THE ANTINOMY OF FICTIVE STATE ADMINISTRATIVE DECISION IN INDONESIAN STATUTE

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Abstrak

Masalah utama dalam makalah ini adalah ketidakpastian hukum yang disebabkan oleh terjadinya antinomi pada Penerbitan Keputusan Administrasi Negara Fiktif oleh Pejabat Administrasi. Hasil analisis menunjukkan: Pertama, peraturan hukum tentang Keputusan Administratif Negara Fiktif oleh Pejabat Administrasi yang menyebabkan perbedaan paradigma dan posisi hukum antara Pasal 3 UU PTUN dengan Pasal 53 UU Administrasi harus terkait dengan jenis keputusan berdasarkan sifatnya. Kedua, implikasi hukum terkait dengan perbedaan dalam peraturan hukum memberikan celah bagi Pejabat Administrasi untuk memicu perlindungan hukum yang belum direalisasi kepada masyarakat. Perbedaan dalam peraturan hukum juga memanifestasikan ketidakpastian hukum dalam proses peradilan karena dapat menyebabkan kebingungan bagi hakim untuk menggunakan titik pengukuran dalam memutuskan sengketa administrasi negara.
Kata kunci: Pengadilan Tata Usaha Negara; Hukum Administrasi; Peraturan Hukum; Pokok; Deklaratif.

Abstract

The main issue in this paper is legal uncertainty caused by the occurrence of antinomy on the Issuance of Fictive State Administration Decision by Administrative Officials. The results of the analysis show: First, the legal regulation concerning the Fictive State Administrative Decision by Administrative Officials which causes differences in paradigms and legal positions between Article 3 of UU PTUN with Article 53 of the Administration Law should be related to the type of decision based on its nature. Second, the legal implication related to the differences in legal regulation provides a gap for Administrative Officials to trigger unrealized legal protection to society. The difference in legal regulation also manifests legal uncertainty in the judicial process because it can cause confusion for judges to use measurement points in deciding state administrative disputes.
Keywords: **State Administrative Court; Administration Law; Legal Regulation; Constitutive; Declarative**

PRELIMINARY

Understanding the state law adopted by the State of the Republic of Indonesia as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has given a consequence that every matter conducted by the state inexecuting its functions must be based on the law. The conception of the State law in this modern era has developed into the Law of Welfare State (*Rechtwelvaarstaat*). Law of Welfare State Theory, or commonly referred to as the State of Welfare Law, has become the foundation for position and function of the government (*bestuurfunctie*) in executing government activities in modern legal countries.[1]

If the government intends to perform its government functions, then the implementation of these functions must be guided by the provisions of the applicable statute, as one of the characteristics of the legal state according to Julius Stahl that is' *wetmatig van bestuur* (the government implementation based on law).[2] The implementation of these functions, directly or indirectly, will certainly affect citizens as the subject even object of law, one of the mechanisms that can be utilized by the state in this matter personified to government officials is through the Issuance of Decisions. The definition of decision itself according to the formulation of Article 1 number 3 of Law Number 5 Year 1986 on State Administrative Courts (hereinafter referred to UU PTUN), namely a decision which is a written stipulation issued by Agency or Official of State Administrative containing State Administrative Law measures based on applicable laws and regulations, which are concrete, individual, and final, which ultimately affect to legal consequences for a person or civil legal entity. Formulation of elements of Article 1 number 3 as follows:

a. Written stipulation;
b. Issued by State Administration agencies or officials;
c. Contains legal actions of the State Administration based on applicable laws and regulations;
d. Concrete, individual and final;
e. Causing legal consequences for a person or civil legal entity.

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[1] Nuryanto A. Daim, *Hukum Administrasi: Perbandingan Penyelesaian Maladministrasi oleh Ombudsman dan Pengadilan Tata Usaha Negara* (Surabaya : Laksbang Justitia, 2014), hal. 2.

[2] Zairin Harahap, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta : RajaGrafindoPersada, 2014), 7.

