



Problematics of the Transfer of Land Ownership Based on Presidential Instruction Number 1 of 2022

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ABSTRACT

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The transfer of land rights through buying and selling is an event or legal action that results in the transfer of rights from one legal subject to another from the seller to the buyer. In order for the buyer to get legal certainty, the deed of sale and purchase made by PPAT needs to be registered with the National Land Agency so that a land certificate is issued as the strongest evidence. Since the issuance of Presidential Instruction Number 1 of 2022, the government has added a requirement in the registration of buying and selling, namely requiring the public to become active participants of BPJS Health which actually burdens the community itself. This type of research uses normative legal research. Using statutory and normative approaches and using secondary and primary legal materials. The results of the study indicate that the Presidential Instruction Number 1 of 2022 has violated Article 28 H of the 1945 Constitution of the Republic of Indonesia.

Keywords:

Transfer of Ownership of Land Rights, Buying and Selling

1. INTRODUCTION

Land is a valuable asset and has an important role in human life. This is because humans are very dependent on land to meet their needs, one of which is for housing. Land has an important role in human life because it functions as a social asset and state asset, the position of land as a social asset is a means of binding unity among the community, while the position of land as a state asset is one of the capital factors in development and land must be used and utilized social welfare in a fair and equitable manner and its sustainability must be maintained.

The position of land from an economic point of view, that land has high economic value, because land has permanent properties and can be used in the future. In line with economic growth, development and population density, the need for land is increasing. Land rights are rights that give authority to someone who has the right to use or take advantage of these rights (Ekawati Dian, et al, 2019). Developments in the land sector in Indonesia, especially in terms of the transfer of land rights, are developing very rapidly.

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Growing very fast in terms of the large number of transfers of the Land Rights.

There are many ways that can be done in terms of the Transfer of Land Rights, it could be for Sale and Purchase, Grants, Inheritance, Exchange, and so forth. The transfer of land rights is the transfer of a land right owned by a legal subject to another legal subject which is carried out in a systematic manner that has been regulated to achieve the desired legal certainty (Ayu Karisa Fania Aristiawati and Mukhanet Wahyu Nugroho, 2022).

Transfer of Land Rights, especially in terms of buying and selling, is regulated in Law no. 5 of 1960 concerning the Basic Agrarian Regulations in articles 20 to 27. Then apart from that, buying and selling a plot of land in Indonesia cannot be done haphazardly, like we buy food at places to eat, which we usually do by mentioning the menu. food then we pay for the food and only then can we eat the food.

Buying and selling of land by legal subjects usually occurs because of a need or just for long-term investment where the price of land will not decrease like transportation or electronic devices which tend to fall or precious metals which tend to fluctuate. The sale and purchase of a land must be carried out in various ways so that the land transaction can legally have occurred, for example related to land prices

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based on an agreement, related to taxes, related to the cost of transferring the name and so on.

In order for land rights to be transferred from the seller to the buyer, another legal action is needed, namely in the form of a juridical transfer or often referred to as the transfer of ownership names. Land rights are rights that give authority to someone who has the right to use or take advantage of the land (Mohammad Jeffry Maulid, 2017). Juridical surrender or better known as behind the name aims to strengthen the rights of the buyer as the new owner.

So that mistakes do not occur and reduce disputes because the transfer of land rights has been carried out legally. Namely evidence of valid land rights, land certificates are important evidence of ownership of a land right. This letter was issued by the Government through the Land Office/National Land Agency (Katah/BPN) (Dian Ekawati et al, 2018). After the previous agreement has been agreed upon, then the next event is to carry out the procedure for transferring the name, the majority of which is authorized by PPAT or Land Deed Making Officials in the local area.

The purpose behind the name is to strengthen the rights of the buyer as the new owner. So that mistakes do not occur and reduce disputes because the transfer of land rights has been carried out legally. To prove that the land rights are transferred, it must be proven by a deed drawn up by and before the PPAT, namely a deed of sale and purchase which will then be used as the basis for registration of changes to land registration data as referred to in the provisions of Article 95 paragraph 1 letter A Regulation of the Minister of Agrarian Affairs/Head of Agency National Land Affairs Number 3 of 1997.

