

THE POSITIVE FICTIONAL PRINCIPLE AFTER THE IMPLEMENTATION OF THE JOB CREATION LAW: A PROPHETIC LEGAL PARADIGM

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Abstract

The positive fictitious principle in the Law No. 11 of 2020 concerning Job Creation (CK Law) exists to facilitate investment and simplify licensing. However, the provisions in the CK Law, which exclude the role of the Administrative Court in fictitious applications have the potential to cause injustice and legal uncertainty in society. That research focuses on examining the positive fictitious principle's existence after the CK Law's enactment in the paradigm of prophetic law. The paradigm of prophetic regulation was chosen in this study as an effort to explore the theological (divine) and human dimensions in positive fictitious formulations as in CK Law. This research is a normative legal type of research with a concept and statutory approach. The results of the study confirm that in terms of the three aspects of prophetic law, namely transcendence, liberation, and humanization, the provisions of the CK Law, which no longer involve the role of the Administrative Court and have not issued Presidential Regulations regarding positive fiction can cause uncertainty and injustice in society. That makes the substance of the prophetic law in the positive fictitious provisions in the CK Law not be realized optimally. Orientation based on the prophetic legal paradigm in regulating the positive fictitious principle after regulation in the CK Law, according to the author, can be done by revising the positive fictitious provisions in the CK Law by returning the competence of the State Administrative Court.

Keywords: *Job Creation Law; Positive Fictional Principle; Prophetic Law*

1. INTRODUCTION

Law No. 11 of 2020 concerning Job Creation (in the future referred to as the CK Law) is one of the most phenomenal laws in Indonesia.¹ That is because, in this law, the formulation procedure uses the omnibus law method, which is an “unusual” method in forming laws in Indonesia. The omnibus law method creates “typical” state laws with a common law system with characters on simplifying and harmonizing conflicting statutes..² In this context, the omnibus law method used in CK Law is actually in the context of efforts to streamline and coordinate regulations and to facilitate investment oriented in the form of

¹ Bayu Dwi Anggono, “OMNIBUS LAW SEBAGAI TEKNIK PEMBENTUKAN UNDANG-UNDANG: PELUANG ADOPTASI DAN TANTANGANNYA DALAM SISTEM PERUNDANG-UNDANGAN INDONESIA,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 9, no. 1 (April 27, 2020): 17, <https://doi.org/10.33331/rechtsvinding.v9i1.389>.

² Zaid Zaid, Farouk Aisha Dawaki, and Sabit Kazeem Oloade, “Should the State Control Tariffs?,” *Journal of Governance and Public Policy* 8, no. 1 (2021): 22–36, <https://doi.org/10.18196/jgpp.811340>.

opening up employment opportunities. Apart from being controversial because the CK Law was formed using the omnibus law method, it is also controversial due to its various substances. One of the substances is related to positive fictional aspects.³ Optimistic fiction is one of the implementations of the ease of investing orientation in CK Law. Positive fictitious is based on the conception that the actions of an authorized official or state agency that permits or does not respond to a state administrative decision (*Keputusan Tata Usaha Negara* or STATE ADMINISTRATIVE DECISION), then the authorized official or state agency is considered to have approved or taken affirmative action.⁴ In short, positive fiction emphasizes that if a state administrative decision needs to be responded to or answered by an authorized official or state agency, then who can consider that the authorized official or state agency is deemed to have approved it.

Provisions regarding fictitious positives in the CK Law are contained in Article 175 number 6, which emphasizes explicitly that there are five days (5 days) to confirm that a STATE ADMINISTRATIVE DECISION has fulfilled a positive fictitious aspect as long as officials or authorized state bodies do not receive an answer/ left. The positive fictitious provision was not the first time it was stated in Article 175, number 6 of the CK Law, but was previously contained in Article 53 of Law no. 3 of 2014 concerning Government Administration (hereinafter referred to as the AP Law) which confirms that the positive fictitious time limit is ten days (ten days).⁵ That means that the provisions in Article 175 point 6 of the CK Law are, in fact, a follow-up provision in Article 53 of the AP Law which differ only in the timeframe of the positive fictitious. Provisions regarding positive fiction in the CK Law became problematic due to the birth of the Constitutional Court Decision Number 91/PUU-XVIII/2020, which stated that the CK Law was conditionally unconstitutional and had to be amended within two years at the latest.

