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Implementation of Fictitious Positive Decision Case Settlement at Administrative Courts

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Abstract

The enactment of Law Number 30 of 2014 on Government Administration, has given birth to a new paradigm related to silence or neglect of an application to obtain a ruling or a decision from a State Administration official becomes positive, meaning that every application for a State Administrative Decree that is Not followed up and/or ignored by State Administration officials are considered legally granted, as confirmed in the provisions of Article 53 paragraph (3) of Law Number 30 of 2014 concerning Government Administration. According to the principle of a fictitious positive decision, if the State Administration Agency or Official does not issue the requested decision, while the predetermined period has passed, it is legally deemed to have issued a decision granting the application (a fictitious positive decision). At the level of implementation at the Administrative Court, the procedure for the Fictitious Positive Application has been regulated in Supreme Court Regulation Number 8 of 2017, concerning Guidelines for Procedures to Obtain Decisions on Acceptance of Applications to Obtain Decisions and / or Actions of Government Agencies or Officials. This Court Regulation number 8 is an amendment and refinement of the Supreme Court Regulation Number 5 of 2015 concerning Guidelines for Procedures to Obtain Decisions on Acceptance of Applications to Obtain Decision and/or Actions from Government Body or Officials.

Keywords: *Implementation; Fictitious Positive; Administrative Courts*

Introduction

Before the issuance of Law Number 30 of 2014 concerning Government Administration, silence or ignorance by State Administration officials on an application submitted by a citizen was interpreted as a rejection of the application. The arrangement literally provides legal certainty to the applicant, although it does not give the applicant the opportunity to submit revisions to the application or simply to complete the completeness of the application. Moreover, the period stipulated by Law Number 5 of 1986 concerning Administrative Courts as the limit for issuing a State Administrative Decree, unless otherwise stipulated in the relevant regulation, is a maximum of 4 (four) months from the date of receipt of an application. This shows that Law Number 5 Year 1986 adopts a fictitious negative principle.

In its development there has been a shift in the silence and ignorance of State Administration officials as regulated in Article 53 of Law Number 30 of 2014 concerning Government Administration which regulates that if the provisions of laws and regulations do not specify a time limit, then State Administration officials are obliged to determine and/or take decisions and/or actions within a maximum period of ten working days after receipt of the complete application by the State Administration official. If within the said time limit, the State Administration official does not determine and/or make a decision and/or action, then the application is considered legally granted.

Based on the provisions in Law Number 30 of 2014 concerning Government Administration, it can be interpreted that there is a new paradigm related to silence or ignorance over an application to be able to obtain a ruling or a decision from a State Administration official becomes positive. This means that every application for a State Administration Decree that is not followed up and/or ignored by a State Administration official is considered legally granted (Article 53 paragraph 3 of Law Number 30 of 2014 concerning Government Administration). The phrase considered granted (fictitious positive) has the consequence that the legal effect arising from factual actions of State Administration officials who do not follow up and/or ignore the application for state administration is the fulfillment of the request. In addition, the State Administration official is obliged to issue a State Administration decision requested. In order to create legal certainty, Article 53 paragraph (4) states that in order to obtain a decision on the acceptance of the petition that is granted, each applicant submits an application to the administrative court.

Research Method

This research employs normative juridical and empirical juridical approach. The normative juridical type refers to legal norms and legal principles in statutory regulations as well as legal norms that live in society. In this research, statutory regulations refer to regulations related to the authority of the Administrative Court and the concept of fictitious positive decisions in the Government Administration Law. Meanwhile, the empirical juridical approach is the implementation of legal rules related to the implementation of dispute resolution for cases of fictitious positive decisions in the Administrative Court.

Analysis and Discussion

Competence of Administrative Court

In the basic concept of administrative law, the main elements of administrative law are known such as the law regarding government power which is at the same time linked to the law regarding community participation in the implementation of legal governance regarding government organizations and law regarding legal protection for the people (Hadjon, et al., 1999).

The existence of government actions that must be based on legal provisions that apply as characteristics or elements of a rule of law and the existence of instruments for testing the government's actions itself. Apparently, in turn, it must also be able to provide protection for the interests of the people if those government actions intersect or even conflict with the interests of the people. So that the interests of the people do not necessarily have to be sacrificed in the event of clashes as a result of government action.

