

Buyer's Legal Protection in Absolute Power of Attorney for Paid-Off Land

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Abstract: The use of absolute power of attorney (Kuasa Mutlak) in land Sale and Purchase Agreements (PPJB) still common in Indonesia, despite legal risks. Even after full payment, land ownership cannot be transferred without a Sale and Purchase Deed (AJB) and registration at the National Land Agency (BPN). While absolute power of attorney offers a quick solution, it violates contract principles and legal regulations, including the Minister of Home Affairs Instruction No. 14/1982. This study examines two key issues: (1) the legal consequences of absolute power of attorney in fully paid PPJBs, and (2) the mechanisms for protecting buyers in such cases. Through a normative analysis of court rulings and legal literature, the findings show that absolute power of attorney fails to secure buyer rights and often leads to disputes. To mitigate risks, stronger contractual clauses, stricter notarial oversight, and limited special power of attorney are proposed. The study recommends regulatory harmonization and public legal education to ensure safer and fairer land transactions.

Keywords: absolute power of attorney, binding sale, purchase agreement, land, buyer.

1. Introduction

Under Indonesian civil law, an engagement is the main basis of a legal relationship between two parties who promise each other to fulfil a certain obligation. Agreements are born from the free will of the parties and are reinforced by Article 1233 of the Civil Code, which states that obligations are born from agreements or laws. In practice, land sale and purchase is the most complex form of engagement and requires strong legal guarantees for the parties, especially the buyer.

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A Sale and Purchase Agreement (PPJB) is one of the instruments used when the buyer is unable to transfer the right directly through a Sale and Purchase Deed (AJB).¹ PPJB is obligatory, meaning that it is only civilly binding without resulting in the transfer of ownership rights.² In this situation, to ensure the exercise of the buyer's rights, absolute power of attorney is often used as an alternative security.

Absolute power of attorney in land transactions is given to ensure that buyers who have paid in full can still administer the transfer of rights without the presence of the seller. However, its use often causes legal problems because it contradicts the Minister of Home Affairs Instruction Number 14 of 1982, which explicitly prohibits the use of absolute power of attorney for the transfer of land rights.

This provision is based on concerns about the abuse of power granted absolutely, which has the potential to harm the authoriser and create legal uncertainty.³ In practice, however, this prohibition can actually harm buyers who have fulfilled all their obligations but have not yet obtained formal land rights. Notaries and Land Deed Officials (PPATs) are often in a dilemma between compliance with administrative requirements and protection of buyers.⁴ In this situation, absolute power of attorney is seen as a practical solution even though legally it creates a problematic gap.

¹ R. Ismala Dewi & Enny Koeswarni Dewa Ayu Sinddhisar Smaratungga, "Implementation of The Binding Agreement for The Sale and Purchase of Land Rights Based on a Notarial Deed in East Jakarta," *Legal Brief* 11, no. 3 (2022): 1387–98, <https://doi.org/10.35335/legal.xx.xx>.

² Ainayah, A., Lasmadi, S., & Rosmidah, R. (2022). *Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah Dalam Perjanjian Pengikatan Jual Beli (PPJB) Yang Mengandung Klausula Kuasa Mutlak. Selodang Mayang: Jurnal Ilmiah Badan Perencanaan Pembangunan Daerah Kabupaten Indragiri Hilir*, 8(3), 196–208.

³ Dinnar, F. T. (2017). *Pembuatan Akta Kuasa Mutlak Sebagai Tindak Lanjut Perjanjian Pengikatan Jual Beli Hak Atas Tanah Yang Dibuat Di Hadapan Notaris* (Tesis Magister, Universitas Islam Indonesia).

⁴ Siti Rahmah, Husni Jalil, and M. Yakub Aiyub Kadir, "Legal Dilemma for Land Deed Officials in Transferring Land Title Within Agrarian Reform in Indonesia: A Study in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 556–78, <https://doi.org/10.22373/sjhk.v8i1.16898>.