As we know, the PPAT has an important role in land registration, namely assisting the Head of the Regency/City Land Office to carry out certain activities in land registration, thus to guarantee legal certainty over the occurrence of a transitional legal act and encumbrance by the parties on land must be made. with perfect evidence, namely made in an authentic deed. This is intended to guarantee rights and obligations as well as legal consequences for legal actions on land by the parties. Registration of the transfer of land rights is carried out by the PPAT, this is regulated in the provisions of Article 2 PP No. 24 of 2016, thus in the context of registering the transfer of rights, the sale and purchase of land rights or ownership rights to flats units must be proven by a deed made before the PPAT.

The sale and purchase deed drawn up before the PPAT aims to provide legal certainty to the right holder of a plot of land (buyer). If a deed of sale and purchase has been drawn up, the PPAT will register with the National Land Agency (hereinafter abbreviated as BPN) to obtain a land certificate which is important evidence of ownership of a land right. This letter is issued by the Government through the National Land Agency.

Early 2022, on January 6 2022, President Joko Widodo has signed a Presidential Instruction (Inpres), which basically instructs Ministries/Institutions, Regional Heads and Directors of the Health Social Security Organizing Agency and the National Social Security Council to take steps according to their respective duties, functions and authorities in order to optimize the National Health Insurance program (Parasanta Sibuea, 2022).

Starting March 1, 2022, the Government requires land sales and purchases to attach a BPJS Health membership card so that PPATs can register the Deed of Sale and Purchase with the BPN. The use of the BPJS Health Card as a condition for transferring land rights is one of the programs or instructions of the President of the Republic of Indonesia No. 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance Program and Letter of the Director General of PHPT No. HR.02/153-400/II/2022 regarding BPJS Health Participant Card as a condition in the application for registration services for the transfer of land rights or ownership rights to flats due to sale and purchase. Two rules set starting from March 1, 2022.

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The letter contains 3 points, one of which regulates the BPJS Health membership card as a requirement in the Application for Registration Services for Transfer of Land Rights or Property Rights to Flats Units due to Sale and Purchase. Provisions for the sale and purchase of land and houses apply to each BPJS Health class, starting from class 1, 2 to 3. In addition to buying land, the transfer of registration of flats or apartments must be accompanied by a photocopy of the BPJS Health membership card.

The government's goal is to oblige BPJS Health requirements for buying and selling land in order to optimize the implementation of the National Health Insurance (JKN) program. Apart from that, this is to increase access to quality health services, and to ensure the sustainability of the JKN program. However, the existence of this regulation actually raises pros and cons in the community, considering that the impact of the impression is quite broad. Presidential Instructions are considered irrelevant because of the heavy duties and obligations for Ministers, Heads of State Institutions, to Heads of Regions in ensuring the health of the people (Sandro Gatra, 2022). 4

Apart from that, the regulation seems to make it difficult for middle-class citizens who are not active to

become BPJS Health participants and for them to become private insurance participants. So that the government needs to optimize internal improvements first according to the regulations that will be appropriate and effective if the ministries and institutions concerned have integrated the new requirements (BPJS) into service standards. Thus the government needs to pay close attention to the effectiveness of enforcing BPJS Health as a condition for access to public services (Fitri Novia Heriani, 2022).

Based on the description as mentioned above, the writer can formulate the problems in the research, namely:

1. What is the procedure for registering the transfer of land rights after Presidential Instruction No. 1 of 2022?
2. Has the procedure for registering the transfer of land rights after Presidential Instruction Number 1 of 2022 met the principle of legal justice (gerechtigheit)?

2. RESEARCH METHOD

The research method used in conducting this research is the normative legal research method, namely where the study is based on legal materials from the literature (Efendi and Ibrahim, 2018). In this study the authors used a problem approach, namely the statutory and conceptual approach. The statutory approach is well reviewed and the statutory regulations are also related to the existing problems. While the conceptual approach is an approach in the science of law that exists and develops the thoughts and doctrines of scholars.

The legal materials used are primary legal materials and secondary legal materials. Primary legal material is the main legal material as an authoritative legal material which includes laws and regulations and all official documents containing legal provisions. While secondary legal materials are documents or legal materials that provide an explanation of primary legal materials such as books, articles, journals, research results, papers and others that are relevant to the issues to be discussed. After the legal materials have been collected, the legal materials are processed and analyzed by linking the legal materials with one another, then they are described and analyzed to answer problems which are then expected to add to the public's insight.

