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Implementation of Article 53 of law no. 30 of 2014: Post Omnibus Law 2020

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ABSTRACT

In law no. 30 of 2014 concerning government administration is a paradigm shift in the Indonesian state administrative court, one of which is the presence of the concept of a positive fictitious decision, precisely in article 53. However, after Law Number 11 of 2020 (Omnibus law) the implementing provisions and the phrase court ruling were removed. This is important because the implementing provisions and the phrase court ruling in the article are removed, so its implementation depends on the Presidential Decree promised by the Job Creation Law which until now has not existed. Therefore, the aim and urgency of this research is to understand the legal principles in accordance with the changes in existing regulations after the Omnibus Law / Job Creation Law.

In this scientific paper, the research method that the author uses is normative legal research or literature review. Based on the results obtained from the literature, the authors concluded that Supreme Court Regulation No. 8 of 2017 which regulates implementing provision for article 53 of Law No. 30 of 2014 before the Job Creation Law did not apply. Therefore, the Presidential Decree promised in the Job Creation Law is very crucial.

Introduction

Basically the positive fictitious principle is a new thing in Indonesia. For 29 years, Indonesian administrative law has used the fictitious negative principle (1986-2014). The application of this principle becomes ingrained with conventional administrative law. In 2014, after the enactment of the Government Administration Act (UU AP), the paradigm of fictitious negative decisions changed to positive fictitious ones. This change has a beneficial purpose on the one hand, but is also considered to have weaknesses on the other hand.

One of the advantages of implementing this principle is that it can accelerate administrative applications in Indonesia. In addition, this also provides guarantees to the citizens of the community who were originally objects to become subjects in a legal state which is part of the embodiment of people's sovereignty. This is quite justified because if an application is

submitted to the relevant authority and until 2 month does not get explicit approval, (Negative Fictitious) it will get legal certainty in the form of the application being approved regardless of whether or not the authority wants it. But on the downside too, positive fictitious creates uncertainty in the interests of third parties as well as the public interest. This is also a juridical consequence of the expansion of the meaning of the State Administrative Decree (KTUN) in Article 87 of the AP Law.

On 24 August 2015, the Supreme Court issued Supreme Court Regulation (PERMA) no. 5 of 2015 as a procedure guide to obtain a decision on the acceptance of an application in order to obtain a decision and/action by a government agency or official. This regulation was finally revoked by Supreme Court Regulation No. 8 of 2017 on 27 November 2017.

In 2020, the Government promulgated a legal regulation that is used to amend all matters in laws and regulations that hinder licensing. In the end, a law was issued using the Omnibus method, namely Law No.1 of 2020 (Cipta Kerja).

Omnibus itself is a method or concept of making regulations that combines several rules with different regulatory substances, into one regulation under one legal umbrella.(Fitryantica, 2019) In fact, this method of making laws is the first time in the history of Indonesian law. Based on the Black Law Dictionary Ninth Edition Bryan A. Garner explained that Omnibus means "*relating to or dealing with numerous objects or items at once ; inculding many things or having various purposes*". Its mean that omnibus can amend all law at same time regardless substances and type of act.

One of the laws amended by the Job Creation Law is the AP Law. Article 53 of the UUAP is amended by eliminating the obligation of a court order. The job creation law gives the authority to determine fictitious decisions in presidential regulations, but until now the president has not issued these regulations. This raises many legal questions. First, is it still relevant to determine the fictitious petition in court and how is the Supreme Court Regulation no. 8 of 2017 as a guideline for the determination of positive fictitious procedures. Second, how to apply the positive fictitious principle in developed countries. Third, how to reflect on the implementation of positive fictitious principles after the Job Creation Law.

Methodology

The research method carried out in writing is using a normative approach that is based on browsing library materials or secondary data. Secondary data in this case includes:

1. Primary legal materials are materials that come from certain authorities that are binding and official, namely various laws and regulations (both legislation and regulations) and judicial decisions (constitutional Court decisions);
2. Secondary legal materials are materials that provide an explanation of primary legal materials such as research results/science journals.
3. Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials such as dictionaries, encyclopedias and so on.

