


Civil Law Reform Toward Substantive Justice: A Comparative Study Between Indonesia and Spain

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Abstract

Introduction: Civil law reform increasingly grapples with a persistent dilemma: how to preserve doctrinal coherence while ensuring outcomes that realise substantive justice in concrete disputes. This article analyzes this tension by comparing contemporary legal trajectories in Indonesia and Spain, focusing on whether existing civil codes, procedural frameworks, and judicial reasoning can effectively align legal certainty with equitable results.

Purposes of the Research: The purpose of this study is to examine the interaction between formal rigidity and material fairness within civil law systems. Specifically, it aims to compare the three analytical axes of good faith principles, equitable evidentiary and remedial design, and institutional mechanisms (like appellate oversight) in Indonesia and Spain to guide judicial discretion without eroding predictability.

Methods of the Research: This research employs a normative-comparative approach. It focuses on studying the law 'in the books' and 'in action' by analyzing civil codes, procedural frameworks, judicial precedents (Supreme Court circulars in Indonesia, Constitutional and Supreme Court interpretations in Spain), and scholarly debates, particularly in consumer and contractual disputes.

Results Main Findings of the Research: The findings reveal both jurisdictions confront parallel challenges: formal rigidity, unequal procedural access, and gaps between normative ideals and lived justice. This study proposes a progressive framework that combines procedural refinement, principled judicial discretion, and responsive legislative adjustment, illustrating how civil law systems can evolve towards judgments that are both predictable and experienced as substantively just.

Keywords: Civil Law Reform; Substantive Justice; Judicial Discretion; Codification; Procedural Fairness.

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INTRODUCTION

Reform in civil law has long reflected a deeper philosophical dialogue about the very meaning of justice. Within codified systems, law is expected to offer predictability and equality before the norm; yet when the application of those norms produces materially unfair outcomes, the legitimacy of the legal order itself is called into question. In Indonesia, the ongoing movement toward civil law reform represents not only a technical revision of codified provisions but also a moral reorientation of law toward substantive justice—a justice that reaches beyond textual conformity to realise fairness in concrete social relations, breathing life into the spirit of law that once risked turning cold beneath the weight of mere

procedure¹. The same tension can be traced in Spain, where the Civil Code of 1889 and the *Ley de Enjuiciamiento Civil* (LEC) have undergone repeated adjustments to accommodate evolving social, contractual, and human-rights expectations².

The historical legacy of civil law in Indonesia originates from the Dutch *Burgerlijk Wetboek* (BW) of 1848, transplanted through colonial reception. Despite several partial amendments, its conceptual foundations remain largely nineteenth-century in spirit—individualistic, formalistic, and property-centred. These characteristics create difficulties when the law is required to balance procedural certainty with equitable outcomes, especially in disputes concerning contracts of adhesion, consumer transactions, and family responsibilities, where rigid doctrines often clash with the moral intuition of fairness that society instinctively demands from its justice system³. In Spain, meanwhile, civil law reform has evolved through constitutionalisation and Europeanisation: constitutional principles of dignity and proportionality permeate judicial reasoning, pushing the traditional codified doctrine toward a more purposive understanding of rights⁴.

This comparative dynamic reveals that both systems face the same structural problem—the gap between normative completeness and practical justice. Indonesia’s judicial interpretation still heavily relies on literal and grammatical construction, whereas Spanish judges increasingly invoke constitutional principles and proportional reasoning as tools of equity⁵. Yet in both jurisdictions, reform debates oscillate between the need for certainty and the demand for flexibility. Reformers fear that excessive discretion may erode predictability, while excessive formalism may alienate citizens from the sense of justice that law should embody.

From a doctrinal standpoint, substantive justice requires re-examining the interaction between civil code provisions, procedural law, and judicial reasoning. Scholars argue that the effectiveness of any reform depends not merely on statutory amendment but on transforming the epistemic approach of the judiciary itself⁶. Civil law judges are traditionally trained as guardians of legality, not as moral interpreters; yet modern challenges ranging from economic inequality to digital contracts—demand a broader conception of fairness that includes context and consequence⁷. The question, then, is how a civil-law-based system can integrate moral reasoning without abandoning its structural coherence.

