

From Silent Act to Legal Certainty: Examining Government Officials' Response to Land Rights Applications under Lex Silencio Positivo

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Abstract

This study aimed to identify the characteristics of the Governmental Silent Act (Principle of Lex Silencio Positivo) in the land rights application proposed by the Community, to find the legal consequences when the government remains "silent" (Principle of Lex Silencio Positivo) on the land rights application proposed by the Community, and to analyze the construction of norms that provide legal certainty regarding the Silent Act (Principle of Lex Silencio Positivo) by the government in relation to the land rights application submitted by the Community. This study was conducted using a normative legal research method, employing a legislative approach, a conceptual approach, a historical approach, a case approach, and a comparative approach. The results of this study showed that the legal consequences of the Governmental Silent Act on land rights applications lead to uncertainty regarding the status of the land rights proposed by the applicants. This uncertainty results in grievances for the parties affected by the Governmental Silent Act, including the applicants themselves. Furthermore, the legal consequences of the Governmental Silent Act are seen as a violation of the General Principles of Good Governance, as it has caused legal uncertainty over the land rights applications proposed by the applicants. Meanwhile, the decision is an obligation for government officials, as mandated in Article 175 of the Omnibus Law (Cipta Kerja) in conjunction with Article 53 of the Government Administrative Law. The legal consequences of the government's silence also lead to potential material losses for applicants, which include individuals, legal entities, and government institutions with a legal interest in the land rights application.

1. Introduction

Land holds great significance for humans, not only as an economic and political resource but also as a symbol of honor, identity, and self-esteem (Nugroho, 2002). The relationship between humans and land encompasses life, residence, and religious aspects (Malaka, 2018). Land can also be a source of conflict, particularly when ownership is unclear, making legal certainty crucial to prevent disputes (Faruq & Hariri, 2023). The Basic Agrarian Law (UUPA) provides the legal foundation for land management in Indonesia, with the state holding the authority to regulate land rights in accordance with Article 33 of the 1945 Constitution (Sutendi, 2011).

The state's role in land issues is to support public interests, especially in land registration, which is carried out by the National Land Agency (BPN) (Djohan Oe, 2015). BPN is responsible for providing legal certainty regarding land ownership and utilization. Resolving land disputes must adhere to applicable regulations and the principles of good governance (AUPB) to ensure justice and the sustainability of land administration in Indonesia (Ernanda *et al.*, 2021).

AUPB (General Principles of Good Governance) is crucial for BPN when issuing decisions or actions related to land rights applications. Under Law No. 30 of 2014 on Administrative Governance, BPN must apply AUPB to avoid legal issues concerning procedures and the content of decisions. One important principle in this law is *Lex Silencio Positivo*, which requires administrative authorities to make decisions within a certain time frame; if not, the application is deemed automatically approved (Ernanda *et al.*, 2021). Changes introduced by the Omnibus Law (Law No. 6 of 2023) reduced this time frame from 10 days to 5 days to expedite public service processes.

Although *Lex Silencio Positivo* is not explicitly stated in the Administrative Governance Law, this concept is adopted as a legal fiction, meaning that the failure of an administrative body to make a decision within the specified time frame results in the automatic approval of the application (Aditya & Al-Fatih, 2023). However, this change also removes the authority of the State Administrative Court (PTUN) to adjudicate silent acts, leading to a potential legal gap. This represents a fundamental shift in the legal framework that previously allowed PTUN to exercise control to prevent abuse of power (Wicaksono *et al.*, 2021).

Article 53 of the Administrative Governance Law underwent a significant change to promote efficiency in licensing by introducing an electronic system for submitting applications to government officials (Roychan, 2023). Article 175, Paragraph 6 of the Omnibus Law regulates that if the application is processed electronically and all requirements are met, the decision or action is automatically considered valid (Wicaksono *et al.*, 2021). This introduces a new paradigm in which decisions made by the electronic system are equivalent to decisions made by the authorized officials.

