**LEGAL CERTAINTY OF BPJS KESEHATAN CARD REQUIREMENTS**

**IN THE TRANSFER OF LAND RIGHTS**

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**Abstract**

### This article aims to analyze and examine the legal certainty of the prerequisites for the BPJS card in transferring land rights and the legality of transferring land rights without attaching a BPJS card after Presidential Instruction No. 1 of 2022. This article uses a normative legal research method. The nature of the research is descriptive analysis. The primary legal materials used in this writing are the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Government Regulation Number 24 of 1997 concerning Land Registration, and Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration and Presidential Instruction Number 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance Program. As for secondary legal materials in the form of publications on law including text books, legal dictionaries, legal journals, and comments on court decisions. The tertiary legal materials used in this study are the Big Indonesian Dictionary and the Legal Dictionary. The results of the study show that legal certainty is a prerequisite for BPJS cards in transferring land rights, namely the government does not actualize aspects of legal certainty as prerequisites for BPJS cards in transferring land rights where legal regulations must be implemented consistently and consequentl.

### **Keywords:** **Legal Certainty, Health BPJS Card, Transfer of Land Rights**

**1. INTRODUCTION**

Indonesian citizens have rights to land that are guaranteed by law. Ownership of land rights is regulated in the provisions of the law to provide legal certainty. Legal certainty aims to protect individual human rights so that they are not violated by the authorities. Legal certainty requires that the law can function as a regulation that must be obeyed, of course, not only on how the regulation is implemented, but how the norms or content material in the regulation contain the basic principles of law. According to Sudikno Mertokusumo, if the word certainty is combined with the word law, it means that a country's legal instruments are capable of guaranteeing the rights and obligations of citizens. These land rights consist of ownership rights, usufructuary rights, building use rights, usufructuary rights, rental rights, land clearing rights, rights to collect forest products, and other rights that are not included in these rights. These rights can be transferred and assigned by the right holder according to applicable legal provisions.

Efforts to realize the protection of land rights by the government, based on the provisions of Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated with Government Regulations. Whereas in paragraph (2) it states that the registration of the land referred to in paragraph (1) includes surveying, surveying and clearing of land, registration of land rights and the transfer of these rights, granting of valid proof of title documents as valid means of proof. strong. The President, who is domiciled as an executive body in the sense that he has the duty to carry out legal regulations, based on the provisions of Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), the president stipulates government regulations to carry out laws as they should. To implement the provisions for land registration, the government issued Government Regulation Number 24 of 1997 concerning Land Registration (PP No. 24/1997), in Article 2 of the Government Regulation it stipulates that land registration must be carried out based on the principles of being simple, safe, affordable, up-to-date and open. The Government Regulation also regulates all matters relating to the mechanisms and conditions that must be met in order to register land rights.

Since the issuance of Presidential Instruction Number 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance Program (Inpres No. 1/2022), which provides additional conditions for registration of transfer of land rights. Based on the second dictum, number 17 of the Presidential Instruction contains instructions to "Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency 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". The addition of these requirements is intended as an effort 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. Based on Article 19 paragraph (1) of the UUPA, it stipulates that in order to guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations. The legal certainty referred to in that Article, which is explained in the general explanation of part IV, is shown to the Government as an instruction, so that land registration is carried out throughout Indonesia which is "Rechts Cadastral" in nature, meaning that it aims to guarantee legal certainty. To carry out the guarantee of legal certainty, the UUPA delegated its arrangements through a Government Regulation, so that PP No. 24/1997. According to Maria Farida, as regulations that get delegation from laws, the function of government regulations is to administer:

1. Further regulation of the provisions in the Act which expressly mention it.

This function is in accordance with the provisions in Article 5 paragraph (2) of the 1945 Constitution (before and after amendment) which stipulates: "The President establishes government regulations to carry out the law as it should be". In this case a Government Regulation must implement all the provisions of a law which expressly requests to be further regulated by a Government Regulation.

1. Carrying out further arrangements for other provisions in the governing law even though they do not explicitly mention it.

If a provision in a Law requires further regulation, while the provision does not explicitly state to be regulated by a Government Regulation, then the president can form a Government Regulation insofar as this constitutes further implementation of the said Law.

Regulations implementing the law are Government Regulations which are in accordance with the provisions of Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, especially when a law has stated explicitly that to implement the law must be in accordance with government regulations, this is a provisions that may not be deviated, as is the case in the provisions of Article 19 paragraph (1) of the UUPA. Based on these provisions it can be concluded that the formal regulatory requirements that can regulate the conditions for transferring land rights which are the implementation of the provisions of Article 19 UUPA must be Government Regulations. In the context of adding requirements for transferring land rights through Presidential Instruction No. 1/2022, which adds the condition for the transfer of land rights because buying and selling must be an active participant in the National Health Insurance program is contrary to the provisions of Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia and the provisions of Article 19 paragraph (1) of the UUPA, because the requirement for the transfer of rights is an element implementation of the provisions of Article 19 UUPA regulated in Government Regulations, so that the Presidential Instruction does not meet the formal requirements. Even the Presidential Instruction is not contained in the hierarchy of laws and regulations as stipulated in Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation. That is, a presidential instruction cannot contain rules that can bind parties, but is limited to the implementation of the coordination function of government institutions.

