

Legal Protection Against Legal Uncertainty of Tacit Approval Under Indonesian Job Creation Law

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Abstract: The concept of tacit approval underscores the idea of considering an application or request as approved even without an explicit formal decision. This approach is taken when the government fails to address or respond to the application within a stipulated time frame. In such cases, the absence of a response is interpreted as an implied granting of permission or approval. This can be found in article 175 point 7 of the Law No. 6 of 2023 concerning Enactment of Government Regulation in lieu of Law No. 2 of 2022 Concerning Job Creation as Law (Job Creation Law). However, this tacit approval must be further regulated through presidential regulation, yet up until this day, it has not been regulated. When the applicant can utilize tacit approval is uncertain, as well as uncertainty regarding legal recourse for the disadvantaged party concerning tacit approval. This research finds that the regulation of tacit approval in presidential regulation should involve acknowledging the tacit approval through registration within the government's information system and issuance of tacit approval certificate, thus ensuring legal certainty for the applicants of decisions. Subsequently, the registered tacit approval certificate can be reviewed through administrative court to establish legal certainty for affected citizens.

Keywords: Tacit Approval; Legal Certainty; Legal Protection; Presidential Regulation; Administrative Court.

1. Introduction

The concept of tacit approval (or tacit authorization), a fundamental principle in administrative and legal systems worldwide, represents a unique and intriguing facet of decision-making processes within government bodies. Tacit approval, encapsulates the idea that the absence of an explicit rejection or an explicit approval from an administrative entity (official or body) implies the grant of approval.¹ This concept emerges from the interplay between administrative efficiency, individual rights, and the need to strike a balance between proactive decision-making and respecting the rights of citizens.

The author will elaborate the embodiment of this concept on Indonesian Law later. In this introduction part, the author will focus on elaborating the theoretical concept. Tacit approval arises from the acknowledgment that in bureaucratic systems, delays in responding to requests or applications are common due to the sheer volume of submissions and the complexity of administrative procedures. Consequently, in situations where the relevant authority does not explicitly respond within a designated time frame, the applicant may infer that their request has been tacitly approved (legal fiction)². This concept is rooted in the recognition of the practical challenges government agencies face in promptly addressing every application or request they receive.³

The notion of tacit approval is present in Article 175, point 7 of Law No. 6 of 2023 concerning Enactment of Government Regulation in lieu of Law No. 2 of 2022 Concerning Job Creation as Law (Job Creation Law).⁴ For context, the Job Creation Law was created in order to boost the effectiveness of the bureaucracy for the sake of Investment, as mentioned in the consideration of the Job Creation Law. For this cause, the norm of tacit approval in Article 53 of Law No. 30 of 2014 regarding Government Administration was changed through article 175 of the Job Creation Law. One of the changes is the elimination of the administrative judiciary role in the follow-up of tacit approval. Nevertheless, this tacit approval requires additional regulation via a presidential regulation as stipulated in Article 175, point 7 of Job Creation Law; however, as of now, such regulation has not been established yet. This, of course, creates problems which will be discussed in this paper.

1 Oswald Jansen, "Silence of Administration", as published in Jean-Bernard Auby (ed.), *Droit Compare de la Procedure Administrative / Comparative Law of Administrative Procedure*, (Brussels: Bruylant, 2015), 6.

2 See: von Jannis Broscheit, *Rechtswirkungen von Genehmigungsfiktionen im Öffentlichen Recht*, (Berlin: Duncker & Humblot, 2016), 13.

3 Enrico Simanjuntak, *Rekonseptualisasi Kewenangan Pengadilan Tata Usaha Negara dalam Mengadili Perkara Fiktif Positif*, (Depok: Rajawali Pers, 2021), 167.

4 Jusak Sindar, *Penyelesaian Sengketa Keputusan Fiktif Positif Pasca Undang-Undang Cipta Kerja*, (Yogyakarta: Deepublish, 2023), 5.

Article 175, point 7 of Job Creation Law serves as a pivotal acknowledgment of the practical challenges that administrative bodies often encounter in responding promptly to the myriad of requests and applications they receive. By formally incorporating the concept of tacit approval into the legal framework, this provision essentially provides a legal basis for the implicit granting of approval when administrative bodies do not provide an explicit response within a designated timeframe. It acknowledges that, due to the complexity and volume of administrative processes, the lack of a formal response should not hinder or delay the progression of necessary procedures.

