

Validity and Legal Consequences of Oral Agreements in Business Disputes: Reconstruction of Proof Based on Substantive Justice (A Case Study on a Construction Contract Decision)

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ABSTRACT

Oral agreements remain widely used in Indonesian construction business, yet their validity and enforceability often spark dispute due to the challenges of proof. This study examines the legal validity and consequences of oral charter-party contracts (pemborongan) through the lens of substantive justice, taking the Supreme Court Decision No. 2345 K/Pdt/2021 as a case study. Employing a normative juridical method with a qualitative case approach, the research analyzes how Indonesian civil law, particularly Articles 1320, 1338, and 1601b of the Civil Code, permits oral contracts in construction works, while procedural law under HIR and the ITE Law imposes a high evidentiary burden. The findings reveal that formalistic approaches by lower courts often nullify oral agreements merely due to lack of documentary proof. In contrast, the Supreme Court reconstructed the parties' consensus by integrating partial payment evidence, electronic communications, and witness testimonies, grounding its reasoning on substantive justice (keadilan substantif). The decision produced legal consequences including the obligation to pay outstanding contract price, compensation, and legal costs. The study proposes an evidentiary reconstruction model that shifts the paradigm from written-document supremacy to a multi-faceted, contextual proof assessment. This model reinforces the principle of good faith and offers a doctrinal framework for judges to resolve similar business disputes without sacrificing legal certainty. The conclusion underlines the urgency of harmonizing formal procedural rules with the substantive truth-seeking function of the judiciary.

Keywords: Gig Economy, Platform Workers, Labor Law Protection, Indonesia, Singapore

INTRODUCTION

Contractual relations form the backbone of business transactions in Indonesia. The Civil Code (Burgerlijk Wetboek, BW) establishes the fundamental pillars of contract law through the principles of freedom of contract, consensualism and good faith. Article 1320 of the BW enumerates four prerequisites for a valid agreement: the consent of the parties, their capacity to contract, a specific subject matter, and a lawful cause. Nothing in that article or subsequent provisions on nominated contracts imposes a universal written-form requirement. Consequently, under the consensual principle, a contract is born at the moment parties reach mutual agreement, irrespective of whether that agreement is expressed orally or in writing (Karna & Purwani, 2025). This implies that oral agreements, including those in complex business sectors such as construction, are theoretically valid and enforceable.

However, the enforceability of oral contracts faces formidable obstacles when disputes arise. The construction industry, particularly in subcontracting and informal project works (pemborongan), is rife with

oral agreements due to time pressure, long-standing personal trust, and the high transaction cost of formal documentation. A contractor or subcontractor often commences work based solely on verbal instructions without any signed instrument that explicitly defines the scope, price, and timeline. Once the work is completed and payment is sought, the promisor may deny the existence or the terms of the agreement, triggering a legal battle centered on proof. The procedural law applicable in Indonesian civil courts predominantly the *Herziene Inlandsch Reglement* (HIR) and the *Rechtsreglement Buitengewesten* (RBg) places heavy emphasis on documentary evidence as the primary means of proof (Article 164 HIR, Article 1866 BW). Oral testimony, presumptions, and confessions are relegated to subsidiary roles. This hierarchical evidentiary structure, while intended to ensure legal certainty, often marginalizes parties who rely in good faith on an oral contract (Ginting & Tobing, 2026).

The tension between substantive validity and procedural proof becomes acute when the court adopts a formalistic mindset. Lower courts frequently dismiss claims based on oral contracts on the ground that the plaintiff fails to produce a written agreement, thereby failing to meet the minimum evidentiary threshold. Such a position essentially equates an oral contract with a non-existent one, undermining both the consensual principle and the pursuit of substantive justice a core value in the Indonesian judicial system, as mandated by Article 5(1) of Law No. 48 of 2009 on Judicial Power, which stipulates that judges must explore, follow, and understand the legal values and sense of justice that live in society (Taufiqurrahman et al., 2026).

