PROPHETIC LAW REVIEW
Volume 4, Issue 1, June 2022

THE LEGAL IMPACTS AND THE GOVERNMENT'S EFFORTS TO RESPOND TO ELECTRONIC STATE ADMINISTRATIVE DECISIONS FOLLOWING THE ENACTMENT OF LAW NO. 11 OF 2020 ON JOB CREATION

Marojahan JS Panjaitan[1]

Citation Guide:
Marojahan JS Panjaitan, **THE LEGAL IMPACTS AND THE GOVERNMENT'S EFFORTS TO RESPOND TO ELECTRONIC STATE ADMINISTRATIVE DECISIONS FOLLOWING THE ENACTMENT OF LAW NO. 11 OF 2020 ON JOB CREATION'** [2022] 4 (1) Prophetic Law Review 110.

Received:
18 August 2021
Accepted:
4 August 2022
Published:
14 October 2022

DOI:
10.20885/PLR.vol4.iss1.art6

Abstract

Responses to applications for state administrative decisions within a time frame of 10 working days as regulated in Article 53 of the Law No. 30 of 2014, which apparently does not provide legal certainty to applicants. This condition is attributed to the fact that electronic form of applications within the 10 working days will not automatically be granted, unless applicants apply to the State Administrative Court. On that basis, the provisions of Article 53 of the Law No. 30 of 2014 were amended by Law No. 11 of 2020 to guarantee the applicants that their electronic form of application within the time limit of five working days will be granted without going through a judicial process. Thus, this study aims to address two aspects, the legal impacts of the issuance of Electronic State Administrative Decree after the enactment of Law No. 11 of 2020, and the government's efforts to respond to the issuance of Electronic State Administrative Decree after the enactment of Law No. 11 of 2020. The research was conducted using normative legal research, particularly library sources, and secondary data in the form of primary, secondary, and tertiary legal materials. The study showed that the legal impacts of an electronically submitted application for a state administrative decision according to Article 53 of the Law No.11 of 2020 have the same legal force as a state administrative decision issued directly by a government official. Clearly, the government's efforts to issue electronic form of application for the State Administrative Decisions by individuals and/or legal entities after the enactment of Law No. 11 of 2020 are carried out to build digital-based governance in all lines of government.

Keywords: *government actions, decrees, permits.*

[1] Lecturer, Bandung Law School. E-mail: marojohanpanjaitan541@gmail.com

A. Introduction

Rapid economic development inevitably necessitates the provision of facilities to obtain state administrative decisions, for example, granting permits to individuals and/or legal entities by state administrative officials. Such applications have been normatively regulated in Article 38 in conjunction with Article 53 of the Law No. 30 of 2014 on Government Administration through electronic forms of application to administrative officials within 10 working days. However, in fact, it turns out that the applicant's request is not automatically granted by a state administrative decision, even after the electronic form of the application within 10 working days has been exceeded. Currently, applicants are still required to directly submit their application through the State Administrative Court (PTUN) even after making an electronic form of the application to a government agency or office. In fact, it has become an open secret that the process of application submission at the State Administrative Court is costly and time consuming. To make things worse, this high cost and time inefficiency do no guarantee that the application will be granted by the State Administrative Court (PTUN). Hence, the provisions as referred to in Article 53 of the Law No. 30 of 2014 do not provide legal certainty to the applicant, since the application can be either granted or rejected, even though it has been submitted electronically within a timeframe of 10 working days, and/or is submitted to the State Administrative Court.

If only the government could respond to an electronic form of an application online within the 10 working days, the applicant does not necessarily need to make a direct submission of their application to the Administrative Court, which may incur high cost and time-consuming legal process. The government is supposed to process electronic applications within the available time limit. Whenever the application requirements are met, the application shall be granted electronically. Meanwhile, in case the application requirements are incomplete, the government can require the applicants to complete the requirements. However, when the applicants are unable to fulfil the requirements, the government can firmly reject their application.

Nonetheless, the current iteration of the process of application is far from what is expected. In fact, it is widely known that without paying a required sum of money, the application for the decision of the state administration can never be proceeded to be either granted and/or rejected. This situation encourages some applicants to give some amount of money to the state administration officials in charge to ensure the quick issuance of the

permit. This fact is clearly seen from criminal case and arrest of the former Minister of Social Affairs, Juliari Batu Bara, and the former Minister of Maritime Affairs and Fisheries, Eddy Prabowo by the KPK for an alleged bribery in connection with the issuance of permits.[2]

Normatively, state administrative decisions fall under the duties and authority of state administrative officials as stated in Article 5 point 6 of the Law No. 28 of 1999 on State Administration that is Clean and Free from Corruption, Collusion and Nepotism, which among other things stipulates that: "every State organizer has the obligations: to perform duties with full responsibility, not to commit ill-behaved acts, without seeking benefits either for his own interests, the interests of his own family, cronyism or group, and not to expect compensation in whatsoever kind of form which is contrary to the provision of regulations and legislation in force."

The above legal provisions serve as guidelines for state administrative officials in performing their public services. In the face of the Industrial Revolution 4.0, Society 5.0, Web 5.0, Human Digital 5.0, 4G (in which 5G and 6G are starting to be introduced), and the borderless global economy, fast service from government agencies or officials without any illicit fees or unofficial charges is increasingly in demand. Furthermore, the severe impact of Covid-19 has demanded the high performance and good coordination between government agencies and public officials to handle many existing problems. Covid-19 not only has an impact on human health, but also has incurred global impacts and national economic growth, state finances, and other life aspects, such as food security, religion, and education sustainability.[3] Everything must be handled simultaneously and integrated with each other to prevent from further impacts caused by Covid-19. In this context, Wawan Mas'udi – Poppy S. Winanti held that the inability to overcome the problems of

