



ADMINISTRATIVE REQUIREMENTS FOR ACTIVE PARTICIPATION IN NATIONAL HEALTH INSURANCE REGISTRATION OF TRANSFER OF LAND RIGHTS FOR SALE AND PURCHASE

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National Health Insurance; Land Transfer; Administrative Requirements; Legal Implications; Property Transactions. This legal research investigates the nexus between the administrative requirement of active participation in the National Health Insurance (NHI) and the registration of the transfer of land rights in the context of property transactions. Employing a juridical-normative approach, the study meticulously analyzes legal regulations, legal doctrines, and court decisions relevant to land transfer registrations and the prerequisites of active NHI participation. The examination reveals that compliance with NHI administrative requirements has the potential to impact the smoothness of land transfer registration processes, and violations of these conditions may result in significant legal consequences. Therefore, a deeper understanding of this relationship provides practical guidance for stakeholders involved in land transactions and contributes to the development of pertinent policies that balance administrative and legal considerations within the framework of NHI and land rights registration.

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A. Introduction

Instruction of the President of the Republic of Indonesia No. 1 of 2022 universally mandates 30 (thirty) ministries/government institutions in Indonesia to take steps according to their respective duties and functions in optimizing the National Health Insurance program (Mukti). The issuance of this Presidential Instruction is intended to ensure that the implementation of the National Health Insurance (JKN) program in Indonesia is realized well. The implementation of the National Health Insurance program is very essential considering that the 1945 Constitution of the Republic of Indonesia in Article 34 paragraph (2) mandates that the state is obliged to develop a social security system for all Indonesian people. And in continuity with the mandate of Article 34 paragraph (3) where, the state is responsible for providing adequate health service facilities and public services.

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Carrying out the mandate of the 1945 Constitution, the Government of the Republic of Indonesia issued Law Number 40 of 2004 concerning the National Social Security System (SJSN) to be responsible for providing comprehensive social security for everyone in order to fulfill the basic needs of a decent life towards the realization of a prosperous Indonesian society. prosperous, just and prosperous. In SJSN, National Health Insurance (JKN) is created as a form of government commitment to the implementation of health insurance for the entire Indonesian people. In this case, SJSN is implemented using a Social Insurance mechanism where each participant is required to pay contributions to provide protection against risks that befall the participant and/or their family members. And the government is responsible for paying JKN contributions for the poor and underprivileged people who are registered as Contribution Assistance Recipient (PBI) participants (Nasional). Not only does it extend to SJSN, the government regulates Indonesian public health matters in Law Number 36 of 2009 concerning Health, which emphasizes that everyone has the same rights in gaining access to resources in the health sector and obtaining safe, quality and safe health services. affordable. This complete regulation regarding guarantees for public health is sufficient to imply that it is an important responsibility for the Government of the Republic of Indonesia to ensure that its people receive adequate health services and quality.

Along with the start of the National Health Insurance program as of January 1 2014, all health insurance programs that have been implemented by the government are integrated into one Health Social Security Administering Body (BPJS Health). The National Health Insurance Program through BPJS Health is the government's effort to provide adequate health insurance for the community. So besides Law Number 24 of 2011 as the legal basis for the implementation of health insurance (BPJS Health) itself, it is then operationalized in other regulations, namely PP Number 86 of 2013, Presidential Decree Number 82 of 2018 and Presidential Instruction Number 1 of 2022. In this study , Instruction of the President of the Republic of Indonesia No. 1 of 2022 mandates, among other things, the Ministry of Agrarian and Spatial Planning / National Land Agency (ATR/BPN) in point 17, namely:

"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 buying and selling are active participants in the National Health Insurance Program."

This instruction then affects the requirements related to registration of transfer of land rights due to buying and selling in Indonesia. The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR/BPN) is instructed to ensure that in every process of registering the transfer of land rights due to sale and purchase, the applicant/registrant is an active participant registered with the National Health Insurance (Online).