However, the reduction of the time frame for a fictive positive decision from 10 days to 5 days raises several issues. Legally, this change does not guarantee effective legal protection for land rights applicants, as the lack of a clear time frame creates legal uncertainty. Theoretically, reducing the time frame does not positively impact the fulfillment of applicants' rights, as the concept of time in law is critical to achieving justice. Sociologically, this change undermines legal certainty and may erode public trust in the government's administrative system (Z. Asikin, 2012).

Based on these issues, the dissertation titled *"From Silent Act to Legal Certainty: Examining Government Officials' Response to Land Rights Applications under Lex Silencio*

Positivo" aims to examine the principle of *lex silencio positivo* and its impact on justice and legal certainty in the land rights application process.

2. Methods

This study employs a normative legal approach aimed at examining and analyzing the principle of *Lex Silencio Positivo* in land rights applications that are just and legally certain. The research involved a review of relevant primary and secondary legal materials to obtain scientifically verifiable truths (Rizkiana & Gerry, 2022). The approach used in this study comprised several dimensions: statutory, conceptual, historical, case, and comparative approaches (Efendi, 2018).

The statutory approach was used to explore the legal consistency found in the provisions related to the Job Creation Law and the Government Administration Law, particularly in identifying legal gaps arising from regulatory changes. The conceptual approach assisted the researcher in uncovering and developing relevant legal concepts, such as the principle of *Lex Silencio Positivo*, which is related to land rights and legal certainty. The historical approach was applied to trace the legal evolution of government officials' silence in land administration over time, providing a deeper understanding of the underlying legal philosophy. The case approach was employed to analyze court decisions that have become final and binding (Marzuki, 2016), relating to the application of government officials' silence in land rights applications, both before and after the enactment of the Job Creation Law. The comparative approach was used to examine the application of similar principles in other countries, such as France and the Netherlands, offering new perspectives to address the legal issues under investigation.

The sources of legal materials used in this study consisted of primary legal materials, such as laws and regulations, legislative records, and court decisions, as well as secondary legal materials including textbooks, legal journals, and other publications relevant to the legal issues being analyzed (A. dan Z. Asikin, 2020). By employing this methodology, the study aimed to identify the legal issues arising from regulatory changes in land administration and provide solutions to enhance legal certainty in the land rights application process.

3. Results and Discussion

Principle of Silence (*Lex Silencio Positivo*) of the National Land Agency (BPN) Officials Regarding Land Rights Applications

The principle of *Lex Silencio Positivo* in administrative law refers to the legal presumption that if a government official, in this case, the National Land Agency (BPN), fails to provide a response within the designated time, the lack of response is considered as approval of the submitted application or decision (Simanjuntak, 2018). The main objective of this principle is to provide legal certainty and protect the applicant's rights by obligating BPN officials to respond promptly to administrative applications, particularly those related to land rights (Apriani & Bur, 2020). In practice, if BPN fails to make a decision within the specified time, the application is considered automatically accepted or approved (Linawati *et al.*, 2018). The silence here is better understood as a form of inaction (leaving the application unanswered) rather than neglect, which may occur due to various reasons such as administrative oversight or a heavy workload.

Based on the *Lex Silencio Positivo* principle, this silence has legal consequences, meaning that an application not responded to within the specified time is deemed approved, providing legal certainty for the applicant to proceed with administrative processes without being hindered by bureaucratic delays (Heriyanto, 2019). In the context of Indonesian law, this principle is reflected in Article 33 Paragraph (3) of the 1945 Constitution, which states that land and natural resources are controlled by the state and used for the welfare of the people, which underpins the state's management of land (Farhani & Chandranegara, 2019). In this case, the application of the *Lex Silencio Positivo* principle accelerates administrative processes and provides legal certainty for land rights applicants (Suprpto, 2022).

The application of this principle in Indonesia can also be observed in several legal cases. One example is at the Surabaya State Administrative Court (PTUN) Number 39/B/2015/PT.TUN.SBY, where a lawsuit was filed against the silence of the Sleman Land Office regarding an application to cancel the name change on a Certificate of Ownership (SHM). Given the lack of response within the specified time, the plaintiff filed a lawsuit based on the *Lex Silencio Positivo* principle, assuming the application was approved. Similar cases involving the silence of land offices not providing decisions within the designated time have occurred as well. Normatively, this principle aims to avoid administrative uncertainty, prevent harm to the applicant due to delays, and enhance administrative efficiency. From a legal epistemology perspective, silence is seen as part of the legal validation process within a broader system (Ahmad, 2017).