The mechanism of this research is to examine all the materials that have been collected both primary, secondary and tertiary legal materials and then analyze them substantially with relevant problems and doctrines to find solutions to problems.

In terms of comparative administrative law of various country, the author uses a sample of state administrative law in Germany, the Netherlands and France. This is based on several reasons, namely:

a) The Indonesian legal system is a derivative of continental European law (Civil Law) (Nurhardianto, 2015).
b) The Netherlands, France and Germany are classified as European countries and use a continental European legal system
c) The Netherlands, France and Germany are included in the top 30 developed countries category (International Monetary Fund, 2020).

Results and Discussion

Positive Fictional Principle

Theoretically it can be argued that all countries in principle have the same goal, namely, to provide welfare for their citizens. This is also in line with the objectives of the Republic of Indonesia as stated in the Preamble to the 1945 Constitution, which is to promote general welfare, to educate the nation's life (Kuswandi, 2015).

At this point, the state is expected to prioritize and serve the interests of its people in a comprehensive manner. Even the ancient Maxim says that the welfare of the people is the highest law (*Salus Populi Suprema Lex*). Therefore, state authorities are prohibited from rejecting an application on the grounds of the absence of law *(Iura Officialibus Consilia).*

If the government administrative apparatus does not serve the requests of citizens as they should, in the sense of neglecting or late in carrying out their legal obligations, then legally such an attitude or action can be considered or equated with an attitude of silence. If this silence means neglect, then this will betray the goals of the country itself. Therefore, for the sake of legal certainty, silence in this administration must be interpreted firmly.

At this point, Vera Parisio stated that *Administrative Silence* can be interpreted as rejection or acceptance. According to Vera Parisio in her journal says that: "*Administrative silence is a legal fiction of administrative law, a caused legally situation, according to which application filed with public administration bodies, outstanding in a certain period of time, are considered as denied or accepted."*

If we look at the basic principles of law, we will find that one of the famous Latin Maxims is *Qui Tacet Consentire Videtur* which means silent means to agree. It is this Maxim who justifies the Positive Fictitious Principle in administrative law.

Terminologically, fictitious means imaginary or just wishful thinking and positive can mean real and definite. If this positive phrase is interpreted as "real", this will be a

contradiction (Contradictio in Terminis). However, if the phrase is interpreted as certainty, in the author's opinion, the meaning is certainty which is still in the imagination.

In general, positive fictitious can be interpreted as a legal rule that requires the administrative authority to respond to or issue a decision/action submitted to it within the period as determined by the regulation and if this prerequisite is met, the administrative authority is automatically deemed to have granted the request for issuance of a decision/ that action (Simanjuntak, 2017). M. Aschari and Fransisca Romana Harjiyatni also considered positive fictitious provisions as a form of government effort in providing and encouraging government administration to improve services more optimally, so that administrative apparatus are required to carry out their obligations more actively (Aschari & Harjiyatni, 2017).

The term positive fictitious has many differences in various places, for example the Dutch use the term *Positieve Fictieve Beschikking, Germany uses the term Genehmigungsfiktion, France uses the term silence de l'administration vaut acceptance, English uses the term implicit decision, Spain uses the term Silencio Positivo as in English* (Heriyanto, 2019). As for the positive fictitious application, there is no difference in principle.