The emergence of electronic evidence through Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), as amended by Law No. 19 of 2016, adds a new dimension to this discussion. Text messages, WhatsApp conversations, emails, and digital transfer records now populate daily business communications. These instruments, while not constituting a formal written contract, capture elements of an agreement and can serve as a logical bridge between pure oral consensus and documentary proof. In several decisions, the Supreme Court has begun to accept such electronic evidence as a valid extension of written evidence, opening the door for reconstructing the truth of an oral agreement through a constellation of indirect proofs (Dantjie & Surahmad, 2025).

Against this backdrop, the present study is anchored in a landmark decision: Supreme Court Decision No. 2345 K/Pdt/2021 (hereinafter, the “Decision”). This case involved a dispute over an oral construction subcontract for earthworks, where the plaintiff (subcontractor) had completed the physical work, but the defendant (main contractor) refused to pay the remaining contract price, arguing that no binding agreement existed due to the absence of a written contract. The lower courts ruled against the plaintiff, strictly applying the documentary-evidence requirement. The Supreme Court reversed, holding that an oral contract for construction work is valid and that the existence and scope of the agreement could be reconstructed through a combination of partial payment evidence, daily work reports, WhatsApp communications, and witness testimonies. In doing so, the Court explicitly invoked the principle of substantive justice to override the rigid formalism that led to an unjust outcome.

The primary research question guiding this study is as follows: How does the court determine the validity and legal consequences of oral agreements in construction business disputes, and how can evidence be reconstructed based on the principle of substantive justice, as demonstrated in the Decision? To answer this question, three sub-questions are formulated: (1) What is the legal framework governing the validity of oral *pemborongan* contracts in Indonesia? (2) What were the evidentiary constraints and reasoning of the lower courts and the Supreme Court in the studied case? (3) How can the evidentiary reconstruction model applied by the Supreme Court be systematized to serve as a doctrinal guide for future cases?

This study has two objectives: first, to critically analyze the legal validity and consequences of oral construction contracts through a doctrinal lens, and second, to reconstruct an evidentiary model that aligns formal procedural law with the substantive justice imperative. The significance of this study lies in its potential to provide a coherent framework for judges, legal practitioners, and business actors to mitigate the risk of injustice caused by over-reliance on written documentation. While numerous Indonesian legal scholars have discussed oral contracts (e.g., H.S. Salim, 2014; Naja, 2019), few have integrated the concept of substantive justice into a case-based evidentiary reconstruction specifically for *pemborongan* disputes. Moreover, the intersection between the ITE Law and classical contract proof in the context of oral agreements remains underexplored (Park & Yi, 2025).

The remainder of this paper is organized as follows. Section 2 presents a literature review of the validity of oral contracts, the principle of substantive justice, and the evidentiary framework in Indonesian civil procedure. Section 3 outlines the normative juridical research method using a case study approach. Section 4 details the results of the case analysis, complete with evidential data tables and a reconstruction chart. Section 5 provides an extensive discussion, interpreting the findings against theoretical and practical backgrounds. Finally, Section 6 concludes the study with actionable recommendations.

METHOD

This study employs a normative juridical research method combined with a case study approach. Normative juridical research, also known as doctrinal legal research, is the primary methodology in Indonesian legal scholarship, focusing on legal norms, principles, and doctrines as found in legislation and court ruling (Marzuki, 2016). The case approach allows for an in-depth, contextualized examination of a specific judicial decision, thereby bridging the gap between abstract norms and their application in concrete disputes. Qualitative analysis was used to interpret the legal reasoning of the courts, extract evidentiary patterns, and synthesize a reconstruction framework.

Supreme Court Decision No. 2345 K/Pdt/2021 was selected as the analytical focal point based on its rich legal issues: it encapsulates the tension between the consensual principle and evidentiary requirements, the interplay between conventional and electronic evidence, and an explicit application of substantive justice. This decision serves as a critical case that exemplifies both the problem and potential solutions.

Data Collection and Validity

Primary legal materials were collected through official websites (Mahkamah Agung directory, JDIH) and verified for their authenticity. The full text of the Decision was downloaded, translated, and coded. Secondary materials were obtained from law libraries, online databases (e.g., Garuda and Google Scholar), and academic repositories. To ensure the trustworthiness of the qualitative analysis, the following strategies were applied.

Triangulation: Cross-verification of the legal principles found in the Decision with doctrinal sources and other Supreme Court rulings.

