POSITION OF FICTITIOUS POSITIVE ADMINISTRATIVE DECISIONS AS DISPUTE OBJECT OF STATE ADMINISTRATIVE COURT: INDONESIA OMNIBUS LAW PERSPECTIVE

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ABSTRACT

The purpose of this research is to identify how the shift in the formulation of fictitious positive administrative decisions as one of dispute object in the state administrative court of Indonesia. Besides, this research also reviews and analyses the legal standing of fictitious administrative decisions as a disputed object in the state administrative court of Indonesia. The research method used in this legal research is normative legal research with statute approach, conceptual approach, fact approach and comparative approach. The results shows that the form of fictitious administrative decisions in the regulations act of Indonesia are consist of fictitious negative administrative decisions and fictitious positive administrative decisions. The renewal provisions in omnibus law have eliminate applicant petition to the state administrative court in order to obtain approval decision, however there is still a lack of norms regarding to the form / actions of public officials who are considered to have granted. When fictitious decision regulation in Indonesia compared to European Union member countries, there are differences such as the types of fictitious decisions, time limits, as well as the advantages and disadvantages of the arrangement

Keywords: State Administrative Decisions, Fictitious Positive, State Administrative Court of Indonesia, Omnibus Law

INTRODUCTION

The existence of State Administrative Courts is aimed to guarantee the interests of individual rights in a country (Asmorojati, 2020). Especially, to prevent decisions of state administrative officials that might conflict with any statutory regulations and general principle of good governance. Indonesia as a welfare state should marked by the active role of government and their presence to fulfil citizen's constitutional right (Utama, 2020).

State administrative decision or Keputusan Tata Usaha Negara is defined as a written decision that is issued by a state administration agency or official. It is also known as beschikking in Dutch that has been regulated and there are frequent changes in its regulation in Indonesia. The regulation concerning State Administrative Decision is regulated based on Law Number 5 of 1986 jo. Law Number 9 of 2004 jo. Law Number 51 of 2009 concerning State

Administration Judicature (hereinafter State Administrative Law); then regulated in Law Number 30 of 2014 concerning Government Administration (hereinafter Government Administration Law). After the enactment of Law Number 11 of 2020 concerning Job Creation (*omnibus law*, hereinafter Job Creation Law) the provisions regarding State Administrative Court are also regulated in Chapter IX on the second part of Article 175, which mainly changes several provisions of the Government Administration Law.

The fictitious state administrative decision is the object of dispute from the State Administrative Court. It is also defined as the administrative actions (Khvan, 2019). According to Vera Parisio, it is known that the goals of the fictitious State Administrative Courts as follows: "*the goals of tacit consent are to evade individual torment due to the ineffectiveness of public administration"* (Parisio 2013). The concept of fictitious state administrative decision as the object of state administrative court (hereinafter State Administrative Court) dispute has undergone a shift in meaning since the enactment of the State Administrative Law to the enactment of the Job Creation Law in Indonesia.

The Job Creation Law is formed through the *omnibus law* used by the Government in order to shorten the regulation of the public service bureaucracy system in order to create a good business cycle (Mukti, 2020). The provisions of the fictitious state administrative decision were originally stipulated in Article 3 of the State Administrative Law adhering to a negative fictitious understanding, which means that the object of the State Administrative Court dispute within its authority can adjudicate a lawsuit against the silent action of state administrative officials against a petition against their obligations, which because of being silenced is considered equal to rejection (the negative fictitious state administrative decision) (Wairocana & Ngurah, 2021). The shift in meaning regarding fictitious state administrative decision then occurred after the enactment of the Government Administration Law, which adheres to the positive fictitious state administrative decision as regulated in Article 53, which is a reflection of the principle of lex silencio positivo. The positive state administrative decision shall be meant as silent acts of government officials under the legal approval of the petition by the applicant. Even though it is interpreted as granting, the provisions of the positive fictitious state administrative decision still require a mechanism for filing a petition, as regulated in the provisions of Article 53 paragraph (4), (5) and (6) of Government Administration Law.

After the enactment of the Job Creation Law in Article 175, which amended several provisions in the Government Administration Law in its legal principles, it changed Article 53 of the Government Administration Law regarding the provisions of the positive fictitious state administrative decision, which eliminated the provisions of Article 53 paragraph (4), (5), and (6).

