



# National Health Insurance Participation Obligations in the Implementation of Land Sale and Purchase from a Human Rights Perspective

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**Abstract.** Presidential Instruction Number 1 Year 2022 on Optimizing the Implementation of the National Health Insurance Program in the Second Dictum Number 17 requires every applicant for registration of transfer of land rights due to sale and purchase to become an active participant in the National Health Insurance (JKN). This is complemented by the issuance of Circular Letter Number 5/SE-400.HK.02/II/2022 concerning Participation in the National Health Insurance (JKN) in the Application for Registration of Transfer of Land Rights or Unit of Ownership of Flat Units Due to Sale and Purchase. Based on BPJS Health data in 2022 there are around 14% of the total population of Indonesia who have not registered for JKN membership and are threatened with not being able to transfer land rights due to sale and purchase. This is the reason for conducting this research to find out the potential violations of the principles of human rights (HAM), especially regarding the right to discrimination and the right to personal freedom and to find out the obstacles that arise due to the implementation of the compulsory JKN membership policy in the implementation of land sale and purchase. The approach method used in this research is normative juridical research with a statutory approach. This study concludes that the obligation of JKN membership in the implementation of land sale and purchase violates the principle of non-discrimination and the right to personal freedom. The policy also causes several obstacles experienced by people who are not JKN participants, including resulting in a longer bureaucratic process in the practice of buying and selling land, limitations on access to BPJS Health membership registration and additional BPJS Health membership registration fees. This research hopes to contribute to policy recommendations that are more in line with human rights principles. These recommendations can contribute to regulatory changes that are more supportive of human rights.

**Keywords:** State Policy, National Health Insurance, Land Sale and Purchase, Human Rights.

## 1. Introduction

The guarantee for the protection of human rights (HAM) in Indonesia, especially regarding social security, is contained in Article 28H Paragraph (3) which guarantees the right of every person to obtain social security that is intact and dignified as a human being. This article underlies state regulations and policies governing social

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A. A. Nassihudin et al. (eds.), *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGS 2023)*, Advances in Social Science, Education and Humanities Research 805,

[https://doi.org/10.2991/978-2-38476-164-7\\_71](https://doi.org/10.2991/978-2-38476-164-7_71)

security, one of which is Presidential Instruction Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program (hereinafter referred to as Inpres JKN 1/2022) to implement the mandate of Article 14 of Law Number 24 of 2011 concerning the Social Security Organizing Agency (BPJS Law) regarding the obligation to become a participant in the Social Security Organizing Agency (BPJS).

One of the policies arising from JKN Presidential Instruction 1/2022 is the obligation of applicants for transfer of land rights due to sale and purchase to become active participants in the JKN program. The aforementioned policy is complemented by Circular Letter of the Directorate of Land and Space Registration Regulation Number 5/SE-400.HK.02/II/2022 concerning Participation in the National Health Insurance (JKN) Program in Application for Registration of Transfer of Land Rights or Ownership Rights over Flat Units Due to Sale and Purchase.

Through Indonesian Presidential Chief of Staff Moeldoko, the government claims that the policy does not burden the community because only the buyer is required to have BPJS membership in the land sale and purchase requirements [1]. Moeldoko considers individuals who can afford to buy land to be those with a good economic standing, so it won't be an issue for them to pay BPJS contributions. A similar claim was made by the spokesperson of the Ministry of Agrarian and Spatial Planning/National Land Agency, Teuku Taufiqulhadi, who described this policy as an effort to provide healthcare protection to the public through BPJS. He stated that the key point of this policy is the optimization of BPJS implementation, making it a government initiative to enforce the provisions in the law requiring individuals to have BPJS membership.

This opinion contradicts the opinion of some PPAT (Land Deed Official) notaries who object to the mandatory requirement to have a BPJS card in the implementation of land sale and purchase [2]. They believe that the policy will result in a longer bureaucracy in the management of the land sale and purchase deed which results in the notary having difficulty in managing it [2]. In addition to notaries, this policy is also opposed by some academics. Trubus Rahadian, a lecturer at Trisakti University, believes that the mandatory BPJS policy in land transactions is excessive when viewed in light of the government's rationale to increase the number of participants in BPJS Health as a means of protecting people's health rights. According to Trubus, to boost BPJS Health membership, it can be achieved by enhancing the quality of BPJS Health services, which will naturally attract individuals to become participants in BPJS Health.

At the time of this research, the BPJS Health membership obligation in the implementation of land sale and purchase was temporarily postponed. The postponement of the policy was stated in the Letter of the Secretary General of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number HK.02/1376/VII/2022. In essence, the obligation to include a photocopy of the BPJS Health card in the application for transfer of land rights due to sale and purchase is postponed on the grounds of providing convenience for the community and for the effectiveness of smooth services in the land sector.

