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ANDALAS BORNEO JUSTICE

Original Article

The Paradigm Shift in Indonesian Contract Law: A Case Study of Oral Employment Agreements Amid the Demand for Written Legal Certainty

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Abstract

Oral agreements remain deeply embedded in Indonesian economic life, and their consequences are most acute in employment relationships, where a large informal workforce is routinely engaged through spoken understandings. Indonesian contract law, inherited from the Burgerlijk Wetboek, adheres to the principle of consensualism, and the Manpower Law expressly allows employment agreements to be made orally or in writing. At the same time, written form is required for fixed-term employment agreements, an employer who hires orally on an indefinite-term basis must issue a letter of appointment, and civil procedure continues to privilege written evidence. This study uses oral employment agreements as a case study of the position of oral contracts amid the demand for written legal certainty. It analyses the normative validity of oral employment agreements, their treatment in the evidentiary system and in selected decisions of the Supreme Court and the Industrial Relations Courts, and the direction of the paradigm shift towards written and electronic certainty. This study employs normative legal research using statutory, conceptual, and case approaches, drawing on primary legal materials, judicial decisions reported in the scholarly literature, and secondary legal materials. The findings show that oral employment agreements are valid and give rise to the full range of worker entitlements, but that their enforceability depends on proof of the elements of work, wages, and orders. The case study also reveals a distinctive feature of employment law: the legal risk of orality is shifted onto the employer, who controls documentation, most visibly through the treatment of unwritten fixed-term agreements as indefinite-term agreements. The paradigm shift identified is therefore evidentiary and protective rather than substantive. This study concludes that a balanced model is required, one that preserves consensualism while strengthening employer documentation duties, judicial guidelines on proving employment relationships, and simple documentation practices for informal workers.

Keywords: Oral employment agreement, consensualism, legal certainty, evidentiary law, industrial relations, Manpower Law

Introduction

Throughout Indonesian society, a considerable number of legal relationships are still created through spoken words rather than signed documents. Loans between relatives, the sale of agricultural produce between farmers and local collectors, profit-sharing arrangements in customary communities, informal employment in micro-enterprises, and even transactions of considerable value in family businesses are frequently concluded orally, relying on mutual trust and social reputation. Scholarly studies consistently record that oral agreements remain prevalent precisely because they are

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practical, fast, and grounded in trust between the parties.[1] In customary communities, the oral form is not merely a matter of convenience but an expression of a legal culture in which the spoken promise carries moral and social authority.[2]

The persistence of this practice is supported by the structure of Indonesian contract law itself. Book III of the Indonesian Civil Code (*Burgerlijk Wetboek*), which remains in force as the general law of obligations, defines an agreement as an act by which one or more persons bind themselves to one or more other persons.[3] Article 1320 of the Civil Code then lays down four requirements for the validity of an agreement, namely the consent of the parties, the capacity to contract, a certain object, and a lawful cause. None of these requirements prescribes written form. Indonesian legal doctrine has long derived from this provision the principle of consensualism, according to which an agreement is born at the moment the parties reach consensus on its essential terms.[4] Combined with the principle of the binding force of contracts in Article 1338 paragraph (1) of the Civil Code, which declares that all agreements lawfully made apply as law to those who make them, the Civil Code provides a firm normative foundation for the validity of oral contracts.[5]

Nevertheless, the practical reality of oral contracts reveals a structural paradox. Although valid in substance, oral contracts are notoriously difficult to prove when a dispute arises. A party who has promised orally may later deny the very existence of the agreement, and the aggrieved party must then discharge the burden of proof through the means of evidence recognised by civil procedural law.[6] Indonesian scholars have repeatedly observed that the weakness of unwritten agreements lies not in their validity but in their proof.[7] Several studies even conclude that an oral agreement which is denied by the defendant cannot, without additional evidence, serve as the basis for a finding of breach of contract (*wanprestasi*).[8] This means that the legal certainty promised by Article 1338 of the Civil Code becomes, in practice, conditional upon the availability of documentation.

The demand for written certainty has intensified with the development of the Indonesian legal system. In land law, the customary principles of *terang* (publicity) and *tunai* (immediacy) that once governed oral land transactions have been modernised into the requirement of a deed executed before a Land Deed Official (*Pejabat Pembuat Akta Tanah*, PPAT).[9] In labour law, fixed-term employment agreements must be concluded in writing.[10] In commercial practice, written agreements

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[1] I Wayan Agus Vijayantera, 'Kajian Hukum Perdata Terhadap Penggunaan Perjanjian Tidak Tertulis Dalam Kegiatan Bisnis', *Jurnal Komunikasi Hukum (JKH)*, 6.1 (2020), 115–25 https://doi.org/10.23887/jkh.v6i1.23445; Berliana Adinda Ayu Puspita and Marwiyah, 'Perjanjian Tidak Tertulis Ditinjau Dalam Sudut Pandang Hukum Perdata', *MAGISTRA Law Review*, 5.01 (2024), 57–70 https://doi.org/10.56444/malrev.v5i01.5325

[2] Ronald Fadly Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat', *SANISA: Jurnal Kreativitas Mahasiswa Hukum*, 3.2 (2023), 89–95 https://doi.org/10.47268/sanisa.v3i2.1576; Hilman Hadikusuma, *Hukum Perjanjian Adat*, 4th edn (Bandung: Citra Aditya Bakti, 1990).

[3] Article 1313 of the Indonesian Civil Code.

[4] R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2005); Ahmadi Miru, *Hukum Kontrak Dan Perancangan Kontrak* (Jakarta: RajaGrafindo Persada, 2008).

[5] Niru Anita Sinaga, 'Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian', *Binamulia Hukum*, 7.2 (2018), 107–20 https://doi.org/10.37893/jbh.v7i2.318; Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas Dalam Kontrak Komersial* (Jakarta: Kencana Prenada Media Group, 2010).

[6] Vivit Choirul Nisya and Indra Yuliawan, 'Analisis Yuridis Kekuatan Hukum Perjanjian Lisan Dalam Hubungan Hukum', *Adil Indonesia Journal*, 4.2 (2023) https://doi.org/10.35473/aij.v4i2.2397; Billy Dicko Stepanus Harefa and Tuhana, 'Kekuatan Hukum Perjanjian Lisan Apabila Terjadi Wanprestasi (Studi Putusan Pengadilan Negeri Yogyakarta Nomor 44/Pdt.G/2015/PN.Yyk)', *Privat Law*, 4.2 (2016), 113–22.

[7] Vijayantera, 'Kajian Hukum Perdata'.

[8] Puspita and Marwiyah, 'Perjanjian Tidak Tertulis'; Arwin Ardianto Sunardi, Fendi Setyawan, and Firman Floranta Adorana, 'Pengembangan Hukum Perjanjian di Indonesia: Dalam Kekuatan Hukum Perjanjian Tidak Tertulis atau Perjanjian Lisan', *Jurnal ISO: Jurnal Ilmu Sosial, Politik dan Humaniora*, 6.1 (2026), 13 https://doi.org/10.53697/iso.v6i1.3583

[9] Sumitro Salim, 'Penerapan Sifat Terang Dan Tunai Dalam Jual Beli Tanah Yang Belum Lunas (Studi Putusan Pengadilan Negeri Tanjung Karang Nomor 6/Pdt.G/2020)', *Indonesian Notary*, 3.4 (2021).

[10] A. Setiawan and others, 'Keabsahan Perjanjian Kerja Waktu Tertentu Yang Dibuat Secara Lisan Menurut Undang-Undang Ketenagakerjaan', *Wijayakusuma Law Review*, 5.1 (2023) https://doi.org/10.51921/wlr.v5i1.228; Jessika Morisca Katu, Ni Komang Arini Styawati, and I Made Aditya

are increasingly perceived as the principal guarantee of legal certainty and of access to judicial remedies.[11] Meanwhile, the digitalisation of transactions has given rise to electronic contracts and electronic evidence, recognised by the Electronic Information and Transactions Law, which have blurred the boundary between oral and written agreements.[12] A conversation concluded through an instant messaging application is neither a purely oral agreement nor a conventional written document, yet it increasingly serves as the decisive evidence in civil disputes.[13]

Employment relationships offer the most instructive setting in which to examine this tension. Statistics Indonesia (BPS) recorded 87.74 million informal workers, or 59.42 per cent of the employed population, in February 2026, and a proportion of about 59.30 per cent in May 2026.[14] Informal work is typically organised through personal arrangements in which the terms of work are agreed by word of mouth and rarely recorded. Yet employment is also the field in which Indonesian law has most deliberately attached written requirements to an otherwise consensual contract. The Manpower Law provides that an employment agreement may be made in writing or orally,[15] requires that fixed-term employment agreements be made in writing,[16] and obliges an employer who hires orally on an indefinite-term basis to issue a letter of appointment.[17] The rules have not been static: the Constitutional Court reformulated the written-form rule for fixed-term agreements in 2024,[18] and a new Employment Protection Law, Law Number 27 of 2026, was enacted and entered into force on 28 October 2026.[19] Oral employment agreements thus combine high social prevalence, statutory acknowledgement of validity, and a protective regime of selective formalism. This makes them a suitable case study for testing whether Indonesian contract law is relocating legal certainty from consensus to evidence.

The existing literature on oral contracts in Indonesia is extensive but fragmented. Most studies examine the validity and evidentiary strength of oral agreements in specific disputes, particularly loan and debt cases, through the analysis of individual district court decisions.[20] Other studies address oral

Mantara Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja Secara Lisan Antara Pekerja Dan Perusahaan', *Jurnal Konstruksi Hukum*, 5.1 (2024), 66–71 https://doi.org/10.22225/jkh.5.1.8598.66-71

[11] Aan Handriani and Edy Mulyanto, 'Kepastian Hukum Terkait Pentingnya Melakukan Perjanjian Tertulis Dalam Bertransaksi', *Pamulang Law Review*, 4.1 (2021), 1–10 https://doi.org/10.32493/palrev.v4i1.12787

[12] David Herianto Sinaga and I Wayan Wiryawan, 'Keabsahan Kontrak Elektronik (E-Contract) Dalam Perjanjian Bisnis', *Kertha Semaya: Journal Ilmu Hukum*, 8.9 (2020), 1385–95 https://doi.org/10.24843/ks.2020.v08.i09.p09; Disriani Latifah Soroinda and Anandri Annisa Rininta Soroinda Nasution, 'Kekuatan Pembuktian Alat Bukti Elektronik Dalam Hukum Acara Perdata', *Jurnal Hukum & Pembangunan*, 52.2 (2022) https://doi.org/10.21143/jhp.vol52.no2.3344

[13] Rachel Berlianta Tita Della and others, 'Eksistensi Pesan Whatsapp Sebagai Alat Bukti Elektronik Dalam Pembuktian Perdata', *Jurnal Pendidikan Tambusai*, 10.2 (2026) https://doi.org/10.31004/jptam.v10i2.40243

[14] Statistics Indonesia (BPS) figures for February 2026 as reported by Kontan, https://nasional.kontan.co.id/news/pekerja-formal-baru-40-pemerintah-dorong-industri-dan-serapan-kerja; BPS figures for May 2026 as reported in 'Jumlah Pekerja Berusaha Sendiri Melonjak 1,38 Juta per Mei 2026', *Bisnis.com*, 5 August 2026, https://ekonomi.bisnis.com/read/20260805/12/1993845/jumlah-pekerja-berusaha-sendiri-melonjak-138-juta-per-mei-2026

[15] Article 51 paragraph (1) of Law Number 13 of 2003 on Manpower.

[16] Article 57 of Law Number 13 of 2003 on Manpower, as amended by Law Number 6 of 2023.

[17] Article 63 paragraph (1) of Law Number 13 of 2003 on Manpower.

[18] Constitutional Court of the Republic of Indonesia, Decision Number 168/PUU-XXI/2023, delivered 31 October 2024, as reported in 'MK: Jangka Waktu PKWT Paling Lama Lima Tahun', *Antara*, 31 October 2024, https://babel.antaranews.com/berita/444701/mk-jangka-waktu-pkwt-paling-lama-lima-tahun

[19] Law of the Republic of Indonesia Number 27 of 2026 on Employment Protection. Its promulgation and entry into force on 28 October 2026 are reported in 'Dokumen UU Pelindungan Ketenagakerjaan 2026 Akhirnya Terbit', *Kompas.id*, https://www.kompas.id/artikel/dokumen-uu-pelindungan-ketenagakerjaan-2026-akhirnya-terbit; the approval of the House of Representatives on 6 October 2026 is reported in 'Akhirnya, RUU Perlindungan Ketenagakerjaan Resmi Disahkan Jadi UU', *Pasardana.id*, 7 October 2026, https://pasardana.id/news/2026/10/7/akhirnya-ruu-perlindungan-ketenagakerjaan-resmi-disahkan-jadi-uu

[20] Chindy Maydiana Marsuseno, Anggrita Esthi S, and Karim, 'Analisa Kekuatan Hukum Perjanjian Secara Lisan Saat Terjadi Wanprestasi (Studi Kasus Putusan Pengadilan Nomor 16/Pdt.G/2011/PN.Bjn)', *Jurnal Judiciary*, 2.3 (2020); Nugraha Endi Yuaga, Ery Agus Priyono, and Suradi, 'Tinjauan Yuridis Terhadap Wanprestasi Pada Perjanjian Lisan (Studi Putusan Pengadilan Negeri Rembang Nomor 4/Pdt.G/2020/PN.Rbg)', *Diponegoro Law Journal*, 12.2 (2023); Faradilla Pratiwi, Ratna Artha Windari, and Si

agreements in customary communities,[21] in business relationships,[22] and in employment relationships.[23] A separate body of literature discusses the position of electronic evidence in civil procedure.[24] These contributions have established a broad consensus that oral contracts are valid but difficult to prove. However, few studies have connected these strands into a single analytical frame that explains the transformation of the position of oral contracts as a systemic shift in the Indonesian law of contract. The literature tends to treat the evidentiary weakness of oral contracts as a fixed fact, rather than as an indicator of a broader movement of the legal system towards documentation-based certainty.

