Available online at: http://jurnal.uns.ac.id
Yustisia Jurnal Hukum
| ISSN (Print) 0852-0941 | ISSN (Online) 2549-0907 |
YUSTISIA Yustisia Jurnal Hukum

The Good Governance Principle in Fictitious-Positive Case Applications After the Job Creation Law

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Article Information

Submitted : July 27, 2022
Reviewed : October 27, 2022
Revised : December 10, 2022
Accepted : Januari 28, 2023

Keywords:
administrative court; fictitious-positive; state administrative officer

DoI: 10.20961/yustisia.v12i1.63999

Abstract

The enactment of Law Number 30 of 2014 expands the competence of the State Administrative Court in protecting members of the public but also state administrators. Law Number 6 of 2023 concerning Job Creation (Law on Job Creation) mentions fictitious-positive cases in Article 175 number 6, which has changed the provisions on fictitious-positive cases. This study aims to see that the judiciary examines fictitious-positive cases after the enactment of the Job Creation Law and how the public submits requests for review of cases after the Act comes into effect. The research is normative and has a legal and philosophical approach. The research data consisted of primary and secondary materials. The authority of judges to examine fictitious-positive cases has been lost after the enactment of the Job Creation Law, reducing the use of the General Principles of Good Governance in reviewing fictitious-positive cases. However, the enforcement of the Job Creation Law seems to leave legal uncertainty for justice seekers regarding fictitious-positive matters, indicating that the reinstatement of the judiciary's authority to review applications for these fictitious-positive cases needs to be taken into account.

I. Introduction

The enactment of Law Number 30 of 2014 concerning Government Administration has been perceived to bring some fresh air by justice seekers. Following this enactment, the scope of competence of State Administrative Court has extended to giving protection to the state administrators, not only to the members of the public (Kadek Agus Sudiarawan, 2020; Putrijanti, 2021). The disputes arising in the State Administrative Court have also varied. Back in the time when Law Number 5 of 1986 concerning State Administrative Court (henceforth referred as *UU PERATUN*) and its amendment were into force, the

disputes involved lawsuits against state administrative court decisions (Setiyawan, 2019). However, following the enforcement of Law Number 30 of 2014 concerning Government Administration (henceforth referred to as *UU AP*) the disputes seem to be no longer limited to the lawsuits, but they also involve applications requesting the reviews of abuse of authority and fictitious-positive matters, where the first matter was discussed in the early study by the writer. This research, on the other hand, aims to delve further into the application requesting the review of fictitious-positive cases.

The term fictitious-positive is not outlined in *UU PERATUN* which tended to refer to the term fictitious-negative. The term "fictitious" refers to the situation where administrative officials remain silent or do not make any decision (Harjiyatni, 2020), but they are "deemed" as if they had taken measures or made a decision. The term "positive", however, is "made comparable to granting a request" (Pratama, 2020). The concept of fictitious-positive in *UU AP* is considered as a legal fiction requiring the administrative authority to respond to or make a decision or to take action requested within the period that has been agreed upon. If this requirement is not fulfilled, the administrative authority is deemed to have granted the issuance of the decision or action requested (Simanjuntak, 2021).

The application of request for a fictitious-positive case is set forth in Article 53 paragraph (2) and (3) of UU AP as follows:

> "(2) If the provision of the law does not set the time regarding the responsibility as intended in Paragraph (1), **the Government body and/or officials must set and/or make a Decision and/or take Action within 10 (ten) working days after a complete application is received** by the Government body and/or officials."
>
> "(3) If within the time as intended in Paragraph (2) the Government Body and/or officials do not set and/or make Decision and/or take Action, **the application is deemed to be lawfully granted. "**

The above provisions indicate that *UU AP* sets the ten-day time limit for state administrators to process the application submitted by the members of the public. If within the time limit given the officials concerned do not make any decision in response to the application submitted, **the request is deemed to "have been lawfully granted".** Furthermore, to give legal certainty regarding the lawfully granted request (fictitious-positive), *UU AP* requires the applicants to send a request to the State Administrative Court for fictitious-positive decision as in Article 53 Paragraph (4); Paragraph (5) implies that State Administrative Court is required to decide within 21 working days after an application is received.

Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law mentions a fictitious-positive case; Article 175 point 6 alters several regulatory provisions regarding fictitious-positive matters as

discussed earlier. First, the 10-day time limit of silence of the administrative officials to be deemed as a fictitious-positive condition is altered to five days in Job Creation Law.

The complete provision regarding the above matter is given in the following:

"(2) *If the provision of the law does not set the time regarding the responsibility as intended in Paragraph (1), the Government body and/or officials must set and/or make a Decision and/or take Action* ***within 5 (five) working*** *days after the complete application is received by the Government body and/or officials."*

This time limit reduction has its advantages and shortcomings. With this reduced time limit, what comes from the members of the public will be put as priority and receive more attention from the state administrators that are required to be more responsive and responsible for every action taken by the government (Saputro, 2021). On the other hand, due to complicated responsibilities and the tasks of the government represented by state administrators, the decisions that are "deemed to be granted" will be piling up and there is possibility that the fictitious-positive matter-related applications will keep increasing in the State Administrative Court in the time to come.

The legislation and the general principles of good governance (henceforth referred to as *AUPB*) still serve as a touchstone for the judges at the court concerned to grant/reject the application of the request in the fictitious-positive case. In previous studies, researchers examined the use of *AUPB* in judges' judgments in examining cases of abuse of authority in cases of State Administration. Departing from the above issue, this research aims to see the analysis of the authority of the judges in reviewing the positive case following the enforcement of Job Creation law and the analysis of the rights of the people requesting the review of the fictitious-positive case following the enforcement of Job Creation Law. Since the applications received regarding this case have been increasing and will be, this research analyzes the use of the AUPB to test the applications of the fictitious-positive cases under the title of Degradation Of The Use Of The General Principle Of Good Governance In Filing An Application Over A Fictitious-Positive Case Following The Enforcement Of Job Creation Law**.**

Every scientific study requires research methods and approaches to set the systematic framework that helps it focus on the solutions to the problems studied. This research studies which *AUPB* are referred to as the basis by the panel of judges of the court of the first, second, and the third instance regarding the application concerning the fictitious-positive case following the enforcement of Job Creation Law. In order to review the application in the State Administrative Court, the judges could refer to the legislation and or *AUPB*. The *AUPB* have always changed in the legislation. Therefore, this research is also intended to investigate what legal breakthroughs have been done by judges under a normative scope of research. Statutory and Philoshopical approaches were used to allow the researcher to access empirical research results without changing the nature of the legal science as the normative science.

II. The analysis of the authority of judges to review the fictitious-positive cases post-Job Creation Law enforcement

The control of the state to run its administration, tasks, and responsibilities is based on the standards or norms that are in place and agreed upon within the purview of the state authority. Indonesia, for example, has agreed to be the state of law as set forth in the Constitution of the state (Asmorojati, 2020). This fundamental agreement requires all the administrative processes taking place in the state to be lawful and to be based on the law. This principle is congruent with the definition of legality as the main pillar of the state of law (Ridwan, H. R, 2016). The legality principle serves as "the basis in each state administration and government, or, in other words, every process of state administration and government must be legitimate or hold the authority as outlined in the law" (Ayuni et al., 2019).

The power to perform the state administration based on the accepted law is referred to as authority, *wewenang* or *kewenangan* in Bahasa derived from the single word *wenang*, meaning to "have (or gain) the right and power to do something". The authority is defined as "1) the right and power to act; authority; 2) the power to decide, order, and delegate a responsibility to another party; 3) the right of function that can be performed". Moreover, the word kewenangan may refer to "1) something that allows someone to be authorized; 2) the right and power to do something". *Wewenang* is translated as authority in English, "*the moral or legal right or ability to control.* In The black law dictionary, authority means "*In contracts. The lawful delegation of power by one person to another. In the English law relating to public administration, an authority is a body having jurisdiction in certain matters of a public nature. In governmental law. Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.*". Unlike in the Netherlands following civil law, the word authority is called "*Autoriet*" meaning "*toestand dat mensen naar je luisteren door je positie en je kwaliteiten; overheid of iemand die de overheid vertegenwoordigt; iemand die ergens veel van weet*" (the condition where a person listens to you through your status and quality; the government or a person representing the government; a person who knows a lot about something), and this term is similar to "*Gezag*" meaning "*persoon of instantie die officieel de marcht heft; toestand dat mensen naar je luisteren door je kwaliteiten en prestaties*" (the person representing an official body holds power; the quality and achievement through which a person listens to you". The authority can also mean "*Bevoegden*" in Dutch, meaning "*iemand die gerechtigd is iets te doen Voorbeeld*"(a person who has the right to do something).

