Setting Positive Decision Which Fictitious In Act Number 30 Of 2014 On The Administration Of Government And Its Legal Consequences As The Object Of Dispute State Administration

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Abstract. Positive fictional setting in Act Number 30 of 2014 due to a legal fiction that require administrative authority to respond or issue a decision / action brought before it within the time limit as prescribed and if these prerequisites are not met, the administrative authority to grant deemed issuance of the decision / action filed legal to him. Fictitious such aims to provide assurance of the juridical side linked with a possible remedy to the court by parties who feel aggrieved, so that the silence of the administration equated with a written decision (written decision) that contains the approval even though his form is not physically written (unwritten decision). In brief,

The issues raised 1) Why in Act Number 30 of 2014 on government administration is set on the fictitious positive decision 2) What about the legal consequences of the decision as a positive fictitious object of dispute TUN 3) What problems arise from a fictitious setting positive and what policy solutions need to be taken to overcome these problems. Aim to determine, analyze and assess the background and reasons underlying positive fictional setting in Act Number 30 of 2014 on public administration and to determine the legal consequences of the decision as a positive fictitious object of dispute TUN, and knowing what the problems arising from the positive fictional setting.

This thesis research method using normative juridical approach, normative legal research resources obtained from the library instead of the field, for the term that is known is the legal material. the normative legal research library materials is a basic material in the science research generally called secondary law.

From the research results can be concluded that Fictitious setting positive consequences on the object of dispute in the State Administrative Court in the attitude of the state administration officials ignored requests citizens to a decision issued after the enactment of Act No. 30 of 2014 on Government Administration using test models in the form of an application to the State Administrative Court as provided for in Article 53 of Act Number 30 of 2014 are not formulated norms regarding procedural law petition fictitious positive this makes the Supreme Court Supreme Court Regulation Number 5 of 2015 as a guide for the State Administrative Court judge in resolving disputes positive fictitious petition the Court shall decide upon a maximum of 21 (twenty one) working days after the application is submitted and the decision is final and binding.

Keywords: Setting Decision; Fictitious Positive; Object Dispute

1. Introduction

After the Reformation, the power is no longer concentrated in the hands of the executive, but spread and divided to prevent further concentration of power that is vulnerable to abuse. Constitutionally the Unitary Republic of Indonesia is a

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constitutional state (Rechstaat, or country based on the rule of law).[3]The provision is clearly stated in Article 1 Paragraph (3) Third Amendment Act of 1945 which states that Indonesia is a country of law. Prof. Jimly Assddiqie Julius Stahl quoting the opinion that there are four elements of a constitutional state is:[4] Recognition of Human Rights (grondrechten); Limitation of power (Scheiding van machten); The rule of law (wetmatigheid vanbestuur (administratie)); and State administrative court (administratieve rechspraak).

Prof. Oemar Seno Adji translate fourth element of a state of law in the opinion of Julius Stahl administratieve rechspraak are administrative courts in disputes.[5]

While the State Administrative agencies in Indonesia first introduced by Act Number 14 Of 1970 About the Principal Judicial Power (Act Number 14 of 1970) in Article 10 which states that the Judicial Authority carried out by the court in the environment: General Court; Religious Courts; Military Justice; and Administrative Courts.

However, Act Number 14 of 1970 is not yet set in detail the scope of duties and authority of the State Administrative Court as a judicial body. In addition to Act Number 14 Of 1970 is also not yet set the procedural law. At that point Number 14 of 1970 introduced a new Administrative Courts as an idea of resolving disputes that arise in the field of state administration among citizens with state administration officials.[6]

UUAP presence brings great explosion (big bang) in the configuration of the Administrative procedural law. The explosion caused numbering legal fiction 'silence means consent' (fictitious positive). Earlier, the Administrative Law himself subscribed to a legal fiction to the contrary, that 'silence means refusing' (fictitious negative). In the context of the Administrative Law, if the administration does not implement or respond to what is already a responsibility when citizens apply for public services to him, by law, are not implemented or respons appeals are considered as a rejection.

