

Research Article

Obligation to be Registered as Participant of National Health Insurance in Land Registration from Sale and Purchase from State Responsibilities Perspective

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Abstract. The right to health is one of the human rights guaranteed by the 1945 Constitution of the Republic of Indonesia and is a state responsibility that must be fulfilled. One manifestation of the implementation of these rights is to organize the National Health Insurance program. However, current facts and data show that participants from the National Health Insurance have not reached 100%, so to achieve this the government issued Presidential Instruction Number 1 of 2022, one of which requires applicants to register for the transfer of land rights because the sale and purchase is an active participant in the Health Insurance program. National. The author considers the government's policy through the Presidential Instruction to be wrong based on theories related to state responsibility, laws related to buying and selling land in Indonesia, and the concept of state control over land in Indonesia. In the end, the author analyzes that this policy will actually be contradictory to other governments, namely all land in Indonesia must have a certificate for the realization of legal certainty over land throughout Indonesia.

Keywords: *Presidential Instruction, National Health Insurance, Land, State Responsibilities.*

A. INTRODUCTION

Every Indonesian citizen has a guaranteed right to health in accordance with Article 28H and Article 34 of the 1945 Constitution of the Republic of Indonesia (UUD 1945) and its implementing regulations, namely Law Number 36 of 2009 concerning Health (Health Law). The Health Law emphasizes that everyone has the same right to affordable and quality health services. Consequently, every citizen also has an obligation to participate in the national health insurance program so that the state can more easily implement the guarantee of the right to health for every citizen.

Health itself is a fundamental human right that is owned by humans, because without the fulfillment of the right to health, humans certainly cannot carry out activities like humans in general (Yang et al., 2021). It is impossible for humans to be able to carry out activities if their physical and mental health is disturbed, so it can be said that the right to health is the core of all human rights possessed by humans (Hsieh et al., 2019; Nuh et al., 2022; Puspitasari et al., 2018).

However, the implementation of the national health insurance program experienced obstacles because not all people registered themselves as participants of the national health insurance (Cohen et al., 2022; Nachrawi & Dinarwati, 2021). Based on data compiled by the Social Security Administering Agency (BPJS), as of December 31, 2020, the number of Indonesians registered as participants in the national health insurance program amounted to 222.5 million people or 81.3% of the population in Indonesia.

This amount must be increased because of the mandate of the 1945 Constitution that the state must guarantee the right to health of citizens as a whole or 100%. To outsmart this,

President Joko Widodo issued Presidential Instruction (Inpres) Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program. It is hoped that with the issuance of the Presidential Instruction, the participants of the national health insurance program can increase rapidly.

One of those who received instructions in the Presidential Instruction was the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency who ordered "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". Based on the Instruction, the President hopes that for every land registration obtained from a sale and purchase transaction, one of the conditions is to be registered as a national health insurance program (Gurung & Panza, 2022).

Although the purpose of the Presidential Instruction is very good, from a legal perspective it can cause problems. One of the core problems is whether the state has the right to interfere in the sale and purchase of land between communities, which transaction is classified as a private agreement? In addition, the Presidential Instruction received wide rejection from the public. One of the reasons for his refusal is that there is no proper correlation between the sale and purchase of land and health insurance and considers this to be a violation of rights by the state (Feng et al., 2020).

The suppression of rights by the state referred to here is related to the legal certainty rights that citizens have the right to possess (Ludvigsson et al., 2019; Agustina et al., 2019). Every land sale and purchase transaction is carried out between the two parties, the seller and the buyer, then it must be followed up with a deed of purchase in the presence of the official making the land deed, and then the certificate renewal is carried out at the National Land Agency office.

When the way to exercise these rights is blocked by the Presidential Instruction by requiring them to be registered as participants of the National Health Insurance, then this has the potential to injure the rights of both the seller and the buyer to the legal certainty of the land sale and purchase transactions they carry out (Vazirani et al., 2019; Kuitunen et al., 2020). So it becomes a big question, is the Presidential Instruction a solution to the problem of fulfilling the right to health and legal certainty related to buying and selling land in Indonesia?

