

## Ordinary State Administrative Dispute and Positive-Fictitious Decisions Dispute in Administrative Court in Relation to Administrative Appeal

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### Abstract

The State Administration decisions, is a written determination by a government official, if it is the object of a dispute in the Administrative Court, it is categorized as an "Ordinary State Administrative Dispute". PTUN is also authorized to adjudicate disputes caused by the existence of "Positive-Fictitious Decisions", which is interpreted as a silence of government officials not issuing the requested petition, then the petition is considered legally granted. The dispute is categorized as "Fictitious-Positive Decision Dispute". Before filing a lawsuit to the Administrative Court, it must first take an "Administrative Appeal", it is determined if the authorized official does not respond (acts in silence) to Administrative Appeal, then "Administrative Appeal are deemed granted". Then there will be a juridical problem: "whether the dispute will be tried by PTUN as" Ordinary State Administrative Dispute "or as" Fictitious-Positive Decision Dispute?" The approach method used is Normative Juridical, qualitative normative analysis method, and grammatical and systematic interpretation method. It is not yet clear whether the legal event will become an "Ordinary TUN Dispute" or a "Fictitious-Positive Decision Dispute", because it cannot be classified into the two types of disputes. Certainty is needed, because the procedural law is very different between the two types of disputes.

**Keyword:** ordinary dispute; positive-fictitious dispute; administrative appeal; administrative court.

### Abstrak

Putusan Tata Usaha Negara, merupakan penetapan tertulis oleh pejabat pemerintah, jika menjadi obyek sengketa di Peradilan Tata Usaha Negara dikategorikan sebagai "Sengketa Tata Usaha Negara Biasa". PTUN juga berwenang mengadili sengketa yang disebabkan oleh adanya "Positive-Fictitious Decisions", yang dimaknai dengan diamnya pejabat pemerintah yang tidak mengeluarkan permohonan yang diminta, maka permohonan tersebut dianggap dikabulkan secara sah. Sengketa tersebut dikategorikan sebagai "Sengketa Keputusan Fiktif-Positif". Sebelum mengajukan gugatan ke Pengadilan Tata Usaha Negara terlebih dahulu harus dilakukan "Banding Administratif", ditentukan jika pejabat yang berwenang tidak menanggapi (bertindak diam) terhadap Banding Administratif, maka "Banding Administratif dianggap dikabulkan". Kemudian akan timbul permasalahan yuridis: "apakah sengketa tersebut akan diadili oleh PTUN sebagai "Sengketa Tata Usaha Negara Biasa" atau sebagai "Sengketa Putusan Fiktif-Positif?" Metode pendekatan yang digunakan adalah Yuridis Normatif, metode analisis normatif kualitatif, dan metode interpretasi gramatikal dan sistematis. Belum jelas apakah peristiwa hukum tersebut akan menjadi "Sengketa TUN Biasa" atau "Sengketa Keputusan Positif-Fiktif", karena tidak dapat digolongkan ke dalam dua jenis sengketa. Kepastian diperlukan, karena hukum acara sangat berbeda antara kedua jenis sengketa tersebut.

**Kata kunci:** sengketa biasa; sengketa positif-fiksi; banding tata usaha; peradilan tata usaha negara.

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## Introduction

Indonesia adheres to the concept of a modern law state (welfare state) which places the government as the party responsible for realizing the *bestuurzorg* (general welfare) of

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its citizens. This is in line with the provisions of Article 33 and Article 34 of the 1945 Constitution which require the government to guarantee the prosperity of its people Indonesia is a country of law. One of the characteristics is the legality principle, that all acts of state administration must have a legal basis. A country is referred to as a rule of law state (*rechtstaat*) which is reflected in several things, which are commonly referred to as the characteristics of a rule of law state, namely (Mahfud. MD., 2001):

1. There is recognition and protection of human rights;
2. The existence of a judiciary that is free from the influence of any other power or force and is impartial;
3. There is a legality principle in the sense that all actions of all citizens, both ordinary people and those in power, must be justified by law.