Peer debriefing: Draft versions of the evidentiary model were discussed with two senior litigation lawyers to check practical applicability.

Audit trail: All coding, quotations, and inferential steps were documented in a research diary to maintain transparency.

Data Analysis Technique

The collected data were analyzed using a qualitative deductive-inductive method. The deductive phase involved deriving a priori categories from the legislative and doctrinal framework: elements of a valid contract, types of admissible evidence, and criteria for substantive justice. The Decision text was then coded against these categories to identify how the court constructed each element of the oral contract and weighed the evidence. The inductive phase allowed emergent themes to surface, particularly regarding the court's integration of electronic evidence and the use of partial performance as a presumption of an agreement.

The analysis proceeded in four steps: (1) case description and decomposition of legal facts; (2) comparative mapping of the evidentiary assessments by the District Court, High Court, and Supreme Court; (3) extraction of the Supreme Court's reconstruction logic; and (4) conceptualization of a generalizable evidence-based model. The results are presented in the form of descriptive text, tables, and flowcharts to enhance clarity. The entire analytical process was oriented toward answering the research questions and achieving the study's objectives, ensuring systematic and comprehensive legal inquiry.

RESULT & DISCUSSION

Case Facts and Legal Issues

The dispute at the heart of the Decision originated from an oral *pemborongan* agreement between PT. Karya Cipta (Plaintiff/Subcontractor) and PT. Marga Utama (Defendant/Main Contractor) in April 2020. The Plaintiff

was engaged to perform earthwork excavation and land clearing for a toll road construction project in West Java. According to the Plaintiff, the Defendant's project manager orally agreed to a lump-sum price of IDR 2,000,000,000 (two billion rupiah) for the scope of 50,000 m³ of excavation. The Plaintiff commenced work immediately, mobilizing heavy equipment and over 30 workers. During the course of the work, the Defendant transferred IDR 500,000,000 to the Plaintiff's bank account in two tranches without any payment description or a formal invoice. The Plaintiff completed the work in July 2020, but when it requested the remaining IDR 1,500,000,000, the Defendant denied the full agreement, claiming that the only deal was a much smaller preliminary earthwork for IDR 500,000,000, which had been paid in full. The Defendant argued that a larger scope would require a written contract, which never materialized.

The Plaintiff filed a lawsuit in the District Court seeking payment of the outstanding amount, plus interest and costs. The central legal issues crystallized as follows: (1) whether an oral contract for earthwork with the claimed scope and price existed and was valid; (2) which party bore the burden of proof and whether the Plaintiff discharged it; and (3) if the contract was proven, what legal consequences flowed from the Defendant's breach.

Table 1 presents a comprehensive inventory of the evidence submitted by each party during proceedings. The table is based on the compiled case file summarized in the Supreme Court's decision.

Table 1. Inventory of Evidence Submitted by the Parties

No.	Evidence Code	Type	Description	Submitted by
1	P-1	Bank statement	Two transfer receipts totaling IDR 500M, dated 20/04/2020 and 15/05/2020	Plaintiff
2	P-2	Electronic document	Screenshot of WhatsApp conversation between Plaintiff's site manager and Defendant's project manager discussing scope, volumes, and deadline	Plaintiff
3	P-3 to P-5	Witness testimony	Three witnesses (equipment operator, field supervisor, and project engineer) testifying about daily work execution and instructions received from Defendant's project manager	Plaintiff
4	P-6	Documentary log	Daily work reports (hard copy) signed by the Plaintiff's supervisor, recording daily excavation volumes and weather conditions; not countersigned by Defendant	Plaintiff
5	P-7	Expert opinion	Report from a quantity surveyor estimating the reasonable market value of 50,000 m ³ earthwork at IDR 1.8–2.2 billion	Plaintiff
6	D-1	Witness testimony	Testimony of Defendant's project manager denying agreement beyond the IDR 500M scope; acknowledging only preliminary discussions	Defendant
7	D-2	Letter	Defendant's internal memo dated March 2020 indicating need for "urgent oral	Defendant

No.	Evidence Code	Type	Description	Submitted by
			quotation” for earthwork preparatory works	

The inventory demonstrates the asymmetric nature of evidence. The Plaintiff relied on a constellation of indirect evidence: partial payment acts, digital communications, witness testimony, and work documentation. The Defendant, beyond a single witness and an internal memo acknowledging an oral arrangement for preparatory work, presented no counter-documentation. The WhatsApp screenshot (P-2) was authenticated via a digital forensic certification under the ITE Law, strengthening its admissibility.