In addition, the CK Law emphasizes that positive fictitious applications are no longer considered the authority of the State Administrative Court (*Pengadilan Tata Usaha Negara* or PTUN) to try them. Previously, in Article 53 paragraph (4) of the AP Law, the provisions concerning positive fiction had to go through an application at the Administrative Court to obtain legal certainty. Based on this description, this research examines the positive fictitious principle's existence after the CK Law's enactment in the paradigm of prophetic law. The paradigm of prophetic law was chosen in this study as an effort to explore the theological (divine) and human dimensions in positive fictitious formulations as in CK LAW. That is relevant to the view of law as a norm, which means

³ Suryati, Ramanata Disurya, and Layang Sardana, "Tinjauan Hukum Terhadap Omnibus Law Undang-Undang Cipta Kerja," *Jurnal Ilmiah Ilmu Hukum Simbur Cahaya* 28, no. 1 (2021): 97–111, <https://doi.org/http://dx.doi.org/10.28946/sc.v28i2.902>.

⁴ Elvlyn Elvlyn and Delpedro Marhaen, "Pengaruh Undang-Undang Cipta Kerja Terhadap Digitalisasi UMKM Di Tengah Pandemi," *Justisi* 8, no. 2 (2022): 82–94, <https://doi.org/10.33506/js.v8i2.1707>.

⁵ Erna Dwi Safitri and Nabitus Sa'adah, "Penerapan Upaya Administratif Dalam Sengketa Tata Usaha Negara," *Jurnal Pembangunan Hukum Indonesia* 3, no. 1 (2021): 34–45.

that law exudes values and morality so that every rule of law must refer to and be based on the importance and morals embodied in legal principles..⁶

Research on positive fiction in the CK Law has been carried out by several previous researchers, such as (i) Mailinda Eka Yuniza and Melodia Puji Inggawati (2021) concerning the Opportunities and Challenges of Implementing Positive Fictitious Decisions After the Promulgation of the Job Creation Law which focuses on aspects of certainty law in positive fictitious as stipulated in CK Law when Administrative Court can no longer make decisions on positive fictitious applications.⁷ Furthermore, research conducted by (ii) Andika Risqi Irvansyah (2022) concerning the Legal Position of Positive Fictitious Decisions Since the Enactment of the Job Creation Law focused on the need for an institution to replace the role of the Administrative Court concerning positive fictitious application decisions.⁸ Of the two previous studies, research discussing the paradigm of prophetic law concerning positive fiction in the CK Law has never actually been carried out; thus, the research that the authors conducted was original and novel to the two previous studies. This study seeks to answer two problem formulations: (i) how is the existence of a positive fictitious principle post-regulation in CK Law viewed from the paradigm of prophetic law? and (ii) how is the orientation based on the paradigm of prophetic law in regulating the positive fictitious principle after regulation in CK Law?

The research that examines the existence of the positive fictitious principle after the regulation in the CK Law is a normative law type research.⁹ The focus of normative legal research is an analysis of studies based on authoritative texts made by the state, in this case, positive law. The primary legal materials in this study are the 1945 Constitution of the Republic of Indonesia, the CK Law, and the AP Law. Secondary legal materials are mixed results of studies and research regarding optimistic fiction related to prophetic laws-non-legal materials, including legal dictionaries. The approach in this study focuses on the concept and statutory approach.

2. ANALYSIS AND DISCUSSION

2.1. The Existence of Positive Fictional Principles in CK Law: A Prophetic Law Paradigm

Optimistic fiction is essential to the law, especially in state administrative law studies.¹⁰ That is because state administrative law regulates legal relations between citizens and

⁶ George Duke, "Law's Normative Point," *Law and Philosophy* 38, no. 1 (February 2019): 1-27, <https://doi.org/10.1007/s10982-018-9334-8>.

⁷ Melodia Puji Inggawati Mailinda Eka Yuniza, "Peluang Dan Tantangan Penerapan Keputusan Fiktif Positif Setelah Diundangkannya Undang-Undang Cipta Kerja," *Jurnal de Jure* 9, no. 2 (2021): 114-29.

