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THE AUTHORITY OF THE STATE ADMINISTRATIVE COURT (PTUN) TO ADJUDICATE POSITIVE FICTITIOUS DECISIONS FROM A PERSPECTIVE OF JUSTICE

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Abstract

The Administrative Court (PTUN) plays an important role in safeguarding the principles of legal certainty, justice, and protection of citizens' rights in Indonesia's administrative legal system. One of the emerging issues is positive fictitious decisions, which stipulate that if an administrative official does not issue a decision within a certain period, the petition is deemed to have been granted. This study aims to explore the authority of the PTUN in adjudicating positive fictitious decisions from a justice perspective. The method used is normative legal research that analyzes relevant regulations and their implementation in practice. The findings reveal that regulatory changes through Law No. 6 of 2023 have created legal uncertainty, reduced the PTUN's authority to adjudicate positive fictitious decisions, and created potential injustices for the public. This study recommends that the PTUN be granted the authority to adjudicate positive fictitious decisions while considering the principle of substantive justice, and the need for clearer regulations regarding oversight mechanisms within the automated administrative system. This study concludes that the removal of the PTUN's authority without clear alternative solutions contradicts the fundamental principles of the rule of law and has the potential to harm the public in accessing administrative justice.

Keywords: State Administrative Court, positive fictitious decision, justice

Abstrak

Pengadilan Tata Usaha Negara (PTUN) memegang peranan penting dalam mengawal prinsip kepastian hukum, keadilan, dan perlindungan hak warga negara dalam sistem hukum administrasi di Indonesia. Salah satu isu yang berkembang adalah keputusan fiktif positif, yang mengatur bahwa jika pejabat administrasi tidak memberikan keputusan dalam jangka waktu tertentu, permohonan dianggap dikabulkan. Penelitian ini bertujuan untuk mengeksplorasi kewenangan PTUN dalam mengadili keputusan fiktif positif dari perspektif keadilan. Metode yang digunakan adalah penelitian hukum normatif yang menganalisis regulasi terkait dan implementasinya di lapangan. Hasil penelitian menunjukkan bahwa perubahan regulasi melalui Undang-Undang Nomor 6 Tahun 2023 menimbulkan ketidakpastian hukum, mengurangi kewenangan PTUN dalam mengadili keputusan fiktif positif, dan menciptakan potensi ketidakadilan bagi masyarakat. Penelitian ini menyarankan agar PTUN tetap diberikan kewenangan untuk mengadili keputusan fiktif positif dengan mempertimbangkan prinsip keadilan substantif, dan

perlu nya regulasi yang lebih jelas terkait mekanisme pengawasan dalam sistem administrasi negara yang terotomatisasi. Kesimpulan penelitian ini adalah bahwa penghapusan kewenangan PTUN tanpa solusi alternatif yang jelas bertentangan dengan prinsip dasar negara hukum dan berpotensi merugikan masyarakat dalam memperoleh keadilan administratif.

Kata kunci: Pengadilan Tata Usaha Negara, keputusan fiktif positif, keadilan

INTRODUCTION

In Indonesia's administrative law system, the State Administrative Court (PTUN) plays an important role in safeguarding the principles of legal certainty, justice, and the protection of citizens' rights against government actions. One of the emerging issues in administrative law is that of positive fictitious decisions, which arise as a result of regulatory mechanisms stipulating that if an administrative official fails to issue a decision within a certain timeframe, the request submitted is deemed to have been granted by law. This raises questions regarding the extent to which the PTUN has the authority to adjudicate and uphold justice in the context of positive fictitious decisions. The lack of clarity in the classification of disputes causes confusion in the application of the law and appropriate procedures (Kupita, 2021).

Positive fictitious decisions are essentially intended to protect the public from bureaucratic delays in decision-making. With this provision, applicants are not disadvantaged by the unclear status of their applications submitted to government agencies. However, in practice, the application of this concept often gives rise to debate, particularly in terms of implementation, oversight, and how the judicial mechanism can provide legal certainty for all parties involved. The removal of the PTUN's authority to adjudicate fictitious positive decisions creates legal uncertainty and is inconsistent with the principles of legal certainty, utility, accuracy, and justice (Pertiwi et al., 2023).

The PTUN, as a judicial institution with jurisdiction over administrative disputes, faces challenges in adjudicating cases related to positive fictitious decisions. One of the issues that arises is how the court can assess the validity of a decision that is considered to have occurred legally without any actual action by administrative officials. On the other hand, it is also important to consider the aspect of substantive justice that must be upheld in the judicial process, so that the decisions made are not only based on legal formalities but also reflect justice for all parties affected. Although the Administrative Court no longer has jurisdiction, it is important to ensure that the decisions made still reflect substantive justice and are not merely based on legal formalities (Kupita & Ardhanariswari, 2023).