Several Supreme Court decisions show different approaches in viewing the validity of absolute power of attorney in PPJB. In Court Decisions Number 598 K/Pdt/2021 and 757 PK/Pdt/2018, the Supreme Court showed caution towards the legality of absolute power of attorney, especially when used for the transfer of land rights without the direct involvement of the seller.

Previous studies, such as by Yosita Erva Yanti⁵ and Clara Vania⁶, have discussed the legality and legal position of absolute power of attorney in PPJB. However, most of these studies still focus on formal juridical aspects and the responsibilities of notaries or PPATs, without focusing on substantial protection of buyers who have paid in full.

Ainayah's research highlights the protection of landowners, a PPJB that contains absolute power. This is in contrast to the approach of this research, which focuses more on the protection of the buyer as the more vulnerable party after the payment has been made. The use of absolute power of attorney in practice has also become a serious issue at the National Land Agency (BPN), as the process of land transfer based on absolute power of attorney is often rejected or its legality questioned. This creates a dualism between field practice and formal regulations.

The novelty of this research is the analysis of absolute power in the context of buyers who have completed payment but have not acquired their legal rights yet. By examining the comparison between administrative prohibition and protection of the buyer's civil rights, this research explores the tension between positive legal norms and practical needs. This approach also places the perspective of substantive justice as the basis for legal considerations, as formulated by Satjipto Rahardjo in his theory of legal protection as a means of defending the rights of aggrieved citizens.

From a functional perspective, absolute power of attorney is often used as a flexible legal tool to avoid administrative obstacles. However, this flexibility

⁵ Yanti, Y. E. (2024). *Peralihan Hak Atas Tanah Menggunakan Akta Kuasa Mutlak Sebagai Tindak Lanjut Perjanjian Pengikatan Jual Beli Tanah* (Tesis Magister, Universitas Sriwijaya).

⁶ Clara, V., & Djajaputra, G. (2018). Keabsahan Penggunaan Kuasa Mutlak Dalam Perjanjian Pengikatan Jual Beli (PPJB) Tanah Yang Dibuat Oleh Notaris. *Jurnal Hukum Adigama*, 1(2), 301–318. <https://journal.untar.ac.id/index.php/adigama/article/view/2747>

also carries the risk of abuse, especially when there is a conflict between the parties or when the power of attorney recipient acts outside the authority. Therefore, there is a need for a legal protection mechanism that can accommodate the needs of buyers who have completed their obligations, but have not obtained their rights yet. In this case, alternatives such as limited power of attorney with safeguard clauses are worth considering.

Within the framework of the theory of legal consequences according to Soeroso, absolute power of attorney as a form of legal action must be analysed based on the consequences arising from legal relations and the rights of the parties. This is in line with the theory that a legal action must produce legal certainty, not uncertainty. On the other hand, the provision of Article 1813 of the Civil Code on the expiration of power of attorney adds complexity. Many notaries add a waiver clause to this article to strengthen the absolute power of attorney. In fact, this action is potentially contrary to the principle of legal protection of the power of attorney grantor. Philosophically, the conflict between the prohibition of absolute power of attorney and the buyer's need for security of rights reflects the tension between the principles of formal justice and substantive justice. The law must provide a proportionate middle ground between the protection of certainty of rights and administrative compliance.

Several international studies on *irrevocable power of attorney* also show that in many countries, this type of power of attorney is only valid when granted with very strong reasons and accompanied by legal protection for the power of attorney grantor.⁷ This study therefore seeks to explore whether the use of irrevocable power of attorney as practised in Indonesia can meet the standards of fair legal protection, and how regulations should be transformed to ensure certainty and fairness in land transactions.

