



## Assessing the Role and Future of the Tax Court Post-MK Decision No. 26PUU-XXI2023

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### ARTICLE INFO

#### Article history:

Received 01 April  
2024

Received in revised  
form 27 May 2024

Accepted 29 May  
2024

### ABSTRACT

Taxation, as a fundamental component of the system of cooperation, serves as a financial resource to underpin governmental financing and expenditure while also acting as an instrument for the regulation of social and economic policies aimed at promoting equitable welfare. The process of tax collection occasionally engenders inequities for taxpayers; consequently, Law 14 of 2002 instituted the Tax Court as an autonomous judicial entity designated for the adjudication of tax-related disputes. Notwithstanding its establishment, the Tax Court encounters significant challenges, notably the dualism of authority wherein the Supreme Court provides technical guidance. At the same time, the Ministry of Finance oversees organizational, administrative, and financial directives. In the Constitutional Court's Decision (MK) Number 26/PUU-XXI/2023, the regulation pertaining to the oversight of the Tax Court was deemed inconsistent with Article 24, paragraphs (1) and (2) of the 1945 Constitution, prompting the Constitutional Court to impose a deadline of December 31, 2026, for the consolidation of the Tax Court's guidance authority under the auspices of the Supreme Court. Consequently, this research endeavours to scrutinize the role and prospective trajectory of the Tax Court alongside the measures necessary to effectuate the transfer of guidance authority in alignment with constitutional mandates. Hence, the author has entitled this study "Measuring the Role and Future of the Tax Court after the Constitutional Court Decision Number 26/PUU-XXI/2023." The questions posed for investigation are: What is the Role and Position of the Tax Court as delineated by the Tax Court Law, and what is the Role and Future of the Tax Court subsequent to the Constitutional Court Decision (Number 26/PUU-XXI/2023)? To address these inquiries, the author employs a qualitative writing methodology complemented by a normative legal perspective.

#### Keyword:

Tax Court, Tax  
Disputes, Judicial Power.

### INTRODUCTION

Taxes serve a pivotal function within the communal support infrastructure, acting as a fundamental source of financing for governmental expenditures and operations (Irawati & Kuntara, 2022). In addition to their fiscal responsibilities,

taxes operate as mechanisms for the execution and regulation of social and economic policies, with the objective of attaining equitable welfare and justice within the societal framework. Furthermore, taxes contribute to the

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preservation of price stability through the management of inflationary pressures (Sasanti & Indah, 2022). Given that taxes constitute a substantial potential revenue stream for the state, their contribution to the promotion of societal welfare and prosperity is essential. The proportion of tax revenue allocated to the State Budget (APBN) has consistently exhibited an upward trend year after year. The revenues accrued from taxation are designated to bolster national development, uphold defense and security, and facilitate governmental functions (Gotama et al., 2020).

However, the execution of tax collection mechanisms frequently diverges from the prescribed policies, engendering perceptions of inequity among taxpayers and precipitating tax disputes between the taxpayers and the fiscal authorities. In essence, tax disputes emerge from divergent interpretations or disagreements between taxpayers and tax officials concerning the evaluation of tax obligations or the collection actions executed by the Directorate General of Taxes. To mitigate tax disputes, the government, via Law No. 14 of 2002 pertaining to the Tax Court, instituted the Tax Court as a strategic initiative aimed at establishing an autonomous judicial entity for the resolution of tax disputes. Notwithstanding the establishment of the Tax Court, numerous challenges persist. At the outset, the Tax Court stands as a specialized judicial forum in the taxation sector, operating as both the starting and ultimate arena for the scrutiny and ruling on tax-related cases (Melyani et al., 2022). This implies that there is no standard legal recourse, such as an appeal to the High Court or a cassation to the Supreme Court, available in the resolution of tax disputes. Instead, the sole alternative is an extraordinary legal remedy through a judicial review conducted by the Supreme Court. Moreover, a dual system of

jurisdiction is present, as the Tax Court functions with the oversight of both the Supreme Court and the Ministry of Finance (Erwiningsih, 2021).