The concept of a rule of law (*rechtstaat*) as proposed by Friedrich Julius Stahl contains 4 (four) main elements, namely (Ridwan HR., 2013):

1. Recognition and protection of human rights;
2. The state is based on trias political theory;
3. The government is run based on law (*wetmatigbestuur*);
4. There is an administrative court in charge of handling cases of illegal acts by the government (*onrechsmatigeoverheidsdaad*)

Administrative Courts in Indonesia are known as State Administrative Courts (abbreviated as PERATUN). Article 18 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power determines that the State Administrative Court is one of the judicial environments in judicial power in Indonesia. In accordance with Freidrich Julius Stahl's opinion, in the concept of a state of law *rechtstaat*, PERATUN (administrative court) is the fourth element, whose task is to judge if there is a dispute between the people (individuals) and the Government (State Administration Officials).

Within the State Administrative Court, the court institutions consist of the State Administrative Court (abbreviated as PTUN) and the High State Administrative Court (abbreviated as PT.TUN) as the Court of Appeal. The State Administrative Court as a material law enforcement agency has the duty and authority to examine, decide and resolve State Administrative disputes, as a result of the issuance of a State Administrative Decree (KTUN). The issuance of a state administrative decisions (state administrative decisions) may be detrimental to the interests of private persons or legal entities. Individuals or civil legal entities who feel that their interests have been harmed by the state administrative decisions can file a lawsuit to the state administrative decisions so that the state administrative decisions are declared null and void.

Based on the matters that have been mentioned above, it can be described that in a State Administration dispute the following will be encountered:

1. The PERATUN authority is to adjudicate state administrative disputes;
2. The plaintiff is a civil person or legal entity;
3. The defendants are state administrative bodies or officials;

4. The object of the dispute or the cause of the state administration dispute is the issuance of a state administrative decree;
5. The claim or *petitum* is the cancellation or invalidity of a state administrative decree

The aforementioned State Administrative Disputes are also known as “Ordinary” State Administration disputes, namely disputes between private persons or legal entities and state administrative bodies or officials as a result of the issuance of a State Administrative Decree. Such disputes are handled by ordinary procedural procedures, as stipulated in the Procedural Law for State Administrative Courts. In 2014, the Government enacted Law Number 30 of 2014 concerning Government Administration (abbreviated as UU-AP), which in several provisions of the article affects the absolute competence of PERATUN, especially in the provisions concerning:

1. Administrative Authorities for Administrative action/factual actions of state administration officials (Supreme Court Regulation/Peraturan Mahkamah Agung (Perma) No. 2 Year 2019 concerning Guidelines for Government Action Dispute Resolution and Authority to Adjudicate PMH/*Onrechtmatige Overheidsdaad* (OOD));
2. Requirement to take Administrative Efforts first before filing a lawsuit with the State Administrative Court (Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Government Administration Dispute Resolution After Taking Administrative Efforts).
3. The authority of the State Administrative Court to adjudicate government administrative disputes with the object of the dispute is Fictitious-Positive Government Decisions and/or Actions. (Article 53 UU-AP. Jo. Supreme Court Regulation Number 8 of 2017 (also known as the Supreme Court Regulation on Procedure Guidelines whose object of dispute is Fictitious-Positive Decisions/Actions).

The Supreme Court Regulation Number 6 of 2018 stipulates: "The court has the authority to accept, examine, decide, resolve government administrative disputes after taking administrative efforts".

Before submitting a lawsuit to the Court, they must first take administrative measures. The definition of administrative effort is the settlement of government administrative disputes carried out within the executive (government). Under the UU-AP, administrative measures consist of “objections” and “administrative appeals”. An objection is if the objection is submitted to the official issuing the decision, whereas an administrative appeal is if the one who resolves the dispute is the superior of the official who issued the decision.