This study is also important in contributing to the development of notarial law and agrarian law in Indonesia, as well as in providing practical guidance for notaries and PPATs in handling similar cases. With the above background,

⁷ Kezia. (2018). Analisis Keabsahan Kuasa Mutlak Dalam Perjanjian Pengikatan Jual Beli (PPJB) Tanah Yang Dibuat Oleh Notaris (Tesis Magister, Universitas Islam Indonesia).

this study focuses on how the granting of absolute power of attorney in the PPJB of land that has been paid off can be constructed as a form of legal protection for buyers, as well as the extent to which regulations and field practices need to be harmonised to realise legal certainty and justice.

2. Methods

This research uses the normative juridical method, which is an approach that relies on the study of relevant laws and regulations, legal doctrines, and court decisions. The main focus of the research is an analysis of the validity and legal consequences of the use of absolute power of attorney in a fully paid-up land Sale and Purchase Agreement (PPJB), as well as the legal protection of the buyer in that context. The data used is secondary data, including primary legal materials such as the Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Principles, Minister of Home Affairs Instruction Number 14 of 1982, and court decisions. Secondary legal materials are obtained from relevant literature, scientific journals, and legal articles.

3. Results and Discussion

3.1 Legal Risks of Granting Absolute Power of Attorney in a Land Sale Agreement (PPJB) After Full Payment by the Buyer

The Sale and Purchase Binding Agreement (PPJB) is the initial agreement between the seller and the buyer before the Sale and Purchase Deed (AJB) is executed. In practice, PPJB is often accompanied by the granting of absolute power of attorney to the buyer to take care of the process of transferring the name of the land certificate.⁸ However, the use of this absolute power of attorney raises various legal implications, especially when the land has been paid in full by the buyer.

Absolute power of attorney is a grant of authority that cannot be revoked by the grantor. Absolute power of attorney is often used to facilitate the process

⁸ Mohammad Bagas Agy Pangestu and Ari Wahyudi Hertanto, "Legal Effects of Default on Land and Building Sale and Purchase Agreement in PPJB," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 8, no. 1 (2024): 343, <https://doi.org/10.58258/jisip.v8i1.6214>.

of transferring land rights without the presence of the seller. However, this is contrary to the principles of civil law which stipulate that the power of attorney can be revoked at any time by the grantor (Article 1813 of the Civil Code).⁹

Home Affairs Ministerial Instruction No. 14/1982 expressly prohibits the use of absolute power of attorney as the basis for transferring land rights. This prohibition aims to prevent abuse of power of attorney and protect the rights of landowners.¹⁰ Nevertheless, in practice, absolute power of attorney is still used for reasons of efficiency and ease of administration. The use of absolute power of attorney in a PPJB that has been paid in full by the buyer can lead to legal uncertainty. If the seller revokes the power of attorney or dies before the AJB is made, the buyer faces the risk of losing the right to the land despite having paid in full. This shows that the absolute power of attorney does not provide a strong legal guarantee for the buyer.

In District Court Decision Number 69/Pdt/G/2018/PN.Bna, the judge stated that the use of absolute power of attorney in the sale and purchase of land was invalid and cancelled because it was contrary to applicable regulations.¹¹ This decision confirms that absolute power of attorney cannot be used as the basis for the transfer of land rights. Notaries and Land Deed Officials (PPAT) have the responsibility to ensure that deeds are made in accordance with the laws and regulations. Making a deed based on absolute power of attorney that is contrary to the law may result in the deed being null and void and give rise to legal liability for the notary or PPAT.¹²

⁹ Utama, I. W., Karjogo, L., & Purwadi, H. (2021). Kekuatan Pembuktian Surat Kuasa Mutlak Dalam Jual Beli Hak Atas Tanah (Studi Putusan Nomor 69/PDT/G/2018/PN.BNA). *Prosiding Seminar Nasional Penelitian dan Pengabdian kepada Masyarakat*, 1(1), 1–10.

¹⁰ Masitah Pohan, "Absolute Power in the Dimensions of Indonesian Law," *International Journal Rglement & Society* 3, no. December (2022): 195–202, <http://jurnal.bundamedia grup.co.id/index.php/ijrs>.