If reviewed based on the Circular Letter of the Head of BPN RI Number 5/SE/IV/2013 which contains the things that need to be fulfilled regarding the

registration of land rights due to sale and purchase, it is necessary to construct whether the mandate of Presidential Instruction Number 1 of 2022 regarding registration of transfer of land rights has been fulfilled. has clear legal reasons. According to Hans Kelsen's legal theory, the functions of legal norms include, among other things, commanding (gebieten), prohibiting (verbieten), empowering (ermachtigen), allowing (erlauben), and deviating from provisions (derogieren). The applicability of a legal norm in a particular legal norm system is relative. He depends on higher norms that shape and determine his behavior. The formation of norms of subordinate legislation must always be in line and in line with the norms of higher legislation (Sutiyoso, 2007). This is where legal principles become important in providing guidelines for the formation of legal norms. Where an arrangement must be compatible with one another and clear so that carrying it out does not result in an inconsistency with the relevant legal norms. So the author in this case will examine the urgency of participation in the National Health Insurance (JKN) program as a condition for registering the transfer of land rights due to buying and selling. This study is important to carry out to review whether the issuance of Presidential Instruction Number 1 of 2022 is related to the registration of the transfer of land rights because the sale and purchase has appropriate and appropriate juridical reasons, so that it does not give rise to legal errors in its implementation.

The aim of this article is to analyze in depth the relationship between the administrative requirements for active participation in the National Health Insurance (JKN) and the registration of transfer of land rights related to buying and selling. Through a discussion of regulations related to registration of transfer of land rights, data on the number of JKN participants in BPJS Health, and the legal consequences of land registration without active participation in JKN, this article aims to provide a comprehensive understanding of the relationship between administrative aspects in property transactions and participation aspects. in the national health insurance program. Thus, it is hoped that this article can provide valuable insight for readers in facing legal and administrative challenges in the context of land buying and selling transactions.

B. Method

The legal research method applied in this article is the normative juridical method. This approach involves an analysis of statutory regulations, legal doctrine and court decisions relevant to the registration of transfer of land rights related to sale and purchase as well as the administrative requirements for active participation in the National Health Insurance (JKN). This analysis is carried out by explaining and interpreting existing legal provisions, in order to understand the regulatory framework that regulates the relationship between these two aspects.

The problem approach in this research focuses on two main dimensions. First, how do the administrative requirements for active participation in JKN affect the registration process for the transfer of land rights related to buying and selling. Second,

what legal implications might arise if registration of the transfer of land rights does not meet the requirements for active participation in JKN. By focusing the analysis on the existing legal framework, this research aims to provide a deeper understanding of the relationship and legal consequences between the administrative aspects of JKN membership and registration of transfer of land rights. Thus, it is hoped that this article will provide valuable conceptual insights into the understanding and practical application of these issues in a legal context.

C. Result & Discussion

1. Regulations related to registration of transfer of land rights due to sale and purchase

a. Government Regulation Number 24 of 1997

Land registration aims to guarantee legal certainty regarding the use and ownership of land rights. By registering land, it will be easy to know the status and legal position of a plot of land. Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration states that the objectives of land registration are:

- 1) To provide legal certainty and legal protection to holders of rights to a plot of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights in question.
- 2) To provide information to interested parties, including the Government, so that they can easily obtain the data needed to carry out legal actions regarding registered plots of land and apartment units.
- 3) To maintain orderly land administration.

b. Presidential Instruction Number 1 of 2022

The presence of Presidential Instruction Number 1 of 2022 cannot be separated from its connection to the National Health Insurance program, as regulated in Law Number 40 of 2004 concerning the National Social Security System (UU SJSN), as well as other operational regulations, namely PP Number 86 of 2013, and Presidential Decree Number 82 of 2018. The President of the Republic of Indonesia then issued Presidential Instruction Number 1 of 2022, in order to maximize the realization of comprehensive health insurance for the Indonesian people. This Presidential Instruction is an effort aimed at ensuring that all Indonesian people are protected through the National Health Insurance Program (JKN). Apart from encouraging mutual cooperation, the issuance of Presidential Instruction Number 1 of 2022 also helps improve the JKN program in terms of access and quality of services, quality of membership data, validity of membership data as well as socialization and education of the JKN program.