⁸ Andika Risqi Irvansyah, "KEDUDUKAN HUKUM KEPUTUSAN FIKTIF POSITIF SEJAK PENGUNDANGAN UNDANG-UNDANG CIPTA KERJA," *Jurnal APHTN-HAN* 1, no. 2 (2022): 210, <https://doi.org/10.25216/jhp.7.2.2018.213-236.1>.

⁹ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenada media Group, 2016).

¹⁰ Ridwan Ridwan HR, *Hukum Administrasi Negara*, 13th ed. (Jakarta: Rajawali Pres, 2018).

state apparatus.¹¹ Positive fiction is also related to the relationship between the state apparatus and citizens. In this case, citizens who seek to apply for permits or other provisions whose substance constitutes a *state administrative decision* (in Indonesia: *Keputusan Tata Usaha Negara* or KTUN) must apply to the state apparatus or an authorized state institution.¹² In this case, positive fiction is relevant to the relationship between citizens and the state apparatus. According to the author, positive fiction in state administrative law is a legal principle (*rechtsbeginsel*). According to Ronald Dworkin, legal principles (*rechtsbeginsel*) qualify in three aspects. *First*, legal principles originate from legal values and legal ideals in society. In this context, the legal principle is the core of value.¹³ *Second*, what cannot equate legal principles with norms or positive law. Even though it is not a legal norm, the validity of a legal norm is determined by the existence of a legal principle. *Third*, legal principles can also test a provision of norms and legal rules.¹⁴ That means that a norm or the rule of law contrary to the law's principle is null and void. Referring to Ronald Dworkin's view, positive fiction is a legal principle with three arguments.

First, legal fiction originates from legal values that develop in society. These legal values develop in line with the existence of a good governance paradigm which emphasizes the importance of the effectiveness and efficiency of state administrators to ensure people's welfare. In this context, one of the efforts to bring about community welfare is through proper and proportional investment.¹⁵ The proper and proportional investment aims to move the wheels of the economy, especially to create jobs. In this context, the government, in establishing regulations and provisions of laws and regulations, is expected to be as simple as possible and effective in supporting a conducive investment climate. Thus, the orientation of proper and proportional investment as part of society's needs requires legal value support in the form of the "ease" value of investing, especially with positive fictitious instruments. *Second*, positive fiction is not just a formulation of norms or legal rules, which are laterally found in Article 175 point 6 CK Law and Article 53 AP Law. Positive fiction is a legal principle because it contains a "guiding spirit" so that law can provide facilities for the development of human life.¹⁶ In this context, apart from being a regulator, the law also encourages human creativity, especially in dealing with the times. *Third*, as a principle, positive fiction can be used as a "testing value" of a provision, norm or rule of law that does not support efforts to facilitate investment. In this context, legal

¹¹ Sri Nurhari Susanto, "Komponen, Konsep Dan Pendekatan Hukum Administrasi Negara," *Administrative Law & Governance Journal* 4, no. 1 (2021): 144–57.

¹² Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara: Transformasi Dan Refleksi*, 1st ed. (Jakarta: Sinar Grafika, 2018).

¹³ Nurul Adhha Asep Saepudin Jahar, Raju Moh Hazmi, "Construction of Legal Justice, Certainty, and Benefits in the Supreme Court Decision Number 46P/HUM/2018," *Cita Hukum* 9, no. 1 (2021): 162.

¹⁴ Sulasno Rokilah Rokilah, "Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan," *Ajudikasi : Jurnal Ilmu Hukum* 5, no. 2 (2021): 179–90.

¹⁵ Khalid Prawiranegara, "Implementasi Asas-Asas Umum Pemerintahan Yang Baik Pada Pemerintahan Kabupaten Dompu," *Jurnal Lex Renaissance* 6, no. 3 (2021): 591–604, <https://doi.org/10.20885/jlr.vol6.iss3.art11>.

¹⁶ Andrew Harding, "Theories of Law and Development," *Asian Journal of Social Science* 46, no. 4–5 (September 28, 2018): 421–44, <https://doi.org/10.1163/15685314-04604003>.

norms and regulations that complicate investment can be considered legal norms that conflict with the positive fictitious principle, making these legal norms null and void.