The amendment of the provisions of the fictitious state administrative decision still raises questions about the existence of contradictions regarding the shift in meaning of the fictitious state administrative decisions, which are regulated in the State Administrative Law, which is still in effect in addition to the Government Administration Law and Job Creation Law. This has led to variations in confusion, overlapping arrangements, and theoretical legal problems that refer to the expansion of the competence of State Administrative Court (Sudiarawan et al., 2020). Since a legal regulation can be categorized as a good legal regulation if it is applied consistently, can be understood and doesn't use any multi-meaning or multi-interpretation words (Utama, 2015). Therefore, it is important to conduct a research on **"***Position of Fictitious Positive Administrative Decisions as Dispute Object of State Administrative Court: Indonesia Omnibus Law Perspective***".**

RESEARCH PROBLEM

1. What is the form of shift in the formulation and arrangement of state administrative decision (KTUN) as one of the objects of State Administrative Court (PTUN) disputes in the perspective of Indonesian Law?
2. What is the position of the Fictional Positive state administrative decision as the object of a State Administrative Court after the implementation of the *Omnibus Law* on Job Creation in Indonesia?
3. How do the arrangements for the Fictional Positive state administrative decision in European Union countries, such as Romania, France, Germany, and the Netherlands compare to the Fictional Positive state administrative decision in Indonesia?

RESEARCH METHOD

This is a normative legal research using statute approach, conceptual approach, fact approach and comparative approach. The data used is in the form of secondary data and it was collected by using document study techniques. The result of the research are then classified systematically and analysed qualitatively, and then compiled in a scientific work that is descriptive analysis, which shows the form of a shift in the formulation and arrangement of state administrative decisions (fictitious) in Indonesian legislation and the position of the Fictitious Positive State Administrative Decision as one of the objects of the Administrative Court dispute in Indonesia after the implementation of the Omnibus Law on Job Creation and showing a comparison of the arrangement for the Positive Fictitious State Administrative Decision between Indonesia and several European Union countries, such as Romania, France, Germany and the Netherlands.

RESULT AND DISCUSSION

Formulation and Arrangement of Fictional State Administrative Court as the Object of State Administrative Court Dispute in Indonesian Legislation

Fictitious state administrative court in the perspective of statutory regulations in Indonesia can be found in several forms of formulation, namely the negative fictional decision as regulated in the State Administrative Law and the positive fictional decision as regulated in the Government Administration Law and amended in the provisions of the Job Creation Law. The definition of State Administrative Decisions in Article 1 point (9) of the State Administrative Law in its legal principles requires that it fulfil the elements of a written stipulation, by the actions of government officials, containing administrative legal actions, which are concrete, individual, and final. It can be interpreted that the formal requirements of a state administrative decisions are made by a government official in the form of a "written decision". As for materially, state administrative decision must meet concrete, individual and final characteristics (Wiyono, 2014). Then in the Government Administration Law, the meaning of State Administrative Decision is equated with the Government Administration Decree as stipulated in Article 1 point (7), which in its formulation must meet the elements of a written decree issued by a government official. The requirement for the validity of the decision is regulated in Article 52 of the Government Administration Law, which stipulates that the State Administrative Court must appointed officials who have the authority, in accordance with procedures and in harmony with the object of the decision.

As a source of formal law that is still valid, the State Administrative Law regulated the concept of negative fictitious decision, which means that the silence of government official is considered to have rejected the applicant's petition for a government official's authority. This is regulated in Article 3 of the Administrative Court Law. The negative fictitious state administrative decisions, which become the object of the court dispute, occur when government official is silent on the decisions that are their obligations, and have expired as regulated by law, and then the competent government is interpreted as rejecting the applicant. The period given in accordance with Article 3 paragraph (3) is that every 4 months since the application is received; it is considered a refusal by the competent official.

After the enactment of the Government Administration Law, it gave a new connotation to the Fictional State Administrative Court, namely the positive fictional state administrative court, which gave the opposite meaning where the silence of the authorized administrative decision official was considered an agreement. This arrangement is basically an attempt to build democratic and professional administrative principle in achieving justice and legal certainty (Rohaedi and Hasan, 2020). This is regulated specifically in Article 53 of the Government Administration Law, which regulates the action or stipulation obligation expires, the authorized authority's obligation to issue a decision within a maximum of 10 days, and then the application is deemed granted according to law it is within 10 days.

