

# The Development and Challenges of Civil Law in Indonesia

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**Abstract:** Civil law is a dynamic field that is constantly evolving in tandem with the evolution of human civilization, which is also impacted by technological advancements and global climate change. Civil law is fundamentally interconnected with the reinforcement of the internal supervisory function, which replaces the external supervisory function. This research aims to ascertain the current state of civil law and the obstacles it faces. The data was analyzed qualitatively, and the method employed normative juridical with secondary data. The findings indicate that the development of modern civil law is a direct result of its fundamental relationship with the relationship between government and society, which enhances the role and participation of society in various domains. Some of the modernizations of civil law that have emerged and are being used to strengthen internal functions related to external control are contract law, consumer protection law, and employment law.

**Keywords:** Development; Challenges; Civil Law; Indonesia.

## 1. Introduction

Civil law refers to the laws that govern the interactions between individuals with the objective of safeguarding their individual interests. The civil code is officially divided into four books: Book I, which regulates Persons (*van Perrsonen*) from Articles 1 to 498; Book II, which regulates Things (*van Zaken*) from Articles 499 to 1232; Book III, which regulates Obligations (*van Verbintenissen*) from Articles 1233 to 1864; and Book IV, which regulates Evidence and Expiration (*van Bewijs en Verjaring*) from Articles 1865 to 1993. Nevertheless, civil law is partitioned into four categories according to the systematics of legal science: inheritance law (*Erfrecht*), property law (*Vermogenrecht*), family law (*Familie recht*), and personal law (*Personenrecht*) (Indonesia, n.d.).

To implement civil law (material law) in judicial institutions, the existence of civil procedural law as formal law plays an important and strategic role. The civil procedural law serves as a formal regulation in the trial process to ensure compliance with civil law (material law) and to maintain and enforce it. Consequently, civil law and civil procedural law are intricately linked. Indonesian legislation confirms this (Romdoni et al., 2022).

Considering the extensive period of Dutch colonialism, the history of civil law in Indonesia is inextricably linked to the influence of Dutch law. The Civil Code (KUH Perdata) or Burgerlijk Wetboek (BW), which was derived from Dutch law, served as the primary foundation for civil law in Indonesia. The Civil Code was implemented in the Dutch East Indies in 1848 and was maintained until Indonesia's independence in 1945, with numerous modifications.

Nevertheless, the necessity of revising and adapting civil law to align with the values and requirements of Indonesian society is becoming more pressing, in addition to the

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country's social, economic, and political dynamics. To realize a more just, modern, and relevant legal system that is in accordance with the times, legal reform is a critical agenda.

The development of civil law in Indonesia can be observed from various perspectives, such as the role of legal institutions in enforcing civil law, improvements in jurisprudence, and changes in laws. For instance, the enactment of Law Number 1 of 1974 concerning Marriage, which replaced colonial regulations, resulted in changes to family law. *Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen* (1999) led to the development of consumer protection law. Currently, the civil law that is in the process of development includes consumer protection law and contract agreement law (Dadang Sundawa, 2021).

According to H. Abdul Manan (2020), civil procedural law governs the following: the process of filing a lawsuit, the defendant's response to the plaintiff's lawsuit, the judge's conduct both prior to and during the trial, the manner in which the judge renders a decision in the plaintiff's case, and the proper implementation of the decision in accordance with the relevant laws and regulations. This process ensures that the rights and obligations of the parties regulated by civil law are enforced effectively. Consequently, it is anticipated that the implementation of civil procedure laws and regulations will enable disputing parties to utilize the legal system to reclaim their rights that have been infringed upon by third parties.

In civil procedure law, the parties involved in a dispute frequently employ seizure during the litigation process to reclaim legally protected rights. In accordance with Article 1, paragraph 16, of the Criminal Procedure Code, seizure is an investigative action that involves the seizure and control of tangible or intangible goods, whether they are movable or immovable, to be used as evidence in investigations, prosecutions, or trials (Shoim, 2022). In the Indonesian national legal constellation, civil law is no longer merely regarded as a rigid, formal juridical instrument. Instead, it serves as a vital tool for achieving social renewal and solidifying substantive justice. This dynamic role is realized through its inherent adaptability to contemporary changes, its capacity to accommodate prevailing societal values, the proactive involvement of legal enforcers—particularly judges—in unearthing substantive justice, and its overall contribution to national development. This intricate process necessitates a robust synergy among legislation, jurisprudence, and public legal awareness.