The transfer of land rights is a common occurrence. The transfer of land rights is the transfer of rights from the right holder to the new right holder for some reason and occurs based on applicable legal provisions. According to the BAL, land rights can be transferred and transferred. The transfer of land rights is the transfer of land rights from the right holder to another party because the right holder dies. The transfer of these rights is due to law, that is, when the right holder dies, the heirs obtain the rights to the land. Transferred land rights contain the intention of transferring land rights from the holder (subject) of the rights to another party because of a legal act that is deliberately carried out with the aim that the other party obtains the rights to the land. In order to obtain certain legal protection, the transfer of rights must be registered. Based on the provisions of Article 19 paragraph (1) and paragraph (2) of the UUPA, reads:

1. To ensure legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations.
2. The registration in paragraph (1) of this article includes:
	1. land mapping and bookkeeping measurement;
	2. registration of land rights and the transfer of said rights;
	3. granting of letters of evidence of rights, which are valid as a strong means of proof.

Based on these provisions it is clearly regulated that land registration also includes the registration of land rights and the transfer of these rights. Registration of land rights is done in a simple way. In the elucidation of Article 2 of the UUPA, the simple principle of land registration is intended so that the main provisions and procedures can be understood by interested parties, especially holders of land rights. According to the provisions of Article 37 paragraph (1) PP No. 24/1997, transfer of land rights and ownership rights to flats through buying and selling, bartering, grants, entry into the company and other legal actions for transferring rights, except for the transfer of rights through auctions, can only be registered if proven by a deed drawn up by the PPAT authority according to the provisions of the applicable laws and regulations. In this provision, it can be seen that one of the acts of transfer of land rights is carried out through buying and selling. Furthermore, there is an affirmation of the sentence "...can only be registered if it is proven by a deed drawn up by the PPAT..." meaning that land registration may not have other requirements other than the authentic deed from the PPAT.

The mention of the term sale and purchase in the UUPA is only found in Article 26 of the UUPA, which concerns the sale and purchase of property rights to land, while other provisions use the term transferred. The definition of transfer indicates a legal act that is intentional to transfer land rights to another party through buying and selling, grants, exchanges, and testamentary grants. So, even though the other articles only mention transfer, one of them is the legal act of transferring land rights due to buying and selling. As previously mentioned, land registration can only be carried out if it is proven by a deed drawn up by the authorized PPAT according to the provisions of the applicable laws and regulations. The authentic deed in question is the Deed of Sale and Purchase (AJB). The sale and purchase deed made and signed before the Land Deed Official (PPAT) proves that a legal action has been taken to transfer rights over a land accompanied by payment of a price, and proves that the recipient or buyer has become the new right holder by having evidence of ownership of the land. This is what lies behind the author to conduct a study entitled “Legal Certainty of BPJS Card Pre-Requirements Health In Land Rights Transfer”**.**

**2. IMPLEMENTATION METHOD**

The research method used is normative legal research.Normative legal research or library law research methods are methods or methods used in legal research conducted by examining existing literature. This research is descriptive analytical. Descriptive, namely research aimed at describing a certain thing and at a certain time. The primary legal materials used in this writing are the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Regulations, Government Regulation Number 24 of 1997 concerning Land Registration, and Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, Presidential Instruction Number 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance Program. The secondary legal materials are in the form of all legal publications which are not official documents. Publications on law include textbooks, legal dictionaries, law journals, and commentaries on court decisions. Tertiary legal materials used in this study areBig Indonesian Dictionary and Legal Dictionary.

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**3. RESULTS AND DISCUSSION**

**3.1. Legal Certainty Prerequisites for BPJS Kesehatan Card in Transfer of Land Rights**

According to Sudikno Mertokusumo, if the word certainty is combined with the word law, it means that a country's legal instruments are capable of guaranteeing the rights and obligations of citizens. These land rights consist of ownership rights, usufructuary rights, building use rights, usufructuary rights, rental rights, land clearing rights, rights to collect forest products, and other rights that are not included in these rights. These rights can be transferred and assigned by the right holder according to applicable legal provisions. Efforts to realize the protection of land rights by the government, based on the provisions of Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), land registration is held throughout the territory of the Republic of Indonesia according to the provisions stipulated with Government Regulations. Whereas in paragraph (2) it states that the registration of the land referred to in paragraph (1) includes surveying, surveying and clearing of land, registration of land rights and the transfer of these rights, granting of valid proof of title documents as valid means of proof. strong.