In order to enforce the law and provide legal protection for the people against these government actions, it is necessary to have a state body that is given the task and authority to supervise judicial assignments regarding government actions that cause harm to the interests of the people. Oemar Seno Adji (1980), following Friedrich Julius Stahl's thoughts on the rule of law, formally argued that in

principle and in general all actions involving and detrimental to everyone or their rights can be supervised by the Court.

The establishment of an Administrative Court (PTUN) in Indonesia which regulated in Law Number 5 of 1986 is an implementation of the provisions of Article 10 paragraph (1) of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power. With the existence of the Administrative Court in a formal juridical manner, the idea to form an Administrative Court has been realized. The existence of PTUN is an absolute prerequisite for efforts to realize a clean, authoritative, and law abiding government (clean governance) at the same time, this proves the existence of legal protection against governmental acts that are not in accordance with the principle of "*rechtematigheid van bestuur*" so as to harm the interests of the people.

Article 47 of Law Number 5 of 1986 states that "the court has the duty and authority to examine, decide, and resolve State Administration disputes." Furthermore, Article 1 Number 10 of Law Number 51 of 2009 the Second Amendment to Law Number 5 of 1986 concerning Administrative Courts, formulates that "state administrative disputes are the disputes arising in the field of State Administration between individuals or civil legal entities and State Administrative bodies or officials, both at the central and regional levels, as a result of the issuance of a State Administration."

Thus, the State Administrative Decree (KTUN) is the basis for the birth of State Administrative disputes. Article 1 number 9 Law Number 51 of 2009 to formulate state administrative decisions is a written stipulation issued by a state administrative body or officials containing legal actions for state administration based on the prevailing laws and regulations, which are individual and final concrete, which have legal consequences for a person or a civil legal entity.

Whereas the provision of Article 3 of Law Number 5 of 1986 concerning Administrative Court is an expansion of the competence of the Administrative Court towards the silence of State Administrative Bodies or Officials who do not issue the requested decision or their obligations in which silence is equated as a Rejection decision (fictitious negative decision).

The provision of Article 3 of Law Number 5 of 1986 has the character of expanding the absolute competence of Administrative Court. Article 3 states that "if a State Administration Body or Official does not require a decision, while this is an obligation, then it is equated with a State Administrative Decree." This provision shows that Law Number 5 of 1986 adopts the fictitious negative principle of silence and neglect of State Administration officials.

The Concept of Fictitious Positive Decision

Comparison of Concept of Fictitious *Positive Decisions in Several Countries*

French administrative law has changed the system of limited negative decisions into fictitious positive decisions. The French legal system for fictitious positive decisions adopts exactly what was already implemented in Spain. This means that before the system in France adopted what was previously applied in Spain, French administrative law only applied limited fictitious positive decisions because the fictitious negative decision regime was still in effect generally. Previously, fictitious positive decisions in France only applied to matters relating to filings, application for a building permit as well as in the fields of area planning law, labor law, and urban law. Meanwhile, the Netherlands still followed the previous French system by enforcing the *niet tijdige beslissing* decision (a decision that passed the specified time) (Simanjuntak, 2017). As a general rule, fictitious positive decisions (*positieve fictieve beschikking*) are applied only to the extent determined by the relevant laws and regulations. In other words, the Dutch model applies fictitious positive decisions to the extent or the basic. In this sense, the Dutch *Algemene wet bestuurecht* (Awb), the book of general administrative law does not contain general provisions regarding

Lex Silentio Positivo but refers to the systematics Chapter 4.1.3.3 of Awb which states that the application of *Lex Silentio Positivo* is allowed. only to the extent that it is specifically regulated in the relevant regulations. The legal provision in the Netherlands that allows for the implementation of fictitious positive decisions is article 28 of the Dutch Public Service Act (*Dienstenwet*) (Simanjuntak, 2017).

In France, the change in the regime of fictitious negative decisions to fictitious positive decisions or actions cannot be separated from the passing of the French parliament (*Assemblée Nationale*) on October 23, 2013, a law intended to simplify the relationship between administrative authorities and the public, as it is still prevailing in the Netherlands today. Previously, the system in France adopted fictitious positive decisions which were limited, meaning that it was only in certain sectors and it had to be linked to other basic regulations governing the possibility of fictitious positive decisions as stipulated in Law Number 2000-321.

