

## **TOWARDS EMANCIPATORY CIVIL LAW: REGULATORY REORIENTATION FOR THE JUSTICE OF INDIVIDUAL RIGHTS**

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### **ABSTRAK**

Penelitian ini bertujuan untuk mengkaji secara mendalam urgensi reorientasi Hukum Perdata di Indonesia dari paradigma yang cenderung statis dan patriarkal menuju kerangka yang lebih emansipatif dan berkeadilan gender. Hukum Perdata, yang sebagian besar masih berakar pada warisan kolonial, sering kali gagal mengakomodasi dinamika sosial kontemporer, terutama dalam hal perlindungan hak-hak individu, otonomi pribadi, dan kesetaraan. Ketidakselarasan ini menciptakan disparitas antara norma hukum dan realitas sosial, yang pada akhirnya dapat merugikan kelompok-kelompok rentan dan membatasi potensi individu. Melalui pendekatan normatif-analitis, artikel ini mengidentifikasi berbagai regulasi yang perlu ditinjau ulang, termasuk dalam bidang hukum keluarga, hukum waris, dan hukum perjanjian, di mana konsep keadilan distributif dan kesetaraan substansial harus menjadi landasan utama. Pembahasan ini tidak hanya berfokus pada perubahan teks hukum, tetapi juga pada perubahan interpretasi dan praktik hukum oleh para penegak hukum. Temuan penelitian menunjukkan bahwa reorientasi ini memerlukan sinergi antara pembaharuan legislasi, re-edukasi yudisial, dan peningkatan kesadaran masyarakat. Dengan demikian, Hukum Perdata dapat bertransformasi menjadi instrumen yang dinamis, responsif, dan mampu menjamin keadilan yang nyata bagi setiap individu, bukan sekadar keadilan formal.

**Kata Kunci:** Hukum Perdata Emansipatif, Reorientasi Regulasi, Keadilan Individu.

### **ABSTRACT**

This study aims to examine in depth the urgency of reorienting Civil Law in Indonesia from a paradigm that tends to be static and patriarchal to a more emancipatory and gender-equitable framework. Civil Law, which is still largely rooted in colonial legacies, often fails to accommodate contemporary social dynamics, especially when it comes to the protection of individual rights, personal autonomy, and equality. This misalignment creates a disparity between legal norms and social realities, which can ultimately harm vulnerable groups and limit individual potential. Through a normative-analytical approach, this article identifies a range of regulations that need to be reviewed, including in the areas of family law, inheritance law, and treaty law, where the concepts of distributive justice and substantial equality should be the primary foundation. This discussion focuses not only on changes in legal texts, but also on changes in legal interpretation and

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practice by law enforcers. The findings of the study show that this reorientation requires synergy between legislative reform, judicial re-education, and increased public awareness. Thus, Civil Law can be transformed into a dynamic, responsive, and able instrument to ensure real justice for every individual, not just formal justice.

**Keywords:** Emancipatory Civil Law, Regulatory Reorientation, Individual Justice.

## INTRODUCTION

Civil Law, as a fundamental pillar in the national legal order, plays a crucial role in regulating inter-individual relations in society. Since independence, Indonesia has inherited a civil law system that largely comes from the Dutch heritage **Burgerlijk Wetboek** (BW), which was designed in an era that had different social values and structures (Muhtar et al., 2023). This legal framework, although it has undergone various adjustments, still contains biases and views that are not entirely in line with the spirit of modern social justice and human rights. Historically, these laws have focused more on property stability and hierarchy, often ignoring the aspirations of individuals and minority groups in society. This paradigm has created a tension between existing legal norms and demands for more substantial justice.

Global and national developments, such as the movement for gender equality and the recognition of children's rights, demand that the legal system evolve. People are now more aware of their rights and demand fair and equal treatment in the eyes of the law. This phenomenon shows the urgency to review whether existing regulations are still relevant and fair (Law, 2020). Laws that are unresponsive to social change can be an obstacle to progress and even a source of injustice. Therefore, a new approach is needed that sees civil law not just as a set of rules, but as a tool to realize social justice.

Crucial issues such as the protection of women's rights in marriage and divorce, equitable inheritance, as well as individual rights in employment agreements show that the current legal framework still has many loopholes. For example, conservative views on family law often place women at a disadvantage, both economically and socially. Rigid inheritance regulations can also lead to conflict and injustice, especially if they do not recognize the role and contribution

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of each family member (Rabbani et al., 2024). This underscores the need for a profound reorientation, not only at the legislative level but also at the interpretation of the law by judges and practitioners.