[2] Irfan Kamil, 'Soal Edhy Prabowo dan Juliari Batubara Layak Dituntut Hukuman Mati, Ini Kata KPK' (2 Februari 2021) < https://nasional.kompas.com/read/2021/02/17/11240161/soal-edhy-prabowo-dan-juliari-batubara-layak -dituntut-hukuman- mati-ini-kata?page=all> accessed March 5, 2021. This is evidenced by what was stated by Nawawi Pomolango, Deputy Chairman of the KPK, regarding several state apparatus and corporations involved in corruption, namely 274 members of the DPR and DPRD; Head of Ministries/Institutions, 28 people; Ambassador, four people; Commissioners, seven people; Governor, 21 people; Mayor-Deputy Mayor and Regent-Deputy Regent, 122 people; ASN echelon 1, 2, and 3, 230 people; Judges, 22 people; Prosecutors, 10 people; Police, two people; Lawyers, 12 people; Private, 308 people; and Corporations, six companies. Farih Maulana Sidiq 'Sejak 2004 hingga 2020, Ada 274 Anggota DPR-DPRD Jadi Tersangka KPK, (2020) <https://news.detik.com/berita/d-5243038/sejak-2004-hingga-2020-ada-274-anggota-dpr-dprd-jadi-tersangka-kpk> accessed May 5, 2021.

[3] Marojahan JS Panjaitan, 'Pola Penanganan Covid-19 dalam Persfektif Perlindungan Hak Asasi Manusia' in Ahmad Redi and Ibnu Sina Chandranegara (eds.), *Segi Hukum terhadap Implikasi Covid-19 di Indonesia* (Kencana 2020) 119.

coordination and synergy will result in failure to contain the spread of the pandemic, which will lead to a deep humanitarian tragedy.[4] This opinion necessitates the state agency or the government officials as a public servant to perform their task properly and quickly without charging any illicit fees to avoid humanitarian tragedies.

On several occasions, Joko Widodo as President of the Republic of Indonesia has always been complaining about the corrupt behaviour of government agencies or officials in running the government. The corrupt actions of administrative officials are suspected to impede the economic development and to curb the investment growth in Indonesia. Thus, Joko Widodo on February 13, 2020, introduced the Omnibus Law to update regulations that seemingly hampering economic development and investment growth. To pass the omnibus law, the government submitted the Job Creation Bill (RUU Cipta Kerja) to the DPR, which later was named as the Job Creation Bill. On October 5, 2020, the Job Creation Bill was passed and signed into law by the DPR and the Executive respectively. Furthermore, on November 2, 2020, the President of the Republic of Indonesia, Joko Widodo, signed the enactment of Law No. 11 of 2020 on Job Creation (UU 11 of 2020).[5]

The existence of Law No. 11 of 2020 serves as legal political decision that must be respected and obeyed by all parties without exception. This law was drafted by the DPR together with the President, who bears the legitimate mandate of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) to form a law.[6] Therefore, despite the fierce line of opposition to the law, Law No. 11 of 2020 is legal and requires further implementation to be adhered to and enforced. This is so because law will only come to force when it has been implemented, respected, and/or enforced.[7]

The legislative intent of Law No. 11 of 2020 was to serve as the guiding principles in overcoming all problems in granting and/or rejecting the electronic form of application for state administrative decisions, which previously had no legal certainty for the applicants. This legal provision is regulated in Article 175 Chapter XI Implementation of Government Administration Law No. 11 of 2020 which stipulates, among other things, that "several provisions in Law No. 30 of 2014 on Government Administration (State

[4] Wawan Mas'udi and Poppy Winanti, *COVID-19: Dari Krisis ke Krisis Tata Kelola*, dalam *Tata Kelola Penanganan COVID-19 di Indonesia* (Gajah Mada University Press 2020) 11.

[5] Taken from the Full Text of Jokowi's Speech as President of the Republic of Indonesia 2019-2020, at the Inauguration of the President and Vice President on Sunday, October 20, 2019.

[6] According to Article 5 paragraph (1) in conjunction with Article 20 of the 1945 Constitution that the President and the DPR are state institutions that have the authority to form laws.

[7] Marojahan JS Panjaitan, *Pembentukan & Perubahan Undang-Undang Berdasarkan UUD 1945* (Pustaka Reka Cipta 2017) 226.

Institutions of the Republic of Indonesia of 2014 Number 292, Supplement to The Republic of Indonesia No. 292) are amended." The amendments to Law No. 30 of 2014 among others concerning with Government Administration (Law No. 30 of 2014) are Article 38 and Article 53 of the law. The amendments, among others, stipulate that an electronic application for the state administrative decision that is not responded by the government within five working days will be issued electronically without waiting for the decision of the Administrative Court. The electronically issued state administrative decisions have the same legal force as those issued by government agencies or officials. Thus, amendments to Articles 38 and 53 of Law No. 30 of 2014 must be responded to by government agencies or officials by providing fast electronic services, especially for transactions.[8] Absence of response from the State Administrative Office will lead to legal consequences for the issuance of a State Administrative Decree submitted electronically after the enactment of Law No. 11 of 2020. The legal impacts referred to, for example, are stipulated in Article 4 of Government Regulation No. 22 of 2021 on Implementation of Environmental Protection and Management, stating that: "every business and/or activity plan that has an impact on the environment must have: (a) Amdal (Environmental Impact Assessment); (b) UKL (Environmental Management Efforts)-UPL (Environmental Monitoring); or (c) SPPL (Statement of Readiness to Manage and Monitor the Environment).

Based on the above provisions, in order for businesses to operate as referred to above, the government is required to check the requirements when a business makes an electronic form of an application for state administrative decision within five working days. Without a careful examination of the application, it is feared that the application will pass with unfulfilled requirements. For this reason, it is worth to question the government's readiness to issue state administrative decisions that are submitted electronically after the issuance of Law No. 11 of 2020. This is questionable because the issuance of state administrative decisions that are issued electronically is made on digital-based platform. In this case, do the government and the individual and/or civil legal entity as the applicant have entirely met the ability to use digital technology? Some of these legal issues should be questioned in the implementation of Chapter XI of Government Administration based on Law No. 11 of 2020. In this case, the application for a state

[8] Marojahan JS Panjaitan, *Politik Hukum Membangun Negara Kebahagiaan Pada Era Revolusi Industri 4.0 dan Society 5.0* (Pustaka Reka Cipta 2020) 53.

administrative decision submitted electronically must meet the requirements as stated in the amendments to Law No. 11 of 2020.