The literature on oral employment agreements is narrower still. Studies agree that oral employment agreements are valid under Article 51 paragraph (1) of the Manpower Law and carry the same legal force as written ones, while stressing that the employer must issue a letter of appointment to evidence the relationship.[25] Dharmanto and Pulung Sari identify the proof of oral employment agreements as the principal practical problem in industrial relations disputes.[26] Case commentaries on Supreme Court decisions have examined the rights of workers employed under oral agreements,[27] the treatment of unwritten fixed-term agreements as indefinite-term agreements,[28][29] and the legal gap created when the Job Creation Law removed the conversion rule for unwritten fixed-term agreements.[30] These contributions treat each decision as an isolated question of labour law. They have not been read together with the general law of oral contracts and the law of civil evidence as indicators of a broader reorientation of legal certainty, which is the contribution this study seeks to make.

The notion of a paradigm shift is used in this study in a specific and limited sense. It does not denote a sudden revolution in legal doctrine but a gradual reorientation of the legal system regarding where legal certainty is located. In the classical model of the Civil Code, certainty is located at the moment of consensus: once the parties agree, the contract exists and binds them as law.[31] In the emerging

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Ngurah Ardhya, 'Kekuatan Pembuktian Dalam Perjanjian Utang Piutang Yang Dibuat Secara Lisan (Studi Kasus Putusan Nomor 139/Pdt.G/2022/PN Sgr)', *Jurnal Locus Delicti*, 6.1 (2025), 13–26 https://doi.org/10.23887/jld.v6i1.5952; Akbar Wahyu Purnawan and Miko Aditiya Suharto, 'Pembuktian Perjanjian Lisan Dalam Sengketa Hutang Piutang: Studi Putusan PN Balikpapan No. 146/Pdt.G/2021', *Jurnal Ilmiah Advokasi*, 13.4 (2025) https://doi.org/10.36987/jiad.v13i4.7574

[21] Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'.

[22] Yuliana La Madi, Sarah Selfina Kuahaty, and Marselo Valentino Geovani Pariela, 'Penggunaan Perjanjian Tidak Tertulis Dalam Hubungan Kegiatan Bisnis', *TATOHI: Jurnal Ilmu Hukum*, 4.9 (2024), 745–56 https://doi.org/10.47268/tatohi.v4i9.2494; Vijayantera, 'Kajian Hukum Perdata'.

[23] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'; Setiawan and others, 'Keabsahan Perjanjian Kerja Waktu Tertentu'.

[24] Efa Laela Fakhriah, 'Penemuan Hukum Oleh Hakim Melalui Pembuktian Dengan Menggunakan Bukti Elektronik Dalam Mengadili Dan Memutus Sengketa Perdata', *Jurnal Bina Mulia Hukum*, 5.1 (2020) https://doi.org/10.23920/jbmh.v5i1.50; A. W. Firmansyah, R. Alauddin, and F. Malik, 'Perkembangan Kedudukan Dan Kekuatan Bukti Elektronik Dalam Sistem Pembuktian Perdata', *Amanna Gappa*, 30.1 (2022), 60–74; Soroinda and Nasution, 'Kekuatan Pembuktian Alat Bukti Elektronik'.

[25] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja Secara Lisan Antara Pekerja Dan Perusahaan'.

[26] Tania Erika Dharmanto and Retno Dewi Pulung Sari, 'Problematika Kekuatan Hukum Perjanjian Kerja Lisan', *Repertorium: Jurnal Ilmiah Hukum Kenotariatan*, 12.1 (2023) https://doi.org/10.28946/rpt.v12i1.2783

[27] Elanda Harviyata Trivirananto, 'Analisis Putusan Mahkamah Agung Nomor 016 K/Pdt.Sus/2011 tentang Hak Pekerja dengan Perjanjian Kerja yang Dibuat Secara Lisan', *NOVUM: Jurnal Hukum*, 1.3 (2014), 186–90 https://ejournal.unesa.ac.id/index.php/novum/article/view/8988

[28] Sonhaji, 'Analisis Putusan Mahkamah Agung Nomor 501 K/Pdt.Sus-PHI/2016 tentang Pemutusan Hubungan Kerja', *Administrative Law & Governance Journal*, 1 (Edisi Khusus I) (2018), 26–46.

[29] Muhamad Abdul Jamil Rizki and Ariawan Gunadi, 'Kedudukan Status Perjanjian Kerja Waktu Tertentu bagi Pekerja yang Tidak Memiliki Kontrak Kerja Tertulis (Studi Putusan Mahkamah Agung Nomor 3K/PDT.SUS-PHI/2025)', *Riwayat*, 8.4 (2025) https://doi.org/10.24815/jr.v8i4.51170

[30] Vista Nur Wasiatul Maghfiroh, 'Perlindungan Hukum Bagi Pekerja Berdasarkan Perjanjian Kerja Tidak Tertulis Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja', *NOVUM: Jurnal Hukum*, 9.3 (2022), 91–100 https://ejournal.unesa.ac.id/index.php/novum/article/view/41724

[31] Subekti, *Hukum Perjanjian*; Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'.

model, certainty is increasingly located in the availability of evidence: a contract is secure to the extent that it can be demonstrated through documents, records, or electronic traces.[32] The question this study pursues is whether, and to what extent, Indonesian contract law has moved from the first model to the second, and what this movement means for the position of oral contracts.

Legal certainty in this context has two dimensions. The first is normative certainty, namely the clarity of the rules that determine when a contract is valid and binding. The second is factual or evidentiary certainty, namely the ability of the parties and the court to establish what the parties actually agreed. Indonesian contract law provides a high degree of normative certainty for oral contracts, since the requirements of Article 1320 of the Civil Code are clear and do not depend on form. However, the evidentiary certainty of oral contracts is low, because their proof depends on the memory of witnesses, the willingness of the counterparty to admit the agreement, and the inferences drawn by the judge.[33] The demand for written legal certainty is, in essence, a demand for evidentiary certainty.

The novelty of this study lies in three aspects. First, it uses oral employment agreements as a case study to reframe the widely acknowledged evidentiary weakness of oral contracts as an indicator of a systemic reorientation of Indonesian contract law, rather than as an isolated technical problem of individual disputes. Second, it integrates strands of literature that have hitherto been discussed separately, namely the doctrine of consensualism, the law of civil evidence, labour law protection, customary transactions, and electronic evidence, into a single analytical frame, and it brings the most recent legal developments, including Constitutional Court Decision Number 168/PUU-XXI/2023 and Law Number 27 of 2026, into that frame. Third, it proposes a balanced model that seeks to preserve the cultural and doctrinal foundations of oral contracting while responding to the legitimate demand for legal certainty. In this way, the study aims to move the discussion beyond the repeated affirmation that oral contracts are valid but difficult to prove, towards an explanation of why this condition exists, how employment law redistributes its consequences, and how it should be addressed.[34]

This gap matters for both theory and practice. Theoretically, it leaves unanswered the question of whether Indonesian contract law is moving away from consensualism or merely relocating legal certainty from the formation of contracts to their proof. Practically, it affects millions of people whose daily transactions are concluded orally and who face the risk of losing their rights because they lack written evidence. The urgency of the issue is heightened by the fact that oral contracting is most common among economically vulnerable groups, including rural communities, informal workers, and small traders, whose access to legal assistance and documentation is limited.[35]

This study, therefore, aims to examine the position of oral contracts amid the growing demand for written legal certainty in Indonesian contract law, using oral employment agreements as its case study. It addresses four research questions. First, what is the normative position of oral employment agreements under the principle of consensualism and the Manpower Law? Second, how are oral employment agreements treated in the evidentiary system and in the decisions of the Supreme Court and the Industrial Relations Courts? Third, in what forms does the paradigm shift towards written and electronic certainty manifest itself in employment, customary, and digital contexts? Fourth, how should the position of oral employment agreements be reconstructed so as to reconcile the culture of oral engagement with the demand for legal certainty? By answering these questions, this study seeks to contribute a conceptual account of the paradigm shift in Indonesian contract law and to propose a balanced model for the future regulation and adjudication of oral contracts.

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32 Handriani and Mulyanto, 'Kepastian Hukum'; Soroinda and Nasution, 'Kekuatan Pembuktian Alat Bukti Elektronik'.

33 Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, rev. edn (Yogyakarta: Cahaya Atma Pustaka, 2013); Elisabeth Nurhaini Butarbutar, 'Arti Pentingnya Pembuktian Dalam Proses Penemuan Hukum di Peradilan Perdata', *Mimbar Hukum*, 22.2 (2010).

34 Sunardi, Setyawan, and Adorana, 'Pengembangan Hukum Perjanjian di Indonesia'; Deanna Fitri Roshandi, 'Analisis Keabsahan Perjanjian Lisan Menurut Hukum Perdata di Indonesia', *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi*, 2.4 (2025), 114–21 https://doi.org/10.62383/konsensus.v2i4.1195

35 Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'; Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'.

Method

This study is normative legal research (doctrinal legal research) that examines law as a system of norms, principles, and doctrines. It employs three approaches. The statutory approach is used to analyse the provisions governing the formation, validity, and proof of contracts, particularly Articles 1313, 1320, 1338, 1601a, 1865, 1866, 1895, and 1905 of the Indonesian Civil Code, Articles 163, 164, and 169 of the *Herzien Inlandsch Reglement* (HIR) and their counterparts in the *Rechtsreglement voor de Buitengewesten* (RBg), Law Number 13 of 2003 on Manpower (in particular Articles 1, 50 to 52, 57, 63, and 188) as amended by Law Number 6 of 2023, Law Number 2 of 2004 on Industrial Relations Dispute Settlement, Law Number 27 of 2026 on Employment Protection, Law Number 11 of 2008 on Electronic Information and Transactions as last amended by Law Number 1 of 2024, Law Number 5 of 1960 on Basic Agrarian Principles, and Government Regulation Number 24 of 1997 on Land Registration, together with Constitutional Court Decision Number 168/PUU-XXI/2023. The conceptual approach is used to examine the principles of consensualism, freedom of contract, *pacta sunt servanda*, and legal certainty as developed in Indonesian contract law doctrine. The case approach is used to analyse the judicial treatment of oral agreements, with decisions concerning oral or unwritten employment agreements forming the core case study and decisions concerning loans and land sales serving as a comparative baseline.

The legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials comprise the statutory provisions mentioned above. Secondary legal materials comprise peer-reviewed journal articles on oral contracts, contract principles, evidentiary law, customary transactions, employment agreements, and electronic evidence, together with leading textbooks on Indonesian contract law, customary contract law, and civil procedure. The court decisions examined fall into two groups. The core case study group consists of decisions concerning oral or unwritten employment agreements, namely Supreme Court Decisions Number 016 K/Pdt.Sus/2011, Number 501 K/Pdt.Sus-PHI/2016, and Number 3 K/Pdt.Sus-PHI/2025, and the decision of the Denpasar Industrial Relations Court Number 9/Pdt.Sus-PHI/2015/PN.Dps. The comparative baseline group consists of the decisions of the District Courts of Bojonegoro, Yogyakarta, Medan, Rembang, Tanjung Karang, Balikpapan, and Singaraja. All decisions are analysed as reported and discussed in the peer-reviewed literature. The materials were collected through library research and selected on the basis of their relevance to the research questions and their verifiability through journal websites and national indexing portals. Information on the legislative developments of 2026 was drawn from official parliamentary documents and national press reports, and is identified as such where it is used. The legal materials were analysed qualitatively using grammatical and systematic interpretation. The analysis proceeds in four steps: first, identifying the normative basis of the validity of oral contracts; second, mapping the evidentiary rules and judicial reasoning applied to oral contracts; third, tracing the manifestations of the shift towards written and electronic certainty across customary, sectoral, and digital domains; and fourth, formulating a prescriptive model for the position of oral contracts. The results are presented descriptively and prescriptively, supported by tables that summarise the statutory form requirements and the judicial treatment of oral contracts, and by a figure that illustrates the paradigm shift.

This study has certain limitations. Because it relies on court decisions as reported and analysed in the peer-reviewed literature, it does not claim to represent the totality of judicial practice concerning oral contracts in Indonesia. The baseline decisions are concentrated in loan, debt, and land disputes, reflecting the focus of the available literature. The employment decisions are few and were not selected through systematic sampling; for the Denpasar decision the literature reports only the setting of the dispute and not its outcome, so that the case study is illustrative rather than representative. In addition, Law Number 27 of 2026 entered into force only recently. Its provisions are discussed on the basis of the bill deliberated by Commission IX of the House of Representatives, and article numbers should be verified against the promulgated text. Moreover, as normative research, this study does not measure empirically the frequency of oral contracting or the outcomes of oral contract disputes. These limitations are addressed by triangulating the judicial practice with statutory analysis and doctrinal literature, and by framing the conclusions as an analysis of the direction of legal development rather than as statistical generalisations.