The District Court and the High Court both rendered judgments in favor of the defendant. The Supreme Court, on cassation, was entirely reversed. Table 2 compares the core considerations of the lower courts and the Supreme Court across key dimensions.

Table 2. Comparative Analysis of Court Considerations

Dimension	District Court & High Court Consideration	Supreme Court Consideration
Validity of oral contract	No valid contract because Article 1320 BW requires clear oral agreement too vague without written specs.	Oral contract is valid under the consensual principle; consent can be inferred from conduct. Article 1320 does not demand written form for <i>pemborongan</i> .
Proof of consensus	Bank transfers do not prove agreement on scope or price; WhatsApp messages are not formal documents.	Partial payment of IDR 500M constitutes an act of performance that presumes a prior agreement. WhatsApp conversation clearly mentions volume and deadline, constituting written proof under ITE Law.
Witness testimony	Witnesses are Plaintiff’s employees; their testimony is biased and insufficient.	Testimonies are consistent, corroborated by documentary traces, and illustrate daily implementation—a strong indicator of the agreement’s existence.
Evaluation of fairness	Not discussed; court adheres strictly to documentary requirement.	Strict formalism leads to unjust enrichment of Defendant; the court must uphold substantive justice (Article 5(1) Law 48/2009).

Dimension	District Court & High Court Consideration	Supreme Court Consideration
Final ruling	Suit rejected.	Suit granted: Defendant must pay IDR 1,500,000,000 plus 6% annual interest from default date and court costs.

The comparison reveals a profound shift in judicial philosophy. The lower courts’ reasoning represents a formalistic paradigm where the absence of a signed contract was effectively conclusive. The Supreme Court adopted a substantive-justice paradigm, treating the oral agreement as a juristic fact that can be reconstructed through interconnected evidence, thereby aligning the outcome with material truth and good faith.

An evidentiary reconstruction model can be extracted based on the Supreme Court’s legal considerations. The Court systematically assembled probative facts to establish the four elements of a valid contract under Article 1320 BW:

1. Consensus: Inferred from (a) the defendant’s internal memo (D-2) acknowledging an oral quotation arrangement, (b) the WhatsApp exchange (P-2) explicitly negotiating volume and duration, and (c) the partial payments (P-1), which are senseless without an underlying obligation. The Court treated partial performance as a tacit admission of the contract’s existence.
2. Capacity: Both parties are registered construction companies, whose capacity was never contested.
3. Definite object: The scope (50,000 m³ earthwork) was specified in WhatsApp messages and reflected in the daily work reports (P-6) and expert market valuation (P-7). The Court harmonized these pieces to concretize the originally oral object.
4. Lawful cause: The parties’ intent exchange of earthwork services for payment—is lawful and not prohibited.

Discussion

The Supreme Court’s decision restates a fundamental yet frequently overlooked principle: Indonesian private law does not make written form a condition for the existence of a *pemborongan* contract. By holding that “the agreement between the parties was born at the moment of oral consensus,” the Court reinforced the consensual foundation of the Civil Code. This aligns with the doctrinal teachings of Roshandi (2025) and the legal certainty principle that parties should be bound by what they genuinely agreed, not by the medium they chose. The decision counters a widespread judicial attitude that, de facto, elevates form over substance. This judicial tendency arguably breaches Article 1338 BW, which allows parties to freely determine the form of their contracts, and indirectly imposes a *bentuk tertentu* (specific form) on a contract that does not legally require it (Roshandi, 2025).

This reaffirmation has significant practical implications. In the construction industry, where small and medium subcontractors often operate without robust legal departments, the decision affirms that their informal business practices are not legally inferior to formal ones. This encourages access to justice for entities that might otherwise be deterred from claiming their rights to it. However, this decision should not be interpreted as a license for commercial anarchy; it reaffirms that while an oral contract is valid, the burden of proof remains with the plaintiff. Thus, the business sector must be educated to intentionally create digital traces (WhatsApp, emails, brief meeting minutes) even when formal deeds are impractical (Febrianty et al., 2025).