The term "*bevoegheid*" has different meaning in terms of its (Hadjon, 2008). *Bevoegheid* is used in the concept of public law and private law. In the concept of law in Indonesia, the term *kewenangan* or *wewenang* is supposed to be used in the concept of public law. F.P.C.L. Tonnaer defines the government's authority as "the ability to perform positive law to allow for the establishment of the connection between the government and its

citizens" (Ridwan H. R., 2013). H. Stoud defines authority as "all rules related to the obtainment and the execution of government's authority by the public legal subject in public law" (Fachrudin, 2004) Indraharto seems to see it from a different perspective, linking authority to "the condition of the state of law in Indonesia and the ability gained through legislation in order to lead to legal consequences (Indroharto, 1994). Authority within the context of law is defined as "rights and obligations" (Bonadi et al., 2019).

The authority is originally derived from the following three ways:" attribution, delegation, and mandate along with co-administration tasks" (Nurmayani, 2016). Attribution means the authority is "originally obtained from the legislation" (Narindra et al., 2020; Santiadi, 2019). The government body directly receives authority from the provisions in particular articles of the legislation. Receiving authority by means of attribution can spur the creation of new authority or can extend the prevailing authority with its internal and external responsibilities (Sinamo, 2010). This authority is fully attributed to those receiving it.

On the other hand, delegation is to delegate authority from the higher government body/officials to the party positioned under it with all the responsibilities and accountability fully delegated to another party receiving it (Cahyandari et al., 2020). The obtainment of authority through delegation may lead to the "likelihood of the misuse of methods or contents/materials delegated" (Fadli, 2012). Attamimi argues that "a regulation made under the delegated authority is likely to lead to misuse or abuse (Nurtjahjo, 2004). Moreover, the regulatory product given is not guaranteed, probably resulting in a surge of regulations that are not always relevant and appropriate. This surge is often inevitable but it can still be controlled and corrected.

The authority given through a mandate is delegated from a mandate giver within the internal relationships with the government. The responsibilities are given by the mandate giver and the government competence is performed according to the mandate on behalf of and for the sake of the responsibilities. The mandate could be given by the party positioned lower than the mandate giver but not hierarchically positioned under the mandate giver as long as it meets the following conditions: 1) the mandate receiver is willing to accept the mandate given, 2) the competence mandated should cover the day-to-day mandate given, 3) the relevant law does not stand against the mandate.

The judicial power in Indonesia is held by the Supreme Court and the judicial institutions under it, including the public court, religious court, court martial, state administrative court, and Constitutional Court. The scope of the State Administrative Court has the authority to review fictitious-positive cases obtained from attribution as the authority because this authority is set forth in UU AP. The State Administrative Court performs the judicial power for the justice seekers over state administration-related disputes. In its implementation, the State Administrative Court delegates its competence to the judges authorized to review and deliver a decision over disputes regarding state administration.

Following the enforcement of Job Creation Law, the legislation has set the time limit to deliver a decision requested, and the government body and/or officials are subject to five working days to make a decision upon the receipt of the application. If the government does not deliver or make any decision within the time limit given, the request is deemed to be lawfully granted. However, the amendment to Job Creation Law has scrapped the judicial authority to respond to the request applied after the application is submitted within 21 working days. This amendment has also scrapped the judicial authority to review the application regarding fictitious-positive cases according to AUPB. Before the revocation of this authority, the AUPB served as the fundamental in reviewing a fictitious-positive case request apart from the legislation. The writer studied 36 fictitious-positive case decisions from 2018 to 2021, and there were 18 decisions (50%) referring to AUPB as the touchstone by which the applications of the fictitious-positive cases were reviewed:

Table 1. The Criteria and Bases of the Reference to AUPB in Reviewing Applications of Fictitious-Positive Cases

No	Registered Decision	The Use of General Principles of Good Governance (AUPB)	Criteria and Bases of the Reference to AUPB								
			Contravening the law	Absence of functionality	Impartiality	Lack of Accuracy	Abuse of authority	Absence of openness	Not putting public interest above all	Inappropriate services	Others
1	01/P/FP/2019/ PTUN-SRG	General Principles of Good Governance									
2	1/P/FP/2020/ PTUN.PLG	Equality principle									Disharmony of acts
3	4/P/FP/2020/ PTUN.JKT	Legal certainty principle	V								
		Justice principle									
4	5/P/FP/2018/ PTUN.SBY	Legal certainty principle	V								
		Accuracy principle				V					
5	12/P/FP/2019/ PTUN.SBY	Legal certainty principle									
		Good service principle								V	
6	1/P/FP/2019/ PTUN.SMG	General Principles of Good Governance									

		The principle of "*nemo commadum capere potest de injuria sua proparia*" law									not a person should benefit from abuse and violations he/she commits and not a person should be disadvantaged by the abuse and violations committed by others.
7	3/P/FP/2018/ PTUN.BJM	General Principles of Good Governance						V		V	
8	5/P/FP/2020/ PTUN.JPR	Legal Certainty Principle	V								
		Good Service Principle								V	
9	10/P/FP/2018/ PTUN.SMD	Accuracy Principle				V					
10	03/P/FP/2020/ PTUN.SMD	Legal Certainty Principle	V								
11	1/P/FP/2019/ PTUN.DPS	Legal Certainty Principle	V								
12	4/P/FP/2018/ PTUN.PBR	Legal Certainty Principle	V								
13	6/P/FP/2020/ PTUN.PBR	Legal Certainty Principle	V								
		Principle of Meeting Raised Expectation									
14	3/P/FP/2018/ PTUN.PLK	Good Service Principle								V	
15	1/P/FP/2019/ PTUN.PLK	Good Service Principle								V	
16	15/P/FP/2020/ PTUN.PL	Good Service Principle	V								
17	4/P/FP/2018/ PTUN.BKL	Good Service Principle								V	
18	2/P/FP/2019/ PTUN.BKL	Legal Certainty Principle	V								

The above Table indicates that most state administrative courts of different regions referred to the AUPB for the fictitious-positive case reviews, including the State Administrative Court in Palangkaraya with three decisions consecutively, followed by the State Administrative Court in Medan, Jayapura, Denpasar, and Palangkaraya with 2 (two) decisions consecutively, and the rest goes to the State Adminisrative Court of Makassar, Serang, Palembang, Jakarta, Bandung, Padang, Banjarmasin, and Samarinda. The reviews of fictitious-positive cases do not only refer to the principles of AUPB as set forth in UU AP, but some judges have also referred to the principles outside AUPB in the legislation, such as the principle of "*nemo commodum capere potest de injuria sua propria*" and the principle of meeting raised expectation. The reduced authority of the judges of state administrative courts following the enforcement of Job Creation Law has also deducted the portion of authority held by the state administrative judges to use AUPB in the State Administrative Court.

III. Analysis of the Rights of the Members of the Public regarding the Applications requesting Reviews of Fictitious-Positive Cases before and after the Enforcement of Law Number 11 of 2020 concerning Job Creation

The legal system in Indonesia recognizes two types of State Administrative Decisions, namely fictitious-positive and fictitious negative, both of which are conceptually categorized into administrative silence (Marzuki, 2017). This concept is linked with legal fiction in in administrative law, where this silence may indicate either granting or rejecting (Simanjuntak, 2021). Unlike the fictitious-negative not triggering a relationship of a new law, the fictitious-positive leaves bigger implications, creating a relationship of a new law that gives new rights and/or responsibilities to the parties involved. The emergence of the fictitious-positive characteristic is intended to encourage the government body/officials to provide good services to the members of the public. This characteristic requires the government to lawfully respond to the applications filed by the people following particular decisions or action. If an application, within a certain time limit, is not responded to by the government, this application is deemed to be lawfully granted.