In a broader context, this principle is also linked to the values of Legal Axiology, which concerns the ethical aspects of law, emphasizing the importance of justice, equality, and freedom in public administration actions (Binawan, 2022). For instance, in administrative law, principles of legal certainty, impartiality, good service, and the obligation to provide reasons are crucial to prevent abuse of power by administrative officials. *Lex Silencio Positivo* helps regulate a fairer and more transparent governance process, preventing maladministration (Suprpto, 2022).

However, the application of this principle must be balanced with careful oversight, as *Lex Silencio Positivo* carries the risk of reducing the quality of the review process if BPN officials rush to make decisions, especially with the changes that shorten the decision-making time from 10 to only 5 working days under the Omnibus Law. This change may increase efficiency but could potentially reduce the thoroughness in processing applications, particularly those involving sensitive land rights.

In relation to the General Principles of Good Governance (AUPB), the *Lex Silencio Positivo* principle also plays a crucial role. AUPB, consisting of procedural and substantive principles, provides guidelines for public officials in carrying out their duties fairly and transparently (Roychan, 2023). The application of this principle involves the obligation of officials to act neutrally, provide reasonable justifications, and ensure fairness in administrative decision-making. The removal of the oversight mechanism by the State Administrative Court (PTUN) over decisions resulting from the fictive positive principle also raises questions about transparency and accountability, as PTUN previously played a role in overseeing administrative decisions to protect citizens' rights from potential abuse of authority (Riansyah, 2024).

The *Lex Silencio Positivo* principle aims to improve the quality of governance by providing legal certainty, but its application must be done with strict oversight to avoid harming the applicant (Suprpto, 2022). This oversight includes both administrative and judicial aspects to avoid procedural errors or invalid decisions. Initially regulated in Law No. 30 of 2014 on Government Administration, this principle has undergone changes

through the Omnibus Law, which reduces the decision-making period to 5 working days, aiming to speed up administrative processes. However, this principle still requires supervision to maintain quality and fairness in government administration.

Ultimately, *Lex Silencio Positivo* emphasizes the importance of protecting land rights and ensuring fast, efficient, and transparent administration (Kurniawan *et al.*, 2023). The challenge, however, is to ensure that its application remains fair and of high quality, ensuring accountability, especially with the changes that reduce oversight over administrative decisions related to citizens' rights, such as land rights.

Silence by BPN officials regarding land rights applications has been regulated in the Omnibus Law and the Government Administration Law to provide legal certainty (Yuniza & Inggawati, 2021). If BPN officials do not make a decision within the designated time, the application is automatically deemed approved. This provision reduces uncertainty, providing predictability for applicants and BPN officials, and regulates the procedures, deadlines, and rights that need to be considered in decisions.

Lex Silencio Positivo on Land Rights Applications

Lex Silencio Positivo aims to provide legal certainty by treating applications that do not receive a response within the designated time as approved (Suprpto, 2022). This regulation reduces uncertainty and clarifies the rights of the applicant, allowing predictability for the parties involved. In practice, both the applicant and BPN officials can predict the consequences of their actions. This concept is closely related to the principle of legal certainty and Hans Kelsen's theory of law, which asserts that law must be applied consistently and objectively, avoiding subjective factors that could influence legal decisions. The application of *Lex Silencio Positivo* reduces confusion and ensures that silence is regarded as approval, providing a strong basis for the applicant to predict that their application will be approved if no decision is made within the specified time.

After the enactment of the Omnibus Law, significant changes occurred in Article 53 of Law No. 30 of 2014 on Government Administration, amended through Article 175 of the Omnibus Law. The main change related to the fictive positive decision is the reduction of the decision-making period from 10 working days to 5 working days, and the removal of the role of the State Administrative Court in the process. If an official or administrative body does not make a decision within 5 days after receiving the application, the application is deemed approved (*fictive positive*) (Eka *et al.*, 2023).