Despite the delay, the policy of compulsory BPJS Health membership in the implementation of the sale and purchase of land may one day be re-enacted. In the midst of this possibility and the pros and cons described above, the question arises how the policy is aligned with human rights principles? This issue is important to study considering that every policy issued by the government, including the obligations contained in the Second Dictum Number 17 of Presidential Instruction JKN 1/2022, must be in accordance with human rights principles.

## **2. Problems**

Based on the introduction of the issue, the problem introductions can be taken:

- a. How is the obligation to participate in the National Health Insurance (JKN) in the implementation of land sale and purchase seen from a human rights perspective?
- b. How are the constraints of the mandatory National Health Insurance (JKN) policy on the implementation of land buying and selling?

## **3. Method**

This research uses normative juridical research methods, namely legal research by examining secondary data as a basis for researching by tracing regulations and literature related to the problems studied [3]. This research also uses the statutory approach method by examining all laws and regulations and other implementing regulations relating to the mandatory JKN membership policy in the implementation of land buying and selling in relation to human rights principles, including laws and regulations as one of the national and international human rights instruments.

This research employs a data processing method involving data verification, which means that the obtained data is carefully examined for completeness, clarity of meaning, and compatibility with each other to determine whether there are any deficiencies and whether it aligns with the issues related to JKN participation obligations in land transactions in connection with human rights principles.

This research employs a descriptive analysis method conducted by grouping data and information, followed by a comprehensive analysis of the entire dataset. After the analysis, topics are broken down from general to specific aspects. The collected data is related to the obligation of JKN participation in land transactions from a human rights perspective, which is analyzed to address the research issues.

## **4. Discussion**

### **4.1 Analysis of the Obligation of National Health Insurance Participation in the Implementation of Land Sale and Purchase in the Perspective of Human Rights**

## **Arrangement of National Health Insurance Participation Obligation in the Implementation of Land Sale and Purchase**

The state has the responsibility to provide protection for the health of citizens through social security programs which are part of human rights (HAM) as mandated in Article 28H Paragraphs (1), (2), (3) and Article 34 Paragraphs (1) and (2) of the 1945 Constitution [4]. One of the social security protections provided is the right to national health insurance through the national social security system (SJSN). To implement the SJSN, the government established an agency for the implementation of social security known as BPJS by issuing Law Number 24 of 2011 concerning Social Security Organizing Agency (BPJS Law). Article 14 of the BPJS Law regulates that BPJS Health membership is mandatory for the Indonesian population [5].

Although the regulation regarding BPJS Health membership is mandatory, not all Indonesian people have registered as BPJS Health participants. Therefore, as a form of optimization of the BPJS Health program to increase the number of BPJS Health membership, participation from all parties is needed through policies that require BPJS Health membership [6]. This is realized through Presidential Instruction Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program (hereinafter referred to as Presidential Instruction JKN 1/2022). Presidential Instruction JKN 1/2022 contains instructions to 30 Ministries/Institutions to participate in supporting the optimization of the Health Insurance program, which includes 111 instructions from the President to Ministries and Institutions.

Second Dictum Number 17 of Presidential Instruction JKN 1/2022 instructs the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency to make the BPJS Health card one of the requirements in the application for transfer of land rights or flats due to sale and purchase. As explained in the Background section of this research, the Ministry of Agrarian and Spatial Planning/Head of the National Land Agency issued Circular Letter Number 5/SE-400.HK.02/II/2022 to implement the instruction in the Second Dictum Number 17 of Presidential Instruction JKN 1/2022.

If reviewed in depth, it can be concluded that there is no correlation between BPJS membership and land sale and purchase. This is because people who are sick or people who cannot leave the hospital or get out of bed can still buy and sell land using a power of attorney [7]. Not only that, the policy also has the potential to result in discrimination against people who have not registered for BPJS Health membership [7]. Where people who are not BPJS Health participants are prevented from obtaining public services in the form of transfer of land rights due to sale and purchase. This is certainly unacceptable because the principle of non-discrimination is one of the principles of human rights that must be respected and protected by the state.

## **Violation of Human Rights Principles on the Obligation to Participate in the National Health Insurance in the Implementation of Land Sale and Purchase**

The issuance of JKN Presidential Instruction 1/2022 is the government's effort to increase the number of BPJS Health membership in order to achieve the 2020-2024 National Medium-Term Development Plan (RPJMN) target of 98% of the Indonesian population. Based on data submitted by BPJS Kesehatan, there are still around 14% of

the total population of Indonesia who have not registered for BPJS Health membership [8]. A random survey of the Indonesian population shows that around 18% of people who do not want to join the National Health Insurance program, 17% are already members of private insurance, 15% feel unfamiliar with BPJS Kesehatan [9]. Another 2% revealed that they no longer have the income to pay BPJS Kesehatan membership fees due to illness or dismissal [9].