3. LITERATURE REVIEW

3.1. Legal certainty

Law and certainty are two things that are very difficult to separate. The law exists for the existence of certainty, the existence of certainty also makes the law more obeyed. To realize the existence of certainty, the law must be created first before the actions regulated in the law are carried out, so that people know what is allowed and what is not allowed. carried out and know the consequences if they act contrary to or against the law.

Certainty means "provisions; provisions" whereas if the word "certainty" is combined with the word "law" then it

becomes legal certainty, which is interpreted as a legal instrument of a country capable of guaranteeing the rights and obligations of every citizen. Law contains certainty when the law can cause human behavior, both individuals, groups and organizations to be bound and in the corridor that has been outlined by the rule of law itself.

It is this value of certainty that must exist in every law made so that it can provide a sense of justice and create order. Certainty is an inseparable feature of law, especially that which is positive law or statutory regulations or written law (Nyoman Gede Remaja, 2014).

Law without certainty value will lose meaning because it can no longer be used as a guideline for everyone's behavior. Certainty contains several meanings, including clarity, does not lead to multiple interpretations, does not cause contradictions, and can be implemented. Law must apply firmly in society, contains openness so that anyone can understand the meaning of a legal provision. One law with another cannot be contradictory so that it does not become a source of doubt.

Lon Fuller proposes 8 (eight) principles that must be fulfilled by law, which if not fulfilled, then the law will fail to be called law, or in other words there must be legal certainty. The eight principles are as follows: 1) A legal system consisting of regulations, not based on heretical decisions for certain matters; 2) These regulations are announced to the public; 3) Not retroactively applicable, because it will undermine integrity system; 4) Made in a formula that is understood by the public; 5) There must not be conflicting regulations; 6) Must not demand an action that exceeds what can be done; 7) Must not be changed frequently; 8) There must be conformity between regulations and day-to-day implementation.

Lon Fuller's opinion above can be said that there must be certainty between regulations and their implementation, thus entering the realm of action, behavior, and the factors that influence how positive law is implemented. Regarding legal certainty above, certainty can contain several meanings, namely clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented.

The law must apply firmly in society, contain openness so that anyone can understand the meaning of a legal provision. One law with another cannot be contradictory so that it does not become a source of doubt. Legal certainty is a legal instrument of a country that contains clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented, which is able to guarantee the rights and obligations of every citizen in accordance with the existing culture of society.

3.2. Transfer of land rights

Transfer of land rights through a registration of land rights, while land registration has an important meaning and has benefits in various aspects of people's lives. Today land

for the community has a multi-dimensional meaning, namely: economic, sociocultural, socioreligious, legal, political, defense, security and sovereignty of a country. The multi-dimensional meaning of land results in the implementation of land affairs becoming complex and a cross-sectoral problem, and from the point of view of individual rights, land ownership is a component of human rights (I Gusti Nyoman Guntur, 2018).

Transition is a movement from one place to another that is done intentionally because of an interest. While rights are something that is guaranteed by law that is owned by every legal subject in Indonesia and is a Normative element that functions as a guide to behavior and protects freedom of immunity and guarantees opportunities for humans to maintain their dignity and worth (Anis Widyawati, 2014), land rights are a right granted by the state to a legal subject to the land it owns where one of the rights to the land is property rights.

The transfer of land rights is one of the events and/or legal actions that result in the transfer of land rights from the old owner to the new owner of said land rights. This transition can occur because it is deliberately transferred, such as buying and selling, grants, and so on, while for transitions that occur accidentally due to death by the previous owner of the right, then the inheritance of the land rights is recorded to the rightful heirs (Sandra Dewi Atika, 2021).

By registering land rights or granting land rights to all rights subjects, they are also given the authority to use the land according to its designation. In this way, legal certainty guarantees will be created for the subject of rights in the ownership and use of the land. Land registration activities will produce evidence of land rights called certificates. With a land certificate, legal certainty regarding the type of rights over it, the subject of the rights, and the objects of the rights become real. Compared to other written evidence, a certificate is a strong proof of rights, that is, it must be considered true until proven otherwise in court with other evidence.