¹¹ Muhammad Alfatahri, Azhari Yahya, and Muazzin, "The Responsibility of the Notary Regarding the Fulfillment of the Elements of Article 41 of the Notary Office Law," *Beijing Law Review* 13, no. 01 (2022): 81–96, <https://doi.org/10.4236/blr.2022.131005>.

¹² Hakim, A. R., & Ilham, M. F. (2023). Akibat Hukum Dan Pertanggungjawaban PPAT Terhadap Pembatalan Akta Jual Beli Dengan Penggunaan Kuasa Mutlak. *Yustitiabelen*, 9(2), 45–60. <https://doi.org/10.36563/yustitiabelen.v9i2.828>

Ainayah's research, the use of absolute power of attorney in the PPJB is considered as legal smuggling and null and void because it violates the validity of the agreement, namely the halal cause as stipulated in Article 1320 of the Civil Code.¹³ Although the buyer has paid in full, the use of absolute power of attorney does not provide legal certainty over land ownership. This is because absolute power of attorney cannot replace the legal title transfer process through AJB and registration at the National Land Agency (BPN).

In practice, the BPN often rejects title transfer applications based on absolute power of attorney because they contradict the applicable regulations. This rejection creates obstacles for the buyer in obtaining the right to the land that has been paid in full. The use of absolute power of attorney can also lead to legal disputes between the seller and the buyer, especially if there is a change of attitude from the seller or his heirs after the power of attorney is granted. This dispute can lead to a lengthy litigation process that is detrimental to both parties.

Indriani's research stated that the use of absolute power of attorney in PPJB can be justified if it fulfils certain conditions, such as the power of attorney is an integral part of the main agreement and all rights of the seller have been fulfilled. However, even if these conditions are met, the use of absolute power of attorney remains risky because it can conflict with regulations that prohibit the use of absolute power of attorney as the basis for transferring land rights. Therefore, caution is required in using absolute power of attorney in a PPJB.

A safer alternative is to use a special and limited power of attorney, and ensure that the title transfer process is carried out through AJB and registration at the BPN in accordance with applicable regulations. Notaries and PPATs should provide clear explanations to the parties on the risks of using absolute power of attorney and encourage the use of legally compliant

¹³ Ainayah, A., Lasmadi, S., & Rosmidah, R. (2022). Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah Dalam Perjanjian Pengikatan Jual Beli (PPJB) Yang Mengandung Klausula Kuasa Mutlak. *Selodang Mayang: Jurnal Ilmiah Badan Perencanaan Pembangunan Daerah Kabupaten Indragiri Hilir*, 8(3), 196–208. <https://doi.org/10.47521/selodangmayang.v8i3.265>

mechanisms for the transfer of land rights.¹⁴ Buyers should also be proactive in ensuring that the process of transferring land rights is carried out in accordance with legal provisions to avoid the risk of losing land rights that have been paid in full.

In the event of a dispute, the buyer can file a lawsuit with the court to claim his rights to the land that has been paid in full. However, this process is time-consuming and costly, and does not guarantee the desired outcome. Therefore, prevention through the use of mechanisms in accordance with the law is more advisable than dispute resolution through litigation.¹⁵ The government and relevant institutions need to provide socialization and education to the public regarding the dangers of using absolute power of attorney in PPJB and the importance of following the correct legal procedures in the transfer of land rights.

Regulatory reform is also needed to provide legal certainty and better protection for parties in land sale and purchase transactions. In conclusion, the use of absolute power of attorney in PPJB on land that has been paid in full by the buyer raises various legal consequences that are detrimental to the buyer. Therefore, it is recommended to use a mechanism that is in accordance with the law in the transfer of land rights to ensure legal certainty and protection for the parties.

3.2 Legal Protection Against Buyers' Misuse of Absolute Power of Attorney in Fully Paid Land Sale Agreements (PPJB)

In the practice of land sale and purchase in Indonesia, PPJB is often used as a preliminary agreement prior to the execution of the Sale and Purchase Deed (AJB). However, the use of absolute power of attorney in PPJB raises various

¹⁴ Putu Ayu et al., "Legal Position of Absolute Power of Attorney in The Transfer of Land Rights," *2nd International Community Service Seminar 2023* 2 (2023): 128–36.