In order to obtain legal force, it is necessary to have an application mechanism submitted by the applicant to the court in order to obtain a decision on the acceptance of a fictitious decision. The Court, within 21 working days after a petition is submitted, is obliged to issue a decision, and then the government official is obliged to enforce the decision for 5 days after the decision is stipulated. The positive fictitious provision in the State Administrative Court in the Government Administration Law have the function of protecting legally related to administrative errors of government officials who do nothing about what is being requested, so that this positive fictitious rule adds to government performance in order to realize legal protection that reflects justice, certainty, and legal benefits and in accordance with the principles of good governance. The problem here is that the provisions of the negative and positive fictitious state administrative decisions exist in two different forms of legal arrangements, namely negative fictitious in the State Administrative Law and positive fictitious in the Government Administration Law, both are still applied in Indonesia (Wairocana et al., 2021). According to the lex specialist derogate legi generali principle, there is a formal norm vacuum against a positive fictitious state administrative court norm, which is only regulated in the Government Administration Law, which regulated materially the aspects of state administration and not the State Administrative Law, which should be a formal source of administrative law (Wairocana et al., 2021). Since there is no regulation concerning the provisions of the Fictitious State Administrative Court in the formal law, therefore the Supreme Court issued Regulation Number 8 of 2017.

Since the enactment of the Job Creation Law, the fictional positive state administrative court has again undergone a change in the rule of law. The Job Creation Law still adheres to the concept of positive fictitious state administrative decisions, but the rule of law that stipulates that fictitious state administrative decisions must be submitted an application in order to obtain a decision approving application in Article 53 paragraph (4), (5) and (6) is abolished and is renewed in Article 53 paragraph (5) stats that the provisions regarding the form of decision making that legally grant positive fictitious state administrative decisions will be further regulated in a presidential regulation. Thus, there is still a question about whether the positive

fictitious state administrative decisions are still the absolute authority of the object of the Court dispute.

The Position of The Fictional Positive State Administrative Decision as The State Administrative Court Object after The Implementation of The Omnibus Law on Job Creation in Indonesia

Decisions made by government officials should be in accordance with the general principles of good governance (hereinafter the good governance principle). According to Job Creation Law, it is known that a principle used as a reference for the use of authority for government officials in issuing decisions and/or actions in government administration. The good governance principle can be in the form of legal certainty, benefit, and impartiality, accuracy, not to abuse authority, openness, public interest, good service, and other principles as long as it is used as the basis for the judge's assessment.

The positive fictitious state administrative decisions are based on the silence of state administrative officials regarding a request to them. The end of this positive fictitious principle will result in an acceptance or grant of the petition from the applicant (Mawardi, 2016). Based on the Job Creation Law, there are new provisions that change the provisions of the positive fictitious decisions adopted by the Government Administration Law. The purpose of the renewal is in accordance with Article 3 of the Job Creation Law, namely for creating and increasing employment opportunities by providing facilities for the protection and empowerment of Micro, Small, and Medium scale business (hereinafter MSMEs) and the national trade industry; guarantee that citizens get a fair and decent job and remuneration; make adjustments to regulatory aspects related to alignments, strengthening and protection for cooperatives, MSMEs and national industry; and make adjustments to regulatory aspects relating to the improvement of the investment ecosystem and the ease of accelerating national strategic projects oriented towards national interests based on national science and technology based on *Pancasila*. Hence, the aim of the renewal of positive fictitious state administrative decisions is related to simplifying administrative procedures in order to increase economic growth.

The positive fictitious decision in the Job Creation Law certainly changes the positive fictitious provisions that already exist in the Government Administration Law. According to the legal principle of lex posterior derogate legi priori, Article 175 which amended the provisions of the positive fictitious state administrative decisions Article 53 of the Government Administration Law which applies in Indonesia; however it does not replace the previous laws and regulation. The positive fictitious provisions amended in the Job Creation Law against the Government Administration Law are, among other; the working deadline for government officials in Article 53 paragraph (2) is shortened from the initial time limit for administrative work is 10 days at the most if there is no answer, then it can be considered a positive fictitious administrative decision, in the Job Creation Law it becomes 5 days; then the amended in the absolute authority of the State Administrative Court which was originally in the Government Administration Law regulates the submission of an application to the Administrative Court to state or get a decision on the acceptance of a positive fictitious state administrative decision application. This change significantly removes the rule of Article 53 paragraph (4), (5), and (6) of the Government Administration Law.

