

Civil Law and Social Inequality: A Politics of Legal Protection Perspective

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Entered : November 16, 2025
Accepted: December 12, 2025

Revised : November 19, 2025
Published: December 31, 2025

Abstract

Civil law is normatively constructed on the assumption of formal equality among legal subjects. In social reality, however, civil law relations frequently operate within conditions of structural inequality arising from disparities in economic power, access to information, and bargaining position. The state responds to such inequalities through regulatory interventions framed as legal protection. This article examines the role of civil law in addressing social inequality from a legal protection politics perspective. Employing normative legal research with statute, conceptual, and case approaches, this study identifies normative ambiguity in civil law concerning the criteria for identifying protected weak parties, the boundary between legal protection and restrictions on private autonomy, and inconsistencies between the Civil Code and social-economic protection legislation. The findings demonstrate that such ambiguity renders civil law protection selective and often ineffective in correcting social inequality. This article argues for a normative reconstruction that positions civil law as a constitutional instrument for correcting social inequality, treating private autonomy as a conditional principle subject to substantive and distributive justice considerations.

Keywords: civil law, social inequality, legal protection, legal politics, distributive justice

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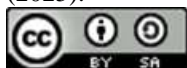
1. Introduction

Civil law is normatively constructed on the premise that legal subjects engage in private relations as formally equal parties. This assumption is embedded in classical civil law doctrine, particularly in the principles of freedom of contract and legal equality before the law. Within this framework, private autonomy functions as the primary source of legitimacy for civil legal relations, while the role of the state is traditionally confined to enforcing agreements rather than correcting structural imbalances between parties.¹ However, this doctrinal neutrality becomes problematic when civil law operates within social realities marked by deep and persistent inequality.

In contemporary society, civil law relations frequently occur under conditions of structural asymmetry. Differences in economic capacity, access to information, legal literacy, and bargaining power shape contractual and proprietary relations in ways that systematically disadvantage weaker parties. These inequalities are not incidental but structural, arising from broader socio-economic arrangements that civil law both reflects and reinforces.² As a result, the formal equality promised by civil law often masks substantive injustice in private legal relations

¹ Chantal Mak, "Giving Voice: A Public Sphere Theory of European Private Law Adjudication," *European Law Open* 2 (2023).

² Hejia Cai, "From Formal Neutrality to Substantive Justice," *Communications in Humanities Research* (2025).



The Indonesian legal system has responded to these realities through various forms of regulatory intervention framed as legal protection. Consumer protection law, standard contract regulation, housing law, and labor-related civil regulations illustrate how the state intervenes to mitigate imbalance and protect weaker parties. Such interventions reflect an implicit acknowledgment that private autonomy cannot operate as an absolute principle in unequal social contexts.³ Yet, these protective measures are scattered across sectoral legislation and lack a coherent normative foundation within civil law itself.

This situation gives rise to a fundamental legal issue: normative ambiguity in the role of civil law as an instrument of social protection. Positive law does not clearly define the criteria for identifying social inequality that warrants legal protection, nor does it articulate consistent limits between legitimate protection and excessive restriction of private autonomy. Furthermore, inconsistencies between the Civil Code and sectoral protective legislation create uncertainty regarding the normative hierarchy and coherence of civil law protection.⁴ This ambiguity weakens legal certainty and undermines the effectiveness of civil law as a corrective mechanism for social inequality.

From a political perspective, legal protection is not a neutral technical response but a manifestation of legal policy choices. Decisions about who qualifies as a weak party, which inequalities deserve correction, and how far the state may intervene in private relations are inherently political. These choices reflect underlying power relations and distributive priorities within the legal system.⁵ Consequently, the study of civil law protection against social inequality must be situated within the broader framework of legal politics rather than treated as a purely doctrinal issue.

This article examines civil law and social inequality through the lens of the politics of legal protection. It seeks to identify forms of normative ambiguity in Indonesian civil law, assess their juridical implications for legal certainty and substantive justice, and propose a normative reconstruction that positions civil law as a constitutional instrument for correcting social inequality. The central argument advanced is that private autonomy should be reconceptualized as a conditional principle, subordinated to distributive justice and substantive equality in contexts of structural imbalance.⁶

Existing scholarship on legal protection in civil law predominantly focuses on specific sectors such as consumer contracts or labor relations, without offering a comprehensive normative framework connecting civil law doctrine, social inequality, and legal politics. Dewi, Lestari, and Nurjanah (2025) emphasize the urgency of protecting weak parties in contemporary contract law but do not address the broader political logic underlying such protection.⁷ Cai (2025) analyzes the shift from formal neutrality to substantive justice in equality law but remains focused on public law contexts rather than private legal relations.⁸ Habib and Gilalo (2025) discuss social justice from a philosophical perspective without integrating it into the structure of civil law doctrine.⁹ This article fills the gap by developing a political-normative analysis of civil law protection that integrates doctrinal civil law, social inequality, and legal policy within a unified analytical framework.