¹⁵ Cut Nangrie and Sari Abuthalib, "Reconstruction Of Dispute Resolution Mechanism Through Arbitration In Civil Procedure Law," *INNOVATIVE: Journal Of Social Science Research* 4, no. 6 (2024): 2597–2612.

legal issues, especially regarding the protection of the rights of buyers who have paid in full.¹⁶

Absolute power of attorney is a grant of authority that cannot be revoked by the grantor. In the context of PPJB, absolute power of attorney is often used to facilitate the process of transferring land rights without the presence of the seller. However, this is contrary to the principles of civil law which stipulate that a power of attorney can be revoked at any time by the grantor (Article 1813 of the Civil Code).

Home Affairs Ministerial Instruction No. 14/1982 expressly prohibits the use of absolute power of attorney as the basis for transferring land rights.¹⁷ This prohibition aims to prevent abuse of power of attorney and protect the rights of landowners. Nevertheless, in practice, absolute power of attorney is still used for reasons of efficiency and ease of administration. The use of absolute power of attorney in a PPJB that has been paid in full by the buyer can lead to legal uncertainty. If the seller revokes the power of attorney or dies before the AJB is made, the buyer faces the risk of losing the right to the land despite having paid in full. This shows that absolute power of attorney does not provide a strong legal guarantee for the buyer. In District Court Decision Number 69/Pdt/G/2018/PN.Bna, the judge stated that the use of absolute power of attorney in the sale and purchase of land was invalid and cancelled because it was contrary to applicable regulations.¹⁸ This decision confirms that absolute power of attorney cannot be used as the basis for the transfer of land rights. Notaries and Land Deed Officials (PPAT) have the responsibility to ensure that deeds are made in accordance with the laws and regulations. Making a deed based on absolute power of attorney that is contrary to the law can result in the deed being null and void and give rise to legal liability for the notary or PPAT. In the research by Ainayah, the use of absolute power of attorney in PPJB is considered as legal smuggling and null and void because

¹⁶ Rahmawati, R. (2021). Kepastian Hukum Dalam Perjanjian Pengikatan Jual Beli Hak Atas Tanah Dengan Kuasa Mutlak. *Jurnal Dinamika Hukum*, 21(3), 456–470.

¹⁷ Pohan, "Absolute Power in the Dimensions of Indonesian Law."

¹⁸ Jastiana, D. (2019). Tinjauan Yuridis Terhadap Perjanjian Pengikatan Jual Beli (PPJB) Sebagai Perlindungan Hukum Bagi Pembeli Yang Telah Membayar Lunas (Studi Putusan Nomor 644 K/Pdt.Sus-Pailit/2017). Tesis Magister Kenotariatan, Universitas Gadjah Mada.

it violates the validity requirement of the agreement, namely the halal cause as stipulated in Article 1320 of the Civil Code.¹⁹

Although the buyer has paid in full, the use of absolute power of attorney does not provide legal certainty over land ownership. This is because absolute power of attorney cannot replace the legal transfer of rights through AJB and registration at the National Land Agency (BPN). In practice, the BPN often rejects name transfer applications based on absolute power of attorney because they contradict the prevailing regulations. This rejection creates obstacles for buyers in obtaining land rights that have been paid in full.

The use of absolute power of attorney can also lead to legal disputes between the seller and the buyer, especially if there is a change in attitude from the seller or his heirs after the power of attorney is granted. This dispute can lead to a lengthy litigation process that is detrimental to both parties. In a study by Indriani²⁰, it was stated that the use of absolute power of attorney in PPJB can be justified if it fulfils certain conditions, such as the power of attorney is an integral part of the main agreement and all rights of the seller have been fulfilled.