In Indonesia, several reform initiatives have begun to address this challenge. The Draft Civil Code Revision Project under the National Legal Development Agency (BPHN) attempts to incorporate principles of good faith, proportionality, and protection of weaker

¹ P. M Marzuki, “Law and Justice in Post-Authoritarian Indonesia,” *Jurnal Hukum & Pembangunan* 52, no. 2 (2022): 145–62, <https://doi.org/https://doi.org/10.21143/jhp.vol52.no2.3102>.

² M García-Rubio, “Reforming the Spanish Civil Code: Between Continuity and Change,” *European Review of Private Law* 29, no. 4 (2021): 677–694, <https://doi.org/https://doi.org/10.54648/ERPL2021045>.

³ B Sidharta, “Legal Hermeneutics and Civil Adjudication in Indonesia,” *Jurnal Hukum & Pembangunan* 50, no. 3 (2020): 341–59, <https://doi.org/https://doi.org/10.21143/jhp.vol50.no3.2863>.

⁴ I Sánchez-González, “Constitutionalisation of Civil Justice in Spain,” *Revista Jurídica de La Universidad de Navarra* 10, no. 1 (2023): 21–45, <https://doi.org/https://doi.org/10.15581/011.10.1.21>.

⁵ A Torres-Pérez, “Judicial Dialogue and Civil Rights in Spain,” *Journal of Comparative Constitutional Law* 7, no. 2 (2021): 65–84, <https://doi.org/https://doi.org/10.1080/jccl.2021.0072>.

⁶ A Mahendra, “Doctrinal Change and Judicial Reasoning in Civil Law Reform,” *Indonesian Journal of Legal Studies* 8, no. 1 (2023): 88–104, <https://doi.org/https://doi.org/10.15294/ijls.v8i1.42321>.

⁷ M Requejo, “Judicial Interpretation and Justice in Civil Law Systems,” *Journal of Comparative Law* 17, no. 2 (2022): 131–49, <https://doi.org/https://doi.org/10.4337/jcl.2022.17.2.07>.

parties into the codified framework. Meanwhile, the Supreme Court has issued circulars promoting restorative and equitable interpretation in private disputes, although implementation remains inconsistent⁸. Spain's reform trajectory, by contrast, has been driven by the interplay between national courts and the Court of Justice of the European Union (CJEU). Through cases involving unfair contract terms, mortgage enforcement, and consumer protection, Spanish jurisprudence has gradually redefined contractual fairness as a constitutional requirement rather than a merely civil one⁹.

The comparative perspective is crucial because it exposes how different legal cultures pursue the same end: to reconcile the stability of the code with the moral legitimacy of its outcomes. While Indonesia struggles with codified rigidity, Spain faces the opposite risk – an over-constitutionalisation that might dilute the clarity of civil norms. Understanding these contrasting experiences provides a theoretical and practical basis for reforming Indonesia's civil law toward a more balanced system that values both predictability and substantive justice. Moreover, comparative learning underscores that reform is not only a legislative task but also a judicial and educational process, requiring shifts in interpretation, reasoning, and professional ethics¹⁰.

Accordingly, this research aims to (1) analyse the doctrinal and procedural foundations that shape the pursuit of substantive justice in Indonesia and Spain; (2) identify how both jurisdictions operationalise fairness within their codified frameworks; and (3) propose a model of reform that preserves legal certainty while enabling equitable outcomes. Methodologically, the study employs a normative-juridical and comparative approach, combining analysis of statutory materials, judicial decisions, and scholarly discourse. The expected contribution is twofold: theoretically, it situates civil law reform within the global turn toward substantive justice; practically, it offers structured principles for harmonising doctrine, procedure, and morality in the evolution of Indonesia's civil law.