³ Candra Dewi, Indah Lestari, and Siti Nurjanah, "The Urgency of Legal Protection for Weak Parties in Contemporary Contract Law," *Advances in Social Humanities Research* (2025).

⁴ Ike Yuvayanti, Misranto, and Moh. Muhibbin, "The Existence of Legal Politics in Realizing a Just State of Law," *Justitia Jurnal Hukum* (2025).

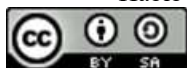
⁵ Deden Abdul Malik et al., "Navigating the Labyrinth: A Normative Juridical Analysis of Legal Politics," *Enigma in Law* (2024).

⁶ Yahya Abdul Habib and J. J. Gilalo, "Social Justice Theory in Indonesia Reviewed from the Philosophy of Law," *International Journal of Business, Law, and Education* (2025).

⁷ Dewi, Lestari, and Nurjanah, "The Urgency of Legal Protection," 2025.

⁸ Cai, "From Formal Neutrality to Substantive Justice," 2025.

⁹ Habib and Gilalo, "Social Justice Theory in Indonesia," 2025.



2. Method

This study employs normative juridical legal research with a critical-prescriptive character. Normative research is selected because the object of analysis concerns legal norms, doctrinal structures, and their coherence within the civil law system, rather than empirical measurement of social phenomena. The prescriptive dimension aims to formulate normative recommendations for reconstructing civil law protection against social inequality.

The statute approach is used to analyze constitutional provisions and statutory regulations governing civil law protection. Primary attention is given to the 1945 Constitution of the Republic of Indonesia, particularly Article 28D paragraph (1) concerning legal certainty and Article 33 concerning social justice and economic democracy, 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.¹⁰ This approach enables identification of normative inconsistencies and gaps between civil law doctrine and protective legislation.

The conceptual approach is applied to examine key legal concepts such as private autonomy, legal protection, social inequality, and distributive justice. These concepts are analyzed through civil law doctrine, socio-legal theory, and legal politics to assess their compatibility and tension within the civil law system. The conceptual framework allows for critical evaluation of the assumption of formal equality and its implications for substantive justice.¹¹

The case approach is employed to examine judicial reasoning in civil cases involving protection of weaker parties. Court decisions are analyzed to assess how judges interpret and apply protective norms, balance private autonomy against social justice considerations, and address structural inequality in private disputes. This approach highlights the practical consequences of normative ambiguity in civil law protection.¹²

Legal materials used in this research consist of primary, secondary, and tertiary sources. Primary materials include statutes and judicial decisions, secondary materials comprise academic journals, legal doctrine, and socio-legal studies, while 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 solutions.

3. Results and Discussion

Civil Law and the Myth of Formal Equality

Civil law doctrine traditionally rests on the principle of formal equality, assuming that legal subjects enter private relations as autonomous and equal actors. This assumption underpins the legitimacy of contractual freedom and property relations, positioning civil law as a neutral framework for coordinating private interests. However, such neutrality is largely fictive when civil law operates within societies characterized by entrenched socio-economic disparities. Formal equality, while normatively appealing, fails to account for the unequal material conditions that shape private bargaining processes.¹³

In practice, civil law relations are embedded in asymmetric power structures. Differences in wealth, information, and legal expertise translate into unequal negotiating positions, particularly in standard-form contracts, housing transactions, and consumer markets. These asymmetries are not adequately addressed by the abstract notion of equal legal capacity. As a result, civil law often legitimizes outcomes that reflect dominance rather than consent, thereby reproducing social inequality under the guise of private autonomy.¹⁴

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

¹¹ Anthea-lee September-Van Huffel, "The Relationship Between Legal-Political Context and Natural-Resource Wealth Distribution," *Fundamina* (2025).

¹² Taqwanda Aulia Mahfud and M. S. Borman, "Justice and Justice: The Role of Judges," *Journal of Law, Politic and Humanities* (2025).

¹³ Hejia Cai, "From Formal Neutrality to Substantive Justice," *Communications in Humanities Research* (2025).

¹⁴ Chantal Mak, "Giving Voice: A Public Sphere Theory of European Private Law Adjudication," *European Law Open* 2 (2023).