Non-performance of these obligations whether due to intentional or unintentional understood as a silence which implicitly means the same as to refuse to issue a decision. The administration's silence equated with a written decision containing the refusal although his form is not physically writing. The decision is thus called a negative decision.[7]The term 'fictitious' means not issue a written decision, but considered to have been issued a written decision, while 'negative' means because of the content of the decision was equated with a 'refusal' to a request. while UUAP[8] as regards the legal fiction administration's silence as an 'agreement,' so inconsistent with the principles or legal fiction that adopted previously by the Administrative Law.

The principle difference in the Law of State Administration and Administrative Law

[3]Oemar Seno Adji, *Justice Free State of Law*, the publisher, Jakarta, 1980, p. 11.

[4]Jimly Asshiddiqie, 2007, Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi, Jakarta,PT. BhuanaIlmu Populer, Kelompok Gramedia, p. 301.

[5]Oemar Seno Adji, Op Cit, p. 16

[6]Lintong O. Siahaan, Prospek PTUN sebagai Pranata Penyelesaian Sengketa Administrasi di Indonesia, Studi Tentang Keberadaan PTUN Selama Satu Dasawarsa 1991- 1981, Jakarta: Perum Percetakan Negara RI, p. 27.

[7] Indroharto, Usaha Memahami Undang-Undang Peradilan Tata Usaha Negara. Jakarta: Pustaka Sinar Harapan, p 65

[8] Enrico Simanjuntak, Perkara Fiktif Positif dan Permasalahan Hukumnya, Jurnal Hukum dan Peradilan Vol. 6 No. 3, 2017, (Jakarta :: Sinar Grafika, 2018), hlm144

Government is fictitious decision rules regarding the negative and positive fictitious decision. Article 3 of Law State Administration regulates the negative fictitious decision that if an Agency or Official State Administration has not issued a decision of the requested while the time period has elapsed, then the entity or state administrative official is deemed to have refused to issue the decision in question.[9]

The paradigm change of administration in 2014 UUAP important highlight is the enactment of the doctrine of "fictitious positives'. Fictitious, or the silence of the Agency or Official TUN, referring to the decree TUN intangibles. This can be considered as a form of rejection, or the granting of a petition. If Decisions TUN intangibles was considered to contain a rejection of the application, it is referred to as 'fictitious Negative', whereas if considered TUN Decision to grant that has been raised, referred to as 'fictitious positives'. Provisions concerning fictitious Negative Decisions subject to the provisions of Article 3 of the Administrative Act, whereas the provisions on Fictitious Positive Decision contained in Article 53 UUAP.[10]

Fictitious setting positive consequences on the object of dispute in the State Administrative Court that the absence of an administrative decision but considered there is an administrative decision that declared positive fictitious, the problem, how the person or legal entity is considered a civil petition was granted by the law?

Based on the above, the authors are interested in doing further research on the matter, the results are set forth in the form of a thesis titled "Setting Decision Characteristically fictitious Positive Act Number 30 2014 About the Administration and Legal Consequences As the object of the Administrative Dispute ".

Based on the above description, the formulation of the problem to be addressed in this study as follows: Why the Law 30 of 2014 on government administration is set on the fictitious positive decision? How the legal consequences of the decision as a positive fictitious object of dispute TUN?

Research methods

Legal research in this academic paper is a normative juridical research using several methods approach. The first approach is the method statute approach, this approach is done by examining all the legislation and regulations relevant to the legal issues are being addressed.[11] The next approach taken is conceptual approach which this approach depart from the views and doctrines that developed in the jurisprudence,[12] in this case relating to the formation of legislation, especially legislation in public administration.