Positive Fictitious Decisions in Indonesia

1. The Existence of Lawsuit Procedures After the Job Creation Act

If we look at the AP regime before the Job Creation Law, the procedure for a fictitious lawsuit (application) is based on Supreme Court Regulation no. 8 of 2017. However, after the issuance of the Job Creation Law, there is no obligation for the applicant to obtain a decision on the acceptance of the application which is used as validation for the grant of the application from the applicant. This gives a juridical consequence that pseudo positive fictitious in UUAP turns into absolute positive fictitious after the existence of the work Job Creation law. From this it can be concluded that the positive fictitious lawsuit procedure in Supreme Court Regulation no. 8 of 2017 is no longer valid. Even though the regulation is no longer valid, the court still cannot reject the lawsuit filed because the principle of *Ius Curia Novit.* This principle is also parallel with Article 10 paragraph (1) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power that "*Courts are prohibited from refusing to examine, try, and decide on a case that is submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it.*"

Because of that, there is a lot of debate as to whether positive fictitious decisions still need to be made in court after the omnibus law. Based on the existing debate on the issue of whether courts have the authority to adjudicate positive fictitious cases that the authors found, there are strong arguments underlying the debate in terms of the practice of making positive fictitious decisions, as follows:

Arguments stating that the court is authorized to adjudicate positive fictitious cases such as:

a) There is no Presidential Regulation yet that regulates stipulation of positive fictitious
b) Supreme Court Regulation No. 8 of 2017 has not been revoked
c) Court can examine formal legal facts of the application
d) Courts are prohibited from refusing to examine on a case that is submitted on the pretext that the law does not exist or is unclear

As for the arguments stating that the court is not authorized to hear positive fictitious cases, such as:

a) The phrase "Court" does not exist in Article 53 of the Job Creation Law.
b) Supreme Court Regulation No. 8 of 2017 against the Job Creation Act (*Lex Superior legi Inferior*) (Prasetyo, 2021).
c) Provisions regarding the determination of decisions are given to the Presidential Regulation and not the Supreme Court Regulation No. 8 years 2017
d) The abolition of the provisions of article 53 paragraph 6 regarding the obligations of government officials or administrative bodies to implement court decisions regarding positive fictitious cases. Therefore, the decision cannot be executed (non-executable) (*Rumusan Lengkap Diskusi Undang - Undang Cipta Kerja*, 2020).

Among the debated arguments and differences in implementation in judicial practice this can result in legal uncertainty. The Directorate General of Military Courts and State Administrative Courts issues circular letter Number 2 of 2021 concerning Handling of Case Registrations to Obtain Decisions on Accepting Applications to Obtain Decisions and/or Actions of Government Agencies or Officials after the Enactment of Law Number 11 of 2020 concerning Job Creation. In the explanation of the circular, it is stated that the Job Creation Law has removed the authority of the State Administrative Court (PTUN) to examine, decide and resolve cases to obtain a decision on the acceptance of applications in order to obtain decisions and/or actions of government agencies or officials in accordance with Article 53 of the Law number 30 of 2014.

As for the contents of the circular[1] are as follows:

a) The Registrar of the Court to actively explain to the justice seekers who register cases to obtain a decision on the acceptance of the application in order to obtain a decision and/or action by a government agency or official regarding the abolition of the provisions of Article 53 paragraph (4) and (5) of Law Number 30 of 2014 concerning Government Administration in particular relating to the regulation of the authority of the State Administrative Court to examine, decide and settle the application case as regulated in Article 175 number 6 of Law Number 11 of 2020 concerning Job Creation;
b) In the event that there are still people seeking justice who wish to register a case to obtain a decision on the acceptance of an application in order to obtain a decision

and/or action by a government agency or official at the State Administrative Court, the Court should be guided by the provisions of Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which stipulates that courts are prohibited from refusing to examine, hear and decide on a case that is submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it;

c) The procedure for handling case registration to obtain a decision on receipt of an application in order to obtain a decision and/or action by a government agency or official is guided by the Supreme Court Regulation Number 08 of 2017 concerning Procedures for Obtaining a Decision on Acceptance of an Application to Obtain a Decision and/or Action of the Agency Government Official

Based on the contents of the circular, it can be concluded that :

First, socialization that the enactment of the Job Creation Law makes it easy for recipients of positive fictitious decisions to be able to directly execute their decisions without being determined by the court.