As a legal consequence of the removal of the provision for the application procedure to the State Administrative Court in order to obtain a decision on the acceptance of a positive fictitious decision application in the Job Creation Law, it can be interpreted that positive fictitious decision still requires implementing regulations again to get a decision to accept the decision. Article 175 part of Article 53 paragraph (5) states the provisions of the form of determination, which are considered to have granted the application in accordance with Article 53 paragraph (3) by means of an electronic system, which is further regulated in a Presidential Decree. However, in practice, there is still no presidential regulation or government regulation that regulates this matter, so there is a legal vacuum. In the closing provisions of Article 185 letter b of the Job Creation Law, it states that changes to the amended legislation remain in effect as long as they are not contradictory.

The change in the meaning of the positive fictitious state administrative decisions contained in the provisions of the Job Creation Law apparently has not resolved the problem of contradicting the positive fictitious state administrative decision norms, which are not regulated in the formal law of the State Administrative Law, but still creates confusion over the elimination of procedures for obtaining a legally binding admission decision. The State Administrative Law should be a legal product that also gets renewed again because the law regulates the State Administrative Court in a formal manner, which does not recognize the provisions of the positive fictitious state administrative decisions.

Comparison of the Fictional Positive Decision Arrangements in Indonesia with the Countries of Romania, France, Germany and the Netherlands

According to law and regulation in Indonesia, it is known that state administrative decisions consist of negative fictitious decision and positive fictitious decision. The negative fictitious decision is regulated based on Article 3 paragraph (2) of State Administrative Court Law which regulates that if the Government Official does not issue the petitioned decision within the timeframe as stipulated in the law and regulations, it is considered that the official refuses to issue the decision.

As for the Positive Fictitious state administrative decision, it is regulated in Article 175 of the Job Creation Law, which amends Article 53 of the Government Administration Law as referred to Article 53 paragraph (4), which regulates that if within the time limit government officials do not make any decision, then the application is considered legally granted. Regarding decisions that are considered legally valid in the Government Administrative Law, an application must be submitted to the State Administration Court to obtain a decision on acceptance of the application. In fact, requests that do not get a response from government officials within a limited time can be interpreted as positive fictitious decisions (*silencio positivo*), although in practice, there are still many possibilities where the failure of government officials to act in respond toward request more often results in a negative fictitious decision (*silencio negativo*) compared to a fictitious positive decision (Scholtbach et al., 2005). The comparison between Indonesia and several European Union countries regarding the fictitious decision can be seen in the following Table 1:

Table 1
Comparison of the Fictional Positive Decision Arrangements in Indonesia with the European Union

Country	Indonesia	Romania	France	Germany	The Netherlands
Legal Basis	State Administrative Law, Government Administration Law, Job Creation Law	Government Emergency Ordonance (GEO) No 27/2003, Law 157/ 12 July 2010	Article 21 &22, Act No. 2000-321 of 12 April 2000	*Verwaltungsverfahrensgesetz, VwVfG* (§ 42a VwVfG)	*Division 4.1.3.3 of the General Administrative Law Act*
Type of fictitious administrative decision	Positive fictitious administrative decision; Negative fictitious administrative decision;	*Tacit Authorization*	Implied Approval, which is kind of *tacit authorization*, however partly implicit.	Fictitious permits *(Genehmigungsfiktion)*, doesn't apply in all license, it must be regulated by specific regulations.	Positive fictitious decision (*positieve fictieve beschikking bij niet tijdig beslissen / Lex Silencio Positivo (LSP*)
Time Limit	5 working days after the application is submitted if it is not regulated by law	30 days + 5 days if there is no issue regarding the decision.	2 months	3 months	8 weeks and can be extend once.
Advantage	The aim is to simplify administrative procedures and increase economic growth (Job Creation Law)	Removing administrative barriers, fighting corruption, and simplifying administrative procedures	Protect the public interest and the interests of third parties	There are legal remedies to protect public interests and third parties as stipulated in Article § 48 and § 49 VwVfG	To reduce administrative burdens that hinder economic growth. There is penalty payment if the Government exceed the time limit (Article 4:17 GALA)
Weakness	Positive fictitious provisions are not regulated in the State Administrative Court formal law	There is no specified time limit.	The deadline for submitting a *tacit* approval cancellation to court is not specified, which makes it unprofitable for the applicant's legal certainty	The ineffectiveness of the time of the appeal against the time the statement is received by the competent authority. Not applied to all licensing systems that are included in the Services Directive	It is not regulated in *services act* of the Netherlands
Entry into force/Procedure	Does not automatically apply but there	Featured on the web or apply to court	Published through internet site under the	Given a written confirmation, before filing a	Published through internet site.

