

Application of the Bona Fide Principle in the Implementation of the Binding Sale and Purchase Agreement Related to the Seller's Absence Before the Notary-PPAT

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Abstract. *The Sale and Purchase Agreement (in Indonesian Version: Perjanjian Pengikatan Jual Beli (PPJB)) is a crucial foundation before the formation of the Akta Jual Beli (AJB). However, in practice, serious obstacles often arise when the seller is unable to be present before the Notary-PPAT. This phenomenon not only hinders administrative processes but also potentially undermines the validity of the deed, increases the risk of breach of contract, and weakens the legal protection that the buyer should receive. In this complex situation, the principle of bona fide (itikad baik) becomes a fundamental pillar that demands honesty, transparency, and compliance with legal obligations from all parties involved. This study uses a doctrinal method to analyze legislation, legal doctrines, and evaluate how court decisions (case studies of Decision Number 28/Pdt/2022/PT SMG, Decision Number 20/Pdt.G/2023/PN.Tgt, and Decision Number 36/PDT/2020/PT.Smg) refer to the principle of bona fide in cases of seller absence in PPJB, and to what extent these decisions can serve as a basis or consideration in choosing dispute resolution mechanisms (litigation, mediation, or arbitration). In-depth analysis shows that judicial bodies consistently emphasize the importance of the principle of bona fide and deed formality. The main results of the analysis indicate that these decisions, by reinforcing the validity of the deed or highlighting violations of good faith, implicitly and explicitly encourage the parties to consider alternative dispute resolution methods such as mediation or arbitration as faster, more efficient efforts that potentially maintain good relations, while striving to reach agreements reflecting the principle of bona fide for legal certainty.*

Keywords: Agreement; Bona Fide Principle; Sale and Purchase.

1. INTRODUCTION

In the implementation of land sale and purchase transactions in Indonesia, the *Perjanjian Pengikatan Jual Beli* (PPJB) plays an important initial role before the creation of the *Akta Jual Beli* (AJB). The PPJB functions to provide a temporary legal bond between the seller and the buyer before a Notary or *Pejabat Pembuat Akta Tanah* (PPAT), especially when payment has not been fully completed or other conditions must be fulfilled. This aims to provide legal protection and certainty for the parties during the payment process and fulfillment of conditions before the issuance of the AJB.

The PPJB arises from the principle of freedom of contract in Book III of the *Kitab Undang-Undang Hukum Perdata*, which allows the parties to make agreements in any form and content as long as they do not conflict with applicable laws and regulations (Amasangsa & Priyanto, n.d.). In land sale and purchase practice, parties usually draft PPJB for several reasons, such as the buyer not yet able to pay in full, related documents of the object are incomplete, parties have not yet controlled the land object, or there are still disagreements on the price value of the sale object not yet agreed upon by both parties.

In practice, PPJB can be divided into two types: paid-in-full PPJB and installment or unpaid PPJB. In the paid-in-full type, the agreement includes a power of attorney clause where the buyer holds full authority ensuring their rights in the sale and purchase transaction. This right applies indefinitely and does not end even if one party dies; the right is transferred to the heirs. Meanwhile, the unpaid PPJB contains clauses that allow the sale to be canceled if certain conditions are not met, such as when the buyer decides not to continue the purchase (Prawira, Nugraha, & Sugiarto, 2023, p. 272).

A significant legal problem arises when the seller does not appear before the Notary-PPAT. Article 37 of Government Regulation Number 24 Year 1997 regarding Land Registration states that both parties, seller and buyer, must be present when the AJB is made. If the seller is absent, the AJB is considered legally invalid due to unfulfilled formal requirements (Winandra, 2021). The absence of the seller disrupts the AJB preparation process, increases the risk of default from the seller, and weakens the legal strength of the sale agreement made without the seller's presence (Justi, 2021).