Furthermore, the provisions that will become a problem are the provisions in Article 77 paragraph (5) UU-AP reads: "In the event that Government Agencies and/or Officials do not resolve the objection within the period referred to in paragraph (4), the objection is deemed granted." And Article 78 paragraph (5) UU-AP stipulates: "In the event that Government Agencies and/or Officials do not complete the appeal within the period referred to in paragraph (4), the objection is considered granted".

A juridical issue will arise, if the official responding to administrative objections and appeals is silent and does not respond to administrative objections and appeals, whether the government administration dispute will become an ordinary state administration dispute or a fictitious-positive decision dispute. The meaning of a Fictitious-Positive Decision is that if the State Administration Officer is obliged to issue a decision requested by the community, but remains silent and does not issue a decision, then the application is considered legally granted. Based on Article 53 UU-AP, the aggrieved person can submit a petition (a kind of lawsuit) to the PTUN so that the court orders the Respondent (State Administration Officer) to issue the decision requested by the Petitioner

Another problem that usually occurs in the PTUN is a problem related to the execution (implementation) of the PTUN decision which has permanent legal force (*inkraht*). This problem will arise, when the Government Administration Agency or Officer as the respondent, is not willing to issue a decision even though it is an obligation ordered by the Court.

## Research Problems

Some of the problems discussed in this article are as follows:

1. How is an ordinary state administrative dispute defined?
2. How is the definition of a fictitious positive decision dispute?
3. Can the Respondent's silence in administrative measures be categorized as a Fictitious-Positive Decision?
4. How is the execution of the PTUN decision in a case of a fictitious-positive decision?

## Research Methods

The approach method used is Normative Juridical, qualitative normative analysis method, and grammatical and systematic interpretation method.

## Discussion

### Ordinary State Administrative Disputes

PTUN authority: The court has the duty and authority to examine, decide and resolve state administrative disputes. Definition of "State Administrative Dispute". Determined in Article 1 number 10 of Law Number 51 of 2009, namely as a dispute arising in the field of State Administration, between a person or civil legal entity and a State Administration Agency or Officer, both at the central and regional levels, as a result of the issuance of a State Administrative Decree, including employment disputes based on the prevailing laws and regulations.

The elements of the state administration dispute (Wiyono, 2013):

1. Disputes that arise in the field of State Administration
2. Between a person or a civil law entity with a state administration agency or official;

3. As a result of the issuance of state administrative decisions, including personnel disputes, based on the prevailing laws and regulations.

The State Administrative Dispute arises from the existence or issuance of a State Administrative Decree (KTUN); therefore the State Administrative Decree becomes the basis for the birth of a State Administrative Dispute. The definition of state administrative decisions is defined in:

1. Definition of state administrative decisions in the Law on State Administrative Courts: "State Administrative Court is a written stipulation issued by a State Administration Agency or Official, which contains legal actions for State Administration, which are based on the prevailing laws and regulations, which are concrete, individual, and final in nature. which gives rise to legal consequences for a person or a civil legal entity.
2. The definition of state administrative decisions in the Law on Government Administration: State administrative decisions are "written decisions issued by Government Agencies and/or Officials in government administration."

Furthermore, Persons or Civil Legal Entities (BHP) who feel that their interests have been harmed by a State Administrative Court, can file a written lawsuit to the competent Court, which contains demands that the State Administrative Court the dispute is declared null and void, with or without a claim for compensation and/or rehabilitation. The procedural law procedure in further ordinary state administrative disputes, the Plaintiff filed a lawsuit at the Administrative Court, with the following stages (Indroharto, 1993):

1. Preliminary Examination, which consists of:
  - a. Deliberative Meeting or dismissal procedure (Article 62 of Law Number 5 Year 1986)
  - b. Preparatory Examination (Article 63 Law Number 5 Year 1986).
2. Examination before the Trial, which consists of:
  - a. Lawsuit Reading
  - b. Readout of Claims Answers
  - c. Replica
  - d. Duplicate
  - e. Proof
  - f. Conclusion
  - g. Reading of Court Decisions

The time required from filing a lawsuit to reading the court's decision is around 5 (five) or 6 (six) months.