The formulation of Article 1 point 3 is then associated with the exceptions listed in Article 3. In the event that the absence of a written determination (first element) should be examined whether the possibility of fulfilling the provisions of Article 3 that:

> (1) If the agency or official of the State Administrative does not issue a decision, while it is an obligation, then it is equated with the State Administrative Decision
>
> (2) If a State Administrative entity or official does not issue a decision that is requested, while the period specified in the intended statute has passed, then the State Administration Agency or Official is deemed to have refused to issue the intended decision
>
> (3) In the event that the relevant statute does not determine the period as referred to in article (2), then after a period of four months from the acceptance of the application, the relevant agency or official of the State Administrative shall be deemed to issue a refusal.

If referring to the legal construction of Article 3 of UU PTUN, agency or official of the State Administrative that does not follow up on the request for issuance of a decision after the time to issue a decision has passed, then the request for the decision is deemed rejected. Thus, the fictive State Administrative Decision which contains the refusal has caused legal consequences and is final. However, this matter has encountered a conflict if it refers to the legal construction of Law Number 30 Year 2014 on Government Administration Law (hereinafter referred to as UU AP) which in Article 53 paragraph (3) states that "If within the time limit referred to in paragraph (2), the body and / or government officials do not stipulate and / or make decisions and / or actions, then the application is deemed to be legally granted." This causes an antinomy that causes legal uncertainty for fictive State Administrative Decision in Indonesian statute. Regarding antinomy in legal theory or the rule of law, W. Friedman explains that these contradictions occur as a result of the natural position of the law itself, which stands between philosophical reasoning, and the practical needs of politics - interests. The categories of Legal intellectual are built from a long and holistic philosophical reasoning, while the ideals of justice in law are constructed through a political mechanism that tends to be transactional.[3]

[3] Zainal Arifn Mochtar, 'Antinomi dalam Peraturan Perundang-undangan di Indonesia' (2015) Vol. 1 Hasanuddin Law Review, 321.

One of the principles of the concept of state law is legal certainty (*rechtszekerheid)*. J. Van. Kan stated that the purpose of the law is to safeguard the interests of every human being therefore their various interests cannot be disturbed.[4] More clearly the purpose of the law is to maintain legal certainty in a society, as well as maintain and prevent every individual in a society from becoming a judge himself.[5] In terms of the deciphering the principle of legal certainty, Yance Arizona considers that the principle of legal certainty must be interpreted normatively, which means that legal certainty must be built by elements, namely:

1. Logical, which means that these provisions must not conflict with higher provisions.
2. Clear, this means that there is no doubt in the provision.[6]

If the principle of legal certainty mentioned above is related to the fictive State Administrative Decision stated in UU AP and UU PTUN, then there is a doubt, namely the existence of antinomy towards legal norms related to fictive State Administrative Decision contained in both laws. Article 53 paragraph (3) of UU AP states that "if within the time limit as referred to in paragraph (2), the government body and / or officials do not determine and / or make decisions and / or actions, then the application is deemed to be legally granted."

Therefore, normatively this UU AP considers that in the event that the government issues a fictive State Administrative Decision, then the contents of the State Administrative Decision are lawful, which means that the government has issued a fictive State Administrative Decision, while according to UU PTUN in Article 3 paragraph (2) that "if a body or official of the State Administration does not issue a decision that is requested, while the period as specified in the statute in question has passed, then the State Administration agency or official is deemed to have refused to issue the intended decision." In UU PTUN's point of view, a fictive KTUN deemed to be issued by a State Administration Officer is a refusal, means that the government has issued a negative fictive KTUN.

If it is associated with the principle of legal certainty according to Yance Arizona, it means that there is no legal certainty from both law and statute regarding the absence of the government when a decision is being requested for

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[4] Ely Kusumastuti, ' Penetapan Tersangka Sebagai Obyek Praperadilan' (2018) Vol 33 Yuridika, 3.