Results and Discussions

The Normative Position of Oral Contracts under the Principle of Consensualism

The normative position of oral contracts in Indonesian law begins with the conceptual architecture of Book III of the Civil Code. The Civil Code adopts an open system of contract law, under which parties are free to conclude agreements, whether named or unnamed, as long as they do not contravene the law, morality, or public order.[36] Within this open system, the form of an agreement is, as a rule, left to the will of the parties. The general provisions on agreements do not contain any rule requiring that an agreement be made in writing in order to be valid. Scholars examining Article 1320 of the Civil Code have emphasised that none of its four requirements mandates written form, so that an oral agreement binds the parties in the same manner as a written one.[37]

The doctrinal expression of this position is the principle of consensualism. Subekti, whose work has shaped generations of Indonesian contract law scholarship, explains that an agreement is already born at the moment consensus is reached on its principal elements, and that formalities are an exception rather than the rule.[38] Hernoko situates consensualism among the fundamental principles of contract law, alongside freedom of contract, the binding force of contracts, and good faith, which together constitute the framework within which the exchange of rights and obligations takes place.[39] Miru likewise treats the consensual character of agreements as the default position in the Indonesian law of contract, while recognising that certain agreements are subject to formal requirements imposed by law.[40] The same reasoning appears in the specific provisions of the Civil Code. Article 1458 of the Civil Code, for instance, provides that a sale is deemed to have taken place as soon as the parties have agreed on the goods and the price, even though the goods have not yet been delivered and the price has not yet been paid.[41]

The binding force of oral contracts is reinforced by the principle of *pacta sunt servanda* embodied in Article 1338 paragraph (1) of the Civil Code. Several studies analysing judicial decisions have concluded that the binding force of an oral agreement derives from the freedom of contract expressed in that provision, and that the legal force of an agreement does not lie in its form but in the fulfilment of the requirements of validity.[42] Sitompul and Ariani note that oral agreements, often described as gentlemen's agreements, historically served traditional societies as a means of binding commitments, and that the parties remain obliged to fulfil the rights and obligations they have undertaken.[43] Ginting reaches a similar conclusion regarding the binding force of oral agreements.[44] The literature, therefore, displays a stable consensus: an oral contract that satisfies Article 1320 of the Civil Code is valid and binding.[45]

It is useful, however, to examine how each of the four requirements of Article 1320 of the Civil Code operates in the context of oral contracts, because the form of the agreement affects not their existence but the manner in which they can be demonstrated. The first requirement, consent, must be free from defects. The Civil Code provides that consent is not valid if given by mistake, obtained

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[36] Nisya and Yuliawan, 'Analisis Yuridis Kekuatan Hukum'; Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'.

[37] Marsuseno, Esthi S, and Karim, 'Analisa Kekuatan Hukum'; Roshandi, 'Analisis Keabsahan Perjanjian Lisan'.

[38] Subekti, *Hukum Perjanjian*.

[39] Hernoko, *Hukum Perjanjian: Asas Proporsionalitas*.

[40] Miru, *Hukum Kontrak Dan Perancangan Kontrak*.

[41] Article 1458 of the Indonesian Civil Code.

[42] Marsuseno, Esthi S, and Karim, 'Analisa Kekuatan Hukum'; Fajar Sahat Ridoli Sitompul and I Gusti Ayu Agung Ariani, 'Kekuatan Mengikat Perjanjian Yang Dibuat Secara Lisan', *Kertha Semaya: Journal Ilmu Hukum*, 2.5 (2014).

[43] Sitompul and Ariani, 'Kekuatan Mengikat Perjanjian Yang Dibuat Secara Lisan'.

[44] Juliati Br Ginting, 'Kekuatan Mengikat Perjanjian Secara Lisan', *The Juris*, 6.2 (2022), 429–36 https://doi.org/10.56301/juris.v6i2.612

[45] Ida Ayu Ketut Cintiya Dewi and Dewa Ayu Dian Sawitri, 'Keabsahan Perjanjian Lisan Dalam Persfektif Hukum Positif di Indonesia (Studi Kasus Perkara Perdata Nomor 44/Pdt.G/2015/PN.Yyk)', *Kertha Wicara: Journal Ilmu Hukum*, 12.10 (2024), 508–16; Immanuel Wibowo Siagian and I Gede Putra Ariana, 'Perjanjian Lisan Sah Sebagai Bukti Dalam Peradilan Perdata', *Kertha Negara: Journal Ilmu Hukum*, 11.9 (2023), 1045–53; Roshandi, 'Analisis Keabsahan Perjanjian Lisan'.

by duress, or procured by fraud.[46] In an oral contract, the content of the consent is not fixed in a text, so that disputes frequently concern not only whether consent was given but also what exactly was agreed. The second requirement, capacity, refers to the ability of the parties to perform legal acts, and the Civil Code enumerates the persons who lack such capacity.[47] The third requirement, a certain object, requires that the object of the agreement be at least determinable as to its kind.[48] The fourth requirement, a lawful cause, prohibits agreements without a cause, with a false cause, or with a forbidden cause.[49]

None of these requirements is incompatible with the oral form. An oral contract can be concluded freely by capable parties concerning a determinable object for a lawful cause. The first two requirements are subjective, and their non-fulfilment renders the agreement voidable, whereas the last two are objective, and their non-fulfilment renders the agreement void by operation of law.[50] The oral form therefore affects neither the legal classification of defects nor their consequences. What the oral form affects is the factual reconstruction of each requirement. When an agreement is written, the document itself serves as prima facie evidence of the consent, the object, and the cause. When an agreement is oral, each of these elements must be reconstructed from testimony and circumstances. This distinction between the existence of the requirements and their demonstration is central to understanding the position of oral contracts.

The principle of good faith reinforces this analysis. Article 1338 paragraph (3) of the Civil Code requires that agreements be performed in good faith.[51] In the context of oral contracts, good faith has a particular significance, because oral contracts rest on trust between the parties. A party who denies an oral agreement that it has in fact concluded acts contrary to good faith, even if the denial is procedurally permissible. Sinaga emphasises that the principles of contract law, including consensualism, *pacta sunt servanda*, and good faith, must operate in harmony in order to realise the objectives of the agreement and justice for the parties.[52] The harmony of these principles suggests that the law should not allow the evidentiary weakness of oral contracts to become a shelter for bad faith.

The principle of proportionality offers a further perspective. Hernoko argues that the exchange of rights and obligations between the parties must be proportional at every phase of the contract, from the pre-contractual phase to the formation and performance of the contract.[53] This principle is relevant to oral contracts because the proportionality of the exchange does not depend on whether the agreement is written. A loan given orally between relatives creates an obligation of repayment that is no less proportional than a loan recorded in a deed. If the law allowed the absence of writing to defeat such an obligation, it would effectively permit a disproportionate outcome in which one party retains the benefit of performance without bearing the corresponding obligation. The principle of proportionality, therefore, supports the position that the evidentiary assessment of oral contracts should aim at reconstructing the actual exchange agreed by the parties.

The recent literature confirms that the normative position of oral contracts remains stable in contemporary doctrine. Roshandi's analysis of the validity of oral agreements under Indonesian civil law,[54] Ginting's study of the binding force of oral agreements,[55] and the analysis by Sunardi, Setyawan, and Adorana of the development of Indonesian contract law with respect to unwritten agreements[56] all proceed from the same premise, namely that the Civil Code does not expressly require written form and that an oral agreement which fulfils Article 1320 of the Civil Code is valid. The continuity

[46] Articles 1321–1328 of the Indonesian Civil Code.
[47] Article 1330 of the Indonesian Civil Code.
[48] Article 1333 of the Indonesian Civil Code.
[49] Articles 1335–1337 of the Indonesian Civil Code.
[50] Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'; Miru, *Hukum Kontrak Dan Perancangan Kontrak*.
[51] Article 1338 paragraph (3) of the Indonesian Civil Code.
[52] Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'.
[53] Hernoko, *Hukum Perjanjian: Asas Proporsionalitas*.
[54] Roshandi, 'Analisis Keabsahan Perjanjian Lisan'.
[55] Ginting, 'Kekuatan Mengikat Perjanjian Secara Lisan'.
[56] Sunardi, Setyawan, and Adorana, 'Pengembangan Hukum Perjanjian di Indonesia'.

of this premise across studies published over more than a decade indicates that the doctrinal foundation of oral contracts has not been eroded. What has changed is the context in which this foundation operates.

This consensus is not merely theoretical. Article 1339 of the Civil Code provides that agreements bind not only with respect to what is expressly stipulated but also with respect to everything that, by the nature of the agreement, is required by propriety, custom, or law. Article 1347 of the Civil Code further provides that customary stipulations are deemed to be included in an agreement even if not expressly stated.[57] These provisions open the Civil Code to the customary practices within which oral contracts are embedded. They are consistent with the national agrarian law, which declares that the agrarian law applicable to land, water, and air space is customary law, insofar as it does not conflict with national interests.[58] In customary contract law, as Hadikusuma explains, agreements are concluded within a web of social relations in which trust, kinship, and community recognition play a central role.[59] Sopamena and others demonstrate that agreements in customary communities, such as profit-sharing arrangements, are typically concluded orally, yet satisfy the requirements of Article 1320 of the Civil Code and therefore produce legal consequences.[60]

The advantages of oral contracts explain their resilience. Vijayantera identifies two principal advantages of unwritten agreements in business, namely efficiency in reaching agreement and the use of trust as the foundation of the contractual relationship.[61] These advantages are particularly valuable in small-scale transactions, where the cost of drafting and executing written documents may be disproportionate to the value of the transaction. La Madi, Kuahaty, and Pariela show that even in business relationships concerning procurement projects, unwritten agreements generate a legal relationship, legal consequences, and liability for compensation when one party fails to perform.[62] Similarly, Puspita and Marwiyah observe that traditional societies often rely on unwritten agreements in business transactions, and that such agreements are grounded in the freedom of the parties to choose the form of their agreement.[63]

The open system of the Civil Code also allows parties to conclude unnamed (innominate) agreements, that is, agreements not specifically regulated in the Civil Code, provided that they do not contravene the law, morality, or public order.[64] Many oral agreements in Indonesian social life belong to this category, including profit-sharing arrangements, informal partnerships, and various service arrangements whose content is shaped by local practice rather than by statutory models. In customary contract law, such arrangements have long been recognised as legitimate forms of cooperation, and their terms are often determined by the customs of the community in which they are concluded.[65] The Civil Code accommodates this reality through Articles 1339 and 1347, which incorporate custom into the content of agreements. In this sense, the oral contract is not a marginal anomaly within Indonesian contract law but a legitimate expression of the freedom of contract and of the plural legal culture of Indonesian society.[66]

It should also be noted that the oral form does not imply informality in the sense of legal indifference. Oral agreements in customary and rural settings are frequently concluded with deliberate rituals of confirmation, such as the presence of witnesses, the handing over of a token payment, or the announcement of the agreement before community leaders. These practices fulfil, within the customary order, functions comparable to those that written documents fulfil in the formal legal

[57] Articles 1339 and 1347 of the Indonesian Civil Code.
[58] Article 5 of Law Number 5 of 1960 on Basic Agrarian Principles.
[59] Hadikusuma, *Hukum Perjanjian Adat*.
[60] Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'.
[61] Vijayantera, 'Kajian Hukum Perdata'.
[62] La Madi, Kuahaty, and Pariela, 'Penggunaan Perjanjian Tidak Tertulis'.
[63] Puspita and Marwiyah, 'Perjanjian Tidak Tertulis'.
[64] Nisya and Yuliawan, 'Analisis Yuridis Kekuatan Hukum'; Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'.
[65] Hadikusuma, *Hukum Perjanjian Adat*.
[66] Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'; Sitompul and Ariani, 'Kekuatan Mengikat Perjanjian Yang Dibuat Secara Lisan'.

order, namely publicity, evidence, and the seriousness of commitment.[67] The paradigm shift examined in this study can therefore be understood partly as the replacement of customary mechanisms of publicity and proof by formal written mechanisms recognised by state law.

Nevertheless, consensualism is not absolute. Indonesian law recognises a category of formal agreements whose validity or effectiveness depends on compliance with prescribed forms. These exceptions are significant for the present analysis, because they demonstrate that the legislature has selectively attached written requirements to transactions considered to involve high risk, public interest, or the protection of weaker parties. **Table 1** summarises the principal statutory provisions governing the form of agreements in Indonesian law.

Table 1. Statutory Provisions on the Form of Agreements in Indonesian Law

No.	Type of Agreement and Legal Basis	Form Requirement and Legal Consequence
1	Agreements in general (Articles 1313, 1320, and 1338 paragraph (1) of the Civil Code)	No form required; the agreement is born upon consensus and binds the parties as law, whether oral or written.
2	Sale and purchase (Article 1458 of the Civil Code)	Concluded upon agreement on the goods and the price, even before delivery or payment; no written form required.
3	Grant/*hibah* (Article 1682 of the Civil Code)	Must be made by notarial deed; otherwise void.
4	Transfer of land rights through sale (Article 37 paragraph (1) of Government Regulation Number 24 of 1997)	Can only be registered if proven by a deed of the Land Deed Official (PPAT); written form conditions registration and legal certainty of the right.
5	Indefinite-term employment agreement (Articles 51 paragraph (1) and 63 paragraph (1) of Law Number 13 of 2003)	May be made orally or in writing; if made orally, the employer must issue a letter of appointment.
6	Fixed-term employment agreement (Article 57 of Law Number 13 of 2003, as amended by Law Number 6 of 2023 and reformulated by Constitutional Court Decision Number 168/PUU-XXI/2023)	Must be made in writing, in the Indonesian language and Latin script.
7	Electronic contracts (Articles 5, 6, and 18 of Law Number 11 of 2008, as last amended by Law Number 1 of 2024)	Binding on the parties; electronic information and documents are valid evidence, except for documents that must by law be made in writing or by notarial or official deed.