Universally instructing 30 (thirty) ministries/institutions and regional governments to participate in taking steps according to their respective duties and functions in optimizing the National Health Insurance Program. Including one of them to the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR/BPN), namely in the second Dictum point 17, to ensure that

applicants for registration of transfer of land rights due to buying and selling are active participants in the National Health Insurance Program. This Presidential Instruction is an evaluation of a similar Presidential Instruction that was previously issued in 2017, namely Presidential Instruction Number 8 of 2017 concerning Optimizing the Implementation of the Health Insurance Program. Regulating the same thing as Presidential Instruction Number 1 of 2022, Presidential Instruction Number 8 of 2017 was present but failed to coordinate and run optimally. It is also stated that this Presidential Instruction is only valid until December 31 2018.

c. Circular Letter Number 1/SE-100/I/2013

The process of applying for registration of land rights due to buying and selling, needs to fulfill a series of processes and conditions. Among the basics that contain implementation guidelines regarding land registration is the Circular Letter of the Head of BPN RI Number 1/SE-100/I/2013. Requirements for registration of transfer of land rights due to sale and purchase must include the following (Pansariang, 2014):

- 1) The application form which has been filled in and signed by the applicant or his/her proxy on sufficient stamp duty;
- 2) Power of Attorney if authorized;
- 3) Sale and Purchase Deed from PPAT;
- 4) Photocopy/original of seller's identity (KTP, KK);
- 5) Photocopy/original of the applicant's identity (KTP, KK) and the identity of the proxy if authorized, which has been checked with the original by the counter staff;
- 6) Original Certificate of Ownership;
- 7) Permit to Transfer Rights if the certificate/decision includes a sign stating that the rights may only be transferred if permission has been obtained from the competent authority;
- 8) Photocopy/Proof of payment of land and building rights acquisition fees (BPHTB);
- 9) Photocopy/Proof of payment of income tax (PPh);
- 10) Photocopy/Proof of the Deed of Establishment and Legalization of Legal Entities which has been matched with the original by the counter officer (for legal entities); And
- 11) Land and Property Asset Value Zone Map

After the issuance of Circular Letter from the Head of BPN RI Number 1/SE-100/I/2013 concerning the Imposition of Tariffs on Non-Tax State Revenues in Accordance with Government Regulation Number 13 of 2010, all National Land Agencies and/or Land Offices in Indonesia carry out land rights registration services because buying and selling refers to the circular letter. Even so, throughout 2013 until now there are still land sales and purchases that are not registered and carried out in accordance with the regulated requirements. An

example is the Kupang District Court Decision Number 265/Pdt.G/2020/PN Kpg, where the plaintiff bought and sold land with the defendant without fulfilling the requirements of the land zone map and sale and purchase deed (Arfan, 2009). This then makes it difficult to register the transfer of land rights due to buying and selling, and results in the certificate being legally defective.

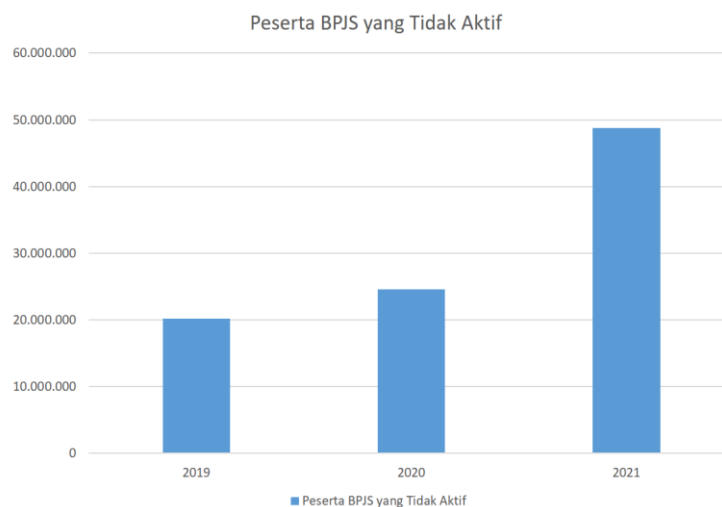
d. Circular Letter Number 5/SE-400.HK.02/II/2022

Implementing the second Dictum point 17 in Presidential Instruction Number 1 of 2022 concerning Optimizing the Implementation of the Health Insurance Program, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) on February 25 issued BPN RI Circular Letter Number 5/SE-400.HK. 02/II/2022. This circular letter is intended as an operational regulation for Presidential Instruction Number 1 of 2022, regarding the details of how to participate in National Health Insurance (JKN) in applications for registration of transfer of land rights or ownership rights of apartment units due to sale and purchase.