However, even if it fulfils these conditions, the use of absolute power of attorney remains risky as it may conflict with regulations that prohibit the use of absolute power of attorney as a basis for transferring land rights. Therefore, caution is required in using absolute power of attorney in a PPJB.²¹ A safer alternative is to use a special and limited power of attorney, and ensure that the title transfer process is carried out through AJB and registration at BPN in accordance with applicable regulations.

¹⁹ Ainayah, A., Lasmadi, S., & Rosmidah, R. (2022). Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah Dalam Perjanjian Pengikatan Jual Beli (PPJB) Yang Mengandung Klausula Kuasa Mutlak. *Selodang Mayang: Jurnal Ilmiah Badan Perencanaan Pembangunan Daerah Kabupaten Indragiri Hilir*, 8(3), 196–208. <https://doi.org/10.47521/selodangmayang.v8i3.265>

²⁰ Indriani, D., Saputri, B. A., Mahmudah, H., Prakoso, B., & Efendi, A. (2023). Kekuatan Hukum Surat Kuasa Mutlak Pada Perjanjian Pengikatan Jual Beli Kaitannya Dengan Jual Beli Tanah. *Kertha Semaya: Journal Ilmu Hukum*, 11(7), 1679–1690. <https://doi.org/10.24843/KS.2023.v11.i07.p17>

²¹ Taufik Hidayat Lubis and Rahmat Ramadhani, "The Legal Strength of the Deed of Power to Sell as the Basis for Transfer of Land Rights," *International Journal Reglement & Society (IJRS* 2, no. 3 (2021): 149–60, <https://doi.org/10.55357/ijrs.v2i3.143>.

Notaries and PPATs should provide clear explanations to the parties on the risks of using absolute power of attorney and encourage the use of legally compliant mechanisms for the transfer of land rights.²² Buyers should also be proactive in ensuring that the process of transferring land rights is carried out in accordance with legal provisions to avoid the risk of losing land rights that have been paid in full.

In the event of a dispute, the buyer can file a lawsuit with the court to claim his rights to the land that has been paid in full. However, this process is time-consuming and costly, and does not guarantee the desired outcome. Therefore, prevention through the use of mechanisms in accordance with the law is more advisable than dispute resolution through litigation. The government and relevant institutions need to provide socialization and education to the public regarding the dangers of using absolute power of attorney in PPJB and the importance of following the correct legal procedures in the transfer of land rights.²³

Regulatory reform is also needed to provide legal certainty and better protection for the parties in land sale and purchase transactions. In conclusion, the use of absolute power of attorney in PPJB on land that has been paid in full by the buyer raises various legal consequences that are detrimental to the buyer. Therefore, it is recommended to use mechanisms that are in accordance with the law in the transfer of land rights to ensure legal certainty and protection for the parties.

4. Conclusion

The use of an absolute power of attorney in land sale agreements (PPJB) that have been fully paid poses significant legal risks to buyers, as it does not guarantee the transfer of ownership rights and is susceptible to revocation or misuse. This practice is contrary to Article 1813 of the Indonesian Civil Code and Minister of Home Affairs Instruction No. 14 of 1982, making any legal

²² Ayu et al., "Legal Position of Absolute Power of Attorney in The Transfer of Land Rights."

²³ Lubis and Ramadhani, "The Legal Strength of the Deed of Power to Sell as the Basis for Transfer of Land Rights."

acts based on such authority potentially invalid. To provide better legal protection, several measures should be taken: restrict the use of powers of attorney to special powers with clear conditions, include stronger protection clauses in PPJBs, and ensure notaries or PPATs inform both parties of the legal implications. Litigation may be pursued as a final step if rights are violated. Harmonizing civil law with land administration regulations is necessary to avoid legal inconsistencies and improper practices. Furthermore, the government must enhance public awareness of lawful procedures in land transactions. Prioritizing legal certainty and the protection of buyers—often the more vulnerable party—is essential in drafting fair agreements and improving land law enforcement in Indonesia.

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