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DOCTRINE OF PART PERFORMANCE: A STRATEGIC APPROACH TO BREAKING THE CHAIN OF OPPORTUNISM IN INDONESIAN CONTRACT AND ISLAMIC LAW

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Abstract

This article discusses the urgency and conceptualization of integrating the doctrine of part performance into Indonesian contract and Islamic law. This doctrine, rooted in the principle of equity in English law, serves as a corrective mechanism against injustices arising from excessive emphasis on written terms, particularly in situations where one party has performed or placed trust in the other. Using a normative juridical method with a doctrinal and comparative approach, this research analyzes the development of the part performance doctrine in England, India, the United States, Germany, and the Netherlands, and evaluates how these jurisdictions balance formalism and equitable contracts. The research results show that while Indonesian law still relies primarily on written evidence as the basis for contract legitimacy, many countries have adopted performance-based interpretations to prevent opportunistic behavior and protect reliance interests. The development of this doctrine is in line with the provisions of maqashid sharia, the mu'athah contract and the principle of not being able to harm each other in the context of Islamic law. The novelty of this article lies in proposing a normative integration model for the doctrine of part performance within the framework of the Civil Code, emphasizing recommendations such as recognizing actual performance as evidence, prohibiting the abuse of formalities, and protecting substantial reliance. This integration is important for aligning Indonesian contract law with modern transactional practices and ensuring contractual justice.

Keywords: part performance; Indonesian contract law; legal formalism; reliance

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Introduction

The development of modern transactions—ranging from the digital economy, investment, and creative partnerships to agribusiness supply chains—indicates that contractual relationships in Indonesia are increasingly formed through the actual actions of the parties before being formalized in written documents. Achievements such as down payments, delivery of goods, or possession of the object often occur before the formal contract is drawn up. However, the Indonesian system of proof still accords dominance to written evidence, so these concrete actions are often not recognized as proof of the contract's existence.

This condition creates space for opportunistic behavior, where the party that has already benefited can avoid its obligations by exploiting the weaknesses of formality.[1] This situation highlights a gap between legal formalism and trust-based relational contracting, which increasingly demands corrective mechanisms in Indonesian contract law.

In various jurisdictions, the need to balance formality and fairness has led to the emergence of the doctrine of part performance. Previous studies suggest that the development of this doctrine aimed to prevent the misuse of written terms. Peter Devonshire's research confirms that the doctrine of part performance is an exception that must be strictly applied because it can correct the rigidity of the Statute of Frauds without eliminating its protective function.[2] Hafiz Muhammad Usman Nawaz et al. show that various legal systems grant the party prevented from performing the right to cancel the contract, claim compensation, and seek benefits for partial performance.[3]

From a functional perspective on contracts, Eric Tjong Tjin Tai et al. assert that when force majeure occurs, there is no breach of contract, and the contractual relationship can only be restored through a restructuring of obligations based on the benefits already

[1] Tao Wang et al., "The Effect of Cultural Differences on the Relationship between Contract Governance and Opportunism," *European Journal of Marketing* 57, no. 11 (2023): 2974–3004, https://doi.org/10.1108/EJM-03-2022-0145.

[2] Peter Devonshire, "The Doctrine of Part Performance: Where Should the Line Be Drawn?," *Otago L. Rev.* 17, no. 2 (2021): 277–301, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/otago17&section=18.

[3] Hafiz Muhammad Usman Nawaz, Mirza Shahid Rizwan Baig, and Dr. Rao Qasim Idrees, "Development of Doctrine of Frustration: Departure from Absolutism in Contracts," *Journal of Peace, Development & Communication* 4, no. 3 (2021): 556–73, https://doi.org/10.36968/jpdc-v04-i03-29.

provided, making partial performance the basis for an objective settlement.[4] Susy Frankel's critique of the uncertainty surrounding the doctrine of part performance in New Zealand demonstrates that without a clear operational definition, this doctrine is unable to prevent the abuse of written requirements in land transactions.[5]

In the context of the United States, Alan S. Gutterman points out that Restatement (Second) of Contracts § 241 includes part performance as an indicator in assessing the materiality of a breach,[6] while Andrew A. Schwartz, through a study of Restatement (Second) of Contracts § 377, asserts that in situations of impracticability, both the performing party and the recipient of the benefit have a right to restitution for the benefits provided through part performance.[7] From a comparative study, Chaitanya Thakur traces the development of this doctrine from English law to its codification in Section 53A of the Indian Transfer of Property Act and finds that part performance is an egalitarian doctrine that balances equity, justice, and good conscience, particularly for the weaker party.[8]

Although these studies provide a comprehensive understanding of the corrective function of part performance, global literature still focuses on the context of each jurisdiction and has not yet answered the question of how this doctrine can be adapted to civil law countries—including Indonesia—whose evidentiary systems heavily emphasize written documents. Additionally, there has been no study that builds a conceptual framework for partial performance compatible with the principles of good faith, fairness, and the prohibition of abuse of rights in the Civil Code. Thus, there is a significant research gap regarding the need for a doctrine of partial performance design that is relevant to Indonesia's dynamic, trust-based, and opportunistic behavior-prone contractual practices.

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[4] Eric Tjong Tjin Tai, "Force Majeure and Excuses in Smart Contracts," *European Review of Private Law* 26, no. 6 (2018): 1–20, https://doi.org/10.54648/erpl2018055.

[5] Susy Frankel, "The Uncertain Doctrine of Part Performance," *Victoria University of Wellington Law Review* 42, no. 1 (2011): 37–48, https://doi.org/10.26686/vuwlr.v42i1.5403.

[6] Alan S Gutterman, "Contract Management," *Social Science Research Network*, 2023, 1–48, https://www.researchgate.net/profile/Alan-Gutterman/publication/372679851_Contract_Management/links/64c2a5da6f28555d86d800bf/Contract-Management.pdf.

[7] Andrew A Schwartz, "Contracts and COVID-19," *Stan. L. Rev. Online* 73 (2020): 48–60, https://scholar.law.colorado.edu/articles/1288/.