In other terms, the enforcement of tax legislation encompasses a dual-tiered judicial process pertaining to taxation. At the outset, tax-related conflicts are addressed by the Objection Agency, subsequently progressing to the Tax Court, which ultimately culminates at the Supreme Court. The Objection Agency constitutes a segment of the tax judiciary under the auspices of the Ministry of Finance, which is responsible for overseeing organizational structure, administrative functions, financial management, and technical training pertaining to judicial practices. It is imperative to underscore that the Objection Agency operates within the parameters of executive authority. Nevertheless, the presence of the Tax Court engenders a degree of ambiguity, as the subject of tax-related disputes—the Tax Assessment Letter (SKP)—remains within the purview of the State Administrative Court (PTUN) (Tomson, 2022).

Recently, the Constitutional Court (MK), through its ruling (Number 26/PUU-XXI/2023), has partially endorsed a petition to scrutinize Law No. 14 of 2002 regarding the Tax Court in relation to the 1945 Constitution, which carries profound ramifications for the governance of the Tax Court's oversight. The constitutionality of Article 5 paragraph (2) of the Law, which asserts that "The supervision of the organization, administration, and finances of the Tax Court is conducted by the Ministry of Finance," was contested. The Constitutional Court's ruling emphasized the split in authority, indicating that the Supreme Court handles the technical judicial oversight of the Tax Court. At the same time, the Ministry of Finance manages the organizational, administrative, and financial aspects.

Incompatibility was established between Article 5 paragraph (2) of Law 14/2002 and Article 24 paragraphs (1) and (2) of the 1945 Constitution since it reduces the judiciary's role under the executive branch's dominion. Fundamentally, this indicates that the Tax Court's status is not autonomous, as it operates as a judicial entity while simultaneously engaging in executive functions. This circumstance may engender a deficiency of independence in the processes of judicial decision-making, as the Tax Court functions within the judicial branch, specifically as a specialized court within the State Administrative Court framework under the auspices of the Supreme Court.

In light of the preceding discourse, it is imperative to examine the function and prospective trajectory of the Tax Court, along with the necessary measures to effectuate the transfer of supervisory authority pertaining to the Tax Court in alignment with the constitutional directive. The Constitutional Court, in its ruling, established a deadline of December 31, 2026, for the amalgamation of the supervisory authority of the Tax Court under a singular entity within the Supreme Court (Bravestha, 2017).

## **RESEARCH METHODS**

In the implementation of this scholarly investigation, the researcher utilizes a qualitative methodology in conjunction with a normative legal framework to clarify the development of the research inquiry. This methodology includes an exhaustive literature review aimed at exploring concepts, viewpoints, and empirical evidence relevant to the legal matters being scrutinized (Atikah, 2022). This examination seeks to articulate legal processes based on authoritative sources compiled through literature analyses, with the purpose of examining, evaluating, and providing recommendations related to the legal statutes governing tax courts.

## **RESULTS AND DISCUSSION**

### **The Role and Position of the Tax Court According to the Tax Court Law**

State revenue, predominantly generated from taxation, assumes a pivotal function in both present and prospective developmental initiatives. As the population of taxpayers expands along with their comprehension of tax rights and responsibilities, the occurrence of tax disputes has become unavoidable (Basri & Muhibbin, 2022). Tax disputes materialize when taxpayers' express dissatisfaction with the tax liabilities ascertained by the tax authorities, frequently stemming from the perceived erroneous application of tax laws, consequently leaving taxpayers feeling aggrieved (Dewi, 2010). Given that tax law encompasses both the entitlements and duties of taxpayers and tax authorities, taxpayers possess the right to pursue resolution when they perceive an injustice stemming from a tax authority's determination. In essence, tax disputes originate from misinterpretations or divergent understandings between taxpayers and tax officials concerning the quantum of tax owed or as a consequence of collection actions executed by the Directorate General of Taxes (Ilyas & Burton, 2013).