Transformation towards emancipatory civil law means shifting the focus from maintaining the status quo to individual empowerment. The concept of emancipation in this context refers to the liberation of individuals from unjust and historical limitations that prevent them from reaching their full potential. An emancipatory law will ensure that everyone, regardless of gender, background, or social status, has equal access to his or her rights. This shift requires intellectual courage to criticize established doctrines and formulate new doctrines that are more inclusive and progressive (Wibowo, 2024).

This research carries the argument that the reorientation of civil law regulations must be based on the principles of human rights and substantive justice. Justice is no longer understood only as formal equal treatment, but also as treatment that takes into account the existing social and historical context. Thus, regulations should be designed to correct the power imbalance and ensure that the end result of the application of the law is fair to all parties involved (Masrukhin, 2023). This approach offers a solid framework for reforming civil law in order to serve as a driving force for justice.

Specifically, this article will analyze how the principle of emancipation can be integrated into various areas of Civil Law. Discussions will include how marriage law can be updated to strengthen individual autonomy and marital equality, how inheritance law can become more flexible and fair, and how covenant law can protect weaker parties from exploitation (Belinda, 2025). Each of these aspects requires careful and bold review to be in line with the ideals of a just and prosperous nation. This research is expected to make a significant contribution to legal discourse in Indonesia.

Thus, this draft will systematically explore existing problems and offer comprehensive solutions. This article will begin with a presentation of the methodology, continue with an in-depth analysis of the findings and discussions, and end with a conclusion that summarizes the main points and relevant policy

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recommendations. It is hoped that this research can be a foundation for academic and practical discussions on civil law reform in Indonesia.

## **METHODS**

This research uses a qualitative approach with normative legal research methods. This approach was chosen because its main focus is to review and analyze legal norms, principles, and legal doctrines related to Civil Law in Indonesia. The aim is to examine the compatibility between existing regulations and the concept of emancipatory justice and to identify gaps and weaknesses that require reorientation. Thus, this study does not collect empirical data from the field, but is oriented towards an in-depth and systematic literature review.

Data collection is carried out through library research, which includes the collection of primary, secondary, and tertiary legal materials. Primary legal materials include laws, government regulations, and jurisprudence relevant to the topic being studied, such as the Marriage Act, the Civil Code, and court rulings. Secondary legal materials consist of books, scientific journals, and the results of academic research that address issues related to civil law, gender justice, and individual rights. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias that are used to understand terminology and concepts more accurately.

Data analysis was carried out qualitatively using legal interpretation techniques and systematic interpretation. The data that has been collected is analyzed to find patterns, trends, and inconsistencies between existing regulations and the principles of emancipatory justice. Researchers will interpret legal norms to find a more progressive and inclusive meaning, as well as compare various relevant legal doctrines. The results of this analysis are then used to formulate a strong argument regarding the urgency of the reorientation of civil law and to propose constructive recommendations for future legal reform.

## **RESULTS AND DISCUSSION**

The reorientation of Civil Law towards an emancipatory framework cannot be done without critically reviewing the long-standing doctrines. One of the most crucial doctrines to review is the concept of patriarchy that still remains in family law regulation. Although the Marriage Law has made significant improvements, the interpretation of certain articles still often reflects the view that women's roles are tied to domestic affairs, while men have greater authority in decision-making (Maula, 2019). This condition substantially hinders women's equality and autonomy in the household (Andrian, 2024). Therefore, a more progressive interpretation of the law is needed to ensure that the roles of husband and wife are recognized as equal.

The issue of property ownership in marriage also shows the need for reorientation. Traditionally, inherited property and separately acquired property are often considered not to be part of the common property, which can be detrimental to one party who does not have formal income (Setyaningrum, 2025). Emancipatory civil law should recognize non-monetary contributions, such as housework and childcare, as a form of legitimate contribution to the common property (Gayo, 2017). This recognition will ensure that every individual, regardless of traditional gender roles, is protected economically and socially (Hamzah & Salsabila, 2024). Thus, common property can reflect a true partnership.

