

BPJS Membership as The Terms for The Transfer of Land Rights Registration Due to Sale and Purchase by a Limited Company

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ABSTRACT

Land rights can be granted to individual legal subjects (*natuurlijk person*) and legal entities (*Recht person*). BPJS membership as a term for the transfer of land rights registration due to sale and purchase made by Limited Company after the issuance of Presidential Instruction (Inpres) Number 1 of 2020 about the Optimization of Jaminan Kesehatan Nasional (known as JKN, the national health insurance) Implementation. The focus of this research is the implementation of the BPJS membership requirement for transfer of land rights registration due to sale and purchase that is applied for Limited Company. The method used in this research is juridical normative and literature reviews on relevant legal literature. The result of this research shows that BPJS membership is also applied as the terms for Limited Company as the purchaser. The required BPJS membership attached is owned by the member of the Limited Company who is appointed as the representative of the Limited Company.

ABSTRAK

Hak atas tanah dapat diberikan kepada subjek hukum individu (*natuurlijk person*) dan badan hukum (*Recht Person*). Keanggotaan BPJS sebagai jangka waktu pengalihan pendaftaran hak atas tanah akibat jual beli yang dilakukan Perseroan Terbatas setelah diterbitkannya Instruksi Presiden (Inpres) Nomor 1 Tahun 2020 tentang Optimalisasi Jaminan Kesehatan Nasional (dikenal sebagai JKN, jaminan kesehatan nasional) Pelaksanaan. Fokus penelitian ini adalah penerapan persyaratan keanggotaan BPJS untuk pengalihan pendaftaran hak atas tanah karena jual beli yang diterapkan untuk Perseroan Terbatas. Metode yang digunakan dalam penelitian ini adalah yuridis normatif dan tinjauan literatur tentang literatur hukum yang relevan. Hasil penelitian ini menunjukkan bahwa keanggotaan BPJS juga diterapkan sebagai syarat perseroan terbatas sebagai pembeli. Keanggotaan BPJS yang dipersyaratkan yang melekat dimiliki oleh anggota Perseroan Terbatas yang ditunjuk sebagai perwakilan Perseroan Terbatas.

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I. INTRODUCTION

Land rights can be granted to individual legal subjects (*natuurlijk person*) and legal entities (*Recht person*) (Pemerintah, 1960). Land rights that can be possessed by legal subjects are the Right of Ownership, Right to Build, Right to Cultivate, and Right to Use. The possession of Right of Ownership is only valid for particular legal entities such as State Bank, Religious Agency, Social Agency, Agricultural Cooperative (Government, 1963), as well as legal entities mentioned in other

Laws. Therefore any legal entities that are not mentioned in the Laws don't have the Right of Ownership of land

Limited Company (*Naamloze Vennootschap*), commonly called company is a legal entity that is easily found in Indonesia. A company as a legal subject is different from humans, who have the will, thinking ability, and self-awareness. Therefore, any legal activities of a company are managed by its organs (Khairandy, 2017). A company has three organs which are the General Meeting of Shareholders (GMS) or *Algemene vergadering van aandeelhouders*, Board of Commissioners (BOC) or *raad van commissarissen*, and Board of Directors (BOD) or *raad van bestuur*.

Every company has moveable and immovable assets. An asset is called a moveable asset because of its characteristics or because it is determined by the law, such as share certificates and company office furniture. Meanwhile, an asset is called an immovable asset because of its characteristics, usage purpose, or because it is determined by the law such as the land and the building (Subekti, 2003). The number of physical assets of a company usually increases by purchase and sale activities. In the case of an immovable asset, the purchase is done by transferring the land right; the right to build, the right to cultivate, and the right to use.

The transfer of land rights can only be done through the activity of purchase and sale. It is considered legitimate if there's the Deed of Sale and Purchase/AJB issued by a Land Deed Official (PPAT). If it doesn't have the deed of sale and purchase, it can not be officially registered. Therefore the role of a land deed official (PPAT) is very significant in the proses of a land rights transfer. After the land deed official issues the deed of sale and purchase, she/he needs to register the land rights transfer to National Land Agency (Kantor Badan Pertahanan) in the area no later than 7 days after the document signing. In the registration process of land rights transfer, some documents are required as an attachment (Taufika Hidayati, 2022). One of the documents that are just officially required to be attached is the membership card of BPJS which stands for Badan Penyelenggara Jaminan Sosial, the official social security of agency in Indonesia. It is regulated in dictum 2 number 17 Presidential Instruction (Inpres) Number 1 of 2020 which stated that:

“The minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency to ensure that applicants for registration of transfer of land rights due to purchase and sale are active members of the National Health Insurance (JKN) program.”