However, this change could reduce the quality of decisions, especially in more complex cases. The removal of the role of the State Administrative Court also raises potential legal uncertainty, as applicants no longer have a channel to challenge decisions deemed detrimental or inaccurate.

Cases Related to *Lex Silencio Positivo* Post-Omnibus Law

1. The case of Matra'i and the Head of the Mojokerto Land Office. In this case, an application to cancel a Certificate of Ownership (SHM) was not processed within the designated time, so the applicant filed a fictive positive lawsuit. However, the court ruled that this application did not meet the requirements for fictive positive because the applicant's goal was to annul an existing decision, not to obtain a new decision. The court advised the applicant to pursue a lawsuit if they wished to annul the existing decision (PTUN SBY Decision No. 11/P/FP/2021/PTUN.Sby).
2. The case of Yislia Lilis and the Head of the Pulang Pisau Land Office. The applicant filed a fictive positive lawsuit after their application for issuing an SHM was not processed by the relevant official. This case illustrates the challenges in the application of the fictive positive principle post-Omnibus Law. The court

acknowledged that the official's negligence could lead to a fictive positive decision if not followed up according to procedure (PTUN PLK Decision No. 2/P/FP/2021/PTUN.PLK).

3. The case of Andry KP. Juni and the Head of the Pulang Pisau Land Office. The applicant filed a request to upgrade land status to SHM, but their application was obstructed by a third-party blockage carried out in 2019. The applicant argued that the blockage was invalid because there was no lawsuit filed in court, and according to the Ministry of Agrarian Regulation No. 13 of 2017, the blockage should only last for 30 working days. The court ordered the removal of the blockage, and the SHM issuance process was continued (same case as the previous one).
4. The case of Liek Mulyanto and the Head of the Surabaya Land Office. The applicant controlled land already registered with SHGB, but a remeasurement by the Land Office found an excess area of 63 m², which included disputed land. The applicant filed an application for the issuance of a Building Use Rights Certificate in 2020, but the application was not processed until after the deadline in Law No. 30 of 2014 had passed. The court ordered the issuance of the SHGB for the applicant (PTUN SBY Decision No. 15/P/FP/2021/PTUN.SBY).

Hans Kelsen's Pure Theory of Law explains that law must be applied as a normative system independent of moral and political values (Asshiddiqie & Safa'at, 2016). In the context of the cases above, this theory demonstrates that the actions of BPN officials who do not follow up on applications or delay the issuance of certificates are inconsistent with the principle of legal certainty. Decisions should be made based on clear procedures, not subjective considerations. This also emphasizes that administrative decisions not made within the specified time can undermine the principle of legal certainty. Other Cases Related to Silence:

1. Case of H. Ach. Afifudin and the National Land Agency (BPN)
The plaintiff submitted an application regarding the cancellation of a name change on an SHM, but BPN did not provide a response within the specified time. A lawsuit was filed to obtain an administrative decision regarding the application. The silence of BPN officials in this case contradicts the principle of legal objectivity expressed by Hans Kelsen. (Surabaya PTUN Decision No. 1/P/FP/2020/PTUN.Sby).
2. Case of the Applicant and the Head of the Jakarta Land Office
The applicant submitted a request for a Building Use Rights Certificate (SHGB), but the application was not processed by the relevant official, despite meeting all the requirements. The inaction of the official could lead to a fictive positive decision, as no decision was made within the specified time. (Jakarta PTUN Decision No. 5/P/FP/2021/PTUN.Jkt).
3. Case of the Applicant and the Sidoarjo Land Office
The applicant submitted a request for a Certificate of Ownership (SHM), but the application was obstructed by objections from another party that were not submitted to the court within the specified time. Despite objections, no decision was made, causing legal uncertainty regarding the status of the land. (Surabaya PTUN Decision No. 10/P/FP/2021/PTUN.Sby).