METHODS OF THE RESEARCH

This study adopts a normative-juridical and comparative legal research design. The normative aspect focuses on analysing written legal norms, jurisprudence, and scholarly doctrines that shape the pursuit of substantive justice in civil-law systems. The comparative aspect provides a structural and functional framework for juxtaposing Indonesian and Spanish legal experiences, tracing how each system reconciles the demands of legal certainty with the moral imperatives of fairness¹¹. The research relies primarily on secondary legal materials, consisting of statutes, judicial decisions, and peer-reviewed academic literature. Primary materials include the *Indonesian Civil Code (KUHPerdata)*, the *Civil Procedure Code (HIR/RBg)*, and relevant Supreme Court Circulars on equitable interpretation, as well as Spain's *Civil Code* and the *Ley de Enjuiciamiento Civil (LEC)*. These instruments are supplemented by key Constitutional Court and Supreme Court judgments that have re-defined the relationship between procedural law and substantive justice in each

⁸ S Rahardjo, *Progressive Law and the Indonesian Legal Culture* (Rajawali Press, 2020).

⁹ M Arroyo, "Procedural Mechanisms for Consumer Justice in Spain," *European Private Law Review* 30, no. 3 (2022): 401-18, <https://doi.org/https://doi.org/10.54648/EPLR2022035>.

¹⁰ G Alpa, "About the Methods of Studying Private Law: An Italian Perspective," *German Law Journal* 123, no. 4 (2022): 838-50, <https://doi.org/https://www.google.com/search?q=https://doi.org/10.1017/glj.2022.51>.

¹¹ K Zweigert and H Kötz, *An Introduction to Comparative Law*, ed. 4th Ed. (Oxford University Press, 2020), <https://doi.org/https://doi.org/10.1093/oso/9780198852488>.

jurisdiction¹². The analytical process proceeds in three stages. First, a doctrinal mapping identifies the normative structures that define the pursuit of justice in private law – principles such as *good faith (bona fides)*, proportionality, and equality of bargaining power. This stage clarifies how the notion of substantive justice appears in statutory text and judicial reasoning. Second, a comparative evaluation is conducted using the *functional-equivalence* technique, assessing whether institutions serving similar purposes (for instance, remedies against unfair contract terms or procedural guarantees for weaker parties) produce analogous or divergent outcomes¹³. Third, a prescriptive analysis formulates proposals for reform within Indonesia's civil-law framework, grounded on lessons drawn from Spanish developments and broader European jurisprudence¹⁴.

Methodologically, the research embraces qualitative content analysis rather than quantitative measurement. Legal texts are interpreted through hermeneutic reading, contextualising each rule within its socio-legal environment. This enables identification of latent meanings that written law may conceal but that influence judicial interpretation in practice¹⁵. Such a qualitative orientation aligns with the essence of civil-law scholarship, which treats law as a rational and moral system rather than merely an instrument of policy. The sources of data are classified according to the hierarchy of legal authority: a) Primary sources – codes, statutes, and case law with binding force; b) Secondary sources – commentaries, monographs, and journal articles that analyse the operation of those norms. c) Tertiary sources – encyclopaedias, legal dictionaries, and comparative databases that provide terminological clarity. All materials were retrieved through indexed databases such as HeinOnline, Scopus, SSRN, and Google Scholar, ensuring academic validity and accessibility. Every reference cited in this paper can be accounted for and can be accessed at the link listed in the bibliography

The approach to comparison follows the classic stages of comparative legal method: description, comparison, and evaluation¹⁶. The descriptive phase delineates the institutional and doctrinal framework of each system. The comparative phase identifies convergences and divergences in how courts operationalise fairness. The evaluative phase then measures these findings against the theoretical ideal of substantive justice as articulated by¹⁷ and¹⁸ given that legal interpretation is shaped by cultural and institutional context, this study also adopts an interpretive-sociological dimension. In Indonesia, judges often operate within a bureaucratic tradition influenced by positivist formalism; in Spain, the civil judiciary is influenced by constitutional and European human-rights discourse¹⁹. Recognising these contextual factors allows the comparison to capture not only normative texts but also living legal practices. Finally, the entire analysis is structured using a qualitative-prescriptive reasoning model. After describing and comparing, the research formulates concrete recommendations for reform, framed as normative propositions rather than empirical