It is further explained in detail through the Circular Letter of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number HR.02/153-400/II/2022 point 3:

“In accordance to the presidential instruction, every registration application of land rights transfer or ownership right of an apartment unit through purchase and sale requires a photocopy of BPJS Health Card attached”

Yulia Jaya Nirmawati, the head of the Public Relations Bureau in the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency explained that the applicant mentioned in Presidential Instruction No. 1 of 2022 refers to the beneficiary or the buyer whose name is written on the land title certificate. It implies that the beneficiary or the buyer, either an individual or a legal entity (company) is required to attach a BPJS membership card (Laksono, 2022).

BPJS membership cards are only intended for an individual (human) legal subject. It is expected that the registration process will be difficult if the buyer as a legal subject is a legal entity such as a Limited Company because a legal entity is not a real individual. Based on the description above, the writers formulate the problem statement is “How is the implementation of BPJS membership as terms

for the transfer of land rights registration due to sale and purchase by a Limited Company as the buyer after the issuance of Presidential Instruction No. 1 of 2022?”

II. RESEARCH METHODS

This research is conducted using the juridical normative method, which is library research. Library research is done by collecting data, reading, recording, and processing the research material (Zed, 2018). The research material used is law, legal literature, and other relevant materials. The juridical normative method is used to obtain clear meaning and principles contained in the law by examining legal research materials (Soerjono, 1989) This research aims to learn the implementation of BPJS membership as terms for the transfer of land rights registration due to sale and purchase by a Limited Company as the buyer after the issuance of Presidential Instruction No. 1 of 2022. This research is expected to broaden the knowledge about the land right transfer registration by purchase and sale. It is also expected to practically educate buyers, especially Limited Company who wants to register a land right transfer by purchase and sale.

III. RESULTS AND DISCUSSION

A Limited Company, as a legal entity has the status “*persona standi in judicio*” meaning that a subject is considered in legal perspective as a person/human who can be charged with rights and obligations according to law (Prasetya, 2014). To allow a Limited Company to perform a legal act, the organs are required tools to run the company which consists of the General Meeting of Shareholders (GMS), Board of Commissioners, and Board of Directors (BOD).

As for the function of each organ of the company, the General Meeting of Shareholders functions as a forum for shareholders to take part in the company business as they are not allowed to carry out day-to-day business and manage the company directly. This forum offers the shareholders the opportunity to learn and evaluate the business and management of the company (Simon Fisher, 2001). The Board of Commissioners and Board of Directors don’t have this authority.

The next organ is the Board of Commissioners which has two main duties; to supervise the director’s policy, and to advise the directors (Government, 2007). There are some ways that the board of commissioners can perform to supervise the director which is specified in the article of Association or statute such as the requirements of the board of commissioners’ approval before taking any action.

Directors have two duties; management and representation. The relationship between the board of directors and the Company is basically a labor relationship in which the Company is the employer of the board of directors. What is meant by management duty is any company asset management activity and it’s the director’s pure authority. Meanwhile, representation duty means the duty of representing the company in any activities inside or outside the court and representing the company as the third party. Article 1 point 5 Law No. 40 of 2007 about Limited Liability Company (hereinafter abbreviated to UPPT) stated that:

“Director is the company organ that’s authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the purpose of the company, as well as represents the Company both inside and outside the court in accordance with the provisions of the Articles of Association”

Furthermore, in Article 12 paragraph (1), it is stated that:

“Board of Directors are entitled to represent the company in and out of court and in all events, bind the Company with other parties and other parties with the Company, and carry out all actions, both regarding management and ownership, but if the matters regarding:

- a. Borrowing or lending money on behalf of the Company (not including taking the Company's money in the bank)
- b. Establish a business or participate in other companies either in the country or abroad, the board of commissioner’s approval is required.

The Board of Directors can consist of one or more than one members. If there is more than one member, one of them will be the “Head of Directors”. Every member of directors is fully responsible in person for any loss he/she caused to the company due to their negligence in carrying out their duties. This case is usually considered as joint responsibility except it is proven otherwise (Prasetya, 2014). Every member of the board of directors has the authority to represent the company except it is stated otherwise in the Article of Association.

A company as a legal entity has its asset, including the land’s rights. This matter is regulated in Law No. 5 of 1960 about Basic Agrarian Principles, later called UUPA. According to UUPA, not all legal entities can have ownership of land rights. Only particular entities that are appointed or determined in the Law can have the rights of ownership of land. To rest legal entities are rightful for Rights to Cultivate, Rights to Build, and Rights to Use.