B. Problem Formulation

Based on the background above, this research identified the following problems:

1. What are the legal impacts for the issuance of State Administrative Decrees submitted electronically after the enactment of Law No. 11 of 2020?
2. How are the government's efforts in issuing State Administrative Decisions submitted electronically by individuals and/or legal entities after the enactment of Law No. 11 of 2020?

C. Research methods

This is descriptive research, which aims to provide an overview or description of the problem understudy. The research method is thus adjusted to the problem formulation by conducted using normative legal approach. It analysed secondary data in the form of primary, secondary, and tertiary legal materials. All materials in the study were collected and processed for further qualitative analysis. The results of the study are presented in descriptive analytical form. Based on the results of the study, conclusions and suggestions will be presented.

D. Results and Discussion

1. Theoretical Study of Government Administration

Amore comprehensive study reveals that almost all countries have a constitution. In terms of function, the constitution serves as the basis for administering the government. However, in addition to functioning as the constitution as the basis for administering the government, the constitution also serves as a source of legal order in the country. These are carried out to realize the concept of a rule of law in the administration of government and national development of the country.

The function of constitution as the basis in the state administration aims not only to create order, but also is affiliated with the need for justice, truth, and benefits. In this context, justice, truth, and benefits will create legal certainty, which will protect people's right and ensure their comfort in carrying out all their activities in the society and the

state.[9] In this sense, a person can carry out his activities in society and the state freely, if he abides by the law of the constitution.

Indonesia's constitution was ratified in 1945. According to Article 7 paragraph (1) of Law No. 12 of 2011 on the Establishment of Legislation, as amended by Law No. 15 of 2019 on Amendment to Law No. 12 of 2011 on the Establishment of Legislation, the 1945 Constitution of the Republic of Indonesia is considered as the fundamental principle. This indicates that the 1945 Constitution of the Republic of Indonesia, apart from serving as the basis for administering the government, is also deemed as the "law of the land" in Indonesia. Thus, the government administration must be done in accordance with the 1945 Constitution of the Republic of Indonesia. Likewise, the related regulations must comply with the 1945 Constitution of the Republic of Indonesia and/or constitute implementation thereof.

At the level of implementation, however, it is noteworthy that Pancasila and the 1945 Constitution are often referred to differently, as if both are separate in terms of function. It should be reminded that Pancasila is stipulated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, so that the two are an inseparable unit. In fact, the 1945 Constitution of the Republic of Indonesia is affiliated with Pancasila, and vice versa despite the general assumption that the two are not integrated. Such correlation can be seen from, for example, Jimly Asshiddiqie's statement that the pinnacle of the system of national legal norms is Pancasila and the 1945 Constitution of the Republic of Indonesia as the highest legal and ethical norms in state activities.[10] In this case, Jimly Asshiddiqie on the one hand mentioned Pancasila and the 1945 Constitution separately, but on the other hand, put more emphasis that the government administration and the formation of law in Indonesia must not conflict with the core point contained in Pancasila and the 1945 Constitution. This statement is in accordance with the position of Pancasila and the 1945 Constitution in the state administration, as well as the position of the government as a state administration with the authority to make decisions in carrying out the duties of the authority to administer state government.[11] However, Bagir Manan once held that, currently the government's actions

[9] Marojahan JS Panjaitan, *Membangun Badan Peradilan yang Beradab. Berbudaya, Dan Berkeadilan Menurut Teori, Praktik dan UUD 1945* (Pustaka Reka Cipta 2018) 23.

[10] Jimly Asshiddiqie, *Teori Hierarki Norma Hukum* (Konpress 2020) 120.

[11] Marojahan JS Panjaitan (n 6) 138-139.

are not only measured by law, but also based on social, economic and political measures.[12] In this case, Bagir Manan further expanded on the legal basis for government action, namely not only acting based on the law, but also based on social, economic and political measures.

According to state administrative law, the common bases for government actions are statutory regulations and the General Principles of Good Governance (AUPB). Article 8 paragraphs (2) and (3) of Law No. 30 of 2014 stipulates that Government state officials in exercising their authority must be based on laws and regulations and AUPB. In issuing state administrative decisions, the government is prohibited from abusing its authority. This legal provision serves as a basic provision that every government official must comply with the stipulation of state administrative decisions, which according to Article 1 point 9 of Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on the State Administrative Court is stated that "[a] State Administrative Decision is a written determination issued by a state administrative agency or official containing legal actions for state administration based on applicable laws and regulations, which are concrete, individual, and final which have legal impacts for a person or civil law entity."[13]

Then, Article 1 paragraph (7) of Law No. 30 of 2014 stipulates that "government Administration Decisions, hereinafter referred to as State Administrative Decisions or State Administration Decrees, hereinafter referred to as Decisions, are written decisions issued by Government Agencies and/or Officials in the administration of government."

Based on the two legal provisions above, the state administrative decision is a written decision issued by the Agency and/or Government Official in the administration of government. Meanwhile, a state administrative agency or official is defined in the explanation of Article 1 point 8 of Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on the State Administrative Court states that the State Administration Agency or Official carries out government affairs based on the applicable laws and regulations. Furthermore, in Article 1 point 3 of Law No. 30 of 2014 also states that Government Agencies and/or Officials are elements that carry out government functions, both within the government and other state administrators.

[12] Bagir Manan, 'Nilai-Nilai Dasar Keindonesiaan dan Negara Hukum' in Imran and Festy Rahma Hidayati (eds.), *Bunga Rampai Memperkuat Peradaban Hukum dan Ketatanegaraan Indonsia* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia 2019) 28.

[13] The concrete, individual, and final meanings can be seen in the explanation of Article 1 section 3 Law No. 5 of 1986 on the State Administrative Court.