According to the provisions of Article 37 paragraph (1) PP No. 24/1997 junctoGovernment Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, transfer of land rights and ownership rights to flats through buying and selling, exchange, grants, entry into the company and other legal acts of transfer of rights, except for the transfer of rights through auctions, can only be registered if proven by a deed drawn up by the PPAT who is authorized according to the provisions of the applicable laws and regulations. In this provision, it can be seen that one of the acts of transfer of land rights is carried out through buying and selling. Furthermore, there is an affirmation of the sentence "...can only be registered if it is proven by a deed drawn up by the PPAT..." meaning that land registration may not have other requirements other than the authentic deed from the PPAT. Since the issuance of Presidential Instruction Number 1 of 2022 concerning Optimization of the Implementation of the National Health Insurance Program (Inpres No. 1/2022), which provides additional conditions for registration of transfer of land rights. Based on the second dictum, number 17 of the Presidential Instruction contains instructions to "Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency 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". The addition of these requirements is intended as an effort 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.

Through Presidential Instruction Number 1 of 2022 Concerning Optimization of the Implementation of the National Health Insurance Program (Inpres No. 1/2022), has provided new requirements for applicants for land registration due to buying and selling, namely that each applicant must be an active participant in the national health program. This is stated in the second dictum number 17 Presidential Instruction No. 1/2022 which reads "Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency to ensure applicants for registration of transfer of land rights due to sale and purchase are active participants in the National Health Insurance program". The presidential policy of issuing Presidential Instruction No. 1 of 2022 in essence, the president's authority is based on power in making policies, especially policies in the field of law. normatively, Presidential instructions are unknown in the hierarchy of statutory regulations as stipulated in the provisions of Article 7 of Law no. 12/2011, so it is not known exactly how the position of the Presidential Instruction is in the Indonesian legal system. However, what is certain is that the presidential instruction contains the President's policy as the head of government in carrying out his functions as an administrative official based on legal provisions.

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In substance, the imposition of requirements as an active participant in the national health insurance program is based on Presidential Decree no. 1/2022 is a wrong policy, because it is clear and evident in the provisions of Article 37 paragraph (1) PP No. 24/1997 juncto Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, Requirements for land registration can only be proven by an authentic deed (AJB) made by PPAT only, meaning Presidential Instruction No. 1/2022 contradicts the provisions of Article 37 paragraph (1) PP No. 24/1997 juncto Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. Furthermore, the additional requirements for the applicant must be an active participant in the National Guarantee Program which tends to complicate the community in obtaining definite legal protection through the processing of certificates of ownership rights to land that occur due to buying and selling, so that because of this complicated situation it is not in line with the principle of land registration which must be carried out simply as regulated in Article 2 PP No. 24/1997 juncto Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration.

The next problem is that the National Health Insurance Program is not coherent with matters of land registration, these two things have different contexts and objectives. Land registration basically aims to provide certain legal protection to every Indonesian citizen over the ownership of land rights. It is different from the National Health Program, in Presidential Regulation Number 82 of 2018 concerning Health Insurance, Article 1 point 1 provides the definition of Health Insurance is a guarantee in the form of health protection so that participants obtain the benefits of health care and protection in meeting basic health needs provided to everyone who have paid health insurance contributions or their Health Insurance contributions are paid by the Central Government and Regional Governments. Thus it is clear that the problem of the substance of Presidential Instruction No. 1/2022 which has mixed up two different scopes of regulations, namely between the regulation of land registration and the regulation of the affairs of the national guarantee program. With the issuance of Presidential Instruction No. 1/2022 has complicated the community's affairs in an effort to obtain definite legal protection for the ownership of land rights. In addition, Presidential Instruction No. 1/2022 is completely out of sync with PP. No. 24/1997 juncto Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. So that,

Presidential Instruction No. 1/2022 is out of sync with the BAL. In a formal legalistic manner, based on the provisions of Article 19 paragraph (1) of the UUPA, in order to guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulations. This means that with regard to the mechanism for land registration and its requirements, arrangements can only be made through a government regulation, so additional requirements for registration of the transfer of land rights cannot be carried out through a Presidential Instruction because they do not comply with formal provisions. In substance, Presidential Instruction No. 1/2022 provides a new requirement, namely that land registration applicants must have the status of active participants in the National Health Insurance Program, because buying and selling in which case this requirement is intended as a way to optimize the implementation of the National Health Insurance Program. These requirements are totally inconsistent with the registration of the transfer of land rights as stipulated in the BAL with its implementing regulations. In addition, it also conflicts with the principle of land registration which must be carried out in a simple and affordable manner. So that the government does not actualize aspects of legal certaintywhere the rule of law must be implemented consistently and consequently.