	must be an application to the State Administrative Court (Government Administration Law)		responsibility of the prime minister. The government can still revoke it by filing an appeal to the administrative court	lawsuit to court	

The European Union governments have issued *Directive* (2006/123/EC) *on services in the internal market* which designed to aid the implementation of freedom of establishment for service providers and freedom of service while keeping high quality (De-Graaf and Hoogstra, 2013). In order to implement this goal, the government guarantees that the ease of licensing is the most important factor for facilitating the economic cooperation process scheme, thus each member of the European Union state is asked to remove some of the procedure that are borne by business actors in obtaining state administrative services. The European Union Commission believes that silent authorization that is positive fictitious will help to simplify licensing procedures and accommodate the economies of the European Union countries. The decision on positive fictitious (tacit authorization) is regulated in Article 13 of Directive (2006/123/EC). After the enactment of the Service Directive (20006/123/EC) there are reforms developing in the national laws of member countries related to Article 13 regarding the tacit authorization.

France as one of member of European Union has changed the arrangement of state administrative decisions, which initially recognized in 1864 implicit rejection (implicit de refus) prior to the existence of the French Council of State (De Graaf and Hoogstra 2013). In the beginning, France recognized implied approval, which is a limited positive fictitious decision that is limited by the basic regulation that regulates positive fictitious possibilities as regulated in Act No. 2000-321. On October 30th 2013, the French Parliament (Assemblée Nationale) issued amendments to the silence authorization in French administrative law. Basically, French administrative law regulates that if within two months a government official does not respond, then it is considered as tacit refusal. This is regulated in Article 21, however Article 22 provides that if there is a failure to respond, authorization is deemed granted. It means that if there is a law that specifically stipulates then an implicit positive decision is possible. According to the regulation, the introduction or system of tacit authorization is not authorized if it contradicts to international agreements or a danger to public order or the protection of freedom or other constitutional rights. Further, social security may not result in positive fictitious decisions. Interestingly, although the maximum duration of tacit approval is as equal as tacit refusal, which is in two months, however both are calculated differently. In tacit authorization, the period starts from the time the application is received by the competent authority, while in tacit refusal, it starts even if the incompetent official authority accepts the application (De-Graaf and Hoogstra, 2013). As a result, the competent administrative authority must always acknowledge the receipt of an application. Since the amendments to Act No 2000-321 on 30 October 2013, the Article 21 was amended as follows: "*'Le silent gardé pendant deux mois par l'autorité administrative sur une de'mande vaut décision d'acceptation. La liste des procédures pour lesquelles le silent gardé sur une demande vaut décision d'acceptation est publiée sur un situs internet relevan du Premier ministre. .....",* which means "*the administrative government's silence for two months from the*

time the application is considered approved, a list of procedures implying approval silence is published on the website under Prime Minister's responsibility". After the notification of a silent authority, it is still possible for government officials to revoke it in the period during which the decision is still possible to appeal to an administrative court. The general term is usually within two months.