Parties who are not satisfied with the decision of the PTUN (court of first instance) can file a legal remedy in the form of an appeal to the State Administrative High Court (PT.TUN), the time required for the examination at the appeal level is around 5 or 6 months. Furthermore, parties who are dissatisfied with PT TUN's Appeal Decision may file a legal action in the form of a cassation to the Supreme Court. The time required for examination at the Cassation level can be more than 6 (six) months. Thus, in settling ordinary state administrative disputes, starting from registration to obtaining a final legally binding decision (*inkraht*), it may take up to more than 2 (two) years.

## Fictitious-Positive Decision Dispute

Positive Fictitious Decision Dispute is regulated in UU-AP, which determines:

- (1) The time limit for the obligation to stipulate and/or take decisions and/or actions is in accordance with the provisions of the statutory regulations.
- (2) If the provisions of the statutory regulations do not determine the time limit for obligations, the Agency and/or Government Officials are obliged to determine and/or make Decisions and/or Actions within a maximum period of 10 (ten) working days after the complete application is received by the Agency and/or Government Officials.
- (3) If within the time limit, Government Agencies and/or Officials do not determine and/or make Decisions and/or Actions, then the application is considered legally granted.
- (4) The applicant submits an application to the Court to obtain a decision on acceptance of the application.
- (5) The court is obliged to decide the application, not later than 21 (twenty-one) working days from the time the application is submitted.
- (6) Agencies and/or Government Officials are obliged to stipulate a Decision to implement the Court's decision, within 5 (five) working days after the Court decision is stipulated.

The provisions contained in UU-AP are known as Fictitious-Positive Decisions/ Actions:

**Fictitious means** (in terms of decisions) intangible as a "written/black and white determination", (in the case of action) means intangible as an act of factual/real. Or in other words, fictitious means "the Agency and/or Government Officials should issue a decision and/or take action, but remain silent, even though it is their obligation. Because he was silent, then no decision and/or action requested by the Petitioner (individual or civil legal entity) did not come out/appear/publish/occur.

**Positive means** "considered granted" legally, that is, if the agency or Government Official is silent/does not issue and/or take the decision and/or action requested, then the request is considered legally granted.

Furthermore, if the Petitioner does not accept it or feels aggrieved by the silence of government bodies or officials, the Petitioner has the right to submit an "application to the Court to obtain a decision on acceptance of the application".

The procedural law required in resolving fictitious-positive decision disputes is a special event law, different from the procedural law in ordinary state administrative disputes. Its specificity can be seen from:

1. The completion time, only takes 21 (twenty-one) working days, starting from the registration of the application to the reading of the court's decision.
2. The Court's decision is final and binding, or there are no more legal remedies, either appeal or cassation;

3. Not going through a preliminary examination (not through the "Consultative Meeting" and "Preparatory Examination), direct case examination for examination before the trial takes the form of reading the petition.

### **Respondent's silent stance in Administrative Efforts**

The definition of ADMINISTRATIVE EFFORTS (UA) is a dispute resolution process carried out within the Government Administration environment as a result of the issuance of decisions and/or detrimental actions. (Article 1 number 16 UU-AP). At the core of administrative efforts, namely a procedure that can be taken by a person or a Civil Legal Entity if he is not satisfied with a decision or action of a State Administrative body or official. The procedure is carried out within the Government (executive) itself.

Administrative efforts can take two forms, namely:

1. OBJECTION, that is, in the case of a State Administration dispute settlement, it is submitted to and resolved by the State Administration Agency or Official who issued the Decree.
2. ADMINISTRATIVE APPEAL, that is, in the case of a State Administration dispute settlement submitted to and resolved by a superior official or other agency of the official issuing the decision.