In practice, there has been much debate regarding the effectiveness of positive fictitious decisions in creating legal certainty and justice. Some argue that this concept speeds up the administrative process and minimizes abuse of authority by state administrative officials who are negligent in making decisions. However, on the other hand, this concept also has weaknesses, especially in terms of implementation in the field. The absence of concrete action by state officials in positive fictitious decisions often creates legal uncertainty for people seeking certainty regarding their administrative rights (Manaan et al., 2024).

From a justice perspective, the existence of positive fictitious decisions can be an effective instrument in accelerating the administrative process of government. However, without adequate control mechanisms, positive fictitious decisions also have the potential to harm certain parties who may be affected by decisions made automatically. Therefore, it is important to review how the Administrative Court can optimize its authority in adjudicating positive fictitious decisions while upholding the principles of justice and legal certainty (Kosasih, 2018).

From a legal perspective, the PTUN must be able to effectively carry out its function as the guardian of justice in the resolution of administrative disputes. This includes the need for clearer regulations in determining the limits of positive fictitious decisions to prevent abuse and legal uncertainty that could harm the public. Strengthening judicial mechanisms and stricter law enforcement are necessary to ensure that the concept of positive fictitious decisions can truly function in accordance with its original purpose, namely to provide legal protection for the public from administrative uncertainty. The PTUN serves as a watchdog over government actions and provides legal protection against administrative actions that harm the public (Zamzami & Muslim, 2023).

Beyond legal aspects, a sociological perspective also plays a crucial role in understanding the impact of positive fictitious decisions on society. Individuals lacking a deep understanding of the law often feel confused about the legal status of their requests that are automatically granted. This necessitates an active role from the government in providing legal education to the public so they can better understand their rights and obligations when facing administrative processes. Positive fictitious decisions, a form of government silence, are regulated in Law No. 30 of 2014, which allows officials to ignore citizens' requests and consider them granted (Wurid, 2022).

Furthermore, in the realm of judicial practice, positive fictitious decisions pose challenges for PTUN judges in interpreting and adjudicating cases fairly. Judges are not only required to understand legal formalities but must also consider substantive justice aspects that can provide optimal protection for the public. Therefore, it is important to develop more detailed guidelines or jurisprudence on how the Administrative Court can adjudicate positive fictitious decisions with a more humanistic approach and in line with the principles of social justice. There is uncertainty regarding whether a dispute should be categorized as a “Regular Administrative Dispute” or a “Positive Fictitious Decision Dispute,” which requires legal certainty due to significant differences in legal procedures between the two types of disputes (Kupita & Ardhanariswari, 2023).

Legally, the authority of the PTUN to adjudicate positive fictitious decisions has a strong basis in various laws and regulations. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) affirms that Indonesia is a state based on the rule of law, so that every decision of the state administration must be based on law and justice. Furthermore, Article 24 of the 1945 Constitution regulates the independent judicial power in upholding the law and justice, thereby legitimizing the PTUN to handle administrative disputes involving positive fictitious decisions.

Law No. 5 of 1986 on Administrative Courts serves as the legal basis for the establishment of the Administrative Court and defines its authority to adjudicate administrative disputes. Article 53 of this law grants the public the right to file a lawsuit against administrative decisions deemed detrimental, including in the context of positive fictitious decisions. In line with this, Law No. 30 of 2014 on Government Administration reinforces the concept of positive fictitious decisions through Article 53, which states that if, within a certain period, an official does not issue a decision, the request is deemed granted. This demonstrates that positive fictitious decisions have a clear legal basis in administrative law. Courts remain necessary to provide legal protection for third parties who feel disadvantaged by decisions arising from the fictitious positive process (Kristiawan et al., 2024).

Furthermore, Law No. 48 of 2009 on Judicial Power emphasizes that courts may not refuse to examine, adjudicate, and decide cases solely because the governing law is absent or unclear. Article 10(1) of this law underscores the court's obligation to continue performing its functions despite regulatory ambiguity. Additionally, Article 5 of the same law mandates that judges must explore, follow, and understand the legal values and justice that exist within society, including in the context of positive fictitious decisions. This study will discuss in depth the authority of the Administrative Court in adjudicating positive fictitious decisions from the perspective of justice. This discussion includes an analysis of the legal basis governing positive fictitious decisions, the challenges faced in their application in the field, and how the court can ensure that the principle of justice is upheld in every decision issued. Thus, this study is expected to contribute to the development of administrative law in Indonesia, particularly in ensuring a balance between legal certainty and justice in the resolution of administrative disputes.