The persistence of this myth of equality creates a normative tension between civil law doctrine and substantive justice. While civil law purports to treat parties equally, it remains largely indifferent to factual inequality. This indifference becomes problematic when private autonomy is invoked to justify outcomes that systematically disadvantage weaker parties. In such contexts, civil law functions less as a framework of freedom and more as a mechanism for stabilizing unequal social relations.¹⁵

Indonesian civil law reflects this tension. The Civil Code continues to emphasize freedom of contract and formal equality, yet sectoral legislation increasingly departs from these principles by introducing protective norms. Consumer protection law, housing regulations, and employment-related civil provisions explicitly recognize unequal bargaining positions and impose mandatory standards to protect weaker parties. This divergence reveals an unresolved contradiction within the civil law system itself.¹⁶

Normatively, the coexistence of formal equality and protective intervention produces ambiguity. Civil law doctrine lacks clear criteria for determining when equality should yield to protection. As a result, protection appears exceptional rather than principled, contingent on legislative discretion rather than doctrinal coherence. This weakens legal certainty and obscures the normative foundations of civil law protection.¹⁷

From a political perspective, the insistence on formal equality serves to depoliticize private law. By framing inequality as external to civil law, the system avoids confronting its distributive effects. This depoliticization masks the role of civil law in structuring social hierarchy and limits the scope of corrective intervention. Recognizing the myth of formal equality is therefore a prerequisite for reconstructing civil law as a tool of substantive justice rather than a neutral arbiter of private will.¹⁸

Prescriptively, civil law must move beyond formal equality and incorporate a concept of relational justice. This requires acknowledging that equality in private law cannot be assessed solely at the level of legal capacity but must consider material conditions and power relations. Without such recognition, civil law protection against social inequality remains fragmented and normatively unstable.¹⁹

Normative Ambiguity in Legal Protection against Social Inequality

The shift from formal equality toward protective intervention has not been accompanied by a coherent normative framework. Instead, Indonesian civil law exhibits normative ambiguity regarding the scope, criteria, and limits of legal protection against social inequality. This ambiguity manifests in uncertainty over who qualifies as a weak party, when protection is justified, and how far private autonomy may be restricted in pursuit of social justice.²⁰

One major source of ambiguity lies in the absence of clear criteria for identifying protected parties. While sectoral legislation frequently refers to consumers, tenants, or workers as weaker parties, these categories are defined inconsistently and without reference to a unified civil law doctrine. Protection thus depends on statutory classification rather than substantive assessment of inequality, resulting in selective and uneven application of protective norms.²¹

A second dimension of ambiguity concerns the boundary between protection and interference. Protective measures often impose mandatory contract terms, invalidate unfair clauses, or limit freedom of contract. However, civil law lacks a principled standard for determining when such restrictions are legitimate. This creates tension between legal certainty and flexibility, as courts and regulators exercise

¹⁵ Anthea-lee September-Van Huffel, "The Relationship Between Legal-Political Context and Natural-Resource Wealth Distribution," *Fundamina* (2025).

¹⁶ Law No. 8 of 1999 on Consumer Protection.

¹⁷ Ike Yuvayanti, Misranto, and Moh. Muhibbin, "The Existence of Legal Politics in Realizing a Just State of Law," *Justitia Jurnal Hukum* (2025).

¹⁸ Deden Abdul Malik et al., "Navigating the Labyrinth: A Normative Juridical Analysis of Legal Politics," *Enigma in Law* (2024).

¹⁹ Candra Dewi, Indah Lestari, and Siti Nurjanah, "The Urgency of Legal Protection for Weak Parties," *Advances in Social Humanities Research* (2025).

²⁰ Yahya Abdul Habib and J. J. Gilalo, "Social Justice Theory in Indonesia," *International Journal of Business, Law, and Education* (2025).

²¹ Law No. 11 of 2020 on Job Creation.

broad discretion without clear normative guidance.²²

The inconsistency between the Civil Code and protective legislation further exacerbates this problem. The Civil Code continues to emphasize autonomy and equality, while protective statutes operate on assumptions of inequality and vulnerability. The absence of systematic harmonization between these norms results in doctrinal fragmentation and interpretive uncertainty for judges and legal practitioners.²³

From the standpoint of legal politics, this ambiguity reflects unresolved distributive choices. Decisions about protection implicitly prioritize certain social interests over others, yet these priorities are rarely articulated transparently. The lack of explicit normative justification allows economic interests to dominate under the pretext of contractual freedom, while social protection remains reactive and limited.²⁴

Judicial practice illustrates the consequences of this ambiguity. Courts vary widely in their willingness to intervene in private relations to protect weaker parties. Some adopt a substantive justice approach, while others adhere strictly to formal autonomy. This inconsistency undermines predictability and reinforces inequality by making protection contingent on judicial discretion rather than legal principle.²⁵

Prescriptively, resolving normative ambiguity requires articulating a coherent doctrine of legal protection grounded in social inequality. Civil law must explicitly recognize inequality as a normative trigger for protection and define proportional limits on intervention. Without such reconstruction, civil law protection will remain fragmented, selective, and insufficient to address structural inequality.²⁶