Therefore, the author is interested in studying how the obligation to be registered as a Participant of National Health Insurance in Land Registration Originating from Sale and Purchase in terms of State Responsibility. This study will be based on the theory of guaranteeing the right to health for citizens and also the authority of the state in the intervention of land buying and selling rights carried out by the community.

B. RESULT AND DISCUSSION

1. The State's Obligation to Fulfill the Right to Health

Health is part of human rights that have been protected for sure to get services and social security in the health sector. Therefore, the right to health is a human right which is the obligation of the state. The state must fulfill this right by providing adequate health services for all Indonesian people

Health is an important asset for all Indonesian people, because health is not a legacy, health is a valuable asset for all people. Therefore, everyone has the right to a standard of living that is adequate for the health and well-being of himself and his family. For example, the right to adequate food, adequate housing, and affordable health facilities as well as various forms of guarantees such as social security, health, and old age (Thomas et al., 2021; Evans et al., 2019).

This is what makes the right to health one of the human rights that must be fulfilled by the state, because health is an essential and crucial right for humans to continue their lives. Without health, of course humans cannot continue their lives and cannot achieve a prosperous life, therefore the role of the state is very important in fulfilling the rights of public health.

The right to health is a right that has been recognized by international law, one of which in the International Covenant states that "the right of everyone to enjoy the highest attainable standard of physical and mental health." Based on the quote from the covenant, it can be seen that the health that is fulfilled by the state is not only physical health, but also mental health.

The concept of human rights adopted by Indonesia is inseparable from the concept of a welfare state which requires the fulfillment and responsibilities of human rights owned by citizens by the state. This is in line with the concept of distributive justice, which according to Aristotle, distributive justice is a mechanism for distributing benefits and burdens among relevant group members proportionally with several criteria for distribution, such as merit, need, equality, and status.

Furthermore, Rawls also presents ideas that are in accordance with the theory of natural law in social contract theory. The idea is that people don't know what they will become. They will not know where their place in society will be. They would not know their class position or social status, nor would anyone know their fortunes in distributing natural assets and abilities, intelligence, strength, and the like. Thus, no one is benefited or harmed by the natural conditions possessed by a human being as a result of the laws of nature.

This principle demands equal opportunities for citizens by providing facilities and opportunities to avoid inequality from the start, such as being born from a rich or poor class and other conditions. Thus, the freedom of basic rights must be positioned as the highest value followed by equal opportunities for everyone. However, Indonesia recognizes that it adheres to a welfare state by referring to the fifth principle contained in Pancasila which states social justice for all Indonesian people, although the preamble and articles of the 1945 Constitution affirm and specifically expand this precept. Therefore, Indonesia must fully fulfill the rights of its citizens based on social justice in Pancasila.

The goal of the welfare state is to fulfill civil rights, including social services, to ensure that every citizen gets a decent income. Thus, the welfare state is associated with the fulfillment of basic needs. According to Andersen, as quoted by Yohanes, the welfare state requires the state to play an active and responsible role in ensuring basic welfare services at a certain level for its citizens.

On the basis of the welfare state, human rights must be treated equally as justifiable claims, based on moral and legal reasons to have or obtain something or act in a certain way. However, the source of these rights is not from the state, not from society, not from religion, but the source of these rights comes from humans from the time they are in the womb. On that basis there is a demand to get their human rights from the state, which places the state as the bearer of responsibility.

All human beings have the same basic rights and cannot be distinguished from one individual to another so that their dignity or honor must always be maintained and protected by every human being in the world. Furthermore, based on this it is known that human rights are universal and their existence is not hindered by the place of application and is not limited by space and time and cannot be separated and violated by anyone.

State obligations basically speak of two things, namely the responsibility of the state in fulfilling the community or citizens in its territory, for example the Indonesian government has an obligation to protect Indonesian citizens, and besides that the government also has an

obligation to protect foreign nationals who are residing in Indonesia with all legal actions carried out in Indonesia

Therefore, it is important for a country to fulfill its legal responsibilities to protect the entire community and/or its citizens whether they are in their country or outside the territory of their country. This has become the highest goal of the establishment of a state, namely the state has the responsibility to fulfill the rights of citizens.