The transfer of land rights is a process of changing the previous holder of land rights to the current holder of land rights (Irvan et al., 2019). The transfer of land rights has 2 types of transfer of land rights, namely switching and being transferred (Santoso, 1991). Switching sees the change of land rights without any legal action being carried out by the owner. Like passing inheritance. The difference is transfer refers to the change in land rights through legal actions carried out by the owner, for example through buying and selling.

Land rights are someone who has the right to rule over a plot of land that can be granted to individuals/individuals, groups of people, or legal entities (Santoso, 1991; Sutedi, 2008). There are various types of land rights, such as property rights, usufructuary rights, building use rights, usufructuary rights, etc. (Irvan et al., 2019). Land

has a position to provide protection so that the land can be arranged neatly and can make people's lives more reasonable in accordance with the provisions in Article 27 paragraph (2) of the 1945 Constitution.

3.3. Health Social Security Organizing Agency

Every citizen has the right to obtain social security to meet the basic needs of a prosperous, just and prosperous life as stipulated in Law no. 40 of 2004 concerning the National Social Security System, as well as in Perpres no. 12 of 2013 concerning Health Insurance, it is stated that Health is in the form of health protection guarantees so that participants get the benefits of health care and protection in meeting basic health needs that are given to everyone who has paid their contributions (Vandawati Zahry et al, 2021).

The Social Security Administering Body or BPJS is an agency of the government's Social Security Administering Body formed by the government to provide health insurance for the public and all Indonesian citizens in stages. This is what is meant by the definition of BPJS for health. BPJS for Health will be a health solution for the community because of its various benefits and facilities. The benefits obtained by BPJS health participants include prevention and treatment services including drug services and consumable medical materials according to medical needs.

BPJS Health is the organizer of the social security program in the health sector which is one of the five programs in the National Social Security System (SJSN), namely Health Insurance, Work Accident Insurance, Old Age Insurance, Pension Insurance, and Death Insurance as stated in the Law Number 40 of 2004 concerning the National Social Security System.

BPJS Health also carries out a governing function in the field of public services, which previously were partly run by state-owned enterprises and partly by government agencies. It is the combination of the two functions of business entities and government functions that is currently reflected in the status of BPJS Health as a public legal entity that carries out public service functions in the field of administering national social security.

BPJS Health was also formed with initial capital financed from the APBN and then has its own wealth which includes BPJS Health assets and social security fund assets from sources as determined in law. The authority of BPJS Health covers the entire territory of the Republic of Indonesia and can represent Indonesia on behalf of the country in relations with international bodies. This authority is a distinct characteristic that is different from legal entities and other state institutions.

Therefore, BPJS Health is a form of State Owned Legal Entity (BHMN), so that the implementation of its duties is accountable to the President as the head of state government. The legal basis for the BPJS is Law Number 40 of 2004 concerning the National Social Security System and Law Number 24 of 2011 concerning the Social Security

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Administration Agency (hereinafter abbreviated as the BPJS Law).

4. DISCUSSION

4.1. Procedure for Registration of Transfer of Land Rights After Presidential Instruction No. 1 of 2022

Transfer of land rights due to buying and selling where the land seller sells the land he owns to the buyer who will buy the land with the interests of each party behind it. After the parties agree to carry out the sale and purchase of the land which is the object of the sale and purchase, the next step is for the buyer to receive a land certificate as well as a PBB SPPT for the land from the seller to transfer the name or transfer of land rights. The land buyers will usually authorize the transfer of the name to the local Notary/PPAT to take care of the transfer of the name.

In an activity of transferring land rights, it is often done by transferring rights through buying and selling activities. The definition of buying and selling land itself is a legal act of surrendering land forever from the seller to the buyer and the seller receives a payment of a sum of money as one of the means of exchange (RD Soepomo, 1994). The term sale and purchase comes from the translation of the word contract of sale which is based on the provisions of Article 1457 of the Civil Code which is meant by sale and purchase, namely an agreement in which one party binds himself to surrender rights to an item and the other party pays the price that has been promised.