The fictive positive decision provides protection for the applicant by ensuring that their request is processed on time (Eka *et al.*, 2023). However, the application of *Lex*

Silencio Positivo also carries risks, such as hasty decisions that neglect in-depth analysis, which can lead to injustice or incorrect decisions. Moreover, the removal of judicial oversight in this process increases the risk of legal uncertainty because applicants can no longer challenge the decisions made. This could also reduce public trust in the existing legal and administrative system.

The *Lex Silencio Positivo* principle aims to provide legal certainty and speed up administration (Roychan, 2023). When officials fail to make a decision within the designated time, the application is automatically deemed approved. However, the application of this principle must be done carefully to avoid hasty decisions that could harm one of the parties. Without clear regulations regarding the handling of fictive positive decisions, inconsistencies may arise, creating legal uncertainty.

Article 175 of the Omnibus Law and Article 53 of the Government Administration Law require officials to make decisions within 5 working days. If not, the application is considered legally approved, offering legal protection to the applicant. The failure of BPN officials to make a decision may be seen as a violation of their legal obligation and could face sanctions. Even without a written decision, the application deemed approved has the same legal force.

BPN officials need to avoid silence and ensure that administrative decisions follow the General Principles of Good Governance (AUPB). AUPB provides guidelines to ensure that decisions made are fair, transparent, and lawful (Cekli Setya Pratiwi *et al.*, 2015). Violations of AUPB could lead to legal consequences, such as *onrechtmatige daad* (unlawful act), *detournement de pouvoir* (abuse of power), *abus de droit* (abuse of right), and *ultra vires* (acts beyond authority) (Putra, 2020).

Land rights are related to individuals and legal entities who have claims or rights over land, whether in the form of ownership, leasehold, or building use rights (HGB) (Vidianti *et al.*, 2024). These rights are accompanied by obligations officially recorded in land certificates or contracts. Incomplete legal norms, particularly those related to *Lex Silencio Positivo*, can lead to legal uncertainty, hinder the application process for land rights, and potentially cause legal disputes.

Legal entities such as companies also have interests in land, either as owners or lessees. Legal entities can hold HGB or HGU, which regulate land use for specific purposes. Unclear administrative procedures can delay processes, create uncertainty, and increase costs.

Legal uncertainty related to the application of *Lex Silencio Positivo* by BPN arises from the inconsistency between Article 175 of the Omnibus Law and Article 53 Paragraph (5) of the Government Administration Law, which requires a presidential regulation to establish decisions deemed approved. Although Article 9 Paragraph (4) of the Government Administration Law states that the lack of regulations does not prevent officials from taking beneficial actions, this contradiction causes confusion. Officials without clear guidance may delay decisions, impeding legal certainty and creating uncertainty for land rights applicants.

This lack of clarity risks causing inconsistent decisions that harm applicants, slow down administration, and add burdens for all parties involved.

Construction of Norms Related to the Silence of National Land Agency (BPN) Officials on Land Rights Applications

Legal certainty in the silence of National Land Agency (BPN) officials regarding land rights applications can be analyzed through legal positivism (Efendi, 2018). Legal positivism views law as a system of clear, written rules, separate from moral or subjective

values. According to positivism, law is recognized as a product of the authority of the ruling power, and only positive law is valid. The validity of law is assessed based on the commands of the authority, without considering moral elements or justice. Jeremy Bentham and John Austin argued that positive law produced by a sovereign ruler is the only legitimate and valid source of law.

Legal reasoning, according to Shidarta and Neil MacCormick, is the process of thinking to make the correct decision based on the applicable legal rules (Shidarta, 2013). This reasoning not only seeks the truth but also solves legal problems practically and solution-oriented. Legal reasoning uses a systematic approach to analyze problems and apply relevant laws.

Legal certainty aims to provide clarity and order in the application of law, in line with the positivist principle of emphasizing objective and consistently applicable law (Arsy *et al.*, 2021). In this regard, regulations governing the silence of BPN officials on land rights applications must be clear and concrete to avoid legal uncertainty. Incomplete legal norms, such as those found in the Omnibus Law and the Government Administration Law, can create difficulties in their application, especially when there are no clear regulations regarding sanctions for officials who remain silent.

