



## Legal Implications Of Positive Fictive Application After The Law Of Job Creation Law Is Declared Conditionally Unconstitutional

Febri Sianipar<sup>1</sup>, Hari Prasetyo<sup>2</sup>

<sup>1</sup>Mahasiswa Magister Hukum, Fakultas Hukum, University of Indonesia, Jakarta, Indonesia

<sup>2</sup>Faculty of Law, University of Indonesia, Jakarta, Indonesia

\*Correspondence: Febri Sianipar, Fakultas Hukum, University of Indonesia, Jakarta, Indonesia.

E-mail: febrisianip@gmail.com

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### Abstract:

Article 175 of Law Number 11 of 2020 changes some of the government administration clauses that have been regulated in the regulation of governmental administration. These changes are related to positive verdicts of fictitious and requests as stipulated in Article 53 of the Law of Creating of Job which amends the clauses of Article 53 of the Government Administration Law. The time limit for establishing a positive fictitious decision has changed from 10 days to 5 days and there is no mechanism for an adjuration to the court of the state administrative to obtain a decision to accept the adjuration. The form of research used is normative juridical with qualitative analysis methods. The results of the study show that fictitious requests are considered legally granted in Article 53 paragraph (4) of Law of Creating of Job without a decision by a Court causing legal uncertainty and because the Law of Creating of Job is declared conditionally unconstitutional, it still refers to the Law Government Administration Act.

**Keywords:** Legal implications, positive fictive, Law of Creating of Job, conditionally unconstitutional

### 1. Introduction

A positive fictitious adjuration to enact and/or carry out a decision and/or action which is not enacted by government official within a maximum period of 10 (ten) days should be deemed legally granted and submission in the form of a request for a positive fictitious to be accepted is an authority that should have been owned by the court of the state administrative. This is because it has been regulated in Article 53 paragraphs (3), (4), and (5) of Law Number 30 of 2014 and is still in effect because the Law of Creating of Job (including the government administration cluster) was declared conditionally unconstitutional by The Constitutional Court of Indonesia in the Constitutional Court of Indonesia Decision Number 91/PUU-XVIII/2020.

The adoption and adjuration of the omnibus law method carried implications for changing several laws in Indonesia, namely the arrangement of regulations after the enactment Law of Creating of Job. The omnibus law method gained strong legitimacy after the enactment of regulation concerning the Establishment of Legislati on (Law Number 13/2022). To simplify various existing regulations using the omnibus law method. One of the adjurations of this regulation is the implementation of government administration (Bayu Dwi Anggono, 2020). Several clauses in Law Number 30 of 2014 have been changed and affected by the Law of Creating of Job (Undang-Undang Cipta Kerja, 2020).

The legal norms regarding positive fictitious adjurations that were previously regulated by the regulation of governmental administration have changed since the enactment of Law of Creating of Job. These changes are contained in the clauses of Article 53 which amends the clauses of Article 53 of the regulation of governmental administration. The original intent of setting verdicts of fictitious was originally intended as a tool to give space to the society to propose a suit to court (Desi Wulandari, 2020). The important reason for the existence of

verdicts of fictitious is to protect the applicant's right to an adjuration submitted to the government due to the silence of government regarding the adjuration submitted. As a juridical consequence of the clauses of Article 53 of Government Administration Law is positive fictitious adjuration. A positive fictitious decision is a decision that constitutes the presumption that the Government Official published a decision granting a request, because the request submitted by the applicant is not responded to by the specified time limit or if it is not determined that ten days have passed after the adjuration has been submitted complete received (Undang-Undang Administrasi Pemerintahan, 2014). In addition to the regulation of governmental administration, positive fictitious requests that are considered granted if within a maximum of 10 days, the request is not responded to are regulated through Supreme Court Regulation 8/2017.