Setiawan revealed that in customary law, buying and selling events are land transactions, similar to reciprocal agreements that are real in the field of law, are cash in nature and have land objects (Waskito and Hadi Arnowo, 2019). According to Article 1458 of the Civil Code, buying and selling is considered to have taken place between the two parties, as soon as the people reach an agreement regarding the goods and the price, even though the goods have not been delivered and the price has not been paid. The legal requirements of an agreement are: a). Agree those who bind themselves; b). The ability to make an engagement; c). A certain thing; d). A lawful reason.

In order to guarantee legal certainty in buying and selling land, the transfer of land rights through buying and selling needs to be registered at the State Land Agency (BPN) in order to obtain valid evidence. However, it can only be registered if it is proven by a deed drawn up by the Land Deed Making Officer (PPAT) (J. Andy Hartanto, 2014). Without a deed made by the PPAT, the transfer of land rights is not considered valid because it is not in accordance with applicable regulations.

The process of transferring land rights at least follows the applicable procedures and is administratively normative in nature which aims to provide legal certainty. So in terms of procedure, it is "guidelines that contain operational procedures that exist within an organization that

are used to ensure that all decisions and actions, as well as the use of process facilities carried out by people within the organization who are members of the organization run effectively and efficiently." , consistent, standard and systematic" (Rudi M Tambunan, 2013)

Changes related to the procedure for transferring land rights have occurred since January 6, 2022, where the government issued Presidential Instruction Number 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance Program (which will hereinafter be referred to as Presidential Instruction Number 1 of 2022). The provisions of Article 17 of Presidential Instruction Number 1 of 2022 state that "the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency must ensure that the application for registration of the transfer of land rights because buying and selling is an active participant in the National Health Insurance program". As for the intent of the norms in this article, the government requires that buying and selling land must attach a BPJS Health membership card which will be implemented starting March 1, 2022. Following up on the Presidential Instruction, on February 14, 2022 the Ministry of Art/BPN issued Circular Letter Number HR.02/153-400/ II/2022 and Circular Letter Number HR.02/164-400/II/2022.

The letter contains 3 points, one of which regulates the BPJS Health membership card as a requirement in the Application for Registration Services for Transfer of Land Rights or Property Rights to Flats Units due to Sale and Purchase. Provisions for the sale and purchase of land and houses apply to each BPJS Health class, starting from class 1, 2 to 3. In addition to buying land, the transfer of registration of flats or apartments must be accompanied by a photocopy of the BPJS Health membership card. Obligations made by the government give rise to various cotras that link BPJS Health membership cards as a condition for transferring land rights. Additional conditions will affect harmonization with other regulations, this condition is not taken into account by the government. Behind this policy, of course, the government has a goal, but this must still be taken into account because unpopular policies result in reduced public trust in the government, because these policies create uncertainty even though they have good intentions.

The government's goal is to require the BPJS Health membership card as a condition for buying and selling land in order to optimize the implementation of the National Health Insurance program (hereinafter abbreviated as JKN). Based on the explanation from the Special Staff as well as the Spokesperson for the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), Teuku Taufiqulhadi gave an explanation regarding the reasons for enforcing the requirement to have a BPJS Health membership card in land buying and selling transactions. Furthermore, it was said that the policy was enacted as an effort by the state to protect the health of its citizens.

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However, according to the author, this policy is premature because there is no correlation between BPJS Health membership cards and transactions related to the transfer of land rights. Even if it is the government's effort to optimize BPJS, then there are other ways that can be done.

On the other hand, the government has a plan to provide health insurance for the Indonesian people as a whole, because the position of BPJS is a mandatory requirement as regulated in the law. Implementation of the enactment of the BPJS Health membership card as a condition for buying land and transferring the registration of flats or apartments must be accompanied by a photocopy of the BPJS Health membership card.

The decision made by the government to increase access to quality health services, and to ensure the sustainability of the JKN program, was made with the illogicality of this policy. The terms of sale and purchase that must be met are:

1. Application form;
2. Photocopy of the identity of the applicant, the parties in the form of Identity Card and Family Card, and power of attorney if authorized;
3. Power of Attorney if authorized;
4. Photocopy of Deed of Establishment and Ratification of Legal Entities, for legal entities;
5. Original certificate;
6. Deed of sale and purchase from the PPAT;
7. Permit for Transfer of Rights, if the certificate or decree states that it must obtain permission from the competent authority;
8. Photocopy of SPPT PBB for the current year;
9. Validated proof of taxation;
10. Photocopy of the applicant's or buyer's BPJS card.