Fictitious-positive State Administrative Decisions are governed in Article 53 of UU AP Paragraph (3) and (4) of UU AP implying that the absence of decision and/or an action or the expiry of the time limit does not immediately make an application granted in the scope of *mutatis mutandis*, but the applicant concerned has to file an application to State Administrative Court to receive the decision of the application receipt. Therefore, the authority of the State Administrative Court is subject to an extended authority to review the fictitious-positve cases arising from the silence or negligence of the state administrative officials not issuing decisions that are supposed to be given in writing by a person or a private legal entity within a certain time limit since this issuance is their responsibility. This is intended to protect the rights of the members of the public

representing individual rights, and the protection is given to the people according to common interest of the individuals living in society.

The subjects or parties filing applications to receive the decision receipt are those whose applications are deemed to be lawfully granted and the government body and/or officials serve as the respondents required to make decisions or take action. On the other hand, the objects of these applications are the decisions that are deemed to be lawfully granted following the absence of the issuance of deicisions within the time limit agreed upon (Arniti et al., 2019; Putra, 2020). In the context of dispute resolution, the principle of *dominis litis* plays a vital role in fictitious-positive cases. As the principle that is unique in the procedural law of State Administrative Law, *dominis litis* is intended to balance the position of the parties concerned in the process of proving at court (Lumbanraja, 2019; Dalimunthe,2020). This urgency arises due to the imbalance between parties involved in the state administrative disputes, where the state administrative body or officials as the defendant has a wider access to information in the proving process compared to the access given to applicants.

The Enforcement of Job Creation Law has brought some amendments to the mechanism of the application of decision receipt in fictitious-positive cases in the legal system in Indonesia. Some amendments are given in the following Table:

Table 2. Comparision between Regulatory Provisions in Article 53 of UU AP and the Provisions in Article 175 of Job Creation Law

UUAP	**Job Creation Law**
Pasal 53:	Pasal 175:
(1) The time limit to set and/or to issue a decision and/or take action is according to the provisions in the legislation.	(1) The time limit to set and/or to issue a decision and/or take action is according to the provisions in the legislation
(2) If the provision of the law does not set the time regarding the responsibility as intended in Paragraph (1), the Government body and/or officials must set and/or make a Decision and/or take Action within 10 (ten) working days after a complete application is received by the Government body and/or officials.	(2) If the provision of the law does not set the time regarding the responsibility as intended in Paragraph (1), the Government body and/or officials must set and/or make a Decision and/or take Action within 5 (five) working days after the complete application is received by the Government body and/or officials.

(3) If within the time as intended in Paragraph (2) the Government Body and/or officials do not set and/or make Decision and/or take Action, the application is deemed to be lawfully granted.	(3) If the application is processed in an electronic system and all the requirement in the system is completely fulfilled, the electronic system sets a Decision and/or takes action as the Decision or Action of the authorized Government body and/or officials.
(4) An applicant files an application to the court to receive the decision of application receipt as intended in Paragraph (3).	(4) If, within the time limit as intended in Paragraph (2), the government body and/or officials do not give a decision and/or take action, the application is deemed to be lawfully granted.
(5) The court must give a decision in response to the application as intended in Paragraph (4) within 21 (twenty-one) working days after an application is received.	(5) Further provisions regarding issuance of lawfully granted Decisions and/or action as intended in Paragraph (3) are regulated in Presidential Regulation.
(6) The government body and/or officials must set a decision to execute a court decision as intended in Paragraph (5) within 5 (five) working days after a decision is given.	

Source: Primary data, processed by the author

The amendments regarding fictitious-positive decision-related matters in Job Creation law have scrapped application mechanism to the State Administrative Court to receive the decision regarding the application receipt and issue *delegatie provisio* to make presidential regulation concerning further provisions on issuance of Decision and/or action deemed to be lawfully granted. These amendments also affect the authority of the State Administrative Court in deciding the application receipt regarding fictitious-positive cases, leaving legal loopholes in the lawfully granted decision and/or action issuance since amidst the absence of presidential regulation, there should be no mechanism declaring the effectuation of fictitious-positive decisions. Moreover, the Constitutional Court in its Decision Number 91/PUU-XVIII/2020 implies that Job Creation Law is declared inconstitutional until improvement is made within two years. As a consequence, the Constitutional Court should postpone all the strategic and widely influential action/policies and no delegated regulations related to Job Creation Law should be made.