To appropriately confront the resolution of tax disputes, it became evident that a specialized judicial authority focused on the adjudication of such issues was needed. With the introduction of Law No. 14 of 2002, which governs the Tax Court, taking over from Law No. 17 of 1997 about the Tax Dispute Settlement Agency, the Tax Court has risen as an essential entity for resolving tax issues (Umboh, 2021). It is anticipated that this will foster adherence to the supremacy of tax law among both taxpayers and tax authorities. The formation of the Tax Court aims to establish legal certainty and equitable justice between taxpayers and tax authorities. As a mechanism for law

enforcement, the Tax Court functions to safeguard the legal entitlements of taxpayers in their interactions with the government (the tax authority) (Purba & Simatupang, 2023). In essence, the Tax Court acts as a distinct legal establishment aimed at addressing tax disagreements between taxpayers and the Directorate General of Taxes.

The Tax Court Law underscores that the fundamental purpose of creating this institution is to wield independent and autonomous judicial authority, ultimately subordinate to the Supreme Court, especially in adjudicating tax-related conflicts. As delineated in Article 27, paragraph (1) of Law No. 48 of 2009 concerning Judicial Power, the Tax Court is categorized as a specialized court within the State Administrative Court framework. As an integral component of the judicial apparatus in Indonesia, the Tax Court possesses the mandate to scrutinize and adjudicate tax disputes. The jurisdiction of the Tax Court encompasses the analysis and resolution of tax appeals and litigations. Furthermore, it retains the authority to supervise legal representatives aiding parties engaged in disputes before the Tax Court. Nevertheless, the Tax Court is devoid of jurisdiction over criminal tax offenses, which fall under the purview of the general courts (Ispriyarso, 2014).

According to Law No. 14 of 2002 pertaining to the Tax Court, the Tax Court functions as a judicial entity that wields judicial authority. The autonomy of judges within the Tax Court is still maintained under a dual oversight framework, in contrast to other judicial entities such as general courts, state administrative courts, and various other courts that operate under a unified oversight model. At present, the Tax Court is administratively, organizationally, and operationally aligned with the Ministry of Finance, whereas the Supreme Court performs its technical judicial supervision (Basri & Muhibbin,

2022). The establishment of the Tax Court is anticipated to improve tax compliance and augment state revenue derived from taxation, albeit its independence is, in practice, constrained by the involvement of two distinct institutions, specifically the Supreme Court and the Ministry of Finance.

This dual authority is further elucidated in Law No. 3 of 2009, which amended Law No. 14 of 1985 pertaining to the Supreme Court. According to this legislative framework, every category of court, covering general courts, religious courts, and state administrative courts, is under the Supreme Court's jurisdiction (Wiyanto, 2022). Nonetheless, a specific exemption is afforded to the Tax Court. Article 5 of Law No. 14 of 2002, which addresses the Tax Court, articulates that the technical judicial oversight of the Tax Court is mandated to be the purview of the Supreme Court (paragraph 1). In contrast, the organizational, administrative, and financial oversight is allocated to the Ministry of Finance (paragraph 2) (Ispriyarso, 2014).

Additionally, Article 27, paragraph (1) of Law Number 48 from the year 2009 about Judicial Powers, along with Law Number 51 from the year 2009 that revised Law Number 5 from 1986 on the State Administrative Court, explains that the Tax Court is classified as a unique court in the State Administrative Court structure. These specific courts hold the jurisdiction to settle and determine unique categories of legal matters and are formed under the guidance of the Supreme Court following legislative rules. A variety of special courts, including the Juvenile Court, Commercial Court, Human Rights Court, Corruption Court, Industrial Relations Court, and Fisheries Court, have been instituted to address the legal and justice requirements of the populace within the General Court system (DM et al., 2023).