Several district/city Land Offices even coordinated with BPJS Health to send officers to be stationed at land offices. The Solok district and Bungo district land offices are examples of land offices that provide JKN registration counters at the relevant land offices. This is a manifestation of the implementation of BPN RI Circular Letter Number 5/SE-400.HK.02/II/2022. And it is intended to make it easier for applicants/registrants to transfer land rights due to buying and selling in obtaining this service. This certainly has an impact on carrying out the mandate of Presidential Instruction Number 1 of 2022 in terms of showing JKN membership when registering the transfer of land rights due to buying and selling, so that it becomes easier and faster

2. Data on the number of participants in the National Health Insurance BPJS Health

Data on BPJS health participants always increases from year to year, this increase can be seen in 2021, the number of BPJS participants is 229,514,068 (two hundred twenty-nine million five hundred fourteen thousand and sixty-eight) people. This figure is a form of achievement made by the government in the spirit of mutual cooperation in the health sector. The number of participants reached 229,514,068 when compared to the total population which reached 273,879,750 people, the number of BPJS Health participants was 83.8%. The high percentage of BPJS Health participants is not offset by the number of inactive participants. where in the last 3 years, the number of inactive participants has always increased. This can be seen in the following graph:



The data above shows that active JKN participation has continued to decline in the last 3 (three) years. Non-active JKN participants as of December 31 2019 numbered 20,189,126 people. The number of inactive participants increased to 24,591,275 people at the end of 2020. And the number of inactive participants continued to increase to 100% on February 7 2022 at 48,723,718 people. This indicates that the rapid decline in the National Health Insurance program needs to be evaluated so that a similar thing does not happen in the following years.

Data on Number of Land Registrations

Since 2017, the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR/BPN) has registered 5.4 million plots of land. This figure then continued to increase in 2018 and 2019, namely to 9.3 million and 11.2 million registered land parcels. Then it decreased due to the Covid19 pandemic in 2020 to 7.1 million plots of land registered. And in 2021 the Ministry of ATR/BPN was recorded as having succeeded in registering 10.7 million plots of land in all provinces in Indonesia.

3. Legal Consequences of Registration of Transfer of Land Rights due to Buying and Selling Without Active Participation in National Health Insurance (JKN)

Registering the transfer of land rights because buying and selling is an obligation. Transfer of land rights that are not immediately registered can result in misappropriation of rights. This can happen because a land sale and purchase has resulted in the transfer of land rights from the seller to the buyer. So, when the transfer of rights is not immediately registered, it can open up the opportunity for the seller to re-sell the land he previously owned to another party, and claim that the land is his as evidenced by a land certificate that has not been reversed by the buyer.

Registration of the transfer of land rights is carried out at the local land office. The process of registering the transfer of land rights due to sale and purchase is carried out based on Government Regulation Number 24 of 1997, Circular Letter of the Head of BPN Number 1/SE-100/I/2013, and Circular Letter of BPN RI Number 5/SE-400.HK.02/II /2022. Among these basics are the regulations and procedures for registering the transfer of land rights due to sale and purchase. Required documents needed to register rights, namely Resident Identity Cards (KTP) belonging to the seller and buyer; Sale and purchase deed made by PPAT; Original land certificate; Proof of payment of income tax (PPh); Proof of full payment of Land and Building Tax (PBB); Proof of payment of Land and Building Rights Acquisition Fee (BPHTB); and Map of land and asset value zones. And by showing active participation in the National Health Insurance program, after the issuance of BPN RI Circular Letter Number 5/SE-400.HK.02/II/2022.

These required documents are important considering the connection between the contents of the document and the legal action being carried out, namely the transfer of land rights. These required documents should be owned by both parties transferring land rights by means of sale and purchase. Because it is an obligation for both parties in the land buying and selling process. However, this is different with active participation documents in the National Health Insurance program, as proven by printouts of participation, this is not an obligation for both parties when buying and selling land.

Starting March 2022, the implementation of registration of transfer of land rights due to buying and selling will also include active participation in the National Health Insurance in the process. The basis that explains further that this applies in the process of registering the transfer of land rights due to buying and selling is Circular Letter Number 5/SE-400.HK.02/II/2022. This Circular was issued as a response from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) to Presidential Instruction Number 1 of 2022 concerning Optimizing the Implementation of the Health Insurance Program. As mandated in Presidential Instruction Number 1 of 2022 through the second Dictum point 17:

"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 buying and selling are active participants in the National Health Insurance Program."