The legal provisions above indicate that the existence of such state administrative decisions is vital to the administration of government. The decisions of the Agency and/or Government Officials are related to government functions, both at the central and regional levels, as well as other state administrators. Government agencies and/or officials carry out state administrative legal actions, which are stated in Article 1 point 8 of the Law. No. 30 of 2014 referred to as Government Administration Actions, namely: actions of Government Officials or other state administrators to take and/or not to take concrete actions in the context of administering the government. Additionally, Article 1 point 8 of Law No. 51 of 2009 on the Second Amendment to Law No. 5 of 1986 on the State Administrative Court states that the State Administration Agency or Official carries out government affairs based on the applicable laws and regulations. On that basis, Government Actions shall refer to legal actions stipulated in written form by government officials. As codified, it refers to its content, instead of its form, and thus Irvan Mawardi said that the State Administrative Decree issued orally did not fall within the meaning of the TUN Decision.[14] However, the formal form of the written decision is not determined specifically, since it only requires the written form. Hence, Irvan Mawardi also added that even a memo or note could be categorized as a written determination.[15] In this context, thus, the elements that must be complied with in the issuance of state administrative decisions are:

a. The decisions made in written form by an authorized official based on the provisions of laws and regulations and AUPB;
b. The decisions containing legal actions of government agencies and/or officials;
c. The decisions having permanent legal force;
d. The decision serving as a basis for carrying out an action;
e. The concrete, individual, and final decisions; and
f. The decisions causing legal impacts for a person and/or civil legal entity.

The above mentioned are guiding principles for issuance of every state administrative decision. In this context, SF Marbun once held that a decision is valid if it fulfils the elements as stated in Article 1 point 9 of Law No. 51 of 2009. In other words, if one of the elements is not fulfilled, the decision cannot be deemed as a state administrative

[14] Irvan Mawardi, *Paradigma Baru PTUN Respon Peradilan Administrasi Terhadap Demokrasi* (Thafa Media 2016) 64.
[15] Mawardi (n 13).

decision.[16] Illegal state administrative decisions cannot be used as a basis for taking actions by state administrative officials or by individuals or civil legal entities. This is in accordance with the idea of a rule of law as mandated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that Indonesia is a state of law. This condition must be complied with in the issuance of state administrative decisions submitted electronically after the enactment of Law No. 11 of 2020.

2. Legal Impacts for the Issuance of Electronic State Administrative Decisions by Individuals and/or Legal Entities after the Enactment of Law No. 11 of 2020

Based on the above discussion, state administrative decisions are defined as written stipulations issued by government agencies and/or officials. One form of state administrative decisions is the granting of business permits. SF Marbun articulated that:

> "Permit is a decision from an authorized Government Official, allowing (an approval) to carry out an act prohibited by laws and regulations, after the fulfilment of the conditions determined by the laws and regulations which results in a legal relationship."[17]

Furthermore, article 1 No. 19 of Law No. 30 of 2014 stipulates that "permit is a decision of an authorized government official as a form of approval of the request of citizens in accordance with the provisions of the legislation."

From this description, a permit is a state administrative decision that allows the implementation of a particular action. Therefore, the existence of the permit is very decisive in starting a business, because, without which, the business cannot officially run its operation. This is what is often taken advantage of by government agencies and/or officials by complicating the process of issuing state administrative decisions regarding the granting of permits. Such opinion was once articulated by Solechan-Edgar Wilardi, that in terms of licensing services, bureaucratic officers often provide very complicated procedures, which tend to be convoluted, difficult to access, having complex procedures and not providing any certain schedule about its issuance and lacking of transparency in terms of the costs incurred for such service.[18] The situation is further complicated by the many regulations governing the same thing, making it even more difficult to get a permit. For example, investing in the Natural Resources sector is regulated by several regulations, namely: Law No. 5 of 1960 on Basic Regulations on Agrarian Principles, Law No. 41 of

[16] S.F. Marbun, *Hukum Administrasi Negara I* (UII Press 2018) 304.
[17] Marbun (n15) 415.
[18] Solechan and Edgar Wilardi, 'Harmonisasi Kewenangan Penyelenggaraan Pelayanan Perizinan Terpadu' (2019) 2 (1) Administrative Law & Governance Journal 155 163.

1999 on Forestry, Law No. 32 of 2009 on Environmental Protection and Management, Law No. 23 of 2014 on Regional Government, plus Government Regulations, Presidential Regulations, Ministerial Regulations, and Regional Regulations.

As stated in the previous discussion, Joko Widodo, the president of Indonesia, has always complained about the corruption government agencies and/or officials. This is because the corrupt attitude of the Agency and/or Government Officials is suspected to have damaged the government's image and hindered the implementation of national development. Therefore, Joko Widodo as the person in charge of government and development, came up with the idea of an omnibus law (omnibus bill) to overcome various problems in permit issuance. According to Firman Freaddy Busroh, with the enactment of omnibus law concept, regulations that are deemed irrelevant or problematic can be resolved quickly.[19] On that basis, Anggita Doramia Lumbanraja believed that the Omnibus law is an appropriate measure for optimizing electronic-based public services. Cross-sectoral arrangements are needed to cut bureaucracy and support one-stop service.[20] Therefore, as Rastri Paramita put, that the classic problems needing an immediate cure are the complicated bureaucracy, the disharmony between laws and regulations, and the lack of good coordination between stakeholders who have the authority to issue permits in investment.[21] These problems were overcome by changing and unifying various related issues into one law, which was later known as Law No. 11 of 2020 on Job Creation. Among the amended as referred to in Article 175 Chapter XI Implementation of Government Administration Law No. 11 of 2020, is Article 38 of Law No. 30 of 2014 which previously stated that:

(1) Government Officials and/or Entities may make Decisions in Electronic Form.
(2) Decisions in Electronic Form must be made or submitted if the Decision is not made or not submitted in writing.
(3) Decisions in Electronic Form have the same legal force as written decisions and are effective from the date of receipt of the said decision by the party concerned.
(4) If the written Decision is not submitted, the Electronic Form Decision will apply.