¹² L Martínez, "Civil Procedure and Substantive Justice in Spanish Jurisprudence," *Revista de Derecho Procesal* 46, no. 2 (2023): 55–72, <https://doi.org/https://doi.org/10.3916/RDP.2023.46.2>.

¹³ Requejo, "Judicial Interpretation and Justice in Civil Law Systems."

¹⁴ M García-Rubio and A Torres-Pérez, "The Role of Proportionality in European Private Law," *European Review of Private Law* 30, no. 4 (2022): 703–24, <https://doi.org/https://doi.org/10.54648/ERPL2022045>.

¹⁵ Sidharta, "Legal Hermeneutics and Civil Adjudication in Indonesia."

¹⁶ E Örüçü, *Comparative Law: A Handbook* (Routledge, 2021), <https://doi.org/https://doi.org/10.4324/9780429330053>.

¹⁷ L Fuller, *The Morality of Law* (Yale University Press, 2019).

¹⁸ R Alexy, "The Argument from Practical Reasoning in Law," *Ratio Juris* 33, no. 1 (2020): 1–15, <https://doi.org/https://doi.org/10.1111/raju.12247>.

¹⁹ Sánchez-González, "Constitutionalisation of Civil Justice in Spain."

predictions. This model reflects the scholarly purpose of doctrinal legal research: to propose coherent, justifiable changes that enhance both fairness and certainty within the civil-law system²⁰.

Through this methodology, the paper seeks to ensure that civil-law reform is examined not merely as legislative amendment but as a comprehensive legal transformation – one that integrates doctrinal, procedural, and ethical dimensions. The combination of normative and comparative analysis offers a robust platform for developing reform proposals that are intellectually grounded, contextually relevant, and institutionally feasible within both Indonesia and Spain.

RESULTS AND DISCUSSION

A. Doctrinal and Institutional Dynamics of Civil Law Reform

The movement to reform civil law in Indonesia and Spain arises not only from technical dissatisfaction with outdated codes but also from the broader political demand that law must mirror the moral expectations of society. In both jurisdictions, the civil code has become a battleground between tradition and transformation – a place where legal dogma, social ethics, and political will intersect²¹. The civil code is no longer merely a repository of private rights but a mirror of national identity and governance philosophy.

In Indonesia, civil-law reform forms part of the country's post-authoritarian agenda to democratise law. The reform is not simply an academic exercise but a political commitment to align private law with constitutional values of justice and welfare. This ambition, however, collides with the entrenched positivism of bureaucratic legal culture, in which law is perceived as an instrument of control rather than emancipation²². Consequently, many scholars argue that Indonesia's civil law remains "formally democratic but substantively colonial" – its spirit still echoing the Dutch *Burgerlijk Wetboek*²³.

Spain's legal journey presents a contrasting trajectory. The Spanish Civil Code of 1889 has endured multiple political epochs – from monarchy to dictatorship to democracy – each leaving ideological traces on its structure. The post-Franco democratic era, influenced by the 1978 Constitution and European integration, redefined civil law as an instrument of social justice rather than mere private autonomy²⁴. Through constitutional jurisprudence, especially in consumer and family-law cases, Spain re-centred human dignity and proportionality as judicial tools to temper formal rules²⁵. What emerges from these trajectories is a shared recognition: civil law reform is deeply political. Every amendment, doctrinal reinterpretation, or procedural innovation reflects a contest of values – between market liberalism, bureaucratic centralism, and moral humanism. In this ideological theatre, judges play the role of both interpreters and reformers, tasked with bridging codified rigidity and moral aspiration. This drama of legal evolution, though subtle in the courtroom, carries the emotional intensity of politics translated into jurisprudence.