As with any legal concept, the implementation of tacit approval demands a regulatory framework that balances administrative efficiency with the protection of individual rights and legal certainty. While Article 175, point 7 of Job Creation Law recognizes tacit approval, it also acknowledges the necessity for further regulation through a presidential regulation. This regulatory measure is crucial to ensure that the application of tacit approval is standardized, consistent, and aligned with legal principles.

The absence of specific presidential regulation for tacit approval introduces an element of uncertainty and leaves room for interpretation. The lack of comprehensive guidelines may lead to inconsistent practices among administrative bodies, raising concerns about potential disparities in how tacit approval is perceived, applied, and safeguarded. Additionally, the absence of regulatory guidance could potentially create a gap between the intended purpose of tacit approval and its practical implementation.

There is legal uncertainty for the applicants after their requests are considered approved, whether they can use them immediately or should wait for the subsequent steps that should be regulated in the presidential decree. There are at least two concrete issues related to the absence of a presidential regulation governing tacit approval, namely:

- What legal protection exists for applicants whose requests are considered approved with tacit approval;
- What legal protection is available for the disadvantaged parties by tacit approval.

There are at least two opinions regarding the follow-up of tacit approval. First, by filing a claim for Government Factual Action⁵, which is a fatal conceptual

5 Muhammad A. Rauf, *Peluang dan Tantangan Pelaksanaan Kewenangan Pengadilan Tata Usaha Negara dalam Memeriksa Permohonan Fiktif Positif Pasca Berlakunya Undang-Undang Cipta Kerja*, in Fahmi Ramadhan Firdaus

error⁶, because Tacit approval is an unwritten decision (which equated as a written decision, see: discussion) and not a factual action. Second, by filing a lawsuit through administrative court to annul the tacit approval, then the court orders the issuance of an explicit decision.⁷ The problem is, neither of these solutions is a norm stipulated within the Job Creation Law, and therefore, they can be considered contradictory to the law. Therefore, this article will discuss the legal protection for legal uncertainty regarding tacit approval within the Job Creation Law.

2. Legal Protection for Applicants Whose Requests Are Considered Approved by Tacit Approval

Implementing a system that recognizes tacit approval can help streamline administrative processes, reduce bureaucratic backlog, and enhance the overall efficiency of government operations. Moreover, by embracing tacit approval, governments aim to foster a sense of trust between the state and its citizens, assuring them that their requests will be deemed approved in the absence of a formal response.

The legal implications of tacit approval extend to various domains, including licensing, permits, regulatory compliance, and administrative decision-making. Understanding the nuances of this concept is essential for legal scholars, practitioners, and policymakers as they navigate the evolving landscape of administrative law. Consequently, tacit approval has sparked extensive discussions in legal academia and has led to the development of guidelines and regulations to govern its application.

However, the concept of tacit approval is not without its complexities and potential pitfalls. While it offers a pragmatic solution to administrative bottlenecks, it raises questions about transparency, due process, and safeguarding individual rights. The challenge lies in striking a balance between expediting administrative procedures and ensuring that individuals are not inadvertently deprived of their rights due to an absence of response. Therefore, the implementation of tacit approval requires a thoughtful approach that safeguards against potential abuses and respects the principles of fairness and justice.

et.al. Dinamika Negara Hukum Demokratis Pasca Perubahan UUD 1945, (Bandarlampung: Pusaka Media, 2022), 804.

6 Muhammad Adiguna Bimasakti, "Penjelasan Hukum (Restatement) Konsep Tindakan Administrasi Pemerintahan Menurut Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Hukum dan Peradilan* 11 (2022): 82.

7 Muhammad Amin Putra, Kewenangan Pengadilan TUN dari Permohonan Fiktif Positif menjadi Gugatan Terhadap Keputusan Fiktif Pasca Undang-Undang Cipta Kerja, in Tri Cahya Indra Permana *et.al., Beberapa Pemikiran Tentang Peradilan Administrasi dan Keadilan Administrasi (Memperingati 70 Tahun Prof. Dr. H. Supandi, S.H., M.Hum.)*, (Depok: Rajawali Pers, 2022), 302-305.