Provisions related to administrative efforts, namely:

1. Article 48 of Law Number 5 Year 1986 determines: (1) In the event that a State Administration Agency or Official is authorized by or based on statutory regulations to administer certain TUN disputes, the TUN dispute must be resolved through available Administrative Efforts; (2) The new court has the authority to examine, decide, and resolve state administration disputes as referred to in Paragraph (1), if all the Administrative Efforts concerned have been used.
2. Law Number 30 of 2014 concerning Government Administration (UU-AP).

Article 1 number 16: "Administrative Efforts are the process of dispute resolution carried out within the Government Administration as a result of the issuance of decisions and / or actions that are detrimental". With the enactment of Law Number 30 of 2014 concerning AP, all claims arising from Administrative Efforts (both objection procedures and administrative appeals) are the authority of the First Level Administrative Court. What is meant by Court, according to article 1 point 18 of the Government Administration Law is the State Administrative Court.

Furthermore, to follow up the provisions against Administrative Efforts, the Supreme Court Regulation Number 6 of 2018 concerning Guidelines for Government Administration Dispute Resolution After Taking Administrative Efforts was issued. Based on Article 2 paragraph (1) it is determined that before filing a lawsuit at the State Administration Court, administrative measures must first be taken. Administrative Efforts provisions are regulated in UU-AP, as follows:

1. General provisions regarding Administrative Efforts:

- a. Citizens who have suffered losses due to Decisions and/or Actions may submit Administrative Efforts to Government Officials or Supervisory Officers who determine and/or make decisions and/or actions.
  - b. Administrative measures as referred to in paragraph (1) consist of: objection; and appeal.
2. Administrative efforts and the authority of PTUN:  
Government Agencies and/or Officials have the authority to resolve objections to Decisions and/or Actions that are determined and/or carried out by the Community. In the event that the Community Citizen does not accept the resolution of objections by the Agency and/or Government Officials, the Community Citizen can file an appeal to the Supervisory Officer. In the event that the Community Citizen does not accept the settlement of the appeal by the Superior Officer, the Community Citizen can file a lawsuit at the Court.
3. Provisions regarding "Objections"  
An objection may be submitted to a decision within a maximum period of 21 (twenty-one) working days from the announcement of the Decree by the Agency and/or Government Official. Objections are submitted in writing to the Agency and/or Government Officials that stipulate the Decree. In the case of objections, Government Agencies and/or Officials are required to stipulate a decision according to the objection request. Government Agencies and/or Officials resolve objections within 10 (ten) working days. In the event that the Agency and/or Government Officials do not resolve the objection within that period, the objection shall be deemed granted. Objections that are deemed granted shall be followed up with a decision in accordance with the application for objection by the Agency and/or Government Official. Government Agencies and/or Officials are obliged to make a Decree in accordance with the application no later than 5 (five) working days after the expiration of said grace period.
4. Provisions regarding "Administrative Appeal":  
The decision can be appealed within 10 (ten) working days after the decision on the objection is received. Appeals are submitted in writing to the superior officers who make decisions. In the event that the appeal is granted, the Agency and/or Government Official shall stipulate a decision in accordance with the appeal request. Government Agencies and/or Officials resolve the appeal no later than 10 (ten) working days. In the event that the Agency and/or Government Officials do not complete the appeal within a predetermined period of time, the objection is deemed granted. Government Agencies and/or Officials are obliged to stipulate Decisions in accordance with the application no later than 5 (five) working days after the expiration of the predetermined grace period.