Second, the court is prohibited from rejecting the application of the community who wants the determination of a fictitious decision.

Third, the procedure for determining fictitious decisions uses the procedures stated in the Supreme Court Regulation Number 08 of 2017.

Based on the conclusion above, in fact the procedural procedure for fictitious determination is no longer valid because it is contrary to the copyright law, however, due to legal vacuum, positive fictitious determination by the court can still be carried out

2. Differences in Article 53 Before and After the Job Creation Act

After the issuance of Law no. 11 of 2020 (Cipta Kerja), There are quite significant differences in the implementation of positive fictitious principles in Indonesian Administrative Law. Even in Article 38 of the Job Creation Law, electronic decisions have the same legal force as decisions in written form. The article also explains that there are no decisions in the same case, therefore if there is an electronic state administrative decision, no written state administrative decision will be made.

The Job Creation Law also stipulates that if an application is not regulated by a grace period, then 5 days after the complete document is received by the relevant administrative authority is considered to have been approved. This is a form of acceleration from the old article 53 which provides a grace period of 10 days.

In the case of positive fictitious decisions, the Job Creation Law does not require it to be legitimized by the state administrative court but will still be stipulated by presidential regulations. However, until this journal was made, the presidential regulation did not yet exist. Therefore, positive fictitious decisions can be directly executed unless regulated by a presidential regulation that will be issued later (Taswin, 2021).

The differences in the positive fictitious principle mechanism in Article 53 between the UUAP and the Job Creation Law are as follows:

No	Difference	Law No. 30 of 2014 (UU AP)	Law No.1 of 2020 (Job Creation Law)
1.	Grace period	If there is no regulation, the grace period is 10 working days	If there is no regulation, the grace period is 5 working days
2	Decision Making Procedure	To obtain a decision on the application, it is required to be brought to court (Pseudo Positive Fictitious)	Decision making is not required to be brought to court (Fiction Positive Absolute)
3	Advanced rules regarding Decision Making	Supreme Court Regulation No. 8 Year 2017	Presidential decree
4	Execution of decisions	After the court decides on the application, the relevant administrative authority must make the decision no later than 5 working days after the decision is made	Execution can be carried out immediately after the grace period ends unless regulated by presidential regulation.
5	Application Terms on electronic decisions	Not Described in Supreme Court Regulation No. 8 of 2017 as well as the AP Law itself	In the case of an application that is processed electronically, as long as all the requirements in the electronic system have been met. So this can be said as a state administrative decision.

Comparison of Positive Fictitious Implementation in Germany, France and the Netherlands

In general, the three countries have had and regulated positive fictitious principles before Indonesia implemented UUAP. France, which implemented the Law of 12 November 2013 and adopted it in its entirety in 2015, (De Graaf & Hoogstra, 2013) the Netherlands did not make a separate law regarding positive fictitious decisions but only changed the General Administrative Law Act in 2009 to adopt positive fictitious principles and for Germany only amended the Administrative Procedure Act (VwVfG) in 2008 and added the positive fictitious principle to section 42a (Dragos et al., 2020).

However, it is undeniable that the application of the positive fictitious principle in some countries is strictly limited, because in the positive fictitious principle, individual rights are assumed to be above the public interest (Chevalier, 2020). Therefore, the application of positive fictitious provisions must be accompanied by rules that are careful enough so that the application of this principle does not harm the public interest or the interests of third parties.

1. Limitations of the application of positive fictitious

In France, the legal basis for the positive fictitious principle is regulated in Article L231-1 of Law of 12 November 2013. This principle is used as a general principle but has very strict limitations. There are 5 limitations regulated by Article L231-4 Law of 12 November 2013 namely:

a) When the request does not lead to the adoption of an individual decision;

b) When the request is not part of a procedure regulated by a legislative or regulatory text or presents the character of an administrative complaint or appeal

c) If the request is of a financial nature except, in the case of social security, in cases provided for by decree;

d) In cases, determined by decree in the Council of State, where implicit acceptance would be incompatible with respect for France's international and European commitments, protection of national security, protection of freedoms and principles of constitutional value and maintenance of public order;

e) In the relationship between the administration and its agents.