[19] Firman Freaddy Busroh, 'Konseptualisasi *Omnibus Law* dalam Menyelesaikan Permasalahan Regulasi Pertanahan' (2017) 10 (2) Jurnal Arena Hukum 227 242.

[20] Anggita Doramia Lumbanraja, 'Urgensi Transformasi Pelayanan Publik melalui E-Government dan Reformasi Regulasi Birokrasi' (2020) 3 (2) Administrative Law & Governance 220 229.

[21] Rastri Paramita, 'Perizinan Berbelit, Investasi Sulit' (2017) <www.puskajianggaran.dpr.go.id> accessed August 11, 2021.

(5) If there is a difference between a Decision in electronic form and a Decision in written form, the decision in written form shall apply.
(6) Decisions that result in the imposition of state finances must be made in writing.

These provisions were later amended in Article 175 Chapter XI Implementation of Government Administration Law No. 11 of 2020 into the followings:

(1) Government Officials and/or Entities may make Decisions in Electronic Form.
(2) Decisions in Electronic Form must be made or submitted against Decisions processed by the electronic system determined by the Central Government.
(3) Decisions in Electronic Form have the same legal force as written decisions and are effective from the date of receipt of the said decision by the party concerned.
(4) In the event that the Decision is made in electronic form, the Decision is not made in written form.

Amendments were also made to Article 53 of Law No. 30 of 2014, which previously stated that:

(1) The time limit for the obligation to determine and/or carry out decisions and/or actions in accordance with the provisions of the laws and regulations.
(2) If the provisions of the laws and regulations do not determine the time limit for the obligations as referred to in paragraph (1), the Agency and/or Government Officials are obliged to determine and/or make decisions and/or actions within 10 (ten) working days after the application is completely received by the Agency and/or Government Officials.
(3) If within the time limit as referred to in paragraph (2), the Government Agency and/or Official does not render a decision and/or take action, the application is considered legally granted.
(4) The applicant applies to the Court to obtain a decision on the acceptance of the application as referred to in paragraph (3).
(5) The court is obliged to decide on the application as referred to in paragraph (4) no later than 21 working days after the application is submitted.
(6) Government agencies and/or officials are obligated to make a decision to implement the court decision as referred to in paragraph (5) no later than 5 (five) working days after the court decision is stipulated.

The above provisions were changed to:

(1) The time limit for the obligation to determine and/or carry out Decisions and/or Actions is given in accordance with the provisions of the laws and regulations.
(2) If the provisions of the laws and regulations do not specify the time limit for the obligations as referred to in paragraph (1), the Government Agency and/or Officials are required to determine and/or make decisions and/or actions within a maximum period of five working days after the application is officially received complete by the Agency and/or Government Official.

(3) If the application is processed through the electronic system and all requirements in the electronic system have been met, the electronic system shall stipulate the Decision and/or Action as a Decision or Action of an authorized Agency or Government Official.
(4) If within the time limit as referred to in paragraph (2), the Agency and/or Government Official does not render a decision and/or take action, the application is considered legally granted.

By considering the amendments to Article 38 and Article 53 of Law No. 30 of 2014, it is apparent that State Administrative Decrees are issued electronically, if government agencies and/or officials do not respond within five working days. Electronically issued state administrative decisions have the same legal force as state administrative decisions issued in writing by a Government Agency or Official. Regarding state administrative decisions that are issued electronically, the government is obliged to comply with them, because these decisions are issued on orders from Law No. 11 of 2020.

Amendments to Articles 38 and 53 of Law No. 30 of 2014 are very beneficial and provide legal certainty for the applicant, because there is no need to wait for the twenty-one-day time span to complete the application at the State Administrative Court. Moreover, in terms of the settlement at the State Administrative Court, there is no guarantee for the applicant that his application is granted by the Administrative Court Panel of Judges. Renius Albert Marvin and Anna Erliyana shared a view, that judges have an important role in realizing what is disputed by the legal purpose of all administrative laws that are brought before the Administrative Court.[22] The role of the PTUN was abolished in the amendments to Articles 38 and 53 of Law No. 30 of 2014 based on Article 175 Chapter XI Implementation of Government Administration of Law No. 11 of 2020. Thus, this paper contradicts with Sigit Riyanto et al. who held the need for legal certainty for the community and the protraction of administration.[23] Thus, it is extremely precise to eliminate the role of the Administrative Court in the issuance of state administrative decisions as referred to in Article 53 of Law No. 30 of 2014, since it provides benefits and legal certainty to the applicant. This is given to the fact that apart from not having to wait for an uncertain timeframe of twenty-one working days, there is also no need to spend money to pay for the proceedings. This is done on the basis that the

[22] Renius Albert Marvin and Anna Erliyana, 'Polemik Jangka Waktu Gugatan ke Pengadilan Tata Usaha Negara' (2019) 49 (4) Jurnal Hukum & Pembangunan 942 955.

[23] Sigit Riyanto and others, 'Catatan Kritis terhadap UU No 11 Tahun 2020 Tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020)' (2020) Fakultas Hukum Universitas Gajah Mada Policy Paper 2/2020 10.

government is encouraged to provide quick services for every application submitted electronically, within five working days without being based on giving money. This also closes the meeting of the applicant with government officials which opens opportunities for corruption.