The most significant jurisprudential contribution of the decision is its method of proof reconstruction. For decades, Indonesian civil courts have operated under a tacit “documentary supremacy” where the absence of a written contract almost inevitably leads to the dismissal of the claim (Hartanti & Wisnaeni, 2025). This formalistic posture not only ignores the consensual principle but also creates a perverse incentive for parties

who received partial performance to deny the entire agreement and retain unjust benefits.

The Supreme Court dismantled this documentary supremacy by employing the mosaic theory of evidence. Instead of searching for a single smoking-gun document, the Court laid out a series of probative facts, each insufficient on its own but, in combination, forming a clear picture. The partial payment acts, for instance, were legally reclassified as *feitelijke handelingen* that create a factual presumption of a broader agreement, similar to the common law's part performance doctrine. Under Indonesian law, presumptions are valid evidence (Article 1915 BW) when they are precise, concordant, and based on established facts. The Court implicitly used the payments as a judicial presumption that the Plaintiff would not have performed work worth IDR 2 billion solely for IDR 500 million in the absence of an agreement for the larger amount (Nadeak et al., 2026).

The admission and weight given to the WhatsApp conversation as a form of electronic written evidence deserve separate emphasis. The lower courts dismissed the WhatsApp screenshot as merely an informal chat. However, the Supreme Court recognized that the ITE Law makes no distinction regarding the formality of language; an electronic document containing information about the subject matter, volume, and timeline is just as much a "document" as a signed letter, provided its authenticity is not disputed or is verified. The Court's stance aligns with Article 5(3) of the ITE Law and the global trend of acknowledging digital communication as legally operative. This is a crucial development for Indonesian business, where most rapid commercial negotiations occur on messaging platforms.

Witness testimony was also re-evaluated. The lower courts' summary dismissal of employee-witnesses as biased contravenes the procedural principle that the judge must appraise the coherence and factual support of testimony, not simply its source. The Supreme Court noted that the three witnesses described consistent technical details—equipment types, number of workers, daily excavation volumes—that only someone directly involved would know, and these details matched the P-6 daily logs. This alignment produced a truth-ring that elevated the credibility of the testimonials beyond partisan bias. The reconstruction thus models a shift from a hierarchical, exclusionary approach to evidence toward an integrative, coherence-based approach.

The Decision's explicit invocation of *keadilan substantif* elevates it from a mere evidentiary ruling to a normative statement about the role of courts. By citing Article 5(1) of Law No. 48 of 2009, the Supreme Court positioned itself as a guarantor of justice, not a mechanical applier of formalistic rules. This is consistent with the concept of a "rights-based judiciary" proposed by Hutagalung (2025), where the judge's primary loyalty is to the protection of substantive rights and procedural rules are instruments to that end (Hutagalung, 2025).

Critics might argue that substantive justice can undermine legal certainty and invite arbitrary decisions. However, the Supreme Court's reasoning in this case is methodical and bounded by the existing evidence rules. It did not invent facts; it merely relaxed the overly rigid weight attached to the absence of a deed. The certainty it sacrificed was a false certainty—one that would have legitimized unjust enrichment. True legal certainty, as Gustav Radbruch's formula suggests, must yield to justice when the tension becomes unbearable. Here, the tension between formal legality (no written contract) and material justice (Defendant receiving millions in work without full payment) was unbearable, and the Court rightly prioritized justice.

The decision provides a doctrinal framework: when evaluating an oral contract, the judge must ask not, "Is there a written deed?" but "Considering all admissible evidence, is the judge convincingly led to the belief that an agreement with the claimed terms existed and was performed?" This reorientation is the essence of substantive justice applied to evidence.

The legal consequences handed down by the Supreme Court—payment of the outstanding contract price, contractual interest from default date, and court costs—are standard remedies for breach of contract under Article 1243 BW. However, the Court's refusal to award additional intangible damages (such as reputational loss) points to a proportional approach that avoids overcompensating the plaintiff. Although moderate, the interest rate of 6% per annum serves to partially offset the cost of delayed payment without becoming punitive.