METHOD

The research used in this study is legal research, which consists of two words, namely “research” and “law” (Diantha, 2016). The origin of the word ‘research’ is “teliti,” which means an action that is full of caution and precision. Meanwhile, “law” has various meanings depending on the perspective of each school of legal philosophy. Therefore, law can be defined as norms that are formed, enforced, and recognized by public authorities to regulate the state and society, enforced with sanctions (Diantha, 2016). If law is studied or researched as an object, then the effort to find the truth in that research must be subject to the applicable law (Prasetyo, 2019). Thus, the object of legal science is norms, and not human attitudes or behavior, which are very important for solving legal problems. The type of research used is normative legal research. Normative legal research in this study is used to find legal rules and principles to answer legal issues (Marzuki, 2017), namely the authority of the State Administrative Court (PTUN) to adjudicate fictitious positive decisions from a perspective of justice. This is a normative research study (Johnny Ibrahim, 2008) and is related to the issue of the authority of the Administrative Court (PTUN) to adjudicate fictitious positive decisions from a perspective of justice.

RESULT AND DISCUSSIONS

A positive fictitious decision is part of the principle of administrative law that stipulates that if a request submitted to a government agency or official does not receive a response within the specified time limit, the request is deemed to have been granted by law. This principle aims to provide legal certainty and protect the rights of citizens interacting with the state administration. However, with the amendment of regulations through Law No. 6 of 2023 on Job Creation, the authority of the Administrative Court (PTUN) to adjudicate cases involving positive fictitious decisions has undergone significant changes. This raises challenges regarding legal certainty and justice for citizens. This change has created legal uncertainty for those seeking justice regarding positive fictitious cases, highlighting the need to reconsider the court's authority to review such requests (Cahyandari, 2023). The legal basis for positive fictitious decisions is regulated in Article 53 of Law No. 30 of 2014 on Administrative Governance.

This concept states that if a Government Agency or Official fails to issue a decision within a certain period, the request is deemed to have been granted by law. However, following the enactment of Law No. 6 of 2023, this concept has changed, particularly with the introduction of an automation mechanism in the electronic system, thereby limiting the role of the Administrative Court in validating fictitious positive decisions. This system allows decisions to be deemed automatically approved without the need for ratification by the PTUN (Pertiwi et al., 2023). Under the new regulation, positive fictitious decisions will be processed electronically through a system that ensures that if there is no response from the authorized official, the system will automatically deem the decision as approved. This reduces the role of the PTUN as a supervisor of this policy, as the ratification mechanism shifts to a more automated administrative system. According to Gustav Radbruch's theory of the purpose of law, law must reflect three main elements: legal certainty, justice, and utility.

In terms of legal certainty, with the removal of the PTUN's authority in certain fictitious positive cases, the public loses the legal avenue previously available to them to follow up on their requests. The absence of comprehensive implementing regulations from the government regarding the approval mechanism for fictitious positive decisions in the electronic system creates uncertainty for applicants. Legal uncertainty arises when there is no clear mechanism for validating fictitious positive decisions in the electronic system. This eliminates the legal avenue previously available to the public to follow up on their requests (Zegarlicki, 2018). In terms of justice, members of the public who feel their rights have been violated do not have an effective judicial mechanism to claim their administrative rights. Positive fictitious decisions, which are supposed to protect the rights of applicants, can instead become instruments of injustice if they are not accompanied by proper oversight mechanisms. Additionally, the automation system adopted in Law No. 6 of 2023 poses risks if there are no control mechanisms allowing applicants to challenge or correct decisions generated by the electronic system (Paskara, 2023). This system must be equipped with mechanisms that allow for oversight and correction to prevent errors or abuse (Zarikyan, 2024).

In terms of benefits, the removal of the PTUN's authority in positive fictitious decisions without clear alternative solutions could worsen public access to legal protection. The Ombudsman, as an alternative institution for resolving public administration issues, still has limitations in issuing binding decisions. Therefore, although the electronic system offers efficiency, a complete transition to this system without judicial oversight could create new problems in practice. In addition to Radbruch's theory, Philipus M. Hadjon's theory of legal protection is also relevant in this context. According to Hadjon, legal protection for citizens must include preventive and repressive protection. In this new system, preventive protection remains weak because the public lacks direct oversight mechanisms over administrative decisions that are automatically approved. Meanwhile, repressive protection through the Administrative Court is also increasingly limited, as the court's authority to correct positive fictitious decisions has been reduced.

