

IMPLEMENTATION OF PRESIDENTIAL INSTRUCTION NUMBER 1 OF 2022 IN TRANSFER OF LAND RIGHTS

Tiara Nevy Pratiwi

aranevy@gmail.com

Master of Notary, Padjadjaran University, Indonesia

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Abstract

According to Presidential Instruction Number 1 of 2022 concerning Optimising the Implementation of the National Health Insurance Program, which aims to optimise the implementation of a Guarantee program, there will be additional requirements in 2022 for transferring ownership rights to land and flat units, specifically the possession of an active BPJS membership card. Since these policy regulations are actually not statutory requirements, this causes individuals to consider the legal force surrounding this issue. The research methodology used in this study was normative legal research, and qualitative data analysis was the data analysis technique used. If we look at the data that has been taken, it can be seen that the Presidential Instruction issued by President Joko Widodo has been quite successful in optimizing existing health programs in Indonesia. It can be seen that there has been quite a significant increase if seen according to the numbers which increase over time.

1. Introduction

The interests in fulfilling the basic needs as humans are regarding clothing, food, and shelter. In these interests, the main thing is about the need for shelter, namely ownership of a house or land, to own a house or land can be through purchasing land that has not been previously owned or purchasing land that

already has a previous owner. When you want to own a house, there is a process in it such as registering land ownership rights or transferring land ownership rights. The process for doing this has conditions in it that must be carried out which are in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning Standards of Services and Land Regulations regulates all requirements and provisions regarding the transfer of land rights. These requirements include application forms, photocopies of identity, photocopies of the deed of establishment and ratification, power of attorney if given, original certificates, and deeds of sale and purchase from the Land Deed Making Officer from the authorized area.¹

Currently, there are additional requirements in the process which is the ownership of an active BPJS membership card. This is done based on Presidential Instruction Number 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance (JKN) Program which is aimed at optimizing the implementation of a JKN program or increasing accessibility of health services, as well as ensuring the implementation of the National Health Insurance program. The Instruction is aimed primarily at the transfer of land rights to the ATR/BPN to ensure that the applicant is a registered party in the program.²

The basis for the emergence of the Presidential Instruction was because according to Ghufroon Mukti, who at that time served as the President Director of BPJS Kesehatan, at that time only around 86% of people in Indonesia had registered and were active in the JKN-KIS Program, the purpose of this was because it was a development plan for Indonesia which targeted around 98% of the community to be under the auspices of JKN in 2024.³

In this case, the Ministry of ATR/BPN, which is one of the Ministries that received instructions from the President, finally issued instructions through Circular Letter Number HR.02/153-400/II/2022 and Circular Letter Number HR.02/164-400/II/2022 which concerns BPJS Kesehatan participants who are a requirement to make an Application and at the time of Registration or Transfer of Land Rights or Ownership Rights of Flats due to Sale and Purchase. The regulations contained in the circular were both issued in 2022 in February which were tiered on February 14 and February 16.

The issuance of the Circular Letter originating from the Presidential Instruction made the public think about the legal force regarding this matter because in fact the policy regulation is not included in a rule or statutory law that

¹ Peraturan Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 1 Tahun 2010 Tentang Standar Pelayanan Dan Pengaturan Pertanahan

² Instruksi Presiden Nomor 1 Tahun 2022 Tentang Optimalisasi Pelaksanaan Program Jaminan Kesehatan Nasional

³ Rahmad S. et.al, "Kedudukan Hukum Surat Edaran Nomor 5/Se-400.Hk.02/II/2022 Terkait Dengan Peralihan Hak Atas Tanah", Jurnal Ilmiah Ilmu Hukum, Vol. 21 No. 1, 2023, p. 33

cannot be directly imposed by legal principles but only has a literal meaning of the law. The purpose of the instruction is only for the state government or the institutions that oversee it, but it affects the people who live it indirectly which creates problems from a legal perspective, therefore, Circular Letter Number 5 / SE-400.HK.02 / II / 2022 was reissued by the BPN regarding the involvement of the National Health Insurance (JKN) in the application that was explained previously.⁴

This also makes the public question whether it needs to be done or not, because it is considered to be inconsistent with Law Number 25 of 2009 concerning Public Services. Regarding this, it is explained that Law No. 5 of 1960 concerning Basic Agrarian Principles and PP No. 24 of 1997 concerning Land Registration do not require an obligation to become an active BPJS Kesehatan National Health Insurance participant, so if this is still done it will cause a problem or legal.⁵

Considering description that has been presented above, this research aims to determine how legal certainty can occur due to the implementation of the presidential instruction and this study is related to active BPJS Kesehatan participation as a mandatory requirement that must be met when registering or transferring land rights, which is very important to do. This is related to the legal uncertainty that will occur in the future for the community so that it can be a loss for those concerned. Therefore, the author conducted a study entitled "Implementation of Presidential Instruction Number 1 of 2022 in Transfer of Land Rights".

