



Controversy on Legal Regulation and Public Interest in the National Health Insurance Program: Legal Assurance Perspective

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Abstract. Public service is an obligation owned by the government and the public has the right to use all public services to support their lives. However, with the issuance of Presidential Instruction No. 1 of 2022 has brought difficulties to the public. This study examines the regulatory and public interest controversies related to the national health insurance program. This study is a statutory study. The results of the study indicate that the controversy over Presidential Instruction Number 1 of 2022 which contains rules or provisions that require every citizen to be a participant in the National Health Insurance (JKN) or BPJS Kesehatan can actively enjoy or obtain public services. In the context of this regulation, it provides limitations on people who are not actively participating in the National Health Insurance (JKN) or BPJS Health which leads to injustice and legal uncertainty that occurs. In addition, in accordance with the laws and regulations related to public services, it is stated that nothing should prevent citizens from enjoying or getting public services in accordance with those provided by the government.

Keywords: National Health Insurance Program · Public Interest · Government Obligations · Legal Assurance

1 Introduction

On January 6, 2022, after the COVID-19 pandemic began to decline which hit all aspects of the lives of the Indonesian people [1], especially the psychological, social and of course economic, which along with the decline in the COVID-19 pandemic, the people's economy slowly began to rise [2], but suddenly the people were surprised and at the same time returned with the issuance of Presidential Instruction No. 1 of 2022.

The reason is that in the Presidential Instruction there are several rules or provisions which basically oblige every Indonesian citizen to become a Participant of the National Health Insurance (JKN) or the Health Social Security Administering Body (hereinafter referred to as BPJS Kesehatan) which is active as a condition for obtaining several public services. Based on Presidential Instruction No. 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program, there are 8 (eight) public services that will require proof of participation in the National Health Insurance (JKN) active BPJS Health, namely the management of buying and selling land; Hajj

and Umrah services; Application for people's business loans (KUR); Application for a driver's license and including other administration; Application for administration to the Ministry of Law and Human Rights; Registration of prospective migrant workers; Application for business permits and formal and non-formal education services [3, 4].

The basic reasons and considerations for the issuance of Presidential Instruction No. 1 of 2022 are in the context of optimizing the implementation of the National Health Insurance program, increasing access to quality health services, and ensuring the sustainability of the National Health Insurance program.

Another reason, based on a statement from the President Director of BPJS Kesehatan, Ghufron Mukti, is that the Presidential Instruction was issued in order to encourage the achievement of the National Health Insurance (JKN) or BPJS Health membership coverage, which is currently 86% to 98% in 2024 of the total Indonesian people (Universal Health Coverage/UHC) as the target of the National Medium-Term Development Plan (hereinafter abbreviated as RPJMN) [5].

Meanwhile, a social insurance expert who is also the Chairman of the National Social Security Council (hereinafter referred to as DJSN) for the 2011–2015 period, Chazali Situmorang explained that, based on Law No. 40 of 2004, states that participation in the National Health Insurance (JKN) BPJS Health is mandatory but is carried out in stages. Optimization efforts are indeed needed because the coverage of participation, which now reaches 86% of the total population, tends to be stagnant. In addition, more and more participants are inactive because they are in arrears in payment of dues [6].

The polemics and reactions regarding the rules and regulations that require all Indonesians to become active participants of the National Health Insurance (JKN) or BPJS Health as a condition for obtaining several public services have received attention from various groups, including the public, people's representatives, government institutions, consumers, observers, and legal academics. The wider community considers that the momentum for the issuance of the Presidential Instruction is not right. This is because people's economic situations and conditions have only slowly begun to recover from the downturn due to the COVID-19 pandemic but have been given another "burden" by the government related to the controversial rules and provisions contained in Presidential Instruction No. 1 of 2022.

Presidential Instruction No. 1 of 2022 which must require proof of participation in the National Health Insurance (JKN) or BPJS Health as an active participant also has no relationship at all with the National Health Insurance (JKN) or BPJS Health, there are contradictions and expansion of the scope of sanctions and meanings or intentions that are different from the provisions of the relevant laws and regulations that have set it up separately, namely the provisions of Presidential Regulation no. 82 of 2018, Presidential Regulation No. 64 of 2018 and Presidential Regulation No. 86 of 2013 with Presidential Instruction No. 1 of 2022, so that if the implementation of the Presidential Instruction is continued, it will have the potential for injustice and legal uncertainty for every citizen.

Meanwhile, in terms of systems and services, the National Health Insurance (JKN) BPJS Health is still not optimal and there are still problems that require evaluation and improvement that should be the main focus and concern for the government [7–11].

