

Positive Fictitious Lawsuits in the Digital Era: Challenges Executing Administrative Court Decisions in OSS

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Article	Abstract
<p>How to cite: Saan & Tubagus Ahmad Ramadan, 'Positive Fictitious Lawsuits in the Digital Era: Challenges Executing Administrative Court Decisions in OSS' (2026) Vol. 7 No. 1 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p>DOI: 10.35719/rch.v7i1.424</p> <p>Article History: Submitted: 05/01/2026 Reviewed: 12/02/2026 Revised: 06/03/2026 Accepted: 17/03/2026</p> <p>ISSN: 2723-0406 (printed) E-ISSN: 2775-5304 (online)</p>	<p>The introduction of the positive fictitious doctrine through Law Number 30 of 2014 concerning Government Administration is a significant effort to realize legal certainty for the public regarding the silence of bureaucratic authorities. However, the transformation of public services into the Online Single Submission (OSS) system after the Job Creation Law has created a new legal paradox. This study aims to analyze the legal implications of the OSS system on positive fictitious procedures and identify obstacles in executing Administrative Court (PTUN) decisions against algorithm-based systems. Using a normative legal research method with a statutory and conceptual approach, this study finds that the digitalization of bureaucracy tends to reduce official discretion, which is a core element in the Residue Theory. A crucial problem arises when PTUN decisions that have permanent legal force cannot be accommodated by the rigid and automated algorithms of the OSS system, thereby creating legal uncertainty. This study concludes the need for legal reconstruction through the synchronization of the Supreme Court's E-Court system with the OSS system, as well as updating procedural regulations to ensure the effectiveness of decision execution in the era of smart governance.</p> <p>Keywords: <i>Positive Fictitious, OSS, Legal Certainty, Administrative Court.</i></p> <p>Abstrak Introduksi doktrin fiktif positif melalui Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan merupakan upaya signifikan dalam mewujudkan kepastian hukum bagi masyarakat atas diamnya otoritas birokrasi. Namun, transformasi pelayanan publik menuju sistem <i>Online Single Submission</i> (OSS) pasca Undang-Undang Cipta Kerja menciptakan paradoks hukum baru. Penelitian ini bertujuan untuk menganalisis implikasi yuridis sistem OSS terhadap prosedur fiktif positif dan mengidentifikasi hambatan eksekusi putusan Peradilan Tata Usaha Negara (PTUN) terhadap sistem yang berbasis algoritma. Dengan menggunakan metode penelitian yuridis normatif melalui pendekatan perundang-undangan dan konseptual, penelitian ini menemukan bahwa digitalisasi birokrasi cenderung mereduksi diskresi pejabat yang merupakan elemen inti dalam Teori Residu. Masalah krusial muncul ketika putusan PTUN yang telah berkekuatan hukum tetap tidak dapat diakomodasi oleh algoritma sistem OSS yang rigid dan otomatis, sehingga menciptakan ketidakpastian hukum. Penelitian ini menyimpulkan perlunya rekonstruksi hukum melalui sinkronisasi antara sistem <i>E-Court</i> Mahkamah Agung dengan sistem OSS serta pembaharuan regulasi beracara guna menjamin efektivitas eksekusi putusan di era <i>smart governance</i>.</p> <p>Kata Kunci: <i>Fiktif Positif, OSS, Kepastian Hukum, Peradilan TUN.</i></p>

Introduction

The transformation of state administrative law in post-reform Indonesia is marked by efforts to strengthen legal protection for citizens against the actions or silence of the rulers. One of the most fundamental juridical leaps is the shift from a negative fictitious regime to a positive fictitious regime through Law Number 30 of 2014 concerning Government Administration (AP Law). Conceptually, the positive fictitious doctrine regulated in Article 53 of the AP Law emphasizes that if the Agency or Government Official does not stipulate a Decision and/or Action within the specified time limit, then the application is considered legally granted.¹ This innovation is intended to break the chain of bureaucratic inertia and provide legal certainty for applicants.

