JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
DOI: https://doi.org/10.38035/jlph.v6i1

Administrative Accountability in Positive Fictitious State Administrative Decisions and the Protection of Applicants' Rights in Environmental Licensing

Salma Laitupa[1], Eka Dewi Kartika[2*], Mar'atun Fitriah[3], Nurul Shalihat Ansar[4]
[1]West Sulawesi University, Majene, Indonesia, salmalaitupa@unsulbar.ac.id
[2]West Sulawesi University, Majene, Indonesia, ekadewikartika@unsulbar.ac.id
[3]West Sulawesi University, Majene, Indonesia, maratunfitriah@unsulbar.ac.id
[4]West Sulawesi University, Majene, Indonesia, nurul.shalihat@unsulbar.ac.id

[*]Corresponding Author: ekadewikartika@unsulbar.ac.id[2]

Abstract: Indonesia's administrative law system continues to pursue the establishment of an effective, transparent, and accountable governance framework. One of the key issues that has emerged is the application of the Positive Fictitious Administrative Decision (KTUN Fiktif Positif) as regulated in Article 53 paragraph (1) of Law Number 30 of 2014 concerning Government Administration. In the context of environmental licensing, this concept presents new challenges, particularly regarding the accountability of administrative officials for decisions that are deemed legally valid due to inaction or negligence. This research aims to analyze the forms of accountability of administrative officials within the framework of the Positive Fictitious Administrative Decision and to examine the available legal mechanisms to protect applicants' rights and ensure the effective execution of such decisions. This study employs a normative legal research method with statutory and conceptual approaches. The findings indicate that administrative officials remain liable both administratively and civilly for the issuance of fictitious positive decisions, even when those decisions are legally recognized. Moreover, oversight by the Ombudsman and administrative litigation through the Administrative Court serve as essential instruments to uphold accountability and legal protection for the public. Therefore, judicial reasoning reform and the consistent application of the precautionary principle are necessary to ensure that the acceleration of public services does not compromise environmental protection.

Keyword: Positive Fictitious Administrative Decision, Administrative Accountability, Environmental Licensing, Legal Protection, Governmental Accountability.

INTRODUCTION

Indonesia's administrative law system continues to strive toward establishing effective, transparent, and accountable governance. One of the most significant challenges faced in this regard concerns the decision-making process of administrative officials, particularly in the context of permit applications. In many cases, public applications are not

responded to decisively neither through approval nor rejection. Such passive or silent conduct by government officials can disadvantage citizens and create legal uncertainty. Law Number 30 of 2014 concerning Government Administration introduces the concept of the Positive Fictitious Administrative Decision. This concept is explicitly regulated in Article 53 paragraph (1), which stipulates that "In the event that a government body and/or official fails to issue a decision and/or take action within the time specified by the laws and regulations, the application shall be deemed legally granted." This principle provides legal certainty for applicants and compels administrative officials to act proactively (Yuniza & Inggarwati, 2021)

The concept of the Positive Fictitious Administrative Decision holds particular relevance in the realm of environmental licensing. The process of obtaining environmental permits often involves multiple complex stages and can take a considerable amount of time. For example, an Environmental Permit (Izin Lingkungan) is a prerequisite for activities or businesses that may have significant environmental impacts, as stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management. Delays or failures by officials to respond to such applications can hinder investment, disadvantage business actors, and, more importantly, create legal vulnerability. The emergence of KTUN Fiktif Positif in environmental licensing, however, introduces new legal challenges. If an application for a permit is deemed legally granted by virtue of this provision, questions arise regarding accountability specifically, who bears responsibility if the granted permit subsequently causes negative environmental impacts. Can the negligent official be held accountable, either administratively or civilly? Furthermore, what legal mechanisms are available to ensure that the applicant's rights are genuinely protected and that the KTUN Fiktif Positif can be effectively executed without undermining environmental safeguards? (Simanjuntak, 2017)