An important consequence not explicitly addressed in the Decision but flowing from the recognition of an oral *pemborongan* contract is the tax and regulatory reporting obligations. When a court affirms the existence of a IDR 2 billion contract, both parties may face tax reassessments for unreported transactions. This ripple effect underscores that oral agreements, once judicially validated, carry full legal and fiscal weight. Business actors should be cognizant of this, as an oral agreement is not a tool to evade formal compliance.

Drawing from the Decision and discussion above, a generic model for proving oral business contracts—especially in construction—can be proposed for judicial use. The model comprises five cumulative layers.

1. Performance Layer: Identify any partial or full performance by either party that is objectively verifiable (payments, delivery of materials, commencement of work). Such acts create a factual presumption of a contractual relationship.
2. Communication layer: Scrutinizes all communication traces (chats, emails, meeting minutes, and voice notes). Classify them under the ITE Law and extract potential points of agreement (scope, price, time). The focus is on the informative content, not the formality.
3. Corroboration Layer: Gather independent data that align with the claimed terms, such as expert valuations, industry price benchmarks, site inspection records, and third-party suppliers. This layer counters vagueness.
4. Consistency Layer: Evaluates the internal consistency and mutual reinforcement among the first three layers. A coherent narrative strengthens the probative value beyond what each piece possesses individually.
5. Justice Calibration Layer: The substantive justice principle is applied to check whether a formalistic rejection of the claim would produce manifestly unjust enrichment. If yes, the threshold of conviction should be lowered slightly within the bounds of rationality, as permitted by Article 5(1) of Law 48/2009.

This model, depicted conceptually in Figure 1, is generalizable beyond *pemborongan* to any commercial oral agreement in Indonesia. Courts adopting it would need to articulate their reasoning in judgments, layer by layer, to ensure transparency and adherence to procedural laws. The model does not require legislative change; it can be implemented immediately through judicial education and Supreme Court circulars.

This study has three implications. For the judiciary, this research provides a ready-to-use framework that can reduce inconsistencies across courts and mitigate the “oral contract syndrome” of unjust dismissals. For practitioners, the case study serves as a practical guide on what evidence to secure from the outset: always request a transfer receipt with a narrative, preserve WhatsApp or email threads, and keep contemporaneous work logs, even if they are unsigned. For policymakers, the findings encourage the alignment of construction service regulations with the ITE Law and evidence law, possibly by amending the model contract for private works to explicitly recognize electronic evidence as a source of binding terms.

This study has some limitations. It centers on a single Supreme Court decision, and while that decision carries high persuasive authority, it does not bind lower courts in the common law sense. Future studies could examine a broader set of cassation rulings to test the model’s consistency and identify divergent trends. Additionally, the qualitative method, although suited to in-depth legal analysis, cannot measure the quantitative impact (e.g., success rate of claims after the decision). Empirical research surveying litigants and judges post-2021 would complement this doctrinal work.

CONCLUSION

Oral *pemborongan* contracts are legally valid under the Indonesian Civil Code’s consensual principle; however, their enforcement has long been crippled by a formalistic evidentiary culture that equates the absence of a written deed with non-existence. The Supreme Court Decision No. 2345 K/Pdt/2021 represents a transformative milestone by reconstructing proof of an oral earthwork contract through a synergistic blend of partial payment evidence, WhatsApp communications, witness testimony, and expert valuation, all bound by the imperative of substantive justice. The Court affirmed that a written form is not a legal requirement for *pemborongan*, and that judges must actively seek the material truth rather than shelter behind documentary supremacy.

The reconstructed evidentiary model layered from performance acts and digital traces to corroboration, consistency, and justice calibration offers a doctrinal blueprint for resolving similar business disputes without sacrificing legal certainty. The legal consequences of a proven oral contract are full compensation, default interest, and costs, putting the oral agreement on an equal remedial footing with written instruments. To operationalize this advancement, the Supreme Court should issue a circular encouraging the integrative evaluation of evidence in oral contract cases, and construction business actors must consciously preserve

digital and physical traces of their agreements. Ultimately, the Decision harmonizes positive law with the living values of business good faith, steering Indonesian contract adjudication toward a more substantively just horizon.

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