

## Juridical Analysis of Use of Health Social Security Agency Card as a Condition for Transfer of Land Rights

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**Abstract.** *This study aims to examine and analyze the juridical implications of using the Health Social Security Administering Body card as a condition for the transfer of land rights in Kendari City, to examine and analyze the juridical implications of the transfer of land rights that do not use the Health Social Security Administering Body card as well as to examine and analyze sample deed of sale. The research approach method used in this thesis is a sociological juridical legal research method. This research specification uses descriptive analysis. The types of data used in this study are primary data and secondary data. Collecting research data with interview techniques and study of documents or library materials. The theory used is the Theory of Legal Certainty according to Gustav Radbruchm and Theory of Legal Work according to William J. Chambliss and Robert B Seidmen. The results of the study show that: First, the juridical analysis of the use of health social security agency cards as a condition for the transfer of land rights in Kendari City is based on Gustav Radbruchm's theory of legal certainty because legal certainty as one of the legal objectives can be said to be part of an effort to achieve justice. There is a priority scale that must be implemented, where the first priority is always justice, then benefit, and finally legal certainty. Second, the juridical implications of the transfer of land rights that do not use the BPJS card based on the theory of the working of the law of William J Chamblis and Robert. The connection is what action a role holder will take in response to legal regulations, highly dependent and controlled by the applicable legal regulations of the sanctions of its implementing activities. Third, the sample of the sale and purchase deed has fulfilled all the requirements of the applicable laws and regulations.*

**Keywords:** Administering Card; Health; Land; Security; Social.

### 1. Introduction

After the issuance of the Presidential Instruction of the Republic of Indonesia Number 1 of 2022 dated March 1, 2022 and in accordance with the Circular

Letter of the Director General of Determination of Land Rights and Registration Number:HR.02/153-400/11/2022. In the process of transferring land rights, in practice at the Office of the National Land Agency of Kendari City, this stipulation is effective as of March 1, 2022, the buyer is required to have an active social health insurance provider card and without arrears, with the stipulation of this new condition being a mandatory requirement is valid and has become an additional requirement so that the process of transfer of rights/transfer of names can occur as required by the Applicant.

The State of Indonesia is a state of law, the statement is regulated in the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) which is formulated in its third amendment dated November 10, 2001. As a consequence of the understanding of the rule of law, all aspects of life in society. The nation and state must be based on and must not deviate from the legal norms that apply in Indonesia, meaning that the law must be made commander in every problem solving relating to individuals, society and the state.<sup>1</sup>

One way to control and own land rights is through a buying and selling process. The definition of buying and selling according to the provisions of Article 1457 of the Civil Code (KUHPerdara) is an agreement in which one party promises to bind himself to surrender an object and the other party promises to bind himself to deliver an object and the other party promises to pay the price was promised<sup>2</sup>.

The sale and purchase agreement alone does not result in the transfer of ownership rights to the goods from the seller's hand to the buyer's hand prior to leveraging. In essence, the sale and purchase agreement is carried out in two stages, namely the stage of agreement between the two parties regarding the goods and prices marked by an agreement (sale and purchase) and second, the stage of leasing the object which is the object of the agreement with the aim of transferring ownership rights from that thing.<sup>3</sup>

Buying and selling there are two subjects, namely the seller and the buyer, each of whom has obligations and various rights, so they are each in some respects the authorities and in other cases the entitled parties. This relates to the reciprocal nature of the sale and purchase agreement (Werdering overenkomst).<sup>4</sup>

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<sup>1</sup>Sjaifurrachman, (2011), *"Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta"*, Mandar Maju, Bandung. p. 1

<sup>2</sup>BIP Redaksi, (2017), *"3 Kitap Undang-Undang Hukum"*, Bhuana Ilmu, Jakarta. p.394.

<sup>3</sup>Saranaung FM, *"Lex Crimen Peralihan Hak Atas Tanah"*, Vol.6 No. 1, 2017

<sup>4</sup>Idris Zainal, (2019), *"Ketentuan Jual Beli Menurut Hukum Perdata"*, Fakultas Hukum USU, Medan. p.38.