The addition of the BPJS Health card requirements is only for transitional services due to buying and selling. In addition, the membership requirements for the National Health Insurance program are imposed on the beneficiary or the purchaser, regardless of BPJS Health class. BPJS Health membership requirements in the sale and purchase of land are also imposed on individual applicants who are Indonesian citizens or foreign nationals who work in Indonesia for no later than 6 months. If the applicant is a legal entity, participation is shown from the appointed directors or management representatives. However, if at the time of submitting the application file you cannot attach a BPJS card, then the file can still be processed but at the time of taking the results it must show the membership status of the National Health Insurance.

BPJS Health ownership is currently increasingly important in the midst of the Covid-19 pandemic. "So when you are sick, then you rush to make BPJS. Sometimes too late. Then don't do that again. Moreover, we are currently facing a very serious national problem, namely Covid-19," this provision applies to each class of BPJS Health starting from

class 1, 2 to 3. This provision is stated in Presidential Instruction (Inpres) Number 1 of 2022 regarding the Optimization of the Implementation of the National Health Insurance Program. In Presidential Instruction 1/2022 various ministries are instructed to take steps according to their respective duties, functions and authorities in order to optimize the National Health Insurance program, including the Ministry of ATR/BPN. "The Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency to ensure the registration of the transfer of land rights due to buying and selling is an active participant in the National Health Insurance program," reads the Presidential Instruction number 18.

However, the additional requirements for land sale and purchase registration have the potential to burden the parties in the transfer of land rights. Moreover, those who have had difficulty accessing BPJS Health services. The policy is irrelevant and has the potential to violate the community's right to obtain public services. Human rights violations occurred because Presidential Instruction No. 1 of 2022 required that every citizen who wants to receive services from the government must first become an active member of the Social Security Administration Agency (BPJS Health).

The purpose of active BPJS Health participants is participants who have no arrears in paying their contributions every month. So that if the citizen is in arrears in paying BPJS Health contributions, then he may not get proper public services. Apart from that, the BPJS Health registration process is required to be registered according to the number of families on the Family Card according to BPJS Health regulations Number 4 of 2014 which states that all Indonesian citizens must register themselves and family members in 1 family card to become BPJS Health participants.

Despite the difficult economic conditions due to the COVID-19 pandemic, many residents have had their finances disrupted, which has affected their ability to pay, including paying BPJS Health contributions. It can be concluded that the existence of Presidential Instruction Number 1 of 2022 indirectly encourages Indonesian Citizens and Foreign Citizens who live in Indonesia for at least 6 months to become BPJS Health participants. This violates Article 28 H of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits. However, the BPJS Health policy, which is used as a requirement for various public service matters, has the potential to cause confusion and make it difficult for the people. The policy is considered not in accordance with various registration and identification activities of public service affairs. The policy seems to have an element of coercion in achieving a goal.

In constitutional philosophy, land ownership and health social security are people's rights that must be protected by the state. in carrying out the obligation to protect

people's rights, the state may not suppress other people's rights. Government policies related to the public, should be dedicated to the benefit and certainty of its people, so it is better to review regulatory products that are issued or will be issued, especially with regard to the BPJS Health membership card as a condition in transferring land rights, because this is burdensome for people who do not have it, causing obstacles at the level of implementation and implications for uncertainty for the community.

4.2. Registration of Transfer of Land Rights After Presidential Instruction No. 1 of 2022 Has Fulfilled the Principles of Legal Justice

Regulations determined by the minister, the head of land can register the transfer of rights over land parcels of ownership, which is carried out between individual Indonesian citizens as evidenced by a deed drawn up by the PPAT, but according to the head of the land office the level of truth is Policy on BPJS participation as a condition the transfer of land rights is considered as an exploitative policy or more coercive for all Indonesian people deemed sufficient to register.

