



Civil Law in Practice Between Theory and Reality

I Gede Sujana^{1*}, Anjelia Pendi Jola², Alexandrio Ngindi Ate³, Patrisia Rambu Sedu⁴

^{1,2,3,4} Universitas Dwijendra, Indonesia

*Corresponding author: dalungsujana@gmail.com

ARTICLE HISTORY

Received : December 23, 2025

Revised : December 27, 2025

Accepted : January 7, 2026

available online: January, 10 2026

KEYWORD

Keyword1; civil law legal certainty

Keyword2; legal theory

Keyword3; legal practice

Civil law is traditionally understood as a systematic and codified legal framework designed to ensure legal certainty, predictability, and coherence in regulating private legal relations. However, the practical application of civil law often reveals a significant gap between theoretical ideals and real-world implementation. This article aims to critically analyze the tension between civil law theory and its practice, focusing on how normative principles operate within judicial interpretation and social realities. This study employs a normative juridical research method with a qualitative and critical analytical approach. The analysis is based on secondary legal materials, including civil codes, judicial decisions, scholarly journal articles, and authoritative legal literature. Doctrinal, philosophical, and comparative approaches are used to examine the extent to which civil law theory aligns with or diverges from its practical application. The findings indicate that civil law in practice is not merely a mechanical application of codified norms. Instead, it is shaped by judicial discretion, interpretative flexibility, socio-economic change, and evolving societal values. The pursuit of legal certainty frequently encounters the demand for substantive justice, compelling judges to adopt purposive and contextual interpretations. Moreover, technological developments and globalization further challenge the adequacy of traditional civil law concepts. This article concludes that the gap between civil law theory and practice is structural rather than incidental. Bridging this gap requires reconceptualizing civil law theory to acknowledge interpretation, context, and justice as integral elements of legal practice. Such an approach allows civil law to remain normatively coherent while responsive to contemporary legal challenges.

INTRODUCTION

Civil law, as a foundational branch of legal science, purports to regulate the rights and obligations of individuals and entities within society through a coherent system of codified norms. At its theoretical core, civil law emphasizes normative clarity, predictability, and systematic codification as the key mechanisms by which private legal relations are governed (Kischel, 2019). However, when translated into practice, this theoretical framework often confronts multifaceted realities: dynamic social values, evolving economic transactions, interpretative discretion by legal actors, and technological change. The interaction between theoretical ideals and practical application in civil law thus raises critical questions about the capacity of doctrine to meet the demands of justice and effectiveness in real-world contexts (Santika, 2021).

Central to civil law theory is the notion that legal rules provide clear direction for judicial interpretation and private ordering, grounded in a comprehensive civil code with systematic categorization of rights, obligations, and remedies (Kischel, 2019). In principle, this creates legal certainty and uniformity, which support fairness in dispute resolution.



Yet this idealized view often encounters obstacles in everyday adjudication, administrative processes, and societal transformations.

One prominent tension arises from the principle of legal certainty versus substantive justice. Legal certainty aims to ensure predictable outcomes based on codified norms, but rigid adherence to codified provisions can inhibit equitable results in complex cases. For example, the principle of legal fiction a theoretical device used to uphold legal consistency has been critiqued for disconnecting legal outcomes from lived social realities, especially for vulnerable individuals who lack mastery of abstract legal concepts (Satria & Brandao, 2023). This underscores how theoretical constructs, though logically coherent, may fail to achieve fair outcomes when detached from contextual considerations central to justice.

Another domain where theory meets reality is in the interpretative role of judges in civil law systems. Whereas classical civil law traditions emphasize application of statutory text with limited judicial law-making, empirical observations reveal that judges increasingly resort to interpretative strategies that mirror common law reasoning to fill gaps or respond to novel disputes (Uswatun Khasanah & Lumbanraja, 2025). This evolving interpretive practice challenges the notion that civil law practice strictly follows codified rules, suggesting instead a hybrid space where judicial creativity and pragmatic considerations influence outcomes. Such practice highlights the gap between legal theory's formalism and practical necessity for interpretative flexibility.

Empirical studies in civil law systems demonstrate that cultural and procedural factors further complicate the translation of theory into effective practice. Research on the application of justice principles within civil law contexts in Indonesia, for example, identifies interpretative inconsistency and localized influences as barriers to delivering equitable civil dispute resolution, revealing that theoretical ideals of justice do not always materialize uniformly in practice (Parlindungan et al., 2024). These observations echo broader concerns regarding how law functions within social and institutional constraints not simply as an abstract system of rules (Santika, 2020).