In contrast, the Tax Court is situated within the State Administrative Court system. The Tax Court is designated as a special court within the State Administrative Court system due to the fact that tax disputes encompass criteria analogous to those present in State Administrative disputes, albeit the Tax Court's positioning within Indonesia's judicial framework is not explicitly delineated in Law No. 14 of 2002. Nevertheless, according to Muchsin, situating the Tax Court within the State Administrative Court system is deemed more fitting, as this positioning is expressly articulated (*expressive verbis*) under the State Administrative Court system, as referenced in the Explanation of Article 27 of Law No. 48 of 2009, in conjunction with the Explanation of Article 21 of Law No. 4 of 2004, in conjunction with the Explanation of Article 9A of Law No. 51 of 2009, in conjunction with Law No. 9 of 2004.

#### **Evaluating the Role and Future of the Tax Court After the Constitutional Court Decision (No. 26/PUU-XXI/2023)**

As previously delineated, the Tax Court persists in functioning under a bifurcated management framework. The establishment of a consolidated management structure has emerged as an imperative in response to the escalating demand for judicial autonomy. Empirical evidence has demonstrated that a disunited judicial framework has the potential to incite disturbances and intrusions upon the independence of judicial entities. In the legal statute pertaining to the Tax Court, the designation of the Tax Court as an adjudicative entity is not explicitly articulated as a specialized court through any particular article or provision. For a body such as the Tax Court to be acknowledged as a rightful executor of judicial power, it is crucial to adhere to various stipulations listed in Article 11,

paragraph (2), Article 13, paragraph (1), and Article 15, paragraph (1) of Law No. 4 enacted in 2004, later updated by Law No. 48 in 2009 concerning Judicial Authority. In accordance with these legal stipulations, a specialized judicial entity can be classified as an authentic judicial body exercising judicial authority if it fulfills multiple criteria, including establishment by legislative enactment, existence within one of the four judicial environments, concluding at the Supreme Court as the apex court in the nation, and having its organizational structure, administrative functions, and financial resources governed by the Supreme Court. The Tax Court satisfies the majority of these criteria, as it was instituted and regulated by statutory law, functions within the State Administrative Court system, and concludes at the Supreme Court. Nonetheless, the accountability for administrative and financial matters is apportioned between the Ministry of Finance and the Supreme Court, thereby meeting this requirement only in a partial capacity.

Nurhidayat recently contested this bifurcated management framework in the Constitutional Court (MK). In the legal petition, the petitioner sought to assert that the terminology "Ministry of Finance" should not be construed as synonymous with "Supreme Court," positing that such an interpretation was conditionally in violation of Article 1, paragraph (3), Article 24, paragraph (1), Article 24, paragraph (1), Article 24, paragraph (2), and Article 28D, paragraph (1) of the 1945 Constitution. In its ruling, the Constitutional Court mandated a deadline of December 31, 2026, for the consolidation of the supervisory jurisdiction of the Tax Court under a singular authority within the Supreme Court. "By December 31, 2026, all dimensions of the Tax Court's oversight must be fully integrated into the Supreme Court."

This ruling issued by the Constitutional Court (No. 26/PUU-XXI/2023) accentuates the critical role of the judiciary in upholding judicial autonomy. In this ruling, the Constitutional Court accorded precedence to constitutional doctrines, thereby reaffirming its dedication to the principles of the rule of law and judicial independence. The emphasis lies in guaranteeing that the Tax Court functions as an entity unencumbered by external influences that may undermine its autonomy. The timeline established by the Constitutional Court, set for December 31, 2026, concerning the consolidation of the Tax Court's supervisory jurisdiction under the Supreme Court, epitomizes endeavors to rehabilitate or augment the autonomy of the court. In combination, these approaches reflect the ideals of a juridical state, which calls for a judiciary that operates independently and governs itself.