For instance, hypothetically someone applies for a permit issuance, and because it is deemed approved, they proceed with the activity as per the requested permit. However, as the police do not find evidence of the permit decision in question, the individual is subsequently arrested on charges of conducting the activity without a permit. On one hand, the individual engages in the activity in good faith due to the assumed issuance of the permit, but they are also unable to prove the existence of the intended permit. Legal protection for situations like these should be regulated in the presidential regulation implementing tacit approval.⁸

2.1. Registering Tacit Approval in a Designated Website.

The call for a presidential regulation to govern tacit approval highlights the meticulous nature of legal framework development. Such regulations should clarify the scope of tacit approval, outline the circumstances under which it applies, establish the maximum duration for tacit approval to take effect, and provide mechanisms for individuals to seek clarification or challenge decisions in cases where the principle might have been misapplied.⁹

The significance of tacit approval is magnified in the context of modern governance, where administrative processes are becoming increasingly digitized. In the digital age, electronic submissions and communications have sped up the administrative exchange, making the timely acknowledgment of applications even more crucial. Consequently, governments around the world are grappling with the adaptation of tacit approval to this digital paradigm, exploring innovative ways to integrate automated responses and acknowledgment mechanisms into administrative procedures.¹⁰

The use of technology in the context of tacit approval can also be implemented to ensure legal certainty for applicants. Every application that meets the requirements according to the procedure and has passed the time limit, is considered deemed approved and can be registered on the government-designated website. The Presidential Regulation regarding tacit approval is a crucial piece of legislation that seeks to streamline administrative procedures and enhance efficiency in government processes. This regulation addresses the concept of tacit approval, which refers to a situation where an application

8 Muhammad Adiguna Bimasakti, "Beberapa Kesalahan Konseptual pada UU Cipta Kerja Menurut Ilmu Hukum Administrasi Negara", *Jurnal Hukum Peratun* 4 (2021), 56.

9 Muhammad Noor Halim Perdana Kusumah and Muhammad Adiguna Bimasakti, *Pedoman Beracara di Peradilan Tata Usaha Negara dan Persidangan Elektronik (e-Litigasi)*, edisi Revisi, (Jakarta: Kencana, 2022), 186.

10 Muhammad Adiguna Bimasakti and Heru Susetyo, *Aspek-Aspek Hukum dalam Pelayanan Publik Pasca Undang-Undang Cipta Kerja*, (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2021), 34.

submitted to a government agency is automatically approved if the agency does not provide a response within a specified timeframe. To ensure the effectiveness and fairness of this process, the regulation should incorporate detailed provisions to regulate various aspects of tacit approval. Some of the key matters that the regulation should address include:

- Designation of a Dedicated Website: One of the foundational components of the regulation should involve the establishment of an official platform or website dedicated to handling applications that have received tacit approval. This platform should serve as the primary interface for applicants to submit their applications and monitor the progress of their submissions. The designation of a dedicated website ensures that there is a centralized and easily accessible channel for applicants to engage with the tacit approval process.
- Procedure for Registration: The regulation should outline a comprehensive and standardized procedure that applicants must follow when registering applications that have been granted tacit approval. This procedure should include clear instructions on how to submit relevant documents, how to indicate the desired timeframe for tacit approval, and any other necessary information. By establishing a well-defined procedure, the regulation ensures consistency and reduces the potential for misunderstandings or errors during the application process.
- Effective Implementation of Tacit Approval: One of the most critical aspects of the regulation is determining the precise point at which tacit approval becomes effective. This temporal aspect is essential to provide clarity to both applicants and government authorities. The regulation should specify the duration of the tacit approval period, as well as the criteria that need to be met for an application to be considered approved. This clarity helps avoid confusion and allows applicants to confidently proceed with their plans after the tacit approval period has elapsed.
- Recourse for Rejected Registrations: Recognizing that errors or issues might arise during the application process, the regulation should establish a mechanism for applicants to address rejected registrations. This could include setting up an appeals process where applicants can provide additional information or correct any errors that led to the rejection. Additionally, the regulation might offer guidance on rectifying common issues that lead to rejections, fostering transparency and

fairness in the application process.

Therefore, the Presidential Regulation regarding tacit approval plays a pivotal role in promoting administrative efficiency and transparency. By addressing key elements such as the designation of a dedicated website, a clear procedure for registration, the effective implementation of tacit approval, and a recourse mechanism for rejected registrations, the regulation ensures that the concept of tacit approval is applied consistently and fairly. This regulatory framework not only benefits applicants by simplifying the application process but also enhances the overall governance and accountability of government agencies involved in the approval process. This concept also aligns with e-Government in public administration, which involves the electronic foundation of governance where the administration is electronically managed through specific systems for Government to Government (G2G), Government to Citizen (G2C), Government to Business (G2B), and Government to Employee (G2E) services.¹¹

Article 53 of the Government Administration Law stipulates that tacit approval is deemed to exist when a submitted application is complete.¹² This means that all procedures specified in the requested application must be fulfilled by the applicant. If these procedures are not complete, the application is considered to have never existed. For instance, in the issuance of land certificates, the applicant must fulfill the requirements established in the legal regulations pertaining to land registration. If any of these requirements are not met, the application is regarded as non-existent and is not deemed approved.