This study seeks to examine in depth the accountability of administrative officials in the implementation of the Positive Fictitious Administrative Decision (KTUN Fiktif Positif), with a particular focus on environmental licensing. The purpose of this research is to analyze how Indonesia's administrative legal system provides legal protection for applicants while upholding the principles of good governance and environmental sustainability. Law Number 30 of 2014 concerning Government Administration introduces the concept of the Positive Fictitious Administrative Decision (KTUN Fiktif Positif). This concept is explicitly regulated in Article 53 paragraph (1), which states that "In the event that a government body and/or official fails to issue a decision and/or take action within the period stipulated by law, the application shall be deemed legally granted." This provision ensures legal certainty for applicants and compels administrative officials to act proactively. The concept of KTUN Fiktif Positif holds significant relevance in the field of environmental licensing. The process of obtaining environmental permits often involves multiple complex stages and can be time-consuming. For instance, an Environmental Permit (Izin Lingkungan) is a prerequisite for any activity or business that may have a significant environmental impact, as stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management. Delays or inaction by officials in issuing such permits can hinder investment, disadvantage business actors, and, more importantly, create legal uncertainty.

The emergence of KTUN Fiktif Positif in environmental licensing introduces new legal questions. When a permit application is deemed legally granted due to administrative silence, who bears responsibility if the granted permit subsequently results in adverse environmental impacts? Can negligent officials be held accountable, either administratively or civilly? Furthermore, what legal mechanisms exist to ensure that the applicant's rights are genuinely protected and that the KTUN Fiktif Positif can be effectively executed without undermining environmental protection?

This study aims to comprehensively explore the accountability of administrative officials under the KTUN Fiktif Positif framework, particularly within the context of environmental licensing. It also seeks to analyze how Indonesia's administrative legal system can balance applicant protection with the preservation of good governance principles and environmental safeguards. Based on this background, the research focuses on two main problems: First, it examines the forms of accountability of administrative officials in the context of KTUN Fiktif Positif arising from environmental permit applications. Second, it explores the legal mechanisms that can provide protection and guarantees for environmental permit applicants to ensure that KTUN Fiktif Positif decisions can be implemented effectively.

METHOD

This study employs a normative legal research method that focuses on the examination of statutory regulations and prevailing legal doctrines to address the research problems that have been formulated. The approaches used include the statutory approach and the conceptual approach, which are applied to assess the conformity of existing norms with the underlying legal principles, concepts, and doctrines. The primary legal materials used in this research consist of several relevant laws and regulations, including: Law Number 30 of 2014 on Government Administration; Law Number 11 of 2020 in conjunction with Law Number 6 of 2023 on Job Creation; Law Number 32 of 2009 on Environmental Protection and Management; and other related regulations. The secondary legal materials comprise relevant scholarly journal articles and other academic references. Data collection was carried out through library research, involving the identification, reading, and analysis of various legal materials. All data were analyzed qualitatively using a deductive method. The analysis was directed toward two main objectives: First, to identify and formulate the forms of accountability of administrative officials for the issuance of Positive Fictitious Administrative Decisions (KTUN Fiktif Positif) in environmental licensing; and second, to map and evaluate the existing legal mechanisms designed to provide protection for affected parties and to ensure the effective execution of KTUN Fiktif Positif decisions.

RESULTS AND DISCUSSION

Accountability of Administrative Officials in the Context of the Positive Fictitious Administrative Decision Arising from Environmental Licensing Applications

In Indonesia's administrative law, the concept of the Positive Fictitious Administrative Decision (KTUN Fiktif Positif), as regulated in Article 53 paragraph (1) of Law Number 30 of 2014 concerning Government Administration (UUAP), emerged as a response to the long-standing bureaucratic problem of sluggishness and passivity among government officials in responding to public applications. Bureaucratic inertia not only generates public frustration but also creates legal uncertainty. The UUAP transformed the previous paradigm, which interpreted official silence as a rejection (fiktif negatif), into one that treats it as legal approval (fiktif positif) when the statutory time limit for issuing a decision expires without action. This shift was designed to promote bureaucratic responsiveness and provide legal certainty for permit applicants (Simanjuntak,2017)

When the fiktif positif principle is applied, there is a significant risk that environmental permits may be automatically granted without adequate evaluation. For instance, if an environmental agency official fails—whether intentionally or due to delay—to issue a decision within the prescribed time limit, the application would be deemed legally approved under the fiktif positif provision. Consequently, projects with potentially high environmental risks could receive approval by default, even if their environmental impact documents (AMDAL) are flawed. From a bureaucratic perspective, this achieves the goal of service

certainty and prevents applicants from being disadvantaged by administrative delays. However, from an environmental standpoint, it poses a serious danger because high-risk projects could obtain authorization automatically without thorough environmental assessment.