In legal research unknown absence of data, because in legal research, especially normative legal research resources obtained from the library instead of the field, for the term that is known is the legal material.[13] the normative legal research library

[9] Basah, Sjahran. 1989. Eksistensi dan Tolok Ukur Badan Peradilan Administrasi Di Indonesia. Bandung: Alumni, 1989, p. 3-4.

[10] Herlambang et al, Asas-asas Umum Pemerintahan Yang baik dalam Perkara Tata Usaha Negara. Socio-Legal Studies, 2017, p. 8

[11] Marzuki, Peter Mahmud. 2009. Penelitian Hukum. Jakarta: Kencana., p 93

[12] Ibid, p 95

[13] Marzuki, Peter Mahmud 2005. Penelitian Hukum. Jakarta: Kencana Prenada Media Group, p 41

materials is a basic material in the science research generally called secondary law.[14] in secondary law is divided into primary and secondary legal materials.

Legal materials collected through the inventory and identification procedure legislation, as well as the classification and systematization of legal materials appropriate research problems. Therefore, data collection techniques used in this research is the study of literature. Literature study done by reading, studying, note making materials review of the literature.[15]

The method of analysis using qualitative analysis that intends to understand the phenomenon of what is experienced by research subjects.[16]In this study This study included a qualitative study using descriptive analytical method. This method tries to check the status of a group of people, an object, a condition, a system of thought or a class of events in the present. Qualitative methods are the research methods used to examine the condition of natural objects (the opposite of experiments), where researchers are key instruments. The data analysis is inductive or qualitative. And qualitative research results further emphasize the significance rather than generalization.[17]

So his goal is pass patterns and striking based on manifestation and symptoms that exist in people's lives. This qualitative approach is seen as a research procedure that produces descriptive data in the form of words written or spoken of people and offenders can be observed.[18]

2. Results And Discussion

2.1. Fictitious Positive Decision setting in Act Number 30 of 2014 on Public Administration on Fictitious Positive

Act Number 30 of 2014 on Government Administration (hereinafter called the Public Administration Act) was enacted with the intention of becoming the guidelines in governance. A government official in holding government and public services should be based on the Law on Public Administration. This is a manifestation rather than state law. In a state of law, government officials in carrying out any action or make a decision should be guided by the principles set out in the Law of Government Administration.

Government Administration Act is a material law. Material law is a set of rules governing the things that must be done, should be done, and are not allowed (prohibited). Can also be interpreted, the substantive law is a regulation which contains rights and obligations.[19]Government Administration Law is a rule that contains the rights and responsibilities in the implementation of governmental tasks. It can also be said that the Law on Public Administration is a regulation concerning the

[14] Soerjono Soekamto, and Sri Mamudji. 2006. Penelitian Hukum Normatif Tinjauan Singkat . Jakarta: Rajawali Pers.. p 23

[15] Soejono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: RajaGrafindo Persada, 2006, p 251

[16] Lexy J. Moleong, MA, 2013. Metode Penelitian Kualitatif. Bandung: PT. Remaja Rosdakarya., p 6

[17]Sugiyono, 2005. Memahami Penelitian Kualitatif. Bandung: Alfabeta., p. 1

[18]Lexy J. Moleong, *op.cit*, p. 4.

[19]Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Yogyakarta: Liberty, 2008, p. 41.

things that must be done, must be done, and should not be done (prohibited) by government officials. Thus it can be concluded that, the Government Administration Act is a material law.

Silence is defined as an agreement is identical to one of the maxims of law in ancient Roman times: *qui tacet consentire videtur* (silence implies consent). In the context of contemporary law, the concept or principle of the fictitious positive use and development of a condition or state when the administrative authorities to be not as it should be that overlook something petition addressed to him (administrative inaction), do not serve optimally (unprofessional), being unresponsive (unresponsive), to process an application in protracted (Delaying services) and others that are identical to the things that are included in the category of maladministration. Under Act Number 30 of 2014 on Government Administration (UUAP) Indonesia's legal system has adopted the legal principle of 'silence means consent' or commonly known as "positive fictitious". In simple terms it can be said that the conception of the fictitious positive in Act Number 30 of 2014 is a law that requires legal fiction administrative authority to respond or issue a decision / action brought before it within the time limit as prescribed and if these prerequisites are not met, the administrative authority to grant deemed issuance of the decision / action filed to them.