In response to these instructions, a Circular Letter was issued by BPN RI SE Number 5/SE-400.HK.02/II/2022 concerning National Health Insurance (JKN) Participation in Applications for Registration of Transfer of Land Rights or Ownership Rights to Flats Due to Buying and selling is a guideline for implementing the Presidential Instruction in question. Namely to realize land registration due to orderly buying and selling, and in accordance with the mandate in Presidential Instruction No. 1 of 2022. However, it needs to be emphasized that until now there is no legal basis which stipulates that active participation in National Health Insurance is part of the application document for registration of transfer of land rights due to

sale and purchase. In BPN RI Circular Letter Number 5/SE-400.HK.02/II/2022 it is stated that:

"The requirements for participation in the National Health Insurance program apply to applications for registration services for the transfer of land rights or ownership rights to apartment units due to sale and purchase."

As if to emphasize that when registering the transfer of land rights due to sale and purchase, land offices must pay attention to the applicant's active participation in the National Health Insurance Program. This is interpreted as a requirement for related services. Then in letter e of Circular Letter Number 5/SE-400.HK.02/II/2022 it is stated as follows:

"If based on the results of the examination as intended in letter c or letter d, the applicant's National Health Insurance membership status is not active or the applicant is not yet a National Health Insurance participant, then:

- (1) Applications for registration services for the transfer of Land Rights or Ownership Rights over Flat Units due to sale and purchase can still be accepted and the service can be processed in accordance with the provisions of statutory regulations; And*
- (2) When collecting service results, the applicant shows that the National Health Insurance membership status is active or has become a National Health Insurance participant."*

The letter e of Circular Letter Number 5/SE-400.HK.02/II/2022 above can be interpreted as an obligation for the land office to ensure that every applicant for registration of the transfer of land rights due to buying and selling is an active participant in the National Health Insurance (JKN) . However, in the event that the applicant has not been registered as an active JKN participant when submitting an application for registration of the transfer of land rights due to sale and purchase, registration can still be carried out in accordance with statutory provisions. Only later, when collecting service results, the applicant can collect the service results in the form of a certificate of ownership by showing status or proof of active participation in the JKN program. This is a new requirement for registering land rights due to buying and selling, after the issuance of Presidential Instruction Number 1 of 2022. It is said to be a requirement, because even if this is not carried out, the service for registering land rights due to buying and selling will be imperfect. That is, when the applicant cannot show proof that he is an active participant in the JKN program, then the results of the land rights registration service cannot be carried out.

Retrieving service results here is the final part of the registration process for transferring land rights. Taking service results means that the process of registering the transfer of land rights submitted by the applicant has been completed. At this time, a land ownership certificate is issued in the applicant's name. In the case of a transfer of land rights due to sale and purchase, the owner of the property rights is the party who buys the land.

Referring to the contents of the circular letter, applicants who can demonstrate active participation in the JKN program can collect the results of land

rights registration services because the sale and purchase has been processed. But then the problem becomes what if the opposite happens. Namely, if the applicant cannot show himself as an active participant in the JKN program, it means that the applicant cannot collect the results of the service, in the form of a certificate, for the transfer of rights that he has registered.

If this happens, not taking the service results in the form of a certificate will not affect the land registration data that has been carried out. As stated in letter e of Circular Letter Number 5/SE-400.HK.02/II/2022, land registration can still be accepted and processed in accordance with statutory regulations even if the applicant is not or is not an active JKN participant. So, even if the proceeds of the service are not taken, the registration of the transfer of land rights is because the sale and purchase that has been registered has been registered and is valid according to law, and will not then become invalid.

But on the other hand, certificates certainly have value for their holders. A certificate of ownership makes it easier to prove the right to ownership of a plot of land. Constructing the legal consequences of not taking the results of land registration services because the applicant is not/is not an active JKN participant, this could result in the land registration process not fulfilling the principle of publicity. Among the principles of land registration according to Article 2 PP Number 24 of 1997 concerning Land Registration, is the open principle (*openbaarheid*). One of the manifestations of holding land registration on an open basis is publicity. The principle of publicity determines that the registration of land rights indirectly constitutes an announcement regarding the existence of a legal relationship between the land and the rights holder. So, with this the other party is deemed to know (MayoreSaranaung, 1990).