The clauses in the regulation of administrative government are different from the clauses of Article 3 of Law Number 5/1986 concerning the court of the state administrative which adheres to a negative fictitious regime. That is, the TUN Judiciary has the authority to hear lawsuits against the silence of the administration courts Agency/Officer who does not issue the decision requested or which becomes his obligation, which silence is equalized as a Decision of Refusal (fictitious negative). The concept of positive fiction was developed in a situation where the holders of government administrative power were indifferent to the submission of requests (administrative inaction), unprofessional and unresponsive, and delaying a request (delaying services) (Muhammad Addi Fauzani, 2021).

The adjuration of the Law of Creating of Job raises problems, one of which is the timeframe for determining a positive fictitious decision that has been amended in Article 53 paragraph (2) of the Law of Creating of Job that: "If it does not stipulate and/or carry out a decision and/or action within a maximum period of 5 working days after the complete adjuration is received by the government agency and/or official, then the adjuration is deemed legally granted"

In the legal considerations of the Surabaya PTUN Decision Number: 16/P/FP/2021/PTUN.SBY the Panel of Judges is of the view that the grace period for adjurations to be submitted for issuance of Verdicts or actions from Government Officials refer to the clauses of Article 6 letter b PERMA Number 8 2017 which is in line with the clauses in Article 53 paragraph (2) of the regulation of governmental administration.

It became a fundamental issue after the Constitutional Court of Indonesia stated in the Constitutional Court of Indonesia Decision Number 91/PUU-XVIII/2020 regarding the enforceability status of Law of Creating of Job. After the verdict, the Constitutional Court of Indonesia in case stated that the Law of Creating of Job was conditionally unconstitutional with 2 years given to legislators to improve the procedures for forming the Law of Creating of Job.

Based on the background description previously presented, the issue of the legal construction of a positive fictitious adjuration will be discussed after the promulgation of the Law of Creating of Job and the legal implications of a positive fictitious adjuration after the Constitutional Court of Indonesia Verdict Number 91/2020 which states that the Law of Creating of Job is conditionally unconstitutional.

## **2. Method**

In this study, the form of research used is normative juridical research (Soerjono Soekanto, 2010). Normative juridical research is research that aims to analyze the adjuration of legal principles and harmonization of the implementation of laws and regulations. This type of research is legal research conducted by examining the literature and secondary data only (Soerjono Soekanto and Sri Mamudji, 2010). This study describes the use of library materials as a source of research due to the character of the object of study in the form of laws and regulations and theories in library materials.

The type of data used is secondary data. The types of secondary data used are in the form of legal materials derived from primary legal materials from legislation, and secondary legal materials from library law materials to obtain the results of legal knowledge literature in the form of books and journals (Ishaq, 2017).

The typology of this research is prescriptive. Prescriptive research is research that provides direction on legal theory and statutory regulations on a problem in a legal event, as well as providing legal guidance on solving it. The method of data analysis in this study is qualitative. The type of qualitative analysis data is analyzing and processing data based on the researcher's understanding of the data or information obtained which is then narrated to obtain research conclusions. Research with this qualitative analysis technique collects all the data, then manages it properly and analyzes it by systematically compiling the data, classifying it into patterns and themes, categorizing and classifying it, connecting one to another, and then interpreting it to understand the meaning of the data, as well as interpretation is carried out from the perspective and knowledge of the researcher after understanding the overall quality of the data (Bambang Sunggono, 2001). After the data analysis is completed, the research results will be presented in a prescriptive-analytical form.

### **3. Results and Discussion**

After Law 11/2020 was promulgated some time later a formal review was carried out at the Constitutional Court of Indonesia. The implication is that all clusters regulated in the law a quo are declared conditionally unconstitutional including the government administration cluster, especially those governing positive fictitious requests where the provision previously changed the positive fictitious clauses in Law 30/2014.

The legal norm returns to the positive fictitious clauses in Law 30/2014 due to the implications of conditional unconstitutional verdicts as a form of accommodating in the event of a positive fictitious request resulting from a decision or action by a government official.