Table 1 shows that the requirement of written form in Indonesian law is selective rather than general. For ordinary agreements, the Civil Code maintains consensualism without qualification. For specific transactions, however, the law imposes written form for different purposes. In the case of grants, the notarial deed is a condition of validity, the absence of which renders the grant void.[68] In the case of the transfer of land rights, the deed of the PPAT is a condition for registration, which in turn determines the legal certainty of the right.[69] In the case of employment, the requirement of written

[67] Hadikusuma, *Hukum Perjanjian Adat*; Salim, 'Penerapan Sifat Terang Dan Tunai'.
[68] Article 1682 of the Indonesian Civil Code.
[69] Article 37 paragraph (1) of Government Regulation Number 24 of 1997 on Land Registration.

form for fixed-term agreements and the obligation to issue a letter of appointment for oral indefinite-term agreements serve the protection of workers.[70] In the case of electronic contracts, the law affirms their binding force and simultaneously recognises electronic information as valid evidence.[71]

This selective pattern indicates that the Indonesian legislature has not repudiated consensualism. Rather, it has introduced written requirements at the points where the interests of third parties, the public, or vulnerable parties call for documentation. From the perspective of contract theory, this pattern reflects the coexistence of two functions of form: a substantive function, in which form is a condition of validity, and an evidentiary or protective function, in which form serves to secure proof and to protect the parties.[72] In most cases involving oral contracts, the operative function is the evidentiary one. Consequently, the decisive question for oral contracts is not whether they are valid, but whether they can be proven.

The distinction between the substantive and evidentiary functions of form has an important implication. Where form is substantive, as in the case of grants, the absence of the prescribed form defeats the agreement regardless of how convincingly its existence can be proven. Where form is evidentiary, the absence of writing does not defeat the agreement, but it shifts the burden onto other means of evidence. Miru's emphasis on contract drafting as an instrument for preventing disputes reflects the evidentiary function: a written contract does not create the obligation, but it fixes its content and facilitates its enforcement.[73] For the vast majority of oral contracts in Indonesian society, the relevant function is evidentiary. This observation forms the basis of the argument, developed in the following sections, that the paradigm shift in Indonesian contract law operates primarily at the level of evidence rather than at the level of validity.

Oral Employment Agreements in the Manpower Law: Validity and Selective Written Form

Employment is a particularly revealing case because the Civil Code itself treats the employment agreement as a named contract. Article 1601a of the Civil Code describes it as an agreement by which a worker binds himself to perform work under the direction of another, the employer, for a certain time in return for wages.[74] The Manpower Law restates the concept in contemporary terms. It defines an employment agreement as an agreement between a worker and an employer that contains the terms of work and the rights and obligations of the parties,[75] and defines an employment relationship as the relationship between an employer and a worker based on an employment agreement, having the elements of work, wages, and orders.[76] An employment relationship arises because of an employment agreement,[77] and that agreement may be made in writing or orally.[78] Its validity depends on requirements parallel to those of Article 1320 of the Civil Code, namely the consent of the parties, the capacity to perform legal acts, the work agreed upon, and the absence of conflict with public order, morality, and statutory provisions.[79] The Government has taken the same position before the Constitutional Court, stating that the legal force of an agreement lies not in its form but in the fulfilment of the requirements of validity under Article 1320 of the Civil Code and Article 52 of the Manpower Law.[80]

Within this framework the employment relationship has a factual character that is of great importance to oral agreements. Because the relationship is defined by the elements of work, wages, and orders, its existence can in principle be shown by demonstrating that the worker performed work under the

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[70] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'; Setiawan and others, 'Keabsahan Perjanjian Kerja Waktu Tertentu'.

[71] Herianto Sinaga and Wiryawan, 'Keabsahan Kontrak Elektronik'.

[72] Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'; Hernoko, *Hukum Perjanjian: Asas Proporsionalitas*.

[73] Miru, *Hukum Kontrak Dan Perancangan Kontrak*.

[74] Article 1601a of the Indonesian Civil Code.

[75] Article 1 point 14 of Law Number 13 of 2003 on Manpower.

[76] Article 1 point 15 of Law Number 13 of 2003 on Manpower.

[77] Article 50 of Law Number 13 of 2003 on Manpower.

[78] Article 51 paragraph (1) of Law Number 13 of 2003 on Manpower.

[79] Article 52 paragraph (1) of Law Number 13 of 2003 on Manpower.

[80] Constitutional Court of the Republic of Indonesia, 'Pemerintah: Aturan Perjanjian Kerja dan Alih Daya dalam UU Cipta Kerja Lindungi Buruh', https://www.mkri.id/berita/-20123

employer's direction and received wages, whether or not any document records the engagement. The oral form therefore does not prevent an employment relationship from arising; it changes only the way in which the relationship must be demonstrated. Katu, Styawati, and Putra accordingly conclude that an oral employment agreement has the same legal force as a written one.[81]

The Manpower Law nevertheless attaches written form to specific situations. When an indefinite-term employment agreement is made orally, the employer must issue a letter of appointment stating at least the worker's name and address, the date of commencement of work, the type of work, and the amount of wages, and a breach of this duty is punishable by a fine.[82] A fixed-term employment agreement, by contrast, must be made in writing in the Indonesian language and Latin script.[83] The legislative history of this rule is revealing. Before the Job Creation Law, Article 57 paragraph (2) provided that a fixed-term agreement not made in writing was declared an indefinite-term agreement. Maghfiroh observes that the amendment of Article 57 removed this paragraph and thereby created a legal gap that leaves workers under unwritten fixed-term agreements in a weaker position.[84] In Decision Number 168/PUU-XXI/2023, delivered on 31 October 2024, the Constitutional Court reformulated Article 57 paragraph (1) as amended by Law Number 6 of 2023 so that a fixed-term agreement must be made in writing in the Indonesian language and Latin script.[85] The Government itself argued before the Court that the written requirement benefits workers because it gives certainty on proof when a dispute arises.[86]

The most recent development is the enactment of Law Number 27 of 2026 on Employment Protection, which the House of Representatives approved on 6 October 2026 and which, according to the records of the State Secretariat as reported in the press, was promulgated and entered into force on 28 October 2026. It comprises 23 chapters and 313 articles.[87] The bill text deliberated by Commission IX shows continuity with the existing model. It provides that an employment agreement is made in writing or orally, and that agreements required to be written must follow the relevant legislation; it retains the employer's duty to issue a letter of appointment when an indefinite-term agreement is made orally; it requires fixed-term agreements to be written in the Indonesian language and Latin script; and it declares a fixed-term agreement that is not written to be an indefinite-term agreement.[88] In other words, the legislature has restored the conversion rule that the Job Creation Law had removed, while leaving consensualism intact. Because the promulgated text may differ from the committee bill in numbering and detail, the discussion that follows is anchored in decisions rendered under Law Number 13 of 2003 as amended, whose reasoning remains the best available guide to how courts treat oral employment agreements.

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81 Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja Secara Lisan Antara Pekerja Dan Perusahaan'.

82 Articles 63 paragraphs (1) and (2) and 188 paragraph (1) of Law Number 13 of 2003 on Manpower; Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja Secara Lisan Antara Pekerja Dan Perusahaan'.

83 Article 57 of Law Number 13 of 2003 on Manpower, as amended by Law Number 6 of 2023.

84 Maghfiroh, 'Perlindungan Hukum Bagi Pekerja Berdasarkan Perjanjian Kerja Tidak Tertulis'.

85 Constitutional Court Decision Number 168/PUU-XXI/2023, as reported in 'MK: Jangka Waktu PKWT Paling Lama Lima Tahun', *Antara*.

86 Constitutional Court of the Republic of Indonesia, 'Pemerintah: Aturan Perjanjian Kerja dan Alih Daya dalam UU Cipta Kerja Lindungi Buruh', https://www.mkri.id/berita/-20123

87 Law of the Republic of Indonesia Number 27 of 2026 on Employment Protection. Its promulgation and entry into force on 28 October 2026 are reported in 'Dokumen UU Pelindungan Ketenagakerjaan 2026 Akhirnya Terbit', *Kompas.id*, https://www.kompas.id/artikel/dokumen-uu-pelindungan-ketenagakerjaan-2026-akhirnya-terbit; the approval of the House of Representatives on 6 October 2026 is reported in 'Akhirnya, RUU Perlindungan Ketenagakerjaan Resmi Disahkan Jadi UU', *Pasardana.id*, 7 October 2026, https://pasardana.id/news/2026/10/7/akhirnya-ruu-perlindungan-ketenagakerjaan-resmi-disahkan-jadi-uu

88 Commission IX of the House of Representatives, Rancangan Undang-Undang tentang Pelindungan Ketenagakerjaan (committee text, file dated 28 September 2026), Chapter XI on employment relations, https://berkas2.dpr.go.id/akd/dokumen/komisi9-RJ-20260928-034348-6645.pdf. The article numbers of the bill may differ from those of the promulgated Law Number 27 of 2026 and should be verified against the official text.

These rules show that employment law pursues two objectives at once. It preserves consensual formation, which protects the large part of the workforce engaged orally, and it assigns documentation duties to the employer, which protects the worker against the evidentiary disadvantage of orality. This is the protective or evidentiary function of form identified in **Table 1**, now seen from within a single field. The employer ordinarily holds the documents that would prove the relationship, such as wage records and appointment letters, so that the decision about who bears the consequences of the absence of writing is in substance a decision about the allocation of evidentiary risk. The sections that follow examine how this allocation operates in the law of evidence and in judicial practice.

The Evidentiary Burden and Judicial Treatment of Oral Contracts

If consensualism determines the validity of oral contracts, the law of evidence determines their fate before the courts. Indonesian civil procedure adopts the principle that whoever asserts a right or denies the right of another must prove that assertion.[89] The means of evidence in civil cases are limited to written evidence, witness testimony, presumptions, confessions, and oaths.[90] Mertokusumo explains that the civil judge is bound to the means of evidence determined by law and that the purpose of proof is to provide the judge with certainty regarding the events in dispute.[91] Within this closed catalogue, written evidence occupies a privileged position, particularly authentic deeds, which constitute perfect evidence between the parties.[92] Butarbutar underlines that proof is central to the process of legal finding in civil adjudication, because without proof the judge cannot establish the facts to which the law is to be applied.[93]

The structure of this evidentiary system places oral contracts at an inherent disadvantage. By definition, an oral contract has no document recording its terms. When the counterparty denies its existence, the claimant must rely on witnesses, presumptions, confessions, or oaths. Witness testimony is admissible in all cases unless excluded by law,[94] but the testimony of a single witness, without other evidence, cannot be believed in law, in accordance with the maxim *unus testis nullus testis*.[95] Sunardi, Setyawan, and Adorana note that, because there is no written document, the proof of an oral agreement must rely on at least two witnesses or one witness supported by other evidence.[96] Nisya and Yuliawan likewise conclude that when an oral agreement is denied, its legal force depends on the evidence available under Article 1866 of the Civil Code, which makes oral agreements highly risky.[97]

The literature reveals a recurring formula in this regard. An oral agreement that fulfils Article 1320 of the Civil Code is valid and capable of grounding a claim of breach, but if it is denied by the party alleged to be in breach, it lacks sufficient legal force unless supported by additional evidence.[98] Harefa and Tuhana emphasise that the party alleged to be in breach can easily deny the agreement because no written evidence exists.[99] Sa'adah, analysing a decision of the Medan District Court, concludes that the proof of an oral agreement has no legal force when it is not supported by other evidence such as witnesses and confession.[100] Tiodor, Tjahyani, and Asmaniar examine the same evidentiary

[89] Article 1865 of the Indonesian Civil Code; Article 163 HIR; Article 283 RBg.
[90] Article 1866 of the Indonesian Civil Code; Article 164 HIR; Article 284 RBg.
[91] Mertokusumo, *Hukum Acara Perdata Indonesia*.
[92] Article 1870 of the Indonesian Civil Code.
[93] Butarbutar, 'Arti Pentingnya Pembuktian'.
[94] Article 1895 of the Indonesian Civil Code.
[95] Article 1905 of the Indonesian Civil Code; Article 169 HIR.
[96] Sunardi, Setyawan, and Adorana, 'Pengembangan Hukum Perjanjian di Indonesia'.
[97] Nisya and Yuliawan, 'Analisis Yuridis Kekuatan Hukum'.
[98] Puspita and Marwiyah, 'Perjanjian Tidak Tertulis'; Sunardi, Setyawan, and Adorana, 'Pengembangan Hukum Perjanjian di Indonesia'; Yuaga, Priyono, and Suradi, 'Tinjauan Yuridis Terhadap Wanprestasi'.
[99] Harefa and Tuhana, 'Kekuatan Hukum Perjanjian Lisan'.
[100] Nur Sa'adah, 'Akibat Hukum Pembuktian Perjanjian Tidak Tertulis (Analisis Putusan Nomor: 373/Pdt.G/2016/PN Mdn)', *Pamulang Law Review*, 1.2 (2018) https://doi.org/10.32493/palrev.v1i2.5325

difficulty in loan agreements concluded orally.[101] In this sense, the legal certainty of oral contracts is not determined by the law of contract but by the law of evidence.

Each means of evidence presents specific possibilities and limitations for oral contracts. Witness testimony is the most natural means of proving an oral agreement, since oral agreements are often concluded in the presence of others. However, the Civil Code and the HIR exclude certain persons from testifying, including relatives by blood or marriage in the direct line and the spouse of one of the parties.[102] This limitation is particularly significant for oral contracts, because such contracts are frequently concluded within families and close social circles, where the persons who witnessed the agreement are precisely those who may be disqualified as witnesses. The paradox is that the social intimacy that makes oral contracting possible also weakens its proof.