From the three descriptions of positive fiction as a legal principle above, who can conclude that the important position of positive fiction as a legal principle is not just a formulation of rules in statutory regulations; but is a legal principle that develops from legal values based on social development which emphasizes the importance of investment role.¹⁷ Historically, who first listed the positive fictitious-related orientation in Article 53 of the AP Law. That confirms that before the enactment of the AP Law (before 2014), negative fictitious applies, which is a legal instrument in the form of a state administrative decision, does not receive a response from an authorized official or legal entity, then does not responding can be equated with refusing. Negative fiction as a “predecessor” of positive fiction is regulated in Article 3 of Law No. 5 of 1986 concerning PTUN (UU PTUN), which confirms that applications for STATE ADMINISTRATIVE DECISION exceed the time limit and are not granted are deemed to have legally rejected the STATE ADMINISTRATIVE DECISION application.¹⁸ Referring to the socio-community conditions and realities at the time the Administrative Court Law was formulated (1986), who can accept that the presence of negative fiction is an attempt to strengthen the position of the Administrative Court as an administrative court in Indonesia. That is understandable, considering that when the Administrative Court Law was passed, it was the first time that Indonesia had an administrative court, in this case, the Administrative Court.¹⁹ That is in line with Philipus M. Hadjon’s view that the presence of PTUN as the first administrative court in Indonesia requires the role of PTUN as guardian of administrative and legal justice, one of which is by establishing negative fictitious provisions.²⁰

The negative fictitious provisions contained in Article 3 of the Administrative Court Law are considered inappropriate or irrelevant to the legal needs of the Indonesian people, especially when starting the new millennium (the 2000s) and starting the 21st century (2000s to on). In Francis Fukuyama’s view, the 21st century is the century of business and technology in which the role of business and technology will become more massive and become the “heart” of human life in the 21st century.²¹ The important part of business and technology has implications for the importance of investment as a support for business and technology sustainability. In the legal aspect, one must immediately facilitate the importance of this investment by criticizing and changing

¹⁷ M. Zulfa Aulia, “Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa,” *Undang: Jurnal Hukum* 3, no. 1 (July 7, 2020): 201–36, <https://doi.org/10.22437/ujh.3.1.201-236>.

¹⁸ Ni Komang Ayu Arniti, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, “Penyelesaian Permohonan Fiktif Positif Untuk Mendapatkan Keputusan Di Pengadilan Tata Usaha Negara,” *Jurnal Analogi Hukum* 1, no. 8 (2019): 265–70.

¹⁹ Irvan Mawardi, *Paradigma Baru PTUN: Respon Peradilan Administrasi Terhadap Demokratisasi*, 1st ed. (Bantul: Thafa Media, 2016).

²⁰ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia* (Surabaya: Peradaban, 2007).

²¹ Francis Fukuyama, *Identity: The Demand For Dignity and The Politics of Resentment*, 1st ed. (London: Farrar, Straus, and Giroux, 2018).

provisions related to negative fiction. Through the AP Law, it is formulated that there are positive fictitious provisions based on the principle of *lex posterior derogate legi priori*. That the substance of the new Law overrides the importance of the old Law so that the positive fictitious provisions in the AP Law can overrule the negative fictitious provisions as contained in Article 3 of the Administrative Court Law when referring to the socio-community reality.²² The legal needs of the community when the AP Law was passed (in 2014), there are at least two arguments why who must replace the negative fictitious provisions in the Administrative Court Law with positive fictitious provisions in the AP Law

First, because of developments business and the importance of investment for the state, it is necessary and essential to have effectiveness and efficiency in the field of Law, especially state Administrative Law. That is so that the state is actively present to facilitate growing investment to impact Indonesia's people positively. Of course, the state's efforts to support smooth investment must evaluate legal provisions that have the potential to impede investment, one of which is the negative fictitious provisions in the AP Law. Thus, the development of the role and the massive investment for the people of Indonesia requires that the state participates by prioritizing positive fictitious as part of the "correction" of negative fictitious provisions contained in previous legal regulations (in this case, the Administrative Court Law). *Second*, affirming the existence of positive fictitious as a "replacement" for negative fictitious as stipulated in the Administrative Court Law is an attempt to activate the role of the government and the courts (in this case, the Administrative Court) in responding to developments in community law. The government's active role legally related to positive fictitious aspects is intended so that the government is more careful and efficient in responding to the submission of a STATE ADMINISTRATIVE DECISION; because it does not answer the application for a STATE ADMINISTRATIVE DECISION, the government is deemed to agree. Concerning the court's role, the State Administrative Court has an active role in this

²² Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 17, no. 3 (2020): 305, <https://doi.org/10.54629/jli.v17i3.711> in which there are two or more positive legal norms for the same regulatory object conflicting with one another. In this situation, the observance of one norm necessarily involves the violation of the other so that in applying one norm requires the existence of what is called "derogation" or the repeal of the validity of the other norm. Ideally, the repeal of the validity of a norm is stipulated in a separate positive legal norm, namely "derogation norm" which determines which norm applies between two or more conflicting norms. However, cases of norm conflict often occur without derogation norms, therefore, it is common in practice to use the principle of norm conflict, that is the principle of *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, or *lex posterior derogat legi priori* as a legal reasoning and argumentation devices in determining which norm prevails. Legal reasoning using this principle must be carried out systematically and logically so that it can lead to valid and acceptable legal arguments. By using the normative legal research method, this paper will discuss the meaning, problematics, and application of these principles in solving the problem of norm conflicts"; "author": [{"dropping-particle": ""}, "family": "Irfani", "given": "Nurfaqih", "non-dropping-particle": ""}, "parse-names": false, "suffix": ""}], "container-title": "Jurnal Legislasi Indonesia", "id": "ITEM-1", "issue": "3", "issued": {"date-parts": [{"2020"}]}, "page": "305", "title": "Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum", "type": "article-journal", "volume": "17", "uris": [{"http": "http://www.mendeley.com/documents/?uuid=7749e8ea-ef89-4ab6-ac4a-83fe54b29ed1"}]}, "mendeley": {"formattedCitation": "Nurfaqih Irfani, \"Asas Lex Superior, Lex Specialis, Dan Lex Pesterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum,\" <i>Jurnal Legislasi Indonesia</i> 17, no. 3 (2020)

case. In providing guarantees of legal certainty regarding positive fictitious aspects, where when the authorized state administrative agency or official does not respond to a STATE ADMINISTRATIVE DECISION submission and exceeds the time limit, the Administrative Court has a role active and strengthen legal certainty related to the enactment of positive fictitious.

Furthermore, the provisions in the positive fictitious are amended with the hope of further optimization through the provisions in Article 175 point 6 CK Law. The positive fictitious applies when the authorized state administrative agency or official does not respond to a State Administrative Decision application. Problems related to Article 175 point 6 CK Law, in particular, are conditional unconstitutional provisions based on the Constitutional Court Decision Number 91/PUU-XVIII/2020 within two years. The absence of technical regulations (in this case, a Presidential Regulation) regarding positive fictitious shortened the time to five days in the CK Law, which was previously ten days in the AP Law.²³ The absence of technical regulations (in this case, a Presidential Regulation) concerning positive fiction as a follow-up to CK Law raises particular legal problems. From the perspective of prophetic law, which emphasizes the aspects of transcendence, liberation, and humanization, the legal policy of regulating positive fiction in CK Law is relevant. The perspective of prophetic law is used as an analytical tool because prophetic law does not see the law as a set of rules made by human consensus. Still, the law must reflect aspects of religiosity.²⁴ This aspect of religiosity is essential, especially concerning the idea of justice, which is a manifestation of Divine values that must apply in human relations (*muamalah*).²⁵ Referring to the aspect of prophetic law, the positive fictitious provisions in CK LAW can be analyzed. *First*, from the element of transcendence in prophetic law,²⁶ which emphasizes the divine dimension by prioritizing equal position among humans, especially equality of position between citizens and state administration officials, then positive fictitious provisions in CK Law have the potential to not provide equal status for citizens with state administration officials because there is no further provision in the form of a Presidential Regulation regarding positive fictitious ones which can weaken the position of citizens for not responding to a request or filing of a state administrative decision by state administration officials.

Second, from the aspect of liberation or efforts to liberate citizens in the sense of facilitating citizens related to investment efforts and culture. The absence of further regulations in the form of Presidential Regulations regarding positive fiction can hinder

²³ Aprillia Jultje Saiya, Saartje Sarah Alfons, and Heillen Martha Yosephine Tita, "Partisipasi Masyarakat Dalam Pembentukan Undang-Undang Cipta Kerja," *TATOHI: Jurnal Ilmu Hukum* 1, no. 6 (2021): 619.