The enactment of the Job Creation Law (UUCK) further complicates this situation through two major changes. First, it replaces the term environmental license with environmental approval and second, it accelerates the mechanism for fiktif positif implementation. The first change signifies a paradigm shift in which environmental approval is no longer a standalone permit but becomes an integral component of the integrated risk-based licensing system. This transformation is affirmed in Articles 21 and 22 of Law Number 11 of 2020 on Job Creation, which was subsequently ratified by Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 and Law Number 6 of 2023. These provisions repeal the previous requirement in Law Number 32 of 2009 (PPLH) that mandated the issuance of an environmental license as a prerequisite for obtaining a business license (Amri F, 2024).

As a consequence, the environmental permit no longer functions as an independent instrument but has been merged into the environmental approval scheme, which now serves merely as one of the administrative components in the issuance of a business license. This transformation diminishes the role of environmental permits as a substantive gatekeeper for business activities, since the environmental feasibility assessment process is no longer conducted ex ante (requirements fulfilled prior to approval) but has been shifted to an ex post verification system (compliance review conducted after the business license is granted) (Yudiantoro et al., 2023). Furthermore, this new paradigm positions environmental approval not as an autonomous administrative decision (vergunning) but as an integral part of the business licensing process. Consequently, the status of environmental approval as an object of administrative dispute (TUN dispute) becomes blurred. This ambiguity is reinforced by the repeal of Article 38 of the Environmental Protection and Management Law (PPLH Law) through the enactment of the Job Creation Law, despite the fact that the former provision had granted citizens and environmental NGOs the right to challenge environmental permits before the Administrative Court (PTUN). Undeniably, this policy shift has streamlined bureaucracy and reduced procedural duplication, thereby expediting the investment process. However, from the perspective of environmental administrative law, such changes effectively weaken the layers of environmental control and oversight mechanisms.

The second major change concerns the fiktif positif principle itself. The Job Creation Law accelerates this mechanism by establishing a very short deadline only five working days for administrative officials to process applications once the requirements are declared complete. If the official fails to issue a decision within that five-day period, the application is automatically deemed approved without requiring a confirmation petition to the Administrative Court (PTUN) (Tekayadi et al., 2024). The implications of this regulation place a heavy burden of responsibility on administrative officials. The shorter time limit increases the risk that officials may be unable to conduct a thorough evaluation or to uphold the principle of prudence, particularly in complex cases involving high environmental risks. This condition potentially generates accountability problems if a permit that is “issued” fictitiously results in negative environmental consequences in the future.

Although the fiktif positif mechanism under the Job Creation Law (UUCK) has narrowed the scope of judicial review, administrative officials may still be held accountable both administratively and civilly. From the administrative perspective, an administrative official can be held responsible if their negligence results in the automatic issuance of a decision (fiktif positif). The primary legal basis for such accountability lies in the prohibition against abuse of authority, as stipulated in Article 17 of the Government Administration Law (UUAP), which states:

1. Government bodies and/or officials are prohibited from abusing their authority.
2. The prohibition on abuse of authority as referred to in paragraph (1) includes:
   a. prohibition against exceeding authority;
   b. prohibition against mixing authorities; and/or
   c. prohibition against acting arbitrarily.

In essence, this article regulates that government bodies or officials are prohibited from abusing their authority, including by acting arbitrarily. The neglect of substantive obligations resulting in the issuance of an automatic decision may be classified as an abuse of authority through negligence, thereby forming a legal basis for corrective administrative action. Explain that post job creation law reforms which shortened the fiktif positif deadline and altered judicial access have weakened judicial avenues, thereby making internal administrative mechanisms more central to enforcing official accountability Yuniza and Inggarwati (2021). further argues that the assessment of administrative negligence must always refer to the general principles of good governance, particularly the precautionary principle and the principle of accountability, such that official inaction which disregards substantive risk assessment may be categorized as maladministration (Latifah, 2016).