However, the issuance of the latest law, made important changes to Articles 21 and 22 of the Law Number 2000-321 which was previously passed on 12 April 2000. The most relevant amendment is Article 21 which stipulates that the basic rule in case of failure to respond to requests within the deadline is that applications submitted legally are considered approved (fictitious positive). In general, it is determined that the silence of the administrative authority within a period of two (2) months after the application is received is considered as an approval. A list of procedures which is considered silent is published on the internet under the responsibility of the Prime Minister. This provision specifies which administrative authorities are responsible for applications that have adopted a fictitious positive conception.

Interestingly, the calculation of the time limit for fictitious positive can be calculated differently. This means the time that fictitious positive effect comes into effect can be adjusted to the type of application submitted so that if the application is urgent. The time calculation can be shorter and, conversely, if the object of the application involves something complex, the calculations can exceed two (2) months. In addition, the procedure for issuing a fictitious positive decision in France is accompanied by the obligation of the administrative authority to issue a confirmation letter (attestation), or in the Dutch context it is called: notification, provided that it is issued within two (2) weeks after the expiration of the time limit. for issuance of decrees. Notification and/or confirmation of this deadline is important because it is related to the calculation of the time for submitting legal remedies by both the petitioner and resistance to third parties (Heriyanto, 2019).

The brief comparison above shows that with the application of the fictitious positive concept, each country, both gradually and fundamentally, has shifted the application of fictitious negative to the fictitious positive. The certainty and firmness of this attitude also needs to be adopted by the administrative law system in Indonesia. The reason is that in UUAP, the silence of Administrative officials is equally considered (fictitious) as agreeing, so that it is contrary to the conception of the Administrative Law which adheres to the principle that the silence of a state administration body or official is equalized with a rejection. The fictitious positive conception is broader than that, because even if a government official has followed up on a petition but if when followed up by the respondent, it turns out that the petition was issued beyond the stipulated time, then in that case the petitioner must be deemed to have been granted by the respondent.

The Concept of Fictitious Positive Decisions According to Law Number 30 of 2014 Concerning Government Administration

Law Number 30 of 2014 concerning Government Administration (UUAP) is a manifestation of the legislators' will to improve government administration. The enactment of the Government Administration Law on October 17 of 2014 is seen as a progressive step in carrying out reform on government administration. This is partly because the Government Administration Law is considered to

put more emphasis on the responsibility of the state and government to ensure the implementation of a government with orientation to public services that is fast, comfortable, and inexpensive. On this basis, the Government Administration Law is placed as one of the pillars of bureaucratic reform and good governance (Hamzah, 2016).

Moreover, the Government Administration Law has shifted the old paradigm to a new one. This paradigm leads the direction of the public service paradigm in the organization of government administration, which is increasingly developing, especially in line with the era of openness which demands the widest possible access to information for the public. This is undoubtedly related to growingly complex tasks of government, both regarding the nature of the work, the types of tasks, and the people who carry it out. In this context, the need arises in determining minimum service standards in the daily administration of the state, including the need to provide legal protection to the community as users of the work of implementing state administration.

In the preamble considering the Government Administration Law, it emphasizes that in order to improve the quality of government administration, government bodies and/or officials, in using authority, must refer to the general principles of good governance (AUPB) and be based on statutory provisions.

In order to solve problems in government administration, regulations regarding government administration are expected to be a solution in providing legal protection, both for citizens and government officials. In realizing good governance, especially for government officials, laws on government administration become the legal basis needed to underlie decisions and/or actions of government officials to meet the legal needs of the community in government administration.

The description above emphasizes that the government's spirit in improving the quality of good governance must be based on general principles of good governance and based on applicable laws and regulations, especially in services to the public which are often found to not provide guarantees and legal uncertainty in making decisions and/or actions of government officials in the field of government administration services. The law on government administration is intended as one of the legal bases for government bodies and / or officials, citizens, and other parties related to government administration in an effort to improve the quality of government administration.

The government administration law has the objectives of creating an orderly administration of government administration, creating legal certainty, preventing abuse of authority, ensuring the accountability of government agencies and/or officials, providing legal protection to citizens and government officials, implementing statutory provisions and regulations, implementing General Principles of Good Governance, and provide the best possible service to members of the community.

The different principle in the Administrative Court Law and the Government Administration Law (UUAP) is the rule regarding fictitious negative and fictitious positive decisions. Article 3 The Law on Administrative Courts regulates fictitious negative decisions where if a State Administrative Bodies or Official does not issue the requested decision while the time period has passed, then the state administrative agency or official is deemed to have refused to issue the decision in question (Basah, 1989).