[8] Chaitanya Thakur, "The Emergence of Doctrine of Part Performance: A Legal Analysis of Section 53A of the Transfer of Property Act," *Jus Corpus LJ* 2 (2021): 321–28, https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/juscrp2&section=364.

The urgency of this research is further strengthened by the fact that Indonesian civil law is oriented toward formal truth, making written documents often the sole determining means of proof, even when the actual behavior of the parties provides more substantial evidence of the contract's existence. If this situation is allowed to continue, the law loses its corrective function and instead has the potential to become an instrument of injustice, especially for those who achieved success first. Global trends also show a shift toward reliance-based enforcement, such as equitable relief in the UK, equitable estoppel in the US, and legislative protection in India, as well as the principles of Treu und Glauben (Germany) and *redelijkheid en billijkheid* (Netherlands), which emphasize that formality should not override the reality of contract performance.

Based on these overall developments, this research is important because it offers scientific contributions not yet available in Indonesian or comparative literature, namely:

1. building a cross-jurisdictional analysis of the doctrine of part performance;
2. identifying core principles that can be adopted into Indonesian contract law;
3. formulating a conceptual framework based on reliance protection that is consistent with the principles of sound faith, fairness, and the prohibition of abuse of rights; and
4. establishing a normative foundation for the reform of contract law concerning evidence and interpretation in Indonesia.

Thus, this research holds significant academic and practical importance, as it fills a theoretical gap, strengthens protection against real achievements, and offers an innovative model for updating Indonesian contract law to be more responsive to the dynamics of modern transactions.

Method

This research employs a normative legal approach with doctrinal and comparative analysis of the development of the part performance doctrine in various jurisdictions and its potential integration into Indonesian contract law. The legal materials examined include legislation (such as the Statute of Frauds 1677, Section 53A of the Indian Transfer of Property Act, the Restatement (Second/Third) of Contracts/Restitution, the BGB, the BW, the Civil Code, and related regulations), important court decisions (including Maddison v Alderson, Messner Vetere v Aegis Group, and Baris v Riezenkamp, as well as decisions from the Indonesian Supreme Court and other Indonesian courts regarding civil proof), and recent scientific literature relevant to reliance-based enforcement, good

faith, and part performance. Theoretically, this research combines the trust-based contract framework, the principles of good faith and contractual fairness, and critiques of legal formalism to reinterpret part performance as a corrective instrument against contractual opportunism. The analysis was conducted through a statute approach, case approach, comparative approach, and conceptual approach, flowing through three steps: mapping the configuration of the doctrine of part performance across jurisdictions, examining the limitations of Indonesia's contract and evidence legal structure, which is oriented toward formal truth and the dominance of written evidence, and formulating a conceptual framework and normative recommendations to integrate protection for partial performance and substantial reliance into Indonesian contract law. With this flow, the research is expected to produce a coherent and operational doctrinal model for the renewal of Indonesian contract law.

Doctrine of Part Performance across Jurisdictions

Basic Concept of the Doctrine of Part Performance

If one party intentionally prevents the other from fulfilling their obligations under the contract, the injured party is entitled to refuse to continue the contract (repudiate the contract) and claim damages for such action. Additionally, he is also entitled to claim compensation based on the principle of quantum meruit for the portion of the work he has already completed.[9] In this case, the doctrine of part performance applies, which is an equitable doctrine in English law that protects a party who has partially performed their contractual obligations, even if the contract has not met legal formalities.[10] This rule is particularly applicable to certain contracts that, by law, are only enforceable if proven in writing, such as contracts for the sale or transfer of land or interests in land, as well as contracts of guaranty. However, if one party has substantially performed its contractual obligations—for example, the buyer has taken possession of the house—the contract that does not meet the written requirements can still be enforced according to the principle of equity.[11]

[9] Nawaz, Baig, and Idrees, "Development of Doctrine of Frustration: Departure from Absolutism in Contracts."

[10] Devonshire, "The Doctrine of Part Performance: Where Should the Line Be Drawn?"

[11] Meria Utama et al., "Drafting Extension of Time for Completion to Avoid Time at Large in Construction Contract," *Notaire* 7, no. 2 (2024): 247–66, https://doi.org/10.20473/ntr.v7i2.58379.

This doctrine was affirmed by the House of Lords in the case of Maddison v. Alderson (1883) 8 App Cas 467, which stated that a party who has received the benefit of partial performance cannot repudiate the contract simply because its written form is incomplete, as long as the actions clearly constitute performance of the contract.[12]

This principle ensures that contracts are executed fairly and prevents unjust enrichment, as the law cannot allow one party to enjoy the benefits of a contract while simultaneously attempting to avoid their obligations.[13] Thus, the execution of existing contracts must still be honored so that no party is disadvantaged even if formal requirements have not been fully met.

The influence of the doctrine of part performance was later also seen in contract law in the United States. There, Restatement (Second) of Contracts § 34(2) explains that if part of a contract has already been performed, this can be strong evidence that the contract truly exists and is valid for enforcement. Additionally, Restatement (Third) of Restitution and Unjust Enrichment § 31 states that a party who has already performed is entitled to compensation to prevent unjust enrichment of the other party. Similar provisions are also found in UCC § 2-201(3)(a) and (c), which provide exceptions to the written contract requirement if part of the contract has already been performed.[14] In both English and US law, the essence is the same: the law must protect the party who has fulfilled their part of the contract, and the party who has received the benefit should not be able to avoid their obligations simply because the contract document is incomplete.

Regulation and Application of the Doctrine of Part Performance in Various Jurisdictions

In the English common law tradition, the doctrine of part performance developed as a jurisprudential response to address the rigidity of the 1677 Statute of Frauds, which required contracts concerning land to be in writing to be validly enforceable.[15] These formal provisions were actually created to prevent fraud and perjury in proving oral

[12] James Edelman, "The Equity of the Statute," *Philosophical Foundations of the Law of Equity (Oxford University Press 2020)*, 2020, 1–26, https://www.hcourt.gov.au/assets/publications/speeches/current-justices/edelmanj/edelmanj29jun17.pdf.