In light of the implications and prospective trajectory of the Tax Court subsequent to the ruling of the Constitutional Court, a series of significant measures must be undertaken. Initially, it is imperative that the legislative authorities, specifically the President and the House of Representatives (DPR), incorporate the amendment of Law No. 14 of 2002 into the publicly accessible cumulative list for legislative revision. This action should be predicated upon the execution of the Constitutional Court's ruling and the amendment of Law No. 14 of 2002, which entails the reallocation of the supervisory jurisdiction of the Tax Court to the Supreme Court through the alignment and harmonization of pertinent legislative frameworks that govern the oversight of the Tax Court, with particular emphasis on Law No. 14 of 2002. Subsequently, the Ministry of Finance is required to either delegate this responsibility to its secretariat or establish a dedicated team tasked with facilitating the transition of the

Tax Court's supervisory jurisdiction to the Supreme Court. This team should engage in a comprehensive analysis of the supervisory authority pertaining to the organization, administration, and financial matters, in addition to the facilities and infrastructure associated with the Tax Court that remain under the stewardship of the Ministry of Finance, thereby ensuring the smooth transfer of oversight to the Supreme Court. Finally, the Supreme Court should similarly empower its secretariat or constitute a specialized team to oversee the transition of the Tax Court's supervisory authority. This team must collaborate with the Ministry of Finance to adequately prepare for the transfer of supervisory powers and systematically delineate and establish the requisite components for the oversight of the Tax Court, including the secretariat, regulations governing organizational, administrative, and financial supervision, as well as the facilities and infrastructure essential for the operations of the Tax Court.

## **CONCLUSION**

According to the provisions established by the Tax Court Law, the Tax Court predominantly serves the function of adjudicating tax-related conflicts that arise between taxpayers and the Directorate General of Taxes. Functioning as an autonomous legal authority, the Tax Court's purpose is to promote legal certainty and equity in the resolution of tax disputes. Although it is categorized as a specialized court within the State Administrative Court framework, the Tax Court possesses exclusive jurisdiction to scrutinize and render decisions on tax disputes, which encompass tax appeals and litigation. Despite its autonomy being constrained by the dual roof system—where administrative oversight is administered by the Ministry of Finance and judicial technical guidance is provided by the Supreme Court—the Tax Court is



anticipated to enhance tax compliance and bolster state revenue within the taxation domain. In light of the Constitutional Court ruling Number 26/PUU-XXI/2023, the significance of harmonizing the court management system to uphold the independence of the judicial institution has been underscored. The ruling from the Constitutional Court accentuated the necessity for the Tax Court to operate under the auspices of the Supreme Court, in alignment with the principles of the rule of law and judicial independence. Measures taken in response to this ruling entail legislative revision, delineation of authority, and coordination among pertinent entities, including the President, the DPR, the Ministry of Finance, and the Supreme Court. Consequently, it is anticipated that these initiatives will fortify the autonomy of the Tax Court and ensure the presence of an independent judiciary.

### LIMITATION

The foremost limitation of this investigation resides in its dependence on normative legal research, which predominantly entails the examination of legal texts, statutes, and judicial rulings. Although this methodology affords a profound comprehension of the legal structures and constitutional requirements, it may not adequately encapsulate the practical ramifications and obstacles encountered by the Tax Court in its routine functions. Moreover, the inquiry is hindered by the accessibility of secondary data, thus constraining the capacity to evaluate the real-world repercussions of the Constitutional Court's adjudications on the operational dynamics of the Tax Court. Subsequent empirical investigations, encompassing interviews with relevant stakeholders and comprehensive case studies, would be advantageous to furnish a more holistic insight into the ramifications of the legal

modifications on the autonomy and efficacy of the Tax Court.

### IMPLICATION

The outcomes of this research possess considerable ramifications for the prospective governance and autonomy of the Tax Court in Indonesia. The ruling issued by the Constitutional Court highlights the necessity for a cohesive management framework under the auspices of the Supreme Court to safeguard judicial independence. Such a transition is anticipated to instigate significant alterations in the operational framework of the Tax Court, thereby requiring extensive legislative reforms and synchronized initiatives between the Ministry of Finance and the Supreme Court. These alterations are projected to bolster the court's capacity to operate autonomously, unencumbered by executive interference, thus fortifying the rule of law in matters pertaining to tax adjudications. The ramifications also encompass policymakers, who must prioritize the revision of pertinent statutes to conform to the Constitutional Court's directive, thereby ensuring the seamless transition of supervisory responsibilities and the enduring viability of the Tax Court's autonomy.