2. Research Method

In this study, the author uses normative legal research approach. The nature of the research used is descriptive analytical through a problem approach originating from Legislation with data collection techniques through literature review and data presentation techniques. This research comes from and is obtained which are then arranged systematically. The data analysis technique used in this study is applied through qualitative data analysis.⁶

3. Results And Discussion

⁴ *Ibid*, p. 37

⁵ Seno Tri Sulistiyono, 22 Februari, 2022, "Keberatan Jual Beli Tanah Pakai BPJS Kesehatan, Masyarakat Bisa Gugat Inpres Jokowi ke MA", <https://www.tribunnews.com/bisnis/2022/02/22/keberatan-jual-beli-tanah-pakai-bpjs-kesehatan-masyarakat-bisa-gugat-inpres-jokowi-ke-ma/>, Accessed on 11 September, 2024.

⁶ Depri Liber, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum", *Jurnal Ilmu Hukum*, Vol. 8, No. 1, 2015, p. 25

3.1 Legal basis and contents contained in Presidential Instruction No. 1 of 2022

A Presidential Instruction is an order from the President that is regulatory in nature that only regulates within an institution or government organization in a coordinated manner from superiors to subordinates that only applies to the organization or government internally and is included in policy regulations (*beleidsregels*).⁷ Legally, the position of this Presidential Instruction is not included in the legal and legislative hierarchy in Indonesia, which is a product of a Policy Regulation produced on the basis of self-assessment.⁸ This policy regulation is a provision made by the government or government officials carried out as state administration which is usually referred to as *beleidsregels*, *spiegelsrecht*, *pseudowetgeving*, *olicy rules*. The President's authority to make policy regulations in this case makes the Presidential Instruction his position as a state administration official not as head of state.

Law is an orderly and interrelated element that is bound by a legal principle and contains values that form a unity in law. This is related to legislation and policy regulations because this is a system that is related to a certain value. Regarding the formation of legislation to harmonize the law to be better which is carried out through a good and democratic process and is sourced from the laws that previously applied in Indonesia. When making it, it must pay attention to the basis that can fulfill the elements of a value that upholds justice. As is known and previously stipulated through Article 7 paragraph (1) of Law Number 10 of 2004 concerning the Formation of Legislation, where the legal hierarchy in Indonesia from the highest is the 1945 Constitution, Law, Government Regulation (PP), Presidential Regulation (Perpres), Regional Regulation (Perda) and is emphasized through the 1945 Constitution that after the amendment, in carrying out the legislative function to form a Law, the power held is by the DPR, not the President. There is Presidential Instruction Number 1 of 2022 concerning the Optimization of the National Health Insurance Program issued in 2022, in which case the instruction is addressed to 23 Ministers in Indonesia and 7

⁷ Sakti R.S, "Simplifikasi Terhadap Peraturan-Peraturan Pelaksanaan yang Dibentuk oleh Presiden dalam Sistem Ketatanegaraan Republik Indonesia", Jurnal Rechtvinding, Vol. 10 No. 2, 2021, p. 252

⁸ Ayu Nur, "Analisis Yuridis Terhadap Instruksi Presiden Nomor 7 Tahun 2014 Tentang Pelaksanaan Program Simpanan Keluarga Sejahtera, Program Indonesia Pintar dan Program Indonesia Sehat Berdasarkan Hierarki Peraturan Perundang-Undangan di Indonesia", Vol. 2 No.1, 2015, p. 18.

other important elements that aim to optimize the National Health Insurance program.

The related Presidential Instruction is to the Minister of ATR/BPN, which contains that to ensure that applicants who register certificates related to the transfer of land rights become active BPJS Kesehatan participants in running the National Health Insurance program. In addition, in response to the Presidential instruction that has been issued, the Minister of ATR/BPN and the Directorate General of Land Rights Determination and Registration issued Circular Letters HR.02/153-400/II/2022 and HR.02/164-400/II/2022. This circular explains the requirements for an active BPJS Kesehatan membership card when carrying out the process.