Reconstructing Civil Law Protection from a Political Perspective

The persistence of social inequality within civil law relations demonstrates that legal protection cannot be treated as a purely technical corrective. Instead, protection operates within a political framework that determines which inequalities are recognized, which interests are prioritized, and how far private autonomy may be constrained. A normative reconstruction of civil law protection therefore requires explicit engagement with legal politics rather than reliance on fragmented sectoral interventions.²⁷

From a political perspective, civil law protection reflects distributive choices embedded in legal norms. Decisions to limit contractual freedom, impose mandatory standards, or invalidate unfair terms necessarily privilege certain social interests over others. When these choices remain implicit, protection appears arbitrary and selective. Normatively, civil law must acknowledge that protection against inequality is not an exception to private autonomy but a constitutive element of a just private law system.²⁸

A reconstructed framework should begin by abandoning the presumption that formal equality suffices as a normative baseline. Instead, protection must be grounded in factual inequality. Legal norms should explicitly recognize disparities in bargaining power, access to information, and socio-economic position as triggers for intervention. This approach shifts civil law from abstract neutrality toward substantive justice without collapsing private law into public regulation.²⁹

Central to this reconstruction is the concept of conditional private autonomy. Private autonomy should remain the organizing principle of civil law, but its legitimacy must depend on the absence of structural inequality. Where such inequality exists, autonomy cannot justify outcomes that perpetuate disadvantage. Conditioning autonomy on substantive fairness provides a principled basis for

²² Law No. 30 of 2014 on Government Administration.

²³ Ike Yuvayanti et al., "The Existence of Legal Politics," 2025.

²⁴ Malik et al., "Navigating the Labyrinth," 2024.

²⁵ Taqwanda Aulia Mahfud and M. S. Borman, "Justice and Justice," *Journal of Law, Politic and Humanities* (2025).

²⁶ Habib and Gilalo, "Social Justice Theory in Indonesia," 2025

²⁷ Ike Yuvayanti, Misranto, and Moh. Muhibbin, "The Existence of Legal Politics in Realizing a Just State of Law," *Justitia Jurnal Hukum* (2025).

²⁸ Yahya Abdul Habib and J. J. Gilalo, "Social Justice Theory in Indonesia Reviewed from the Philosophy of Law," *International Journal of Business, Law, and Education* (2025).

²⁹ Hejia Cai, "From Formal Neutrality to Substantive Justice," *Communications in Humanities Research* (2025)

intervention while preserving the coherence of civil law doctrine.³⁰

The political dimension of protection also requires proportionality and transparency. Interventions must be justified by clearly articulated social objectives and limited to what is necessary to correct inequality. Law No. 30 of 2014 on Government Administration offers a normative foundation for proportionality and accountability, yet these principles must be extended into civil law adjudication. Courts should explicitly assess whether protective measures appropriately balance autonomy and social justice.³¹

Judicial practice plays a decisive role in operationalizing this framework. Judges act as mediators between private autonomy and distributive justice, translating abstract norms into concrete outcomes. Without clear normative guidance, judicial discretion risks inconsistency. A reconstructed doctrine of civil law protection would equip courts with principled criteria for identifying inequality and calibrating intervention.³²

Prescriptively, civil law reform must integrate political awareness into doctrinal development. This includes harmonizing the Civil Code with protective legislation, articulating clear standards for identifying weak parties, and embedding substantive justice into civil law interpretation. Through such reconstruction, civil law can function as a constitutional instrument for correcting social inequality rather than merely reflecting it.³³

Conclusion

This article demonstrates that civil law operates within conditions of social inequality that fundamentally challenge the assumption of formal equality. The persistence of structural disparities in private relations exposes the limitations of traditional civil law doctrine and necessitates legal protection as a corrective mechanism. However, the current framework of protection in Indonesian civil law is characterized by normative ambiguity, resulting in selective, inconsistent, and often ineffective intervention.

The analysis shows that ambiguity arises from unclear criteria for identifying protected parties, uncertain limits on state intervention, and doctrinal fragmentation between the Civil Code and sectoral protective legislation. These conditions weaken legal certainty and allow private autonomy to legitimize unequal outcomes. From a political perspective, such ambiguity reflects unresolved distributive choices within the legal system.

This article argues that civil law protection must be reconstructed as a constitutional response to social inequality. Private autonomy should be treated as a conditional principle, subordinated to substantive and distributive justice where structural inequality exists. By explicitly integrating political considerations, proportionality, and accountability into civil law doctrine, legal protection can become a coherent and principled instrument for reducing social inequality while preserving the integrity of private law.

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³⁰ Chantal Mak, "Giving Voice: A Public Sphere Theory of European Private Law Adjudication," *European Law Open* 2 (2023)

³¹ Law No. 30 of 2014 on Government Administration.

³² Taqwanda Aulia Mahfud and M. S. Borman, "Justice and Justice: A Study of the Role of Judges," *Journal of Law, Politic and Humanities* (2025).

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