### REFERENCES

- Atikah, I. (2022). *Metode Penelitian Hukum*.
- Basri, H., & Muhibbin, M. (2022). Kedudukan Pengadilan Pajak dalam sistem peradilan di Indonesia. *Jurnal Hukum Dan Kenotariatan*, 6(4), 1442–1458.
- Bravestha, R. (2017). *Kedudukan Pengadilan Pajak Dalam Sistem Peradilan Di Indonesia*. Untag Surabaya.
- Dewi, D. A. S. (2010). Penyelesaian Sengketa Pajak. *Jurnal Fakultas Hukum Universitas Muhammadiyah Magelang*, 5(2), 23266.

- DM, M. Y., Akbar, A., Hariri, A., & Srinofrita, S. (2023). Analisis Yuridis Peranan dan Kedudukan Peradilan Pajak di Indonesia. *Jurnal Pendidikan Dan Konseling (JPDK)*, 5(1), 1267–1273.
- Erwiningsih, W. (2021). Implementasi Penyelesaian Sengketa Pajak Pada Pengadilan Pajak Indonesia. *Justicia Sains: Jurnal Ilmu Hukum*, 6(2), 248–262.
- Gotama, I. W. S., Widiati, I. A. P., & Seputra, I. P. G. (2020). Eksistensi Pengadilan Pajak dalam penyelesaian sengketa pajak. *Jurnal Analogi Hukum*, 2(3), 331–335.
- Ilyas, W. B., & Burton, R. (2013). Hukum pajak: Teori, analisis, dan perkembangannya. *Jakarta: Salemba Empat*.
- Irawati, A., & Kuntara, I. (2022). Transformasi Pelayanan Publik di Era New Normal di Badan Pengelola Keuangan Daerah Kota Padang Panjang. *Jurnal Ilmiah Ekotrans & Erudisi*, 2(1), 73–82.
- Ispriyarso, B. (2014). Analisis Yuridis Terhadap Kedudukan Pengadilan Pajak Sebagai Pengadilan Khusus Di Lingkungan Peradilan Tata Usaha Negara. *Masalah-Masalah Hukum*, 43(1), 40–48.
- Melyani, R. S., Putera, R. E., & Koeswara, H. (2022). Strategi Kantor Sistem Administrasi Manunggal Satu Atap (SAMSAT) Painan dalam Meningkatkan Pendapatan Pajak Kendaraan Bermotor di Kabupaten Pesisir Selatan. *Jurnal Ilmiah Ekotrans & Erudisi*, 2(1), 11–21.
- Purba, P. P. Q., & Simatupang, D. P. (2023). Upaya Penyelesaian Sengketa Pajak PT Taspen (Persero) Kantor Cabang Utama Medan. *Jurnal Ilmiah Penegakan Hukum*, 10(1), 33–41.
- Sasanti, D. N., & Indah, H. T. K. (2022). Problematika Penyelesaian Sengketa di Pengadilan Pajak Dalam Rangka Perwujudan Peradilan Sederhana, Cepat, dan Biaya Ringan. *Reformasi Hukum*, 26(1), 21–38.
- Tomson, S. (2022). Reposisi pengadilan pajak menurut sistem kekuasaan kehakiman di Indonesia. *Honeste Vivere*, 32(2), 108–122.
- Umboh, D. Y. (2021). Prosedur Penyelesaian Sengketa Pajak di Pengadilan Pajak Menurut Undang Undang Nomor 14 Tahun 2002. *Lex Administratum*, 9(8).
- Wiyanto, H. M. (2022). Peradilan Khusus di Dalam Sistem Peradilan di Indonesia. *Jurnal Hukum Progresif*, 10(1), 76–85.