It is no secret that getting a grant of permit from state administrative decisions requires the applicant to pay for a sum of unofficial charges, and thus without which the grant of permit will never be possible. The process of obtaining a permit is convoluted and time consuming. In fact, it is highly possible that the applicants will not be granted permission unless they pay a huge sum of unofficial charges. This is evidenced by the number of unscrupulous state officials who have been caught red handed by the KPK when conducting transactions related to granting permits. Edhy Prabowo and Juliari Batubara were among government officials whom KPK caught as red-handed when transacting in obtaining permits.[24] If only state officials were aware of their duties, such cases would never have occurred. Thus, the changes as referred to in Article 175 Chapter XI Implementation of Government Administration, Law No. 11 of 2020 provides convenience for persons and/or civil legal entities in obtaining state administrative decisions, especially regarding the granting of business permits. To smooth the process of permits, the government is required to build an electronic licensing system.[25] This is a challenge for Government Agencies or officials in building an electronic licensing system, as referred to in Law No. 11 of 2020, which is then followed by issuing several Government Regulations in implementing the Job Creation Act. The Government Regulations in question are Government Regulation No. 43 of 2021 on Settlement of Spatial Incompatibility (PP No. 43 of 2021) and Government Regulation No. 5 of 2021 on Implementation of Joint Risk Business Licensing (PP No. 5 of 2021). In addition, various conveniences in granting permits must be balanced by completing all requirements to obtain permits. In a sense, to obtain a permit, the applicant must fulfil all the specified requirements, because the licensing requirements are different from one another, according to their designation.[26] For example, this can be seen in the granting of permits as referred

[24] Irfan Kamil (n 1).

[25] Monika Suhayati, 'Permasalahan Perizinan Berusaha Terintegrasi Secara Elektronik (*Online Submission System*)' (2018) <https: //sdip. dpr.go.id /search /detail/ category /Info%20Singkat/id/888> accessed August 11, 2021.

[26] Marojahan JS Panjaitan and Pani Nurahmawati, *Problema Sentralisasi Pemberian Perizinan Pasca Pemberlakuan UU. No. 11 Tahun 2020 tentang Cipta Kerja*, (Fakultas Hukum Universitas Islam Indonesia 2021) 444.

to in Article 1 section 7 of the Government Regulation No. 43 of 2021, which says that permits related to activities that utilize marine space are legalities granted to business entities or communities to start and run their businesses and/or activities in coastal and marine areas. The requirements for obtaining permits as referred to in PP No. 43 of 2021 will be different from the requirements according to Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management in obtaining permits. The role of government is needed to check all the completeness of the permit application requirements before the end of the five working day time limit. Unless it is reviewed carefully within five working days, even though some requirements are not met by the applicant, a state administrative decision will be issued electronically to grant the application.

The examination of all the applicant's files must be carried out appropriately according to the specified requirements. Otherwise, it will be classified as an unlawful act. Against the alleged unlawful act in the examination of files, the applicant can file a lawsuit to settle it to the State Administrative Court, as referred to in Article 53 of Law No. 9 of 2004 which states that:

> (1) Individuals or legal entities who feel that their interests have been harmed by a State Administrative Decree may file a written lawsuit to the competent court containing a demand that the disputed State Administrative Decision be declared null or void, with or without a claim for compensation and/or rehabilitation.
> (2) The reasons that can be used in the lawsuit as referred to in paragraph (1) are:
> a. The State Administrative Decision being sued is contrary to the prevailing laws and regulations;
> b. The State Administrative Decision being sued is contrary to the general principles of good governance.

The abovementioned legal provisions form the basis for the applicant to prove that they suspect an un unlawful act committed by a government agency and/or officials during the examination of the application file. Indeed, this is not regulated in the amendment to Article 175 Chapter XI Implementation of Government Administration of Law No. 11 of 2020. However, all legal consequences arising from the enactment of Law No. 11 of 2020 must be faced according to law. In this case, the government needs to check all the completeness of the requirements in obtaining state administrative decisions submitted electronically correctly according to law. Otherwise, an applicant can sue the government to the State Administrative Court as referred to in Article 53 of Law No. 9 of 2004.

3. The Government's Efforts in Issuing Electronic State Administrative Decisions by Individuals and/or Legal Entities After the Enactment of Law No. 11 of 2020

Article 175 points 3 and 6 Chapter XI concerning Implementation of Government Administration Law No. 11 of 2020, which requires the government to examine every electronic form of application within the five working day limit, must respond substantively. Unless the government examines every application submitted electronically within the five working days, an administrative decision will be issued electronically to grant the request. State administrative decisions issued electronically are the same as those issued by government agencies or officials.

Article 175 points 3 and 6 Chapter XI on the Implementation of Government Administration Law No. 11 of 2020 requires the government and private persons or legal entities to prepare for the implementation. However, at the implementation level, both the government and private individuals or legal entities seem less prepared for the implementation, because they are yet to own adequate digital technology and/or the ability to use it. People living in urban areas might have been able to implement this requirement, but the government and the people in the Regency/City in some remote rural areas may not gain the ability to implement this requirement. This condition is well portrayed from the statement of several government apparatuses in the Regency/City and rural areas, as well as several companies in the regions and rural areas. It was known, for example, from the sub-district head of Pasirjambu, Bandung regency, that until now the government in the sub-district office to rural areas has not entirely used digital technology.[27] Research in several Bandung City Offices revealed that many of them were not able to apply digital technology. The same was also true for the local government in Subang Regency, Kuningan Regency, West Java, which were exempt from the use of digital technology. Therefore, in order to implement Law No. 11 of 2020, it is necessary to build a collaboration of digital technology with innovative, creative, and comprehensive governance. This is in accordance with the notion of Mochammad Rozikin, et al., that innovation in government is a creative idea in reforming the government system in order to improve the performance of the government.[28] In the rapid development of science and

[27]Results of an interview with the Bandung District Head of Pasirjambu during Legal Counseling held by the Bandung Law College Service and Extension Institute, March 2, 2020.

[28] Mochammad Rozikin, Wa Hesty and Sulikah, 'Kolaborasi dan *E-Literacy*: Kunci Keberhasilan Inovasi *E-Government* Pemerintah Daerah' (2020) 16 (1) Jurnal Borneo Administrator 61 69.

technology, the emergence of a fast-moving borderless global economy, and the national development programs as initiated in the SDGs, digital technology is urgently required.

Digital technology is also needed to respond to the economic and investment crisis caused by Covid-19. Indeed, the application of digital technology is far from easy, because building digital technology-based governance requires is highly costly. Despite the amount of challenge, the government must prepare for it within the framework of economic recovery that can prosper all the children of the nation because Law No. 11 of 2020 was formed for this purpose.