*3.1 Legal Construction of Positive Fictitious Adjudications After the Promulgation of the Law of Creating of Job*  
Positive law in a rule-of-law or *rechstaat* country like Indonesia considers that the highest parameter in the state is law where the constitution is the highest rule of law as a supremacy of law (Jimly Asshiddiqie, 2018). The legitimacy of the supremacy of the constitution consists of two things i.e laws and regulations that are subject to the values as contained in the constitution and the satisfaction and participation of the community in the formation of these laws and regulations (Neil Parpworth, 2020). The Government Administration cluster Law of Creating of Job amended some of the clauses in Regulation of 30/2014 concerning Government Administration. Several clauses of the regulation of governmental administration were amended to simplify decision-making arrangements or even actions by Government Officials (Muhammad Addi Fauzani, 2021). The regulation of positive verdicts of fictitious by the regulation of governmental administration brings changes to the arrangements for verdicts of fictitious which were previously only recognized as legal constructions of negative verdicts of fictitious as regulated by the Law on State Administrative Courts. Fictitious The verdict of state administration have developed into two types, namely Negative Fictitious The verdict of state administration and Positive Fictitious The verdict of state administration. Conceptually, 2 (two) types of fictitious administrative verdicts fall into the concept of administrative silence (Peter Mahmud Marzuki, 2017). In administrative law, a request for a negative or positive KTUN is legal fiction. The silence of government administration officials (administrative inaction) can be interpreted as approval (approval) or rejection (rejection) (Enrico Simanjuntak, 2018). A negative Fictitious KTUN is when the silence of an administrative official is equalized with a written decision containing a refusal. Meanwhile, the positive fictitious the verdict of state administration are the silence of administrative officials equalized with Verdicts that contain approval.

According to Batalli, the two types of Verdicts, which are fictitious, negative, and positive, have different interests. Negative Fictitious State Administrative Laws are often interpreted as an attempt to protect the autonomy of administrative authorities so that policies will not be affected due to administrative reticence. Meanwhile, the Fictitious State Administrative Court places more emphasis on protecting individual rights, therefore the Fictitious State Administrative Court is referred to as a fictitious decision that is individual-centric. Positive verdicts of fictitious are considered a way to simplify and reduce regulatory and administrative burdens on the public and the private sector, as well as support the smooth running of economic activities (Enrico Simanjuntak, 2017). The existence of a paradigm difference between the Negative Fictitious TUN Verdicts and the Positive Fictitious TUN Verdicts can be seen when they are made in the form of comparisons that give rise

to dynamics in administrative law. This difference is in terms of the legal politics of Negative and Positive Fictive KTUN arrangements which are rooted in the Regulation concerning State Administrative Court (UU No. 5 of 1986) and the regulation concerning Government Administration.

The issuance of the regulation of governmental administration brought changes to the verdicts of fictitious that were originally regulated in the Regulation concerning State Administrative Court where the silence of the administration courts Government Officials regarding a request was interpreted as a rejection, while in the regulation of governmental administration, it was interpreted as legally granted. This positive fiction in the regulation of governmental administration is seen as coercion to the TUN Agency or Officials to always respond to all matters being handled or require Verdicts from requests submitted by the public, this is an implication of the considerations in the regulation of governmental administration which mandates so that there is an increase in carrying out govermental affairs (Muhammad Yasin, et al., 2017).

There is no clause that stipulates that it is considered granted *mutatis mutandis* to an adjuration submitted as an implication of a positive fictitious government administration verdict in which there is no stipulations or non-implementation of a verdict or action and an expiration period. According to the clauses of Article 53 paragraph (4) it reads that in order to obtain a decision in the form of accepting an application for the procedure, the application must be submitted to the state Administrative Court by the Petitioner (Undang-Undang Administrasi Pemerintahan, 2014). Therefore, the adjuration must be decided by the Court no later than 21 (twenty-one) working days after the adjuration is filed. The construction of the positive fictitious decision contains the domains *litis* principle as a principle that is specific to the formal law of the court of the state administrative. Because the standing in the State Administrative dispute is unequal, the *dominis litis* principle takes on the role of balancing the standing between the parties in the State Administrative dispute (Anggita Doramia Lumbanraja, 2019).