This assessment can be seen in terms of how the law applies and currently there are regulations related to this, namely Law Number 5 of 1960 Concerning Regulations Basic Principles of Agrarian and PP Number 18 of 2021 Concerning Management Rights, Rights to Land, Units Apartments, and Land Registration which have a regulatory nature or a binding nature and/or are generally applicable, but not with the Presidential Instruction issued here which is only a *beleidreges* or in other words a policy regulation. The Law explains how the law on land applies, procedures for land registration, transfer of land rights, leasing, as well as rights to cultivate and others which are not in line with the Presidential Instruction which requires active BPJS Kesehatan membership as a condition in submitting for the sale and purchase or transfer of land rights or ownership rights to apartment units. This allows for legal uncertainty over existing regulations because since the issuance of Law Number 5 of 1960 concerning Basic Agrarian Principles and the newly updated Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration have been implemented as basic regulations regarding land which contain conditions that must be met. This is also related to the levels of regulations and laws currently in effect in Indonesia where the Presidential Instruction is clearly below the regulatory Laws and Regulations which allow for a possible bias and make the public confused about whether the regulation must be implemented or not because land and BPJS Kesehatan membership are two things that are unrelated and also contradictory.

Considering by the purpose of the presidential instruction, it can be assessed that it is intended to optimize the implementation of the JKN program, increase access to better health services, and ensure the

continuation of the JKN program rather than relying on urgent circumstances that are needed for policy. In this case, the Presidential Instruction which is a Policy Regulation is not a form or type of Legislation so that this Regulation is not referred to as *wetgeving* but rather a regel or rule (*beleidsregel*).

3.2 Implementation Regarding BPJS Membership Requirements Active in Carrying Out the Transfer Process Land Rights

In terms of its authority, BPJS Kesehatan has the right to map social security funds for investment, supervise and examine the discipline of participants and employers in fulfilling their obligations, create and terminate work contracts with health facilities, enter into partnerships with other parties for the implementation of ongoing programs, impose administrative sanctions on parties who do not fulfill their obligations and BPJS Kesehatan has the right to collect payment of membership fees. As previously stated, the participant party..BPJS.Kesehatan must be active in completing the process of transferring land ownership rights. This is related because there are still many people who have not registered as JKN participants or whose membership is inactive.

In 2022, Presidential Instruction Number 1 was issued by President Joko Widodo, this is related to the large number of BPJS participants who are inactive or have not registered for the membership. It is stated that in 2022, around 86% of the population or Indonesian society has obtained health insurance protection by making each of them a participant in JKN-KIS, in this case BPJS Kesehatan. The scope of this membership includes the poor and underprivileged population, which is included in the Contribution Assistance Recipient (PBI) participants and retired civil servants, police, and soldiers. Which in this year, namely 2024, it is expected that around 98% of the people in Indonesia have registered as participants in JKN-KIS based on the Medium-Term Long-Term Development Plan Target. The President Director as the leader of BPJS Kesehatan is Prof., Dr., Ali Ghufroon Mukti, M.Sc., Ph.D., AAK. stated that the JKN-KIS program is a program that covers all individuals, not only for people with certain groups, so it requires participation from all parties, not only from BPJS Kesehatan, or the government, or participants who use it. Regulations have been explained and published previously regarding the obligations of every individual in

Indonesia to be a participant in the JKN-KIS program, in this case BPJS Kesehatan, such as the BPJS Law of 2011. Concerning the Social Security Administering Body, Law Number 40 of 2004 Concerning the Social Security System and PP Number 83 of 2013.⁹

Based on the data obtained by the author, in February 2022 the coverage registered as BPJS Kesehatan participants reached 86.13% or it can be said that 236,877,955 people in Indonesia have registered and around 49,574,546 individuals are inactive and around 38,145,605 people have not registered as BPJS Kesehatan participants. This supports the issuance of the Presidential Instruction which lasted until August 2022 and made a change in BPJS Kesehatan membership which was quite successful in increasing the coverage figure of BPJS Kesehatan membership to 88.46% with the number of individuals around 243,282,029 people.¹⁰

In March 2022, data recorded around 22,879 people or applicants who have carried out the administrative process regarding the transfer of land rights in other words land sales and purchases and there are around 3,190 people or applicants who have not registered as participants of BPJS Kesehatan. So if calculated around 19,989 people who have registered as active participants as BPJS Kesehatan participants and have successfully passed the administrative process in carrying out the transfer of land ownership rights.