In addition to addressing procedures, attention must also be given to the delineation of authority. Within the Presidential Regulation concerning tacit approval, it must also be stipulated that if an application is submitted to an unauthorized official or administrative body, the application is considered to have never existed and is not deemed approved. This is a logical consequence of the principle that there is no accountability without authority (*geen verantwoordelijkheid zonder bevoegdheid*). This implies that applications submitted to an unauthorized body or official need not be pursued by the intended official or body. Therefore, the system within the website designated by the Presidential Regulation must also be capable of determining whether the official or body intended in the application has the authority to issue the

11 Firdaus Masyhur, "Kesiapan E-Skills Pemerintah Daerah dalam Implementasi E-Government di Kawasan Mamminasata", *Jurnal Pekommas*, 17 (2014), 152.

12 Azza Azka Norra, "Pertentangan Norma Fiktif Negatif dan Fiktif Positif Serta Kontekstualisasinya Menurut Undang-Undang Administrasi Pemerintahan", *Jurnal Hukum Peratun*, 3 (2020), 146.

requested decision or not.

A similar regulation has actually been implemented in France through the *Code des relations entre le public et l'administration* (abbreviated CRPA), or the Law on Relations between the Public and Government Administration. In Article L232-3, when requested, it is mandatory to register it on a website designated by law, namely: <http://service-public.fr> (Article D231-2 and Article D231-3), and subsequently reported to the Prime Minister. Therefore, based on Article L112-5 paragraph (3), Tacit Approvals do not need to be confirmed by a court decision, and are registered on the official website. Furthermore, if the requested Authority did not have the proper authorization, the Authority can revoke (withdraw/cancel) the tacit approval that has already been “issued,” and the applicants can file an appeal in the Administrative Court.¹³

2.2. Issuance of Tacit Approval Certificate

To provide clarity and evidence of tacit approval, a certificate is issued to the applicant as a formal acknowledgment of their tacitly approved application. This certificate holds various implications and serves several purposes within the broader framework of regulatory governance. The issuance of a certificate for tacit approval is a significant aspect of administrative processes aimed at enhancing efficiency and transparency within government procedures. Therefore, the Presidential Regulation should stipulate the issuance of a tacit approval certificate to verify that the application is deemed approved.

At its core, the issuance of a certificate for tacit approval is a procedural step that underscores the commitment to efficient governance and the reduction of bureaucratic delays. This approach is particularly beneficial in scenarios where a lack of response from government agencies could potentially impede projects, hinder investments, or delay crucial decisions. By streamlining the approval process through tacit approval and providing a certificate as evidence, government authorities demonstrate their commitment to promoting timely actions and preventing unnecessary bottlenecks in public administration.

The certificate itself serves multiple functions. Firstly, it acts as an official document that affirms the applicant’s compliance with the requirements and procedures set forth by the relevant government agency. This is an essential aspect of maintaining accountability and ensuring that applications adhering to the proper processes are granted tacit approval. The certificate thus becomes

13 Marc Clement, *Yurisprudensi Peradilan Administrasi Perancis: Keputusan Implisit dan Titik Singgung Antara Sanksi Pidana dan Sanksi Administrasi*, (SUSTAIN Project, UNDP), 92.

a tangible record of the applicant's adherence to regulatory guidelines.

Secondly, the certificate for tacit approval provides legal and evidentiary value. In cases where legal disputes arise or questions regarding the validity of approvals are raised, the certificate serves as concrete proof that the application was indeed granted tacit approval within the specified timeframe. This can be crucial for applicants seeking to defend their rights and interests in the face of potential challenges.

Furthermore, the issuance of the certificate enhances transparency and trust between government authorities and applicants. By providing a clear document that attests to the tacit approval, the government agency shows a commitment to open and accountable decision-making. This transparency is essential for building public confidence in the regulatory process, as it reduces suspicions of favoritism or hidden agendas. Applicants can be assured that their applications are being treated fairly and objectively.

The certificate also aids in financial and project planning for applicants. Once an application receives tacit approval, the applicant can confidently proceed with their plans, whether it involves investments, construction projects, or other business activities. The certificate serves as proof that the necessary approvals have been obtained, allowing applicants to secure funding, allocate resources, and make strategic decisions with the assurance that their endeavors are legally sanctioned.