On November 2, 2020 the regulations concerning creating of job was promulgated through the State Gazette of 2020 Number 245 and the Supplement to the State Gazette Number 6573. The promulgation of the Law of Creating of Job made changes to the formulation of the Positive Fictitious State Administrative Statements which were previously regulated in Article 53 Government Administration Act. This change marks a shift in the legal politics of the construction of the Positive Fictitious State Administrative Law in the Indonesian legal system.

The promulgation of the Law of Creating of Job brought changes to the construction of the Positive Fictitious State Administrative Law as mandated by Article 175 of the Government Administration cluster Law of Creating of Job, namely: 1) Deadline for the obligation to determine and/or carry out changed Verdicts and/or Actions (Positive Fictitious State Verdicts), in the regulation of governmental administration the time limit is 10 (ten) days to 5 (five) days in the Law of Creating of Job. This change is based on Article 53 paragraph (2) of the Law of Creating of Job jo. Article 53 paragraph (2) of the regulation of governmental administration. This change is in line with the commitment to provide ease of doing business as one of the principles of the Law of Creating of Job (Undang-Undang Cipta Kerja, 2020). The principle of providing ease of doing business or in other terms ease of licensing is one of the important factors to ensure the smooth flow of trade and economic cooperation. As is the case in Europe, the principle of ease of licensing is based on the European Parliament which issued Directive 2006/123/EC to facilitate licensing and eliminate obstacles for business actors in terms of licensing administration (Muhammad Addi Fauzani, 2021). Positive fictitious or otherwise termed tacit authorization is seen as being able to simplify licensing procedures and accommodate the free movement of business services between countries (Enrico Simanjuntak, 2017). However, if we look again at the Academic Text of the Law of Creating of Job, there is no specific basis for consideration regarding the change in the time limit from 10 days to 5 days.

Regarding the Fictitious State Administrative Court, which is regulated by Article 53 of the Law of Creating of Job, a policy is adopted in the firm of abolishing the mechanism for applications submitted to the Administrative Court, the aim of which is to obtain a verdict to accept the application/submission and to provide a delegation of

clauses to form a Presidential Regulation regarding further provisions regarding the form of determination in the form of a presumption to grant it legally legal decisions or actions (Undang-Undang Cipta Kerja, 2020). This change has an impact on the authority of the court of the state administrative in deciding the acceptance of fictitious adjurations and creates a legal vacuum regarding the form of the stipulation of Verdicts and/or Actions that are deemed legally granted because as long as a Presidential Regulation has not been issued, during that period there is no mechanism to declare the enforceability of verdicts of fictitious positive.

*3.2 Legal Implications of a Positive Fictitious Adjuration After the Constitutional Court of Indonesia Decision Number 91/PUU-XVIII/2020 which states that the Law of Creating of Job is Conditionally Unconstitutional*  
The positive fictitious legal principle simplified by silence means agreeing is a legal principle that has been adopted by Indonesia through the regulation of governmental administration. The positive fictitious concept in the regulation of governmental administration is a legal fiction that requires the administrative officials to give respond or issue a decision/action being requested but limited by a time limit following the clauses. If the time limit has passed, the administrative official is considered to have granted the request for issuing a decision or even action requested by the Officials (Enrico Simanjuntak, 2018).