A Presidential Instruction is a policy regulation in the realm of State administrative law in that its legal position is located outside the hierarchy of laws and regulations and

has no binding force, so of course the Presidential Instruction cannot defeat the normative power of the law. Presidential instructions are “policy rules” or “beleidsregels”, which are forms of policy regulations that cannot be categorized as ordinary forms of legislation. They are called “policy” or “beleids” or policies because they cannot be formally called or are not in the form of official regulations [12–15].

That the president’s instructions are limited to giving directions, guiding in terms of the implementation of tasks and work. Meanwhile, there are presidential decrees that are regulatory (regeling) (which are equated with presidential regulations) and some are stipulating (beschikking).

For this reason, the main discussion in this study is how to apply Presidential Instruction No. 1 of 2022, which contains rules or provisions for the obligation for every Indonesian citizen to become an active BPJS Health National Health Insurance Participant as a condition for obtaining public services in the Legal Assurance Perspective.

2 Method

The approach method used in this study is to use the normative juridical method by using the statute approach, namely by understanding, taking an inventory, selecting, reviewing and analyzing the set of laws and regulations and the rules or norms in positive law, which are then connected to the discussion that becomes the subject of study and then linked and presented in a systematic and descriptive manner according to the problem of the study.

3 Results and Discussion

It is the consideration and intention of the government to issue Presidential Instruction No. 1 of 2022 in which there are rules or regulations that require every Indonesian citizen to be an active participant in the National Health Insurance (JKN) BPJS Health as a condition for obtaining several public services such as managing land sales and purchases, hajj and umrah services, applying for people’s business loans (KUR), applications for driving licenses, administrative applications at the Ministry of Law and Human Rights, registration of prospective migrant workers, applications for business permits, and formal and non-formal education services, namely in order to optimize the implementation of the National Health Insurance program.

The author examines and analyzes the potential for conflicts or legal conflicts by dividing them into 2 (two): first, internal legal conflicts or conflicts, namely those that occur between Presidential Instruction No. 1 of 2022, in which there are rules and regulations that contain the obligation or necessity to become an active participant in the National Health Insurance (JKN) BPJS Health as a condition for obtaining several public services with the laws and regulations related to the National Health Insurance (JKN). The two external legal conflicts or conflicts, namely with laws and regulations that are not related to the National Health Insurance but are related to public services as referred to in the presidential instruction.

Internally, there are at least 3 (two) statutory regulations in the National Health Insurance (JKN) BPJS Health which are technically very closely related to the rules

and provisions of the Presidential Instruction, which basically contains the rules and regulations governing the administering of administrative sanctions to participants of the National Health Insurance (JKN) BPJS Health, namely:

- 1) Presidential Regulation No. 82 of 2018;
- 2) Presidential Regulation No. 64 of 2018; and
- 3) Presidential Regulation No. 86 of 2013.

These laws and regulations should be the main reference for the issuance of Presidential Instructions, especially those containing the rules and provisions for sanctions against citizens for not getting public services. From the three laws and regulations mentioned above, when studied, analyzed, and further analyzed then compared with Presidential Instruction No. 1 of 2022, it is known and found the following:

- 1) There is no relationship between these inaccessible public services except by requiring the obligation to be an active participant of the National Health Insurance (JKN) BPJS Kesehatan. Causal sanctions should only be given to those related to the National Health Insurance (JKN) or BPJS Health. The rules and provisions for imposing sanctions have been carried out by the government or BPJS Health as the JKN regulatory body, namely by Presidential Regulation No. 82 of 2018, and several changes to the provisions were made through Presidential Regulation No. 64 of 2018, Article 42 Paragraph 1, Paragraph 3, Paragraph 5 and paragraph 6, which principally impose sanctions on participants of the National Health Insurance (JKN) BPJS Health is explained as follows:
 - a) Temporary suspension of participation in the National Health Insurance (JKN) BPJS Health until the arrears are paid off;
 - b) Conditional termination of inpatient benefit services for 45 (forty-five days) after active participation status returns; and
 - c) If the BPJS Kesehatan National Health Insurance (JKN) participant uses the inpatient benefit service, a fine of 5% of the cost of the Indonesian Case Based Groups package will be imposed, or a maximum of IDR 30,000,000 (thirty million rupiah).
- 2) There are differences in meaning and intent regarding the imposition of administrative sanctions between Presidential Regulation No. 86 of 2013 and Presidential Instruction Number 1 of 2022, specifically regarding the meaning and purpose of the obligations of BPJS Kesehatan National Health Insurance (JKN) participants in an active position (active means no arrears of BPJS Health Contributions) as stipulated in Presidential Instruction No. 86 of 2013 1 of 2022. Meanwhile, based on Presidential Regulation No. 86 of 2013, Article 11 paragraph 2 states as follows:

“The sanction of not receiving certain public services as referred to in paragraph (1) is revoked if everyone, other than the employer, worker, and recipient of the contribution assistance, has registered himself and his family members as participants with BPJS as evidenced by showing a social security membership card or a registration receipt from BPJS and proof of payment of dues.”