Based on the provisions of the aforementioned statutory regulations, in the case of the flow/path of a case at the administrative office, in relation to the existence of provisions regarding Administrative Efforts, the following can be concluded:

1. The flow of cases in Peratun after the publication of Perma No. 6 of 2018, namely:



- 1) First: take all available administrative measures (in the form of Objections and Appeals) first;
  - 2) Second: Only then filed a lawsuit at the State Administrative Court (PTUN) as the first level court.
  - 3) Third: If not satisfied with the PTUN decision, the Plaintiff can file an appeal to the High State Administrative Court (PT.TUN)
  - 4) Fourth: If not satisfied with the decision on appeal of PT.TUN, the Plaintiff can file an appeal to the Supreme Court.
2. If in the trial it is proven that the Plaintiff has not taken all available Administrative Efforts, but has already filed a lawsuit at the Administrative Court, then the lawsuit will be declared not accepted (*NO/Niet Onvankelijkewerklaar*).
  3. In the provisions of the statutory regulations which form the basis for the issuance of KTUN regulating administrative efforts, these provisions are used as rules in the settlement of administrative efforts.
  4. In the provisions of the statutory regulations which form the basis for the issuance of state administrative decisions, the Court uses the provisions stipulated in Law Number 30 of 2014 concerning Government Administration.
  5. The deadline for filing a lawsuit is calculated as 90 (ninety) days from the time the decision on administrative efforts is received by the community members or since it is announced by the government administrative body or official in charge of the settlement of administrative efforts.  
Furthermore, the third party who is not addressed by the decision resulting from the follow-up of administrative efforts, the grace period for filing a lawsuit to the Court, is calculated from the time the person concerned first became aware of a State Administration decision that was detrimental to his interests.
6. In the event that the Agency and/or Government Official does not resolve the objection within 10 (ten) working days, the objection is deemed granted. Objections that are deemed granted shall be followed up with a decision in accordance with the objection request by the Agency and/or Government Official. Government Agencies and/or Officials are obliged to stipulate a Decree in accordance with the application no later than 5 (five) working days after the 10-working day grace period ends.  
The Objection Applicant has the right to submit an application to the PTUN in order to obtain a decision from the agency or State Administration Officer. (The legal remedies taken by the Petitioner are called "Application", and submitted to the PTUN, the content of the petition is that the Court obliges the Respondent to determine a decision which is considered granted.) The question is whether this dispute can be categorized as a Fictitious-Positive dispute. Fictitious means that the State Administration Officer is silent and does not answer the objection request, while positive means that the objection request is considered granted (Universitas Indonesia-CSGAR, 2017).
  7. In the event that the Agency and/or Government Officials do not complete the Appeal within 10 (ten) working days, the objection is deemed granted. Objections that are

deemed granted shall be followed up with a decision in accordance with the application. Government Agencies and/or Officials are obliged to stipulate a Decree in accordance with the application no later than 5 (five) working days after the 10 working day grace period ends.

The appeal applicant has the right to submit an application to the PTUN in order to obtain a decision from the agency or State Administrative Official (The legal remedies taken by the Petitioner are called "Application", and submitted to the PTUN, the content of the petition is that the Court obliges the Respondent to make a decision in accordance with the petition which is deemed granted). The question is whether this dispute can be categorized as a Fictitious-Positive dispute. Fictitious means that the State Administration Officer is silent and does not answer the request for appeal, while positive means that the application is considered granted.

The main thing that becomes the focus of attention is if in an administrative effort, a Government Administration Agency or Officer is silent and does not respond to administrative objections and/or appeals, the legal problem is whether the problem will become an ordinary state administrative dispute or will it become a fictitious-positive decision dispute? (Universitas Indonesia- CSGAR, 2017)

It turns out that there are difficulties regarding the categorization of the two things, namely:

1. Cannot be categorized as an ordinary state administrative dispute, for the reasons, namely:
  - a. In accordance with the provisions of UU-AP, the object of the dispute is the "silence" of Government Administration Officials who are not willing to issue the decision requested by the applicant, then this should be a fictitious positive decision dispute.
  - b. The dispute is about legal opinion (legal fiction) which states that the petitioner's request for the respondent to issue a decision is considered legally granted. Because the object is intangible as a decision in the form of writing (real), it cannot be categorized as an ordinary dispute.
2. It cannot be categorized as a fictitious-positive decision dispute, for the reasons, namely:
  - a. Does not meet the criteria for fictitious-positive disputes as stipulated in Article 3 paragraph (2) letter c of the Supreme Court Regulation Number 8 of 2017 which stipulates: "An application for a decision that has never been determined by a government agency or official".  
In relation to administrative efforts, before the Petitioner submitted an administrative effort, the Respondent had already issued a decision (decision), in which the Petitioner had objections so that the Petitioner submitted an administrative effort. Therefore, based on this argument, the dispute cannot be categorized as a fictitious-positive decision dispute.
  - b. The dispute is not related to the provisions of Article 53 UU-AP, so it cannot be categorized as a fictitious-positive decision dispute.