²⁴ Arief Budiono Khudzaifah Dimyati, Haedar Nashir, Elviandri, Absori, Kelik Wardiono, "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (2021): 1–8.

²⁵ Said Syaripuddin, "Maslahat as Considerations of Islamic Law in View Imam Malik," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam Volume* 4, no. 1 (2020): 1–23.

²⁶ M. Syamsuddin, ed., *Ilmu Hukum Profetik: Gagasan Awal, Landasan Kefilsafatan, Dan Kemungkinan Penerapannya Di Era Postmodern*, 1st ed. (Yogyakarta: FH UII Press, 2013).

investment. Because there is legal uncertainty for the community regarding positive fiction in CK Law no longer involves the role of PTUN and has not issued a Presidential Regulation regarding positive fiction.²⁷ *Third*, from the aspect of humanization or efforts to fulfil citizens' constitutional rights, the CK Law provision no longer involves the role of the State Administrative Court and has not issued a Presidential Regulation concerning positive fiction that can cause injustice in society. That means that the dimension of humanization as an aspect of prophetic law is not fulfilled. From the description of the analysis, it can be concluded that the existence of a positive fictitious principle after regulation in CK Law is in terms of the prophetic legal paradigm. Instead of being oriented towards providing convenience and legal certainty in investing precisely in the CK Law formulation, the positive fictitious principle creates injustice and legal certainty in the Public. Judging from the three aspects of prophetic law, namely transcendence, liberation, and humanization, the provisions of CK Law, which no longer involve the role of PTUN and have not issued Presidential Regulations regarding positive fiction, can cause uncertainty and injustice in society. That makes the substance of the prophetic law in the positive fictitious provisions in CK Law not be realized optimally.

2.2. The Prophetic Law in Regulating the Positive Fictional Principle on Job Creation Law: A Paradigmatized Orientation

The existence of legal uncertainty in the regulation regarding positive fictitious provisions in CK Law has damaged the existence of CK Law, which is teleologically oriented to simplify and streamline investment.²⁸ However, the rule regarding positive fictitious provisions in CK Law has made the legal uncertainty even more accurate and made it difficult for citizens such as *yustisiabelen* (justice seekers) to formulate legal steps related to positive fiction. In the opinion of the author, two aspects lead to legal uncertainty in positive fictitious arrangements in CK Law. First, positive fictitious provisions in CK Law cause legal tension because they reduce PTUN, which in the AP Law, PTUN is given the competence to ratify positive fictitious submission legally.²⁹ That differs from the CK Law provisions, which have “erased” PTUN competence in positive fictitious submissions. Legal uncertainty arises that when CK Law “removes” PTUN's competence in fictitious positive submissions, then, in this case, does the fictitious positive filing take place by law after the specified time limit immediately takes effect.

Second, the positive fictitious provisions in the CK Law require further regulation of the positive fictitious arrangements in the laws and regulations under the CK Law, in this case, namely, the Presidential Regulation. However, after the Constitutional Court Decision, which later confirmed the unconstitutional status of the Constitutional

²⁷ *Ibid.*

²⁸ Hari Agus Santoso, “Efektifitas Undang-Undang Cipta Kerja Terhadap Peningkatan Investasi,” *Jurnal Hukum Positum* 6, no. 2 (2021): 254–72.

²⁹ Arif Hidayat and Zaenal Arifin, “Politik Hukum Legislasi Sebagai Socio-Equilibrium Di Indonesia,” *Jurnal Ius Constituendum* 4, no. 2 (2019): 147–59, <https://doi.org/10.26623/jic.v4i2.1654>. harus ditujukan untuk mewujudkan keseimbangan sosial (social equilibrium)

Court Decision regarding Job Creation, positive fictitious arrangements are also actually constrained, especially concerning how positive fictitious procedures and implementation are. From the two aspects of legal uncertainty related to positive fictitious provisions in CK Law, from the perspective of prophetic law, positive fictitious provisions in CK Law must receive analysis and construction of future arrangements based on the paradigm of prophetic law. The prophetic law paradigm is used as the principal analysis in studying positive fictitious provisions in CK Law based on three arguments. *First*, the idea of prophetic law is oriented towards transcendence, liberation and humanization, which emphasize the importance of the element of benefit for humans.³⁰