However, in its development, the implementation of the positive fictitious doctrine has been disrupted due to the enactment of Law Number 6 of 2023 concerning Job Creation which integrates the entire licensing process into the electronic system through *Online Single Submission* (OSS). Based on Article 175 number 6 of the Job Creation Law, positive fictitious decisions no longer require a court decision to obtain legality, but are born automatically through an electronic system.² On the one hand, this automation appears to be an acceleration of public services. But on the other hand, the integration of the law into the algorithm creates an "administrative rigidity" that threatens the principles of traditional administrative law.

Theoretically, this phenomenon can be dissected using Van Vollenhoven's *Waste Theory*. In this theory, administrative law is a dynamic instrument that manages the "remainder" of governmental functions after the legislative and judicial functions are separated.³ This dynamic nature often requires the discretion of officials to respond to concrete conditions in the field. However, in the OSS system, the discretion is "imprisoned" in the code *is law*. When a dispute occurs, and the State Administrative Court (PTUN) issues a ruling that favors the plaintiff on a fictitious positive basis, the execution of the decision often hits a technical wall. PTUN officials often argue that they cannot execute because the OSS system is centralized and does not provide a manual feature for forcibly entering court rulings into the system.⁴

In addition, this problem is closely related to the Theory of Legal Certainty. Jan Michiel Otto emphasized that legal certainty is not only about the availability of *clear rules*, but also consistency in their enforcement and implementation by the state.⁵ When the decision of the PTUN that has permanent legal force (*inkracht*) cannot be technically operationalized in the OSS system, then the legal certainty promised by the state through the judiciary becomes an illusion. This misalignment between judicial and digital authorities results in citizens losing their administrative rights despite having won cases in court.

Previous research by Nurul Ghufroon has highlighted the problem of execution of PTUN decisions in general, but has not specifically dissected the technical challenges in the OSS system that uses a *risk-based approach*.⁶ Similarly, Zairin Zain's (2021) study focuses more on the

¹ Ridwan HR, "State Administrative Law," *Jakarta: Rajawali Press*, 2016, 182.

² Law of the Republic of Indonesia, "Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law," 2023, <https://peraturan.bpk.go.id/Details/246523/uu-no-6-tahun-2023>.

³ S F Marbun, "State Administrative Law," *Yogyakarta: FH UII Press*, 2012, 27.

⁴ Hendra Latif, "Digital Administrative Law: Challenges and Expectations," *Bandung: Citra Aditya Bakti*, 2023, 88.

⁵ Jan Michiel Otto and Tristram Moeliono, "Legal Certainty in Developing Countries," 2003, 41.

⁶ Nurul Ghufroon, "The Problem of Execution of PTUN Decisions in Positive Fictitious Disputes," *Journal of State Administrative Justice* 9, no. 1 (2022): 52.

administrative aspects of OSS without delving into judicial obstacles in positive fictitious executions.⁷ Therefore, this research is important to fill the legal *vacuum* regarding the mechanism of execution of PTUN decisions in the digital era. The novelty of this research lies in the effort to reconstruct the relationship between judicial power and bureaucratic digital sovereignty, in order to find solutions to the impasse of execution that is detrimental to the interests of the community and investment.

This research is expected to answer two problems, namely the legal implications of the OSS system on the procedure for applying for positive fictitious decisions after the Job Creation Law and juridical and technical obstacles in the execution of PTUN decisions related to fictitious positive against the algorithm-based government system (OSS).

Method

This research uses a type of normative legal research (*doctrinal research*), which is research that lays down law as a building of a system of norms consisting of principles, rules, laws and regulations, court decisions, and doctrines.⁸ The use of this normative method aims to examine the inconsistency of norms between the positive fictitious legal regime in the Government Administration Law and the technical-juridical implementation in the *Online Single Submission* (OSS) system.