Presumptions offer a second avenue. Presumptions not established by law are left to the discretion of the judge, who may only consider presumptions that are weighty, precise, and consistent with one another.[103] In oral contract disputes, presumptions may be drawn from partial performance, payment records, the conduct of the parties, or the customary practice in a particular community. The judicial practice discussed below shows that courts frequently rely on such circumstantial facts to reconstruct oral agreements.[104]

Confession constitutes a third avenue. A confession made before the judge constitutes full evidence against the person who makes it and cannot be withdrawn unless it is proven to have resulted from a mistake of fact.[105] In oral contract disputes, confession is often partial: the defendant may admit receiving money but deny that it was a loan, or admit the agreement but dispute its terms. The rule against splitting a confession to the detriment of the person who makes it limits the extent to which a partial confession can be used.[106] Sa'adah's analysis confirms that confession, together with witness testimony, is among the supporting evidence that determines whether an oral agreement has legal force.[107]

The oath is a fourth avenue, and it is of particular interest for oral contracts. The decisive oath may be imposed by one party on the other in any civil dispute, and its taking or refusal determines the outcome of the case.[108] Because the decisive oath does not require any prior evidence, it is theoretically available to a claimant who has no documents and no witnesses. In practice, however, the decisive oath shifts the outcome to the conscience of the opposing party, which makes it an uncertain instrument when the dispute arises precisely from that party's denial. The structure of the evidentiary system thus offers oral contracts several avenues of proof, but each avenue is narrower and less reliable than written evidence.[109]

The judicial practice reported in the literature on general civil disputes, however, shows that courts do not treat oral contracts with hostility. On the contrary, district courts have frequently recognised oral agreements and granted claims of breach when the evidentiary record, taken as a whole, establishes the existence of the agreement. **Table 2** summarises selected decisions discussed in the scholarly literature. These decisions concern loans and land sales rather than employment, and they serve as a comparative baseline for the employment case study that follows.

Table 2. Judicial Treatment of Oral Agreements in Selected District Court Decisions (Comparative Baseline: Loan and Land Disputes)

[101] Patricia Caroline Tiodor, Murendah Tjahyani, and Asmaniar, 'Pembuktian Wanprestasi Perjanjian Utang Piutang Secara Lisan', *Krisna Law: Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana*, 5.1 (2023), 27–39 https://doi.org/10.37893/krisnalaw.v5i1.208

[102] Article 1910 of the Indonesian Civil Code; Article 145 HIR.

[103] Articles 1915–1922 of the Indonesian Civil Code.

[104] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'; Pratiwi, Windari, and Ardhya, 'Kekuatan Pembuktian'.

[105] Articles 1923–1928 of the Indonesian Civil Code.

[106] Article 1924 of the Indonesian Civil Code.

[107] Sa'adah, 'Akibat Hukum Pembuktian'.

[108] Articles 1929–1940 of the Indonesian Civil Code.

[109] Mertokusumo, *Hukum Acara Perdata Indonesia*.

No.	Court Decision	Subject Matter and Judicial Treatment of the Oral Agreement
1	Bojonegoro District Court No. 16/Pdt.G/2011/PN.Bjn	Breach of an oral agreement; the agreement was assessed under Article 1320 of the Civil Code, with its binding force derived from freedom of contract under Article 1338 of the Civil Code.[110]
2	Yogyakarta District Court No. 44/Pdt.G/2015/PN.Yyk	Validity and breach of an oral agreement; the oral agreement was held valid, and its proof was strengthened by witnesses who knew of its conclusion.[111]
3	Medan District Court No. 373/Pdt.G/2016/PN Mdn	Proof of an unwritten agreement; the oral agreement lacks legal force in proof unless supported by other evidence such as witnesses and confession.[112]
4	Rembang District Court No. 4/Pdt.G/2020/PN.Rbg	Breach of an oral agreement; the oral agreement is valid, but if denied it must first be proven before breach can be established.[113]
5	Tanjung Karang District Court No. 6/Pdt.G/2020	Sale of land not yet fully paid; the customary principles of *terang* and *tunai* were considered fulfilled.[114]
6	Balikpapan District Court No. 146/Pdt.G/2021/PN Bpp	Oral loan agreement; the legal relationship was established through fund transfer records, correspondence, and witness testimony, giving the oral agreement sufficient evidentiary value.[115]
7	Singaraja District Court No. 139/Pdt.G/2022/PN Sgr	Oral loan agreement; the judge relied on Articles 1313 and 1320 of the Civil Code and freedom of contract, finding that the oral agreement could have reliable evidentiary value.[116]

Table 2 demonstrates three patterns in the judicial treatment of oral contracts. The first pattern is the consistent affirmation of validity. In every decision examined, the courts and the commentators begin from Article 1320 of the Civil Code and acknowledge that the oral form does not, by itself, defeat the agreement.[117] The second pattern is the decisive role of supporting evidence. Courts rely on witnesses who knew of the agreement,[118] on records of fund transfers and correspondence,[119] and on confessions.[120] Where such supporting evidence is absent, the claim fails, because the agreement must first be proven before it can be enforced.[121] The third pattern is the gradual incorporation of electronic records into the evidentiary mosaic. In the Balikpapan decision, the court relied on fund transfer records and correspondence alongside witness testimony, so that the oral agreement was found to have sufficient evidentiary value.[122]

A closer reading of the individual decisions reinforces these patterns. In the Bojonegoro case, the analysis of the decision emphasises that the binding force of the oral agreement derives from the freedom of contract embodied in Article 1338 paragraph (1) of the Civil Code, and that an oral agreement retains its legal force to establish breach as long as it fulfils Article 1320 of the Civil Code; the difficulty arises when the defendant denies the agreement.[123] In the Yogyakarta case of 2015, the

[110] Marsuseno, Esthi S, and Karim, 'Analisa Kekuatan Hukum'.
[111] Dewi and Sawitri, 'Keabsahan Perjanjian Lisan'; Harefa and Tuhana, 'Kekuatan Hukum Perjanjian Lisan'.
[112] Sa'adah, 'Akibat Hukum Pembuktian'.
[113] Yuaga, Priyono, and Suradi, 'Tinjauan Yuridis Terhadap Wanprestasi'.
[114] Salim, 'Penerapan Sifat Terang Dan Tunai'.
[115] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[116] Pratiwi, Windari, and Ardhya, 'Kekuatan Pembuktian'.
[117] Marsuseno, Esthi S, and Karim, 'Analisa Kekuatan Hukum'; Dewi and Sawitri, 'Keabsahan Perjanjian Lisan'; Pratiwi, Windari, and Ardhya, 'Kekuatan Pembuktian'.
[118] Dewi and Sawitri, 'Keabsahan Perjanjian Lisan'.
[119] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[120] Sa'adah, 'Akibat Hukum Pembuktian'.
[121] Yuaga, Priyono, and Suradi, 'Tinjauan Yuridis Terhadap Wanprestasi'.
[122] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[123] Marsuseno, Esthi S, and Karim, 'Analisa Kekuatan Hukum'.

commentators conclude that the oral agreement was valid and that its proof became strong because it was supported by witnesses who knew of its conclusion.[124] The same decision has been examined by Harefa and Tuhana, who highlight the ease with which the party alleged to be in breach may deny an oral agreement in the absence of written evidence.[125]

In the Medan case, Sa'adah evaluates the decision against Article 1338 of the Civil Code and concludes that parties to an oral agreement are obliged to perform what they have agreed, but that the proof of such an agreement has no legal force if it is not supported by other evidence, such as witnesses and confession.[126] In the Rembang case, Yuaga, Priyono, and Suradi affirm that oral agreements remain valid and have legal force to establish breach, but that if the agreement is not acknowledged by the party alleged to be in breach, it must first be proven.[127] These two decisions illustrate the conditional character of the enforceability of oral contracts: validity is presumed, but enforcement depends on supporting evidence.

The Tanjung Karang case concerns a different context, namely the sale of land whose price had not yet been fully paid. Salim shows that the court treated the principles of *terang* and *tunai* as fulfilled even though the remaining payment was settled through a subsequent agreement, and that the principle of *terang* is not expressly regulated in statutory law, so that its application refers to customary law.[128] This decision demonstrates that customary principles continue to inform judicial reasoning in land transactions, even as their content is reinterpreted in the light of formal procedures.

The Balikpapan and Singaraja cases represent the most recent pattern. In Balikpapan, the court established the legal relationship between creditor and debtor on the basis of fund transfer records, correspondence, and witness testimony, thereby confirming that the oral agreement possessed sufficient evidentiary value; the court nevertheless rejected the request for the seizure of shares as security, because it conflicted with Supreme Court guidelines and involved public interests in the electricity sector.[129] In Singaraja, the judge based the assessment on Articles 1313 and 1320 of the Civil Code and the principle of freedom of contract, and found that the oral agreement could have reliable evidentiary value.[130] Both decisions show that the courts are prepared to enforce oral agreements when the evidentiary record includes documentary traces, especially banking records and written communications.

These patterns are consistent with the findings of more recent studies. Pratiwi, Windari, and Ardhya show that, in the Singaraja decision, the judge based the assessment of the oral agreement on Articles 1313 and 1320 of the Civil Code and the principle of freedom of contract, while acknowledging that written agreements have stronger evidentiary force in court.[131] Hanifah, Khoirotunnisa, and Nugroho examine a 2025 decision of the Yogyakarta District Court on the evidentiary strength of oral agreements in breach of contract disputes, indicating the continuing relevance of the issue.[132] Soplanit, Borman, and Nasution observe that oral loan agreements remain prevalent in familial relationships, friendships, and informal financial transactions, and that their fundamental weakness lies in the evidentiary challenges that arise during dispute resolution.[133] Siagian and Ariana add that oral agreements are not only valid but can also be used in the process of civil adjudication as evidence.[134]

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[124] Dewi and Sawitri, 'Keabsahan Perjanjian Lisan'.
[125] Harefa and Tuhana, 'Kekuatan Hukum Perjanjian Lisan'.
[126] Sa'adah, 'Akibat Hukum Pembuktian'.
[127] Yuaga, Priyono, and Suradi, 'Tinjauan Yuridis Terhadap Wanprestasi'.
[128] Salim, 'Penerapan Sifat Terang Dan Tunai'.
[129] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[130] Pratiwi, Windari, and Ardhya, 'Kekuatan Pembuktian'.
[131] Pratiwi, Windari, and Ardhya, 'Kekuatan Pembuktian'.
[132] I. Y. Hanifah, Khoirotunnisa, and L. D. Nugroho, 'Analisis Yuridis Kekuatan Pembuktian Perjanjian Lisan Dalam Penyelesaian Sengketa Wanprestasi Berdasarkan Putusan Pengadilan No: 44/Pdt.G/2025/PN.YYK', *Justness: Jurnal Hukum Politik dan Agama*, 5.2 (2025) https://doi.org/10.61974/justness.v5i2.91
[133] Paulus Dominggu Soplanit, M. Syahrul Borman, and Dedi Wardana Nasution, 'Proof of Default in Oral Loan Agreements: A Normative Analysis of Civil Law Evidence in Indonesia', *International Journal of Law and Society*, 3.1 (2026).
[134] Siagian and Ariana, 'Perjanjian Lisan Sah'.

The judicial practice thus suggests that the courts adopt what may be described as a holistic or mosaic approach to evidence. Instead of requiring a single document that records the entire agreement, the courts assemble the facts from fragments: a witness who was present, a transfer receipt, an exchange of messages, partial performance, or an admission. This approach is consistent with the freedom of the judge in assessing witness testimony and presumptions, as well as with the role of the judge in legal finding.[135] It is, however, also a symptom of the shift examined in this study. Each fragment of evidence on which the courts rely is, in effect, a trace of documentation. The more documentation exists, the more secure the oral contract becomes. Legal certainty for oral contracts, therefore, is increasingly purchased through documentation, even when the contract itself remains oral.

This explains why the literature, while affirming the validity of oral contracts, almost uniformly recommends written documentation.

The role of the judge deserves particular attention in this context. Indonesian civil procedure assigns to the judge a passive role in determining the scope of the dispute, but an active role in assessing the evidence and finding the law.[136] Butarbutar emphasises that proof is an essential stage in the process of legal finding, because it is through proof that the judge establishes the concrete events to which legal norms are applied.[137] In oral contract disputes, legal finding is particularly demanding. The judge must determine whether an agreement existed, what its terms were, and whether it was breached, often without any document that records these matters. Fakhriah's analysis of legal finding through electronic evidence shows that judges have been willing to interpret the evidentiary framework in the light of social and technological developments, relying on substantive legislation where formal procedural law is silent.[138] The same interpretive openness can be applied to oral contracts, by allowing the judge to assess circumstantial facts, community testimony, and electronic traces as a coherent whole.

However, the reliance on judicial discretion also has a cost. When the outcome of oral contract disputes depends heavily on the assessment of individual judges, similar cases may be decided differently. The literature reviewed in this study shows broad consistency in the affirmation of validity, but considerable variation in the assessment of evidence, ranging from cases in which supporting evidence was found sufficient to cases in which the absence of written evidence was decisive.[139] This variation is a further indicator of the demand for legal certainty. It suggests that the paradigm shift towards written certainty is driven not only by legislation and commercial practice but also by the uncertainty inherent in discretionary assessment of unwritten evidence. Purnawan and Suharto, after finding that the oral agreement in the Balikpapan case had sufficient evidentiary value, still recommend that agreements be documented in writing to ensure legal certainty and facilitate proof.[140] Handriani and Mulyanto argue that a written agreement has the legal force to establish that a party has committed a breach, even if the party denies it, and that a written agreement gives the parties legal certainty to bring a claim before the court.[141] Vijayantera identifies the weakness of unwritten agreements as residing precisely in their proof.[142] The doctrinal message is clear: the law accepts oral contracts in principle but rewards written contracts in practice.