The provisions of Article 37 paragraph (1) Government Regulation Number 24 of 1997 in conjunction with Government Regulation Number 18 of 2001 concerning Land Registration, states that every transfer of land rights through sale and purchase, grants, capital entry in companies and other legal acts of transfer of rights, can only be registered if it can be proven by a deed made by the Land Deed Making Official (PPAT) except for auction.

The sale and purchase agreement of the role of the Notary through the deed he made provides legal certainty for the parties, namely the seller and the buyer. This legal certainty is a form of guarantee for the rights and obligations of the parties in the process of transferring rights to the land being traded. It is very important to know that an authentic deed is a deed made by and before a notary which is a perfect means of proof.

In the event that the regulation on the transfer of rights has now issued new requirements, namely based on Presidential Instruction No. 1 of 2022 concerning the optimization of the implementation of the national health insurance program, a rule is issued which reads "every application for registration services for the transfer of land rights or property rights to flat units due to sale and purchase must be accompanied by a photocopy of the participant card of the Social Security Administering Body (BPJS).

One of the conditions for the transfer of rights is to have a Social Security Administering Agency (BPJS) card specifically for human legal subjects. If the buyer is a legal person/human subject, the Social Security Administering Body (BPJS) can ask for it according to his/her name on the identity card (KTP) but if the buyer is a legal entity to exercise authority with the aim of transferring land rights to the Land Agency National (BPN). Because it is necessary to know that the Social Security Administering Body (BPJS) on behalf of a legal entity is not issued, can this requirement be waived and replaced with a Social Security Administering Agency (BPJS) card on behalf of the commissioners, directors or shareholders.

## 2. Research Methods

In this thesis research, the research method is sociological juridical. Sociological juridical research emphasizes research that aims to obtain legal knowledge empirically by going directly to the object. Empirical juridical research is legal research using secondary data as initial data, which is then followed by primary data in the field or on the community.<sup>5</sup> This research specification uses descriptive analysis, namely research which in addition to providing an overview,

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<sup>5</sup>Koesnadi Hardjosoemantri, (1988), *Hukum Tata Lingkungan*, Gajah Mada University Press, Yogyakarta, p. 334-335.

writing and reporting an object or an event will also draw general conclusions from the problems discussed. Sources of data come from primary data and secondary data. Data collection methods include interviews, document studies and library materials. Data analysis as a follow-up to the data processing process is the work of a researcher who requires accuracy, and optimal outpouring of thinking power.<sup>6</sup> Data analysis is a process of organizing and sorting data into a pattern of categories and basic units of description so that themes can be found and working hypotheses can be formulated as suggested.<sup>7</sup>

### **3. Results and Discussion**

#### **3.1. Use of the Health Social Security Administering Body Card as a Condition for the Transfer of Land Rights in Kendari City**

The use of the Health Social Security Administering Body Card as a condition for the transfer of land rights at the National Land Agency of Kendari City has a procedure regarding the basic provisions governing it, the conditions that must be carried out from the time the application is submitted until the completion of the process of transferring land rights/transfer of name.

The sale and purchase agreement of the role of the Notary through the deed he made provides legal certainty for the parties, namely the seller and the buyer. This legal certainty is a form of guarantee for the rights and obligations of the parties in the process of transferring rights to the land being traded. It is very important to know that an authentic deed is a deed made by and before a notary which is a perfect means of proof.

The sale and purchase agreement is a reciprocal agreement in which one party (the seller) promises to hand over the ownership rights to an item, while the other party (the buyer) promises to pay a price consisting of a sum of money in exchange for the acquisition on the property rights. The main elements of a sale and purchase agreement are goods and prices, in accordance with the principle of consensualism that animates the law of the Civil Code agreement, the sale and purchase agreement was born at the moment of reaching an "agreement" on goods and services. By agreement, it is intended that between the parties concerned an agreement is reached. That is, what one wants is what the other wants and the two wills meet in the "agreement".