The presence of the Law of Creating of Job has changed the arrangements for the construction of positive verdicts of fictitious. These changes have implications, namely (Dian Agung Wicaksono, Bimo Fajar Hantoro, and Dedi Kurniawan, 2021):

First, regulation regarding the absolute competence of the State Administrative Court (PTUN) and the authority of the Court, namely the authority to decide on fictitious positive applications based on the clause of Article 53 paragraphs (3) and (4) of the regulation of governmental administration. So that requests that are not determined and/or not carried out by Government Agencies and/or Officials within a maximum period of 10 working days (in which case there is no time limit for the obligation to determine and/or carry out Verdicts and/or actions following according to statutory clauses) are considered legally granted, the petition is submitted by the Petitioner to the court (in this case the court of the state administrative as stipulated in Article 1 point 18) to obtain a decision on accepting the adjuration.

The clauses in the Law of Creating of Job do not mention the absolute competence of the court of the state administrative to decide on the acceptance of an adjuration for an applicant adjuration which is deemed legally granted. What is at issue in the Law of Creating of Job is whether a positive fictitious decision submitted through an automatic adjuration is determined without going through an adjuration to the PTUN by the applicant (simplified by asking whether the PTUN still has the authority to try positive fictitious adjurations). This question is motivated by the legal politics of fictitious positive decision regulation which is different from the regulation of governmental administration which makes PTUN have absolute competence to apply for positive verdicts of fictitious. State Administrative Courts, which according to Article 53 of the regulation of governmental administration are given the authority to decide on acceptance of positive fictitious adjurations *mutatis mutandis*, lose their authority by not providing for such clauses in Article 175 of the Law of Creating of Job.

It is true that the Court is prohibited from rejecting a case or what is known as the principle of *ius curia novit*. *Jus curia novit* is defined because there are no or no rules or it is not clear enough, there is no a prohibition for the Court not to refuse a lawsuit to be examined, tried or terminated, therefore the Court is obliged to examine and adjudicate as determined by law (Undang-Undang Kekuasaan Kehakiman, 2009). However, if the regulation alone does not stipulate that a court has the authority to examine, try and decide a case, the decision of the case must be declared *mutatis mutandis* unacceptable (*Niet ontvankelijke verklaard*). Or to overcome the problem of positive verdicts of fictitious, the principle of *lex specialis derogate legi generali* is used.

The implications for the clauses in the Law of Creating of Job that no longer include the phrase court, the implementation of the decision will be hampered because the clauses for implementing court Verdicts on positive fictitious requests as intended in Article 53 parag. (6) of the regulation of governmental administrative

no longer exist in the Law of Creating of Job. This means that there are no more legal clauses obliging officials to issue Verdicts and/or actions based on court Verdicts on positive fictitious adjuration cases. This results in non-executable Verdicts, and the principle of simple, fast, and low-cost justice is not achieved because there is a deadlock from the inability to implement the decision.

Second, the clauses for positive verdicts of fictitious are deemed legally granted in Article 175 paragraph (4) of Law of Creating of Job without a decision by a court causing legal uncertainty. Because if it is understood that the phrase positive verdicts of fictitious are considered granted, without a court decision, then positive fictitious constructions have constitutive elements that create new legal relations that did not exist before, which have an impact on the birth of rights and/or obligations (*rechtsscheppende beschikking*).

Understanding the construction of positive verdicts of fictitious in the regulation of governmental administration requires a mechanism to justify its existence. In Law No. 30 of 2014, the concept of a fictitious positive KTUN is pseudo in nature which still involves the role of the court (Verdicts are considered granted but still require the role of the court to oblige Officials to issue Verdicts and/or Actions). Meanwhile, the concept of a positive fictitious decision referred to in the Law of Creating of Job appears to be absolute/original because it no longer requires the role of the court. The status of Verdicts and/or actions considered to be granted is immediately absolute by the official concerned.

