Damhil Law Journal

e-ISSN 2808-7143

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Positive Fictional Authority Legislative Ratio in Government Administration Laws and Job Creation Laws

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Abstract:
The purpose of this paper is to find out the ratio legis of the authority to adjudicate positive fictitious cases in the Government Administration Law and the Job Creation Law. The research method used is a normative research method using a statutory approach. The result of this research is that after the existence of the Job Creation Law, everything has changed very significantly in all matters of legal regulation. This is all evidenced by the loss of Indonesia state administrative court-PTUN's authority over positive fictitious legal remedies previously regulated in Article 53 of Law No. 30 of 2014 concerning Government Administration. Then Article 175 number 6 of the Job Creation Law has changed Article 53 of the Government Administration Law, where the authority of the State Administrative Court is eliminated. With these changes, there are many parties who are harmed, not only the community who do not get their rights in obtaining protection and legal services as they should, but the Advocate profession is also harmed in this case they cannot fight for justice in the community. As stated by Viktor as an advocate for one of the clients who filed a positive fictitious lawsuit at the Indonesia state administrative court-PTUN, "after the enactment of the Job Creation Law, there were changes in the Government Administration Law, especially Article 53 of the Government Administration Law. Previously, positive fictitious efforts went through a mechanism at the Indonesia state administrative court-PTUN. But, in Article 175 of the Job Creation Law, it changes Article 53 of the Government Administration Law where positive fictitious efforts through the Indonesia state administrative court-PTUN mechanism are removed.

Keywords: *Legal Ratio; Positive Fiction; Government Administration Laws; Employment Law*

How to cite **(Chicago Manual Style)**:
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Introduction

Law Number 30 of 2014 concerning Government Administration is a manifestation of the will of lawmakers to improve government administration. The promulgation of the Public Administration Law on October 17, 2014, was seen as a progressive step in implementing government administration reforms. This is partly because the Public Administration Law is considered further to emphasize the responsibility of the State and government to ensure the implementation of a government oriented towards fast, convenient, and inexpensive public services. On this basis, Public administration Law is positioned as one of the pillars of bureaucratic reform and good governance.(Wicaksono, Hantoro, and Kurniawan 2021)

Moreover, the public administration Law shifts the old paradigm of government administration to a new paradigm. This paradigm accompanies the direction of the paradigm of public service in the administration of government which is growing, especially in line with the era of openness, which demands the widest possible access to information for the public. This is undoubtedly given the increasingly complex tasks of government regarding the nature of work and types of tasks and the people who carry them out. In this context, the need arises to set minimum service standards in the day-to-day administration of the State, including the need to provide legal protection to the public as part of the work of executors of state administration (Fauzani 2021).

In considering the Public Administration Law, it emphasizes that to improve the quality of government administration, government agencies and officials must use their authority to refer to the general principles of good governance based on statutory provisions. To solve problems in governance, arrangements regarding government administration are expected to be a solution in providing legal protection, both for citizens and government officials. To realize good governance, especially for government officials, laws on government administration are the legal basis needed to underlie government officials' decisions and actions to meet the community's legal needs in administering government (Norra 2020).

The above description emphasizes that the government is very concerned about the quality of good governance, which must be based on the principles of good governance in general and based on applicable laws and regulations, especially in serving

the community, which is often found not providing legal guarantees and uncertainty in making decisions. And actions of government officials in the field of government administration services.

Method

The type of research used in this article is normative legal research which focuses on literature studies. So, the data used is secondary data consisting of primary legal material (in the form of relevant laws and regulations) and secondary (consisting of references in the form of scientific articles and books relevant to the focus of the study). Aimed at facilitating analysis, conceptual approaches and statutory approaches are used to assist in the mapping of research objects, and the analysis is carried out with qualitative juridical. The legal materials that have been obtained and are available are then reviewed and analyzed systematically and logically (Jonaedi Efendi, Johnny Ibrahim, and Se 2018).