This asymmetry produces distributive consequences that deserve attention. The parties who rely most on oral contracts are typically those with the least access to documentation and legal advice, such as family members lending money to one another, farmers selling produce, workers in micro-

[135] Mertokusumo, *Hukum Acara Perdata Indonesia*; Butarbutar, 'Arti Pentingnya Pembuktian'.
[136] Mertokusumo, *Hukum Acara Perdata Indonesia*.
[137] Butarbutar, 'Arti Pentingnya Pembuktian'.
[138] Fakhriah, 'Penemuan Hukum Oleh Hakim'.
[139] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'; Sa'adah, 'Akibat Hukum Pembuktian'; Yuaga, Priyono, and Suradi, 'Tinjauan Yuridis Terhadap Wanprestasi'.
[140] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[141] Handriani and Mulyanto, 'Kepastian Hukum'.
[142] Vijayantera, 'Kajian Hukum Perdata'.

enterprises, and members of customary communities.[143] When disputes arise, these parties carry the burden of proof under Article 1865 of the Civil Code without the advantage of written evidence. By contrast, parties with greater resources tend to formalise their transactions and thereby secure their position in advance. The evidentiary system, although formally neutral, therefore distributes legal certainty unevenly. This observation strengthens the argument that the position of oral contracts is not merely a technical issue of evidence but a matter of access to justice.

The international literature on Indonesian law reflects the same concern. Soplanit, Borman, and Nasution, writing for an international readership, describe oral loan agreements as a prevalent form of contract in Indonesian society and identify the evidentiary challenges in dispute resolution as their fundamental weakness, while pointing to witness testimony, communications, and circumstantial evidence recognised under Article 1866 of the Civil Code and the Electronic Information and Transactions Law as the means of addressing that weakness.[144] This convergence between domestic and international scholarship indicates that the evidentiary vulnerability of oral contracts is a recognised structural feature of Indonesian contract law, rather than a problem confined to particular courts or regions.

Case Study: Oral Employment Agreements before the Industrial Relations Courts

Disputes arising from employment relationships are resolved through the industrial relations dispute settlement system. Under Law Number 2 of 2004, a dispute must first be attempted through bipartite negotiation, and unresolved disputes proceed to mediation, conciliation, or arbitration, or to the Industrial Relations Court.[145] The procedural law applied in the Industrial Relations Court is the civil procedural law applicable in the general courts, save where the Law provides otherwise,[146] so that the evidentiary regime examined above, including Articles 1865 and 1866 of the Civil Code and Articles 163 and 164 of the HIR, governs the proof of oral employment agreements. Dharmanto and Pulung Sari describe the same sequence, beginning with bipartite negotiation within thirty working days, and identify witnesses as the most practical evidence of an oral employment agreement, recommending that witnesses be present when it is made.[147]

Four decisions form the core of the case study. They were selected because the literature reports that the employment agreement in question was oral or unwritten. **Table 3** summarises them.

Table 3. Judicial Treatment of Oral Employment Agreements in Selected Decisions of the Supreme Court and the Industrial Relations Courts

No.	Court Decision	Subject Matter and Judicial Treatment of the Oral Agreement
1	Supreme Court No. 016 K/Pdt.Sus/2011 (*Rokimin v PT Gaya Putih*)	Worker employed without a written agreement for more than three consecutive years. The Industrial Relations Court at Denpasar denied his normative rights; the Supreme Court granted severance pay, compensation for entitlements, a long-service award, and unpaid religious holiday allowance, holding that an oral arrangement still meets the statutory definition of an employment agreement.[148]
2	Denpasar Industrial Relations Court No. 9/Pdt.Sus-PHI/2015/PN.Dps	Workers recruited through oral agreements by an electronic-cigarette business and a tourist accommodation business, who claimed that they had not received their rights since beginning work. The decision is discussed in the literature as an illustration of the prevalence and proof difficulties of oral employment agreements; the source does not report its outcome.[149]

[143] Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'; Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'; Soplanit, Borman, and Nasution, 'Proof of Default in Oral Loan Agreements'.

[144] Soplanit, Borman, and Nasution, 'Proof of Default in Oral Loan Agreements'.

[145] Law of the Republic of Indonesia Number 2 of 2004 on Industrial Relations Dispute Settlement, Article 3; Dharmanto and Pulung Sari, 'Problematika Kekuatan Hukum Perjanjian Kerja Lisan'.

[146] Article 57 of Law Number 2 of 2004 on Industrial Relations Dispute Settlement.

[147] Dharmanto and Pulung Sari, 'Problematika Kekuatan Hukum Perjanjian Kerja Lisan'.

[148] Triviranto, 'Analisis Putusan Mahkamah Agung Nomor 016 K/Pdt.Sus/2011'.

[149] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja Secara Lisan Antara Pekerja Dan Perusahaan'.

3	Supreme Court No. 501 K/Pdt.Sus-PHI/2016	Four workers engaged by a contractor without any signed fixed-term agreement, then suspended and dismissed on the ground that a fixed-term contract had expired. The unwritten fixed-term agreement was treated as an indefinite-term agreement from the outset; severance and compensation were awarded, but suspension wages were denied.[150]
4	Supreme Court No. 3 K/Pdt.Sus-PHI/2025	A worker with no written fixed-term agreement was dismissed without compensation on the claim that the contract had expired. The Industrial Relations Court and the Supreme Court held that the unwritten fixed-term agreement failed the formal requirement and became an indefinite-term agreement.[151]

Table 3 reveals four patterns, which differ in important respects from the patterns observed in the baseline decisions in **Table 2**.

The first pattern is that the validity of the oral form is not contested. In the *Rokimin* case, the commentary reports that the Supreme Court regarded the oral arrangement as satisfying the definition of an employment agreement in Article 1 point 14 of the Manpower Law, and held that the absence of a written agreement does not relieve the employer of its obligations, so that the worker was entitled to severance pay and the other normative rights.[152] In none of the decisions examined was the worker's claim defeated merely because the agreement was not written. The Denpasar decision of 2015, although reported only in outline, confirms the setting in which these disputes arise: businesses that recruit workers orally, and workers who later claim that their rights have not been fulfilled.[153]

The second pattern is the inversion of the evidentiary consequence of orality. In the baseline decisions in **Table 2**, the absence of writing burdens the claimant: the oral agreement must first be proven, and where supporting evidence is lacking the claim fails.[154] In the employment decisions, the absence of writing is charged against the employer. In the case of the contractor that employed four workers, the workers had never signed a fixed-term agreement, and the Supreme Court treated the agreement as indefinite-term from the beginning, so that the employer's reliance on the expiry of a contract failed.[155] Rizki and Gunadi report that in Decision Number 3 K/Pdt.Sus-PHI/2025 the Supreme Court reasoned that written form is mandatory, that the employer's failure to comply cannot be charged to the worker, and that the protective principle prevails.[156] The employer who alleges a fixed-term engagement, and who alone could have documented it, bears the consequence of not having done so. Employment law thus allocates the evidentiary risk of orality to the party that controls documentation, which is the clearest manifestation in the case study of the protective function of form.

The third pattern is that the existence of the relationship is established through its factual elements rather than through a single document. In the *Rokimin* case, the evidence at trial showed that the relationship had lasted more than three consecutive years without any written agreement.[157] Rizki and Gunadi, for their part, state the elements that establish an employment relationship as work, wages, and orders.[158] In this respect the employment decisions resemble the mosaic approach to evidence observed in the baseline decisions: the courts assemble the relationship from the duration of service, the performance of work, and the receipt of wages. The difference is that in employment disputes the mosaic is assembled in favour of the party with the weaker documentary position.

[150] Sonhaji, 'Analisis Putusan Mahkamah Agung Nomor 501 K/Pdt.Sus-PHI/2016'.
[151] Rizki and Gunadi, 'Kedudukan Status Perjanjian Kerja Waktu Tertentu'.
[152] Triviranto, 'Analisis Putusan Mahkamah Agung Nomor 016 K/Pdt.Sus/2011'.
[153] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja Secara Lisan Antara Pekerja Dan Perusahaan'.
[154] Yuaga, Priyono, and Suradi, 'Tinjauan Yuridis Terhadap Wanprestasi Pada Perjanjian Lisan'; Sa'adah, 'Akibat Hukum Pembuktian Perjanjian Tidak Tertulis'.
[155] Sonhaji, 'Analisis Putusan Mahkamah Agung Nomor 501 K/Pdt.Sus-PHI/2016'.
[156] Rizki and Gunadi, 'Kedudukan Status Perjanjian Kerja Waktu Tertentu'.
[157] Triviranto, 'Analisis Putusan Mahkamah Agung Nomor 016 K/Pdt.Sus/2011'.
[158] Rizki and Gunadi, 'Kedudukan Status Perjanjian Kerja Waktu Tertentu'.

The fourth pattern is that the consequences of orality remain unevenly resolved at the level of remedies. Sonhaji, evaluating the 2016 decision, argues that the denial of suspension wages was inconsistent with the rule that the parties must continue to perform their obligations until the dispute acquires permanent legal force, as stated in Article 155 paragraph (2) of the Manpower Law and Constitutional Court Decision Number 37/PUU-IX/2011, and concludes that the decision is only partly consistent with labour law.[159] The *Rokimin* case likewise shows divergence between levels of court, since the first-instance court denied the worker's normative rights and the Supreme Court granted them.[160] These divergences echo the variation in the assessment of evidence observed in the baseline decisions and strengthen the argument that discretionary assessment of unwritten arrangements generates uncertainty.

The case study also shows an interaction between the judiciary and the legislature. The removal of the conversion rule in Article 57 paragraph (2) left workers under unwritten fixed-term agreements without an express statutory remedy,[161] yet Rizki and Gunadi report that the Supreme Court has continued to treat a fixed-term agreement lacking written form as an indefinite-term agreement, relying on Article 57 of the Manpower Law as the basis of the conversion.[162] The committee bill for Law Number 27 of 2026 then restated the rule expressly.[163] This sequence, in which judicial protection is followed by legislative confirmation, illustrates the evidentiary and protective character of the paradigm shift: the legislature has not abandoned consensualism, but it has reinforced the documentation duties of the party that holds the greater power.

The protection is nevertheless available only to the worker who can show the elements of an employment relationship. Where the worker's engagement is characterised as a service or a partnership, or where the putative employer denies that any engagement existed, the worker returns to the general evidentiary position described in **Table 2**. The employment case study therefore qualifies the distributive concern raised earlier without removing it: employment law redistributes the risk of orality for those who are recognised as workers, but the most informal engagements remain exposed to the full weakness of unwritten proof.

From Customary Orality to Written and Electronic Certainty: Mapping the Paradigm Shift

The tension between the validity and the proof of oral contracts would be of limited significance if it were confined to individual disputes. However, the literature and the statutory framework reveal that the tension is part of a broader transformation occurring in several domains of Indonesian law. This section maps that transformation in three domains, customary land transactions, sectoral regulation, and digital transactions, and treats employment, examined in the case study above, as the principal sectoral domain because it shows most clearly how form is used both to preserve consensus and to allocate evidentiary risk.

The first domain is customary land transactions. Under customary law, the sale of land is a transfer of rights that is *terang* and *tunai*. *Terang* means that the transfer is carried out openly, traditionally before the head of the customary community or village, so that it is known to the public; *tunai* means that the transfer of rights and the payment of the price take place simultaneously.[164] Within this framework, oral transactions witnessed by community leaders were sufficient to transfer rights. Salim shows that the principles of *terang* and *tunai* have undergone modernisation, so that *terang* now means that the sale must be conducted before a PPAT, while *tunai* refers to the fulfilment of performance.[165] Salim also notes that the principle of *terang* is not expressly regulated in statutory law, so that its

[159] Sonhaji, 'Analisis Putusan Mahkamah Agung Nomor 501 K/Pdt.Sus-PHI/2016'.
[160] Triviranto, 'Analisis Putusan Mahkamah Agung Nomor 016 K/Pdt.Sus/2011'.
[161] Maghfiroh, 'Perlindungan Hukum Bagi Pekerja Berdasarkan Perjanjian Kerja Tidak Tertulis'.
[162] Rizki and Gunadi, 'Kedudukan Status Perjanjian Kerja Waktu Tertentu'.
[163] Commission IX of the House of Representatives, Rancangan Undang-Undang tentang Pelindungan Ketenagakerjaan (committee text, file dated 28 September 2026), Chapter XI on employment relations, https://berkas2.dpr.go.id/akd/dokumen/komisi9-RJ-20260928-034348-6645.pdf. The article numbers of the bill may differ from those of the promulgated Law Number 27 of 2026 and should be verified against the official text.
[164] Hadikusuma, *Hukum Perjanjian Adat*.
[165] Salim, 'Penerapan Sifat Terang Dan Tunai'.

application still refers to customary law.[166] This illustrates the essence of the paradigm shift: the customary principle is retained, but its content is translated into a formal written procedure. The requirement that the transfer of land rights through sale may only be registered if proven by a PPAT deed completes this transformation.[167]

The coexistence of customary and formal regimes, however, produces a zone of uncertainty. Land transactions carried out under customary principles, orally or through private receipts before village heads, may be valid between the parties under customary law and under Article 1320 of the Civil Code, but they do not by themselves produce the registration that secures the right against third parties.[168] The parties to such transactions occupy an intermediate position: their agreement exists and binds them, yet the legal certainty of the resulting right depends on a subsequent formal procedure. This intermediate position mirrors, in the domain of land, the general condition of oral contracts identified in this study.

The second domain is sectoral regulation, particularly employment law. The Manpower Law provides that employment agreements may be made in writing or orally.[169] This provision preserves the consensual character of employment relationships and acknowledges the diversity of Indonesian society. However, the same law requires that fixed-term employment agreements be made in writing in the Indonesian language and Latin script,[170] and obliges employers who conclude indefinite-term employment agreements orally to issue a letter of appointment to the worker.[171] Katu, Styawati, and Putra find that oral employment agreements have the same legal force as written ones, yet companies must still issue letters of appointment to prove the employment relationship.[172] The study by Setiawan and others on oral fixed-term employment agreements highlights the consequences of non-compliance with the written requirement.[173] In this domain, written form functions as a protective instrument. The law accepts the oral employment relationship but compels its documentation in order to protect the worker as the weaker party.