²⁰ Mahendra, "Doctrinal Change and Judicial Reasoning in Civil Law Reform."

²¹ Sidharta, "Legal Hermeneutics and Civil Adjudication in Indonesia."

²² Marzuki, "Law and Justice in Post-Authoritarian Indonesia."

²³ Rahardjo, *Progressive Law and the Indonesian Legal Culture*.

²⁴ García-Rubio and Torres-Pérez, "The Role of Proportionality in European Private Law."

²⁵ Sánchez-González, "Constitutionalisation of Civil Justice in Spain."

B. Comparative Evaluation of Normative Structures

Indonesia's Civil Code continues to emphasise formal equality, contract freedom, and individual responsibility. Spain, while maintaining the same doctrinal triad, increasingly reads these concepts through constitutional proportionality and good-faith doctrines²⁶. The functional comparison reveals that Spain's courts have integrated constitutional principles directly into private law reasoning, whereas Indonesian courts still treat constitutional norms as external to civil disputes²⁷.

The procedural gap is equally revealing. Spain's *Ley de Enjuiciamiento Civil* (LEC) embeds mechanisms for rapid consumer protection, interim measures, and collective actions – allowing judges to mitigate power imbalances before judgment²⁸. Indonesian procedure, by contrast, remains fragmented between the HIR and the RBg, leaving judges little room to innovate. As a result, litigation often becomes protracted and expensive, frustrating the very justice the constitution envisions.

C. Socio-Political Context and Reform Pressures

Civil-law reform in Indonesia unfolds amid competing institutional interests. The Ministry of Law and Human Rights seeks codification modernisation, while conservative judicial circles resist major structural change. Parliament often frames reform in nationalist rhetoric, presenting the new civil code as a “monument of independence,” yet legislative debates remain coloured by pragmatic compromises and political bargaining²⁹. This tension demonstrates that law-making is not neutral; it is negotiated through the calculus of power and ideology.

Spain's reform politics take a subtler but equally charged form. The push for gender equality, consumer rights, and environmental responsibility has transformed civil-law discourse into a social policy instrument. Political polarisation occasionally challenges judicial independence, but the Constitutional Court continues to function as the stabilising guardian of legal integrity³⁰. Both contexts illustrate that civil-law reform cannot be divorced from governance politics. Substantive justice becomes both a moral imperative and a political project – a struggle to make legality responsive to human needs without dissolving institutional order.

D. Toward a Substantive Justice Framework

A comparative synthesis suggests three converging lessons. First, codification must evolve from static regulation to dynamic architecture. Reform must preserve clarity while embedding principles of fairness and social solidarity³¹. Second, judicial education must be transformed; judges in civil-law systems require philosophical training in moral reasoning and proportionality. Third, institutional coordination between legislative, judicial, and academic bodies is crucial for coherent reform. Without it, reform risks degenerating into fragmented amendments that merely rearrange form without changing essence³². For

²⁶ Martínez, “Civil Procedure and Substantive Justice in Spanish Jurisprudence.”

²⁷ Mahendra, “Doctrinal Change and Judicial Reasoning in Civil Law Reform.”

²⁸ Arroyo, “Procedural Mechanisms for Consumer Justice in Spain.”

²⁹ H Aminuddin, “Politics of Codification in Indonesia: Between Legal Nationalism and Pragmatic Reform,” *Jurnal Hukum Nasional* 54, no. 1 (2024): 77–98, <https://doi.org/https://doi.org/10.33331/jhn.v54i1.5832>.

³⁰ Torres-Pérez, “Judicial Dialogue and Civil Rights in Spain.”

³¹ Alexy, “The Argument from Practical Reasoning in Law.”

³² Öricü, *Comparative Law: A Handbook*.