The use of a certificate, serves several essential purposes within the administrative context:

- Legal Verification: The certificate acts as a documented proof of the Tacit Approval, offering a verifiable record that the applicant can present in case of disputes, legal inquiries, or any need for formal confirmation.
- Transparency: By issuing a certificate, Government Administration ensures that the process of Tacit Approval is transparent and consistent. Applicants are provided with clear evidence of their approved status, which fosters trust in the regulatory process.
- Applicant Confidence: The certificate empowers applicants to confidently proceed with their plans, investments, or projects, as they possess an official document affirming their approved status.
- Administrative Efficiency: The issuance of a certificate streamlines administrative procedures by providing a standardized method of

confirming Tacit Approval. This reduces potential ambiguities or misunderstandings.

- Accountability: By mandating the issuance of a certificate, the regulation holds Government Administration accountable for recognizing and officially acknowledging Tacit Approval.

The issuance of a certificate for tacit approval is a vital element of modern administrative processes that prioritize efficiency, transparency, and accountability. By providing applicants with a formal document that affirms their compliance with regulatory procedures and acknowledges their tacit approval, governments foster a business-friendly environment, streamline decision-making, and promote responsible governance. The certificate serves not only as evidence of approval but also as a symbol of cooperation between government agencies and applicants, ultimately contributing to a more effective and harmonious regulatory landscape.

In France, a comparable regulation has been put into practice under the framework of the CRPA. Specifically, Article L112-5 of the CRPA outlines a significant requirement regarding the handling of Tacit Approval within governmental processes. This provision mandates that Government Administration is obligated to take subsequent actions following instances of Tacit Approval. These actions involve the issuance of an attestation, which can be understood as a form of certificate. Nevertheless, not all applications can be considered accepted, as there are several exceptions in the CRPA where such applications are not deemed to be accepted.¹⁴

To uphold the principles of transparency, accountability, and legal certainty, the CRPA stipulates that Government Administration must not only acknowledge Tacit Approval but also provide a tangible record of this acknowledgment. This is achieved through the issuance of an attestation, which serves as a confirmation that the application has indeed received Tacit Approval and is eligible for the corresponding benefits or rights. The President should appoint a certain body or official to issue a certificate to ensure the rights of citizens whose application is deemed approved. Why? Because this certificate acts as a proof that a tacit approval exists and can be used against other parties.

¹⁴ Wolfgang Weiß & Michael Mirschberger (eds.), *The Implementation of the EU Services Directive, Transposition, Problems and Strategies*, (The Hague: T.M.C. Asser Press, 2012), 19-20.

3. Legal Protection from Tacit Approval for the Disadvantaged Parties

According to Article 87 of the Government Administration Law, the disputed objects that can be examined in the administrative court are decisions in the form of written decisions (*besluiten*) and factual actions (*feitelijke handelingen*). As for tacit approval as a disputed object in the administrative court, it is not regulated within either the Government Administration Law as amended in Job Creation Law; or Law No. 5 of 1986 concerning the Administrative Judiciary, as amended by Law No. 9 of 2004 and Law No. 51 of 2009. Therefore, in this section, it will be examined whether tacit approval can be brought to trial in the administrative court, and whether tacit approval is deemed as a written decision or a factual action.

The concept of tacit approval finds resonance with the Latin adage “*Etiam Si Tacere Est Respondere*,” which translates to “Even if silent, it is an answer.”¹⁵ This notion underscores the idea that the absence of explicit communication or response can, in itself, convey a meaningful message or confirmation. In the context of administrative procedures, when a government agency or official does not provide a formal decision within a designated timeframe, their silence can be interpreted as a form of acknowledgment or acceptance of the matter at hand.

This concept is based on legal fiction, which is something that doesn’t exist in reality but is assumed to be present. If the assumption used is considered legally accepted, then the theory of positive fiction has been applied, in line with the adage “*Qui Tacet Consentire Videtur*,” meaning silence implies consent.¹⁶ Article 53 of the Government Administration Law, as amended in Article 175 point 7 of the Job Creation Law, regulates government inaction as tacit approval.¹⁷

This interpretation is aligned with the principles embedded in legal frameworks, particularly Article 3, paragraph (1) of the Administrative Judiciary Law.¹⁸ According to this provision, when an official or a government entity neglects their responsibility to issue a decision that falls within their jurisdiction, this inaction is regarded as tantamount to making a decision. In other words, the law recognizes the significance of timely decision-making and places importance on the responsibilities of government bodies to address matters promptly. This means

15 Aldwin Rahadian Megantara, *Catatan Kritis Omnibus Law Cipta Kerja dalam Sudut Pandang Hukum Administrasi Pemerintahan*, (Yogyakarta: Deepublish, 2021), 75.