A law that has been enacted cannot be avoided from being reviewed by the Constitutional Court of Indonesia. The authority of the Constitutional Court of Indonesia to examine laws (as the sole interpreter of the Constitution) of the Constitution is based on Article 24C paragraph (1) of the 1945 Constitution that the Constitutional Court of Indonesia has the authority to try at the first and last levels whose decision is final for reviewing laws against the Constitution, apart from that also by Article 10 paragraph (1) and paragraph (2) of the Constitutional Court of Indonesia Law, as last amended three times by Law Number 7 of 2020 (Faiz Rahman and Dian Agung Wicaksono, 2016). Technical implementation of judicial review -The law by the Constitutional Court of Indonesia is based on Constitutional Court of Indonesia Regulation Number 2 of 2021 concerning Procedures for Reviewing Laws. Testing the law consists of material testing, namely testing the contents of statutory material or legal norms, and also formal testing, namely testing the procedures for establishing legislation (Syukri Asy'ari, Meyrinda Rahmawaty Hilipito, Mohammad Mahrus Ali, 2013).

The adjuration for judicial review, both material and formal, ends in a decision. Universally, the verdict consists of being granted, rejected, or *Niet Onvankleijke Verklaard* (unacceptable) (*Undang-Undang Mahkamah Konstitusi*, 2003). However, if it is only based on the three types of injunctions, it will be difficult in reviewing a law formulated in general, the implementation of which is not yet known whether it is contrary to the Constitution or not. In its development, the CC made a variant verdict. The nature of the law is general-abstract. It is often unknown whether or not the formulation of general legal norms contradicts the Constitution (Harjono, 2008). This is the basis for conditional types of Verdicts, both conditionally constitutional and conditionally unconstitutional (Faiz Rahman and Dian Agung Wicaksono, 2016).

Conditionally constitutional, in a condition where the norm is tested in an adjuration, it turns out that it can be interpreted differently and the difference in interpretation causes legal uncertainty which causes the constitutional rights of citizens to be violated, therefore the Constitutional Court of Indonesia gives a certain interpretation so as not to create legal uncertainty or violate the rights citizen (*Putusan Mahkamah Konstitusi Nomor 19/PUU-VIII/2010*).

The clause of this interpretation is not only carried out in conditionally constitutional Verdicts but also in Verdicts that are conditionally unconstitutional. The two variants of the decision provide terms and meaning to address the CC of Indonesia's verdict in interpreting and implementing a statutory clause by taking into account the interpretation of the Constitutional Court of Indonesia on the constitutionality of the material clauses of the law that has been reviewed.

The birth of a conditional unconstitutional verdict is based on the ineffective experience of conditional constitutional Verdicts. Both conditional and unconditional constitutional Verdicts are Verdicts that legally do not cancel and declare that a norm does not apply, but both models of Verdicts contain or contain an interpretive decision on the material content of paragraphs, articles, and/or parts of laws - laws or laws as a whole which are basically stated to be contrary to or not contrary to the constitution and still have legal force or do not have binding legal force. The declarative nature of the decision is an initial statement that depends on the implementation of the norms being tested or the drafting of laws being tested which must be based on the interpretations, directions, guidelines, and signs given by the Constitutional Court of Indonesia. If the conditions set by the Constitutional Court of Indonesia are met, then these norms can still be enforced (conditionally constitutional) even though they are basically against the Constitution (conditionally unconstitutional).

There are 4 types of conditional unconstitutional decision characteristics, namely (Faiz Rahman and Dian Agung Wicaksono, 2016):

1. conditional unconstitutional Verdicts in the verdict must have a conditional unconstitutional clause;
2. conditional unconstitutional Verdicts are principally based on the verdict granting;
3. conditional unconstitutional rulings can be in the form of meaning or providing unconstitutional conditions for the norm being tested;
4. in substance, conditional unconstitutional clauses and conditional constitutional clauses are the same. His argument is based on the considerations of the Constitutional Court of Indonesia Judge in Decision Number 54/PUU-VI/2008 which states that "the a quo article at present is unconstitutional and will become constitutional if the conditions referred to above are met.

The Law of Creating of Job which was just promulgated in early November 2020 received a formal review at the Constitutional Court of Indonesia by the Petitioner which consisted of individuals, indigenous peoples, and NGOs. The Petitioner argues that the Law of Creating of Job was formed without regard to the procedure for forming statutory regulations as appropriate. Regarding the request for formal review, the Constitutional Court of Indonesia ruled in the Constitutional Court of Indonesia Decision Number 91/PUU-XVIII/2020 whose ruling was that the Law of Creating of Job was conditionally unconstitutional.