This research believes that a policy that requires BPJS Health membership in land buying and selling, while on the other hand some people have not registered for BPJS Health membership, has the potential to cause violations of human rights principles. The potential for discrimination and violation of the right to personal freedom of the community in detail can be described as follows:

- a. Violation of the Principle of Non-Discrimination in the Obligation of National Health Insurance Participation in the Implementation of Land Sale and Purchase

The Universal Declaration of Human Rights 1948 (UDHR) guarantees the right of everyone to life, liberty and security of person, equality before the law and equal protection against discrimination for violation of the principles of the declaration [10]. As one of the countries that has ratified the UDHR, Indonesia has agreed and recognized what has been regulated in it. The form of ratification carried out by Indonesia is evidenced by the issuance of Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights 1966 (International Covenant on Civil and Political Rights).

The implementation of the principle of non-discrimination in the system of legislation in Indonesia is realized by the recognition of the provisions on freedom from discriminatory treatment in the 1945 Constitution of the Republic of Indonesia (UUD 1945) [11]. Some articles that regulate the prohibition of discrimination in the 1945 Constitution include Article 28D Paragraph (2) which determines that everyone has the right to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law; Article 28I Paragraph (2) regulates the right of everyone to be free from discriminatory actions [12]; Article 27 Paragraph (1) which determines that all citizens are equal before the law and government and must uphold the law and government without exception. Article 28D Paragraph (3) stipulates that every citizen is entitled to equal opportunity in government. In addition, the principle of non-discrimination is also stipulated in the SNP Human Rights that the government in acting and issuing policies must not conflict with human rights norms and principles. It is also explained regarding the scope of discrimination in Standard Norms and Regulations (SNP) Number 1 on the Elimination of Racial and Ethnic Discrimination that discrimination must be seen from all aspects of life that have the potential for discrimination, discrimination cannot be seen partially, which only attacks some rights.

The explanation of the principle of non-discrimination that has been explained above is able to answer the question of whether there is a violation

of the principle of non-discrimination in the implementation of the mandatory national health insurance participation policy in the sale and purchase of land. The policy can be considered discriminatory because it distinguishes between people who are active JKN participants and those who are not. The people who are not active JKN participants are hindered in their right to obtain public services in the form of transfer of land rights due to the sale and purchase of land [6].

In addition, the mandatory JKN membership policy in the implementation of land purchase may cause difficulties for some non-formal workers who do not have social security and cannot afford to pay JKN membership fees in fulfilling JKN membership requirements when buying land [13]. Therefore, the obligation of JKN membership in the implementation of land sale and purchase may result in a violation of the principle of non-discrimination if not balanced with other alternative solutions to ensure that all citizens have equal opportunities in public services for the transfer of land rights due to sale and purchase.

b. Violation of Human Rights Principles on the Obligation to Participate in the National Health Insurance in the Implementation of Land Sale and Purchase

Article 2 of Law No. 39/1999 on Human Rights states that the right to personal freedom is a basic right owned by every person that must be respected. One of the rights to personal freedom includes the fulfillment of the right to health. Based on General Comments No. 14, it explains the right to the highest attainable standard of health. In particular, General Comments No. 14 point 1 explains that health is a fundamental human right and cannot be ignored, where every human being has the right to obtain the highest attainable standard of health in order to live a dignified life [14]. General Comment No. 14 point 2 explains that the International Covenant on Economic, Social and Cultural Rights, hereinafter referred to as ICESCR, especially in Article 12 point 1, also regulates the right to obtain the highest standard of health [14].

Indonesia is one of the countries that has ratified the ICESCR through Law No. 11/2005 on the Ratification of the International Covenant on Social and Cultural Rights. The regulation in Article 12 point 1 of the ICESCR is adopted in Article 12 Paragraph (1) of Law No. 12 of 2005 [15]. The regulation in the article is one of the rights to health which is part of human rights. When associated with the right to personal freedom, the regulation in the article is regarding the right to freedom to obtain the right to health with the highest standard of health. The highest standard of health that can be achieved can be interpreted that the level of health that can be obtained by someone must be the highest health condition supported by maximum facilities.

Other arrangements regarding the right to health are regulated in Article 5 Paragraphs (2) and (3) of Law Number 36 Year 2009 on Health regarding the rights and obligations of the community. Respect for the rights and obligations of the community is one of the practices of the Fourth Precept of

Pancasila regarding democracy. Democracy is a form of government where citizens have equal rights in decision making [6]. The issuance of Presidential Instruction JKN 1/2022, especially in the Second Dictum Number 17, is an instruction that is considered undemocratic, because these requirements tend to force people to become BPJS Health participants.