Seller absence before the notary often results from various reasons such as busyness, distant location, or health issues. However, this should not reduce the seller's responsibility to ensure all information regarding the sale object is correctly conveyed to the buyer. When the seller is absent, there is a risk the buyer does not obtain a full understanding of the land object's condition, including potential legal or physical problems. Therefore, the application of the bona fide principle is very important to protect the buyer's interests and maintain transaction integrity (Azizah, 2024).

According to Ridwan Khairandy, the bona fide principle in the land sale agreement not only requires honesty and transparency from the start of negotiations, but also mandates direct presence or through valid power of attorney during the deed making process before the notary. Seller absence without valid reason may be considered a breach of the bona fide principle, potentially diminishing the evidentiary strength of the deed and leading to legal disputes between parties (Khairandy, 2017).

Seller absence before the notary can be addressed by granting power to the buyer to sign the AJB on behalf of the seller. However, this must always uphold the bona fide principle by transparently and honestly disclosing all relevant transaction information. Applying good faith not only protects the buyer's rights but also maintains legal process integrity in the implementation of the PPJB (Tanoto, 2022, pp. 1650–1662).

For example, in Decision Number 28/Pdt/2022/PT SMG, the main dispute issue was the seller's absence during the making of the AJB before the notary. The case emphasizes the critical importance of applying the good faith principle in the sale process, especially regarding the direct presence of parties when signing the deed. This study aims to analyze the application of the good faith principle in PPJB related to seller absence and how judicial practice handles such disputes, referring to Decision Number 28/Pdt/2022/PT SMG, Decision Number 20/Pdt.G/2023/PN.Tgt, and Decision Number

36/Pdt/2020/PT Smg. It is expected that the results provide in-depth insight into the application of the bona fide principle in land sale legal practices while ensuring transaction validity and legal protection of all parties.

The problems to be addressed in this paper are: 1) How is the bona fide principle applied in PPJB involving seller absence before the Notary-PPAT, and how do court decisions (case studies Decision Number 28/Pdt/2022/PT SMG, Decision Number 20/Pdt.G/2023/PN.Tgt, and Decision Number 36/Pdt/2020/PT Smg) relate to dispute resolution efforts? 2) To what extent can court decisions referring to the bona fide principle in cases of seller absence in PPJB serve as the basis or consideration in choosing dispute resolution mechanisms (litigation, mediation, or arbitration)?

2. RESEARCH METHODS

This study uses a doctrinal research method (normative legal research). This approach focuses on in-depth analysis of applicable legal norms, legal theories, and expert doctrines related to the bona fide principle, sale and purchase agreements, the role of Notary-PPAT, and dispute resolution mechanisms. This doctrinal analysis is enriched by studies of relevant court decisions as reflections of the law's application in practice. The research type is normative legal research aimed at reviewing and interpreting legislation, legal doctrines, and court decisions as legal materials analyzed systematically (Soekanto & Mamudji, 2011).

The data sources used are legal materials, including primary and secondary legal materials such as Decision Number 28/Pdt/2022/PT SMG, Decision Number 20/Pdt.G/2023/PN.Tgt, and Decision Number 36/PDT/2020/PT.Smg. Data collection techniques consist of library studies and documentation studies. Data is collected through comprehensive tracing of primary and secondary legal sources, including court decision documents. The data analysis technique employed is descriptive-analytical. The obtained data will be described, interpreted, and systematically linked, with emphasis on doctrinal analysis and interpretation of court decisions as a form of law application, to build coherent arguments to answer the research problem formulation (Widiarty, 2024, p. 128).

3. RESULTS AND DISCUSSION

3.1. Application of the Bona Fide Principle in the Binding Sale and Purchase Agreement Related to the Seller's Absence before the Notary – PPAT, Based on Decision Number 20 /Pdt.G/2023/PN.Tgt, Decision Number 28/Pdt/2022/PT SMG, and Decision Number 36/PDT/2020/PT.