[13] Robert Stevens, "Should No Further Books Be Written on the Law of Unjust Enrichment?," *Canadian Journal of Law & Jurisprudence* XXXVII, no. 2 (2024): 619–38, https://doi.org/https://doi.org/10.1017/cjlj.2024.10.

[14] Mark P Gergen, "Contract as an Object of People's Will," *The American Journal of Jurisprudence* 70, no. 1 (2025): 1–19, https://doi.org/https://doi.org/10.1093/ajj/auaf003.

[15] Wayne R Barnes, "The Judicial Admissions Exception to the Statute of Frauds: A Curiously Gradual Adoption," *Wake Forest L. Rev.* 55 (2020): 475–523, https://ssrn.com/abstract=3521985.

contracts in the 17th century. However, in practice, the written requirement often becomes a source of injustice when one party has taken concrete actions that were only possible if the contract truly existed—for example, physical possession of the land, partial payment of the price, or substantial renovations to the property.[16]

In the landmark case of Maddison v Alderson (1883), the House of Lords set an important precedent by ruling that the Statute of Frauds should not be used as an instrument to commit fraud.[17] Lord Selborne emphasized that equity must provide protection to the party who has performed obligations "unequivocally referable to the contract," meaning actions that can only be objectively explained if there was a contractual agreement.[18] Thus, one should not benefit from the performance of a contract and then evade their obligations simply because it was not made in writing.

This doctrine subsequently influenced lawmakers in India, who explicitly adopted it through Section 53-A of the Transfer of Property Act 1882 (as amended in 1929). Unlike the characters in England, party performance in India only serves as a shield and not a sword.[19] This means that a buyer or successful party can maintain possession of property acquired under an oral contract and significant reliance but cannot sue for specific performance solely on the basis of part performance. This form of protection is related to the social realities of India, where land transactions are often conducted without formal documentation and the bargaining power of buyers is often weaker than that of landowners who have control over formal proof.

Unlike India, the legal system in the United States applies the doctrine of part performance through the equitable estoppel approach, which is based on the principle of reliance to prevent injustice. Restatement (Second) of Contracts § 129 allows courts to order specific performance of an oral contract for land if the party seeking enforcement has significantly changed their position in reliance on the existence of the contract and

[16] Dr Wei Wen, "Unenforceable, Unformed and Invalid Oral Land Sale Contracts: A Comparative Analysis of the Chinese 'Statute of Frauds' and the Equivalent Legislation in Common Law Jurisdictions," *Journal of Contract Law* 36, no. 3 (2020): 1–17, https://ssrn.com/abstract=3644845.

[17] Lord Sales JSC, "Proprietary Estoppel: Great Expectations and Detrimental Reliance," in *Modern Studies in Property Law, Volume 12*, 2023, 1–18, https://doi.org/10.5040/9781509963690.ch-010.

[18] JSC.

[19] Shashank Sridhar, "Impact on Non-Payment of Part or Entire of the Sale Consideration," *Supremo Amicus* 19 (2020): 1–9, http://www.supremoamicus.org/.

damages cannot be adequately remedied by ordinary restitution.[20] Thus, although the Statute of Frauds remains in effect, this exception provides room for substantive justice when written evidence is absent, as long as the reliance is real, substantial, and unambiguous. Its application remains cautious, as seen in Messner Vetere Berger v. Aegis Group (1999), where the claim was dismissed because the plaintiff's reliance on the contract was not proven.[21]

Meanwhile, in the civil law system, which does not rigidly treat formality as a requirement for contract enforceability, similar protection is accommodated through general principles. In Germany, Article 242 of the Civil Code (BGB) affirms the obligation to act in good faith (*Treu und Glauben*) in every contractual relationship, including the pre-contractual stage. When one party has taken action in reliance and the other party attempts to renege on the agreement due to formality, such behavior is considered a violation of good faith.[22] In addition, the doctrine of culpa in contrahendo, which is now codified in Sections 280(1), 311(2), and 241(2) of the BGB, grants the injured party the right to claim compensation for breaches of pre-contractual obligations, even when the contract has not been fully formed.[23] This case shows that protection against reliance in German law does not depend on the existence of a written instrument, but rather on moral-legal demands for fair and responsible contractual behavior.

In the Dutch legal system, this protection is guaranteed through the principle of redelijkheid en billijkheid (reasonableness and fairness), which has become the spirit of modern Dutch contract law. Since the landmark decision in Baris v Riezenkamp (1957), the Dutch Supreme Court has affirmed that parties are bound by good faith obligations from the negotiation stage.[24] If reliance has occurred—like payment or performance delivery based on the belief that the contract will be fulfilled—the other party should not

[20] Matthew Bruckner, "Bruckner (Howard Law) Contracts 2024: Restatement (Second) of Contracts § 129," H2O Casebook, 2024, https://opencasebook.org/casebooks/11720-bruckner-howard-law-contracts-2024/resources/9.9-restatement-second-of-contracts-129/.

[21] Court of Appeals of New York, "Messner Vetere Berger McNamee Schmetterer Euro RSCG Inc. v. Aegis Group PLC," 1999, https://www.law.cornell.edu/nyctap/comments/i99_0032.htm.

[22] Kevin Bork and Manfred Wandt, "'Utmost' Good Faith in German Contract Law," *Zeitschrift Fur Die Gesamte Versicherungswissenschaft* 109, no. 2–4 (2020): 243–254, https://doi.org/10.1007/s12297-020-00478-6.

[23] Marta Andhov et al., "Culpa in Contrahendo: A Solar Eclipse between Contract and Public Procurement Law?," *The Procurement Journal* 2 (2025): 47–77, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5500199.

[24] Thijs Beumers, Willem van Boom, and E Karner, "Tortious and Contractual Liability from a Dutch Perspective," *Tortious and Contractual Liability–Chinese and European Perspectives*, 2021, 223–45, https://dendrou.eu/gallery/2021 Beumers VanBoom Tortious and Contractual Liability.pdf.

opportunistically avoid their obligations just because the contract is not perfectly formalized.