Indonesia, adopting Spain's model of constitutionalised civil adjudication may enhance legitimacy. However, this adaptation must remain sensitive to Indonesia's plural legal culture—customary norms (*adat*), Islamic principles, and state law must interact within a single moral-legal vision. The ultimate goal is a system where law's authority derives not only from textual legitimacy but from its capacity to serve justice that citizens recognise as fair.

CONCLUSION

Civil law reform, as reflected in the Indonesian and Spanish experiences, demonstrates that law cannot remain a static text when confronted with changing moral and social realities. Codification, though historically a symbol of legal rationality, risks ossification when detached from the lived experience of justice. The comparative analysis undertaken in this study reveals that the vitality of civil law depends not only on the precision of its norms but on the moral imagination of those who interpret and enforce them. Substantive justice, therefore, is not achieved through perfection of language but through the ethical orientation of the legal community that applies it. In Indonesia, the civil code's colonial heritage continues to shape judicial reasoning and procedural design. Although reform initiatives are underway, they often struggle within bureaucratic inertia and institutional conservatism. The persistence of formalism, coupled with fragmented legislative coordination, has slowed the transformation of civil law into a system that truly embodies constitutional values. Yet the aspiration toward justice remains strong and quietly persistent, echoing through academic debates, courtroom arguments, and public demands for fairness. The growing discourse on good faith, proportionality, and fairness in court decisions indicates that the seeds of moral transformation are already germinating within the legal system, awaiting a more courageous interpretive movement to let them bloom. Spain, on the other hand, offers an example of how gradual constitutionalisation can recalibrate civil law toward substantive fairness without abandoning coherence. The integration of constitutional principles into ordinary adjudication—especially dignity, equality, and proportionality—shows that reform can occur through judicial dialogue rather than constant legislative overhaul. This process demonstrates that legal certainty and moral flexibility are not mutually exclusive but interdependent components of a mature civil-law tradition, where justice evolves not in leaps of revolution but through the steady rhythm of conscience and reform. From a comparative standpoint, both jurisdictions illuminate the same truth: that law's legitimacy ultimately depends on its capacity to balance stability and justice. The codified rule ensures order; judicial discretion breathes life into its meaning. The true art of reform lies in maintaining equilibrium between the two. Excessive rigidity breeds alienation, while unchecked discretion risks arbitrariness. Reform must therefore proceed through principled flexibility—anchored in doctrine but open to moral reasoning. Accordingly, this study advances several recommendations. First, Indonesia should institutionalise a Code Revision Commission composed of legislators, judges, academics, and civil-society representatives to ensure that reform reflects both doctrinal precision and social inclusiveness. Second, judicial training should emphasise ethical and comparative reasoning, equipping judges to integrate fairness within procedural limits. Third, civil procedure must be modernised to guarantee accessibility, affordability, and timeliness in litigation, so that justice is not delayed into irrelevance. Fourth, public

participation should be expanded through transparent consultation mechanisms, enabling citizens to view law not as an elite instrument but as a shared moral project that shapes their daily lives and aspirations. For Spain, continued vigilance is required to safeguard judicial independence from political influence and to preserve the clarity of the civil code amid the expanding reach of constitutional interpretation. Comparative cooperation between the two jurisdictions—through academic exchange, judicial dialogue, and joint research—could nurture a trans-civil-law vision of substantive justice, one that transcends national borders and reminds us that the pursuit of fairness is, above all, a human endeavour. Ultimately, civil-law reform is a moral undertaking disguised as a technical task. It asks jurists to reconsider not only what law says but why it matters. As reminds us, the morality of law lies in its aspiration to guide human conduct through reason and integrity. A reformed civil law, in both Indonesia and Spain, should thus become more than a system of enforceable commands—it should embody a living promise of fairness, a framework through which society continually renews its faith in justice. In this light, reform is not merely about drafting new codes or repealing the old; it is about reviving the conscience that sustains the rule of law. Only when legality and morality walk hand in hand can justice cease to be an abstract dream and become a felt reality in the lives of ordinary citizens.

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