Forms of administrative accountability that can be applied include internal government supervision through the Government Internal Supervisory Apparatus (APIP), the imposition of tiered administrative sanctions (ranging from warnings and demotions to dismissal), and complaints to the Ombudsman, which is authorized to assess acts of maladministration. The Indonesian Ombudsman holds the authority to evaluate cases of maladministration as stipulated in Article 1 point 3 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, which defines maladministration as "behavior or acts that are unlawful, constitute an abuse of authority, negligence, or omission of legal obligations in the delivery of public services." Article 8 paragraph (1) further grants the Ombudsman the authority to receive reports, conduct substantive investigations, and issue recommendations to relevant agencies. Such recommendations may include procedural improvements in public service delivery, compensation for aggrieved citizens, or disciplinary measures against officials through their superiors. Although the Ombudsman cannot directly impose executive sanctions, Article 38 of the Ombudsman Law mandates that institutions must follow up on Ombudsman recommendations within 60 days. Failure to comply allows the Ombudsman to publicly announce the agency's non-compliance as a form of moral sanction (naming and shaming).

From a legal-principle perspective, the authority of the Ombudsman is grounded in the General Principles of Good Governance (AUPB), particularly the principles of accountability, proportionality, and justice, as formulated in Article 10 paragraph (1) of the Government Administration Law (UUAP). This provision mandates that every governmental decision or action must adhere to the AUPB as the standard of legality and administrative propriety. Accordingly, the Ombudsman serves as a non-judicial corrective mechanism that safeguards the public's right to fair and maladministration-free public services, while also functioning as an external supervisory institution over service providers. In practice, research shows that the Ombudsman acts as a watchdog of accountability investigating alleged maladministration, issuing recommendations for corrective measures, and promoting institutional compliance through normative and governance-based pressure (Setiawan, 2020). Academic findings further confirm that the Ombudsman's recommendations possess tangible moral and political influence in improving public service practices. Moreover, amid the limited judicial access to certain administrative objects, the Ombudsman's mechanism serves as a significant corrective instrument to bridge accountability gaps (Nurdin, 2021).

In the civil law domain, the doctrine of unlawful acts by the government (onrechtmatige overheidsdaad, OOD) provides a legal framework for holding the state or

officials liable when their actions or omissions cause harm. The legal basis for this doctrine is found in Articles 1365 and 1366 of the Indonesian Civil Code (KUHPerdata). Article 1365 stipulates that: "Every unlawful act that causes damage to another person obliges the person who, due to his fault, caused the damage to compensate for it." Meanwhile, Article 1366 provides that: "Every person is responsible not only for the damage caused by his acts but also for the damage caused by his negligence or imprudence." Based on these provisions, Article 1365 emphasizes active wrongdoing (commission), while Article 1366 focuses on omissions negligence or failure to act when there is a duty to do so (Wardhani, 2020). Within the framework of unlawful acts, the element of "action") thus includes omission, while the "unlawful" nature encompasses not only violations of written law but also breaches of the general principles of good governance, such as accountability and due care (Barokah & Erliyana, 2021).

This legal construction gives rise to two forms of compensation. First, financial compensation (material damages) covering loss of income, medical expenses, property damage, prevention or mitigation costs, and initial recovery expenses. Second, non-financial compensation (immaterial damages) for suffering, loss of security or comfort, and socio-cultural harm to affected communities. In environmental cases, this configuration is reinforced by Article 87 paragraph (1) of the Environmental Protection and Management Law (UUPPLH), which requires perpetrators of environmental torts to "pay compensation and/or undertake specific measures." The phrase "specific measures" explicitly allows for remedial actions aimed at restoration. Furthermore, Article 54 specifies the forms of environmental restoration, including cessation of pollution sources, removal of pollutants, remediation, rehabilitation, restoration, and other technical measures consistent with advances in science and technology. Therefore, in environmental disputes, plaintiffs are entitled to claim both material and immaterial damages, while also seeking judicial orders compelling the defendant to restore environmental quality. This dual remedy compensation combined with restoration has been recognized in judicial practice and is considered an effective means of achieving substantive environmental recovery (Aminah, 2019).