In the context of the positive fictitious provisions in CK Law, the prophetic law is used as the principal analysis to assess whether the positive fictitious provisions in CK Law have a benefit dimension or not for the Indonesian people. *Second*, the idea and paradigm of prophetic law do not only see the law as a set of norms and rules but view law as a value and principle. That means that efforts to regulate positive fiction in CK Law must refer to values and the principle of the birth of CK Law, which aims to provide benefits and create prosperity for the community.³¹ *Third*, the paradigm of prophetic law is interesting to be used as an “analytical knife” in discussing positive fictitious provisions in CK Law because the paradigm of prophetic law places the values of divinity, humanity, and nationality as one unit that supports each other. That is in line with the ideals of Indonesian law, namely Pancasila, which also accommodates the values of divinity, humanity, and nationality in one sentence later named Pancasila. In the paradigm of prophetic law, the positive fictitious arrangement in CK Law does not have a benefit aspect, even though the objective of the positive fictitious understanding in CK Law has a benefit goal.³² That means there is incoherence between “objectives” with “how to make it happen”.

In terms of objectives, the positive fictitious provisions in CK Law, which shorten the positive fictitious time to five days, is a good step and has an orientation towards the benefit aspect. However, with the positive fictitious formulation provisions in CK Law, which negate the role of PTUN, no further technical rules are making positive fictitious provisions in CK Law are limited to “paper tigers”. That means that the aim is good and has dimensions of benefit. Still, in the method and implementation the benefit aspect needs to be fulfilled and tends to be emasculated. Furthermore, in a comprehensive and holistic perspective, the presence of CK Law *ratio legis* apart from efforts to harmonize legal products, also has an orientation to facilitate investment so that it is expected

³⁰ Et.all. Absori, *Paradigma Hukum Profetik: Ragam Paradigma Menuju Hukum Berketuhanan*, 1st ed. (Yogyakarta: CV Genta Fisa Utama, 2018).

³¹ A'An Efendi and Fradhana Putra Disantara, “Post Conditionally Unconstitutional of Job Creation Law: Quo Vadis Legal Certainty?,” *Yuridika* 37, no. 2 (2022): 329–66, <https://doi.org/https://doi.org/10.20473/ydk.v37i2.33364>.

³² Bruno Deffains and Claude Fluët, “Social Norms and Legal Design,” *The Journal of Law, Economics, and Organization* 36, no. 1 (August 14, 2019): 139–69, <https://doi.org/10.1093/jleo/ewz016>.

to have an impact on providing jobs for the community.³³ However, the legal ratio of the presence of CK Law is even more difficult to materialize with positive fictitious provisions in CK Law, which creates legal uncertainty for the community. In the context of prophetic law, there has been a “conflict” between the rule of law. In this case, the provisions in CK Law, and the values that underlie the birth of CK Law, in this case, the ratio legis of the presence of CK Law. Thus, in the paradigm of prophetic law, the value of humanization in CK Law cannot be optimally manifested in a positive fictitious setting in CK Law.

Third, referring to the paradigm of prophetic law based on Pancasila’s legal ideals, the positive fictitious provisions in CK Law do not fulfill the five values in Pancasila. According to Notonagoro, Pancasila has five values that cannot be ignored, let alone conflict with existing laws and regulations.³⁴ Furthermore, Hamid S. Attamimi argues that Pancasila is a *staatsfundamentálnorm*, and the values of Pancasila must be able to be used as a “stone test” in testing existing laws and regulations. In this context, the value of Pancasila as the basis of prophetic law is used to analyze positive fictitious provisions in CK Law. In the divine values in Pancasila, one of its values is an effort to facilitate every human affair. Humans who can help and reduce other human affairs will get a reward from God. In the positive fictitious context in CK Law, instead of facilitating, the positive fictitious provisions in CK Law make it difficult and even cause legal uncertainty for the community. Furthermore, from a humanitarian and national point of view, the positive fictitious provisions in CK Law gave birth to a veiled “oppression” among Indonesians. That is because the legal orientation of state administration seeks to create harmonious relations between citizens and state administration officials. That is castrated by legal uncertainty in the positive fictitious provisions stipulated in the CK LAW so that it will disrupt the relations between citizens and state administration officials.³⁵