[5] *Ibid.*

[6] Yance Arizona, 'Apa Itu Kepastian Hukum', See at<https://yancearizona.net/2008/04/13/apa-itu-kepastian-hukum/>accessed on 01st May 2019.

immediate decision which is then considered to have issued a KTUN, in this case a fictive KTUN. This is due to the emergence of doubts (unclear) caused by the same effect of both laws, namely the norms of the two laws overlapping and both are still equally valid hence there is no certainty, the norm which law substantively/supposedly to apply if the government is remain silent when a decision is being requested for immediate decision by the society.

Those mentioned cases above can be legal loopholes that can benefit certain groups in their implementation. From the illustration above, it actually describes the existence of a continuous antinomy. Indeed, every norm embodied in the form of statute, the material content in it is always unable to escape from an antinomy --- opposition.[7] Therefore, the author seeks to make a hypothesis that the two overlapping laws have projected an adage that states "*ubi ius incertum ibi ius nullum*" (where the law is uncertain, there is no law).

According to Philipus M. Hadjon, the presence of State Administrative Court through UU PTUN does not only protect individual rights but also protects people's rights. For this reason, in addition to protect individual rights, most of the contents of UU PTUN protect society's right. Articles that directly concern the protection of society rights are:

> Article 49:
> The court is not authorized to examine, decide and resolve certain state administrative disputes in the event that the disputed decision is issued:
> a. In time of war. Hazard conditions, natural disasters, or extraordinary dangerous conditions, based on applicable laws and statute;
> b. In urgent conditions for public interest based on applicable laws and statute.
>
> Article 55:
> Lawsuit can be submitted only within a period of ninety days from the date of receipt or announced by the Agency or Official of State Administrative.
>
> Article 67 paragraph (1):

[7] Zainal Arifn Mochtar, 'Antinomi dalam Peraturan Perundang-undangan di Indonesia', 319.

> Lawsuit does not delay or hinder the implementation of the decision of the Agency or Official of State Administrative as well as the actions of the Agency or Official of State Administration that is being sued.[8]

However, because of the antinomy between article 3 paragraph (2) of UU PTUN with article 53 paragraph (3) of UU AP, it does not provide protection for society's right or individual rights of citizens but provides space for State Administration Officers to issue or not a decision in accordance with the political interests of the oligarchic group of government officials and then claiming to use one of the mentioned laws above.

Based on the discussion and illustration above, this article will find out what is the paradigm and position of each law that causes differences in legal regulation regarding fictive KTUN issued by TUN Officials. This article will also analyze the legal implications of the differences in the position of the fictive KTUN based on UU PTUN and UU AP. Therefore, the answer and solution can be found later for the overlapping of norms or antinomies between UU PTUN and UU AP in the case of fictive KTUN issued by TUN Officials.

METHODOLOGY

This article utilizes a type of normative legal research, which according to Peter Mahmud Marzuki is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues encountered.[9] Furthermore, the results of a discussion and solving a legal problem studied are very dependent on the approach used by the researcher. In this article the author uses 2 (two) approaches. The first approach in this study is the statute approach. Statute approach is a legal research that places a statute approach as one the method. The statute approach is carried out by examining all laws and regulations that have relevance to the legal issues being addressed. In this case it is a matter of the position of the decision that is applied to the TUN Official.

The second approach is the conceptual approach conducted by looking for existing theories and doctrines to be used as a reference in order to understand views and doctrines in building a legal argument in solving the issues encountered.[10] The conceptual approach correlates existing concepts with legal

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[8] Philipus M Hadjon, *et.,al., Pengantar Hukum Administrasi Indonesia* (Yogyakarta : Gadjah Mada University Press, 2005), 314.

[9] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta : Pranada Media Group 2011), 35.

[10] *Ibid.*, 177.

issues between the relevance of decisions that are applied to TUN Officials which are regulated in UU PTUN with decisions that are being requested to Government Officials as regulated in UU AP.

Then this article will be elaborated by examining, explaining, describing, and providing a clear and concrete picture of the object discussed deductively to further analyze the legal issues that will be examined which are then linked to the laws and regulations and applicable legal provisions.