To fill the absence of a legal instrument governing the fictitious-positive case handling, the Supreme Court of the Republic of Indonesia under Directorate General of Court Martial and State Administrative Court (**DITJENMILTUN**) issued a Circular

Letter Number 2 of 2021 concerning the Settlement of Case Registration to receive Decision of Application Receipt to be responded to with Decision and/or Action of the Government Officials following the Enforcement of Law number 11 of 2020 concerning Job Creation (**SE DITJENMILTUN 2/2021**). This circular letter leads to the possibility where fictitious-positive case applications could still be filed to the State Administrative Court as long as the Presidential Regulation as the successor regulation to Job Creation Law has not been promulgated. This is governed in the following Circular Letter:

***SE DITJENMILTUN 2/2021**, Point 5:*

a. It is advisable for court clerks to actively explain to justice seekers filing their applications requesting the decision regarding the application receipt to get the decision or action given by the government body and/or officials following the revocation of the provisions in Article 53 Paragraph (4) and (5) of Law Number 30 of 2014 concerning Government Administration especially regarding the regulations of authority in the State Administrative Court to review, decide, and settle the request, as governed in Article 175 of Law Number 11 of 2020 concerning Job Creation;
b. In terms of the condition where some justice seekers are willing to file applications to get the decision and/or to be responded to with action from the government body and/or officials in the State Administrative Court, it is advisable for the court to refer to the provisions in Article 10 Paragraph (1) of Law Number 48 of 2009 concerning Judicial Power implying that **Courts must not refuse to review, judge, and deliver a decision over a case requested** on the pretext of the absence of particular law or the situation where the law is unclear; that is, the court is held responsible to review and judge the case concerned;
c. The procedures regarding the settlement of the applications to get the decision following the application receipt to be responded to with the decision and/or action from the government body and/or officials **refer to the Regulation of the Supreme Court Number 08 of 2017** concerning Procedural Guidelines to receive Decision following Application Receipt to get the Decision and/or Action of the Government Body or Officials.

SE DITJENMILTUN 2/2021 serves as the basis, allowing justice seekers to file their applications concerned to the State Administrative Court to the time the Presidential Regulation as the delegated regulation to Job Creation Law is promulgated. However, the Circular Letter above indicates that the promulgation of Job Creation Law has scrapped the authority of the State Administrative Law to review, decide, and settle the fictitious-positive disputes. This Circular Letter aims to accommodate the interest of justice seekers willing to file applications of fictitious-positive cases to the State Administrative Court in compliance with the provisions in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power implying that **the court must not refuse to review, judge, and deliver a decision over a case requested** on the pretext of the absence of particular law or the situation where the law is unclear; that is, the court

is held responsible to review and judge the case concerned. This is important to bear in mind that this provision applies to the condition where the objective or material law of the dispute is absent or unclear, not because the formal law is absent or unclear.

The absence of the underlying factor of the authority held by the judges of the State Administrative Court to review, deliver a decision over, and resolve the disputes regarding fictitious-positive matters has the consequences on the applications of fictitious-positive matters registered following the effectuation of the Circular Letter **DITJENMILTUN 2/2021**. Due to the absence of this authority, the judges of the State Administrative Court decided that the request could not be granted, as in the Decision of State Administrative Court of Serang Number 5/P/FP/2021/PTUN.SRG, Makassar Number 2/P/FP/2021/PTUN.MKSR, and Surabaya Number 22/P/FP/2021/PTUN. SBY.