If administrative silence is included in the Limitations regulated in Article L231-4 above, then the request that has passed the specified time limit is decided as a negative fictitious / refusal decision. The legal ratio of the existence of these limitations is clearly to protect the public interest both nationally and internationally. In addition, the application that can be imposed by the positive fictitious principle is only an individual application.

For the Netherlands and Germany, as far as the author observes, there is no specific explanation regarding the limitations of positive fictitious implementation in the administrative law of those countries, even in its implementation individual interests take precedence over the interests of third parties and the public interest (Graaf et al., 2020).

2. Deadline for Giving Decision on Silent Administrative

Providing legal certainty is one of the obligations of the administrative (executive) and law-making authorities (legislative and judicial). Therefore a decision on an application should be made as quickly and accurately as possible. This is also part of the objective of the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market which aims to simplify procedural administration of European Union members (Purwadi, 2019). Therefore, the provision of legal certainty that is appropriate and fast is the obligation of the government at large. This can be reflected by looking at the provision of a decision time limit at the time after the silent administrative.

In France, until now it still adheres to the dualism of applying the principle of fictitious decisions. In fact, by law there is no specific grace period used in general principles. Therefore, the grace period is a reasonable deadline. This reasonable deadline means that the deadline can be assumed that the authority is aware of the facts regarding its task. In fact, the verdict dated January 29, 2013 explains that the court will impose sanctions on authorities who do not carry out their duties past the reasonable deadline (*Cour Administrative d'Appel de Marseille, 8ème chambre, 29/01/2013, 11MA02224*, 2013). But it can be justified if there is a reasonable reason.

Basically, the Deadline above does not apply if it has been specifically regulated by law. But in principle the implementation of a reasonable deadline is 2 month / 8 weeks. Therefore, after the grace period of 2 months, it means that the application can be considered as granted or refused depending on the legal category.

As for the Netherlands and Germany, the use of the grace period is generally no different from that in France, which is 2 months for the Netherlands and 3 months for Germany. But still, this depends on the subject matter. Some specific things can be longer because they are regulated by certain laws. In addition, the grace period can be extended for certain reasons, for example, the administrative authority requires an audit agency to see the subject matter clearly or the authority still requires several additional documents to complete the application requirements. The implicit decisions given after the grace period have expired are fictitious positive or considered as granted (Kovaˇc et al., 2020).

3. Legal Consequences and Finalization

If we look at the administrative regulations in the three countries (Germany, France and the Netherlands), there is no significant difference in terms of legal consequences after the grace period ends. This happens because the three countries and even all members of the European Union are bound by the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market which is clearly functioned to accelerate administrative authorization in the European Union countries.[2]

In general, after the grace period has expired, the application can be considered as granted. This is excluded in France, because France uses the fictitious negative and positive fictitious principles as general principles simultaneously. After legally obtaining a positive fictitious decision, there are several different regulations regarding this matter in the three countries.

At the administrative law level in France, an applicant who has received a positive fictitious decision can immediately execute the application. However, it is advisable to notify the relevant authorities to obtain a certificate. This certificate is not legally required, but it can be useful if administrative authorities challenge the fictitious decision. even if the applicant wants a more favorable decision through the litigation process (appeal), the existence of this certificate is not mandatory. When the fictitious decision is challenged, the individual will have to proof that he/she initiated a request and the date of the request, by any means. Consequently, being in possession of the reception notice or of the certification might be helpful. However, in the case of a fictitious negative decision, the individual can also directly file a case with the court after the grace period has expired through the usual judicial mechanism (administrative action or administrative appeals).

As for the Netherlands, positive fictitious decisions will take effect after the 3 day grace period applies and this applies automatically, legally and binding. However, in cases involving environmental law (GAEL), prior notification is required.