Moreover, the increasing prevalence of technological and economic transformations necessitates adaptations in civil law doctrine that theory has historically under-emphasized. Digital contracts, borderless commercial transactions, and electronic commerce create new legal relationships that challenge traditional civil law categories and require substantive reinterpretation of existing norms (Dalila, Andrian, & Munawir, 2024). These developments illuminate how civil law's theoretical structure must constantly engage with social change, rather than remain static.

Another layer of complexity arises from the educational dimension of legal practice. Legal education that privileges abstract doctrinal mastery may inadequately prepare practitioners for the interpretative and pragmatic aspects of everyday civil litigation and negotiation. Research suggests that effective civil law practice requires not only mastery of norms but also sophisticated legal thinking skills that allow practitioners to apply legal principles adaptively to diverse factual scenarios (Huang, 2024). This insight underscores



the need for legal pedagogy that integrates theoretical understanding with practical problem-solving, bridging the gap between what laws prescribe and how they operate in real contexts (Santika, 2023).

The critical examination of civil law in practice also invites broader theoretical reflection on the philosophical foundations of law itself. For example, debates within jurisprudence such as those between legal positivism and other normative philosophies influence how legal actors perceive the role of codified norms versus moral or social values (Bobbio, 1979; Hart, 1961). These philosophical debates shape civil law scholarship by interrogating whether law should be understood strictly as a system of rules or as an instrument for social justice and moral governance (Santika, 2019).

Finally, it is important to recognize that civil law does not operate in isolation. The comparative context particularly when civil law regimes engage with other legal traditions and cross-border disputes further complicates the practical application of theoretical principles. Issues in private international law, such as conflict of law in electronic transactions, demonstrate how theoretical frameworks designed for domestic application must adapt to transnational realities (Vinata, 2025).

In summary, the interface between civil law theory and practice reveals persistent tensions: codification versus interpretative flexibility, legal certainty versus substantive justice, doctrinal education versus adaptive practice, and domestic norms versus transnational complexities (Santika, 2022). These tensions highlight the indispensability of continuous critical analysis whereby theory informs practice, and practice, in turn, refines theory. Understanding these dynamics is vital for legal scholars, practitioners, and educators who aim to reconcile the aspirational framework of civil law with the complexities of real-world application.

METHOD

This study employs a normative juridical research method with a qualitative analytical approach, focusing on the critical examination of civil law doctrine as articulated in legal theory and its manifestation in judicial and social practice. Normative juridical research is appropriate for this study because it emphasizes the analysis of legal norms, principles, doctrines, and legal reasoning rather than empirical measurement of behavior (Soekanto & Mamudji, 2015). Through this approach, the research critically evaluates the coherence, consistency, and applicability of civil law norms when confronted with practical realities in dispute resolution and legal interpretation.

The primary data sources used in this research consist of secondary legal materials, including statutes, civil codes, judicial decisions, scholarly journal articles, and authoritative legal textbooks. These materials are categorized into primary legal materials (such as civil law codifications and court judgments), secondary legal materials (academic commentaries, legal doctrines, and journal publications), and tertiary legal materials (legal dictionaries and encyclopedias) to ensure systematic analysis (Marzuki, 2017). Scholarly journals and classical legal texts are selected based on their relevance to civil law theory,



legal interpretation, and the tension between doctrinal formalism and judicial pragmatism.

The analytical framework applied in this study is doctrinal and critical legal analysis. Doctrinal analysis is used to examine how civil law concepts such as legal certainty, contractual obligation, liability, and judicial interpretation are theoretically constructed within the civil law tradition (Kischel, 2019). This analysis is complemented by a critical perspective that questions the adequacy of these doctrines in addressing contemporary legal challenges. Critical legal analysis allows the research to move beyond descriptive exposition and interrogate the ideological, philosophical, and institutional assumptions underlying civil law theory (Unger, 1986).

Furthermore, this research incorporates a conceptual and philosophical approach to explore the jurisprudential foundations of civil law, particularly the influence of legal positivism on codification and judicial reasoning (Sujana et al., 2025). By engaging with classical jurisprudential works, such as Hart's theory of law and Bobbio's analysis of legal positivism, the study examines how theoretical commitments to rule-based systems affect judicial behavior and legal outcomes in practice (Hart, 1961; Bobbio, 1979). This philosophical inquiry is essential to understanding why gaps between theory and practice persist within civil law systems (Wiryanawan & Sujana, 2023).