ANALYSIS AND RESULTS

A. The Paradigm of Each Law and the Legal Position of the Fictive KTUN

The construction of the understanding of state law adopted by Indonesia based on the concept of the Law of Welfare State has become the foundation of the position and function of the government (*bestuurfunctie*) in carrying out its governance.[11] Some state functions stated by legal experts including according to W. Friedmann namely, the state as provider, the state as entrepreneurs, the state as umpire, and also as regulators.[12]

W. Friedmann actually described some state functions not government functions, but because those who carried out government affairs are representations of the state, this could be identified with as government function. Government function as a regulator basically gives authority to the government to regulate the country. This function is not limited to law only but also on all juridical instruments based on statute to exercise government affairs. State Administrative Decisions are one example of a juridical instrument based on statute, therefore the issuance of a State Administrative Decision is one of the concrete manifestations of regulator function in administering government affairs.

In another interpretation regarding the issuance of State Administrative Decision it is stated that a decision or decree is a statement of intention caused by a letter of application submitted, or at least the desirability or requirement stated,[13] from the statement above it is concluded that related to the issuance of State

[11] Nuryanto A. Daim, *Loc.Cit.*

[12] Aminuddin Ilmar, *Hak Menguasai Negara : dalam privatisasi BUMN* (Jakarta : Kencana Prenada Media Group 2012), 13. Related to government function on regulation function, this matter is also regulated in Article 1 Number 2 Law Number 30 Year 2014 on Government Administration

[13] Aminuddin Ilmar, *Hukum Tata Pemerintahan* (Makassar : Identitas, 2013), 181.

Administrative Decision, the government occupies 2 (two) positions, which are active and passive. Definitely, the 2 (two) positions of the government above have their respective legal consequences which could be detrimental to one of the parties related to the implementation of the government function.

1. Paradigm of Decisions Requested According to Law Number 5 Year 1986 Problems of fictive KTUN are regulated in Article 3 of UU PTUN, namely:

    a. If Agency or Official of State Administration does not issue a decision, while it is an obligation, then it is likened to a State Administrative Decision.
    b. If Agency or Official State Administration does not issue a decision that is requested, while the period specified in the statute referred to has passed, then the Agency or Official of State Administrative is deemed to have rejected to issue the intended decision.
    c. In the event that the relevant statute does not determine the period referred to in paragraph (2), then after a period of four months from the receipt of the application, the Agency or Official of State Administrative concerned shall be deemed to have issued a refusal decision.

Normatively, according to UU PTUN, a fictive KTUN deemed to be issued by a TUN official which is indeed the authority of the TUN official concerned and the period determined by statute has passed and / or 4 (four) months, the TUN official is deemed has issued a refusal decision. Therefore,UU PTUN paradigm assumes that every fictive KTUN issued by TUN officials is considered a refusal decision.

2. Paradigm of Decisions Requested According to Law Number 30 Year 2014

The State Administrative Decision is one of the juridical instruments based on the Statute that can be utilized by the government in carrying out its regulatory functions. However, what is interesting is that the KTUN problem is not only regulated and discussed by a single law product, but also by 2 (two) laws, namely UU PTUN and UU AP. Specifically with regard to the fictive KTUN issued by the government in UU AP contained in Article 53 which states:

1) The deadline for the obligation to determine and / or constitute decisions and / or actions in accordance with the provisions of statute.
2) If the provisions of statute do not determine the deadline for obligations as referred to in paragraph (1), then the Agency and / or Official shall determine and / or constitute decisions and / or actions within a maximum of 10 (ten) working days after the complete application is received by the Agency and / or Official.
3) If within the time limit referred to in paragraph (2), the Agency and / or Government Officials do not determine and / or make decisions and / or actions, then the application is deemed to be legally granted.
4) The applicant submits an application to the court to obtain the decision to receive the application as referred to in paragraph (3).
5) The court is obliged to decide on the application as referred to in paragraph (4) no later than 21 (twenty one) working days after the application is submitted.
6) The Agency and / or Official shall determine the decision to implement the court decision as referred to in paragraph (5) no later than 5 (five) working days after the decision of the court is constituted.