An important change in the administrative paradigm in UUAP is the application of the "Fictitious Positive" doctrine. Fictitious, or the silent attitude of the State Administrative Body or Official, refers to the State Administrative Decree that is not tangible. This can be considered as a form of refusal or granting of a request. If the State Administrative Decision which is not tangible is deemed to contain a rejection of the submitted application, it is referred to as ‘Fictitious Negative’, whereas if the State Administrative Decision is considered to grant the application that has been submitted, it is referred to as ' Fictitious Positive'. Provisions regarding Fictitious Negative Decisions are regulated in the provisions of

Article 3 of the Administrative Court Law, while provisions regarding Fictitious Positive Decisions are contained in Article 53 of Government Administrative Law (Ahmad, 2017).

As for Article 53 of the Law on Government Administration in principle, if within the stipulated time limit, Government Agencies or Officials do not determine and or take decisions and/or actions, then the application is considered legally granted. This is what is interpreted as a fictitious positive decision.

The birth of fictitious positive decision cannot be separated from a change in the paradigm of public services which requires government agencies or officials to be more responsive to community requests. Zudan Arif Fakrulloh (2015) said one of the basic wishes and direction of legal politics in the Government Administration Law is to improve the quality of government administration.

The regulation of Government Administration is basically an effort to build basic principles, patterns of thought, attitude, behavior, culture, and administrative action patterns that are democratic, objective, and professional in order to create justice and legal certainty. This Law is the whole effort to rearrange Decisions and/or Actions of Government Agencies and/or Officials based on the provisions of the laws and regulations and General Principles of Good Governance.

This Law is intended not only as a legal umbrella for government administration, but also as an instrument to improve the quality of government services to the public so that the existence of this Law can actually create good governance for all Government Agencies or Officials at the Central and Regional Governments.

The government administration law regulates general principles of good governance including legal certainty, expediency, impartiality, accuracy, not to abuse authority, openness, public interest, and good service. Furthermore, in the elucidation of Article 10, it is explained that the principles of good governance include:

a) the principle of legal certainty is the principle in a state of law that prioritizes the basis for the provisions of statutory regulations, propriety, equity and justice in every government administration policy;
b) the principle of benefit is that a benefit that must be considered in a balanced manner, between:
   (1) the interests of one individual and the interest of another;
   (2) individual interests with society;
   (3) the interests of citizens and foreign communities;
   (4) the interests of one community group and the interests of another community group;
   (5) government interests and community members;
   (6) the interests of the present generation and the interests of future generations;
   (7) the interests of humans and their ecosystems;
   (8) the interests of men and women;
c) the principle of impartiality is the principle that obliges Government Agencies and/or Officials in determining and/or making Decisions and/or Actions by considering the interests of the parties as a whole and is not discriminatory;
d) the principle of accuracy is a principle which means that a Decision and/or Action must be based on complete information and documents to support the legality of the stipulation and/or implementation of Decisions and/or Actions so that the Decision and/or Actions concerned are prepared carefully before the Decision and/or the action is determined and/or carried out;
e) the principle of not abusing authority is the principle which obliges each Agency and/or Government Official not to use its authority for personal interests or other interests and is not in accordance with the purpose of granting said authority, does not exceed, does not abuse, and/or does not mix up authority;

f) the principle of openness is the principle that serves the public to gain access to and obtain correct, honest, and non-discriminatory information in the administration of government by taking into account the protection of personal, class and State secrets human rights;
g) the principle of public interest is the principle that prioritizes public welfare and benefit in an aspirational, accommodating, selective and non-discriminatory manner; h) the principle of good service is the principle of providing timely services, clear procedures and costs, in accordance with service standards and the provisions of laws and regulations;
i) other general principles outside the general principles of good governance are principles which originate from the decisions of the district court that are not compared, or the decisions of the high court that are not subject to a case or decision of the Supreme Court.

Law Number 30 of 2014 concerning Government Administration (UUAP) is the manifestation of the legislators' will to improve government administration. The promulgation of Government Administration Law on 17 October 2014 is seen as a progressive step in carrying out government administration reform. This is partly because Government Administration Law is considered to increasingly emphasize the responsibility of the state and government to ensure the implementation of a government oriented towards public services that is fast, comfortable, and inexpensive. On this basis, Government Administration Law is placed as one of the pillars of bureaucratic reform and good governance.