Discussion

A positive fictitious decision is the silence or neglect of a state administration official who does not issue a state administration decision submitted in writing by a civil legal person or entity within a certain time, which is his obligation. Due to the silence or neglect of the state administration official, a civil legal person or entity must apply to the court to obtain a decision on acceptance of the application. Professor of Administrative Sciences at the University of Indonesia, Eko Prasojo, explained that positive fictitious institutions encourage government agencies/officials to provide good public services to the community. In the provisions of Article 53, fictitious means that the object of the application submitted to the court to obtain an acceptance decision is, in fact, intangible because the silence of officials or state administrative bodies is considered the same as a written State Administrative Decision. According to, the positive fictitious concept in Public Administration Law is a legal fiction that requires administrative authorities to respond to or issue decisions/actions submitted to them within the specified time limit. If these preconditions are not met, the administrative authority is deemed to grant the request for the issuance of decisions/actions that was requested of him (Wulandari 2020).

Furthermore, the positive fictitious existence states that if the provisions of the laws and regulations do not specify the time limit for the obligations referred to in

paragraph (1), then the Government Agency and Officials are required to determine and carry out a decision and action within a maximum period of 10 (ten) working days after the Agency and Government Official receive the complete application.

If within the time limit in paragraph (2), the Government Agency and Official does not stipulate and carry out a Decision and Action. Then the application is considered legally granted. Based on the provisions above, it is known that the Public Administration Law stipulates a 10-day time limit for government officials to process community requests. If the deadline has passed, and the official has not decided on the application submitted, then the application is deemed to have been granted according to Law. Furthermore, in order to provide legal certainty regarding the legally granted (fictitious positive) decision, the Public Administration Law stipulates that the applicant must apply to the Administrative Court to obtain a positive fictitious decision following the provisions of Article 53 paragraph (4), and in paragraph (5) stipulates that Administrative Court must terminate within 21 working days from the time the application is received (Aditya and Al-Fatih 2023).

1. Positive Fiction After the Job Creation Law

Afterward, observing the impact of Article 175 point 6 of the Job Creation Law, it turns out that the content material changes several positive fictitious regulations as reviewed above. First, the time limit for silence for administrative bodies or officials, originally set at ten days in the Public Administration Law to be considered positive fictitious, was changed to 5 days in the Ciptaker Law. The full rules state as follows: (2) If the provisions of the laws and regulations do not specify the time limit for the obligations referred to in paragraph (1), then the Government Agency and officials are obliged to determine and a decision and action within 5 (five) working days after the Agency and Government Official receive the complete application. In the author's opinion, cutting time to be faster is a good thing because it means giving responsibility to agencies or administrative officials to work more quickly in public services. However, it should also be realized that cutting time, on the other hand, will harm by reducing the quality of examining the requirements of a submitted application because the government will rush to decide with a deadline of only five days from the date the application is received. Second, Article 157, point 6 of the Job Creation Law also deletes paragraphs (4), (5) of article 53 of the Public Administration Law, which regulates the mechanism for

requesting a positive fictitious determination through the Administrative Court (Sindar, Mawuntu, and Setiabudhi 2023).

2. Positive Fiction After the Job Creation Law Ratio Legis of Authority to Adjudicate Positive Fictitious Cases in Laws and Regulations

After the changes/amendments were made, Article 24 of the 1945 Constitution of the Republic of Indonesia stipulates: (1) Judicial Power is an independent power to administer justice in order to uphold Law and justice; (2) Judicial power is exercised by a Supreme Court and judicial bodies under it in the General Court environment, the Military Court environment, the State Administrative Court environment and by a Constitutional Court.

The nature of the establishment of the State Administrative Court is intended to provide legal protection to citizens from the possibility of abuse of authority or arbitrary actions by the government. In addition, the preamble to the State Administrative Court Law states that the establishment of the State Administrative Court Law took into account several considerations, namely:

1) With the existence of the State Administrative Court Law, it is hoped that the State will be able to create a life system for the life of the State and nation that is prosperous, safe, peaceful, and orderly, which guarantees equality of position of citizens in the Law, and which guarantees the maintenance of harmonious, balanced relations, as well as harmony between apparatus in the field of State Administration and community members;
2) With the existence of the State Administrative Court Law, it is hoped that apparatus in the field of State Administration will be able to become efficient, effective, clean, and authoritative tools, and that, in carrying out their duties, is always based on the Law based on the spirit and attitude of community service;
3) With the existence of the State Administrative Court Law, it is hoped that all conflicts of interest, disputes, or disputes between State Administrative Agencies or Officials and members of the public that can harm or hinder the course of national development can be resolved in the fairest way possible through the State Administrative Court;

4) With the existence of the State Administrative Court Law, it is hoped that the State Administrative Court will be able to uphold justice, truth, order, and legal certainty, so that it can protect the community, especially in the relationship between State Administrative Agencies or Officials and the community.