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* 1. **Legality of Transfer of Land Rights Without Attaching a BPJS Health Card After Presidential Instruction Number 1 of 2022**

According to PP. No. 24/1997 concerning Land Registration in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration, the procedure for buying and selling land including transferring land rights, which also includes buying and selling land, must be carried out in before the Authorizing Officer. Land Deed The implementation of a land deed must be witnessed by at least two witnesses who, according to the applicable laws and regulations, meet the requirements to act as witnesses in a legal act and who, among other things, prove the existence of a party or proxy.

Registration of land rights is regulated in Article 19 of the Basic Agrarian Law. Regarding the implementation of land registration, PP No. 24/97 mandates that the procedures for land registration must be made before the PPAT and registered so that proof of title is issued. Proof of this right is in the form of an authentic deed/certificate whose contents have been determined by the applicable laws and regulations, then the PPAT only fills in the available deed forms. According to R. Subekti, the elements that must be met before carrying out land registration are the absence of a certificate and the payment of prices or taxes by sellers and buyers has not occurred. The documents that must be submitted by the seller to the PPAT for the certificate registration process include personal biodata such as a photocopy of the KK, KTP, SPPT/PBB, and marriage certificate, while the buyer only has a photocopy of the KK, KTP, and marriage certificate.

The land title certificate includes a copy of the land book and measurement document bound in one cover. Article 32 paragraph (1) PP No. 24/97 stipulates that land certificates are strong evidence containing legally binding information and must be considered as true information as long as the physical data and juridical data are in accordance with the information presented and recorded in the measurement certificate and land book. The transfer of rights or sale and purchase of land by legal subjects or persons is intended to obtain legality or legal certainty for the sale and purchase of goods to the previous land owner. By transferring the status of ownership rights to land or the status of ownership rights from the old owner to the new owner of the land which is the object of sale and purchase between the two parties, the buyer or new owner legally holds the ownership rights to the land. Post Presidential Instruction No. 1 of 2022 stipulates that a photocopy of the BPJS Health card must be attached to each transfer of rights or sale and purchase of land, whereas before PPAT the file must be complete and include a photocopy of the BPJS Health card so that PPAT can register it directly at the local land office. However, at the time of transfer of rights, if the buyer does not have a BPJS Health card, then the buyer must first obtain one while the files are being processed; only after the buying and selling service process is complete can the applicant obtain a certificate by attaching a BPJS Health card.

However, the existence of the BPJS Health Card as a prerequisite must be emphasized. There is no connection between these conditions and the process of transferring rights or buying and selling land. Nonetheless, Presidential Instruction No. 1/22 concerning Optimizing the Implementation of the National Health Insurance Program, at number 17 it states that: “The Minister of ATR/BPN is responsible for ensuring that applicants for registration of transfer of land rights due to sale and purchase are active participants in the program. National health insurance". The Ministry of ATR/BPN requires the BPJS Health Card as a prerequisite for registering the transfer of land rights due to sales and purchases. Presidential Instruction No. 1/22 and PP No. 24/97 juncto Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration are directly contradictory or not in accordance with the standards. The point is, even if you only attach a valid BPJS Health Card as a condition. Given the hierarchy of laws and regulations which are regulated in full in Law no. 12 of 2011 concerning the Formation of Legislation:

"Article 7 of Law 12 of 2011 concerning the Heirarchy of Legislation which reads:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;

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1. Act/Government Regulation in Lieu of Law (Perppu);
2. Government regulations;
3. Presidential decree;
4. Provincial Regulations and;
5. Regency/City Regional Regulations.”

It is clear that Government Regulations have a philosophy to regulate a situation, while Presidential Instructions only provide instructions. Therefore, buying and selling land without attaching a BPJS Health Card is still legal and legal based on Government Regulation Number 24 of 1997 in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration..

**4. CONCLUSION**

The legal certainty of the prerequisites for the BPJS card in the transfer of land rights is that these requirements are completely incoherent with the matters of registering the transfer of land rights as stipulated in the UUPA with its implementing regulations. In addition, it also conflicts with the principle of land registration which must be carried out in a simple and affordable manner. Therefore, the government does not actualize the legal certainty aspect of the prerequisites for the BPJS card in the transfer of land rights where legal regulations must be implemented consistently and consequently. The legality of transferring land rights without attaching a bpjs card after Presidential Instruction Number 1 of 2022, namely that it is clear that Government Regulations have a philosophy to regulate a situation, while Presidential Instructions only provide instructions. Therefore, buying and selling land without attaching a BPJS Health Card is still legal and legal based on Government Regulation Number 24 of 1997 in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration.

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