To strengthen the critical dimension, the study also utilizes a comparative and contextual analysis, drawing examples from civil law jurisdictions to illustrate how similar legal norms may yield divergent outcomes due to social, institutional, or interpretative factors. Comparative insights are not intended to produce generalizations but to highlight structural patterns that reveal systemic tensions between normative ideals and practical implementation (Zweigert & Kötz, 1998). This method enables the identification of recurring issues such as judicial discretion, interpretative inconsistency, and the influence of socio-economic conditions on legal application.

The data analysis technique employed is qualitative interpretative analysis, whereby legal texts and scholarly arguments are examined through close reading and thematic categorization. The researcher identifies key themes such as legal certainty versus justice, codification versus interpretation, and theory versus pragmatism and analyzes their interrelations to construct a coherent critical narrative. This interpretative process aligns with the view that legal research is inherently analytical and argumentative, requiring reasoned evaluation rather than numerical validation (Hutchinson & Duncan, 2012).

In sum, the methodology adopted in this study enables a comprehensive and critical understanding of civil law as both a normative system and a lived practice. By integrating doctrinal, philosophical, and critical approaches, this research method provides a robust framework for analyzing the persistent gap between civil law theory and its practical realization, thereby contributing to deeper scholarly reflection on the effectiveness and adaptability of civil law in contemporary society.



RESULT AND DISCUSSION

The results of this normative and critical analysis reveal a persistent and structural gap between civil law theory and its practical implementation. While civil law doctrine is theoretically designed to ensure legal certainty through codification and systematic legal reasoning, its application in practice often deviates from these ideals due to interpretative flexibility, institutional constraints, and socio-economic realities. This finding confirms that civil law operates not merely as a closed system of norms but as a dynamic legal practice shaped by contextual forces.

One of the most significant findings concerns the tension between legal certainty and substantive justice. Civil law theory prioritizes predictability and uniformity by emphasizing adherence to codified rules (Kischel, 2019). However, judicial practice demonstrates that rigid application of statutory provisions can produce outcomes perceived as unjust, particularly in cases involving unequal bargaining power or complex social circumstances. Judges frequently navigate this tension by adopting purposive or teleological interpretations, thereby prioritizing fairness over strict textualism. This practice indicates that legal certainty, while essential, is insufficient on its own to guarantee justice in concrete cases (Hart, 1961).

The analysis further shows that judicial interpretation plays a far more creative role in civil law systems than classical doctrine suggests. Traditional civil law theory positions judges as “the mouth of the law,” whose role is limited to applying codified norms. In practice, however, judges often engage in gap-filling, analogical reasoning, and contextual interpretation to address situations not explicitly regulated by statutes. Empirical and doctrinal studies confirm that judges increasingly act as normative actors who shape the law through interpretation, especially in rapidly evolving areas such as contract law and civil liability (Uswatun Khasanah & Lumbanraja, 2025). This reality challenges the assumption that codification alone can fully regulate private legal relations.

Another important result concerns the impact of social and economic change on civil law practice. Theoretical civil law frameworks were largely developed in relatively stable social contexts, yet contemporary legal practice must respond to digitalization, transnational transactions, and new forms of private interaction. The study finds that traditional civil law concepts such as consent, fault, and contractual freedom often require reinterpretation to remain functional in digital and cross-border settings (Dalila et al., 2024). This demonstrates that civil law theory, when left static, risks becoming detached from social reality (Mujarti et al., 2021).

The findings also reveal that legal education and doctrinal formalism contribute to the gap between theory and practice (Satriana, I. M. & Dewi., 2021). Civil law education traditionally emphasizes mastery of codes and doctrinal structures, sometimes at the expense of practical reasoning skills. As a result, practitioners may struggle to apply abstract legal concepts to complex factual scenarios. Scholars argue that effective civil law practice requires legal reasoning that integrates doctrine with contextual analysis and



ethical judgment (Huang, 2024). This suggests that the disconnect between theory and reality is not merely institutional but also pedagogical.