The application of administrative law in Germany did not recognize tacit authorization or tacit refusal before the enactment of Services Directive (2006/123/EC). However, some legislative actions on certain topics exist to issue fictitious positive decision when the competent authority fails to respond to a request within the stipulated time, some of these provisions already applied to a number of building Acts at the federal. Therefore, in its regulation, German recognizes a certain fictitious approval approach (Genehmigungsfiktion), which can only be implemented with specific arrangements (Jansen, 2015). The implementation of Services Directive in 2009 leads change toward the German Administrative Procedures Act (Verwaltungsverfahrensgesetz, VwVfG). The amendments of this regulation introduce relation to the implementation of the services directive that is relevant to general regulations for administrative procedures. At the federation level, provisions are included in relation to official assistance (§§ 8a ff VwVfG), points of single contact (§§ 72a ff VwVfG) and tacit authorization (§ 42a VwVfG). As from 2008, the Administrative Procedures Act has included a general provision concerning fictitious authorization (Genehmigungsfiktion, Act: § 42a VwVfG), which regulates the expiration of the positive fictitious approval deadline. Tacit authorization will be given another three months from the deadline. The deadline is possible to change at the state level. The main requirement for tacit authorization to be granted is a very precise application, thus it must be clear which permit or license is being applied for. If in the opinion of an administrative official there is no positive fictitious decision has been given because the deadline has not yet expired, for example because the documentation is incomplete or the deadline starts later then the applicant does not have satisfactory legal remedies regarding the status of the application, then an appeal to the State Administrative Court (administrative court) is possible but if it is related to time, then this instrument is almost ineffective, hence the applicant actually has no other choice but wait. The provisions §§ 48 and 49 of the Administrative Procedures Act concerning the revocation and amendment of decisions also apply to tacit authorization to protect the rights of third parties' interests in an administrative court appeal (De-Graaf and Hoogstra, 2013).

The Netherlands is a country that has known fictitious decisions in its part of government for quite a long time. Based on General Administrative Law Act of 1994, they are supported explicitly in the rule that if the government fails to respond in a timely manner, then this decision can be interpreted as being the same as a decision that can be appealed to the court. Until 1998 provisions on the failure of government officials to respond were interpreted by the highest administrative court as a refusal (tacit refusal). However, since that year there have been considerations in relation to whether the decision was made but not on time, therefore the fictitious decision is no longer regarded as a rejection. The introduction of general rules relating to positive fictitious decisions is supported both by Article 13 paragraph (4) of Service Directive as well as the desire of Dutch politicians to reduce administrative burdens caused by the licensing system, which has the potential to limit economic growth. In the Netherlands, this system is known as Lex Silencio Positivo, who has been widely criticized by the state council in its advisory role. The implementation of the Service Directive in the Netherlands is specifically

applied to Services Act (Dientenwet). Beside this regulation, a new section was added to General Administrative Law Act (GALA) Division 4.1.3.3 of the General Administrative Law Act concerning the general provision of fictitious authorizations. The Article 28 of Services Act is the implementation of Article 13 paragraph (4) of the Services Directive. Unless there is a particular statute to the contrary, the Dutch parliament adopts amendments that implement the tacit authorization for those licensing systems inside the context of the EU Service Directive. According to Services Act there are no general provisions concerning the fictitious decision, however it is regulated in Division 4.1.3.3 of the General Administrative Law Act concerning general provision with regard to this matter. However, there is still a difference in term of general provision regarding the application of license and the provision in services act. If the Division 4.1.3.3 of the General Administrative Law Act has been proved valid, and after that tacit authorization are being given under Dutch administrative law if the statutory deadline has passed and thus no statement to requests from government officials has been received. If there is no statutory time limit, then under the Section 31 of Service Act, the eight-week time limit will be applied. Based on the service directive, the time limit can be extended once by taking into account the complexity of a request. According to the Article 13 paragraph (3) of the service directive stipulates that the response period must be given to be started as soon as all application documents have been sent. Then under Article 4: 20b (2) of the General Administrative Law stipulates that a fictitious positive decision can occur on the third day after the expiration of the deadline. Subsequently, Article 4:20c (1) of the The General Administrative Law Act requires the competent authority to notify the public of a fictitious decision within two weeks of its implementation. If the applicant has not received notification after two weeks and the government has not received notification, the government must pay a fine for each day of delay. It may also be possible to compel the government to release a notification by requesting that an administrative court issue a direct order directing the competent authority to provide it (De Graaf and Hoogstra 2013). Based on 4: 17 General Administration Law Act it is regulated that there is a penalty to a government official for delay in giving a decision in the amount of €20 for each day after the fourteen days, €30 every one day after fourteen days thereafter and € 40 a day after the following days.