This certainty is reinforced by the statement in the *Hengstenvereniging* case that contracts must be interpreted based on common sense and reasonable fairness (*volgens de eisen van redelijkheid en billijkheid*), so that adherence to formalities should not outweigh the necessity of upholding substantive justice in contractual relationships.[25]

To provide a systematic understanding and to identify the differences and commonalities between various jurisdictions that regulate the doctrine of part performance, a comprehensive comparison of the character, function, basis for justification, and legal protection provided by each system needs to be presented. This comparison is important because it shows how doctrines born from the equity tradition in England underwent normative transformations according to the needs of different legal systems, both common law and civil law. The following table is compiled to briefly illustrate the evolution, orientation, and implications of applying the doctrine of part performance in several countries:

Table 1. Comparative Overview of the Doctrine of Part Performance Across Jurisdictions

Jurisdiction	Legal Sources	Nature & Function of the Doctrine	Key Requirements Emphasized	Form of Protection / Remedy	Leading Cases / Rules
England	Case law in equity (anchored in the Statute of Frauds 1677)	Instrument of equitable relief to prevent abuse of formalities	Acts must be unequivocally referable to the contract	Specific performance and prevention of unjust enrichment	Maddison v Alderson (1883) 8 App Cas 467
United States	Restatement (Second) of Contracts §129; Restatement (Third) of Restitution & Unjust Enrichment §31; UCC §2-201(3)	Reliance-based exception to the Statute of Frauds (equitable estoppel)	Injustice can only be avoided by enforcement (substantial, unambiguous reliance)	Specific performance; reliance-based restitution	Messner Vetere Berger McNamee Schmetterer Euro RSCG Inc. v. Aegis Group PLC (1999)
India	Section 53-A Transfer of Property Act, 1882	Shield not sword — protective device for purchasers/possessors	Possession under the contract and readiness & willingness to perform	Protection of peaceable possession (defence only)	TPA 1929 amendment (codifying part

[25] Rizky Febri Dewanti, Pujiyono Pujiyono, and Yudho Taruno Muryanto, "The Application of Good Faith Principle of Precontract in Common Law and Civil Law Contry," *Research, Society and Development* 10, no. 16 (2021): 1–8, https://doi.org/10.33448/rsd-v10i16.23621.

	(1929 amendment)				performance)
Germany	BGB §242; §§280(1), 311(2), 241(2) BGB	Protection via good faith (*Treu und Glauben*) and culpa in contrahendo	Proof of conduct inconsistent with good faith	Pre-contractual damages/compensation	Consistent application of *Treu und Glauben*
Netherlands	BW 6:2(1); BW 6:162	Protection via reasonableness and fairness (*redelijkheid en billijkheid*)	Reliance and societal propriety (*maatschappelijke betamelijkheid*)	Prevention of opportunistic behaviour; progressive contract interpretation	Baris v Riezenkamp (1957); Hengstenver eniging

Source: Compiled by the Researcher, 2025.

Theoretically and empirically, the table above shows that although the term "part performance" is only known in the common law tradition, the substance of its protection has also been internalized in the civil law system through the principles of good faith, contractual fairness, and equity. England and the United States placed this doctrine as part of an equitable relief mechanism to balance the Statute of Frauds, while India adopted it as a legislative defense instrument that prioritized stable land ownership. Conversely, Germany and the Netherlands view reliance protection as a moral-legal consequence of the established contractual relationship, which begins even at the pre-contractual stage; therefore, formalities should not ignore the social reality that contracts are often "worked out" faster than they are "written down." Thus, these differences in approach do not change the fundamental goal of part performance: to prevent the law from being used as an instrument of injustice and to ensure that no party opportunistically benefits from the contract without fulfilling their obligations.

The Urgency and Conceptualization of the Doctrine of Part Performance in Indonesian Contract Law

The Urgency of Integrating the Doctrine of Part Performance into the Reform of Indonesian Contract Law

Legal reform is essentially an effort to update and improve existing rules so they are more aligned with societal developments, including the ever-advancing social, economic, and technological changes. According to Davies, this improvement is not only the task of state institutions formally mandated to make or amend laws but can also arise from experts, academics, and public pressure through political processes when existing rules are no longer adequate or cause problems in daily practice. In other words, legal

reform is carried out so that the law remains relevant, just, and capable of addressing the real needs of society today.[26] In Indonesian contract law, the urgency for reform arises from the disparity between formal written perfection and the contractual reality constructed through the parties' behavior. The dominance of formalistic doctrine is a colonial legacy that makes documents the center of contract legitimacy, potentially sacrificing material truth reflected in actual performance.

At the same time, the development of legal thought in various countries, particularly the emergence of textualism in the United States, emphasized that legal interpretation should adhere to the original meaning understood by the general public when the rules were created. Antonin Scalia, a leading figure in this school of thought, rejected the inclusion of moral purposes or values not explicitly written in legal texts, as he believed judges should only adhere to the literal wording of enacted rules.[27] This approach is considered capable of strengthening legal certainty and limiting the subjectivity of judges, but it has also been criticized for being less adaptable to justice issues arising in new social situations and for potentially maintaining hidden biases behind the legal text itself.

The issue becomes acute when one party has provided significant performance that has created detrimental reliance, both economically and socially, but the benefiting party subsequently refuses to be bound simply because the contract was not put in writing; in this context, reliance cannot be narrowly understood as mere financial loss but rather encompasses changes in legal and social position built on trust in a promise or norm considered to be in effect. The most striking illustration is seen in the fundamental change of precedent in Dobbs v. Jackson Women's Health Organization (2022), which overturned Roe v. Wade (1973). In this case, the United States Supreme Court disregarded the widespread societal reliance over nearly five decades, encompassing personal autonomy, life direction, existential stability, and social identity formed based on previous legal

[26] Narelle Bedford, Wendy Bonython, and Alice Taylor, "Law as It Is, and How It Could Be: Law Reform Participation as Authentic Assessment and a Pedagogical Tool," *Law Teacher* 58, no. 1 (2024): 58–73, https://doi.org/10.1080/03069400.2023.2288415.