16 Hernán Corral Talciani, “Qui tacet consentire videtur: La importancia de una antigua regla canónica en el juicio contra Tomás Moro”, *Ius Canonicum* 51(2011), 142.

17 Dacian C. Dragos *et.al.* (eds.), *The Sound of Silence in European Administrative Law*, (Cham: Palgrave Macmillan, 2020), 13-14.

18 Jusak Sindar, “Penyelesaian Sengketa Keputusan Fiktif Positif Pasca Undang-Undang Cipta Kerja”, *Jurnal Pendidikan dan Konseling*, 5 (2023), 6048.

that, as such, tacit approval is equated with a written decision according to article 3 paragraph 1 of the Administrative Judiciary Law.

Based on this, the disadvantaged parties due to the existence of tacit approval can file a lawsuit in the administrative court as stipulated in Article 53 paragraph (1) of Law No. 9 of 2004. The disputed object is the certificate of tacit approval, which is a certificate issued by the website system designated by the presidential regulation. The difference between a lawsuit for deemed refusal and tacit approval lies in Article 3 paragraph 2 and 3 of the Administrative Judiciary Law. In the case of a deemed refusal, the plaintiff is the requesting party whose application is considered rejected through deemed refusal. Conversely, in a tacit approval lawsuit, the plaintiff is another party who feels disadvantaged due to the presence of tacit approval. The following are the procedural details for filing a lawsuit in the administrative court for tacit approval:

- The plaintiff must first file an objection (*bezwaar*) with the competent official or government body that issued the relevant decision within a maximum of 21 working days after the tacit approval certificate is announced on the website. For instance, the objection must be submitted to the head of the land office regarding the tacit approval certificate concerning land certificate applications. After the objection is resolved, the plaintiff can lodge an administrative appeal (*administratieve beroep*) within 10 working days after receiving the outcome of the objection from the superior official/government body. For example, this can be addressed to the head of the regional land office as the superior to the head of the land office. This is as regulated in Articles 75 to 78 of the Government Administration Law¹⁹;
- After receiving the outcome of the administrative appeal, if the Applicant is unwilling to accept the result, they can file a lawsuit in the administrative court (Article 76 paragraph (3) of the Government Administration Law). The deadline for submitting the lawsuit is 90 days after the announcement of the tacit approval certificate (Article 55 of the Administrative Judiciary Law).²⁰

¹⁹ Muhammad Adiguna Bimasakti, "Lawsuit in Administrative Court after Administrative Proceedings Based on Perma No. 6 of 2018", *Jurnal Hukum dan Peradilan* 8 (2019), 473.

²⁰ Zaka Firma Aditya, Muhammad Adiguna Bimasakti, and Anna Erliyana, *Hukum Administrasi Negara Kontemporer: Konsep, Teori dan Penerapannya di Indonesia*, (Depok: Rajawali Pers, 2023), 287.

4. Conclusion

The concept of tacit approval revolves around treating an application or request as granted, even in the absence of a direct formal decision. This occurs when the government fails to respond to the application within a predetermined time frame. In such instances, the lack of a response is interpreted as an implicit form of consent or approval. This concept is delineated in article 175 point 7 of Job Creation Law. For context, the Job Creation Law was created in order to boost the effectiveness of the bureaucracy for the sake of Investment, as mentioned in the consideration of the Job Creation Law. For this cause, the norm of tacit approval in Article 53 of Law No. 30 of 2014 was changed through article 175 of the Job Creation Law. One of the changes is the elimination of the administrative judiciary role in the follow-up of tacit approval. However, it is essential for this tacit approval to be subjected to more comprehensive regulation through a presidential regulation. Despite the passage of time, such regulation has not been established yet.

The regulation of tacit approval within a presidential regulation should encompass the formal recognition of tacit approval through registration within the government's information system and issuance of a certificate to verify it. This, in turn, guarantees legal assurance for individuals awaiting decision outcomes. Moreover, the tacit approvals can be subject to review within an administrative court, serving to establish legal surety for citizens who might be influenced by these decisions. This mechanism ensures a level of accountability and legality in the implementation of tacit approval, ultimately safeguarding the interests of both applicants and the broader community.

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