This study demonstrates that civil law has evolved into an integral component of market governance, functioning as a legal instrument through which economic policy and state power shape market relations. While this development is constitutionally justified and economically significant, it generates normative ambiguity regarding the boundaries between private law autonomy and public economic regulation. Such ambiguity undermines legal certainty and weakens the normative coherence of civil law.

The analysis concludes that the use of civil law instruments for market governance must be normatively constrained. Civil law cannot be reduced to a mere extension of regulatory power, nor can private autonomy be treated as an absolute principle immune to economic policy considerations. Instead, a balanced framework is required in which civil law supports market governance while remaining anchored in legality, proportionality, and accountability.

Prescriptively, Indonesian civil law must adopt a reconstructed boundary that treats private autonomy as conditional and subjects state intervention to explicit normative criteria. Harmonization between the Civil Code and economic legislation, combined with proportionality-based judicial review, is essential to ensure that civil law contributes to economic governance without eroding legal certainty, fairness, and trust in market relations.

<sup>31</sup> Davorin Pichler and Marija Pavošević, "Civil Law Aspects of the Conflict of Private and Public Interests," *EU and Comparative Law Issues and Challenges Series* (2025).

<sup>32</sup> Intan Meitasari, Suratno, and Yuniwati, "Normative Approach to Law and Economics in Developing Countries," *Journal of Law and Economics* (2025).

<sup>33</sup> Law No. 30 of 2014 on Government Administration.

<sup>34</sup> O. Skvortsov, "State Capitalism and the Intervention of Public Law in Civil Legislation," *Zakon* (2025).

<sup>35</sup> Wenzhou Shu, "Dynamic Adaptation of the Basic Principles of Civil Law," *Journal of Historical, Cultural and Social Sciences* (2025).

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