In addition, within the civil law framework, the doctrine of vicarious liability allows liability to be imputed to a government agency for the acts of its officials pursuant to Article 1367 of the Indonesian Civil Code (KUHPerdata). This applies under the condition that a genuine employment relationship exists, the wrongful act was committed in the course of official duties, and the act bears a functional connection to the delegated tasks. This doctrinal conclusion establishes that such liability is derivative and fault-based, rather than strict, and serves to distribute risk to the party exercising control over the work (Dita, 2023). Placed in the context of environmental licensing, if a technical official negligently assesses the feasibility of an Environmental Impact Assessment (AMDAL) or allows an automatic approval to proceed despite clear indicators of environmental risk, the agency may be held vicariously liable for the resulting harm provided that the elements of employment relationship, scope of duties, and negligence are proven. This liability exists alongside the potential personal liability of the individual official involved (Dita, 2023).

From a governance design perspective, the two axes of accountability administrative and civil function complementarily. Ombudsman oversight provides a non-judicial corrective channel for public service failures, while civil litigation serves as a remedial pathway when actual harm has occurred. Collectively, these mechanisms rest on the conception of public office as a fiduciary duty, requiring prudence and accountability in accordance with the General Principles of Good Governance (AUPB). Therefore, there can be no "vacuum of responsibility" merely because an administrative decision arises automatically (Nurdin, 2021). Within this legal construction, administrative officials (Pejabat TUN) continue to bear full official responsibility for fiktif positif decisions as part of their institutional duties, and in

certain circumstances, personal responsibility, consistent with the principle of geen bevoegdheid zonder verantwoordelijkheid no authority without responsibility which links every administrative power to the obligation to account for its consequences (Barokah & Erliyana, 2021). Although the Job Creation Law (UU Cipta Kerja) has altered numerous regulatory provisions, the essence of accountability remains unchanged. The ultimate aim of the fiktif positif mechanism is to enforce timeliness without sacrificing legality and substantive accountability in administrative decision-making (Tekayadi et al., 2024).

Specifically in environmental law, decisions that "arise from silence" cannot be treated as absolute. Environmental licensing involving ecological impacts must adhere to the precautionary principle (Article 2 letter f of Law No. 32 of 2009) and the constitutional right to a good and healthy environment (Article 28H paragraph (1) of the 1945 Constitution). The state, including administrative officials, bears the duty to respect, protect, and fulfill this constitutional right. Therefore, allowing an automatic approval to be issued in the face of evident environmental risk constitutes a violation of both the AUPB and environmental rights. Accordingly, both administrative mechanisms (disciplinary measures, corrective decisions, and Ombudsman follow-ups) and civil mechanisms (compensation and restoration actions) must be activated simultaneously to ensure that expedited public service operates in harmony with environmental protection.

Available Legal Mechanisms to Provide Protection and Guarantees for Environmental Permit Applicants to Ensure the Effective Execution of Positive Fictitious Administrative Decisions

Under the current legal framework, the Job Creation Law (UUCK) provides legal protection for permit applicants through the implementation of the Positive Fictitious Administrative Decision (KTUN Fiktif Positif) mechanism. Through this mechanism, an administrative decision is deemed to have been legally issued if the competent official fails to issue a decision within the prescribed time limit. The amendments introduced by the Job Creation Law accelerate the decision-making timeframe from a maximum of 10 working days, as previously stipulated in the Government Administration Law (UUPA), to 5 working days. On one hand, this change offers benefits in the form of faster public services and greater administrative convenience for citizens in processing permit applications. However, on the other hand, such acceleration may also lead to adverse consequences (Irvansyah, 2022). The shortened timeframe carries the potential risk that submitted applications may not be carefully examined or may not be reviewed at all by the competent authorities. Such circumstances may result in substantive defects within the automatically granted decisions (Naleng et al., 2025).

Following the enactment of the Job Creation Law, a conceptual shift has occurred regarding the fiktif positif application mechanism. Previously, applicants could directly file a petition with the Administrative Court (PTUN). However, under the new regime, the available legal remedy is a factual lawsuit. This type of lawsuit may be filed when a government body and/or official is suspected of violating the General Principles of Good Governance (AUPB). Referring to Article 9 paragraph (1) of the Government Administration Law (UUAP), every administrative decision or action must be based on statutory provisions as well as the AUPB principles. These principles include legal certainty, expediency, impartiality, accuracy, prohibition of abuse of power, transparency, public interest, and the delivery of good public services (Zahro & Basri, 2023).