The argument put forward by the Constitutional Court in legal considerations in the a quo verdict states that the procedures for forming law 11/2020 are not appropriate, meaning that the methods and methods are certain, standard, as well as the systematics for forming laws are not carried out comply with the applicable regulations. Apart from that, there have been changes in the writing of several substances after the joint agreement between the DPR and the President, and also contrary to the principles of forming statutory regulations. It is on this basis that according to the Constitutional Court Law 11/2020 does not fulfill the clauses as the touchstone is the 1945 Constitution, therefore it must also be stated that there is a formal defect.

The Constitutional Court of Indonesia (in bahasa Indonesia called Mahkamah Konstitusi) Decision Number. 91/2020 states that the regulation of Law of Creating of Job is conditionally unconstitutional with 2 years given to the legislators to improve the procedure for forming the Law of Creating of Job. This means that concerning the CC of Indonesia's decision and the law being tested, the decision legally does not annul and declares that a norm does not apply, this can be seen in the principal decision of the adjuration which states that the Law of Creating of Job is still in effect until reform is made following with the grace period specified in the the CC of Indonesia (Mahkamah Konstitusi) Verdict Number 91/2020. In a conditional unconstitutional decision, the article being petitioned for review is said to be unconstitutional at the time the decision is read and will become constitutional if the conditions enacted by the the CC of Indonesia are fulfilled by the addressat of the CC of Indonesia's verdict.

Concerning fictitious positive adjuration arrangements in the Law of Creating of Job in the form of setting a deadline for stipulating and/or carrying out a Decision and/or Action no later than 5 (five) working days after the adjuration is received in full by Government Officials and the implications the law regarding the authority of the Court (PTUN) to decide on the receipt of fictitious positive requests for authority with no regulation of the

competence of the Court for the Positive Fictitious KTUN in Article 53 of the Law of Creating of Job has implications for this regulation after the Constitutional Court of Indonesia Decision Number 91/PUU-XVIII/2020 which stated that The Law of Creating of Job is conditionally unconstitutional with 2 years given to the legislators to improve the procedures for forming the Law of Creating of Job. Implementing the Law of Creating of Job as one of the rules through the conditionally unconstitutional scheme also violates the meaning of the rule itself, considering the concept of a rule is one that applies in an all-or-nothing way (Douglas E Edlin, 2021). Referring back to the regulation regarding positive verdicts of fictitious and positive fictitious requests in the regulation of governmental administration and also implementing regulations, namely The Regulation from Supreme Court 8/2017, the point is that the clauses still refer to the old rules.

#### **4. Conclusion**

In the case of a positive fictitious administrative verdict, the decision or action and the expiration of the period do not necessarily make the request granted *mutatis mutandis*. According to the clauses of Article 53 paragraph (4) the applicant is required to apply to the court of the state administrative to obtain a decision on acceptance of the adjuration. The enactment of the Law of Creating of Job made changes to the arrangement of the Positive Fictitious State Administrative Law formula which was previously regulated in Article 53 of the regulation of governmental administration. This change marks a shift in the legal politics of the construction of the Positive Fictitious State Administrative Law in the Indonesian legal system.

The Constitutional Court of Indonesia's decision Number 91/PUU-XVIII/2020 which stated that the Law of Creating of Job after the decision was conditionally unconstitutional with 2 years given for the legislators to improve the procedure for forming the Law of Creating of Job has legal implications for clauses regarding fictitious positive Verdicts and fictitious requests positive still refers to the Law on Government Administration and Supreme Court Regulation 8/2017 concerning Guidelines for Procedures to Obtain a Decision on Acceptance of Adjurations to Obtain Verdicts and/or Actions by Government Bodies or Officials.

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