The research approach used in this writing includes three types of approaches, First, *Statute Approach*: It is carried out by examining all regulations related to the object of dispute, especially the Government Administration Law, the Job Creation Law, and Government Regulations on Risk-Based Business Licensing.⁹ Second, *Conceptual Approach*: Refers to the legal doctrines of state administration, especially the Theory of Legal Certainty and the Residual Theory, in order to build legal arguments regarding the limits of discretion in the digital system. Third, *Case Approach*: It is carried out by observing the tendency of PTUN decisions related to positive fictitious application lawsuits and obstacles to their execution at the technical implementation level.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations and court decisions. Secondary legal materials include legal textbooks, scientific journals, and related research results. Tertiary legal materials include legal dictionaries and encyclopedias.¹⁰ The technique of collecting legal materials is carried out through library *research* by searching legal documents both physically and through digital databases.

Furthermore, the collected legal materials are analyzed qualitatively using the deductive-syllogism method. The analysis was carried out by explaining the major premise in the form of normative rules regarding positive fictitious, then faced with a minor premise in the form of technical facts of the OSS system, so that a prescriptive legal conclusion was produced regarding the legal reconstruction of the execution of PTUN decisions in the digital era.¹¹

⁷ Zairin Zain, "Transformation of Licensing Law in the Digital Era," *Journal of Law & Development* 51, no. 2 (2021): 320.

⁸ Mahmud Marzuki, *Legal Research: Revised Edition* (Prenada Media, 2017), <https://books.google.co.id/books?id=CKZADwAAQBAJ>.

⁹ Jonaedi Efendi and Johnny Ibrahim, *Legal Research Methods: Normative and Empirical* (Prenada Media, 2018), <https://books.google.co.id/books?id=5OZeDwAAQBAJ>.

¹⁰ Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (CV publisher. Rajawali, 2015), https://books.google.co.id/books?id=_Y1GPAAACAAJ.

¹¹ Ridwan HR, "State Administrative Law."

Results and Discussion

Transformation of Positive Fictitious Doctrine: From Manual Administration to OSS Algorithms

The Evolution of Positive Fictitious Normative in Indonesian Positive Law

Historically, Indonesian administrative law places the "silence" of officials as a rejection (fictitious negative). This is a preventive effort so that citizens immediately take legal action if their application is ignored. However, the birth of Article 53 of Law No. 30 of 2014 concerning Government Administration (AP Law) revolutionarily changed this order. The AP Law regime introduced positive fiction as an instrument to discipline the bureaucracy. In the original scheme of the AP Law, a fictitious positive status was not born completely automatically, but required a judicial "stamp" through an application to the PTUN.¹²

After the enactment of Law No. 6 of 2023 concerning Job Creation, there was a drastic shift in Article 53 of the AP Law. This new norm states that fictitious positive decisions are now born for the sake of the law through electronic systems. This change changes the positive fictitious nature from the previous *judicial-administrative* nature (requiring court determination) to *technical-automatic* (born through the system).¹³ Normatively, this is a form of strengthening legal certainty. However, this transformation creates a major challenge when "law" is no longer read by humans through legal reason, but by machines through algorithmic lines of code.

Mechanization of Discretion: The "Code is Law" Dilemma in the OSS System

In traditional administrative law, TUN officials have authority called discretion or *freies ermesen*. Discretion is the spirit of state administration that allows officials to make decisions based on concrete situations in the public interest. However, in the *Online Single Submission Risk-Based Approach* (OSS RBA) system, the discretion undergoes a process of mechanization or automation. The OSS system is designed with *If-Then logic* (if the requirements are met, then the permission is issued; if not, then it is rejected or withheld).¹⁴

The problem arises when the OSS system experiences a "silent" or verification failure. In the positive fictitious doctrine of the digital era, the silence of the system should result in automatic publication permissions. However, the OSS system is often locked in the technical verification stage at ministries or sectoral institutions. Here, there is a clash between Legal Sovereignty (which states that permissions must be issued because time has expired) and Algorithmic Sovereignty (which holds permissions because the data parameters have not been verified).¹⁵ This phenomenon confirms Lawrence Lessig's theory that in the digital world, "*Code is Law*" the code of the program becomes the law that regulates behavior and limits the actions, even the legal actions of the officials themselves. TUN officials no longer have the discretion to override when the system experiences bottlenecks, which practically cripples the effectiveness of the positive fictitious doctrine.