According to Ambedha et al. (2022) and Chou et al. (2019), elements of the state's responsibility in protecting human rights include three specific responsibilities, namely: 1) the responsibility to prevent, namely addressing the root causes and direct causes of internal conflicts and other crises that endanger society; 2) Responsibility to react, i.e. to respond to situations of human need that compel to take appropriate steps, which may include coercive measures such as sanctions, international determinations, and, in extreme cases, military intervention; and 3) Responsibility for rebuilding, which provides, especially after military intervention, full assistance for recovery, reconstruction and reconciliation, to address the causes of harm for which the intervention was designed to stop or prevent.

The above description shows that the state's responsibility includes meeting human needs, including the provision of guarantees. Therefore, because the fulfillment of the right to health is a human right, the state is responsible for fulfilling these rights. Therefore, every individual, family, and community has the right to obtain protection for their health, and the government is responsible and has the right to regulate and protect so that the community's right to a healthy life is fulfilled. Therefore, the recognition and affirmation of the right to health as part of human rights certainly emphasizes the responsibility of the state to fulfill this right. In this case, the state is obliged to provide health facilities and public service facilities for all citizens.

2. The Concept of Buying and Selling Land in Indonesian Law

The Indonesian National Land Law, which is fully regulated in Law Number 5 of 1960 concerning Agrarian Principles, is a law imbued with customary law. This is because customary law in the process of buying and selling land in Indonesia has been in effect for a long time in Indonesian society. The concept of law in buying and selling has a different application, for example customary law adheres to the principle of "light and cash".

Terang means that the legal act of buying and selling is carried out in the presence of an official who has the authority to witness the process of buying and selling land, so there is little chance of a land conflict. While cash is delivery directly from the seller and the buyer without any delay or distance in time. This is considered different from the concept of buying and selling western land. The concept of buying and selling land in western law emphasizes the clauses of the agreement made by both parties, but it is different from the concept of customary law adopted by the Indonesian people, in which they must comply with the elements of light and cash, and if not fulfilled, then the land transaction must be considered invalid even though there is an agreement between the two parties (Kanmiki et al., 2019; Kania, 2021).

The Agrarian Law was promulgated in the State Gazette of the Republic of Indonesia Year 1960 Number 104 on September 24, 1960. The BAL which contains the main provisions of the Land Law aims to abolish things that have occurred previously, namely dualism in the field of Land Law, and is intended to to organize a legal unit in accordance with the wishes of the people as a national unity and in accordance with economic interests. According to Soehadi, "The sale and purchase of land according to customary law is a permanent transfer of land by receiving an amount of money which is paid in cash by the

buyer and the buyer obtains full ownership rights to the land. This cash payment is made in front of the village head as a legal witness to the sale and purchase transaction”.

In general, humans always interact, so that the relationship between individuals and individuals is created. Relationships between individuals lead to relationships tailored to their needs, including their need for land. If the relationship between two people or two people is regulated by law, namely the relationship between people who are regulated by law and whose consequences are protected by law, then the relationship is called a legal relationship. Buying and selling land based on customary law is still routinely carried out by some Indonesian people. Especially those who have a weak economic situation and a low level of education. This is because of the effect of customary law, which stipulates that the sale and purchase of land rights is legal if it is clear and meets the cash requirements. In customary law there is a system used for buying and selling land rights known as light and cash. This means that the transfer of land rights from the seller to the buyer must be made at the same time as payment before the Land Deed Official.

Customary law and national law that regulates agrarian matters have different arrangements from the validity of contracts regulated by western civil law. As a general rule, customary law requires that every act that results in a change in the legal status of the person concerned is protected by law only if the act is legal and the act is clear and carried out with Cash and Clear. According to customary law, the agreement to buy or sell land rights is not carried out by the official who issues the land certificate, but it is difficult to prove the rights to the purchased land, especially for the final buyer/right holder, because without a certificate issued by the land certificate officer, it will be difficult for buyers to register their land rights at the authorized land registration office.