Concerning the values of democracy and justice, the positive fictitious provisions in CK Law further marginalize the people and distance them people from the substance of the importance of justice. That is because the people who have filed positive fictitious applications do not have room to obtain legal certainty guarantees for positive fictitious applications that have been submitted. According to the author, orientation based on the prophetic law paradigm in regulating the positive fictitious principle after the regulation in CK Law can be done in three ways. *First*, related to the Constitutional Court’s decision which confirms that CK Law is conditionally unconstitutional, then the legislators (in this case, the CK Law-maker) must revise the positive fictitious provisions in the CK Law

³³ Rizki Ramadani Anggreany Arief, “Omnibus Law Cipta Kerja Dan Implikasinya Terhadap Konsep Dasar Perseroan Terbatas,” *Al Adalah* 6, no. 2 (2021): 110.

³⁴ Anzhar Ishal Afryand dan Sapriya, “Internalisasi Nilai-Nilai Pancasila Melalui Pusat Studi Pancasila Sebagai Upaya Penguatan Ideologi Bangsa Bagi Generasi Muda (Studi Kasus Di Pusat Studi Pancasila Universitas Gadjah Mada Yogyakarta),” *Untirta Civic Education Journal* 3, no. 2 (2018): 30–42, <https://doi.org/10.16143/j.cnki.1001-9928.2018.01.002>.

³⁵ Richard Epstein, *The Dubious Morality of Modern Administrative Law* (Maryland: Rowman & Littlefield, 2020).

by returning PTUN competence or being able to attribute authority to other institutions as guarantors of legal certainty regarding positive fictitious submissions. *Second*, the government must prepare and formulate technical provisions in Presidential Regulations related to positive fictitious provisions as a follow-up to the provisions in CK Law. That needs to be done by the government, in particular by coordinating with related and relevant parties. *Third*, the community needs to be active in following developments in the regulation of positive fictitious provisions, including seeking various available spaces and legal remedies in their efforts to seek legal certainty regarding the regulation of positive fictitious provisions, which are oriented towards making it easier for the public to obtain state administrative decision as an effort to facilitate business and streamline aspects permits for the public

3. CONCLUSION

The existence of the post-regulation positive fictitious principle in CK Law is viewed from the prophetic legal paradigm of the positive fictitious principle. Instead of being oriented towards providing convenience and legal certainty in investing, it is precisely in the CK Law formulation; instead, it creates injustice and legal certainty in society. Judging from the three aspects of prophetic law, namely transcendence, liberation, and humanization, the provisions of CK Law, which no longer involve the role of PTUN and have not issued Presidential Regulations regarding positive fiction, can cause uncertainty and injustice in society. That makes the substance of the prophetic law in the positive fictitious provisions in CK Law not be realized optimally.

According to the author, in three ways, what can do orientation based on the prophetic law paradigm in regulating the positive fictitious principle after the regulation in CK Law. *First*, it related to the Constitutional Court's decision which confirms that CK Law is conditionally unconstitutional. Then, the legislators (in this case, the CK Law maker) must revise the positive fictitious provisions in the CK Law by returning PTUN competence or being able to attribute authority to other institutions as guarantors of legal certainty regarding positive fictitious submissions. *Second*, the government must prepare and formulate technical provisions in Presidential Regulations related to positive fictitious provisions as a follow-up to the conditions in CK Law. That needs to be done by the government, in particular by coordinating with related and relevant parties. *Third*, the community needs to be active in following developments in regulating positive fictitious provisions, including various available spaces and legal remedies in their efforts to seek legal certainty regarding the law of positive fictitious requirements, which are oriented towards making it easier for the public to obtain STATE ADMINISTRATIVE DECISION to facilitate business and streamline aspects permits for the people. The CK Law makers need to review and even revise the provisions for submitting fictitious positive applications by requiring to provide competence from the State Administrative

Court. Then, they can also regulate the authority of other institutions to guarantee legal certainty for submitting positive fictitious applications. Apart from that, the government also needs to formulate a Presidential Regulation as a technical rule for fictitious positive requests as a follow-up to CK Law.

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