Based on the provisions of Article 37 of Government Regulation Number 24 of 1997 as amended by Government Regulation Number 18 of 2020 concerning Land Registration, it indicates that for the purposes of registering the transfer of rights to the district/city land office, the sale and purchase of land rights must be evidenced by a PPAT deed. In certain circumstances, the head of the district/city land office can register the transfer of rights over land parcels of private ownership, the parties (sellers and buyers) are individual Indonesian citizens as evidenced by a deed drawn up by the PPAT, but the validity is considered sufficient to register the transfer of rights. concerned (Sutedi, Adrian, 2013).

The PPAT must make a sale and purchase deed not only for land rights that have been registered (certified) or ownership rights for flats, but also for land rights that have not been registered (not certified) at the district/city land office. If the sale and purchase of land rights has not been registered (not certified) and the purpose is not to be registered at the district/city land office, then the sale and purchase can be made with a private deed (not by the PPAT). In practice, the sale and purchase of land rights is made with a private deed by the parties witnessed by the village head or local sub-district head on sufficient stamp paper.

With the deed of sale and purchase made, at that time there had been a transfer of rights from the rights holder as the seller to another party as the buyer. Sale and purchase of land that has not been registered (not yet certified and the aim is to be registered with the district/city land office through sporadic land registration, the sale and purchase must be made with a PPAT deed. (not yet certified) that is not made with a PPAT deed, then the application for land registration in land registration is sporadically rejected by the head of the

district/city land office, then a sale and purchase is carried out again by the seller and the buyer which is made with a PPAT deed (Sahat HMT Sinaga, 2014).

The government in order to optimize the implementation of the National Health Insurance program, increase access to quality health services, and to ensure the sustainability of the National Health Insurance program, hereby issues the Presidential Instruction of the Republic of Indonesia Number 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance Program. The 17th dictum states that "the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency is to ensure that applicants for registration of transfer of land rights due to sale and purchase are active participants in the National Health Insurance program".

Based on the 17th dictum of Presidential Instruction number 1 of 2022, a Letter from the Director General of PHPT of the Ministry of ATR/BPN Number.02/153-400/II/2022 was issued which states that every request for registration services for the transfer of land rights or ownership rights or flats due to sale purchase must be accompanied by a photocopy of the BPJS Health Participant Card. The impact of this rule is for those who want to change their name in the buying and selling process, Buyers who were not previously members or did not have a BPJS Health Card are forced to register themselves to become active participants or just to get a BPJS Health card solely in order to do so. name change at the local land office.

The BPJS Health Card requirements are only intended for land buyers because they are considered capable of paying BPJS contributions. However, in practice, not all land buyers can afford to pay these fees. Because the payment of BPJS contributions is not based on an individual person but based on the number of persons on the Family Card, which could include a father, mother, children, siblings, and others.

Indonesia as a state based on law is reflected in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, so all aspects in the field of society, nationality and statehood including government must always be based on law. According to Gustav Radbruch, law must contain 3 (three) identity values, namely as follows: 1). Principle of Legal Certainty (*rechtmatigheid*); 2) Principle of Legal Justice (*gerechtigheit*) and 3). The principle of legal expediency (*zwech matigheid* or *doematigheid* or utility).

The Presidential Decree governing the transfer of land rights due to buying and selling, in this case the Buyer is required to be an active participant in the BPJS Health Card, does not fulfill the principles of legal justice. As explained above, the provisions that apply to BPJS Health regulations, if one family member decides to register for BPJS Health, then all family members must be registered as well.

So that land buyers who do not have a BPJS Health card must be prepared to pay the monthly contributions for all

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family members who are registered according to the amount on the Family Card because being a BPJS participant cannot register alone but all family members who are registered on the Family Card must also also registered. Within the BPJS Health service there are service classes which of course have different fees to pay. The BPJS Health premium fee that applies from January 2021 according to Presidential Decree Number 64 of 2020, namely:

1. Class I Health BPJS services per person pay Rp. 150,000
2. BPJS Health Class II service per person pays contributions in the amount of IDR 100,000
3. Class III Health BPJS services per person pay a fee of Rp. 42,000 (Rp. 35,000 paid independently and Rp. 7,000 subsidized by the government).