The formulation of the Second Dictum Number 17 of Presidential Instruction JKN 1/2022, makes people who will apply for transfer of land rights due to sale and purchase have no other choice but to become active BPJS Kesehatan participants [15]. Meanwhile, in a democratic country, the community has the democratic freedom to have the right to make decisions on whether or not to join the BPJS Health membership [6]. Freedom in decision-making is also reflected in the provisions of Article 5 Paragraphs (2) and (3) of Law Number 36 of 2009 concerning Health regarding the rights and obligations of the community which states that everyone has the right to determine their own health services needed for themselves. . So the community has the freedom to use BPJS health services or health services in other insurance companies.

The explanation of the right to personal freedom that has been explained above is able to answer the question of whether there is a violation of the right to personal freedom in the implementation of the mandatory BPJS Health membership policy in the sale and purchase of land. The policy can be considered to violate the right to personal freedom because it forces each individual community to participate in BPJS Kesehatan membership as a condition in the application for transfer of rights to land or apartment units due to sale and purchase. Therefore, it is necessary to consider other alternative solutions to ensure that the right to personal freedom is not violated in the implementation of the policy.

#### **4.2 Constraints in the Implementation of the Mandatory National Health Insurance Policy on the Sale and Purchase of Land**

The implementation of policies in Presidential Instruction JKN 1/2022, especially in the Second Dictum number 17 in the ATR / BPN Office Semarang City, has not experienced any obstacles. This was conveyed by the Head of the ATR / BPN Office of Semarang City, Sigit Rahmawan, regarding the inclusion of the BPJS Health card as a condition for the application for transfer of land rights due to sale and purchase, no significant obstacles were found [16]. A similar opinion was also conveyed by the Head of the Rights Determination and Registration Section of the Banyumas Regency ATR/BPN Office, Sumpeno, who was met on February 20, 2023 at the Banyumas Regency ATR/BPN Office. Sumpeno said that when the policy requiring the inclusion of a photocopy of the BPJS Health card in the application for transfer of land rights was still being implemented at the Banyumas Regency BPN Office, he did not encounter any complaints of obstacles from employees of the Banyumas ATR/BPN office. Sumpeno also said that the Banyumas Regency ATR/BPN Office only carries out what has been ordered by the Central Government and is committed to carrying it out properly.

Although the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency did not experience any obstacles during the implementation of the policy, other obstacles arose from the community affected by the mandatory BPJS Health membership policy in the implementation of land sale and purchase. The obstacles experienced by some people include the following:

- a. Increasingly long bureaucracy in arranging land sale and purchase deeds [2]. In managing the land sale and purchase deed, there are several processes that are quite long by requiring a series of document requirements that must be met by the applicant, with the addition of the requirement for the inclusion of a BPJS Card in the application for transfer of land rights will add to the increasingly long bureaucratic process [17]. For example, there is a person who has not been registered as an active BPJS Health participant who will apply for transfer of land rights due to sale and purchase, due to this policy the person must take care of registering BPJS Health membership first before submitting an application for transfer of land rights due to sale and purchase to the BPN. The process of registering BPJS Kesehatan membership is time-consuming and lengthens the bureaucratic process that must be taken by the applicant [13].
- b. Limitations on access to BPJS Health membership registration. Although there is currently a technological convenience that facilitates the registration of BPJS Health membership through the JKN Mobile application [18]. It is possible that there are still people who experience difficulties in registering BPJS Health membership, especially for people who live in remote areas that are far from access to health services [9]. With the mandatory BPJS Health policy in the implementation of land buying and selling, it can limit people's access to buying land or owning land.
- c. Additional costs for BPJS Health membership registration. The existence of a policy that requires active BPJS Health membership can increase costs for applicants for transfer of land rights due to sale and purchase. To register for BPJS Health membership requires a fee that must be paid to pay premium money, which is referred to as contribution money every month. This can reduce a person's financial capacity when buying land, because they have to spend additional costs again to take care of BPJS Health membership registration.

Some of the obstacles that arise in the community as described above are presumably one of the reasons for postponing the policy requiring the inclusion of a photocopy of the BPJS Health card in the application for transfer of land rights due to sale and purchase to provide convenience for the community as well as effectiveness and smoothness of services in the land sector.

## 5. Conclusion

Based on the results of research and discussion, it can be concluded that the obligation of JKN membership in the implementation of land buying and selling is regulated in

the Second Dictum Number 17 of Presidential Instruction Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program. This policy, when viewed from a human rights perspective, has the potential to violate human rights principles, especially violating the principle of non-discrimination and the right to personal freedom. In its implementation, the mandatory JKN membership policy in land buying and selling as stipulated in JKN Presidential Instruction 1/2022 at the time this research was compiled experienced delays due to several obstacles experienced by some people. The obstacles that occur include the increasingly long bureaucracy in taking care of land sale and purchase deeds; limitations on access to BPJS Health membership registration; and additional BPJS Health membership registration fees.

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