The issuance of the Circular Letter DITJENMILTUN 2/2021 has led to several dissenting interpretations made by the judges over whether the State Administrative Court is authorized to review and deliver a decision, and settle the disputes of fictitious-positive cases. This is obvious in the Decision of State Administrative Court of Surabaya Number 22/P/FP/2021/PTUN.SBY, declaring that the *a quo* request was granted on one condition that Job Creation Law does not regulate the administrative measures or any legal remedies that can be taken by the people perceiving that they are harmed by the action taken by the government officials that do not make any decision requested, and this issue leads to the dispute regarding the issuance of the decision that has to involve litigation in the State Administrative Court. Another underlying consideration is the issuance of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 10 of 2020 concerning the Effectuation of the Formulation of the Results of the Plenary Meeting on the Sections of the Supreme Court of the Republic of Indonesia of 2020 that serves as a guideline of Task Implementation for the Court which, as in section E number 3 of sub-point d, states "the fundamental regulations have explicitely decided that the State Administrative Court is authorized to judge the cases related to point (d). Article 21 and Article 53 of Law Number 30 of 2014 concerning Government Administration". This Circular Letter was issued on 18 December 2020 while Job Creation Law was promulgated on 2 November 2020. This indicates that the Circular Letter resulted from the study prior to the amendment to Article 53 of UU AP stating that the State Administrative Court is authorized in fictitious-positive matters.

The disparity of particular decisions has triggered legal uncertainty for the people, especially in terms of the provision in Article 16 of Supreme Court Decision Number 5 of 2015 implying that the court decision following the application receipt to get the decision and/or action from the government body/officials is final and binding. This provision underlies that the decision declared at the first instance regarding fictitious-positive matters could not go any further to appellate court or cassation. As a consequence, the active role of the judges is crucial in delivering a decision over a fictitious-positive case that adheres to the truth and justice.

The further problem lies in the question 'how can administrative measures or elgal remedies be achieved by the people to get their right to the State Court Decision that is fictitious-positive prior to the drafting of Presidential Regulation as a delegated regulation to Job Creation Law?' Although Job Creation Law does not currently regulate the process of the request of the application of a fictitious-positive decision to the State Administrative Court and it is understood as being granted in *mutatis mutandis*, The fictitious-positive State Administrative Court Decision needs the standard mechanism. This idea departs from the understanding that the State Administrative Court Decision with its fictitious positive construction is likely to be constitutive, indicating that this decision tends to give rise to the new law that does not pre-exist, resulting in the new rights and responsibilities (*rechtsscheppende beschikking*.) (Wicaksono et al., 2021; Sudiarawan, 2022). Thus, the decision with the fictitious-positive construction requires the mechanism that highlights the legal power. The absence of the mechanism justifying the State Administrative Court Decision with fictitious-positive construction leads to legal uncertainty for the legal subjects with the legal relationship according to the decision.

Therefore, bringing the authority to handle the case regarding the application of fictitious-positive cases back to the State Administrative Court through Job Creation Law needs to be taken into account (Saiya, 2021), but it is important to remember that letting the presidential regulation regulate the matter regarding the authority of the State Administrative Court to judge fictitious-positive cases as governed in Job Creation Law is not appropriate. It could trigger another issue in the formulation of the legislation, recalling that Article 24 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) implying that an institutional authority related to judicial power must be regulated in the law. That is, returning the basis of the authority of the State Administrative Court regarding the fictitious-positive cases cannot just take place without amending Article 175 of Job Creation Law. Returning the authority of the State Administrative Court can be directly inserted to Article 175 of Job Creation Law as in Article 53 of UU AP without using any delegated regulations, so that it will not contravene the 1945 Constitution or Law Number 12 of 2011 concerning Formulation of Legislation (UU PPPU). The amendment to Article 175 has the greater chance while Job Creation Law is being suspended for improvement for up to two years.

IV. Conclusion

The judicial authority to judge the fictitious-positive cases following the enforcement of Job Creation Law has scrapped the authority of the court to deliver a decision regarding fictitious-positive matters, resulting in the reduced frequency of the use of AUPB in reviewing the applications regarding fictitious-positive cases. The rights of the people to file applications requesting review of fictitious-positive cases prior to the effectuation of Job Creation law were still under the legal certainty for the legal subjects that are deemed to have a legal connection according to the State Administrative Court Decision,

and the process was accommodated by the State Administrative Court to help gain justice. However, the enforcement of Job Creation Law seems to lead to legal uncertainty for justice seekers regarding the fictitious-positive cases of State Administrative Court Decision. Thus, returning the authority to handle fictitious-positive cases to the State Administrative Court through Job Creation Law needs to be considered.

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