[27] Alanna Josephine Scalza, "Textualism, Judicial Discretion, and the Philosophical Legacy of Justice Antonin Scalia" (St. John's University (New York), 2025), https://scholar.stjohns.edu/theses_dissertations?utm_source=scholar.stjohns.edu%2Ftheses_dissertations%2F920&utm_medium=PDF&utm_campaign=PDFCoverPages.

protections.[28] If such forms of reliance are ignored, the court indirectly allows the dignity of the performing party to be harmed, creates uncertainty in legal relationships, and diminishes public trust in the judiciary's ability to deliver fair and consistent decisions.

In contract theory based on trust, the core of a contract does not lie in the existence of a written document as an administrative formality but rather in the genuine commitment between the parties, which builds cooperation, generates mutual benefits, and creates reasonable expectations that are worthy of legal protection.[29] In modern economic practice, which relies on long-term relationships, the rigid application of contractual formalities is often exploited opportunistically by the party that has already benefited to later renege on its obligations. This behavior is known as moral hazard, and it can even develop into double moral hazard when both parties have equal opportunities to harm each other, as is often the case in franchise relationships, supply chains, technology services, and various forms of creative partnerships.[30] In situations like this, the reliance that has been established through actual actions should be the basis for legal protection to prevent anyone from using formalism as a tool to escape their responsibilities.

The dynamics of modern transactions, which are based on collaborative trust, show that contracts can no longer be understood simply as static written documents but rather as cooperative relationships that continue to evolve as they are executed. Therefore, contracts should be viewed as relational instruments that require protection against the elements of trust, cooperative behavior, and interdependence that naturally arise when parties work together.[31] From this perspective, the law should not be fixated solely on formality but must be able to ensure that the values and commitments already established in the real-world interactions of both parties are respected and protected.

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[28] Nina Varsava, "Precedent, Reliance, and Dobbs," *Harvard Law Review* 136, no. 7 (2023): 1845–1912, https://ssrn.com/abstract=4152020.

[29] Huimin Li et al., "Building Mechanism of the Initial Trust Motivation of Owners toward Contractors," *Journal of Engineering, Design and Technology* 23, no. 1 (2025): 51–68, https://doi.org/10.1108/JEDT-06-2022-0331.

[30] Gabriel Carroll and Lukas Bolte, "Robust Contracting under Double Moral Hazard," *Theoretical Economics* 18, no. 4 (2023): 1623–1663, https://doi.org/10.3982/te4916.

[31] Sheratun Noor Jyoti and Momena Akter, "Assessment Of Data-Driven Vendor Performance Evaluation in Retail Supply Chains: Analyzing Metrics, Scorecards, And Contract Management Tools," *American Journal of Interdisciplinary Studies* 3, no. 02 (2022): 36–61, https://doi.org/https://doi.org/10.63125/0s7t1y90.

The development of contract law in various countries indicates a shift toward reliance-based enforcement as a correction to the weaknesses of written formalism.[32] In England, the doctrine of equitable part performance ensures that the Statute of Frauds cannot be used as a tool for fraud. In the United States, protection is provided through equitable estoppel, which prevents bad-faith parties from reneging on their commitments. India even explicitly affirmed this concept in legislation providing protection for the implementation of agreements.

Meanwhile, Germany and the Netherlands have made the principles of Treu und Glauben (good faith) and redelijkheid en billijkheid (reasonableness and fairness) the ethical basis of contractual relationships, binding the parties even from the negotiation stage. This entire approach points to the same overarching goal: justice and the protection of trust already given must take precedence over simply fulfilling the administrative requirements of a contract.

Atiyah's view in The Rise and Fall of Freedom of Contract strengthens this argument by showing that the core of a contract is not the formal freedom to promise but rather the legal recognition of performance that has created reliance worthy of protection.[33] Indonesia also has a normative foundation in the principles of good faith, propriety, and the prohibition of abuse of rights. The remaining challenge is to transform these principles into operational norms to prevent manipulation of formalities and protect reasonable trust in transactions.

This debate found its most progressive articulation in Justice Froneman's dissenting opinion in the Beadica case. Referring to the thoughts of Gordley, Atiyah, and Kennedy, Froneman shows that pacta sunt servanda should not be read as an absolute dogma but rather must be in line with good faith, fairness, and the social conditions in which the contract exists. He dismantles the false claims of objectivity in the majority approach, which normalizes power imbalances and structural inequalities in contractual relationships. Judges, according to Froneman, are not merely guardians of textual

[32] William N. Eskridge, "Reliance Interests in Statutory and Constitutional Interpretation," *Vanderbilt Law Review* 76, no. 3 (2023): 681–771, https://openyls.law.yale.edu/bitstream/handle/20.500.13051/18271/e.pdf?sequence=1.

[33] Jaco Barnard-Naudé, "Contract from the Margins: The Becoming of a Minor Jurisprudence in the Minority Judgment of Froneman, J in Beadica 231 CC v Trustees for the Time Being of the Oregon Trust 2020 5 SA 247 CC," *Potchefstroom Electronic Law Journal (PELJ)* 27, no. 1 (2024): 1–22, http://dx.doi.org/10.17159/1727-3781/2024/v27i0a16893.

certainty but corrective agents tasked with preventing contract law from becoming a mechanism that systematically perpetuates injustice.[34]

This overall analysis shows that reforming the doctrine of part performance is a normative necessity for Indonesian contract law to protect the concrete form of contracts in modern societal practice. Imperfections in formality should not erase the truth of achievements that have generated both economic and social value. Thus, Indonesian contract law is required to seriously integrate the protection of reliance as a fundamental principle of contract enforcement, in line with the direction of the evolution of contractual justice in various leading jurisdictions.