The employment domain illustrates with particular clarity the difference between the validity of an oral agreement and the legal effects attached to its form. An oral indefinite-term employment agreement is valid, and the employment relationship exists as soon as the elements of work, wages, and orders are present. However, the employer's obligation to issue a letter of appointment shows that the legislature regards documentation as necessary for the protection of the worker, who would otherwise face difficulties in proving the existence and terms of the relationship.[174] In the case of fixed-term employment, the written requirement goes further, because it conditions the legality of the fixed-term character of the relationship.[175] The protective function of form in employment law thus confirms the selective logic identified in **Table 1**: the law intervenes with written requirements where the inequality of bargaining power between the parties creates a risk that the weaker party will be unable to enforce its rights.

This protective logic also explains why oral employment agreements remain widespread in micro and small enterprises, where employers and workers are often bound by personal or family relationships. In such settings, the formal requirement of documentation may be perceived as a sign of distrust. The challenge for labour law is therefore similar to the challenge for contract law in general: to promote documentation without undermining the trust-based relationships that characterise much of Indonesian economic life.[176]

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[166] Salim, 'Penerapan Sifat Terang Dan Tunai'.
[167] Article 37 paragraph (1) of Government Regulation Number 24 of 1997 on Land Registration.
[168] Salim, 'Penerapan Sifat Terang Dan Tunai'; Hadikusuma, *Hukum Perjanjian Adat*.
[169] Article 51 paragraph (1) of Law Number 13 of 2003 on Manpower.
[170] Article 57 of Law Number 13 of 2003 on Manpower, as amended by Law Number 6 of 2023.
[171] Article 63 paragraph (1) of Law Number 13 of 2003 on Manpower.
[172] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'.
[173] Setiawan and others, 'Keabsahan Perjanjian Kerja Waktu Tertentu'.
[174] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'.
[175] Setiawan and others, 'Keabsahan Perjanjian Kerja Waktu Tertentu'.
[176] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'; Vijayantera, 'Kajian Hukum Perdata'.

The case study allows this domain to be read more precisely. The Manpower Law of 2003, its amendment in 2023, the Constitutional Court's reformulation of 2024, and the Employment Protection Law of 2026 all retain the principle that employment agreements may be made orally, while repeatedly tightening the documentation duties of the employer, in particular for fixed-term agreements. The employment domain thus confirms that the shift is selective and protective: form is demanded where the employer controls the documentation and the worker bears the risk.

The third and most dynamic domain is digital transactions. The Electronic Information and Transactions Law recognises electronic information, electronic documents, and their printouts as valid legal evidence and as an extension of the means of evidence under procedural law.[177] The law also provides that electronic transactions set out in electronic contracts bind the parties.[178] Herianto Sinaga and Wiryawan conclude that electronic contracts are valid and legally binding.[179] Fakhriah explains that, because the HIR as formal procedural law does not regulate electronic evidence, judges may base their assessment on the Electronic Information and Transactions Law as a substantive law that also contains procedural provisions.[180] Soroinda and Nasution examine the evidentiary strength of electronic evidence in civil procedure,[181] while Firmansyah, Alauddin, and Malik observe that the validity, position, and strength of electronic evidence in civil cases remain under debate because civil procedural law has not specifically regulated it.[182]

The digital domain has a particular significance for oral contracts. Many agreements that would previously have been concluded face to face, without any record, are now concluded through instant messaging applications, voice notes, or telephone calls. These communications are oral in their cultural character, since they reproduce the informality and trust-based nature of spoken agreements, yet they leave a durable electronic trace. Della and others show that the evidentiary strength of WhatsApp messages in civil cases depends on the fulfilment of authenticity, integrity, and accountability.[183] Soplanit, Borman, and Nasution likewise point to electronic communications as a means of addressing the evidentiary weakness of oral loan agreements.[184] The emergence of what may be termed "digital orality" thus narrows the evidentiary gap between oral and written contracts, while at the same time reinforcing the dependence of legal certainty on documentation.

The legal framework for electronic evidence also contains limits that are relevant to the analysis. Electronic information is considered valid only if it uses an electronic system in accordance with the law,[185] and it can be relied upon to the extent that it is accessible, displayable, guaranteed in its integrity, and accountable so as to explain a situation.[186] Moreover, the provisions on electronic evidence do not apply to documents which, according to law, must be made in written form or in the form of a notarial deed or a deed made by an official authorised to make deeds.[187] These limits reproduce, in the digital domain, the selective pattern identified in **Table 1**. Ordinary agreements may be proven through electronic records, while transactions subject to formal requirements, such as the transfer of land rights, remain bound to the conventional deed.

The digital domain also raises new evidentiary questions. Screenshots of conversations can be edited, messages can be deleted, and the identity of the sender can be disputed. Della and others accordingly

[177] Article 5 paragraphs (1) and (2) of Law Number 11 of 2008 on Electronic Information and Transactions, as last amended by Law Number 1 of 2024.
[178] Article 18 paragraph (1) of Law Number 11 of 2008 on Electronic Information and Transactions, as last amended by Law Number 1 of 2024.
[179] Herianto Sinaga and Wiryawan, 'Keabsahan Kontrak Elektronik'.
[180] Fakhriah, 'Penemuan Hukum Oleh Hakim'.
[181] Soroinda and Nasution, 'Kekuatan Pembuktian Alat Bukti Elektronik'.
[182] Firmansyah, Alauddin, and Malik, 'Perkembangan Kedudukan Dan Kekuatan Bukti Elektronik'.
[183] Della and others, 'Eksistensi Pesan Whatsapp'.
[184] Soplanit, Borman, and Nasution, 'Proof of Default in Oral Loan Agreements'.
[185] Article 5 paragraph (3) of Law Number 11 of 2008 on Electronic Information and Transactions, as last amended by Law Number 1 of 2024.
[186] Article 6 of Law Number 11 of 2008 on Electronic Information and Transactions, as last amended by Law Number 1 of 2024.
[187] Article 5 paragraph (4) of Law Number 11 of 2008 on Electronic Information and Transactions, as last amended by Law Number 1 of 2024.

emphasise authenticity, integrity, and accountability as the criteria of the evidentiary strength of WhatsApp messages.[188] Soroinda and Nasution, as well as Firmansyah, Alauddin, and Malik, show that the assessment of electronic evidence in civil cases still lacks uniform standards.[189] The paradigm shift towards electronic certainty is therefore incomplete. It has created new possibilities for proving oral agreements, but it has not yet produced the procedural certainty that would allow such evidence to be assessed consistently.

In oral employment arrangements, work instructions, shift schedules, and wage payments increasingly pass through messaging applications and bank transfers. These traces correspond directly to the elements of orders and wages that define an employment relationship. In the Balikpapan decision on an oral loan, the court treated fund transfer records and correspondence as decisive supporting evidence,[190] and, by analogy, the same kinds of records can serve to prove an oral employment relationship, subject to the conditions of authenticity, integrity, and accountability emphasised in the literature on WhatsApp evidence.[191] The digital trace may thus become, for informal workers, the functional equivalent of the letter of appointment that the law requires but that informal employers seldom issue.

A fourth domain, which cuts across the previous three, is commercial practice. In business relationships, the choice between oral and written agreements is increasingly shaped by risk management. Vijayantera notes that unwritten agreements are frequently used among traditional business communities, but that their weakness in proof makes them vulnerable when disputes arise.[192] La Madi, Kuahaty, and Pariela illustrate this vulnerability through a dispute concerning compensation for fees in a procurement project, in which the claimant had to resort to litigation after the defendant failed to show good faith.[193] Handriani and Mulyanto argue that written agreements provide the basis for resolving future disputes, protecting the parties and providing legal certainty and justice.[194] In commercial practice, therefore, the demand for written certainty arises not from legislative compulsion but from the rational calculation of the parties, who seek to reduce the risk of non-performance and the cost of proof.

The four domains reveal different drivers of the paradigm shift. In customary land transactions, the driver is the state system of land registration. In employment, the driver is the protective policy of labour law. In digital transactions, the driver is technological change and its legislative recognition. In commercial practice, the driver is the market logic of risk management. Despite these different drivers, the outcome is similar: legal certainty is increasingly associated with documentation, while the substantive validity of oral agreements remains formally intact.[195]

Figure 1 illustrates the paradigm shift identified in this study. The figure shows that the shift does not replace consensualism with formalism. Instead, it moves the locus of legal certainty from the moment of consensus to the availability of evidence, and from purely spoken words to written and electronic traces.

[188] Della and others, 'Eksistensi Pesan Whatsapp'.
[189] Soroinda and Nasution, 'Kekuatan Pembuktian Alat Bukti Elektronik'; Firmansyah, Alauddin, and Malik, 'Perkembangan Kedudukan Dan Kekuatan Bukti Elektronik'.
[190] Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[191] Della and others, 'Eksistensi Pesan Whatsapp'.
[192] Vijayantera, 'Kajian Hukum Perdata'.
[193] La Madi, Kuahaty, and Pariela, 'Penggunaan Perjanjian Tidak Tertulis'.
[194] Handriani and Mulyanto, 'Kepastian Hukum'.
[195] Handriani and Mulyanto, 'Kepastian Hukum'; Herianto Sinaga and Wiryawan, 'Keabsahan Kontrak Elektronik'; Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'; Salim, 'Penerapan Sifat Terang Dan Tunai'.

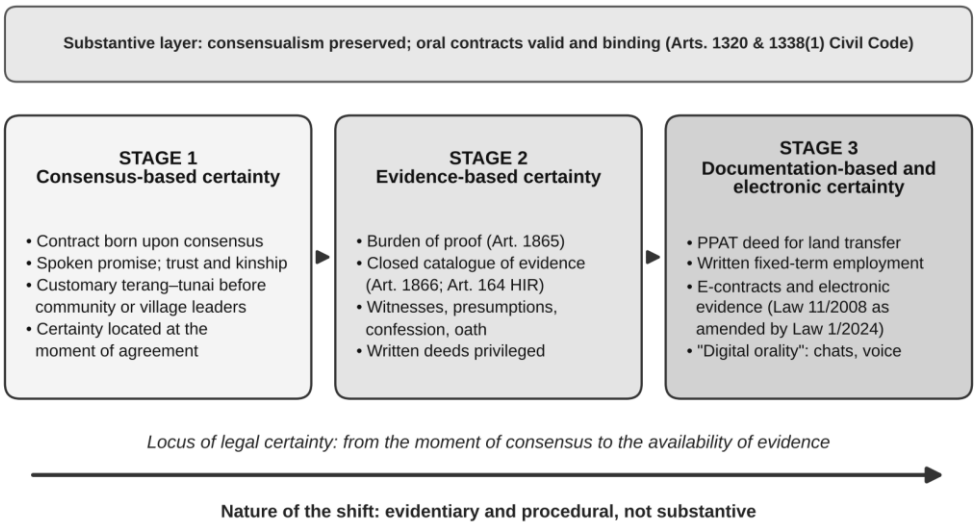


Figure 1. The paradigm shift in the position of oral contracts in Indonesian contract law

Three conclusions emerge from this mapping. First, the shift is evidentiary and procedural rather than substantive. In none of the domains examined has the law declared oral contracts invalid as a general rule. Even in land transactions and fixed-term employment, written form operates as a condition for registration, protection, or specific legal effects rather than as a denial of the underlying consensus.[196] Second, the shift is selective. Written form is required where third parties, public registers, or vulnerable parties are involved, as summarised in **Table 1**. Third, the shift is technological. Electronic communications create new forms of documentation that transform the evidentiary position of agreements that are, in substance and culture, still oral.[197] The paradigm shift in Indonesian contract law may therefore be described as a movement from consensus-based certainty to evidence-based certainty.

It is important to emphasise that the three stages depicted in **Figure 1** do not replace one another chronologically in a strict sense. They coexist in contemporary Indonesian society. In many rural and customary communities, consensus-based certainty remains the dominant mode of contracting, supported by social sanctions and community memory.[198] In judicial proceedings, evidence-based certainty determines the outcome of disputes.[199] In land registration, formal employment, and digital commerce, documentation-based and electronic certainty increasingly prevail.[200] The paradigm shift consists in the growing weight of the second and third modes relative to the first. The challenge for Indonesian contract law is to ensure that this growing weight does not deprive the first mode of legal protection, since a large part of Indonesian society continues to rely on it.

Reconstructing the Position of Oral Contracts: Towards Balanced Legal Certainty

The findings above raise a normative question: how should Indonesian law position oral contracts in the future? Two extreme answers can be rejected. The first would be to impose a general requirement of written form for all contracts above a certain value or in certain categories. Such an approach would contradict the open system and the principle of consensualism of the Civil Code,[201]

[196] Salim, 'Penerapan Sifat Terang Dan Tunai'; Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'.
[197] Herianto Sinaga and Wiryawan, 'Keabsahan Kontrak Elektronik'; Della and others, 'Eksistensi Pesan Whatsapp'.
[198] Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'; Hadikusuma, *Hukum Perjanjian Adat*.
[199] Mertokusumo, *Hukum Acara Perdata Indonesia*.
[200] Salim, 'Penerapan Sifat Terang Dan Tunai'; Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'; Herianto Sinaga and Wiryawan, 'Keabsahan Kontrak Elektronik'.
[201] Subekti, *Hukum Perjanjian*; Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'.

would disregard the customary legal culture of a large part of Indonesian society,[202] and would expose the most vulnerable groups to the loss of rights arising from agreements that they had concluded in good faith. The second extreme would be to maintain the status quo, in which oral contracts are valid in theory but fragile in practice. This approach ignores the reality that the burden of proof falls disproportionately on parties who lack documentation, legal literacy, and access to legal assistance.[203]

This study proposes a balanced model built on four pillars. The first pillar is the preservation of consensualism as the substantive foundation of contract law. Oral contracts should continue to be recognised as valid and binding whenever they fulfil the requirements of Article 1320 of the Civil Code. The principle of proportionality, as developed by Hernoko, supports this position, because it requires that the exchange of rights and obligations be assessed fairly at every phase of the contract rather than formally on the basis of its documentation.[204] The preservation of consensualism also respects the customary roots of Indonesian contract law and the trust-based relationships through which many communities organise their economic life.[205]

The second pillar is the reform of civil procedure, particularly the codification of electronic evidence. The literature shows that the absence of explicit regulation of electronic evidence in the HIR and RBg leaves judges to rely on the Electronic Information and Transactions Law and on legal finding.[206] Fakhriah notes that the draft civil procedure law has also not regulated electronic evidence.[207] A future civil procedure code should explicitly recognise electronic communications, including messages, voice recordings, and transaction records, as means of evidence, and should establish standards for assessing their authenticity, integrity, and accountability.[208] Such reform would enable oral contracts that leave electronic traces to be proven more reliably, thereby closing a significant part of the evidentiary gap.