Based on the provisions of the Law on Basic Agrarian Affairs as the applicable law in Indonesia, the sale and purchase of land is not only a formal agreement but also a material agreement. Therefore, in addition to an agreement, there are forms and conditions that must be met in order for the agreement to be valid. One of the conditions that must be met is that the sale and purchase of land is carried out in the presence of the official making the land deed and then registered with the land office. This is what makes buying and selling land legal.

Therefore, based on customary law and also the Law on Basic Agrarian Affairs which is the basis of national land law in Indonesia, the transfer of land rights is said to have legal force not when there is an agreement or signing by both parties, but when the land sale and purchase transaction is carried out. in cash or directly between the buyer and seller, carried out before the official making the land deed, and finally registered with the land office or the National Defense Agency.

This shows that there is harmony between customary law and positive law related to land at this time, and indeed the agrarian law itself is imbued with customary law. Therefore, when the sale and purchase process is completed between the buyer and seller, this will lead to a legal consequence, namely the severance of the relationship between the old land owner and the new land owner forever. Transfer of rights means the transfer of control both juridically and physically. However, sometimes the transfer of rights is only juridical because physically the land is still controlled by other people (for example, due to an unfinished lease relationship), so that the physical handover is not carried out immediately.

Therefore, it can be understood that the sale and purchase of land must begin with the meeting of the seller and the buyer first. At this stage of the meeting, the seller and the buyer do not need to do this in front of the land deed official. Furthermore, after reaching an agreement, they came to the official who made the land deed and stated that they wanted to carry out the process of buying and selling land. In the process, the official who issued the

land certificate has the responsibility to investigate the land certificate and the identity of the parties. The land deed official also has the responsibility to check whether the certificate is free from various legal problems such as disputes and others, and if it is known that the certificate is not problematic, the land deed official makes a sale and purchase certificate. The making will be attended by the parties and witnessed by a minimum of two witnesses.

The payment itself is recommended to be made by the parties in the presence of the official making the land deed, because this will make it easier for the official making the land deed to check whether the payment of the land price is in accordance with the agreement and also makes it easier to issue a deed of sale and purchase. If the payment is not made in front of the land deed official, he/she must ask: "Has the price of the land according to the deed been submitted by the buyer to the seller and has the seller received the price of the land from the buyer"?

According to Wiryono Projodikoro, "sales and purchases according to customary law are not just an agreement between the two parties, but are a transfer of rights to goods or objects on condition that they pay a price. When an agreement is made between the two parties, according to customary law, the buyer is given a down payment to the seller. This is intended so that there is strength between the two parties."

There are two types of buying and selling land in customary law, namely as follows: 1) One-sided legal actions in which the act does not involve two parties but only one party, for example when someone stays silent and builds a residence, opens agricultural land, and others that does not involve other parties; and 2) Two-party legal actions in which these actions always involve the presence of two parties. The essence of this act is the transfer of rights between the parties, one example of which is buying and selling (Sahur et al., 2021; Tien, 2021).

As the author explained earlier, that the current national agrarian law which is fully regulated in the Law on Agrarian Principles is imbued with customary law, so that national agrarian law is very closely related to the system and principles of customary law. This is what makes the similarities between national agrarian law and customary law very visible. In customary law, the system used for buying and selling land is known as the cash and clear system. This means that the transfer of land rights occurs at once after the payment of the land price is handed over to the buyer. Furthermore, the action must be fulfilled by submitting an advance so that it is legally binding.

Furthermore, what is interesting to discuss is the extent to which the state can intervene in land buying and selling transactions carried out by the community. Since the revolution for Indonesian independence, there have been many public tendencies towards anti-Western law, including one in the aspects of civil and agrarian law. This is what makes the Domein Verklaring principle which was enforced by the Dutch during the Dutch colonial period immediately replaced by the Indonesian people with the concept of 'The Right to Control the State', then whether this concept can be used as a justification for interfering in land buying and selling transactions, by requiring them to become participants in national health insurance?

The State's Right to Control over land is the right of control based on a common basis; eternal and is the parent of other land tenure rights. The Law on Agrarian Principles has the main spirit to make "the declaration of land controlled by the Indonesian people as common land shows that there is a legal relationship in the field of civil law".