The bona fide or good faith principle is a fundamental tenet rooted in Roman law, included in the process of the Land Sale and Purchase Binding Agreement (PPJB) and the Sale and Purchase Deed (AJB). This principle demands honesty, openness, mutual trust, and the obligation to act according to the norms of justice. The application of the bona fide principle in executing the PPJB is a crucial aspect in contract law, especially when one party, namely the seller, is absent before the notary. This principle plays a vital role in ensuring honesty and transparency in every transaction, as well as protecting the interests of the involved parties (Khalid, 2023, pp. 109–122).

In the realm of land transactions, the role of officials who draft the deed is very crucial. In Indonesian land law, the AJB is specifically created by the Land Deed Official (PPAT),

who has specific authority according to Government Regulation Number 37 of 1998 (Government Regulation Number 37 of 1998, Article 2). Although Notaries have general authority to create authentic deeds, PPAT is the authority designated for making deeds of transfer of land rights (Law No. 2 of 2014, Article 15 paragraph 1). In practice, notaries often also serve as PPAT, but the authority to draft the AJB is specific to PPAT. However, in initial stages such as the PPJB, notaries often facilitate the initial agreement. The absence of the seller during the reading and signing of the deed, either before the notary (for PPJB) or PPAT (for AJB), is often challenged when one of the essential parties, namely the seller, is unable to attend. This absence is not only a procedural issue but also deeply tests the essence of the bona fide principle itself (Government Regulation Number 24 of 1997, Article 37 paragraph 1).

The bona fide principle requires each party to act honestly and openly in exercising their rights and obligations under the agreement. In the context of the PPJB, if the seller is absent before the notary, this situation could pose a risk of breach unless balanced by reasonable actions, such as granting power of attorney to another party to represent them. The bona fide principle serves as a benchmark in assessing the honesty and fairness in executing a contract (Huala, 2024). Besides complementing the freedom of contract, this principle also functions as a legal protection for parties harmed by violations of honesty and fairness (Yuanitasari, 2020). In Indonesia's contract law system, the bona fide principle is mainly recognized in two forms: subjective and objective.

Subjective good faith refers to the sincere intent and honesty of the parties, expected to provide truthful and open information regarding their identities and conditions, so that no party is harmed by unclear or misleading information. According to Khalid (2023), subjective good faith is the foundation for trust between parties, which is crucial for maintaining the integrity of the agreement.

Conversely, objective good faith relates to the implementation of the contract in accordance with norms of decency and justice. The actions of the parties during contract execution must reflect fairness and should not harm any party. Hernoko (2020, p. 23) explains that good faith applies not only during negotiation or drafting but also throughout all stages of contract implementation. Therefore, applying the bona fide principle is essential to ensure all transactions are conducted fairly and meet the expectations of all involved parties (Arifin, 2020, p. 23).

The absence of the seller during the reading and signing of the deed has significant legal consequences and is strictly regulated under the Notary Position Law (UUJN) Article 16 paragraph (1), which mandates the notary to read the deed aloud and clearly in front of the parties present, witnessed by at least two witnesses, and the deed shall be signed immediately by the parties, witnesses, and notary (Law No. 2 of 2014, Article 16 paragraph 1). This provision aims to ensure the authenticity and full evidentiary power of the deed.

If one party, such as the seller, is absent during the reading and signing, the deed risks losing its status as an authentic deed and may be reclassified as a underhanded deed, which significantly reduces its evidentiary strength in law (Sani, 2023). This directly contradicts Law No. 16 paragraph (9) of the UUJN and also breaches the ethical code of the Indonesian Notary Association. Violating formal provisions can result in

administrative sanctions against the notary, ranging from written warnings to temporary dismissal, depending on the severity of the violation (Arimbi, 2022).

In the context of land sales practices in Indonesia, the transaction process must be recorded in an authentic deed drafted by authorized officials, namely Notaries or PPAT. If the seller does not appear before the notary, the drafted deed can be deemed invalid because it does not meet the formal requirements mandated by law. The AJB created without the presence of the seller, who is a crucial party in the transaction, can be considered invalid (Hutama, 2023, pp. 875–882).