As for Germany, the decision can take effect automatically after there is no interim decision from the relevant authorities. interim decision (Zwischenbescheid) this is a document that is meaningful as a suspension of decision for several reasons. If the applicant does not accept this decision then the application is considered as granted.

NO	Comparison	German	Dutch	France
1	Legal base	Article 42a VwVfG	section 4.1.3.3 GALA	Article L231-1, Law of 12 November 2013

[2]Ribes, D. (2014). Le nouveau principe « silence de l'administration vaut acceptance ». *Actualité Juridique du Droit Administrative*, 389–394.

2	timeframe for filing an appeal or request	For objections of Negative decision is 3 months after	For objections of Negative decision is 6 weeks	Negative Decision : 2 months for filling an appeal
3	Legal Subject	Petitioner: the party whose application is considered legally granted. Defendant: Agency and/or Officer Government	Petitioner: the party whose application is considered legally granted. Defendant: Agency and/or Officer Government	Petitioner or applicant: the party whose application is considered legally granted or rejected. Defendant: Agency and/or Officer Government
4	Grace Period	If the grace period is not stipulated in the regulations, then use reasonable time principle as general principle / three months	If the grace period is not stipulated in the regulations, then use reasonable time principle as general principle / 8 weeks	If the grace period is not stipulated in the regulations, then use a reasonable time of 2 months as general principle for negative decision and positive decision.
5	Requirements of implicit decision	There is no specific limitation concerning requirement of silent decision	There is no specific limitation concerning requirement of silent decision	Negative implicit : Article L231-4 Positive implicit : other than those requirements
6	Decision / Action	considered as grantedpetition	considered as grantedpetition	Depend on regulation, it could be considered as granted petition or rejected petition
7	Implementation of Decision	Depend on Court's decision	3 days after decision has been released by court, the decision can be executed	Depend on Court's decision

8	Legal Effort	can take Ordinary and Extraordinary Legal Efforts	can take administrative action	can take administrative action or administrative appeals

Reflection on Changes in Regulation of Fictitious Stipulations on Legal Justice

The aspect of justice is explicitly part of the ideals of the Indonesian nation. This is clearly stated in the Pancasila and the preamble to the Indonesian constitution. Pancasila is the basis for the Indonesian nation, the state philosophy, ideology and ideals of the state and the law of the Indonesian nation as well as a unifier of the Indonesian people (Darmadi, 2020). Even according to Emha Ainun Najib, the point of social justice is a manifestation of all the previous Pancasila points (first to fourth precepts) (Najib, 2020).

Theoretically, the social justice referred to in Pancasila is interpreted as follows:

First, distributive justice, namely justice which is the relationship between the state and the people of the country.

Second, legal justice is a relationship in justice between citizens and their country.

The third is commutative justice, namely the relationship between citizen justice and others (Nurcahya & Dewi, 2021).

Judging from the changes in the rules, all the rules should be based on legal objective. In general, the objectives of Indonesian law are divided into 3, namely justice, expediency and legal certainty (Anshori, 2018). But among the three principles the most important is justice (Rahman, 2020). This is because the principle of expediency and legal certainty is complementary to the principle of justice itself.

In the context of positive fictitious changes in Indonesia after the Job Creation Law, there is no need for a court order. This has a juridical consequence that positive fictitious decisions apply automatically (Ex Lege). This may adversely affect the interests of third parties and the public interest.

Basically, prior to the new regulations in the Job Creation Act, the UUAP already had weaknesses that had a negative impact on third parties and the public interest. This can be seen from the positive fictitious determination mechanism in the Administrative Court which only uses formal truths and ignores material truths (Arniti et al., 2019). Therefore, according to the author, this is more precisely called the legitimacy of the court than the court's determination. In addition, because positive fictitious determinations only prioritize formal truths, positive fictitious cases are very prone to “legal smuggling”, namely the courts are extensions of parties who take advantage of legal loopholes in the weaknesses of positive fictitious testing procedures.