Even though it shows a civil relationship, in the sense of the Rights of the Indonesian Nation, it still provides the opportunity for every Indonesian citizen to be able to own land as part of the common land. This is clearly shown in Article 9 paragraph (2) of the LoGA, which states: "Every Indonesian citizen, both male and female, has the same opportunity to

obtain land rights and benefit from the results both for himself and his family. ” In addition to civil relations, the Rights of the Indonesian Nation contain elements of the task of authority. The task of authority here means that the Indonesian people have the authority to regulate and manage land together for the greatest prosperity of the people. The implementation of the authority is left to the State, as an organization of power owned by all Indonesian people, as mandated by Article 33 paragraph (3) of the 1945 Constitution.

The Right to Control the State describes legal institutions and concrete legal relationships between the State and land that exist throughout Indonesia. The relationship between the State's Right to Control and the land throughout the territory of Indonesia is solely for the public. This public authority stems from the delegation of the Indonesian nation's duties to land throughout Indonesia. This is what distinguishes the occupation of land by the state during the reign of the Dutch East Indies, which at that time was known as *domein verklaring*. This domain implies that all lands where the other party cannot prove their eigendom are declared as state domains. So, at that time the state was called the owner of the land. This statement is needed to legitimize the state's authority to provide, sell or lease land to parties in need. With the enactment of the UUPA, all provisions regarding the *verklaring* domain are revoked.

In General Elucidation number II it is stated that "The Basic Agrarian Law departs from the stance that in order to achieve what is specified in Article 33 paragraph 3 of the Constitution it is neither necessary nor appropriate, that the Indonesian nation or State acts as the owner of the land. It is more appropriate if the State as an organization of power for all the people (the nation) acts as the Government". From this understanding, it must be seen the meaning of the provisions of Article 2 paragraph 1 of the Law which reads "Earth, water and space, including the natural resources contained therein, are at the highest level controlled by the State". In accordance with the root of the word above, the word "controlled" in this article does not mean "owned", but what is meant is to give power to the State, as the organization of the Indonesian nation's power at the highest level.

At the time of the amendment to the 1945 Constitution, the word "controlled by the state" contained in Article 33 paragraph (3) of the 1945 Constitution, was proposed to be changed to "controlled and/or regulated by the State". With these two words it shows that there is a difference in understanding between 'controlled' and 'ruled'. The term 'controlled' signifies a civil relationship, while the word regulated to denote a public relationship. Meanwhile, so far the UUPA and several other laws and regulations have defined the word 'controlled' as including the authority to regulate.

3. Analysis of Obligations as Participant of National Health Insurance to Register Land

Previously, the author explained that guaranteeing the right to health is one of the responsibilities of the state, and because the data shows that not 100% of the Indonesian people have not been registered as participants in the national health insurance, the government issued a Presidential Instruction which instructs one of them to the Ministry of Agrarian Affairs, Spatial Planning, and the National Land Agency to require land sale and purchase transactions as participants of the national health insurance.

The author believes that this is wrong. First, the author's opinion is based on the principle of buying and selling land based on customary law which animates the agrarian law in Indonesia. The author has explained earlier that the condition for purchasing land based on customary law is valid if it meets the "clear and cash" requirements. The parties in the land sale and purchase transaction need to register a certificate with the Land Deed Making Officer to ensure legal certainty of the land transaction. Without a deed issued by the Land

Deed Officer, the buyer will find it difficult to register his land rights at the authorized land office.

The author argues that the addition of a requirement by the government that the parties who buy and sell land and want to register it with the National Land Agency actually becomes an unnecessary policy and makes it difficult for the parties to register the results of the land sale and purchase transactions they do. The government should pay attention to the importance of a land sale and purchase transaction to be registered with the National Land Agency, and if the government actually makes it difficult by adding administrative requirements that are outside the substantive requirements derived from customary law and agrarian law, then this has the potential to make people reluctant to register land-buying transactions carried out by them.

The government should be aware and pay attention that there are only 72 million plots of certified land in Indonesia. This number is still far from the total number of plots of land estimated to exist in Indonesia, which is 126 million parcels of land. This means that from the data it can be seen that there are 54 million parcels of land that have not been certified. This should be a serious concern for the government. The author argues that with the addition of requirements to register land certificates originating from buying and selling, it actually has an impact on the government's program in increasing certified land in Indonesia. Whereas legal certainty over land is something that is no less important than the fulfillment of the right to health.