Conceptualizing the Doctrine of Part Performance in Indonesian Contract Law

Various countries have developed the doctrine of part performance, indicating a significant shift in understanding the validity of a contract. Previously, a contract was considered truly existent only when it was put into a written document. Now, many legal systems view the actual actions of the parties—such as beginning to fulfill obligations or providing benefits—as the strongest evidence that a contract has truly been agreed upon. This shift in perspective is relevant for Indonesia, as many agreements in society are already being implemented but are not recognized simply because they are not in written form.

Conceptually, the Civil Code (KUHPerdata) has never made written form a requirement for the validity of an agreement, as Article 1320 only requires "agreement, capacity, a certain object, and a lawful cause."[35] However, structurally, the Indonesian system of proof still gives a dominant position to written evidence, as stated in Articles 1866 and 1870 of the Civil Code,[36] where written documents are considered the main evidence with perfect probative force. As a result, contractual relationships that have been effectively carried out in reality often lack sufficient legitimacy when disputes arise and are brought to court.

[34] Barnard-Naudé.

[35] Hetty Hassanah, Wahyudi Wahyudi, and Norazlina Abdul Aziz, "Standard Clause Problems in E-Commerce Based on Indonesian Civil Law," *Jurnal Wawasan Yuridika* 7, no. 2 (2023): 221–38, https://doi.org/10.25072//jwy.v7i2.4226.

[36] Sri Wahyuni, "Resolution of Antam Gold Selling and Buying Disputes Reviewed From Economic Analysis of Law Theory," *Journal of Social Research* 3, no. 1 (2023): 59–65, https://doi.org/10.55324/josr.v3i1.1669.

The connection between this condition and the civil proof principle, which prioritizes formal truth over material truth, becomes even more evident.[37] This reasoning is clearly reflected in Supreme Court Decision No. 290 K/Sip/1973, which was also considered in Yogyakarta Religious High Court Decision No. 27/Pdt.G/2019/PTA. Yk, which states that civil cases do not require the judge's conviction, unlike criminal cases; the judge only needs to assess the evidence presented by the parties without having to develop a deep inner conviction. Thus, when written evidence is presented in court, its existence is almost always stronger and more decisive than proof based on the actual actions of the parties. Finally, even though a contract has been factually executed, the absence of written evidence often weakens the position of the party who has performed, while the presence of a single formal document can shift the burden of proof, even when that document does not fully reflect the actual reality of the contractual relationship that occurred.

Indonesian law actually has a normative foundation that aligns with the spirit of partial performance. Article 1338 paragraph (3) of the Civil Code requires every agreement to be executed in good faith,[38] while Article 1339 expands the content of the agreement to include obligations arising from decency, custom, and the nature of the agreement itself.[39]

Article 1347 recognizes the existence of clauses that are considered to be present even if not explicitly stated,[40] while Article 1365 prohibits the abuse of rights that harms others.[41] These norms clearly show that the actual behavior of the parties can give rise to legal obligations even if they are not explicitly stated in the text. Even modern developments such as the recognition of electronic evidence in Law of the Republic of

[37] Hendri Jayadi, "Searching for Material Truth in Civil Trials Based on Civil Procedure Law in Indonesia," *International Journal of Law and Politics Studies* 5, no. 4 (2023): 65–69, https://doi.org/10.32996/ijlps.2023.5.4.6.

[38] Dewanti, Pujiyono, and Muryanto, "The Application of Good Faith Principle of Precontract in Common Law and Civil Law Contry."

[39] Suherman S.H and Heru Sugiyono, "Government Policy in Indonesian Contract Law That Still Uses Contract Law Inherited from Dutch Product," *International Journal of Law and Management* 66, no. 1 (2024): 1–10, https://doi.org/10.1108/IJLMA-09-2022-0203.

[40] Muhammad Ilham Akbar Lemmy, Mahmul Siregar, and Robert Robert, "Legal Consequences of Non-Disclosure Agreements Between Companies and Employees Regarding the Protection of Sales Methods as Trade Secrets," *DE LEGA LATA: Jurnal Ilmu Hukum* 10, no. 2 (2025): 313–22, https://creativecommons.org/licenses/by-sa/4.0/.

[41] Masnida Malau, Yuniar Rahmatiar, and Muhamad Abas, "Perbuatan Melawan Hukum Atas Penyerobotan Tanah Milik Orang Lain Dihubungkan Dengan Pasal 1365 KUH Perdata," *Binamulia Hukum* 12, no. 2 (2023): 299–307, https://doi.org/10.37893/jbh.v12i2.427.

Indonesia Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 Concerning Information and Electronic Transactions (Articles 5–6) prove that the Indonesian legal system has shifted from an exclusive emphasis on physical documents toward recognizing all forms of behavior or recordings that reflect contractual commitment.

The need for the doctrine of part performance becomes increasingly apparent when we consider the complexity of modern transactions in Indonesia, ranging from digital businesses and creative partnerships to agribusiness supply chains and trust-based investment relationships. In this kind of context, achievements are often made long before the contract is put in writing, because the business world moves dynamically and doesn't always wait for administrative readiness. When the law still relies on the perfection of written documents, it opens the door to opportunistic behavior: a party that has already received benefits can evade their responsibilities simply because the formalities are not complete. This shows that formalism uncorrected by the principle of justice is the same as providing an instrument for committing injustice.

The principle of good faith is a moral foundation that ensures contractual relationships are conducted with honesty, transparency, and without the intention of harming the other party. Cicero defines good faith as an honest and moral attitude that rejects all forms of deceit, false calculation, or actions that exploit the weaknesses of others. In modern development, good faith serves not only as an ethical norm but also as a guide for behavior, requiring parties to act honestly and fairly from the negotiation process to the execution of the contract. This principle ensures that contract performance is not only measured by the perfection of formalities but also by the parties' sincerity in fulfilling their commitments honestly and without abusing circumstances.[42] Thus, the principle of good faith becomes an important foundation for the recognition of part performance, as it protects the party that has demonstrably performed from dishonest behavior that seeks to avoid obligations solely on administrative grounds.