¹² Ridwan HR.

¹³ Law of the Republic of Indonesia, "Law of the Republic of Indonesia Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law."

¹⁴ Dian Puji N Simatupang, "A New Paradigm of State Administrative Law," *Jakarta: UI Press, 2021*, 2021, 110.

¹⁵ L Lessig, "Code: And Other Laws of Cyberspace," *New York: Basic Books, 2009*, 884, <https://books.google.co.id/books?id=tmE-pvNIX38C>.

Revisiting Residual Theory in the Age of Algorithmic Governance

Van Vollenhoven's Residual Theory (*Afvaltheorie*) places state administration as a very broad and dynamic function, encompassing everything that is not a legislative or judicial function.¹⁶ State administration is the operational arm of the state to achieve welfare *state* goals. However, with a government system that relies heavily on algorithms such as OSS, the state's administrative functions that should be elastic have become very rigid.

Automation through OSS has "separated" the rest of the government functions (residues) from human reason (officials) and transferred them into machine logic. As a result, when a fictitious positive dispute occurs, there is no longer a legal subject (official) who is in real control of the decision materially.¹⁷ If the legal reasoning of the administration states that citizens' rights must be granted due to bureaucratic negligence, but the system algorithm does not recognize the concept of "negligence", then there is a *legal deadlock*. This shows that Residual Theory needs to be redefined in a digital context; Administration is no longer just a residual function, but a function that is now held hostage by the information system technostructure.¹⁸

This inconsistency has a fatal effect on legal certainty. Citizens who hold positive fictitious promises from the law often find that they cannot be "printed" by the OSS system because they are considered to skip programmed technical procedures. This transformation from manual to algorithmic, if not accompanied by the provision of a "legal emergency exit" in the system, will continue to produce administrative injustices where the digital system becomes a barrier to law enforcement itself.

Problems of Execution of PTUN Decisions in the Digital Ecosystem

Authority Conflict: Between the Court's Ruling and Algorithmic Rigidity

The execution of the decision of the State Administrative Court (PTUN) is essentially a test for the rule of law in a democratic system. In a fictitious positive dispute, the court through its *amar*, orders the TUN Officer to establish a decision or take action in accordance with the plaintiff's request. However, in the OSS digital ecosystem, the authority of the TUN Officer has been reduced to just a system operator. The problem arises when the OSS system, which is centrally managed by the relevant ministries, does not recognize the category of "court orders" in its database structure.¹⁹

Juridically, a court decision that has permanent legal force (*inkracht*) is mandatory to be implemented. However, technically, the OSS algorithm works based on rigid data fulfillment criteria (inputs). If an applicant wins a positive fictitious lawsuit, but technically the supporting documents in the system are considered incomplete or have not been verified by a sectoral agency, then the system will automatically block the issuance of the permit. Here comes the impasse: The TUN official is unable to carry out his legal obligations because he is "held hostage" by his own system. This creates a degradation of the dignity of the judiciary, where the judge's orders are defeated by the code of a computer program.²⁰

¹⁶ Marbun, "State Administrative Law."

¹⁷ Latif, "Digital Administrative Law: Challenges and Expectations."

¹⁸ Bagir Manan, "People's Sovereignty, Human Rights and the Rule of Law (Collection of Essays)," *Jakarta: Gaya Media Pratama*, 2001, 45.

¹⁹ Ghufroon, "The Problem of Execution of PTUN Decisions in Positive Fictitious Disputes."