Moreover, to fulfil the wishes of the international community initiated by the SDGs, which directs development to prosper people in 2030, Indonesia as part of the SDGs is required to make this happen. There is a need to understand that the progress of science and technology is also directed at provide ease and comfort for people.[29] The government is thus required to prepare for the implementation of digital technology, and there is no reason to reject it to avoid the country from technological backwardness and the intervention from developed countries.

In fact, combining between state governance and digital technology is a useful attempt to ease regular tasks and to prevent corrupt practices in government agencies. Rosmala Hirawan shared this opinion in an interview that the Ministry of Law and Human Rights had been using digital technology, although some were still manual. The use of digital technology has been very useful and provides convenience in carrying out daily work routines, such as conducting community services, meetings, checking attendance, and so on. This is especially true during the Covid-19 outbreak which limits the space for relationships at work, and thus making digital technology as a very helpful platform at work. For instance, digital technology allows online meetings via Zoom. Digital technology also prevents from corrupt practices, because all policies are integrated into a data centre that is easily accessible by the public.[30] In this case, Rosmala Hirawan said that digital technology-based governance, in addition to providing ease also builds governance that is free of corruption. All data in the digital-based governance is integrated into the data centre, so that every policy can be easily accessed and monitored by the public. For example, the electronic application of a person and/or civil legal

[29] Marojahan JS Panjaitan, 'Legal Politics to Build a State of Happiness: An Idea in A State Based on the 1945 Constitution' (2021) 10 International Journal of Criminology and Sociology 486 486.

[30]The results of the interview dated August 14, 2020 with Rosmala Hirawan, SE, SH, MH, position: First Expert Immigration Analysis, Origin of agency: Immigration Division, Regional Office of the Ministry of Law and Human Rights, West Java.

entity can be easily accessed and monitored by the public, because the application is integrated directly into the data centre.

Digital technology has also been fruitful in helping the teaching and learning process that has been hindered due to Covid-19. The utilization of digital technology in the realm of education has allowed the implementation of online teaching and learning process from elementary to university levels. During the Covid-19 pandemic, many academic activities in countless universities are conducted online, including oral defence of dissertations, and webinars conducted via Zoom. The only problem to digital technology is lack of ability and sources to buy the devices for digital technology and ethnological illiteracy. Research in the Regency/City to rural areas disclosed that many local government officials apply manual administration of the governance because they are yet to be equipped with digital technology in administering the government. In the framework of accelerating the achievement of good governance based on digital technology, the government has issued Presidential Regulation No. 81 of 2010 on the Grand Design of Bureaucratic Reform 2010-2025.[31] In addition, the government has also issued Presidential Regulation No. 95 of 2018 on Electronic-Based Government Systems. Everything is done within the framework of implementing digital-based governance. Although at the level of normative provisions, the implementation of an electronic-based government system, which is also called e-government, has not gone well, especially in remote areas, the government are rural areas has been pursuing the use of digital technology. Dadan Kurniansyah, for example, admitted that the lack use of technology in the bureaucracy occurs at the village level in Karawang Regency.[32] In fact, e-government refers to the use of information technology in government agencies or public institutions. It aims to ensure that governance relations involving the government, the private sector and the community can be created in such a more efficient and effective way.

As mentioned above, in addition to the need for the government to have digital technology, individuals or civil legal entities are also required to possess and acquire the ability to use it in order to submit applications electronically. There seems to be no problem for large companies because in general the company's management has been integrated with digital technology. However, the problem is experienced by middle to

[31] Sigit Riyanto and others (n 22) 52.

[32] Dadan Kurniansyah and Hannie Hannie, 'Faktor-faktor Yang Mempengaruhi Pengembangan Teknologi Informasi Pemerintahan Desa (E-Gov) di Indonesia' (2020) 5 (1) Jurnal Politikom Indonesia 155 155-172.

lower companies, since not all of them are equipped with and are able to use them. In general, these companies may still use technology in their operation system as is shown from the interview of Andi Haryadhika Nurrasjid that some of the Tirtawening Regional Public Companies in Bandung City have used digital technology in company management, but some company management is still conducted manually. Thus, it is difficult to coordinate with one another. All employees of the Tirtawening Regional Public Company, Bandung City, highly expect that all company management uses digital technology.[33] The same is also true in other companies, especially those in remote areas.

Currently, the government is seeking ways to assist small and medium-sized companies in raising capital and making it easier to obtain business permits. However, beyond that, the government should also provide guidance to various companies to be able to respond to what is desired in Law No. 11 of 2020. This is because the guidance impacts economic development by attracting investment, providing many job vacancies, and creating a professional workforce.

In terms of the administration of government in Indonesia, the role to provide guidance to the company lies with the regional government because the company is within the scope of the regional government. In addition, the regional government also serves as the spearhead in carrying out development, while the central government only serves as a national policy maker. The basis for national development is set forth in the Law on the State Revenue and Expenditure Budget, and to implement it, the Regional Government issues the Regional Expenditure and Revenue Budget. That is the essence of regional autonomy in the administration of regional government as referred to in Article 1 paragraph (1), Article 4 paragraph (1), Article 18 of the 1945 Constitution, as well as the Act. No. 23 of 2014 on Regional Government. In this sense, Indonesia is developed based on regional autonomy in the concept of a unitary state according to Article 1 paragraph (1) of the 1945 Constitution, instead of regional autonomy in the sense of a federation (union). As a unitary state, development is carried out in a synergistic, integrated and sustainable manner from the centre to the regions. Thus, the guidance carried out by the Regional Government to local companies encourages them to have the ability to submit electronic form of applications in obtaining state administrative decisions regarding the granting of business permits as referred to in Law No. 11 of 2020.

[33]The results of the interview on August 14, 2021 with Andi Haryadhika Nurrasjid. SH, CPCLE, Position: Implementing Subdivision of Public Company Law, Tirtawening Region, Bandung.

E. Conclusion

The legal impacts of an electronic applications for a state administrative decision according to Article 53 of Law No. 11 of 2020 have the same legal force as a state administrative decision issued directly by a government official. The government's efforts to issue electronic State Administrative Decisions by individuals and/or legal entities after the enactment of Law No. 11 of 2020 is carried out by building digital-based governance in all lines of government.

