

Perkara keputusan fiktif positif dan penerapan upaya hukumnya : studi kasus putusan nomor 175 pk/tun/2016 = The case of fictitious positive decisions and the application of remedies : case study decision number 175 pk/tun/2016

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Abstrak

Penelitian ini berangkat dari permasalahan Keputusan Tata Usaha Negara pasca berlaku Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan (UUAP). Adanya pergeseran paradigma fiktif negatif yang bermakna ditolak menjadi fiktif positif yang bermakna dikabulkan, menimbulkan akibat hukum. Keputusan fiktif positif seharusnya menjadi unsur pendukung tujuan UUAP yang menghendaki percepatan penyelenggaraan administrasi pemerintahan. Namun, dalam praktik terdapat Putusan No. 175 PK/TUN/2016 mengenai upaya hukum Peninjauan Kembali terhadap permohonan fiktif positif yang kemudian dijadikan yurisprudensi. Padahal, putusan permohonan fiktif positif bersifat final and binding. Kondisi demikian berpotensi menghambat tujuan UUAP dimaksud. Berdasarkan hasil penelitian normatif dengan pendekatan perundang-undangan, kasus dan konsepsional, ditemukan bahwa, akibat hukum yang ditimbulkan dari adanya pergeseran paradigma keputusan fiktif negatif menjadi fiktif positif adalah demi kepastian hukum, ketentuan fiktif negatif dalam Pasal 3 UU Peratun menjadi tidak berlaku. Adanya upaya hukum Peninjauan Kembali adalah sebagai sarana *corrective justice* terhadap kekhilafan hakim pada penerapan *judex factie* putusan permohonan fiktif positif di Peradilan Tata Usaha Negara (PTUN). Dalam penyelenggaraan pelayanan publik harus tetap memperhatikan pemenuhan persyaratan prosedur permohonan. Ketentuan fiktif positif bersifat sementara, jika *good governance* sudah tercapai dan dalam kondisi stabil, pengaturan fiktif positif akan ditiadakan dan diberlakukan kembali pengaturan fiktif negatif. Mahkamah Agung sebagai pemegang regulasi beracara di PTUN diharapkan terus responsif dalam mengimbangi perkembangan penerapan keputusan fiktif positif. Diperlukan kehati-hatian, kecermatan, dan pengetahuan hakim dalam penerapan *judex factie* pada pemeriksaan PTUN tingkat pertama.

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This research departs from the problems in an administrative decision after the enactment of Act No. 30 years 2014 on Government Administration (Government Administration Act). The existence of paradigm movement from fictitious negative which is meaning rejected into the fictitious positive meaning accepted, give rise to legal consequences. A fictitious positive decision purpose should be supporting elements of Government Administration Act which requires the acceleration of organizing government administration. However, in practice there is a Decision No. 175 PK/TUN/2016 regarding Judicial Review Remedies against a fictitious positive petition was then made of the jurisprudence. Whereas, the fictitious positive decision is final and binding. These conditions could potentially hinder the purpose of Government Administration Act that requires the presence of an acceleration in the conduct of the administrative service. Based on the results of normative research with regulatory, cases, and conceptional approaches, it was found that legal consequences arising from the existing paradigm of a fictitious negative decision to fictitious positive are the provisions in article 3 negative fictional in Administrative become not valid. An attempt of Law Review is as a means of *corrective justice* against the judge's mistakes for *judex factie* application of

the fictitious positive decision in administrative court. In organizing the public service must remain mindful of eligibility procedures. Fictitious positive provisions are temporary, if good governance had already been achieved and in stable condition, the fictitious positive regulation and enforced will pass back to fictitious negative. The Supreme Court as the holder of the regulation in Administrative court is expected to continue to be responsive in development of the fictitious positive application. Necessary prudence, accuracy, and the knowledge of judges in applying the *judex factie* on investigation Administrative court first level.