Seizures are of two types: the plaintiff's property is seized when the defendant or another party has it. The purpose of this seizure is to return the seized property to the plaintiff after the court decision becomes final and enforceable. The plaintiff requests that the judge who is reviewing the case seize the defendant's property as a preliminary measure to guarantee that the civil decision can be enforced. The property is incapable of being sold or transferred subsequent to its seizure.

A security seizure, which is occasionally referred to as a *conservatoir beslag*, may be implemented by the court upon the plaintiff's request to safeguard the disputed property. An order for security seizure may be issued by the court either prior to or during the examination protocol. Security seizures are conducted by court officials or officers from the District Court, who are accompanied by two witnesses. Article 227 paragraph (1) of Government Regulation Number 33 of 1989, as amended by Article 261 paragraph (1) of Government Regulation Number 33 of 1989, establishes the legal foundation for security seizure (*Conservatoir Beslag*). This is in order to prevent any party involved in the dispute from selling or transferring the rights to the seized property. If the court chairman or panel chairman approves the seizure application, the bailiff is required to perform his duties in a professional and proportionate manner, which entails being meticulous and thorough, as he collaborates with the parties involved in the dispute (Aprita, 2021).

The plaintiff has the right to submit a request for the seizure of movable property controlled by the defendant and/or property belonging to the defendant controlled by the defendant or a third party from the time the lawsuit is filed until the decision becomes

final and legally binding, as stated in Article 49 of the Draft Law on Civil Procedure (Aritonang Z. R.; Tarigan A. C.; Aritonang L. M., 2023). The detention of collateral that has been authorized by the Chief Justice of the Supreme Court must be implemented in accordance with the plaintiff's request in the lawsuit, which must also specify the rationale behind the request for collateral detention. The collateral must be held by the court clerk or bailiff, who serves as the court execution officer, in accordance with the procedures outlined in Articles 197–199 HIR and Articles 208–214 RBg. The district court clerk is the executor of the collateral seizure, or the clerk may request that the chief justice of the district court appoint a representative who is deemed competent. Stated that the confiscated property's owner is prohibited from renting, encumbering, or transferring the property to another party (Hum et al., 2022).

In Indonesia, civil law has been significantly influenced by globalization and advancements in information technology. This development necessitates legal modifications that not only account for domestic changes but also adhere to international standards. For example, in the domain of electronic contracts and digital transactions, specific regulations are required to manage the rights and responsibilities of the involved parties (Fikriana M.; Mardiansyah B., 2023). The rapid socio-economic evolution and the profound digital transformation in Indonesia underscore an urgent need to reformulate the fundamental principles of both substantive and procedural civil law. Existing civil law principles, often rooted in colonial doctrines, frequently prove inadequate or irrelevant for addressing the complexities of digital-era transactions, such as digital asset ownership and electronic contracts, thereby risking a lack of legal certainty and the potential for new vulnerabilities. This exigency extends to enhancing the protection of vulnerable parties in the digital realm, demanding a reinforcement of principles like good faith to counter online exploitation. Furthermore, ensuring substantive justice in digital transactions necessitates a re-evaluation of contractual fairness, especially concerning platform liabilities. Procedurally, adapting evidentiary rules to recognize digital evidence's probative value is crucial, requiring clarity on issues like the hierarchy between traditional authentic deeds and digital records. Ultimately, this comprehensive re-evaluation of civil law's foundational principles is paramount to maintaining its relevance, guaranteeing legal certainty, safeguarding rights, and achieving substantive justice in the contemporary digital landscape.

The objective of this investigation is to explore the evolution of Indonesian civil law over time. The study concentrates on the evolution of legislation, changes in judicial practice, and the impact of external factors, such as globalization, on civil law. The objective of this study is to offer a comprehensive understanding of the comprehensive conditions and direction of civil law development in Indonesia, as well as to provide recommendations for regulatory updates that are more effective and responsive to the needs of society. This aim will be achieved by analyzing these developments.

## 2. Materials and Methods

The development of civil law in Indonesia was analyzed using a normative legal method with a qualitative approach in this study. The researcher selected this approach due to its capacity to conduct a comprehensive examination of the laws and regulations, legal documents, and court decisions that were pertinent to the development of civil law. The research method employed the following steps: a normative approach to the law; and the analysis of primary and secondary legal documents as a method of implementing a normative approach in law data collection techniques. The data required for this study were obtained by reviewing legal literature, legal documents, and court decisions related to civil law. Data for this study was collected through literature review, encompassing an examination of primary, secondary, and tertiary legal materials. The gathered data was then subjected to a descriptive analytical method to derive coherent conclusions.