Particularly according to Article 53 Paragraph (3) of UU AP that a fictive KTUN issued by the Agency and / or Government Officials and the time limit specified in the Statute has passed and / or 10 (ten) working days, then the fictive KTUN is deemed to be granted by law, then it is also explained the mechanism that must be carried out by the applicant for a decision, namely through a court mechanism to obtain a decision to accept the application. Therefore in general,UU AP paradigm, especially Article 53 Paragraph (3) states that every fictive KTUN issued by the government originating from requests made by the community is deemed to be legally granted by the mechanism stipulated in the statute.

3. Legal Position of Fictive KTUN

The position of a fictive KTUN issued by an authorized official (TUN official) in its arrangement (between UU PTUN and UU AP) has led to a conflict of norm or antinomy, hence the arrangement related to fictive KTUN has different legal consequence, allowing for the emergence of confusion when applied in the process of government implementation as well processes in court. UU PTUN considers that every fictive KTUN issued by the government is a fictive KTUN which contains temporary refusal of UU AP assumes that every fictive KTUN

issued by the government is a fictive KTUN which contains acceptance or is granted legally, but this article assumes that there can be problem solving through relevant interpretation to the decision arrangement requested to authorized official.

It is necessary to note that the main principle in regulative principle is closely interrelated, namely; proportionality and subsidiarity which in Germany both are called *Fundamentalnormen des Rechtsstaats.*[14] The proportionality principle requires a balance between method and objective.[15] In regulation related to fictive KTUN there are indeed conflicting norm, therefore the usage of relevant interpretation is needed. The purpose of the interpretation related to the fictive KTUN by UU PTUN and UU AP is to regulate the position of each view on a fictiveKTUN. This issuance is conducted to eliminate the tension between norms contained in Article 3 of UU PTUN and Article 53 Paragraph (3) of UU AP, one of the relevant ways to achieve this goal is the contextual separation of the views of each law regarding fictive KTUN.

Before describing the results of the analysis related to the paradigm differences between Article 3 of UU PTUN with Article 53 of UU AP, this article first describes the types of decisions based on their characteristics, namely:

1) Constitutive decision is a type of decision presenting or abolishing a legal relationship or a decision that occurs to a new right that was not previously owned by a person, or in relation to evidence, constitutive decision is an absolute proof. In other words, there is no legal relationship without constitutive decisions. One example of a constitutive decision is a Leave Decision Letterfor Civil Servants.
2) Declarative decision or declaratory is a type of decision that does not change existing rights and obligations, but merely state these rights and obligations or decisions that only recognize existing rights. In relation to evidence, declarative decision is not absolute evidence. The existence of legal relationship may still be proven by other evidence. One example of a declarative decision is birth certificate.[16]

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[14] Jan Remmelink, *Hukum Pidana: Komentar atas Pasal-pasal Terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan Padanannya dalam Kitab Undang-Undang Hukum Pidana Indonesia* (Jakarta : PT Gramedia Pustaka Utama, 2003), 46.

[15] *Ibid.*

[16] Ridwan HR, *Hukum Administrasi Negara* (Jakarta : RajaGrafindo Persada, 2014), 157-158.

The analysis result of this article lead to an interpretation that Article 3 ofUU PTUN on fictive KTUN is contextually more identical and relevant if it is associated with constitutive type decision.[17] This is because contextually the situation of the applicant before the application for the issuance of KTUN has not yet had rights and obligations, but if the government does not issue or refuse to issue a decision on the request, then there is a legal consequence for the applicant, namely the obligation not to conduct certain action that is requested. The government certainly has a basic consideration to not issue a decision, one of the government's considerations, for example, is the potential loss (disrupting stability) for the government (as an official / public servant) in administering its government affairs if it issues a decision on the request. Examples that can be raised in this article from the above propositions, for example, Building Construction Permit (hereinafter IMB) applications by citizens who are not in synchronization with the city spatial plan (hereinafter RTRK/RTRW), therefore government does not issue a Decision on the request for issuance of the IMB. This is deliberately conducted by the government in order to maintain the regional spatial plan and to avoid disruptionof the stability of upcoming city's development.