Based on data from various PTUN rulings related to positive fictitious objects before the regulatory changes, it was found that many petitions were rejected because: the government officials or agencies named as respondents lacked authority over the subject matter of the petition; the petition was filed against an object still under dispute or falling under civil law; and formal requirements such as the petitioner's legal standing or the filing procedure were not met. With the partial removal of the PTUN's role, this new mechanism must ensure that there is no reduction in the public's right to administrative justice. The PTUN previously served as a legal safeguard for the public against government actions that caused harm. With its removal, there are concerns that the public's right to administrative justice may be reduced (Heryansyah, 2020).

The changes introduced by Law No. 6 of 2023 are indeed aimed at simplifying government administration, but a more in-depth study is needed on the effectiveness of the electronic system in replacing the role of the PTUN. Without adequate oversight, this system has the potential to create disparities in access to justice, particularly for those who lack a deep understanding of electronic systems or face technical challenges in accessing digital administrative services. Without adequate oversight, this system may not be effective in fully replacing the role of the Administrative Court and could exacerbate disparities in access to justice (Bernadika & Afriyie, 2023). From an effectiveness perspective, this automation system also needs to consider the principle of administrative discretion, as outlined in administrative law theory. Discretion is the freedom that officials have to make decisions based on specific conditions in the field. With an automated system, this discretionary role is reduced, which can lead to overly rigid decisions that do not consider specific factors in each case (McCann, 2023).

The existence of clear regulations and legal mechanisms that are accessible to the public will help create a state administrative system that is more responsive to the needs of the community. The existence of clear regulations and legal mechanisms that are accessible to the public will help create a state administrative system that is more responsive to the needs of the community (Rochmawanto et al., 2022). Therefore, even though this automation system aims to improve efficiency, there must still be an appeal or review mechanism that allows the public to obtain maximum justice. With openness in the administrative process, it is hoped that the rights of the public will be better protected and

that the principle of justice will remain the foundation of every decision made by government agencies or officials.

Therefore, although this automation system aims to improve efficiency, there must still be an appeal or review mechanism that allows the public to obtain maximum justice. It is important to strengthen the right to appeal and transparency in the automation system. This can be done by providing explanations and access to the software code used in automated decision-making (Henman, 2021). In addition, public access to documents and algorithms used in these systems can increase transparency (Mazur, 2021). With openness in administrative processes, it is hoped that the rights of the public will be better protected and that the principle of justice will remain the basis for every decision made by government agencies or officials.

Furthermore, there needs to be periodic evaluation of the implementation of new regulations. This is important to ensure that the interests of the public are maintained and that the law can function optimally in providing justice for all parties. The government must also ensure that the new administrative mechanisms are more transparent and accessible to the public, so that legal certainty and justice can be realized in the practice of government administration. Regulatory evaluation must involve public participation to ensure that the interests of the community are properly accommodated. Lack of public participation can lead to conflicts of interest and discrimination in the legislative process (Hidayah et al., 2024). Synergy between the judiciary, government, and community is needed to ensure that the new system is not only administratively efficient but also upholds the principle of legal justice. More holistic policy reforms must be implemented to provide not only short-term solutions but also build a stronger legal system oriented toward the protection of citizens' rights. Therefore, reforms must include legislative changes, institutional restructuring, and the use of technology to improve legal processes (Akpuokwe et al., 2024).

CONCLUSIONS

The removal of the Administrative Court's authority to adjudicate positive fictitious petitions without an alternative mechanism has created legal uncertainty, reduced legal protection for the public, and created an imbalance in the distribution of state authority. From a legal perspective, this change has the potential to hinder the achievement of legal certainty, justice, and benefit because no instrument guarantees certainty in administrative decision-making. From the perspective of legal protection, the public loses access to a court that can ensure that state administrative bodies or officials do not abuse their authority by disregarding submitted petitions. Meanwhile, in the theory of authority, this regulatory change should be followed by the attribution or transfer of authority to other institutions that can handle fictitious positive petitions, so as not to create a legal vacuum that contradicts the principle of legality in administrative law. Thus, the abolition of the PTUN's authority in positive fictitious cases without a clear alternative solution contradicts the fundamental principles of the rule of law and has the potential to harm the public in obtaining administrative justice.

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