- c. According to UU-AP provisions, there is no procedural law which indicates that the dispute is a fictitious-positive decision dispute.

### **Execution of Administrative Court Decisions in Fictitious-Positive Decisions**

The definition of execution of court decisions is the implementation of court decisions that have permanent legal force (*inkraht*). A verdict that has been inclined means that there is no room for ordinary legal remedies to take place, so that the verdict is truly ready to be executed (executed). The Law on State Administrative Courts provides that only court decisions that have permanent legal force (*inkraht*) can be implemented.

Regarding the execution of the PTUN Decision in the case of a Positive Fictitious Decision, this is closely related to the procedural procedure at the PTUN in the case of a Positive Fictional Decision, and is also related to the provisions of forced efforts if the Respondent/Defendant is not willing to carry out the obligations as contained in the orders/obligations contained in the *amar* the court's decision.

Prior to that, the provisions for proceeding at the PTUN will be presented in the case of a positive fictitious decision, as follows:

1. In the event that the Government Administration Agency or Officer is obliged to determine the decision requested by the community (the applicant), the Government Administration Agency or Officer is obliged to determine the requested decision, within the time limit in accordance with the provisions of the legislation.
2. If the provisions of the statutory regulations do not specify the time limit for the obligations as referred to above, the Agency and/or Government Officials are obliged to determine and/or make a Decision within 10 (ten) working days after the complete application is received by the Agency and/or Government Officials.
3. If within the time limit mentioned above, the Agency and/or Government Official does not make a decision, then the application is considered legally granted.
4. The applicant submits an application to the Court (PTUN) to obtain a decision on acceptance of the application.
5. The court is obliged to decide the application, not later than 21 (twenty-one) working days from the time the application is submitted.
6. Court decisions (PTUN) in cases of positive fictitious decisions are final and binding, no more legal remedies are available.
7. Government agencies and/or officials are obliged to make a decision to implement the Court's decision no later than 5 (five) working days after the Court's decision is stipulated.

Based on the provisions of the Law on State Administrative Courts, only court decisions that have been signed can be implemented (executed). Basically, and in accordance with the provisions, the implementation of Court decisions is carried out voluntarily by the Respondent/Defendant (Government Administration Agency or Officer). Problems will arise if within a grace period of 5 (five) working days from the stipulation of the Court's

decision, however, Government Administrative Bodies or Officials are not willing to carry out the obligations as ordered in the Court's decision, namely the obligation to issue the decision requested by the Petitioner. If this happens, then the provisions stipulated in the provisions of Article 116 of Law Number 51 of 2009 concerning State Administrative Courts will apply.

Execution of Court Decisions in cases of Fictitious Positive Decisions, are as follows:

1. The Respondent (Agency and/or Government Official) voluntarily carries out the obligation to stipulate/issue Decisions as ordered in the Court's decision, not later than 5 (five) working days after the Court's decision is stipulated.
2. The Respondent is not willing to implement the court decision, the following provisions shall apply:
  - a. Court decisions that have obtained permanent legal force, are uploaded to the electronic address of the Court according to the a-quo case register address, on the day the Court Decision is stipulated.
  - b. If within 5 (five) working days since the Court Decision is stipulated, the Respondent does not carry out the obligation to issue a Decision, then the applicant submits a request to the head of the court so that the court orders the Respondent to implement the court's decision.
  - c. In the event that the defendant is unwilling to carry out a court decision that has obtained permanent legal force, the official concerned is subject to forced attempts in the form of payment of an amount of forced money and/or administrative sanctions.
  - d. Officials who do not implement court decisions are announced in the local print media by the clerk of the court since the above provisions are not fulfilled.
  - e. In addition to being announced in the local printed mass media, the head of the court must submit this matter to the President as the holder of the highest government power to order the official to implement the court's decisions, and to the people's representative institutions to carry out the oversight function.
  - f. Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for implementing forced payments and/or administrative sanctions are regulated by statutory regulations.