Legal fiction as it aims to provide assurance of the juridical linked with a possible remedy to the court by parties who feel aggrieved, so that the silence of the administration equated with a written decision (written decision) that contains the approval even though his form is not physically written (Unwritten decision). In short, the principle of positive fictitious is the opposite of the previous legal principle known in Indonesia, namely the administrative law principle of 'fictitious-negative'.[20]The term 'fictitious' means not issue a written decision, but considered to have been issued a written decision, while 'negative' means because of the content of the decision was equated with a 'refusal' to a request. It is unclear who first used the term positive fictitious though the term is now beginning to commonly known and used, most likely positive fictitious term used for fictitious negative term has been more commonly known in the literature as well as in administrative law, judicial practice. In foreign literature, terminology or term positive fictitious termed *lex silencio positivo*, which is the terminology derived from the Latin term combination (*lex*) and Spain *(silencio positivo*)[21]

2.2. Legal Consequences of Decisions Fictitious Positive As Object Dispute TUN

Act Number 30 of 2014 does not regulate the disputed state administration in administrative courts, when all administrative efforts have been used. Conceptually administrative effort is a mechanism for filing an objection or administrative appeal against the decision of the internal environment of government administration. It is in essence as a means of internal controls and the legal protection provided by the body

[20]Indroharto, 2005. Usaha Memahami Undang-Undang Peradilan Tata Usaha Negara. Jakarta: Pustaka Sinar Harapan, Jakarta: Sinar Harapan, 1991. p. 65

[21]Enrico Simanjuntak, Perkara Fiktif Positif dan Permasalahan Hukumnya, Jurnal Hukum dan Peradilan Vol. 6 No. 3, 2017, p. 305-307

or institution within the government itself.[22] Similarly, Paul E. Lotulung found administrative objection or appeal is part of a legal action against government decision[23],

Understanding accordance to the regulation of legislation, implications if its legislation changed or issued new regulations the principle of *lex posteriori derogate legi priori*, the new regulations rule out the old regulation governing the same when. In Act Number 5 of 1986 concerning the State Administrative Court (Administrative Court Act) Article 1 paragraph 3 provides that an administrative decision is a determination in writing, in accordance with the teachings of positivism, that the law should be written to ensure legal certainty.[24]

How if the request for an administrative decision is not taken / ignored by the official / State Administrative Agency? The situation arising from the actions silence / Officer / State Administrative Agency Law, according to the Administrative Court (vide Article 3, paragraph 1 and 2) is considered as if it had issued a negative decision. *Tjakranegara*[25] gives the sense that a negative decision may be the refusal of a thing being requested and a decision is refusal to process a request.

Thus it can be interpreted that if the deadline referred to Article 53 paragraph (2) UUAP, Agency and / or Government officials did not establish and / or carry out the decision and / or action, the request shall be deemed granted legally. As well, the applicant filed a request to the administrative court to obtain a decision of receipt of the request referred to in Article 53 paragraph (3) UUAP. In other words, the occurrence of cases of fictitious positive is if the Board and / or Government officials did not establish and / or carry out the decision and / or action within a period of ten (10) working days or if it is not otherwise determined by the basic rules, the application shall be deemed granted legally after a complete application is received by the agency and / or government officials. Therefore, when drawn elements or criteria are legal then: 1) must be satisfied the requirements of the Agency and / or Government officials did not establish and / or carry out the decision and / or action within a period of ten (10) working days or if it is not specified the other by the basic rules; 2) The application shall be considered legally granted after the complete application is received by the agency and / or government officials.[26]