Thus, if you pay attention to the provisions of the article, it can be seen that the provision of sanctions for not getting public services is aimed at citizens whose positions at that time have not been registered as participants of the National Health Insurance (JKN) BPJS Health, and not at participants in the National Health Insurance (JKN) BPJS. Health that have been registered but the membership status is problematic due to payment arrears.

However, in Presidential Instruction No. 1 of 2022, the meaning and purpose will be different, namely BPJS Health National Health Insurance (JKN) participants are in an active position (active means that they are registered but there are arrears of BPJS Health Contributions, then they must pay the arrears to get public services as specified in the Presidential Instruction).

- 3) Third, there are differences and expansion of public services as described between Presidential Regulation No. 86 of 2013 and Presidential Instruction No. 1 of 2022. Based on Presidential Regulation No. 86 of 2013 concerning Procedures for Imposing Administrative Sanctions to Employers Other Than State Administrators and Everyone Other Than Employers, Workers, and Contribution Assistance Recipients in the Administration of Social Security, Article 9 paragraph 2 states as follows: “Sanctions for not receiving certain public services are imposed on everyone other than employers, workers, and recipients of contribution assistance who meet the requirements for participation in the social security program, including:

- a) Building Permit (IMB);
- b) Driving License (SIM);
- c) Land certificate;
- d) passport; or
- e) Vehicle Registration Certificate (STNK)”.

Thus, if it is considered based on the provisions of the article, it can be seen that there is an expansion in the form of additional public services as contained in Presidential Instruction No. 1 of 2022, namely the management of buying and selling land, Hajj and Umrah, Application for people’s business loans (KUR), Application for driving licenses and other administration, Application for administration at the Ministry of Law and Human Rights, Registration of prospective migrant workers, Application for business permits and formal and non-formal education services.

Externally, the enactment and implementation of Presidential Instruction No. 1 of 2022, which requires every citizen to be an active participant in the National Health Insurance (JKN) BPJS Health to obtain at least 8 (eight) public services as described, but in the fact that the public service in question already has its own rules and regulations based on respective laws and regulations, it is related to this matter which has the potential to conflict or conflict with Law No. 25 of 2009.

In the consideration of the law, it is stated that the state is obliged to serve every citizen and resident to fulfill their basic rights and needs within the framework of public services, which is the mandate of the 1945 Constitution of the Republic of Indonesia. Article 1 of Law No. 25 of 2009 states that public services are activities or series of activities in the context of fulfilling service needs in accordance with laws and regulations for every citizen and resident of goods, services, and/or administrative services provided by

public service providers. Then Article 2 states that the Law on Public Services is intended to provide legal certainty in the relationship between the community and providers of public services.

Based on the description and explanation, it is clear that there has been a conflict and conflict between the rules and provisions contained in Presidential Instruction Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program, which requires every citizen to be a participant of the National Health Insurance (JKN) or BPJS Kesehatan actively seeking public services in accordance with Law No. 25 of 2009. This is because each of the 8 (eight) public services included in the Presidential Instruction No. 1 of 2022 clearly has its own rules and provisions in their respective laws and regulations. Thus, based on the explanation above, if the Presidential Instruction No. 1 of 2022 is enacted, it has the potential to violate laws and regulations which are hierarchically recognized in the system of laws and regulations in Indonesia, and their position is above the Presidential Instruction, and what is most worrying in this case is the occurrence of injustice and legal uncertainty for Indonesian citizens.

4 Conclusion

Controversy over Presidential Instruction Number 1 of 2022, which contains rules or provisions that require every citizen to be a participant in the National Health Insurance (JKN) or BPJS Health actively to be able to enjoy or get public services. In the context of this regulation, it provides limitations on people who are not actively participating in the National Health Insurance (JKN) or BPJS Health which leads to injustice and legal uncertainty. In addition, in accordance with the laws and regulations related to public services, it is stated that nothing should prevent citizens from enjoying or getting public services in accordance with those provided by the government. For this reason, the Presidential Instruction should be reviewed again to be applied to the general public.

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