Considering from the data that has been taken, it can be seen that the Presidential Instruction issued by President Joko Widodo was quite successful in optimizing the health program in Indonesia. It can be seen that there has been a significant increase when viewed according to the numbers that have increased over time. However, this has become a problem or polemic that has occurred in society because it is suspected that it is not in accordance with the previous applicable Law regarding the land system in force in Indonesia because previously there were no regulations regarding the obligation of the community to have active BPJS Health membership in the process of transferring land rights. So that over time on August 18, 2022, a Circular Letter was issued. Number. HK.02 / 1376 / VIII / 2022 issued by

⁹ Newsroom, 14 Oktober, 2024, "Ini Penjelasan BPJS Kesehatan Soal Inpres Nomor 1 Tahun 2022", <https://bekasikab.go.id/ini-penjelasan-bpjs-kesehatan-soal-inpres-nomor-1-tahun-2022>, Accessed on 11 September, 2024.

¹⁰ Dewan Jaminan Sosial Nasional, Oktober 2024, "Aspek Kepesertaan BPJS Kesehatan", <https://sismonev.djsn.go.id/kepesertaan/>, Accessed on 11 September 2024.

the Minister of ATR / BPN through the Secretary General regarding the postponement of the implementation of the previously issued Circular Letter regarding active BPJS Health membership in the process of transferring land rights. In this case, the applicant no longer needs to use these requirements, however, when collecting the certificate that has been processed, the community or applicant must attach proof that it has been activated and has an active BPJS Health membership card.

This makes the public mistaken about the Presidential Instruction because it is inconsistent for the government and indirectly this can have a negative impact because the implementation of the Presidential Instruction is something that is considered less than good for the law in Indonesia because initially the public must be confirmed as an active BPJS Kesehatan participant which should be when carrying out the process of transferring rights cannot be continued to the next process if the applicant is not registered as a BPJS Kesehatan participant until the requirements attached to the Presidential Instruction are met.

4. Conclusion

Legally, a Presidential Instruction is an order issued by the President that has a regulatory nature that only regulates within an institution or government organization that is coordinated from superiors to subordinates and applies only internally, which is only a Policy Regulation and is not included in the hierarchy of regulations..legislation in..Indonesia. In this case, there is Presidential Instruction Number 1 of 2022 issued by President Joko Widodo in 2022 which aims to optimize the National Health Insurance program. The main focus that is important in this study is that in the Presidential Instruction there is an order to the Minister..ATR/BPN so that he issues a Circular Letter HR.02/153-400/II/2022 which contains an active BPJS Health membership card which is a requirement when the applicant carries out the land transfer process. This is a legal uncertainty that may occur because there is a Law that has been in effect since long ago regarding the process of transferring land rights which has explained the requirements that must be met. In addition, it is known that the Presidential Instruction is legally hierarchical in Indonesia that it is under the regulatory Laws and Regulations that allow for bias in the law and make applicants for the transfer of land rights mistaken. In reality, the implementation of the membership requirements of BPJS Kesehatan which is active in the process of transferring land rights has been quite successful in optimizing the health program in Indonesia because the coverage of BPJS Kesehatan membership has increased by around 2.33%. However, if assessed legally, this could be a problem because it is

considered inconsistent with the applicable laws in Indonesia. So that Circular Letter Number HK.02/1376/VIII/2022 was issued in August 2022 which was issued by the Minister of ATR/BPN through the Secretary General; regarding the postponement of the implementation of the previously issued Circular Letter regarding BPJS Kesehatan membership which must be registered and active in the process of transferring land rights, but applicants are required to attach proof that they have been activated as active BPJS Kesehatan members when collecting the certificate.

5. Suggestion

The policy of Presidential Instruction No. 1 of 2022 can be said to have not been successful when assessed from the side of the regulations or instructions that have been made which have disrupted the process of transferring land rights and this has not been carried out optimally. but behind that this is a positive thing in optimizing BPJS Kesehatan membership. further review is needed in the implementation of this presidential instruction in several aspects of activities in Indonesia because it is considered capable of providing more positive impacts.

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