Legal positivism prioritizes the importance of separating law from morality and encourages the application of objective law, well-structured and consistently applied (Yuliani *et al.*, 2023). This ensures that law is applied consistently and provides certainty to the parties involved, without being influenced by speculation or subjective values. Legal clarity enables fair enforcement, creates order, and maintains public trust in the legal system.

The principle of legal certainty is closely related to legal positivism, which emphasizes clear and written legal rules to create order in society. According to Jan Michiel Otto, there are several key elements in legal certainty, including: first, clear and easily understandable legal rules; second, government agencies that apply rules consistently; third, the obligation of the public to comply with the law; fourth, judicial independence in applying the law; and fifth, the effective enforcement of judicial decisions.

The incompleteness of norms in Article 175 of the Omnibus Law and Article 53 Paragraph (5) of the Government Administration Law related to the absence of regulations governing the establishment of fictive positive decisions by BPN officials can create legal uncertainty. The *Lex Silencio Positivo* principle stipulates that if BPN officials fail to respond within the designated time, the land rights application is deemed approved. However, the absence of a presidential regulation that governs the implementation of this principle results in uncertainty regarding the procedure and implementation of the decision.

Some cases related to this principle include:

1. Surabaya Administrative Court Decision No. 39/B/2015/PT.TUN.SBY: A lawsuit against the silence of the Sleman Land Office regarding the request for the cancellation of the name transfer on the Land Ownership Certificate (SHM), which resulted in legal uncertainty regarding the land rights status.
2. Surabaya Administrative Court Decision No. 9/P/FP/2019/PTUN.SBY: A lawsuit against the issuance of an invalid land certificate due to the unclear and unresponsive actions of the relevant official regarding the request for certificate cancellation.

3. Administrative Court Decision No. 11/P/FP/2020/PTUN-JKT: A lawsuit against the silence of the South Jakarta Land Office regarding the issuance of the Building Use Rights Certificate (SHGB), which has not been issued despite various efforts.
4. Surabaya Administrative Court Decision No. 1/P/FP/2020/PTUN.SBY: Resolving a dispute related to a "fictive positive decision" arising from the silence of the Sidoarjo Land Office in responding to a request for a Land Ownership Certificate.

Based on Article 175 of the Omnibus Law and Article 53 of the Government Administration Law, BPN officials are required to issue a decision or take action within five working days after receiving a request (Suprpto, 2022). If not, the request is considered granted. However, the absence of a presidential regulation governing the implementation of this principle leads to legal uncertainty.

The legal vacuum can create potential conflicts between the public and the government regarding land rights applications (Ul Akmal *et al.*, 2023). Applicants for land rights who have submitted their requests face obstacles in executing their rights, while the government hesitates to implement fictive positive decisions without clear guidelines. This legal gap also hinders the goal of Article 175 of the Omnibus Law, which aims to accelerate the processing of land rights applications. The absence of clear regulations causes legal uncertainty, preventing the National Land Agency (BPN) from making definitive decisions. According to Article 175 of the Omnibus Law and Article 53 Paragraph (5) of the Government Administration Law, the legal vacuum concerning administrative decisions leads to ambiguity in the application of the law to land rights applications. Without a clear presidential regulation, BPN decisions can vary, creating uncertainty for the public. Therefore, additional regulations, such as a presidential regulation, are necessary to provide legal clarity. The failure to achieve legal certainty due to this regulatory vacuum harms applicants who may face delays or uncertain decisions from BPN.

French administrative law introduced the concept of 'implicit rejection' (*décision implicite de refus*) since 1864, which treats requests that are not answered within a certain time as rejected (De Graaf & Hoogstra, 2013). However, since 2000, the concept of positive fiction has been applied, where requests not responded to within a certain period are considered accepted. The Law No. 2000-321, which regulates positive fiction, changed the deadline to two months, with certain exceptions. France regulates positive fiction in detail through *Lex Silencio*, which provides legal certainty for applicants. The administrative courts in France have the authority to handle disputes between the public and the government. There are specialized courts, such as the *tribunaux administratifs* for first cases, *Cour administratives d'appel* for appeals, and the *Conseil d'État* as the highest court reviewing administrative decisions (De Graaf & Hoogstra, 2013). Positive fiction in France aims to promote bureaucratic efficiency, provide legal certainty to applicants, and enhance accountability and transparency in government administration.