Meanwhile, Article 53 Paragraph (3) of UU AP is contextually more identical and relevant if it is associated with declarative decision type.[18] This is because Declarative Decision is only limited to clarify / declaring certain matter, without causing a legal consequence (right or obligation), therefore there will not be any possibility of loss for government if the government does not want to issue a declarative decision, except government's silence will result in the absence of legal certainty over the recognition of rights for society who request a decision.

Henceforth is the principle of subsidiarity. This principle requires that if one problem is facing difficulty to present with several alternative solutions (several solutions), then the solution must be chosen is the least that causes harm.[19] In the matter of issuing a fictive KTUN by TUN officials or the Government, indeed it often creates ambiguity in the process of administering government affairs due to differences or conflicts of norms in the Statute. Based on the problems above, the author considers that the contextual separation of the

[17] For more substantive matters this can be seen also at Philipus M Hadjon, *et.,al., Pengantar Hukum Administrasi Indonesia*, 144.

[18] For more substantive matters this can be seen also at Philipus M Hadjon, *et.,al., Pengantar Hukum Administrasi Indonesia*, 144.

[19] Jan Remmelink, *Loc.Cit.*

paradigm and the position of each law based on the type of decision is a solution that resolving the confusion caused by the conflict norms. The step will also reduce losses that arise primarily from problems regarding the tension of interpretation by jurisprudents in understanding the meaning of legal standing and the legal consequences in the issuance of fictive KTUN.

From the approach using the types of decisions based on the nature as previously described, a red thread can be drawn related to the paradigm of Article 3 of UU PTUN and Article 53 of UU AP that it should be related to the type of decision. If the decision is constitutive, then the decision must be situated under UU PTUN, therefore negative legal fiction applies to it. While if the decision is declarative, then the decision must be situated under UU AP, therefore positive legal fiction applies to it. This solution will certainly contribute to the meaning of legal fictive regulations in UU PTUN and UU AP to be rational. This is in line with the principle of *litis finiri oportet* which means that it does not allow protracted legal cases without end is rational.[20]

B. Legal Implications Against the Difference of Fictive KTUN Position

Legal implication is legal consequence that will occur based on a certain legal event. This contributes certain view that in legal implication there is elements of legal relationship between persons, legal event and legal consequence. In this regard, this article discusses the legal implication of the differences in position of decisions that are filed with TUN officials based on UU PTUN and UU AP.

In some literatures it is explained that the legal consequences are the result of an action taken to obtain an effect desired by the perpetrator and regulated by law. The actions taken are legal actions, namely actions taken to obtain matter due to the desired law.[21] More clearly in other literature that the legal consequences are all consequences that occur from all legal actions carried out by the legal subject to the object of law or other consequences caused by certain events by the law concerned that have been determined or considered as a legal consequence.[22]

Legal consequence is the source of right and obligation for legal subjects concerned. It is clear that the actions taken by the legal subject against the object

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[20] B. Arief Sidharta 'Negara Hukum Yang Berkeadilan' Kumpulan Pemikiran dalam Rangka Purna Bhakti Prof. Dr. Bagir Manan, *Asas Hukum, Kaidah Hukum, Sistem Hukum, dan Penemuan Hukum,* (Bandung : PSKN FH UNPAD, 2011), 15.

[21] R. Soeroso, *Pengantar Ilmu Hukum* (Jakarta : Sinar Grafika, 1993), 295.

[22] Pipin Syarifin, *Pengantar Ilmu Hukum* (Bandung : CV Pustaka Setia, 1999), 71.

of law can certainly trigger legal consequences. Legal consequence can be embodied:

1. The birth, change or disappearance of a legal situation.
2. The birth, change or disappearance of a legal relationship, between two or more legal subjects, where the rights and obligations of one party are faced with the rights and obligations of the other party.
3. The birth of sanctions if actions are taken against the law.
4. The legal consequences arising from the existence of emergency events by the relevant law have been recognized or considered as legal consequences, even though in reasonable circumstances these actions may be prohibited by law.[23]