The lack of bona fide, both in subjective and objective dimensions, can have serious implications for the validity of an agreement or deed. If the parties do not act honestly, openly, and fairly at every stage, the contract risks losing its strength. Violations of the bona fide principle can occur when one party deliberately hides important information, provides misleading information, fails to fulfill obligations without valid reasons, or acts in a way that unfairly harms the other party (Khairandy, 2008, p. 345).

In Indonesia's law of contracts, Article 1320 of the Civil Code stipulates four requirements for validity: consensus, capacity, a specific object, and a lawful cause (Civil Code, Article 1320). Although the physical absence of the seller does not directly violate any of these four requirements, the absence itself, especially if unaccompanied by valid reasons or adequate mitigation efforts, can strongly indicate violations of objective bona fide (reasonable and fair conduct) or subjective bona fide (sincere intention).

The parties involved in the deed creation process often face absence due to various reasons. A relevant example is when a bank only sends a copy of the deed to be signed without the presence before the notary. Such situations are clearly contrary to the provisions of the UUJN and the notary's code of ethics, thereby risking legal disputes over the deed's validity. Deeds prepared without following the formal procedures set out can be legally problematic and may be annulled by the courts (Sukma, 2025, pp. 18–24). To minimize this risk, notaries must ensure the physical presence of all parties during the reading and signing of the deed. If a party cannot be present for legitimate reasons, the absence must be explicitly recorded in the deed, as per Law No. 44 of the UUJN. This recording is vital to maintain document validity and to protect the legal rights and interests of all involved parties (Dwika, 2022).

Deeds declared void by law have very serious legal consequences. Primarily, the legally authentic status of the deed will diminish to a hand-written deed, losing its full evidentiary value in court. This results in legal uncertainty for buyers, sellers, and interested third parties. Furthermore, if the nullification causes losses to the parties, the notary may be held liable in civil law for damages, as regulated in Law No. 65 of the UUJN. If criminal elements are found during the process, such as forgery or fraud, the notary can also face criminal sanctions (Putri, 2021).

In applying the bona fide principle, all parties in the PPJB must act in good faith. The absence of the seller before the notary, especially if justified by valid reasons or without adequate mitigation, can reflect a lack of subjective or objective bona fide, potentially nullifying the agreement. Therefore, the bona fide principle should be a primary guideline for notaries and parties to prevent disputes and ensure legal certainty (Haryani, 2021).

The absence of the seller in signing the AJB before the notary raises complex legal issues that often lead to disputes. The main issue is the validity of the deed made without the

seller's presence, which results in the deed losing its status as an authentic act and falling to a underhanded deed, weakening its evidentiary power and creating legal uncertainty for buyers and third parties (Rahmadani & Putra, 2023, pp. 175–185). Non-attendance also poses a risk of breach, especially if the seller unilaterally refuses to fulfill the obligation to appear or sign. In such situations, buyers may suffer losses if they have already paid for or agreed upon the land rights that cannot be obtained. Disputes arising are typically filed in court as breaches, requests for deed annulment, or even lawsuits against notaries who are considered negligent (Kusumawardhani & Ary, 2022).

In Decisions No. 28/Pdt/2022/PT SMG, No. 20/Pdt.G/2023/PN.Tgt, and No. 36/PDT/2020/PT.Smg, the seller's absence is the main reason for the nullification of the sale and purchase deed. Courts view that the presence of parties is an absolute requirement in creating an authentic deed; violation of this leads to the deed being legally null and void (Decisions No. 28/Pdt/2022/PT SMG, No. 20/Pdt.G/2023/PN.Tgt, & No. 36/PDT/2020/PT).

Another common issue involves the responsibility of the notary. Notaries who prepare deeds without the presence of the seller may face administrative sanctions, civil, or even criminal penalties if they violate ethical codes or laws. Therefore, notaries are obligated to verify the presence of parties or at least obtain valid power of attorney from absent parties, documented and verified thoroughly to ensure validity and good faith (Dewi, 2023).