To acquire a comprehensive understanding of the evolution of civil law, the researcher compiled various pertinent written sources. Document analysis implied the examination of legal documents, including court decisions, laws, and regulations. The purpose of this analysis was to detect the evolution, applications, and changes in civil law in Indonesia over time. The methodology for data analysis was employed to qualitatively assess the reliability and validity of the collected data. Cross-checking was implemented on various data sources to guarantee the study's validity and reliability. The results of the analysis were also compared with the opinions of legal experts and previous studies by the researcher. This measure was implemented to mitigate bias and guarantee the reliability and accuracy of the research findings. This research method was intended to provide a comprehensive understanding of the evolution of civil law in Indonesia, as well as recommendations that facilitated more relevant and effective legal reforms (Hosnah et al., 2021).

### 3. Results and Discussion

According to Roscoe Pound's renowned work, law has four objectives in its development, one of which is to preserve security and order. Furthermore, the law serves as a tool for social education, the enforcement of justice, and personal development. Law, legal institutions, and legal experts are crucial in the process of altering norms and values at each stage of evolution. The current government strategy is to gradually and sustainably restore the economy to address the highly uncertain situation we are currently in. Laws are established as a result of the existence of humans in society. Law regulates the implementation and maintenance of social rights and obligations. "Material civil law" governs the rights and responsibilities of individuals in social interactions, whereas "formal civil law" governs the implementation and preservation of these rights and responsibilities. In the positive legal system that is applicable in Indonesia, civil procedural law is a collection of legal regulations, procedures, and rules that govern the implementation of civil law (Zia et al., 2020). Civil procedural law also governs the process of obtaining legal certainty and rights in the absence of a dispute by submitting an "application" to the court (Puhri et al., 2021). Both are currently in the process of development, with the current state of technology being a significant factor (Husni Abdulah Pakarti et al., 2023).

The Indonesian nation's character is not accurately represented by Indonesian civil law, which is the reason for efforts to unify civil law reform in Indonesia. Indonesian civil law is a legacy of colonialism, which explains the lack of accurate representation of the Indonesian nation's character. History demonstrates that the civil law that is currently in effect in Indonesia is inextricably linked to the history of European civil law. In Continental Europe, Roman Civil Law is applicable alongside written law and local customary law (Sitepu, 2018). As a consequence, numerous provisions of the current civil law are no longer consistent with the current circumstances and are no longer aligned with the rapid and dynamic development of Indonesian society. To prevent a legal vacuum in the lives of Indonesian society, civil law based on the BW may only be employed as a transitional or temporary law to facilitate the formation of Indonesian national law. The national objective of uniting Indonesia as a political and legal entity often overlooks the pluralistic and local laws currently in effect within society, as it promotes a unified and codified national law. National legislative policies that are unsuccessful in realizing the nation's vision of being a catalyst for renewal are causing local agrarian communities to undergo a transition to an urban and industrial lifestyle at the national level (Wignjosoebroto, 2007).

The Burgerlijk Wetboek (BW) that the Dutch East Indies left behind has not been officially replaced by a Civil Code (KUH Perdata) in Indonesia until now. The Civil Code, which serves as the primary legal framework for the civil sector, continues to present several significant challenges. These include the uncertainty surrounding its legal status—whether it is a valid law or merely a compilation of unwritten laws—translation challenges, and the existence of numerous provisions that are deemed unnecessary in light of contemporary social and legal circumstances. Consequently, it is imperative to

revise the Civil Code promptly. A revision can be accomplished by identifying and selecting articles that are still in alignment with current legal trends (Mangara & Al-Djufri, 2022). To address the absence of civil procedural law in Indonesia, the Supreme Court implements updates through court decisions, supreme court jurisprudence, doctrines of supreme court justices, the formulation of the results of the plenary chamber meeting, the Supreme Court Circular (SEMA), and the formation of the Supreme Court Regulation (Perma) (Ardiansyah, 2020).