One of the obstacles in the execution of court decisions in cases of Fictitious Positive Decisions is the absence of laws and regulations governing the application of administrative sanctions and forced money, this results in difficulties when forcing Government Administrative Bodies or Officials to carry out the obligation to issue decisions as court orders (Aschari and Harjiyatni, 2017; Harjiyatni, 2017).

## Conclusion

- a. Ordinary state administrative dispute is a state administrative dispute resulting from the issuance of a state administrative decision, the legal process of which is through an "Ordinary Procedure".

- b. A fictitious-positive decision dispute is a dispute that meets the criteria for the provisions of Article 53 UU-AP, namely the silence of the Government Administrative Officials is not willing to issue the decision requested, and the petition is not against the provisions issued by the Respondent, and the petition is not related to the interests. another person or civil legal entity.
- c. Silence is not willing to issue the decision requested in administrative efforts, if a dispute occurs, it cannot be categorized as an ordinary state administrative dispute or a fictitious-positive decision dispute.
- d. The Respondent (Agency and/or Government Official) voluntarily carries out the obligation to stipulate/issue Decisions as ordered in the Court's decision, no later than 5 (five) working days after the Court's decision is stipulated. In the event that the Respondent is not willing to implement the court's decision, the Respondent is subject to forced attempts in the form of administrative sanctions, imposition of forced money, and it will be reported in the mass media.

## Suggestion

The Supreme Court needs to provide clarity on the respondent's silence in administrative efforts, whether it will be categorized as an ordinary state administration dispute or as a fictitious-positive decision dispute.

## References

- Ahmad. (2017). Konsep Fiktif Positif: Penerapannya di Pengadilan Tata Usaha Negara. *Jurnal Hukum Replik*. 5(2). 141-156. <http://dx.doi.org/10.31000/jhr.v5i2.923.g587>.
- Aschari, M. and Harjiyatni, Fransisca Romana. (2017). Kajian tentang Kompetensi Absolut Peradilan Tata Usaha Negara dalam Menyelesaikan Sengketa Keputusan Fiktif Positif. *Jurnal Kajian Hukum*. 2(1). 25-57.
- Harjiyatni, Fransisca Romana. (2017). The Absolute Competence of the Jurisdiction of the Administrative Court in a Dispute Whose Object is a Fictive-Positive KTUN. *Mimbar Hukum*. 29(2). 376-389. <https://doi.org/10.22146/jmh.23284>.
- Indroharto. (1993). *Usaha Memahami Undang-undang tentang Peradilan Tata Usaha Negara: Buku 2: Beracara di Pengadilan Tata Usaha Negara*. Jakarta. Pustaka Sinar Harapan.
- Ridwan, HR. (2013). *Hukum Administarasi Negara*. Jakarta. Raja Grafindo Persada.
- Wiyono, R. (2013). *Hukum Acara Peradilan Tata Usaha Negara*. Jakarta. Sinar Grafika.
- Universitas Indonesia – Center for Study of Governance and Administrative Reform (UI-CSGAR). (20017) Annotation Book of Law Number 30 Concerning Government Administration. Jakarta. Universitas Indonesia Press.
- Supreme Court Regulation Number 8 of 2017 concerning Guidelines for Fictitious-Positive Case Procedures.
- Supreme Court Regulation Number 6 of 2018 Regarding Lawsuits After Taking Administrative Efforts.