3.2. To what extent can court decisions referring to the principle of bona fide in cases of seller absence in the *Perjanjian Pengikatan Jual Beli* (PPJB) serve as a basis or consideration in the selection of dispute resolution mechanisms (litigation, mediation, or arbitration)? Based on Decision Number 28/Pdt/2022/PT SMG, Decision Number 20/Pdt.G/2023/PN.Tgt, and Decision Number 36/PDT/2020/PT.Smg.

The seller's absence during the signing of the PPJB before the notary raises complex legal issues that often result in disputes between parties. The main issue concerns the validity of the PPJB made without the seller's presence. Consequently, the deed loses its status as an authentic deed and becomes an underhand deed, which weakens its evidentiary strength before the law, causing legal uncertainty for buyers and interested third parties (Wulandari, 2025).

This indicates that legal formalities in making the deed are crucial to ensuring sufficient legal certainty. The seller's absence can also cause risks of breach of contract, especially if the seller later unilaterally refuses to appear or sign the deed. In such situations, the buyer may suffer losses related to previously agreed or paid land rights. Disputes typically arise in court as breach of contract claims, cancellation of the deed, or tort claims against notaries alleged to be negligent in their duties (Yolanda, 2022, pp. 67–75).

In the court decisions of this study's case, namely Decision Number 28/Pdt/2022/PT SMG, Decision Number 20/Pdt.G/2023/PN.Tgt, and Decision Number 36/PDT/2020/PT.Smg, there are variations in applying the principle of bona fide in land sale contract disputes involving the role of Notaries/PPAT and the issue of party presence. These three rulings provide a concrete picture of how bona fide functions both as protection for parties acting in good faith and as an ethical and legal boundary for Notaries/PPAT in carrying out their duties. Judges in each case have different

considerations but substantially base their judgment on assessing the honesty, compliance, and real will of the parties.

In Decision of the Tanah Grogot District Court (Number 20/Pdt.G/2023/PN Tgt), the problem arose because the seller did not appear before the PPAT after receiving full payment from the buyer. Consequently, the right transfer process could not be formally conducted. In this case, the bona fide principle was applied by the judge as the basis for protecting the buyer who had fulfilled their obligations fully. Although an authentic deed had not been made because the seller did not appear before the PPAT, the judge considered the contract's substance valid as it met the elements of agreement, capacity, specific object, and lawful cause as regulated in Article 1320 of the Civil Code. The judge used the bona fide principle to penetrate the formality of land law by allowing the buyer to act on behalf of the seller to complete the name transfer. This application shows that good faith can serve as a legal justification in conditions where the seller's absence hampers contractual execution (Decision Number 20/Pdt.G/2023/PN Tgt, 2023).

Conversely, in the Semarang High Court Decision No. 36/Pdt/2020/PT Smg, the bona fide principle was used to assess whether the parties fulfilled their obligations honestly and timely. The buyer who failed to pay off the land price was considered to violate the bona fide principle by not showing the intention to complete their obligations as agreed. The judge emphasized that the bona fide principle applies not only during the contract creation but also in its implementation. Therefore, a formally valid PPJB can lose its legal force if one party does not act in good faith during execution (Decision Number 36/PDT/2020/PT SMG, 2020).

In the Semarang High Court Decision No. 28/Pdt/2022/PT Smg, the bona fide principle functions as a standard for PPAT professionalism. PPAT Ahmad Fatkhur, S.H., M.Kn. was found to violate the principle of office by making a sale deed without the direct presence of the seller. Article 38 paragraph (1) of Government Regulation Number 24 of 1997 explicitly requires that land rights transfers are only valid if evidenced by a deed made by PPAT before the concerned parties (Government Regulation Number 24 of 1997, Article 38 paragraph 1). This act not only impaired the deed's validity but also contradicted the bona fide principle by ignoring honesty, openness, and the true intention of the parties. In this study's context, this ruling shows that the absence of the seller before the PPAT without proper power of attorney directly results in the nullification of the sale deed and ethical responsibility for the PPAT as a public official.