From a jurisprudential perspective, the analysis highlights the influence of legal positivism on civil law's theoretical foundations (Cariver, 2025). Positivist assumptions such as the separation of law from morality and the primacy of written norms have shaped civil law codification and interpretative methods (Bobbio, 1979). However, practical adjudication often reveals that moral reasoning and social values inevitably inform judicial decisions, particularly in hard cases (Kurniawan & Setyawan., 2024). This finding supports the argument that civil law cannot function as a purely mechanical system of rules and must acknowledge the normative role of interpretation (Unger, 1986).

Furthermore, comparative analysis indicates that the theory-practice gap is not unique to a single jurisdiction but is a structural feature of civil law systems (Satriana, I. M. & Dewi., 2022). Different civil law countries exhibit varying degrees of judicial discretion and interpretative openness, influenced by institutional culture and historical development. Nonetheless, the underlying tension between codification and flexibility remains consistent across jurisdictions (Zweigert & Kötz, 1998). This reinforces the conclusion that the problem lies not in imperfect implementation alone but in the inherent limitations of civil law theory itself.

Critically, these findings suggest that civil law theory must evolve to better reflect its practical operation. Rather than viewing deviations from codified norms as anomalies, legal scholarship should recognize interpretative flexibility as an integral component of civil law practice. Doing so would allow theory to function as a guiding framework rather than a rigid constraint, enhancing the law's responsiveness to social change while preserving its normative coherence.

In sum, the results and discussion demonstrate that civil law exists in a continuous negotiation between normative ideals and practical realities. Legal certainty, codification, and doctrinal coherence remain essential foundations, yet they must be balanced with interpretative adaptability, contextual sensitivity, and substantive justice. Bridging the gap between theory and practice therefore requires not the abandonment of civil law theory, but its critical refinement in light of lived legal experience.

CONCLUSION

This study concludes that civil law operates within a persistent and inherent tension between theoretical ideals and practical realities. While civil law theory emphasizes codification, legal certainty, and systematic coherence as its core strengths, the findings demonstrate that these elements alone are insufficient to address the complexity of contemporary legal disputes. In practice, civil law functions as a dynamic system shaped by judicial interpretation, socio-economic conditions, and evolving societal values.

The analysis confirms that legal certainty and substantive justice often stand in a delicate balance. Strict adherence to codified norms may enhance predictability but can simultaneously hinder equitable outcomes in complex cases. Consequently, judges in civil law systems increasingly rely on purposive and contextual interpretation to bridge



normative gaps, thereby challenging the classical conception of judges as mere applicers of the law. This interpretative role highlights the necessity of flexibility within civil law practice without undermining its doctrinal foundations.

Furthermore, the study reveals that social transformation, technological development, and globalization significantly intensify the gap between civil law theory and practice. Traditional civil law concepts must be continuously reinterpreted to remain relevant in regulating digital transactions, cross-border legal relations, and modern private interactions. Failure to adapt theoretical frameworks risks rendering civil law norms ineffective or disconnected from lived legal experiences.

From an educational and jurisprudential perspective, the findings indicate that doctrinal formalism and positivist assumptions contribute to the theory–practice divide. Legal education and scholarship that prioritize abstract normativity without sufficient engagement with practical reasoning may limit the capacity of legal actors to respond to real-world challenges. Therefore, civil law theory should be understood not as a rigid structure but as an evolving framework informed by practice.

In conclusion, bridging the gap between civil law theory and reality does not require abandoning codification or legal certainty, but rather reconceptualizing civil law theory to acknowledge interpretation, context, and justice as integral components of legal practice. Such a critical and reflective approach enables civil law to remain both normatively coherent and practically effective in addressing the complexities of modern society.

Conflict of Interest

Penulis menyatakan tidak memiliki konflik kepentingan terkait publikasi artikel ini.

REFERENCES

- Bobbio, N. (1979). *Legal Positivism* (Il Positivismo Giuridico). Torino: Giappichelli.
- Dalila, B., Andrian, S., & Munawir. (2024). *Menelisik ruang lingkup dan pentingnya ilmu hukum perdata dalam kehidupan bermasyarakat*. Jurnal Al-Mizan: Jurnal Hukum Islam dan Ekonomi Syariah.
- Hart, H. L. A. (1961). *The Concept of Law*. Oxford: Oxford University Press.
- Huang, Y. (2024). *Legal thinking and examples of civil law: A study on the basic theory of claim rights*. Clausius Scientific Press.
- Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83–119. <https://doi.org/10.21153/dlr2012vol17no1art70>
- Kischel, U. (2019). *Comparative law*. Oxford: Oxford University Press.
- Kurniawan, I. D., & Setyawan, V. P. (2024). *The importance of protecting e-commerce consumer personal data*. *IJOLARES: Indonesian Journal of Law Research*, 2(2), 51-55.
- Marzuki, P. M. (2017). *Penelitian hukum*. Jakarta: Kencana.
- Mujarti, N. M., Satriana, I. M. W. C., & Dewi, A. M. A. T. (2021). Akibat Hukum Terhadap Pelanggaran Surat Ijin Usaha Perdagangan Di Kabupaten Gianyar. *Kerta Dyatmika*, 18(1), 33-44.