The abolition of judicial authority to review applications deemed legally granted, coupled with the absence of an independent oversight institution to monitor and guarantee the execution of such decisions, creates the potential for injustice and abuse of power by the government. This situation undermines both legal protection and the principle of legal

certainty, which are fundamental to administrative governance as mandated by Law Number 30 of 2014 on Government Administration. Moreover, the reduction of judicial authority weakens the balance among the branches of government, reinforcing the dominance of the executive within administrative governance. In turn, this structural imbalance opens space for authoritarian tendencies in the practice of public administration (Naleng et al., 2025).

This condition ultimately disadvantages citizens who seek legal certainty regarding the requested Administrative Decision (KTUN). Consequently, the available legal remedy is through litigation in the form of a government action dispute. Such disputes are regulated under Supreme Court Regulation (PERMA) Number 2 of 2019 concerning Guidelines for the Settlement of Government Action Disputes and the Jurisdiction to Adjudicate Unlawful Acts by Government Bodies/Officials (hereinafter referred to as PERMA 2/2019). According to Article 2 of PERMA 2/2019, the Administrative Court (PTUN) has the authority to adjudicate disputes arising from government actions, provided that administrative remedies have first been exhausted. A government action dispute is defined as an administrative dispute between citizens and government administrators that arises from an act or omission involving a concrete governmental action in the implementation of public administration (see Article 1 point 1 in conjunction with Article 1 point 3 of PERMA 2/2019). Furthermore, pursuant to Article 5 paragraph (2) of PERMA 2/2019, an Administrative Decision (KTUN) is categorized as a concrete, individual, and final government action, consistent with Article 1 point 3 of the Government Administration Law (UU Administrasi Pemerintahan). Therefore, the neglect or inaction of an administrative official in responding to a KTUN application can be classified as a government action dispute, which may ultimately be challenged before the Administrative Court (PTUN) (Abrianto et al., 2023).

Moreover, if citizens feel disadvantaged or dissatisfied with the implementation of the Positive Fictitious Decision concept within the framework of administrative actions, an alternative non-litigation mechanism is also available. This mechanism allows the submission of a complaint to the Ombudsman of the Republic of Indonesia, the institution authorized to supervise the implementation of public services. The Ombudsman's supervision represents a form of independent external oversight aimed at ensuring the accountability, transparency, and responsiveness of government institutions in delivering public services.

In the context of the Positive Fictitious Decision following the enactment of the Job Creation Law (UUCK), the Ombudsman plays a crucial role in monitoring the passive conduct of government bodies and/or officials. This function is carried out through the reception and investigation of reports of alleged maladministration in public service delivery. Pursuant to Article 7 of Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia, the Ombudsman is authorized to receive public complaints regarding alleged maladministration. In carrying out its investigative function, the Ombudsman must adhere to the principles of independence, non-discrimination, impartiality, and free of charge. Moreover, the Ombudsman is obliged to hear and consider the statements of all parties and to facilitate accessibility for complainants (Rini & Putri, 2024).

Efforts to simplify licensing processes and procedures are further emphasized in Article 19 paragraph (1) of Government Regulation Number 24 of 2018, which explicitly stipulates that the authority to issue Business Licenses as referred to in Article 18, including other related documents, must be exercised through the Online Single Submission (OSS) institution. The establishment of the OSS system aims to enhance the effectiveness and efficiency for business actors in obtaining licenses by providing access to an integrated online service platform. Moreover, OSS represents a significant step in the implementation of electronic government (e-government) designed to improve the quality of public services in the field of business licensing (Noor et al., 2023).

Previously, the licensing mechanism under the traditional permit-based system required every business actor to obtain multiple forms of authorization, regardless of the level of risk associated with their business activities. This often resulted in lengthy and complex bureaucratic procedures that potentially opened avenues for corrupt practices. Through the implementation of a risk-based approach within the OSS system, the principle of proportionality is applied—where the type of licensing and level of supervision are adjusted according to the risk category of the business activity. This system classifies businesses into four categories:

1. Low-risk activities, which only require a Business Identification Number (Nomor Induk Berusaha – NIB) serving also as a declaration of compliance with business standards;
2. Medium-low-risk activities, which require an NIB and a Standard Certificate obtained through a self-declaration mechanism;
3. Medium-high-risk activities, which require an NIB and a Standard Certificate subject to government verification; and
4. High-risk activities, which require an NIB and a specific license, including in-depth assessments such as the Environmental Impact Analysis (AMDAL) for activities with significant environmental implications.