If a lot of land is not certified, the potential for land conflicts will certainly increase. Previously in the process of buying and selling land, the buyer and seller had gone through a long process first. This long process will certainly be very inconvenient for the buyer and seller if it is added to the condition that they must be registered as participants of the National Health Insurance, not to mention that the buyer and seller are not necessarily people who are able to pay the fees charged as participants of the National Health Insurance (Salamah, 2020; Tan et al., 2021).

Furthermore, there is also an argument that the government does have the right to apply land registration requirements to be registered as a participant in the National Health Insurance considering the concept of land tenure by the state. However, the author argues that this argument is wrong because the concept of state control adopted by Indonesia after independence was not like that. As the author explained in the previous section, the Right to Control the State describes legal institutions and concrete legal relationships between the State and land that exist throughout Indonesia. The relationship between the State's Right to Control and the land throughout the territory of Indonesia is solely for the public. This public authority comes from the delegation of tasks for the Indonesian people to land in all parts of Indonesia.

This is what distinguishes the occupation of land by the state during the reign of the Dutch East Indies, which at that time was known as *domein verklaring*. This domain implies that all lands where the other party cannot prove their eigendom are declared as state domains. So, at that time the state was called the owner of the land. This statement is needed to legitimize the state's authority to provide, sell or lease land to parties in need. With the enactment of the UUPA, all provisions regarding the *verklaring* domain are revoked.

Therefore, according to the author, it is very inappropriate to make the Right to Control the State as the basis for justifying arguments to apply the requirements to be registered as a participant in the National Health Insurance to obtain a land certificate. Because the right to control the state does not mean that the state has full control over land throughout Indonesia as the concept of *domein verklaring* has been revoked by the UUPA.

Finally, the author argues that the government has taken the wrong step in its strategy to increase the number of participants in the National Health Insurance. It is undeniable that as what the author has described previously, the government has a responsibility so that participants of the National Health Insurance reach 100% as a manifestation of the fulfillment of the Right to Health as part of the Human Rights owned by the Indonesian people.

However, what the government should pay attention to regarding the concept of state responsibility, as the author has described previously, is that the state's responsibility includes the fulfillment of human needs, including the provision of guarantees. Therefore, the author argues that the role of the government in fulfilling the right to health and achieving the total National Health Insurance participants to reach 100% is to move actively, not passively. The government should choose a policy of providing National Health Insurance for parties who want to register their buying and selling transactions, instead of requiring them to register for the National Health Insurance first, which will certainly be burdensome for both the buyer and the seller.

C. CONCLUSION

The government has an obligation to fulfill the right to health as a human right owned by all Indonesian people. However, to do this, the government has made a mistake by issuing Presidential Instruction No. 1 of 2022, one of which requires those who wish to register the transfer of land rights as a result of buying and selling transactions, they must be registered as participants of the National Health Insurance. The obligations stated in the Presidential Instruction actually have a reciprocal effect on other government programs, namely the land certification program, one of which is constrained by the large number of land buying and selling activities that are carried out under the hands, which are carried out without being in front of the Land Deed Making Officer and not being registered. to the National Land Agency.

By requiring the parties who carry out the sale and purchase of land to be registered as participants of the National Health Insurance, then this is tantamount to the state giving up hands in fulfilling the health rights of citizens as well as the right to legal certainty over land transactions that have been carried out by the parties, either the seller or the buyer. . Whereas the concept of state responsibility requires that the state is not just a night watchman, but the state must have a more active role in fulfilling the rights of citizens. The government also cannot sacrifice one of the two rights that are very important for citizens. This means that the government cannot sacrifice the right to legal certainty that is entitled to be obtained by the parties in the process of buying and selling land in order to fulfill other rights, namely the right to health.

Therefore, the government should play an active role in adding National Health Insurance participants by providing easy registration facilities, including one for those who want to register their land with the National Defense Agency, instead of requiring them to be registered first when they want to take care of their land status obtained from buying and selling transactions.

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