With the principle of publicity, land registration indirectly also functions to socialize the public to know the position of ownership of collateral objects (Prayitno, 2009), as stated in Article 13 of Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. In the event that land registration services are not collected, it is difficult to prove quickly and in detail that the land is occupied and owned by that person.

In relation to proof, the existence of a title certificate is a form of authentic deed and perfect proof according to the law. Every land title certificate or property rights certificate has 2 (two) evidentiary powers, namely the strength of birth proof and the power of formal proof. Based on the legal principle of proof "*acta publica probant sese ipsa*" namely a deed that appears to be an authentic deed and meets the specified requirements, then the deed is valid and can be considered an authentic deed until proven otherwise (Patajai, 2019). The title certificate qualifies as an authentic deed which is issued by the National Land Agency (BPN). So this is authentic evidence for the right holder to control his land.

Regarding land rights certificates, this also applies to the interests or benefits of every person, not limited to the parties whose names are listed. Land rights certificates as authentic deeds depend on the strength of proof of birth

(Patajai, 2019). And the right to continue to control and occupy as proof of ownership of this right will only cease when it is stated otherwise by a court decision that has permanent legal force. This is in accordance with the "principle of *presumptio iustae causa*" namely that every state administrative decision (KTUN) issued must be considered correct according to law, therefore it can be implemented first as long as it has not been proven otherwise and declared by the administrative judge as an unlawful decision (Suriadinata, 2018). So even if it is not held by the right holder, because the proceeds of the service are not taken, the title certificate in the name of ownership that has been registered still has permanent legal force, until there is a court decision that proves otherwise.

Collection of service results that cannot be carried out also of course results in not achieving the objectives of the land registration itself. The purpose of carrying out land registration, namely (ramadhani, 2017):

- a. To provide legal certainty and legal protection to rights holders;
- b. To provide information to interested parties;
- c. To maintain orderly land administration.

So, by not taking the service proceeds, the rights holder does not obtain legal certainty. Even though the transfer of rights has been recorded as legally valid and registered, the element of legal certainty for the rights holder is said to have not been fulfilled. Based on Van Apeldorn's theory of legal certainty, legal certainty is the clarity of behavioral scenarios that are general in nature and binding on all members of society, including the legal consequences. Legal certainty also means what can be determined from the law, in concrete matters, such as property rights to land which become more concrete if the right holder has a certificate of ownership rights in question.

However, this enactment has received various responses from the public, because proving oneself as an active participant in the National Health Insurance (JKN) indirectly ultimately becomes binding. Participation in JKN has also resulted in several public services imposing service sanctions if they do not include proof of JKN participation in the process (Zon). Quoted from *mediaindonesia.com*, Chairman of the DPR RI's Inter-Parliamentary Cooperation Agency, Fadli Zon, said that in terms of public services, making the right to health services in the form of Health Insurance an obligation which then complicates the community's process of obtaining other public services, is a matter of which is wrong. This is because the Presidential Instruction then gives rise to sanctions on public services for the community. On the same occasion, he also said that from the legal order, a Presidential Instruction cannot bind everyone in general, the position of the Presidential Instruction is only binding on (government officials under the president). The Presidential Instruction also does not include regulations that are regulatory towards the community as far as possible. If you want to bind and regulate the public/general, the regulation issued should be in the form of a presidential regulation.

Where an arrangement must be compatible with one another and clear so that implementing it does not result in an inconsistency with the relevant legal norms. review whether the issuance of Presidential Instruction Number 1 of 2022 is related to the registration of the transfer of land rights because the sale and purchase has appropriate and appropriate juridical reasons, so that it does not give rise to legal errors in its implementation.

D. Conclusion

In conclusion, this research comprehensively describes the relationship between the administrative requirements for active participation in National Health Insurance (JKN) and registration of transfer of land rights related to buying and selling. Through a normative juridical approach, in-depth analysis of legal regulations, doctrine and court decisions has opened insight into the legal and administrative implications of JKN membership requirements in property transactions. This research shows that compliance with JKN administrative requirements has the potential to impact the smooth process of registering the transfer of land rights, and violations of these requirements can have significant legal impacts. Therefore, it is hoped that a deeper understanding of this relationship can provide practical guidance for parties involved in land buying and selling transactions, as well as contribute to the development of relevant policies in order to balance administrative and legal aspects in the context of JKN and registration of land rights.

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