Looking at the development of the doctrine of part performance in various jurisdictions and its relevance to the reform of Indonesian contract law, it is clear that protecting the actual performance of a contract is not sufficient if it is only placed at the

[42] Brunela Kullolli, "The Meaning of the Good Faith Principle," *International Journal* 10, no. 1 (2023): 625–36, https://doi.org/https://doi.org/10.15379/ijmst.v10i1.2625.

level of conceptual argumentation or general principles. More focused norm formulation is needed so that the principles of reliance, good faith, and justice truly gain operational force in judicial practice. The gap between formal legitimacy and the reality of contract implementation must be bridged through explicit normative regulations, leaving no room for abuse of formalism or denial of obligations after benefits are received.

In this regard, the integration of the doctrine of part performance should not be understood as a transplantation of the concept from the common law system but rather as a rearticulation of principles that are actually already recognized in Indonesian law, such as good faith, fairness, and the prohibition of abuse of rights. These principles require concrete guidelines to be consistently applied by judges when assessing contract disputes involving partial performance or significant reliance.

Therefore, a series of normative recommendations are needed to fill legal gaps, clarify standards of proof, and provide interpretive direction aligned with the development of modern contractual relationships. These normative recommendations are formulated to strengthen legal protection for meritorious parties, prevent unjust enrichment, and ensure that Indonesian contract law moves toward a just model.

Based on these objectives, the following table is compiled to map the recommended norms that can be used operationally as a basis for drafting new regulations and as jurisprudential guidelines for integrating the doctrine of part performance into Indonesian contract law.

Table 2. Integration Concept of Part Performance Doctrine for Indonesian Contract Law

Regulatory Recommendation	Substance of Regulation	Objective
Recognition of Performance as Evidence of Contract	Partial performance, benefit acceptance, or reliance actions that clearly refer to an agreement constitute sufficient proof to enforce a contract even if unwritten.	To balance the dominance of written evidence and protect contractual reality.
Prohibition on the Abuse of Formalities	Parties who have benefited from a contract cannot evade obligations solely because the contract was not in writing, unless there is evidence of defective consent.	To prevent opportunistic behavior and moral hazard in transactions.
Judicial Duty to Assess Based on Actual Conduct	Judges must interpret the existence and content of an agreement based on the actions, communications, and behavior of the parties throughout the contractual relationship.	To reinforce good faith and fairness as interpretive principles.

Protection for Substantial Reliance	Reliance that causes a change in legal, economic, or social position must be protected equivalently to written contracts.	To ensure substantive justice and prevent asymmetric harm.
Part Performance as Basis for Contract Enforcement (specific performance / restitution)	Concrete acts that are unequivocally referable to the contract provide grounds for the court to order specific performance or restitution.	To prevent unjust enrichment and uphold corrective justice.

Source: Compiled by the Researcher, 2025

The recommendation of this norm is important to ensure that the doctrine of part performance does not remain a theoretical discourse but becomes an operational legal instrument. *The first norm* affirms that partial performance must be recognized as proof of the contract's existence, a necessary correction to the dominance of written evidence in Indonesian evidentiary law. This regulation does not provide a more balanced position for the parties who have historically relied on actual conduct in executing contracts, especially in sectors that rarely prepare complete formal documentation.

The second norm, which is the prohibition of abusing formalities, aims to prevent a party that has already benefited from a contract from avoiding their obligations simply because the contract has not been made in writing. This norm is important because many parties exploit administrative loopholes as an excuse to shirk responsibility, even though they have already enjoyed the benefits of the contract. With this ban in place, the law ensures that no party can hide behind technical or administrative reasons to deny responsibility. The law must protect the substance of the parties' relationship, not allow for dishonest behavior that exploits the weaknesses of formality.

The third norm requires judges to determine whether an agreement truly exists and what its contents are by considering all actions, statements, and communications of the parties throughout the duration of the relationship. This means that judges should not only focus on written documents but must assess how the parties actually behaved. This approach strengthens the principles of good faith and fairness that have long been present in the Civil Code. With this norm, judges can assess agreements more comprehensively and realistically so that decisions more accurately reflect what actually happened, rather than just what was written on paper.

The fourth norm provides protection for parties who have taken real actions or made sacrifices in reliance on the contractual promises of the other party. This kind of reliance can be a change in legal, social, or economic position, for example, having spent

money, time, or effort because they were confident the agreement would be carried out. This norm is important to prevent unilateral losses, especially for the party that performed first. With this norm, the law ensures that reasonable trust already manifested in concrete actions should not be disregarded simply because documents or formalities are incomplete.

The fifth norm affirms that part performance is not only used as evidence but can also serve as the basis for enforcing the agreement itself. This means that if there is clear evidence of performance referring to the contract, the court can order that the contract be carried out (specific performance) or provide restitution as a remedy. This norm prevents situations where one party benefits from the actions of another party without fulfilling its obligations. Thus, corrective justice can function effectively because the law does not allow any party to enjoy undue benefits.

These norms as a whole create a regulatory framework that aligns with the development of modern contract theory and global jurisprudential practices, while also being compatible with the principles of good faith, fairness, and the prohibition of abuse of rights within the Indonesian legal system. Thus, the integration of these norms becomes an important step toward a more just reform of contract law.

Islamic Contract Principles and the Recognition of Part Performance

The doctrine of part performance may also be considered within the framework of Islamic contract law. Thus, Islamic law stresses the importance of commitment and the conduct of transactions based on mutual agreement. *QS. Al-Ma'idah [5]: 1* also instructs believers to carry out the contracts that have been made.[43] *QS. An-Nisa' [4]: 29* prohibits taking the property of others unjustly but permits trade based on mutual agreement. These principles reveal that justice also comprises the truth of the parties' agreement, the discharge of obligations, and the safeguarding of property acquired through lawful transactions.[44]

Then, from the perspective of *maqashid al-sharia*h, the protection of property (*hifz al-mal*) is crucial. Where one party has made a delivery of goods, paid the price, transferred possession of an object, or fulfilled the majority of the agreed obligations, the

[43] Diantara Purnama et al., *Pengantar Hukum Ekonomi Syariah* (CV. Edu Akademi, 2026).