Based on the count on March 1, 2022 at the National Land Office (BPN) in Kendari City, there is an active implementation of the transfer of rights process which requires the attachment of a BPJS Health card as a condition for the transfer of land rights. The Kendari City National Land Agency explained that:

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<sup>6</sup>Suharsimi Arikunto, (2011), *Prosedur Penelitian Suatu Pendekatan Praktek*, p. 227.

<sup>7</sup>Bambang Waluyo, (1996), *Penelitian Hukum dalam Praktek*, Sinar Grafika, Jakarta. p.77.

there were several files of transfer of rights before they were entered at the counter on March 1, 2022, the status of the files was still being carried out and the transfer of rights was processed without using this additional conditional rule at the beginning of the transfer of rights. Because at the time the applicant registered this policy was not yet in effect<sup>8</sup>.

Based on interviews conducted at the Kendari City Health Social Security Administration Agency (BPJS), BPJS also confirmed that the use of the Health Social Security Administration Agency (BPJS) card was a condition for the transfer of land rights and he also explained in detail that "Referring to the Law on No. 24 of 2011 concerning BPJS where Article 14 states that everyone including foreigners who work for a minimum of 6 months must become a participant in social security. The derivative is in Presidential Regulation 82 of 2018 Article 6 every Indonesian citizen is required to participate in the health insurance program<sup>9</sup>.

With the stipulation of the implementation of this new requirement, it was able to encourage more people to join the National Health Insurance (JKN) specifically in Kendari City. This is evidenced by a direct explanation by the Kendari City Health BPJS "Yes, with this requirement it will automatically increase the compliance of Indonesian citizens, both individuals and legal entities to register for JKN"<sup>10</sup>.

The juridical analysis of the use of health social security agency cards as a condition for the transfer of land rights in Kendari City is based on Gustav Radbruch's theory of legal certainty because legal certainty as one of the legal objectives can be said to be part of efforts to achieve justice. Gustav Radbruch said that there is a scale of priorities that must be implemented, where the first priority is always justice, then benefit, and finally legal certainty<sup>11</sup>.

- The real form of justice in the transfer of rights in Kendari City is a stipulation of the application of additional conditions, namely the use of the Health Social Security Administering Body (BPJS) card which applies to

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<sup>8</sup> Anang Ade Irawan, Pertanggungjawaban Ahli Waris Notaris sebagai Pejabat Umum atas Akta Notaris yang Menimbulkan Kerugian Para Pihak, *Jurnal Lentera Hukum*, Volume 5 Issue 2 2018

<sup>9</sup> Eko Puji Hartono, Akhmad Khisni, "The Role of PPAT in Making the Deed of Transfer of Rights to Land and/or Buildings Formerly of Customary Ownership Related to the Payment of Duty on the Acquisition of Rights to Land and/or Buildings", *Jurnal Akta* VOL. 5, No. 1, March 2018

<sup>10</sup> Yunita Budi Chrissanni dan Amin Purnawan, Peranan PPAT dalam Pemungutan Bea Perolehan Hak Tanah dan Bangunan (BPHTB) On Line Atas Transaksi Jual Beli Tanah dan Bangunan di Kota Magelang. *Jurnal Akta*, 4 (3) 2017, p. 3

<sup>11</sup> Harnita, dkk. "Tanggung Jawab PPAT dalam Penetapan Nilai Transaksi Jual Beli Tanah dan Bangunan di Kota Banda Aceh", *Udayana Master Law Journal*, Vol. 8 No. 3 September 2019, p. 354-370.

every applicant for the transfer of land rights, both the transfer of rights which are in process status before March 1, 2022 or after this policy is enforced must meet these requirements.