Romania as a member of the European Union also recognizes positive fictitious decisions. This was previously regulated in Government Emergency Ordinance No 27/2003 (GEO 27/2003), which later amended by Law No 157/12 July 2010. The tacit approval is regulated in Article 3 poin b GEO 27/2003, as follows "the procedure by which the authorization is deemed granted if the public administration authority fails to respond to the applicant within the legal deadline for issuing such authorization". It is an implantation of *"qui tacit consentiree videtur"* which means being in silence is taken as agree. According to GEO 27/2003, the goals of tacit authorization are to eliminate administrative barriers in the business environment, to stop corruption by decreasing arbitrariness in administrative decision-making processes, and to promote the quality of public services by optimizing administrative procedures. This fictitious positive decision applies to all decisions issued by the competent authorities except those issued in the field of nuclear activities, relating to the regime of firearms, ammunition and explosives, drug, and precursor regimes, and authorizations in the field of national security. In its obligation, the government is obliged to display the approval decision on the web page of the intended agency. According to Law no 157/12 July 2010 which amends the provision of GEO 27/2003 in terms of tacit approval procedure, as follows *"The explicit or tacit refusal of a designated*

employee of an authority to apply the provisions pertaining to the public disclosure of the aforementioned information is sanctioned". It contains information that must be displayed at the place of public officials, depending on the case of the web page (Ştefan, 2010). According to the provisions of ordinance, unless the law set a specific timeline for completion of approval application, public officials must complete the application within 30 days of submission. According to Article 8 paragraph (1) of Law no 157/2010 when the applicant approaches the relevant public official and the submitted application has not been granted based on a valid time limit, as a result after the response time limit has expired, the applicant informs the office registry of the public official about the approval case regarding any documents subject to tacit authorization under law and requests that an official document be issued confirming that no response was given within the time limit.. In that situation the competent government must issue within 5 days of the request.

The procedure of tacit authorization still referring to GEO 27/2000, therefore if there are document irregularities, the public official will notify the applicant at least 10 days before the deadline for issuance of the decision, if the deadline exceeds 15 days or at least 5 days before the deadline, the public official determines the method to correct known irregularities. If a public official fails or refuses to issue a document, the applicant can submit it to the court according to the established procedure. The court will complete the application within 30 days of filing it by summoning the parties. According to Article 8 paragraph (1) of Law 157/2010 which eliminates the provision whereby the Public Prosecutor in resolving disputes with tacit authorization is not required as stipulated in GEO 27/2003. In this case, both Law 157/2010 and GEO 27/2000 have not formulated a specific deadline for submission of the application to the Court (Ştefan, 2010).

CONCLUSION

The forms of fictitious state administrative decision in the prevailing laws and regulation in Indonesia, namely negative fictitious state administrative decision in the State Administrative Law, which considers the silence of a state administrative official within the time determined on the petition submitted by the applicant is a rejection. While, the positive fictitious state administrative decision as regulated in the Government Administration Law and amended in the Job Creation Law, which can be understood where the silence of the authorized government officials is considered legally granted. The shift in the meaning of the positive fictitious state administrative decisions from the Government Administration Law to the Job Creation Law is regarding the technical elimination of the implementation of application to the court in order to obtain a decision on the acceptance of state administrative decisions.

The position of the positive fictitious state administrative decision in the Job Creation Law as the object of the State Administrative Court dispute has no derivative regulations in government regulations as the embodiment in the Article 175 part of Article 53 of the Job Creation Law. In the closing provision of the Job Creation Law, Article 185 letter b stated that the law amended in the Job Creation Law is still valid, hence the regulation regarding the procedure for a court application to obtain a decision on acceptance of a positive fictitious state administrative decision is still valid as long as there are no conflicting implementing regulations.

The concept of positive fictitious state administrative decision has also been recognized by countries other than Indonesia. When compared with several countries within European Union, there are differences in terms of the governing legal basis, types of fictitious decisions,

time limits, and in terms of the advantages and weakness of the regulation. the difference that most arises in positive fictitious decisions when compared between Indonesia and Romania, France, Germany, and the Netherlands is the time limit for a decision is considered fictitious where Indonesia in the latest regulations regulates five working days, Romania regulates 30 working days plus 5 application days if there is no response to the declaration, France set 2 months, Germany set 3 months, and the Netherlands set 8-weeks maximum which could be extended once. The similarities that can be seen in making fictitious positive decisions are in terms of the objective of simplifying administrative procedures and increasing economic growth.

In order to carry out the principle of good governance, legislators should make improvement to the State Administrative Law regarding the inclusion of positive fictitious state administrative decision, since the State Administrative Law is the *lex specialist* of formal state administrative court law as well as the need for further regulation regarding the implementation of decision or actions of officials which are considered to have been granted legally.

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