The existence of the potential for "smuggling of laws" above makes the application of this positive fictitious principle contrary to the principle of *Nemo Commodum Capere Potest De Injuria Sua Propria* which means that no one may benefit from irregularities and/or violations committed by himself and no one may be harmed by irregularities and violations committed by him done by someone else. As a universal principle, this principle prohibits any potential deviation from the law itself, whether carried out by the authorities or the community.

Moreover, the UUAP stipulates that court decisions on positive fictitious petitions are final and binding, while in other countries where the development of administrative law is much more established than Indonesia, there are still legal remedies available for court decisions in positive fictitious cases.

Juridically, because the Law no. 5 of 1986 (Peratun) has not been revoked, this can be overcome by procedural PK (extraordinary legal remedies) contained in Article 132 of the Administrative Court Law jo. Article 67 of the MA Law (UU. No. 3 of 2009) can be applied. However, this is still limited by Article 45A paragraphs (1) and (2) of Law Number 5 Year 2004 regarding the exception to the authority to appeal (AISYAH, 2019).

This continues to be exacerbated by the application of automated decision-making using positive fictitious principles in the Job Creation Law. In the absence of a court, there will be no examination of the formal fact of the positive fictitious decision. This clearly closes the possibility of justice seekers, both third parties and others, to change fictitious decisions that have been legal.

Despite all the criticisms, the use of positive fictitious is basically an effort to build democratic, objective, and professional principles, mindsets, attitudes, behavior, culture, and administrative action patterns in the context of realizing justice and legal certainty (Rohaedi & Basri, 2020).

The use of the negative fictitious principle also has many shortcomings, administrative authorities that allow negative fictitious decisions in Indonesia are often irresponsible. This is because negative fictitious do not cause legal effects on third parties and the public interest. in practice a simple permit application can take up to a year and this has become the hallmark of administrative authorities (Darwis, 2015). The use of positive fictitious makes administrative authorities more disciplined and responsible. Although there is no legal remedy after the fictitious decision is fixed, but if there is an unlawful act in it, the authority can be sued.

This is reinforced by the supreme court regulation no. 2 of 2019 which is a procedure for people who feel aggrieved by the legal decision or factual actions taken by administrative authorities and also the administrative authority must be responsible for both the unlawful acts committed. This regulation also legitimizes procedurally that the administrative court has the authority to adjudicate unlawful acts committed by administrative authorities.

Conclusion

Based on the discussion above, the authors draw the following conclusions:

First, the existence of a fictitious positive decision-making procedure legally does not use Supreme Court Regulation No. 8 of 2017 and the court does not have the authority to examine, decide and resolve cases to obtain a decision on the acceptance of an application in order to obtain a decision and/or action by a government agency or official. But in practice the procedural rules are still used until the presidential regulation promised by the job creation law is issued

Second, in a comparison of the application of the positive fictitious principle in France, Germany and the Netherlands, it was found that these countries still have legal remedies after the official fictitious decision. Even if the applicant wants a more favorable decision, the decision can be revoked or repeated. In addition, legal remedies can be carried out by third parties as well as related administrative authorities. Notification to the relevant administrative authority is not required but can request a certificate of determination from the administrative authority which will be useful when legal remedies or fictitious decisions are challenged by other parties.

Third, in terms of legal justice, changes in the implementation of positive fictitious principles after the Job Creation Law make it more difficult for justice seekers to take legal remedies. Even the job creation law revoked the court's authority to examine the formal veracity of the application. This certainly creates opportunities for “legal smugglers” and is dangerous for third parties and the public interest. However, if the purpose of this regulation (Cipta Kerja act) is successful, the lag in licensing that occurs in Indonesia will decrease and the administrative authorities will be more responsible and actually if there is an unlawful act committed by the authority then this can be sued by the community. Therefore, the public can still question the actions of the authorities regardless of the absence of legal effort in positive fictitious.

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