- The real form of legal certainty in the transfer of rights in Kendari City is the implementation or enforcement of the law regardless of who will do it. The requirements for using the Health Social Security Administering Body (BPJS) card apply to all applicants without exception. Legal certainty aims to create justice without discriminating between one party and another. Certainty is needed to realize the element of equality before the law without any legal discrimination.
- The tangible form of the benefits of using the Health Social Security Administering Body (BPJS) card as a condition for the transfer of rights in Kendari City is that with the stipulation of the implementation of this new requirement, it turns out to be able to encourage more people to join the National Health Insurance (JKN) automatically increasing citizen compliance. Indonesia, both individuals and legal entities to register for JKN.

### 3.2. Juridical Implications for the Transfer of Land Rights that Do not Use the Cards of the Health Social Security Administering Body (BPJS)

The National Land Agency (BPN) in Kendari City has enforced since March 1, 2022 that all processes of transferring land rights are due to: buying and selling, grants, wills and so on. Must meet additional requirements, namely attaching an active Health Insurance Administering Agency (BPJS) card and without having an arrears status. This additional requirement is specific to one party only, namely as the Buyer Party.

The reality on the ground is that there are still people in Kendari City in general who carry out the process of transferring land rights, but there is still a lack of understanding of the rules for setting this new condition which requires the use of the BPJS health card as a public service requirement that applies specifically to the National Land Agency for the process of transfer of rights such as: buying and selling, grants, exchange, auction, inheritance, transfer of rights due to merger or consolidation and transfer of other rights<sup>12</sup>.

One of the conditions for the transfer of land rights, for example the transfer of rights due to sale and purchase, must also attach a Sale and Purchase Deed made and issued by the Notary Office of the Land Deed Making Official (PPAT). The reality on the ground, this requirement is also an initial requirement that must be met by the applicant in order for the transfer of land rights to occur. This deed of sale and purchase serves as perfect evidence that the object is real, the

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<sup>12</sup> Karina Prasetyo Putri, Tanggung Jawab Dan Perlindungan Hukum Bagi Notaris Purna Bakti Terhadap Akta Yang Pernah Dibuat (Analisis Pasal 65 dan Pasal 66 Undang-Undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris), *Jurnal Fakultas Hukum*, Universitas Brawijaya

transfer of rights from the seller to the buyer has been carried out. The process of transferring land rights is witnessed before the authorized Notary, namely the PPAT Notary who makes the Sale and Purchase Deed.

If, the relationship between the Deed of Sale and Purchase with Juridical Implications for the Transfer of Land Rights Not Using the Card of the Health Social Security Administering Body (BPJS). Based on the Letter of the Director General of PHPT of the Ministry of ATR/BPN Number HR.02/153-400/II/2022, it is stated that every application for registration services for the transfer of land rights or ownership rights to flat units due to sale and purchase must be accompanied by a photocopy of the BPJS Health Participant Card (Active participants in the National Health Insurance program and registered without any arrears of dues.

So, based on Presidential Instruction (Inpres) number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program and the Letter of the Director General of PHPT of the Ministry of ATR/BPN Number HR.02/153-400/II/2022 this rule applies simultaneously from March 1, 2022. Based on these instructions, every Notary party as the Land Deed Making Officer is required to ask for these additional requirements from the beginning before the Sale and Purchase Deed is made<sup>13</sup>.

The BPJS Health Card is a mandatory requirement and must be attached to the National Land Office which is only intended for the buyer. So that the deed of sale and purchase can be executed. Every Sale and Purchase Deed that the applicant wants to make, the PPAT Notary has the right to first request these additional conditions. In order to facilitate the process of transferring rights at the National Land Office.