-
- Parlindungan, G. T., Suci, A. M., Arisma, T. F., & Putri, S. K. (2024). *Penerapan prinsip keadilan dalam hukum perdata di Indonesia*. *Journal of Global Legal Review*, 2(2), 89-98.
- Santika, I. G. N. (2019). Presidensialisme Dan Problematika Mekanisme Impeachment Presiden Dan/Atau Wakil Presiden Berdasarkan UUD 1945 Pasca Perubahan (Perspektif Pergulatan Hukum Dan Politik). *Jurnal Ilmiah Ilmu Sosial*, 5(1), 23-34.
- Santika, I. G. N. (2020). *Menggali dan Menemukan Roh Pancasila Secara Kontekstual*. Penerbit Lakeisha.
- Santika, I. G. N. (2021). *Pendidikan Kewarganegaraan: Studi Komparatif Konstitusi Dengan UUD 1945*.
- Santika, I. G. N. (2022). *Pendidikan Kewarganegaraan: Problematika Hasil Perubahan UUD 1945 Secara Konseptual*.
- Santika, I. G. N. (2023). Kedudukan Pancasila dalam Peraturan Perundang-Undangan di Indonesia. *IJOLARES: Indonesian Journal of Law Research*, 1(2), 47-51.
- Satria, A. P., & Brandao, E. (2023). Understanding the nature of legal knowledge: In-depth critique of the legal fiction principle. *Walisongo Law Review (Walrev)*, 5(2), 203-220.
- Satriana, I. M. W. C., & Dewi, N. M. L. (2021). Non litigation dispute resolution in settlement of civil disputes. *Legal Brief*, 10(2), 214-220.
- Satriana, I. M. W. C., & Dewi, N. M. L. (2022). Law Brakes to Protect Victims of Sexual Violence Against Children and Women in the Private Field. *Journal Equity of Law and Governance*, 2(2), 115-122.
- Sila, I. M., Santika, I. G. N., Kandi, D. N., & Ngana, C. R. D. (2025). DEMOCRACY AND THE 1945 CONSTITUTION: A POLITICAL PERSPECTIVE ON INDONESIA'S CONSTITUTIONAL FRAMEWORK. *International Journal of Education and Social Science Studies*, 1(2), 93-102.
- Soekanto, S., & Mamudji, S. (2015). *Penelitian hukum normatif: Suatu tinjauan singkat*. Jakarta: RajaGrafindo Persada.
- Sujana, I. G., Santika, I. G. N., Karmani, G., & Mesa, J. (2025). Integrasi Prinsip-Prinsip Pancasila dalam Perumusan Kebijakan Hukum Nasional. *IJOLARES: Indonesian Journal of Law Research*, 3(2), 66-74.
- Unger, R. M. (1986). *The critical legal studies movement*. Cambridge, MA: Harvard University Press.
- Uswatun Khasanah, D. R. A., & Lumbanraja, A. D. (2025). *Perkembangan interpretasi hukum oleh hakim di Indonesia dalam dominasi tradisi civil law system*. *Jurnal Ius Constituendum*.
- Vinata, R. T. (2025). *Penggunaan teori hukum perdata internasional terhadap conflict of law dalam transaksi elektronik*. Perspektif: Kajian Masalah Hukum dan Pembangunan
-



This is an open access article under the CC-BY-SA license

-
- Wiryan, I. W., & Sujana, I. G. (2023). Tanggung Jawab Penerima Hibah Uang yang Bersumber dari APBD oleh Pemerintah Daerah. *IJOLARES: Indonesian Journal of Law Research*, 1(2), 41-46.
- Zweigert, K., & Kötz, H. (1998). *An introduction to comparative law* (3rd ed.). Oxford: Oxford University Press.