The third pillar is the development of judicial guidelines for the assessment of oral contracts. The judicial practice summarised in **Table 2** shows that courts already apply a mosaic approach to evidence. This practice should be consolidated into guidelines that clarify the weight to be given to partial performance, payment records, communications, and the testimony of community witnesses in cases involving oral contracts.[209] Because the difficulty of proof is inherent in the oral form, judges should assess oral agreements objectively and contextually, taking into account the social relationship within which the agreement was concluded, in order to achieve justice for the parties.[210] Guidelines would promote consistency and prevent oral contracts from being defeated merely because of the absence of a formal document.

Such guidelines could address several recurring issues. They could clarify how the exclusion of family members as witnesses should be applied in disputes arising from intra-family loans, given that such loans are frequently witnessed only by relatives. They could indicate the circumstances in which partial performance, such as the transfer of money or the delivery of goods, gives rise to presumptions that are weighty, precise, and consistent. They could also specify how electronic communications are to be verified, for example through the examination of the original device or the involvement of digital forensic expertise, so that the evidentiary value of such communications

[202] Hadikusuma, *Hukum Perjanjian Adat*; Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'.
[203] Nisya and Yuliawan, 'Analisis Yuridis Kekuatan Hukum'; Tiodor, Tjahyani, and Asmaniar, 'Pembuktian Wanprestasi'.
[204] Hernoko, *Hukum Perjanjian: Asas Proporsionalitas*.
[205] Hadikusuma, *Hukum Perjanjian Adat*; Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'.
[206] Fakhriah, 'Penemuan Hukum Oleh Hakim'; Firmansyah, Alauddin, and Malik, 'Perkembangan Kedudukan Dan Kekuatan Bukti Elektronik'.
[207] Fakhriah, 'Penemuan Hukum Oleh Hakim'.
[208] Della and others, 'Eksistensi Pesan Whatsapp'; Soroinda and Nasution, 'Kekuatan Pembuktian Alat Bukti Elektronik'.
[209] Pratiwi, Windari, and Ardhya, 'Kekuatan Pembuktian'; Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[210] Dewi and Sawitri, 'Keabsahan Perjanjian Lisan'; Hanifah, Khoirotunnisa, and Nugroho, 'Analisis Yuridis Kekuatan Pembuktian'.

does not depend on the discretion of individual judges.[211] In this way, the mosaic approach already applied by the courts would become a predictable method rather than an ad hoc practice.

For employment disputes, the case study suggests three further elements for such guidelines. First, courts should treat proof of the performance of work and the receipt of wages as sufficient to raise a presumption that an employment relationship exists, leaving it to the employer to show a different legal character, such as a service or partnership relationship. Second, the guidelines should confirm that where an employer relies on a fixed-term engagement, the absence of a written agreement is to be assessed against the employer, in line with the protective reasoning reported in the Supreme Court decisions examined above. Third, they should promote consistency in the treatment of wages during the dispute, so that outcomes do not diverge as they did in Decision Number 501 K/Pdt.Sus-PHI/2016.[212] These proposals are offered *de lege ferenda* and are framed as guidelines rather than as a general reversal of the burden of proof, which would require legislative amendment of Article 1865 of the Civil Code and Article 163 of the HIR.

It may be objected that strengthening the evidentiary position of oral contracts would encourage parties to avoid written agreements and would thereby increase litigation. This objection is not persuasive. The balanced model does not discourage written agreements; on the contrary, it encourages documentation in simple and accessible forms. What it rejects is the assumption that the absence of a formal document should be treated as the absence of an agreement. The objective is not to place oral and written contracts on an identical evidentiary footing, which would be neither realistic nor desirable, but to ensure that the evidentiary system does not systematically disadvantage those who, for social, economic, or cultural reasons, rely on oral agreements.[213]

The balanced model also has implications for legal professionals. Notaries and PPATs play a central role in transactions that require formal deeds, particularly in land transactions, and their services embody the written certainty demanded by the law.[214] Advocates and legal aid providers, by contrast, are often confronted with oral contract disputes in which the evidentiary record must be reconstructed. For both groups, the findings of this study underline the importance of understanding the customary and social contexts within which oral contracts are concluded, so that formal requirements are applied with sensitivity to the realities of the parties.[215]

In the employment field, labour inspectors and local manpower offices have a particular role. They are the institutions best placed to monitor compliance with the duty to issue letters of appointment and to deliver the legal literacy programmes discussed below. The committee bill for Law Number 27 of 2026 also requires employers to register fixed-term agreements electronically with the manpower authority within three working days of signing, and gives workers and inspectors access to the registered agreements,[216] which would extend the evidentiary infrastructure from the courtroom to the administrative system.

The fourth pillar is the promotion of minimum documentation and legal literacy. Documentation need not take the form of formal contracts drafted by lawyers or notaries. Simple records, such as a short written note, a payment receipt, a message confirming the agreed terms, or a statement witnessed by a village or customary leader, can significantly strengthen the evidentiary position of oral contracts.[217] Miru underlines the importance of contract drafting as a means of preventing disputes,[218] while Handriani and Mulyanto stress that written agreements provide legal certainty for

[211] Della and others, 'Eksistensi Pesan Whatsapp'; Fakhriah, 'Penemuan Hukum Oleh Hakim'.
[212] Sonhaji, 'Analisis Putusan Mahkamah Agung Nomor 501 K/Pdt.Sus-PHI/2016'.
[213] Vijayantera, 'Kajian Hukum Perdata'; Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'.
[214] Salim, 'Penerapan Sifat Terang Dan Tunai'.
[215] Hadikusuma, *Hukum Perjanjian Adat*; Mertokusumo, *Hukum Acara Perdata Indonesia*.
[216] Commission IX of the House of Representatives, Rancangan Undang-Undang tentang Pelindungan Ketenagakerjaan (committee text, file dated 28 September 2026), provisions on the registration of fixed-term agreements; article numbers to be verified against the promulgated Law Number 27 of 2026.
[217] Vijayantera, 'Kajian Hukum Perdata'; Purnawan and Suharto, 'Pembuktian Perjanjian Lisan'.
[218] Miru, *Hukum Kontrak Dan Perancangan Kontrak*.

the parties.[219] In customary communities, the traditional function of *terang*, namely the involvement of community leaders as witnesses, can be revitalised as a culturally appropriate form of documentation.[220] Legal literacy programmes for rural communities, informal workers, and small traders would help them understand that their oral agreements are valid, but that their rights are better protected when supported by evidence.[221]

Minimum documentation is particularly relevant to the digital environment. Since many agreements are already negotiated through messaging applications, parties can be encouraged to send a brief confirmation of the essential terms, such as the amount, the due date, and the obligations of each party, at the time the agreement is reached. Such a confirmation does not transform the oral agreement into a formal written contract, but it creates an electronic record that may be assessed under the Electronic Information and Transactions Law, subject to the requirements of authenticity, integrity, and accountability.[222] In this way, the technological dimension of the paradigm shift can be harnessed to protect, rather than to marginalise, those who rely on oral agreements.

For oral employment arrangements, minimum documentation can take the form of the letter of appointment already required by law, a record of the start date, the type of work, and the wage, wage receipts or bank transfers, and a message in which the employer confirms these terms. The letter of appointment is the paradigm example of the balanced model: it does not transform the oral agreement into a formal contract, but it fixes the facts needed to prove it.[223]

Village institutions can also contribute to minimum documentation. In many communities, village heads and customary leaders already witness important transactions, particularly land transactions, as part of the customary principle of *terang*.[224] Simple registers of such transactions maintained at the village level, without replacing the formal procedures required by law, could provide valuable evidence when disputes arise. Such registers would revitalise the customary function of publicity in a form that can be recognised by courts as documentary or circumstantial evidence. They would also bridge the gap between customary practice and the formal legal system, which is one of the principal sources of uncertainty identified in this study.

Taken together, the four pillars of the balanced model correspond to the three stages of the paradigm shift. The preservation of consensualism protects the substantive layer that underlies all three stages. The reform of civil procedure and the development of judicial guidelines address the evidence-based stage. The promotion of minimum documentation and legal literacy addresses the documentation-based and electronic stage, while ensuring that communities still operating in the consensus-based stage are not left without protection. The model therefore does not resist the paradigm shift; it seeks to guide it in a direction that is consistent with the foundational principles of Indonesian contract law and with the social realities of Indonesian society.[225]

This balanced model reconciles the two values that have been in tension throughout this study. On the one hand, it respects the culture of oral contracting and the principle of consensualism that have long characterised Indonesian contract law. On the other hand, it responds to the demand for legal certainty by strengthening the evidentiary infrastructure rather than by imposing formalism. In this way, the paradigm shift towards written and electronic certainty can be managed so that it enhances, rather than undermines, the protection of parties who rely on the spoken word.

Conclusion

[219] Handriani and Mulyanto, 'Kepastian Hukum'.
[220] Salim, 'Penerapan Sifat Terang Dan Tunai'; Hadikusuma, *Hukum Perjanjian Adat*.
[221] Sopamena and others, 'Keabsahan Perjanjian Lisan Dalam Masyarakat Adat'; Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja'.
[222] Della and others, 'Eksistensi Pesan Whatsapp'; Herianto Sinaga and Wiryawan, 'Keabsahan Kontrak Elektronik'.
[223] Katu, Styawati, and Putra, 'Tinjauan Yuridis Terhadap Akibat Hukum Perjanjian Kerja Secara Lisan Antara Pekerja Dan Perusahaan'.
[224] Salim, 'Penerapan Sifat Terang Dan Tunai'; Hadikusuma, *Hukum Perjanjian Adat*.
[225] Sinaga, 'Peranan Asas-Asas Hukum Perjanjian'; Hernoko, *Hukum Perjanjian: Asas Proporsionalitas*.

This study finds that oral employment agreements retain a firm normative position in Indonesian law. Under the principle of consensualism derived from the Civil Code and Article 51 paragraph (1) of the Manpower Law, an oral employment agreement that fulfils the requirements of validity is binding and gives rise to the full range of worker entitlements. Indonesian law imposes written form selectively, for fixed-term employment agreements, for the letter of appointment that accompanies oral indefinite-term agreements, and, in other fields, for transactions such as grants and the transfer of land rights.

The decisive weakness of oral contracts lies in their proof, but the case study shows that employment law redistributes this weakness. Whereas in general civil disputes the absence of writing burdens the claimant, in the employment decisions examined the absence of a written fixed-term agreement is charged against the employer, so that an unwritten fixed-term agreement is treated as an indefinite-term agreement, and the oral engagement is proven through the elements of work, wages, and orders. Judicial practice nevertheless shows variation in remedies and in the assessment of evidence, and increasingly incorporates payment records and electronic communications.

The paradigm shift in Indonesian contract law is therefore evidentiary and protective rather than substantive. The law has not abandoned consensualism; it has relocated legal certainty from the moment of consensus to the availability of documentation, and it has assigned the duty to document to the party that controls it. This shift manifests itself in the modernisation of customary land transactions, in the protective formalism of employment law, from the Manpower Law through Constitutional Court Decision Number 168/PUU-XXI/2023 to Law Number 27 of 2026, and in the recognition of electronic contracts and electronic evidence.

A balanced model is required to manage this shift. Such a model should preserve consensualism as the substantive foundation of contract law, reform civil procedure to regulate electronic evidence explicitly, develop judicial guidelines for the assessment of oral contracts, including a presumption of an employment relationship arising from proof of work and wages, strengthen employer documentation duties and the supervision of compliance, and promote minimum documentation and legal literacy, particularly among communities and workers who rely most heavily on oral agreements. This study contributes to the understanding of Indonesian contract law by using oral employment agreements to reframe the evidentiary weakness of oral contracts as an indicator of a systemic reorientation of legal certainty, and by integrating the doctrines of consensualism, civil evidence, customary transactions, sectoral formalism, and electronic evidence into a single analytical frame. Future research should examine empirically how oral employment agreements are concluded and enforced in specific sectors and regions, how village and customary institutions document transactions, how electronic communications are assessed by courts in practice, and how the courts apply the Employment Protection Law once its implementing regulations are available.

Ethics approval

This study is normative legal research based on documentary legal materials and did not involve human participants. *"Not required."*

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Declaration of artificial intelligence use

"This study used artificial intelligence (AI) tools and methodologies in the following capacities:

1. **Manuscript writing support**: AI-based language models, such as Claude (Anthropic), were employed to:
    a. Language refinement (improving grammar, sentence structure, and readability of the manuscript).
    b. Content summarization (assisting in summarizing findings and conclusions in a concise manner).
    c. Technical writing assistance (providing suggestions for structuring complex technical descriptions more effectively).
    d. Generate scientific content, interpret data, and draw conclusions.

"We confirm that all AI-assisted processes were critically reviewed by the authors to ensure the integrity and reliability of the results. The final decisions and interpretations presented in this article were solely made by the authors."

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