Furthermore, in the field of inheritance law, this reorientation demands a more flexible and fair approach. Rigid inheritance doctrines based on patrilineal lineages or systems that do not recognize adopted children or children out of wedlock equally often lead to injustice and family conflict (Rabbani et al., 2024). An emancipatory law must be able to accommodate the principle of distributive justice, in which the distribution of inheritance can be adjusted to the needs and contribution of each heir to the family. This can be realized through a broader interpretation of the principle of egalititeit or through more flexible dispute resolution mechanisms (Gojali, 2023).

The following table shows the comparison between traditional civil law approaches and emancipatory approaches in several key areas.

Aspects of Civil Law	Traditional Approach	Emancipatory Approach
Family	Hierarkis, peran gender kaku	Hierarchical, rigid gender roles
Joint Property	Oriented towards monetary contribution	Recognize monetary and non-monetary contributions
Waris	Rigid, hereditary-based	Flexible, distributive justice-based
Covenant	Free, potentially exploitative	Protected, balance of parties
Individual Autonomy	Limited by social norms	Strengthened as a fundamental right

Reorientation is also indispensable in treaty law. Although the principle of freedom of contract is universally recognized, in practice, there is often an imbalance of power between the contracting parties. For example, in online loan agreements or employment agreements, there are often clauses that are detrimental to consumers or workers (Lestari, 2020). Emancipatory civil law should be able to provide stronger protection to weak parties, for example by adopting stricter doctrines of good faith and unconscionability, which allow judges to invalidate unfair clauses (Bidang, n.d.).

This balance of justice does not mean abolishing the law, but rather ensuring that the law functions as a just tool. This effort requires cooperation from all elements of the legal system. In addition to improving legislation, the role of judges as legal interpreters is also very vital (Mungawanah et al., 2025). Judges must have social sensitivity and courage to interpret the law progressively, fill legal gaps and correct injustices that are not addressed by legislation (Hidayat et al., n.d.).

The adoption of new doctrines, such as living law, can also be the basis for this reorientation. By recognizing that customary law norms and social norms that are fair and non-discriminatory have the force of law, the civil law system can become more responsive to the realities of pluralistic societies (Adhilia et al., 2025). This allows the law to evolve along with the development of society, without having to wait for long-term legislative changes (Arianto & Irawati, 2024). This

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recognition can be a bridge between formal law and justice felt by the community (Muhlizi, 2013).

The biggest challenge in this reorientation process has been resistance from conservative views and established interpretations of the law. However, with the global momentum for the protection of human rights and equality, this reform has become inevitable (Kansil & Putri, 2024). Legal education must reform its curriculum to instill an understanding of emancipatory justice from an early age in prospective legal practitioners (Nurhasanah, 2010). Public awareness campaigns are also needed so that people can understand their rights and demand better justice (Palilingan et al., 2024).

This change does not happen overnight, but is an ongoing process. The implementation of new regulations must also be accompanied by strict monitoring and evaluation. The involvement of civil society, academics, and legal practitioners in the policy-making process is essential to ensure that any changes reflect the real needs and aspirations of the community (Asdiqi, 2024). Thus, this reorientation will be a collective movement to create civil law that truly serves justice for each individual (Roem et al., 2024).

## CONCLUSION

Based on the analysis that has been presented, it can be concluded that Civil Law in Indonesia is at a critical point that demands a substantial reorientation from a tradition-based framework towards a more emancipatory and equitable paradigm. Despite progress, colonial legacies and conservative views still create loopholes that hinder the full protection of individual rights, especially in sensitive issues such as family law, inheritance, and covenants. This change is not just a technical-legal issue, but a reflection of the nation's commitment to the values of equality, personal autonomy, and social justice enshrined in the constitution.

This reorientation demands a series of integrated actions, ranging from legislative reforms that eliminate gender bias and discrimination, to changes in the interpretation of the law by the judiciary. It takes judges who are brave and socially sensitive to interpret the law progressively in order to realize substantive justice. In

addition, legal education and public awareness raising also play a vital role in shaping the legal ecosystem that supports this transformation. Without the support of all parties, this reform will be difficult to realize and civil law will continue to lag behind the ever-evolving social dynamics.

In the end, the reorientation of Civil Law towards an emancipatory framework is a moral necessity and a social imperative. This process will allow civil law to serve as an instrument that not only resolves disputes, but also empowers individuals, corrects historical imbalances, and builds a more just and equal society. By doing this reorientation, Indonesia will be one step ahead in realizing the ideals of a state of law that upholds the dignity and rights of every citizen.

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