The regulation of Government Administration is basically an effort to build basic principles, patterns of thought, attitude, behavior, culture and administrative action patterns that are democratic, objective, and professional in order to create justice and legal certainty. This Law is the whole effort to rearrange the Decisions and/or Actions of Government Agencies and / or Officials based on the provisions of laws and regulations and the General Principles of Good Governance. This Law is intended not only as a legal umbrella for government administration, but also as an instrument to improve the quality of government services to the public so that the existence of this Law can truly create good governance for all Government Agencies or Officials at the Central and Regional Governments.

The basis for the fictitious positive application has been determined by Article 53 of Law Number 30 of 2014 concerning Government Administration which regulates:

1. The time limit for the obligation to stipulate and/or take decisions and/or actions in accordance with the provisions of the legislation.
2. If the statutory provisions do not specify a time limit for obligations as referred to in paragraph (1), the Agency and/or Government Officials are obliged to determine and/or make Decisions and/or Actions within 10 (ten) working days after the application received completely by the Agency and/or Government Officials.
3. If within the time limit as referred to in paragraph (2), Government Agencies and/or Officials do not determine and/or carry out Decisions and/or Actions, then the application is deemed granted.
4. The applicant submits an application to the Court to obtain a decision on acceptance of the application as referred to in paragraph (3).
5. The court is obliged to decide the application as intended in paragraph (4) not later than 21 (twenty-one) working days from the time the application is submitted.
6. Government agencies and/or officials are obliged to stipulate a decision to implement the Court's decision as referred to in paragraph (5) no later than 5 (five) working days after the Court decision is stipulated.

Meanwhile, the legal provisions for the application procedure are further regulated in Article 4 paragraph (1) of the Supreme Court Regulation (PERMA) Number 8 of 2018 concerning Guidelines for Procedures for Obtaining Decisions on Acceptance of Applications to Obtain Decisions and / or Actions

of Government Agencies or Officials. PERMA Number 8 of 2017 determines that the petition is submitted to a court whose jurisdiction includes the domicile of the Respondent through the secretariat. PERMA Number 8 of 2018 further regulates trial examination procedure which includes examining the main application, examining the respondent's response, examining written or written evidence, listening to witness testimony, listening to expert statements, and examining other evidence in the form of electronic information or electronic documents.

Settlement of Fictitious Positive Decisions at the Administrative Court

The fictitious positive application process can be carried out if in the application that has been submitted to a state administrative agency or official the application has been received, in this case the state administrative agency or official does not respond even though it is an obligation of the state administrative body or official within the time limit that has determined by legislation, then as mentioned in article 53 paragraph 3 of law Number 30 of 2014 concerning government administration the application is considered granted (fictitious positive). However, in the process the state administrative body or official, article 3 paragraph 1 and 2 Law Number 5 of 1986 still applies which states that the silence of state administrative bodies or officials is a refusal, or in other words, state administrative bodies or officials seem to have issued a fictitious negative decision (application is rejected).

Submission of an application to the Administrative Court will be processed within a period of not later than 10 (ten) working days after the complete application is received by the Body and/or Government Officials. Afterwards, the administrative court is obliged to decide upon said application no later than 21 (twenty-one days) since the application is submitted. Moreover, government officials are required to implement the Court Decision no later than 5 (days) since the court decision is stipulated.

This remains a dilemma in synchronization between Law Number 5 of 1986 which has been amended twice, up to Law Number 51 of 2009 with Law Number 30 of 2014 on government administration, especially in article 3 of the Administrative Law (fictitious negative) as formal law and article 53 of the Government Adminstration Law (fictitious positive) as material law. In addressing the confusion between these two laws in the PTUN (Administrative Court), the Supreme Court move quickly so as not to cause sustainable problems. Therefore, the Supreme Court regulates the procedural law regarding applications to obtain actions or decisions of government agencies and/or officials by issuing PERMA Number 5 of 2015 concerning Procedural Guidelines for Obtaining Decisions on Acceptance of Applications to Obtain Decisions and or Actions of Government Agencies or Officials.

The purpose of an application to obtain a decision and/or action by a government body and/or official is a written request that is submitted to the court in the event that the application is deemed legally granted because the government body and/or official does not make a decision and/or take action.

In the procedure for obtaining acceptance of the application at the Administrative Court, the applicant must complete some of the prerequisites set out by PERMA Number 8 of 2018 which regulates the formal law.