In France, the administrative court system consists of various courts handling disputes between the public and the government. There are 46 *tribunaux administratifs* spread across the country, providing wide access for the public to file cases (Gutierrez, 2014). These courts handle administrative decisions that are considered harmful to individuals or entities. If a party is dissatisfied with the first decision, they can appeal to the *Cour d'appel administratif*, which reviews and makes the final decision, unless there are legal grounds for cassation to the *Conseil d'État* (Chevalier, 2020). Administrative courts in France are separate from the general judicial system, providing legal certainty

and efficiency in handling administrative disputes. This system is also often used as a reference by other countries in Continental Europe.

In Spain, the administrative justice system has developed since 1888 and follows a hybrid model between Anglo-Saxon and French law (Aberastury, 2023). In 2015, the General Administrative Procedure Law introduced the *Lex Silencio* principle, stating that if the government does not respond to an administrative request within a certain period, the request is considered approved by law. This principle aims to speed up administrative processes and avoid bureaucratic delays. Additionally, the legal system in Spain also provides protection for individual rights by ensuring that failure to provide a decision within a reasonable time is deemed automatic approval, thereby enhancing transparency and efficiency in public services.

The principle of *Lex Silencio Administrativo* in Spain assumes that if the government does not respond within the specified time, the request is considered approved or granted by law. This provides legal certainty to the applicant, who can consider their request accepted without a written decision. If the applicant is dissatisfied, they can appeal or file a lawsuit. This also protects the applicant's rights from administrative uncertainty and undue delays.

In Spanish law, *Artículo 24 Ley 39/2015* regulates the obligation of the administration to issue an explicit decision in administrative procedures. This decision must be made within the stipulated time, usually within a maximum period of six months, unless otherwise specified by law or European Union regulations. If no decision is made within the specified time, the *silencio administrativo* principle applies, which considers the request accepted (Aschari, 2017).

Several exceptions apply, such as procedures involving rights that only require notification or declaration to the administration. If the administration is unable to meet the deadline due to a lack of resources, it can extend the time limit, as per Article 23 of Law 39/2015, but this extension cannot exceed the established deadline.

Article 24 of Law 39/2015 also regulates that if the administration fails to issue a decision after the deadline, the request may be deemed accepted or rejected automatically, with exceptions for public interests, such as national security or environmental protection. If the request is considered rejected, the interested party may file an administrative appeal or judicial-administrative action.

In this regard, the *silencio administrativo* principle provides the legal basis that administrative actions not taken within the stipulated time still have binding legal effects, allowing the applicant to continue their administrative process.

If an application or appeal does not receive a response from the administration within the specified time, the application is considered automatically rejected through the concept of *silencio administrative* (Aschari, 2017). The effect of this rejection differs from acceptance, as there is no substantive decision that benefits the interested party. The rejection through the silence of the administration grants the interested party the right to appeal, either administratively or through administrative judiciary, according to the applicable regulations.

If the administration does not provide an explicit response within the designated time, the application is automatically considered accepted. However, if the administration eventually issues a decision, that decision must be confirmatory, meaning it only affirms that the application has been accepted. The explicit decision cannot alter the acceptance status that has already occurred through the silence of the administration.

Administrative decisions that consider an application or appeal accepted or rejected through the silence of the administration carry the same legal force as explicit

decisions. The interested party may file an appeal, which will then be reviewed by the administration within a certain period; otherwise, the appeal is considered accepted.

Administrative actions resulting from the silence of the administration can be proven with various accepted legal evidence, such as a decree acknowledging the silence of the administration. This decree is issued within fifteen days after the deadline for completing the procedure and can be requested at any time by the interested party. The decree provides legal certainty that the application or appeal has been accepted or rejected in accordance with the mechanism.