Based on these considerations, the State Administrative Court has the authority to examine, decide and resolve disputes whose object is State Administrative Decisions. Decisions that are the object of dispute in the State Administrative Court are regulated in Articles 1 to 52 of the Law on State Administrative Courts because these laws also act as material Law. Issuance of said State Administrative Decree is an administrative action carried out by a State Administrative Agency or Official. As a public servant serving the community in the administrative field, every administration of a State Administration Agency/ official in making decisions is what is meant by government administration.

In addition, in the preamble to the Government Administration Law, several considerations were stated as the reason for the formation of the Government Administration Law, namely:

1) The Government Administration Law is expected to improve the quality of government administration. Government agencies and officials, in exercising their authority, must refer to the general principles of good governance based on the provisions of laws and regulations;
2) The Government Administration Law is expected to be able 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;
3) The Government Administration Law is expected to create good governance, especially for government officials; the Law on government administration becomes the legal basis needed to base government officials' decisions and actions to meet society's legal needs in administering government;

Based on these considerations, on October 17, 2014, Law Number 30 of 2014 concerning Government Administration was enacted (after this, referred to as the Government Administration Law). Article 3 of the Government Administration Law states that the purpose of forming a Government Administration Law is:

1) to create an orderly administration of government administration;
2) create legal certainty;
3) prevent abuse of authority;
4) guarantee the accountability of Government Agencies and Officials;
5) provide legal protection to community members and government officials;
6) implement the provisions of laws and regulations and apply the general principles of good government; and:
7) provide the best possible service to the community (Alandi and Mayasari 2024).

The Government Administration Law regulates the legal relationship between government administration bodies or officials and the public in public Law. This Law stipulates boundaries and rules that contain the obligations and rights of both parties (government administration bodies or officials and the community). This Government Administration Law is an important regulator of the bureaucratic reform process because it emphasizes government management so that it can properly carry out its main functions.

Lawsuits against violations of the provisions of this Law can be submitted to the State Administrative Court. The Government Administration Law regulates the orderly administration of government in running the government, including regulating decisions and procedures. So that in the context of law enforcement in the field of state administration, this Government Administration Law also becomes a new basis for the State Administrative Court in examining State Administrative disputes; this is because the Government Administration Law also regulates the object of dispute in the State Administrative Court namely State Administrative Decision, applications that are silenced by the State Administrative Agency or Officials, filing lawsuits through administrative efforts, (procedures). As is known, that provision has also been previously regulated in the State Administrative Court Law. The enactment of the Government Administration Law makes State administrative law move towards a new paradigm, so alignment is needed with the procedural Law of the State Administrative Court to create synchronization and harmonization in Indonesian laws and regulations. The implementation of synchronization and harmonization of laws and regulations in Indonesia is already an urgent need because issues of legal development increasingly require a more comprehensive approach (Suprapto, Ramadhany, and Salamah 2023).

Conclusion

The regulatory framework (at the low level) in the field of government administration is still in quite an apprehensive condition. Based on the search conducted by the author of the article in the government administration law regarding positive fiction, which was amended in the work copyright law, it experienced many setbacks and not only has the potential to open up loopholes for injustice but also a legal vacuum and the blurring of legal certainty. Departing from this, implementing the order of laws and regulations in the field of government administration also illustrates the ineffectiveness and lack of benefits obtained by the Indonesian people in the field of positive fiction. When viewed from the perspective of the purpose of Law to provide certainty, justice, and benefit, the current arrangement of laws and regulations is still too far from the expected results. Therefore, improvements are needed, and even breakthroughs in the Indonesian legal system, especially in the field of positive fiction.

Recommendation (Optional)

It is necessary to reform the current legal system to overcome the problems that occur in it. The large number of regulations that lead to overlap and disharmony starts from the normative level to difficulties in implementing the general principles of good governance. Therefore, reforming the legal system in the field of positive fiction must be carried out carefully and involve all the necessary components to produce a good and progressive legal system.

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