This is what makes the emergence of pro and contra stance on the stipulation of this rule. There are also people who still question what is the relationship between BPJS health and the process of transferring rights. Actually, if we think clearly, there are many things that can benefit the establishment of this rule. The benefits are: in the BPJS health law, BPJS participation is mandatory for citizens, both individuals and legal entities. This is used as evidence that a citizen is carrying out his obligations to become a participant of BPJS Kesehatan/JKN. The obligation of BPJS health requirements as a public service requirement at the National Land Agency in terms of the transfer of land rights is actually not an obligation. However, Mr. Ilham, is one of the parties who want to carry out the process of transferring land rights due to buying and selling. To carry out the process of transferring these rights, he immediately wanted to register with the PPAT Notary Office to make a Sale and Purchase Deed first so that the transfer of land rights could be processed at the National Land Agency. Mr. Ilham as the Purchaser, his file was returned by the PPAT Notary Office after the Notary Party

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<sup>13</sup> Raisa, Analisis Yuridis Terhadap Penerapan Pasal 35 Undang-Undang Jabatan Notaris Berkaitan Penyerahan Protokol Notaris Yang Telah Meninggal Dunia di Kota Medan, Thesis of Faculty of Law, Universitas Sumatera Utara

examined the file. The reason for returning is because Mr Ilham's file is incomplete, the transfer of rights can be processed again if all the requirements for the transfer of rights that have been determined by the PPAT Notary Office and the National Land Agency (BPN) are complete<sup>14</sup>.

The case example above is a juridical implication of the transfer of land rights that do not use the card of the Social Security Administration for Health (BPJS) in Kendari City. The juridical implication for the transfer of land rights that does not use the Health Social Security Administering Body (BPJS) Card in Kendari City is that if the Buyer does not attach his BPJS Health Card according to the applicant's name or the card status is not active because it has an arrears of payment obligations, it is in the process of making The Deed of Sale and Purchase at the PPAT Notary Office has the file listed as pending or pending. This means that the process of making the sale and purchase deed cannot be processed temporarily or the file has a pending status. According to an explanation from a Notary Office in Kendari City.

The theory of the operation of the law is related to the juridical implications of the transfer of land rights that do not use the card of the Health Social Security Administering Body (BPJS). The connection is what action a role holder will take in response to the rule of law, is very dependent and controlled by the applicable legal regulations from the sanctions from its implementing activities, as well as from the whole complex of social, political, and other forces that work on him.

This additional requirement is a condition of the transfer of rights regulations if the applicant does not attach an active BPJS Health card without arrears and in accordance with the name of the applicant. So, the National Land Agency has the right to show the rules or work flow first in this case acting on behalf of itself, namely the PPAT Notary Office. How the applicants are expected to act to complete and collect all the requirements for the transfer of rights, both the conditions determined by the PPAT Notary, the aim is to obtain a Sale and Purchase Deed and the conditions determined by the National Land Agency so that the process of transferring land rights due to the sale and purchase can be completed in accordance with applicant's expectations and goals. The work of law aims to create a legal relationship.

#### **4. Conclusion**

The juridical analysis of the use of health social security agency cards as a condition for the transfer of land rights in Kendari City is based on Gustav Radbruch's theory of legal certainty because legal certainty as one of the legal objectives can be said to be part of efforts to achieve justice. Gustav Radbruch said that there is a scale of priorities that must be implemented, where the first priority is always justice, then benefit, and finally legal certainty. The theory of

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<sup>14</sup> Ngadenan, Eksekusi Hak Tanggungan Sebagai Konsekuensi Jaminan Kredit Untuk Perlindungan Hukum Bagi Kepentingan Kreditur Di Mungkid, *Jurnal Law Reform*, Vol 5 No. 1 April 2010



the operation of the law is related to the juridical implications of the transfer of land rights that do not use the card of the Health Social Security Administering Body (BPJS). The connection is what action a role holder will take in response to the rule of law, is very dependent and controlled by the applicable legal regulations from the sanctions from its implementing activities, as well as from the whole complex of social, political, and other forces that work on him. The example of the sale and purchase deed has fulfilled all the requirements of the Basic Agrarian Act No. 5 of 1950, Presidential Instruction Number 1 of 2022 concerning Optimizing the Implementation of the National Health Insurance Program and Circular of the Director General of Determination of Land Rights and Registration Number HR.02 /153-400/11/2022 concerning the application of the membership.

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