The risk-based approach reflects the application of the precautionary principle, which seeks to maintain a balance between ease of doing business and the protection of public interests, encompassing safety, health, environmental sustainability, and national security (Sari & Rahayu, 2025).

CONCLUSION

Following the enactment of the Job Creation Law (Omnibus Law), the acceleration of public services and automation through the Online Single Submission (OSS) system has, in practice, increased the risk of diminished checks and balances and the emergence of positive fictitious decisions (fiktif positif) without adequate substantive environmental review. This situation constitutes an initial test of administrative accountability. In this context, administrative officials continue to bear responsibility on two fronts. First, administrative liability, which includes corrective measures and disciplinary sanctions imposed by superiors or internal government supervisors (APIP), as well as external oversight by the Ombudsman in cases of maladministration (inaction or negligence). This responsibility extends to the obligation to review and, if necessary, revoke defective decisions. Second, civil liability, which arises through tort actions (onrechtmatige overheidsdaad) for damages and/or environmental restoration when negligence causes harm. All these mechanisms rest upon the General Principles of Good Governance (AUPB), the precautionary principle, and the notion of public office as a fiduciary trust embodied in the maxim geen bevoegdheid zonder verantwoordelijkheid (“no authority without responsibility”). Therefore, a decision by silence can never eliminate official accountability; rather, it demands concrete corrective actions to ensure that administrative efficiency does not come at the expense of environmental protection.

The foregoing analysis demonstrates that, following the implementation of the Job Creation Law, the mechanism of positive fictitious decisions in licensing has undergone a profound transformation. On one hand, the acceleration of decision deadlines, procedural simplification through OSS, and the adoption of a risk-based approach have facilitated efficiency and ease for applicants and business actors. On the other hand, these reforms have also created new challenges such as the risk of maladministration, the weakening of legal protection due to reduced judicial oversight, and the increasing dominance of the executive branch, which may disturb the balance of power. In this context, the Administrative Court (PTUN), through government action lawsuits, together with the supervisory function of the

Ombudsman of the Republic of Indonesia, serve as crucial instruments to uphold accountability, transparency, and the protection of citizens' rights in the implementation of administrative governance.

REFERENCE

Abrianto, B. O., Nugraha, X., Hartono, J., & Kosuma, I. P. (2023). Problematika Keputusan Tata Usaha Negara yang Bersifat Fiktif Positif Setelah Undang-Undang Nomor 11 tahun 2020. Arena Hukum, 16(3), 549 https://doi.org/10.21776/ub.arenahukum.2023.01603.5

Aminah, A. (2019). GUGATAN PERDATA BIDANG LINGKUNGAN HIDUP DAN KEHUTANAN DI INDONESIA. Jurnal Hukum Progresif, 7(2), 142-152. https://doi.org/10.14710/hp.7.2.142-152

Amri, F. H. A. (2024). Izin Lingkungan dalam Kegiatan Usaha Pasca Penetapan Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. Bina Hukum Lingkungan, 6(3), 438–452. https://www.bhl-jurnal.or.id/index.php/bhl/article/view/226

Ayu Dita, S., & Winanti, A. (2023). Analisis Asas Vicarious Liability dalam Pertanggungjawaban Pengganti atas Perbuatan Melawan Hukum Pegawai Bank. JURNAL USM LAW REVIEW, 6(2), 526-542. https://doi.org/10.26623/julr.v6i2.7037

Barokah, M. R., & Erliyana, A. (2021). Pergeseran kompetensi absolut dari peradilan umum ke peradilan TUN: Gugatan onrechtmatige overheidsdaad. Jurnal Hukum & Pembangunan, 51(4). https://doi.org/10.21143/jhp.vol51.no4.3290

Irvansyah, A. R. (2022). Kedudukan hukum keputusan fiktif positif sejak pengundangan undang-undang cipta kerja. JAPHTN-HAN, 1(2), 216. https://doi.org/10.55292/japhtnhan.v1i2.31

Latifah, E. (2016). PRECAUTIONARY PRINCIPLE SEBAGAI LANDASAN DALAM MERUMUSKAN KEBIJAKAN PUBLIK. Yustisia, 5(2), 275-297. http://dx.doi.org/10.20961/yustisia.v5i2.8742