Fictitious Positive Dispute Check Flow
Supreme Court Regulation Number 8 of 2007

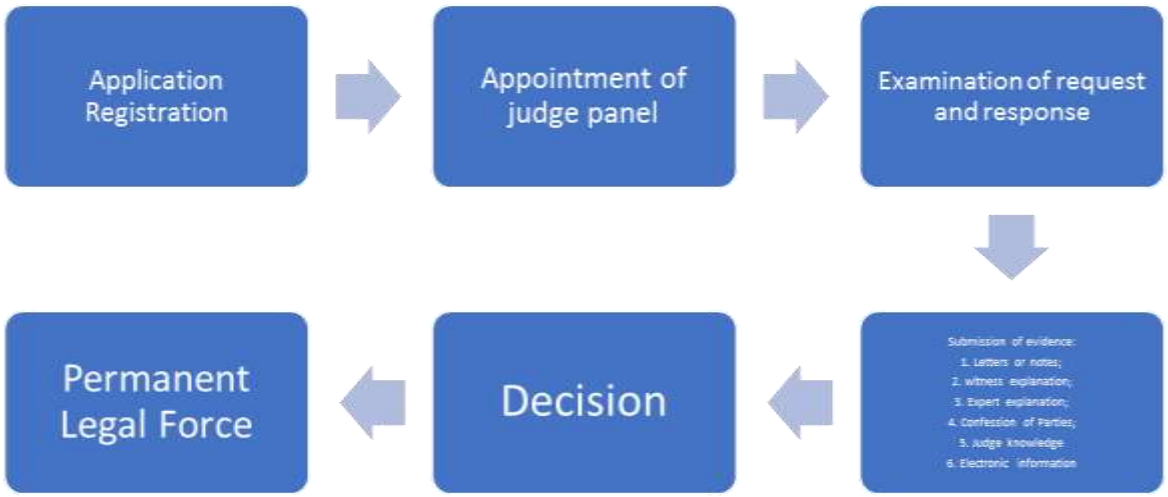

Figure 1. Flow of Dispute Resolution Application for Fictitious Decisions in Administrative Court

Based on data obtained at the Jakarta Administrative Court, the case for disputes over the application for a fictitious positive decision was registered at the Jakarta Administrative Court for the period January to October 2020 in the period from January to January October 2020, as many as 19 cases as can be seen in Table 1.

Table 1. Data on cases of disputes over the request for a Fictitious Positive Decision at the Jakarta Administrative Court for the period January to October 2020

No	Case Number	Registration Date	Case Clarification
1	19/P/FP/2020/PTUN.JKT	26 Oct 2020	Fictitious Positive application
2	18/P/FP/2020/PTUN.JKT	14 Oct 2020	Fictitious Positive application
4	15/P/FP/2020/PTUN.JKT	29 Sep 2020	Fictitious Positive application
5	14/P/FP/2020/PTUN.JKT	29 Sep 2020	Fictitious Positive application
6	16/P/FP/2020/PTUN.JKT	29 Sep 2020	Fictitious Positive application
7	13/P/FP/2020/PTUN.JKT	08 Sep 2020	Fictitious Positive application
8	12/P/FP/2020/PTUN.JKT	07 Sep 2020	Fictitious Positive application
9	11/P/FP/2020/PTUN.JKT	19 Aug 2020	Fictitious Positive application
10	10/P/2020/PTUN.JKT	11 Aug 2020	Fictitious Positive application
11	9/P/FP/2020/PTUN.JKT	04 Aug 2020	Fictitious Positive application
12	8/P/FP/2020/PTUN.JKT	20 Jul 2020	Fictitious Positive application
13	7/P/FP/2020/PTUN.JKT	09 Jun 2020	Fictitious Positive application
14	6/P/FP/2020/PTUN.JKT	26 May 2020	Fictitious Positive application
15	5/P/FP/2020/PTUN.JKT	12 May 2020	Fictitious Positive application
16	3/P/FP/2020/PTUN.JKT	16 Mar 2020	Fictitious Positive application
17	4/P/FP/2020/PTUN.JKT	16 Mar 2020	Fictitious Positive application
18	2/P/FP/2020/PTUN.JKT	24 Feb 2020	Fictitious Positive application
19	1/P/FP/2020/PTUN.JKT	24 Jan 2020	Fictitious Positive application

Source: Jakarta Administrative Court, October 2020

From the description above, it shows that after the enactment of Law Number 30 of 2014 concerning Government Administration which was ratified on October 17, 2014, the implementation of the case settlement of fictitious positive decision requests in practice at the Jakarta Administrative Court is basically in accordance with the provisions of procedural law as regulated in the provisions of Law Number 5 of 1986 concerning Administrative Courts as amended several times, most recently by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 and Regulation of the Supreme Court (PERMA) Number 8 of 2017 concerning Procedure Guidelines for Obtaining Decisions on Acceptance of Applications Obtaining Decisions and/or Actions of Government Agencies or Officials.