[44] Abdul Malik, "Perspektif Tafsir Konteks Aktual Ekonomi Qur'ani Dalam QS Al-Nisa'/4: 29," *Dirasat Islamiah: Jurnal Kajian Keislaman* 2, no. 1 (2021): 39–56.

law must address the question of whether the execution has resulted in a property right or a legitimate expectation worth protecting.[45] It is possible to undermine the protection of property and to encourage unjust enrichment if the recipient is allowed to continue to enjoy the benefits while denying the existence of an agreement on the sole basis that the documentation is inadequate. In this matter, the doctrine of part performance can serve the purpose of *hifz al-mal* by preventing the loss of value that has been lawfully delivered and promoting the creation of justice among the contracting parties.

This principle does not mean, however, that every action or payment is automatically evidence of a binding agreement. “The acts must be sufficiently and clearly connected to the alleged agreement and must be judged in light of the circumstances and the evidence available.” This principle is also supported by the concept of the *mu'athah* contract. Parties can express offers and acceptances through actions, such as handing over goods and making payments, without needing explicit verbal statements in transactions that are usually carried out this way.[46]

If the actions are carried out openly, in accordance with the customs, and with the knowledge of both parties that these actions are a method of concluding a transaction, they may indicate the existence of consent. The *mu'athah* contract is relevant to the doctrine of part performance, particularly concerning proof and interpretation. For example, the delivery, payment, receipt, or use of an object can signify both the existence and the content of the agreement. However, this doctrine must not be applied in such a way as to ignore statutory procedures, rights of third parties, or special provisions for certain types of transactions, e.g., transactions relating to land or other objects specially regulated by law.

The principle of la *dharar wa la dhirar* (no harm and no reciprocating harm), which is well known in the hadith literature, further buttresses the corrective function of the doctrine of part performance. Losses that could have been avoided can be caused by

[45] Arminsyah Arminsyah, “Maqasid Al-Shariah in Contemporary Legal Systems: An Analysis of Digital Rights and Privacy Protection,” *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 12, no. 2 (2025): 289–308, https://doi.org/10.32505/qadha.v12i2.11178.

[46] Baso Hamka, Abdul Wahid Haddade, and Abd. Rahman Ambo Masse, “Islamic Law Overview of Mu’athah Buying and Selling at STIBA Makassar,” *International Journal of Islamic Studies* 3, no. 2 (2023): 159–74, https://doi.org/10.24252/ijis.v3i2.43345.

formal defects.[47] The party that brings about the fulfilment of the obligation of the other party enjoys the fulfilment and then rejects its obligation. The rule is consistent with a legal interpretation that bars such conduct and, where appropriate, mandates the return of benefits or compensation for losses resulting therefrom.

At the same time, this principle must also be applied fairly. The court must not permit a party to allege an unproven agreement or to damage the other party by relying on the partial performance of an agreement. The assessment must therefore be based on established evidence, on the conduct of the parties, on the nature of the transaction and on the proportionality of the recovery sought. From the above explanation it can be seen that the *maqashid al-shariah, akad mu'athah*, and the principle of *la dharar wa la dhirar* provide a coherent Islamic legal basis for the main idea of this article, which is that actual performance and reasonable reliance should not be disregarded simply because the written form of an agreement is incomplete, especially when the other party has been aware of and has benefited from the performance. Such principles favor a limited and measured recognition of part performance as an exception to the principle of legal certainty rather than an unlimited deviation from it. In practice, judges will need to consider whether the parties' conduct objectively reflects consent, whether the performance is connected with the alleged agreement, whether the receiving party benefits, whether denial of the agreement will cause unfair harm, and whether the remedy sought is proportionate. This approach reconciles the corrective role of the part performance doctrine with the protection of property, fulfilment of agreements, and justice in Islamic economic transactions.

Conclusion

The conclusion of this study affirms that the doctrine of part performance possesses significant potential as a remedial mechanism within the Indonesian contract law framework, which remains predominantly constrained by the formalism of written evidence. Through a cross-jurisdictional analysis of England, the United States, India, Germany, and the Netherlands, it is evident that the protection of actual performance and substantial reliance has become a crucial element in the modern development of global

[47] Ichwan Ahnaz Alamudi et al., "Studi Qawaid Fiqhiyyah: Aspek Ibadat Dan Muamalat Dalam Kaidah La Dharara Wa La Dhirar," *Qonun Iqtishad EL Madani Journal* 4, no. 1 (2025): 21–28, https://doi.org/10.55438/jqim.v4i1.140.

contract law. By identifying the core principles of the part performance doctrine—such as good faith, contractual fairness, and the prohibition of abuse of rights—this research successfully formulated a conceptual framework suitable for the Indonesian normative context, particularly through the principles in Article 1338, paragraph (3), Article 1339, and Article 1365 of the Civil Code.

This research makes a significant scientific contribution by offering a model for integrating the doctrine of part performance into Indonesian contract law through a series of normative recommendations that can be operationalized by policymakers and courts. This model enriches the discourse of civil law and offers concrete solutions to the problem of the disparity between legal formalism and the reality of trust-based contractual relationships in contemporary business practices. Therefore, this research promotes normative legal reform in contracts, bolstering the performing party's position against administrative weaknesses.

Looking ahead, this research opens up avenues for further development, particularly in designing a more precise legal framework regarding proof of reliance in electronic contracts, as well as extending the principle of part performance to sectors such as e-commerce, construction, and franchise partnerships. Integration with interdisciplinary approaches, including legal and economic perspectives and social justice theory, is also an important direction for future research in refining the role of contract law as an instrument for the just distribution of benefits and responsibilities.

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The author declares that there is no conflict of interest in the publication of this article.

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The author used ChatGPT (OpenAI) and QuillBot to improve language, correct grammar, and enhance clarity and readability. These tools were used solely as writing aids. The author critically reviewed, edited, and verified all AI-assisted content and takes full responsibility for the accuracy, originality, and integrity of the final manuscript.

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