To expand its business, a company will make a sale or purchase of assets which in this case is the land. To be rightful on land, a company has to do 2 steps, the first is to apply for land rights to the state for lands that have not yet been owned by anyone, the next is to transfer the land rights through inheritance, sale, purchase, exchange, grant, investment (*inbreng*), and auction (Santoso, 2011).

Transfer of land rights is regulated in Government Ordinance No. 24 of 1997 about Land Registration (hereinafter referred to as PP No. 24 of 1997) which says that any activities that cause transfer of land rights must have a dedicated deed made by and in the presence of Land Deed Official (PPAT). It’s explained in Article 37 Paragraph (1):

“Transfer of land rights and rights of an apartment unit through sale, purchase, exchange, grant, investment in the company, and other legal action of transfer of rights, except for the transfer of rights through auction, can only be registered if it’s proven by a deed officially made by authorized PPAT and in accordance to applicable laws at the time.”

A deed is a written guarantee that is signed and contains information about any events which cause any deal or rights or become the basis of rights. It must be intentionally written as proof (Ali & Haryani, 2012). Generally, there are 2 (two) types of deeds, namely private deeds, and authentic deeds.

A private deed is a deed that is not issued by a public official as the intermediary. The deeds are written and signed in person by the involved parties (Subekti, 2003). The validation of the deed is in the hand of the involved parties. As long as the parties acknowledge the validity, the deed has perfect evidentiary power as strong as an authentic deed. However, if one of the parties involved denies the validity, the verification of its validity will be weighed on the denying parties and the judgment on the validity is left to the judge (Mertokusumo, 1993). Meanwhile, an authentic deed is a deed that has the strongest evidentiary power and binds everyone mentioned in the deed, as long as it can’t be proven otherwise by the judgment of the court which has permanent legal power (Adjie, 2008).

From the information above, it is learned that there are two differences between the 2 deeds. First, the involvement of public officials in the issuance of the deed, and second, the evidentiary power of the deed in the court. If the deed is written and issued in the presence of the authorized official, it will have strong evidentiary power. However, if it is privately written and issued without the presence of an authorized official, it will not be as strong as an authentic deed (Taufika Hidayati, 2022).

In the matter of land transfer, the deed needed is the PPAT deed. A PPAT deed is a deed made and issued by PPAT as a guarantee and proof that a certain legal action has been done regarding rights transfer on land or apartment unit (Government, 1998). There are 3 (three) points that must be considered regarding the PPAT deed:

- a. It is made by the Land Deed Official (PPAT)
- b. The issuance of PPAT is a guarantee that a legal action has been performed in the matter of land rights or rights of ownership on the apartment unit
- c. The object in the PPAT deed is rights on land and rights of ownership of apartment units (Salim HS, 2019).

PPAT deed is an authentic deed as explained in Article 3 Paragraph (1) Government Ordinance No. 37 of 1998 about Land Deed Official (PPAT) Job Regulation that says:

“To perform the main task as mentioned in Article 2, a land deed official (PPT) is authorized in making authentic deed about any legal action as mentioned in Article 2 Paragraph (2) about rights on land and ownership on apartment unit located within his/her working area.”

In short, there are certain requirements to be met in making a PPAT Deed be an authentic deed. Article 1868 in the Indonesian Civil Code says that an authentic deed is a deed with the characteristics determined in law by/in the presence of a local authorized public official.

In the making of the Sale and Purchase Deed, PPAT needs some documents from some parties:

- a. Land title certificate
- b. Identities of parties involved
Seller and buyer must attach an ID card, marriage certificate (if the seller is married), family card, and Taxpayer Identification Card (NPWP). If there's a company involved as a party, additional documents which are the company's article of Association, and Commissioner's Approval Letter/RUPS (if needed).
- c. Affidavit of non-disputed land
- d. Property tax payment slip
- e. Acquisition Duty of Right on Land and Building (BPHTB),
- f. Location permit for a company

The making of the deed of sale and purchase (Akta Jual Beli/AJB) requires the presence of all the parties involved in performing the legal action or their representative with the legitimate power of attorney (Regulation of the Minister of State for Agrarian Affairs No 3 of 1997 about the Provisions for the Implementation of Government Regulation No. 24 of 1997 about Land Registration, 1997). The making of the deed of sale and purchase (Akta Jual Beli) must be witnessed by at least two competent witnesses and they must be able to read it well and explain to all the parties the content of the deed (Eka Febriana, 2021). Afterward, the signed deed must be registered to the Land Agency no later than 7 (seven) office days from the date of signing (Government, 1997).

The registration process to the Land Agency requires additional documents; transfer of title form, Land Deed Official/PPAT power attorney, Administration of Non-Tax State Revenue payment slip, and a photocopy of BPJS Health member card. The photocopy of the BPJS Health member card is a newly added required document since March 1st. 2022.