However, in the future, the administration of the judiciary in adjudicating the settlement of cases of fictitious positive requests for decisions in practice in a good Administrative Court, of course, must be supported by competent and professional judicial apparatus, besides that it is necessary to think about changes to PERMA rules regarding the prohibition of third parties who feel their interests. disadvantaged to be able to apply for intervention in a fictitious positive petition case, although of course taking into account the time frame for completion of the case which is limited by law to only 21 (twenty-one) working days (Heriyanto, 2019).

Conclusion

After the enactment of Law Number 30 of 2014 concerning Government Administration which was ratified on 17 October 2014 has brought juridical consequences to the expansion of the competence (absolute authority) of the Administrative Court which among other things, concerns the object of disputes in adjudicating Fictitious Positive Decisions.

In practice, in practice at the Jakarta Administrative Court, the implementation of dispute resolution requests for fictitious positive decisions is in accordance with statutory regulations as regulated in Law Number 5 of 1986 concerning Administrative Courts as amended several times, most recently by Law Number 51 of 2009 concerning Second Amendment to Law Number 5 of 1986, Law Number 30 of 2014 concerning Government Administration, and Regulation of the Supreme Court Number 08 of 2018 concerning Procedural Guidelines to Obtain Decisions on Acceptance of Applications to Obtain Decisions and/or Actions of Government Agencies or Officials.

The administration of the judiciary in adjudicating the settlement of cases of petition for fictitious positive decisions in good practice in the Administrative Court, of course, must be supported by competent and professional judicial apparatus, which can be pursued by means other than the judges must independently increase the quality of knowledge, it is necessary Continuous education of judges is carried out by the competent authority within the jurisdiction of the judiciary at the Supreme Court of the Republic of Indonesia.

References

Adji, O. S. (1980). *Peradilan Bebas: Negara Hukum* [Free Justice: The State of Law]. Jakarta: Erlangga.

Ahmad. (2017). Konsep Fiktif Positif: Penerapannya Di Pengadilan Tata Usaha Negara [Fictitious positive Concept: Its Application in Administrative Courts]. *Jurnal Hukum Republik,* 5(2).

Fakrulloh, Z. A. (2015). Tindakan Hukum Bagi Aparatur Penyelenggara Pemerintahan [Legal Actions for Government Administrators]. 62th National Seminar of IKAHI, Jakarta, March 26.

Hamzah, M. G. (2016). Paradigma Baru Penyelenggaraan Pemerintahan Berdasarkan Undang-Undang Administrasi Pemerintahan kaitannya dengan Perkembangan Hukum Acara Peratun [New Paradigm of Government Administration Based on the Government *Administration* Law in relation to the Development of Administrative Procedure Law]. Paper presented on One-day Seminar on 26th Anniversary of Administrative Court. Jakarta.

Heriyanto, B. (2019). Problematika Peyelesaian Perkara "Fiktif Positif" di Pengadilan Tata Usaha *Negara* [*Problems in the Settlement of "Fictitious Positive" Cases at Administrative Courts*]. *Jurnal Pakuan Law Review*, 5(1).

Hadjon, P. M., Martosoeignjo, R. S. S., Basah, S., Manan, B., Marzuci, H. M. L., Berge, T., Buuren, P. J. J. V., and Stroink, F. A. M. (1999). *Pengantar Hukum Administrasi Negara [Introduction to The Indonesian Administration Law]*. Yogyakarta: Gajah Mada University Press.

Ridwan. (2010). *Hukum Administrasi Negara* [State Administrative Law]. Jakarta: Rajawali Press.

Simanjuntak, E. Perkara Fiktif Positif dan Permasalah Hukumnya [*Fictious Proceedings and Its Legal Problem*]. *Jurnal Hukum dan Peradilan, 6(3), 2017.*

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