Absolute competence in the state court system Enterprises attitude state administration officials ignored requests citizens to a decision issued after the enactment of Act No. 30 of 2014 on Government Administration using test models in the form of an application to the State Administrative Court as provided for in Article 53 of Act Number 30 of 2014 are not formulated norms regarding procedural law petition fictitious positive this makes the Supreme Court Supreme Court Regulation Number 5 2015 as a guide for the State Administrative Court judge in resolving

[22] SFMarbun, Peradilan Administrasi dan Upaya Administratif di Indonesia. , Yogyakarta: Liberty, 1997, p.81

[23] Paulus Effendie Lotulung, *Beberapa Sistem tentang Kontrol Segi Hukum terhadap Pemerintah*, (Bandung: PT. Citra Aditya Bakti, 1993), p.15

[24] Enrico Simanjuntak, *Perkara Fiktif Positif dan Permasalahan Hukumnya,* Jurnal Hukum dan Peradilan Vol. 6 No. 3, 2017, p. 389-390

[25] Tjakranegara, Soegiatno., *Hukum Acara PTUN ,* (Jakarta. Sinar Grafika, 1994) p. 45

[26] Enrico Simanjuntak, *op.cit*, p. 389-390

disputes positive fictitious petition the Court shall decide upon a maximum of 21 (twenty one) working days after the application is submitted and the decision is final and binding[27]

3. Closing

3.1 Conclusion

Based on the discussions that have been presented above, the author concludes that:

- Positive fictional setting in Act Number 30, 2014 due to a legal fiction that require administrative authority to respond or issue a decision / action brought before it within the time limit as prescribed and if these prerequisites are not met, the administrative authority to grant deemed issuance of the decision / action filed to them. Legal fiction as it aims to provide assurance of the juridical linked with a possible remedy to the court by parties who feel aggrieved, so that the silence of the administration equated with a written decision (written decision) that contains the approval even though his form is not physically written (Unwritten decision). In short, the principle of positive fictitious is the opposite of the previous legal principle known in Indonesia, namely the administrative law principle of 'fictitious-negative'.
- Fictitious setting positive consequences on the object of dispute in the State Administrative Court in the attitude of the state administration officials ignored requests citizens to a decision issued after the enactment of Act No. 30 of 2014 on Government Administration using test models in the form of an application to the State Administrative Court as provided for in Article 53 of Act Number 30 of 2014 are not formulated norms regarding procedural law petition fictitious positive this makes the Supreme Court Supreme Court Regulation Number 5 2015 as a guide for the State Administrative Court judge in resolving disputes positive fictitious petition the Court shall decide upon a maximum of 21 (twenty one) working days after the application is submitted and the decision is final and binding,

3.2 Suggestion

The Parliament and Government as State agencies authorized to form the Act in order to make revisions to the Law Administrative Courts, especially in relation to the norms governing definitions, criteria and testing process to request a fictitious positive, then the provisions in Regulation Supreme Court Number 5 of 2015 should be accommodated in the form of legislation that level Law of Administrative Courts so urgent revision.

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[27] Rendi Yurista, *Keputusan Fiktif Positif Pejabat Tata Usaha Negara Sebagai Objek Sengketa Tata Usaha Negara,* Banda Aceh; Universitas Syiah Kuala, 2017), p. 36

[3] Herlambang. 2017. Asas-asas Umum Pemerintahan Yang baik dalam Perkara Tata Usaha Negara. Sosio-Legal.
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[23] Enrico Simanjuntak, Prospek Prinsip Fiktif Positif Dalam Menunjang Kemudahan Berusaha di Indonesia, Jurnal RechtsVinding, Vol. 7 No.2, Agustus, 2018.
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[25] Oemar Seno Adji, 1980, Peradilan Bebas Negara Hukum, Penerbit Erlangga, Jakarta
[26] Jimly Asshiddiqie, 2007, Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi, Jakarta,PT. BhuanaIlmu Populer, Kelompok Gramedia