Based on the results of the analysis of this article, the legal implication that can arise from the differences in the position of the fictive KTUN is considered to be issued by TUN officials whose arrangements are contained in 2 (two) Laws, namely UU PTUN and UU AP. First, the differences in the fictive KTUN regulation by UU PTUN which provide a legal umbrella that any of government silent action when it is requested for a decision is deemed to issue a refusal decision and UU AP which stipulates that any government silent action when it is requested for a decision is deemed to grant the request legally provides a gap for TUN Officials or the Government to use juridical instruments which are their authority, one of which is the issuance of decision for matters that benefit their personal interests or the interests of merely oligarch group, this certainly contribute an impact on the stability of government affairs. One of the legal consequences that have the potential to arise from the legal loophole is not providing legal protection for society or the parties requesting a decision, even though every law must provide legal protection to all citizens, including TUN officials or the Government and the public.

Second, relating to the court proceedings when a lawsuit arises by applicant or society who feels disadvantaged by the fictive KTUN, the parties in the judicial process will have the same legal umbrella in supporting their respective arguments, which will make the judge experience confusion in using the legal basis that they will use as a measurement point in deciding a lawsuit related to the actions of the TUN Official or the Government in granting or refusing a decision request. This results in not achieving legal certainty which is

[23] *Ibid.*, 72.

one of the objectives of the law, precisely projecting this adage that the author has mentioned in the previous discussion namely "*ubi ius incertum ibi ius nullum*".

If the government as the state power holder neglects antinomy's effect of the fictive KTUN problem that allows for some legal implications as stated, the state in this sense the government can be considered negligent in carrying out its functions, especially in providing legal services and protection for its citizens. The aforementioned situation if it is still ignored in the end has contradicted with principle of *litis finiri oportet* because it allows protracted legal issues / cases without settlement. In order to avoid contradiction to this principle, this article considers that the legal implications of the differences in the position of fictive KTUN which is regulated in UU PTUN and UU AP, should be related to the type of decision as described by the author previously. If the decision is constitutive, then the decision is relevant if utilizingUU PTUN as the legal basis of government action, therefore negative legal fiction applies to it. Whereas if the decision is declarative, then the decision is relevant if utilizing UU AP as the legal umbrella of the parties related to the request for a decision, therefore positive legal fiction applies to it. The step of separating the position of the decision that is requested based on the type of decision is a solutive step and the least to cause loss.

CONCLUSION

Antinomy between this Law (UU PTUN and UU AP) related to fictive KTUN regulation according to the results of author's analysis can be concluded that related to the paradigm and position of Article 3 of UU PTUN and Article 53 of UU AP, it should be related to the type of decision. If the decision is constitutive, then the decision must be situated under UU PTUN, therefore negative legal fiction applies to it. Whereas if the decision is declarative, then the decision must be situated under UU AP, therefore positive legal fiction applies to it. This solution will certainly make the meaning of legal fiction regulation in UU PTUN and UU AP become rational, thus it has been aligned with the principle of *litis finiri oportet* (not allowing protracted legal cases without settlement is rational).

Legal Implications of fictive KTUN Position Differences based on UU PTUN and UU AP as explained in the previous discussion, namely: First, the differences in the fictive KTUN regulation actually provide a gap for TUN Officials or the Government to utilize juridical instruments under their authority in which one of themis the issuance of matters that benefit his personal interests or the interests of merely oligarch group, this certainly contribute an impact on the stability of the administration of government affairs. The consequences of the

legal loopholes certainly do not provide legal protection for society or the parties requesting the decision, even though every law should provide legal protection to all citizens, including TUN Officials or the Government and public. Second, relating to the court proceedings when a lawsuit arises by the applicant or society who feels disadvantaged by the fictive KTUN, the parties in the judicial process will have the same legal umbrella in supporting their respective arguments, which will make the judge experience confusion in using the legal basis that they will use as a measurement point in deciding a lawsuit related to the actions of TUN Officials or the Government in granting or refusing a request for a decision, this which then provides legal uncertainty in the judicial process.

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