Muryati, D. T., Triasih, D., & Mulyani, T. (2022). Implikasi Kebijakan Izin Lingkungan Terhadap Lingkungan Hidup Di Indonesia. JURNAL USM LAW REVIEW, 5(2), 693-707. https://doi.org/10.26623/julr.v5i2.5773

Naleng, S. A. J., Pinori, J. J., & Sendow, A. V. (2025). TINJAUAN YURIDIS MENGENAI PUTUSAN FIKTIF NEGATIF DAN FIKTIF POSITIF YANG DIKELUARKAN OLEH PENGADILAN TATA USAHA NEGARA. LEX PRIVATUM, 15(3).8 https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/61140

Noor, A., Prabowo, R. G., Kusnadi, E., & Diansyah, Y. (2023). Pemberian Izin Berbasis Elektorinik (Online Submite Sistem) Berdasarkan Prinsip Fiktif Positif Pasca Undang-Undang Cipta Lapangan Kerja. UNES Law Review, 5(4), 2593 https://doi.org/10.31933/unesrev.v5i4.596

Nurdin, N. (2021). Kekuatan Hukum Rekomendasi Ombudsman Sebagai Bentuk Pengawasan Terhadap Pelayanan Publik. JATISWARA, 36(2), 205–218. https://doi.org/10.29303/jtsw.v36i2.314

Rini, W. S. D., & Putri, C. P. H. (2024). Penggunaan Sarana Hukum Administrasi Negara dalam Menyikapi Ketidakpastian Penerapan Norma Keputusan Fiktif Positif. Proceeding APHTN-HAN, 2(1), 375https://doi.org/10.55292/k9ehx312

Sari, C. F., & Rahayu, S. A. P. (2025). Analisis Penerapan OSS Berbasis Risiko dalam Mewujudkan Kepastian Hukum bagi Investor di Indonesia. JURNAL ILMIAH NUSANTARA, 2(3),583-584. https://doi.org/10.61722/jinu.v2i3.4556

Setiawan, A. (2020). Pelaksanaan fungsi rekomendasi Ombudsman Republik Indonesia terhadap kepala daerah. Veritas et Justitia, 6(2), 274–297.

https://doi.org/10.25123/vej.v6i2.3657

Simanjuntak, E. (2017). Perkara fiktif positif dan permasalahan hukumnya. Jurnal Hukum dan Peradilan, 6(3), 379–398. https://doi.org/10.25216/jhp.6.3.2017.379-398

Tekayadi, S., Prayuda, H., & Alfurqan, I. (2024). Perubahan Konsep Fiktif Positif dalam Penyelenggaraan Perizinan Berbasis Resiko Pasca Pengesahan Undang-Undang Nomor 6 Tahun 2023 terkait Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 terkait Cipta Kerja. Indonesia Berdaya, 5(4), 1459-1466. https://doi.org/10.47679/ib.2024961

Wardhani, W. (2020). Unsur kesalahan dalam gugatan perbuatan melawan hukum (onrechmatige daad) pada sengketa lingkungan hidup (Putusan Nomor 118/Pdt.G/LH/2016/PN.Plk). Jurnal Verstek, 8(3), 232–246. https://doi.org/10.20961/jv.v8i3.47068

Yudiantoro, E. G. A., Waluyo, & Fatma Ulfatun N. (2023). Penerapan peraturan pemerintah tentang penyelenggaraan perizinan berusaha berbasis risiko dalam upaya pengawasan pencemaran di Kabupaten Sukoharjo. Jurnal Discretie: Jurnal Bagian Hukum Administrasi Negara, 4(1), 172-173. https://doi.org/10.20961/jd.v4i1.71712

Yuniza, M. E., & Inggarwati, M. P. (2021). Peluang dan Tantangan Penerapan Keputusan Fiktif Positif Setelah Undang-Undang Cipta Kerja Diundangkan. Jurnal de Jure, 13(2), 114–129.

Zahro, N. E. F., & Basri, A. H. (2023). Konsep Permohonan Keputusan Fiktif Positif Pasca Berlakunya Pasal 175 Angka 7 Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja. Journal of Law and Islamic Law, 1(1), 12-13. https://panitera.amiin.or.id/index.php/panitera/article/view/2