²⁰ Latif, "Digital Administrative Law: Challenges and Expectations."

Technical Barriers to Interoperability and the Absence of Manual Override Features

One of the fundamental weaknesses in the current OSS system design is the absence of a *manual override* feature given to local officials or technical agencies to execute court decisions. The OSS system was built in the spirit of centralization to ensure uniformity, but ignored aspects of legal heterogeneity in the field, including the existence of judicial disputes.²¹ When executors (TUN Officials) want to implement the PTUN decision, they often find that the "button" to issue the permit is not active (*greyed out*) because the systemic prerequisites have not been met.

Data insynchronization or lack of interoperability between information systems in the Supreme Court (such as *E-Court* or *SIPP*) and OSS systems exacerbate this condition. Information about a decision canceling or ordering the issuance of a permit is not automatically connected to the OSS dashboard. As a result, the execution of a fictitious positive verdict requires a lengthy manual bureaucratic procedure, ranging from inter-agency correspondence to requests for the opening of system access specifically to central managers. This is contrary to the spirit of efficiency carried out by the Job Creation Law and violates the principle of legal certainty which is the main pillar of administrative law.²²

Analysis of Execution Failures in the Perspective of Substantive Legal Certainty

The inability to execute positive fictitious judgments against the OSS system results in legal certainty only stopping at the formal level (on the judgment paper), but failing to reach the substantive level (benefits for citizens). In the perspective of Legal Certainty Theory, Jan Michiel Otto emphasizes that the effectiveness of the law is measured by the extent to which the ruler obeys the administrative law itself.²³ If a state builds an electronic system that does not allow its officials to comply with court orders, then the state has created systemic legal uncertainty.

This failure of execution also has implications for the emergence of involuntary "administrative defiance". TUN officials can be considered to have committed maladministration or even unlawful acts by the authorities (*onrechtmatige overheidsdaad*), when in fact they do not technically have the power to intervene in the OSS algorithm. In the long run, this will reduce the level of public and investor confidence in the licensing system in Indonesia. If court decisions no longer have coercive force on the government's digital system, then legal protection for the people against the arbitrariness of digital bureaucracy (digital authoritarianism) is in a very vulnerable position.²⁴

Legal Reconstruction: Towards Smart Administrative Justice

Regulatory Synchronization: Redefining Enforcement Efforts in PERMA and the AP Law

The first step in legal reconstruction is to harmonize the TUN judicial procedural law with the material administration law that has been digitized. Supreme Court Regulation (PERMA) Number 8 of 2017 is currently still operating on the assumption that the execution is a manual action of officials. In the OSS era, there is a need for regulatory updates that recognize

²¹ Zain, "The Transformation of Licensing Law in the Digital Era."

²² Simatupang, "A New Paradigm of State Administrative Law."

²³ Otto and Moeliono, "Legal Certainty in Developing Countries."

²⁴ Philipus M. Hadjon, "Legal Protection for the People in Indonesia," *Surabaya: Building Knowledge*, 1987, p. 256, <https://books.google.co.id/books?id=zzjaGwAACAAJ>.

"system failures" as the object of dispute and establish "technical orders" (such as system unblocking) as part of the ruling.²⁵

This reconstruction should touch on Article 53 of the AP Law by adding a clause regarding the government's obligation to provide *a legal backdoor* or a special enforcement channel in any electronic licensing system. The researcher argues that legal certainty should not be defeated by the technical reason of the unavailability of features in the system. Therefore, the law must require the system administrator (BKPM/Ministry of Investment) to immediately implement the PTUN decision through a valid manual intervention (*authorized override*) as soon as the decision acquires permanent legal force.²⁶

Authority Integration: The Idea of E-Court Connectivity and OSS Systems

The futuristic solution offered in this study is the development of a *Smart Administrative Justice* ecosystem. This can be achieved through data integration between *the Supreme Court's E-Court* system and the central OSS system. In this framework, every PTUN decision related to positive fictitious must be integrated in *real-time* (interoperability) into the *national licensing* database.²⁷

With this integration, the court decision can function as a digital *key* that automatically triggers the OSS system to issue permits without having to wait for manual initiatives from the officials concerned. This is in line with the concept of *e-justice* which aims to minimize bureaucratic obstacles in the implementation of judges' decisions.²⁸ This integration will ensure that judicial authorities have a direct impact on the digital administrative system, so that the rule of law is maintained above the sovereignty of the algorithm.