Based on these three decisions, it can be concluded that applying the bona fide principle has two main dimensions in the context of land sale binding agreements. First, the substantive dimension, where bona fide serves as the basis for judges to determine which party deserves protection. Buyers who have fulfilled their obligations fully are entitled to legal protection even if formal requirements are unmet (as in the Tanah Grogot case). Conversely, parties who fail contractual obligations are deemed to violate bona fide (as in the Semarang PPJB case). Second, the formal and ethical dimensions, where bona fide serves as a moral and professional standard for Notaries/PPAT to ensure the truth and presence of the parties. The absence of the seller without lawful basis not only violates formal rules but also reflects a breach of the bona fide principle that must be upheld by public officials in deed-making (as in the Batang case).

These three decisions strengthen the argument that the seller's absence before the Notary/PPAT is not merely administrative but concerns fulfilling the bona fide principle

as a fundamental principle of contract law and notarial law. In the Tanah Grogot case, judges accommodated the bona fide principle to protect buyers acting in good faith. In the Semarang PPJB case, bona fide became a contractual moral boundary assessing honesty in performance. Meanwhile, in the Batang case, bona fide became a professional ethical parameter for Notaries/PPAT, where violating the seller's direct presence causes the deed to lose legal force.

In dispute resolution, court decisions emphasizing the importance of party presence and the bona fide principle can be strong considerations in choosing settlement mechanisms. If the deed is legally nullified due to seller absence, disputes arise over proving land ownership or breach claims. Court rulings affirming deed nullification indicate litigation as a means to enforce formal and substantive truth. However, litigation tends to be time-consuming and costly (Haryani, 2021, pp. 56–65).

Therefore, alternative dispute resolution becomes very relevant. Arbitration, with its final and binding decision (*in kracht*), offers speed and legal certainty if parties agree to arbitration (Azislamadjido, 2022). Mediation, either court-facilitated or out-of-court, offers opportunities for amicable settlements that maintain good relationships, are cost and time efficient, and focus on mutually beneficial solutions (Yustitia, 2021). Court rulings emphasizing the bona fide principle and deed formality can form a basis for considering mediation or arbitration (Dewan Sengketa, 2020). Mediators help parties understand the legal implications of seller absence and court decisions, encouraging agreements reflecting bona fide, even if initial formalities were missed. If significant bona fide violations occur, mediation agreements may focus on compensation or other remedies, respecting fair settlement principles. Similarly, arbitrators can consider bona fide in judging the fairness of clauses agreed or losses resulting from seller absence (Nurfitriah, 2025).

Thus, enforcing the bona fide principle through adherence to formal deed procedures by Notaries/PPAT and understanding the legal impact of seller absence is crucial. Court decisions annulling deeds for formal violations affirm the importance of compliance with law and bona fide. In handling arising disputes, choosing between litigation and alternative resolution must consider the extent to which bona fide can be upheld in the process to achieve genuine legal certainty for all parties.

4. CONCLUSION

This study confirms that the principle of bona fide is a fundamental principle in binding land sale agreements (PPJB), requiring honesty, openness, and compliance with legal norms and deed formalities. The seller's absence before the Notary-PPAT without valid reason or verified power of attorney can be considered a violation of the bona fide principle, which impacts deed validity, ranging from losing its authentic status, becoming an underhand deed, to potentially being declared null and void. The study also emphasizes the fundamental role of Notaries and PPAT in ensuring deed validity. They are not only formal recorders but also bear responsibility for maintaining the integrity of every legal process. Creating a deed without the presence of the concerned parties potentially exposes Notaries-PPAT to administrative, civil, and even criminal sanctions according to UUJN and related regulations.

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