The public is required to pay BPJS Health contributions no later than the 10th of each month. If it exceeds that date, based on the attachment on the official BPJS Health website, no fine will be issued. However, participant status will be deactivated immediately after the next 1 (one) month. The BPJS Health Card can be reactivated if participants pay contributions that are in arrears with a record of a maximum of 24 months and must pay contributions. If within 45 days after the participation is reactivated and the participant is hospitalized, then a service fine must be paid. The amount of the fine that must be borne by the participant is 5% (five percent) of the initial diagnosis fee during inpatient services multiplied by the amount in arrears. The provision of late payment fines for BPJS Health is that the number of months in arrears is a maximum of 12 months and the maximum fine is Rp. 30,000,000 (thirty million rupiah).

In the opinion of Ali Ghufon Mukti (Director of BPJS Health) said that the policies implemented by the ATR/BPN Ministry and other Ministries/Agencies may seem unrelated. However, this is actually closely related to the government's commitment to ensure that all levels of society have health insurance, especially the upper middle class who have not registered for the JKN program. "The important point is that JKN-KIS is a joint program, so it's not just for certain groups of people. So this requires participation from all parties, not just from the government or participants. Togetherness is the main key of this program," he explained. Because of this, the government issued instructions to ATR/BPN and K/L to socialize JKN-KIS to all levels of society so that everyone is guaranteed to be protected. "Respect for community rights and obligations is the practice of the fourth Pancasila precept concerning democracy. Democracy is a form of government where all citizens have equal rights in making decisions that can change their lives. Democracy allows citizens to participate either directly or through representatives in the formulation, development and making of law.

Freedom of democracy, in this case having the right to make decisions whether or not to participate in the BPJS,

is the right of Indonesian citizens. It is further strengthened in Article 5 paragraphs (2) and (3) which states that every person has the right to independently and responsibly determine for himself the health services needed for himself. So the presidential instruction mentioned above is not in accordance with the law on health. Because based on Article 5 of the Health Law, citizens are free to choose which health service they will choose as their health responsibility. So, people are free to use BPJS health services or other commercial health services that are now mushrooming in Indonesia.

So if according to the Director of BPJS Health who says BPJS Health as a condition for the transfer of rights is meant to ensure public health protection it is not relatable to the BPJS concept itself, namely the concept of responsibility that occurs between the insurer (BPJS Health) and the insured (Participants). So that presidential instruction number 1 of 2022 indirectly forces Indonesian citizens to take part in BPJS and this is contrary to the objectives of the health law.

Health insurance should be free of charge because it is the state's obligation to implement health insurance according to the legislation above. Therefore, there is no difference in class membership and treatment of JKN patients. If the state objects to the waiver of health insurance, the state is obliged to carry out subsidies by uniforming the amount of contributions (single tariff). Not a few people have participated in commercial insurance that covers their health needs, due to the limited benefits offered from JKN.

4. CONCLUSION

1. A policy implemented by the government that adds the obligation to own a BJS Health membership card in the procedure for registering the transfer of land rights to the public. And related to the qualifications of active BPJS Health participants are participants who have no arrears in payment of contributions every month. Based on this policy, these requirements apply to both Indonesian Citizens and Foreign Citizens who work in Indonesia for at least 6 months. However, in reality the imposition of these requirements actually burdens and even burdens the community and is irrelevant, this is because it violates Article 28 H of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to get special facilities and treatment to obtain the same opportunities and benefits. This is because. Whereas based on Presidential Instruction Number 1 of 2022 concerning Optimization of the implementation of the National Health Insurance specifically addressed to the Ministry of ATR/BPN it is stated that BPJS Health as a condition for disputes over land or apartment rights, is a policy that creates uncertainty for the community and this policy legally creates uselessness.
2. The BPJS Health Card Requirement Policy is only intended for land buyers because they are considered capable of paying BPJS contributions. However, in

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practice, not all land buyers can afford to pay these fees. Because the payment of BPJS contributions is not based on individuals but based on the number of persons on the Family Card. Because based on Article 5 of the Health Law, citizens are free to choose which health service they will choose as their health responsibility. So, people are free to use BPJS health services or other commercial health services that are now mushrooming in Indonesia. So that the implementation of policies regulated in Presidential Instruction No. 1 of 2022 does not have a side of justice.

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