The dynamics of the development of the principle of freedom of contract and the various problems that arise with the progress of business practices are among the strategic issues that serve as the initiating point for efforts to reform civil law in Indonesia. The absence of clear regulations regarding the pre-contractual stages, the absence of a clear distinction between the process of forming and validating a contract, and the lack of detailed and comprehensive regulations for certain types of agreements that have experienced significant developments in practice are among the problems. The necessity for reform is also influenced by the advancements in science, international relations, information technology, and other strategic fields, including health and food. In this context, the *causa* (certain things) as defined in the Civil Code is viewed as losing its significance as a determining factor for the validity of agreements in general (Ismail & Kifli, 2022). Updates and developments in civil law are a result of the dynamic nature of law, which is constantly adapting to societal changes. This dynamic is also influenced by the development of legal philosophy, which methodologically, systematically, rationally, and fundamentally endeavors to investigate legal truth in greater depth, transcending the boundaries of empirical truth and accountability based solely on experience (Sukardi & Yonnawati, 2022).

Islamic civil law and customary law coexist with various colonial laws and regulations in Indonesia's contemporary civil law system, which remains multicultural. It is imperative that immediate action be taken in this regard, as it has been determined that this system will serve as the foundation for the development of a new national civil code. Various challenges persist as a result of the relatively high level of emotional sensitivity to the topics and objects that require regulation. Philosophical, legal (normative), and sociological reform—at least three essential components of civil procedural law reform—must be taken into account. Legal (normative) content reform is designed to assess the content of positive legal norms or rules that are currently in effect. Conversely, sociological content reform is intended to prevent societal opposition to the creation of new laws. The objective of philosophical reform is to reassess the application of the fundamental concepts and principles of civil procedural law. The establishment of civil procedural law principles that are consistent with the concept of Indonesian society's life is essential for the reform of civil procedural law. Given the existence of these national civil procedural law principles, any modifications to legislation must be centered on these principles to establish fair and adaptable laws that can accommodate the diverse conflicts and changes that occur in society, as well as to safeguard society from the abuse of power without discrimination.

Nevertheless, individuals who are in search of justice frequently encounter intricate and protracted legal processes. The lengthy procedures associated with civil litigation do not reflect the concepts of simplicity, speed, and affordability. Additionally, the decision involves the winner and the loser in a state of conflict, although the outcome is enshrined in a court decision that is legally binding on the parties (Suhartono N. N.; Wibisono C. S., 2022).

Consequently, the codification of laws to unify national civil law must be conducted in a gradual, meticulous, and uniform manner within the context of reform and the establishment of a national civil code. The legal provisions of each religion or religious belief, as well as other laws, are still referenced and enforced in accordance with their respective legal requirements. However, issues that are unable to be unified must be weighed against the dynamics and legal expertise of the community in question. A new

national civil code must be drafted and developed by utilizing existing jurisprudence and other unwritten legal standards as a starting point (Kamello, 2011).

#### 4. Conclusions

The evolution of Indonesian civil law exhibits complex adaptive principles, transitioning from a colonial legacy towards a relevant framework in the globalized era, impelled by demands for justice and economic development. Current legal reforms and jurisprudential advancements acutely focus on two pivotal issues within civil procedural law: firstly, the imperative to harmonize evidentiary rules with technological advancements and contemporary transactional models. Secondly, the persistent challenge of enforcing court decisions without direct involvement of law enforcement officials, given their traditional purview within public, rather than private, law. The emergence of technological innovations necessitates a critical re-evaluation of evidentiary hierarchies. For instance, a salient question arises concerning the probative weight of a notarial deed vis-à-vis live video recordings or CCTV footage documenting agreements. While the national civil law doctrine, inherited from Dutch colonial jurisprudence, confers substantial evidential authority upon authentic deeds—regarded by courts as formal truth—this ongoing discourse underscores the urgent need for a systematic re-assessment of evidentiary principles. Such a re-assessment is vital to adequately accommodate digital realities and concurrently ensure consistency with the overarching objective of civil law: to achieve substantive justice amidst the intricate complexities of contemporary transactions.

The success of civil law reform is essentially measured through a three-pillar framework of indicators: the juridical dimension, access to justice, and the social effectiveness of legal norms. Juridically, key indicators encompass the coherence, consistency, and substantive quality of legal provisions that are responsive to societal dynamics, alongside an enhanced integrity and capacity of legal enforcers. The aspect of access to justice is assessed by financial and physical accessibility, the efficiency of judicial processes, and the assurance of non-discrimination across all segments of society. Meanwhile, social effectiveness is reflected in shifts in public behavior and legal compliance, a positive impact on socio-economic well-being, and an increase in public trust in the civil law system. Therefore, a comprehensive evaluation of these indicators is crucial to ensure that civil law genuinely transforms into a substantial instrument for social renewal and the advancement of justice.

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