Comparing the systems in Indonesia, France, and Spain reveals differences in the application of the *silencio administrativo* principle. In France, if the government does not respond within a certain period, the application is considered granted, aiming to enhance the efficiency and transparency of administration (De Graaf & Hoogstra, 2013). In Spain, the application of this principle also aims to reduce bureaucratic delays, where the application is automatically considered approved if no decision is made within the specified time (Gutierrez, 2014). In Indonesia, similar provisions stipulate that if an application is not processed within five working days, the application is considered granted by law.

In Indonesia, the National Land Agency (BPN) operates under the Ministry of Agrarian Affairs and Spatial Planning, with the task of managing government affairs in the fields of agrarian and spatial planning (BPN, 2016). Oversight of BPN is conducted through an internal control system that includes risk assessment, activity monitoring, and continuous monitoring to ensure the implementation of public policies in the land sector follows procedures and provides good service to the public.

The implementation of risk management systems in BPN involves several structures, such as Risk Owners, Risk Management Task Forces, and Risk Management Supervision Units, which are responsible for identifying, managing, and monitoring risks that may affect public service in land affairs.

The model for public service supervision in the land sector is regulated by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (BPN) Regulation No. 3 of 2022 (BPN, 2022). This model provides that risk management is carried out by officials at the echelon II level, with risk owners being high-ranking officials leading BPN regional offices, and implementation teams consisting of supervisory officers, functional officials, and staff. The implementation team is tasked with assessing, managing, and reporting risks related to land services. The supervision aims to ensure transparency, accountability, and efficiency in the service process, particularly in land rights administration.

Additionally, related to disputes over court decisions, if the parties are dissatisfied with the implementation of BPN's decision, they can file complaints through an electronic or written system. Complaints must be resolved within seven working days, and if not, the parties may appeal to the State Administrative Court (PTUN). Regarding legal protection, applicants are entitled to legal certainty about the land rights application process and can file a lawsuit for compensation if there is negligence or violation of procedures by BPN officials. BPN is required to provide administrative compensation if negligence in the application process or court decision implementation is proven.

In the implementation of court decisions, the parties also have the right to ensure that the decision is carried out within the specified time. If BPN fails to implement the decision, the aggrieved party can file an execution request with the court that issued the decision. This process is based on regulations governing application submissions, court decisions, deadlines, and oversight mechanisms. However, there is a legal gap regarding

the absence of regulations on the form of the decision that is considered legally granted, which still needs to be regulated further in a Presidential Regulation.

The legal norms governing applications and court decisions adopt the *Lex Silencio Positivo* principle, where the silence of BPN officials is considered automatic approval, providing legal certainty for applicants. By setting a five-day working period for applications and a ten-day working period for the implementation of court decisions, it is expected that the process will be faster and more efficient. Additionally, this norm also includes administrative sanctions for negligent BPN officials, enhancing accountability and discipline in public service. The use of electronic systems for transparency and monitoring the status of applications, along with clear complaint mechanisms, ensures legal protection for applicants and related parties, realizing a more transparent, accountable, effective, and just land service.

4. Conclusion

Lex Silencio Positivo is a legal concept that considers the silence of officials from the National Land Agency (BPN) regarding land rights applications as approval if there is no response within five working days, as regulated in Article 1, paragraph 3, and Article 4, paragraph (1) of the Government Administration Law, as well as Article 175 of the Omnibus Law and Article 53, paragraph (2) of the Government Administration Law. This silence can cause uncertainty regarding the status of the land rights application, which harms the applicant and violates the principles of good governance, as making a decision is the obligation of BPN officials. This uncertainty has the potential to cause material losses for the applicant, whether individual, legal entity, or government institution with a legal interest. Oversight of land rights applications is conducted through the Government's Internal Control System (SPIP), regulated under Government Regulation No. 60 of 2008, using the COSO framework to identify risks and reduce violations, with the aim of enhancing transparency, accountability, and effectiveness in public services in the land sector. The indifference of government officials toward land rights applications leads to legal uncertainty that harms the applicant and violates obligations outlined in Article 175 of the Omnibus Law and Article 53 of the Government Administration Law, while also potentially causing material losses for the concerned parties.

5. References

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