Position Accountability and Risk Mitigation in Algorithmic Governance

Legal reconstruction must also clarify the accountability aspect. If the OSS system fails to execute a court decision due to prolonged technical reasons, it must be clearly defined who is the legal subject who is responsible in terms of position (*disciplinary action*) or personal liability (*personal liability*). The researchers suggest that execution responsibility be placed collegially between the TUN Officials who process the permits and the system administrators at the central level.²⁹

In addition, there needs to be a mechanism for "mitigating legal risks" in every development of public service algorithms. Any *e-government* system built must go through a *Legal Impact Assessment* to ensure that the algorithm created will never hinder the law enforcement process or ignore court rulings. This is a manifestation of legal protection for the people who are adaptive to the development of information technology.³⁰ Thus, the transition to *smart governance* will not compromise the constitutional rights of citizens that have been guaranteed through the judicial process.

²⁵ Ghufon, "The Problem of Execution of PTUN Decisions in Positive Fictitious Disputes."

²⁶ Simatupang, "A New Paradigm of State Administrative Law."

²⁷ Latif, "Digital Administrative Law: Challenges and Expectations."

²⁸ Jimly Asshiddiqie, *The Constitution and Constitutionalism of Indonesia* (Sinar Grafika, 2021), <https://books.google.co.id/books?id=QXtWEAAAQBAJ>.

²⁹ Manan, "People's Sovereignty, Human Rights and the Rule of Law (Essay Collection)."

³⁰ Hadjon, "Legal Protection for the People in Indonesia."

Conclusion

Based on the analysis that has been described in the discussion, this study concludes two fundamental things, such as,

The transformation of positive fictitious doctrine from manual to digital (OSS) has changed the nature of TUN decisions from *judicial-administrative* to *technical-automated*. This integration normatively strengthens legal certainty with the birth of permits "for the sake of law" through electronic systems. However, substantively, this creates a reduction to the discretion of officials (Residual Theory), where state administrative authorities are now held hostage by the rigidity of algorithms that are inflexible in responding to procedural impasses.

The problem of the execution of PTUN decisions in the digital ecosystem is rooted in the insynchronization between the judicial authorities and the technical authorities of the OSS system. The absence of *manual override* features and weak data interoperability between the Supreme Court and central licensing authority institutions result in decisions that have permanent legal force (*inkracht*) often cannot be operationalized. This hurts the Legal Certainty Theory because the state fails to bring administrative compliance over digital sovereignty, which ultimately harms citizens' constitutional rights and investment certainty.

In order to overcome these problems, researchers propose the following recommendations, To the Government (Ministry of Investment/BKPM): It is necessary to immediately *re-engineer* the OSS system by providing a special channel for the execution of court decisions. The system must allow for legitimate manual intervention by the authorized officials to implement the PTUN decision without having to go through rigid algorithmic validation. To the Supreme Court: It is necessary to revise PERMA Number 8 of 2017 to adapt procedural procedures to the reality of the risk-based licensing system (RBA). In addition, it is necessary to integrate the information system between *the E-Court* and the national OSS system so that the execution of judgments can run automatically through electronic data exchange (*Digital Interoperability*). To Lawmakers: In the future revision of the Government Administration Law or the ITE Law, it is necessary to include a clause on "Algorithmic Responsibility" which requires every electronic public service system to have a judicial compliance mechanism, in order to ensure that information technology remains subject to the rule of law.

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