This study recommends that the government and individuals and/or legal entities are required to have digital technology so that electronic form of applications can be issued within five working days. The government also needs to socialize the enactment of the Law No. 11 of 2020 to make sure that all levels understand the way to obtain electronic form of state administrative decisions.

References

Law

The 1945 Constitution of Indonesia.
Law No. 5 of 1960 on Basic Agrarian Regulations.
Law No. 5 of 1986 on State Administrative Court.
Law No. 32 of 2009 on Environmental Protection and Management.
President Regulation No. 81 of 2010 on Grand Design for Bureaucratic Reform 2010-2025.
Law No. 23 of 2014 on Local Government.
Law No. 30 of 2014 on Government Administration.
President Regulation No. 95 of 2018 on Electronic-Based Government Systems.
Law No. 11 of 2020 on Job Creation.
Government Regulation No. 22 of 2021 on Implementation of Environmental Protection and Management.
Government Regulation No. 43 of 2021 on Settlement of Spatial Incompatibility.
Government Regulation No. 5 of 2021 on Implementation of Risky Business Licensing.

Books

Manan B, 'Nilai-Nilai Dasar Keindonesiaan dan Negara Hukum' in Imran and Festy Rahma Hidayati (eds.), *Bunga Rampai Memperkuat Peradaban Hukum dan Ketatanegaraan Indonsia* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia 2019).
Mawardi I, *Paradigma Baru PTUN Respon Peradilan Administrasi Terhadap Demokrasi* (Thafa Media 2016).
Asshiddiqie J, *Teori Hierarki Norma Hukum* (Konpress 2020).
Panjaitan MJS and Nurahmawati P, *Problema Sentralisasi Pemberian Perizinan Pasca Pemberlakuan UU. No. 11 Tahun 2020 tentang Cipta Kerja*, (Fakultas Hukum Universitas Islam Indonesia 2021).
Panjaitan MJS, 'Pola Penanganan Covid-19 dalam Persfektif Perlindungan Hak Asasi Manusia' in Ahmad Redi and Ibnu Sina Chandranegara (eds.), *Segi Hukum terhadap Implikasi Covid-19 di Indonesia* (Kencana 2020).

_____, *Pembentukan & Perubahan Undang-Undang Berdasarkan UUD 1945* (Pustaka Reka Cipta 2017).

_____, *Membangun Badan Peradilan yang Beradab. Berbudaya, Dan Berkeadilan Menurut Teori, Praktik dan UUD 1945* (Pustaka Reka Cipta 2018).

_____, *Politik Hukum Membangun Negara Kebahagiaan Pada Era Revolusi Industri 4.0 dan Society 5.0* (Pustaka Reka Cipta 2020).

Marbun SF, *Hukum Administrasi Negara I* (UII Press 2018).

Mas'udi W and Winanti P, *COVID-19: Dari Krisis ke Krisis Tata Kelola*, dalam *Tata Kelola Penanganan COVID-19 di Indonesia* (Gajah Mada University Press 2020).

Journals

Lumbanraja AD, 'Urgensi Transformasi Pelayanan Publik melalui E-Government dan Reformasi Regulasi Birokrasi' (2020) 3 (2) Administrative Law & Governance 220.

Kurniansyah D and Hannie H, 'Faktor-faktor Yang Mempengaruhi Pengembangan Teknologi Informasi Pemerintahan Desa (E-Gov) di Indonesia' (2020) 5 (1) Jurnal Politikom Indonesia 155.

Busroh FF, 'Konseptualisasi *Omnibus Law* dalam Menyelesaikan Permasalahan Regulasi Pertanahan' (2017) 10 (2) Jurnal Arena Hukum 227.

Panjaitan MJS, 'Legal Politics to Build a State of Happiness: An Idea in A State Based on the 1945 Constitution' (2021) 10 International Journal of Criminology and Sociology 486.

Rozikin M, Hesty W, and Sulikah, 'Kolaborasi dan *E-Literacy*: Kunci Keberhasilan Inovasi *E-Government* Pemerintah Daerah' (2020) 16 (1) Jurnal Borneo Administrator 61.

Marvin RA and Erliyana A, 'Polemik Jangka Waktu Gugatan ke Pengadilan Tata Usaha Negara' (2019) 49 (4) Jurnal Hukum & Pembangunan 942.

Solechan and Wilardi E, 'Harmonisasi Kewenangan Penyelenggaraan Pelayanan Perizinan Terpadu' (2019) 2 (1) Administrative Law & Governance Journal 155.

Policy Paper

Riyanto S and others, 'Catatan Kritis terhadap UU No 11 Tahun 2020 Tentang Cipta Kerja (Pengesahan DPR 5 Oktober 2020)' (2020) Fakultas Hukum Universitas Gajah Mada Policy Paper 2/2020.

Websites

Kamil I, 'Soal Edhy Prabowo dan Juliari Batubara Layak Dituntut Hukuman Mati, Ini Kata KPK' (2 Februari 2021) < https://nasional.kompas.com/read/2021/02/17/11240161/soal-edhy-prabowo-dan-juliari-batubara-layak -dituntut-hukuman-mati-ini-kata?page=all> accessed March 5, 2021.

Suhayati M, 'Permasalahan Perizinan Berusaha Terintegrasi Secara Elektronik (*Online Submission System*)' (2018) <https: //sdip. dpr.go.id /search /detail/ category /Info%20Singkat/id/888> accessed August 11, 2021.

Paramita R, 'Perizinan Berbelit, Investasi Sulit' (2017) <www.puskajianggaran.dpr.go.id> accessed August 11, 2021.

Sidiq FM 'Sejak 2004 hingga 2020, Ada 274 Anggota DPR-DPRD Jadi Tersangka KPK, (2020) <https://news.detik.com/berita/d-5243038/sejak-2004-hingga-2020-ada-274-anggota-dpr-dprd-jadi-tersangka-kpk> accessed May 5, 2021