Before the issuance of the regulation, on January 6, 2022, President Joko Widodo issued Presidential Instruction No 1 of 2022 (Inpres No. 1 of 2022) about the Optimization of Jaminan Kesehatan Nasional (known as JKN, the national health insurance) Implementation. It instructs 23 ministries and 7 state institutions to implement new terms that require BPJS membership for their administrative matters. This regulation is issued to guarantee health and the right to life for all Indonesian people (Tambun, 2022).

Ministry of Agrarian Affairs and Spatial Planning/National Land Agency is included in the 23 Ministries that are instructed to add BPJS membership as a term. It adds that every registration of land rights transfer or ownership right of an apartment unit by purchase and sale should require the applicant to be a member of the National Insurance Program. In Dictum 2 No 17 Presidential Instruction No. 1 of 2022, it is written that:

“The minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency to ensure that applicants for registration of transfer of land rights due to purchase and sale are active members of the National Health Insurance (JKN) program.”

It is further explained in detail through the Circular Letter of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Number HR.02/153-400/II/2022 point 3:

“In accordance to the presidential instruction, every registration application of land rights transfer or ownership right of an apartment unit through purchase and sale requires a photocopy of BPJS Health Card attached”

The consequence of this regulation is that every applicant for land rights transfer registration, whether a person or a legal entity (Limited Company), must be an active member of the National Health Insurance program. However, Yulia Jaya Nirmawati (Nirmawati, n.d.) added that only the people whose names will be written on the certificate that is required to attach the photocopy of the BPJS health membership card.

The objective of the BPJS program is to guarantee decent life and basic life fulfillment for the member and/or the family. Meanwhile, the objective of social security is to guarantee the members of health insurance get the health care benefits and meet their basic health needs. In line with the objective, it is resolved that the active member of the Health Insurance program is everyone, including foreigners who have been working for at least 6 months in Indonesia and paid the dues of the Health Insurance.(Regulation of Social Health Insurance Administration Body, No 5 of 2020 about Second Amandment of Regulation of Social Health Insurance Administration Body No. 6 of 2018 about Administration of Health Insurance Program Membership, n.d.)

As learned from the objective of BPJS and social security, both programs are intended for people, which are living things who need the guarantee of health. Therefore it will not be difficult to meet the terms of BPJS membership when someone has to register for land rights transfer due to a sale and purchase because the seller is a human, a living being.

However, it will be difficult if the legal subject is a legal entity that does not physically exist. As explained by Yulia Jaya Nirmawati, any legal entity also needs to attach BPJS membership. This applies since 2011 when employers and workers were obliged to have social security. In the article 15 paragraph (1) Law no. 24 of 2011 about Badan Penyelenggara Jaminan Sosial/BPJS, the Social Health Insurance Administration Body, it is stated that:

“Employers must gradually register themselves and their workers to BPJS membership in line with the Social Security program they join.”

Even though it is not implied in the law that the employers include companies. As previously described in terms of the relationship between the board of directors and a company that has a labor relationship. Not only for the board of directors, the Company must also register social security for other workers within the Company.

The making of sale and purchase deed with a company as the buyer of the land rights, the representative of the company is the directors. As explained earlier, the director is the only organ that is allowed to represent a company in and out of court. In other words, to make the deed of sale and purchase with a third party, directors can represent the company as a legal entity that can be imposed rights and obligations in the Sale and Purchase Deed. Yulia Jaya Nirmawati further explained that if the party who buys is a legal entity, then the BPJS terms apply to the representative of the legal entity. Therefore every registration of land rights transfer due to sale and purchase needs to attach the director's BPJS member card if the buyer is a company.

The contents of the Sale and Purchase Deed with the condition that BPJS participation can be added to the personal appearance section. The section contains the identity of both the buyer and seller who act on the behalf of themselves or represent others and it should mention full name, place and date of birth, occupation, citizenship, address, and identity card number. If the party is a company, then it should show the company's article of Association. In the personal appearance, the company as a buyer should attach the BPJS membership card of its director. It can be concluded that if a company wishes to do a transaction on land rights as a buyer, the BPJS membership card that can be attached is the director's card as the representative for the company in accordance with the company's article of Association

IV. CONCLUSION

Based on the discussion, it can be concluded that the photocopy of BPJS membership as a term is only applied to the recipient of the right or the buyer whose name will be written in the certificate of land rights. If the buyer is a Limited Company, the person that should attach the photocopy of BPJS membership is the authorized representative of the company. It is suggested to speed up the system integration between the BPJS system and the National Identity Card (KTP) so there is no need to attach a physical photocopied BPJS Health card. It will be more practical as the system allows us to see membership status in the database.

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