



Institutional Redesign of Tax Court within the Scope of Supreme Court Authority

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ABSTRACT

The development of the global economy and free trade has led to a surge in transactions of goods, services, and capital, which encourages diversity in the format of tax objects and complex transactions. In the implementation of tax collection, it is not uncommon for disputes to arise between tax authorities and taxpayers. However, under this law, the position of the Tax Court falls under two institutions, namely the Supreme Court and the Ministry of Finance, which raises concerns about the independence of judges due to guidance from the Ministry of Finance. This research aims to analyze the institutional redesign of the Tax Court within the scope of authority of the Supreme Court based on Constitutional Court Decision Number 26/PUU-XXI/2023. The research method applies a normative juridical approach supported by empirical data; this research uses legal document analysis and interviews. The results showed that Constitutional Court Decision No. 26/PUU-XXI/2023 directed the Tax Court to become a specialized court within the scope of state administrative justice under the Supreme Court. Guidance related to organization, finance, and administration is fully transferred to the Supreme Court by December 31, 2026, ending the authority of the Ministry of Finance. The judges' legal considerations in this decision include providing a transition period to allow the Supreme Court to prepare for the management of the Tax Court and for legislators to draft relevant procedural laws.

Keywords: Authority, Institutional redesign, Supreme Court, Tax court

INTRODUCTION

August 17, 1945, is the most important milestone in the life of the nation and state for the people of Indonesia. On that monumental date, the Indonesian people declared their independence by establishing the Unitary State of the Republic of Indonesia in the form of a Republic. The Preamble of the 1945 Constitution is the basic norm of the state (*staatsfundamentalnorm*) which describes the ideals of the nation-state in which there is also a Declaration of Independence. The Preamble of the 1945 Constitution, formulated and established by the founding fathers, became the source and basis for the preparation of constitutional norms in the articles and paragraphs of the 1945 Constitution (Marshanda, 2023; Pasau, 2022; Rinardi, 2017; Rofa et al., 2018; Suparjan & Khaldun, 2021).

In the context of the Indonesian State, the 1945 Constitution contains the eternal goals (vision) and mission of the Indonesian nation. The eternal vision as stated in the preamble of the 1945 Constitution is "The independent, sovereign, just and prosperous state of Indonesia."

Meanwhile, the mission is first, to protect the entire Indonesian nation; second, to promote general welfare; third, to educate the nation's life; and fourth, to participate in implementing world order based on independence, lasting peace, and social justice. The elaboration of the aforementioned vision and mission concerning the welfare of society is then set out in the articles of the 1945 Constitution relating to welfare. In the Indonesian dictionary, welfare is defined as the state of being prosperous; security, safety, tranquility (Annava et al., 2022; Arip, 2018; Erwinsyahbana & Syahbana, 2018; Silalahi, 2020; Wahyudi, 2012; Widjaja & Simanjuntak, 2022).

The meaning of the word "prosperous" is defined as safe and prosperous; safe (free from all kinds of disturbances). Whereas the word "prosperous" is defined as having plenty or sufficiency. The word "welfare" is always associated with the word "prosperity." In this context, there is a role for the State in providing welfare. The role of the state in the welfare of the people is outlined in Article 27 paragraph (2) of the 1945 Constitution, which states that every citizen has the right to work and a decent livelihood for humanity. As we know, Indonesia entered the Reform Era in 1998, when the 1945 Constitution underwent four (4) amendments. The second amendment was dated August 18, 2000; the third amendment was dated November 9, 2001; and the fourth amendment was made on August 10, 2002, which is hereinafter referred to as the 1945 Constitution of the Republic of Indonesia (*NRI*). Article 27 of the 1945 Constitution received an additional paragraph (3) in the Second Amendment dated August 18, 2000.

In order to realize the vision of the Indonesian nation, the State then prepares an estimate of funding needs for program financing in order to fulfill its missions in the form of the State Budget (*APBN*) (Freebairn & Griffiths, 2023; I Kadek Andika Setiawan et al., 2021; Kozmenko et al., 2020; Setyadi et al., 2023; Wang & Kim, 2023). In accordance with its function, the *APBN* is elaborated into three (3) main functions, namely allocation, distribution, and stabilization. However, normatively for Indonesia, the *APBN* function is normatively placed as a rule in the *APBN* policy every year. Based on Article 3 Paragraph (4) of Law Number 17 of 2003 concerning State Finance (hereinafter referred to as *UUKN*), it is confirmed that the *APBN/APBD* has the functions of authorization, planning, supervision, allocation, distribution, and stabilization. In its explanation, among others, it is stated:

1. The Authorization Function means that the state budget becomes the basis for implementing revenue and expenditure in the year concerned;
2. The Planning Function means that the state budget serves as a guide for management in planning activities for the year in question;
3. The Supervisory Function means that the state budget serves as a guide to assess whether the activities of the state administration are in accordance with the provisions that have been set;
4. The Allocation Function means that the state budget must be directed to reduce unemployment and waste of resources, and improve the efficiency and effectiveness of the economy;
5. The Distribution Function means that state budget policies must take into account a sense of justice and propriety; and

6. The Stabilization Function means that the government budget becomes a tool to maintain and strive for the fundamental balance of the economy.

Administratively, the *APBN* itself is a small scope of state finance. The definition of state finances set out in the *UUKN* is derived from the theory of the welfare state, which is explicitly embraced in the 1945 Constitution of the Republic of Indonesia, from its preamble to its articles. The framers of the 1945 Constitution, who were influenced by welfare state thinking, envisioned the establishment of an Indonesian government that protects the entire Indonesian nation and is able to promote general welfare and beyond.

Based on World Bank data, especially within a period of five (5) years, from 2014 to 2019, world economic growth was in the range of 2.85%. Meanwhile, the development of cross-country movement of goods and services in world free trade, including the movement of capital or investment in the real, service, and financial sectors, has experienced a significant surge. The Industrial Revolution 4.0, which is characterized by the digitization of manufacturing and the dominant factor of technology and information automation, has caused business activities, both the production of goods and services, to become increasingly complex and diverse, which is reflected in various forms of business transactions that are increasingly varied. Although during 2021 world economic growth slowed down due to the Covid-19 Pandemic, with the emergence of hope for the development of a vaccine to overcome the spread of this virus, it was predicted that in mid to late 2021 the world economy would begin to recover and return to a stable growth pattern in the range of economic growth of 3.4%. The various variants of business transactions lead to the emergence of tax object formats both in terms of breadth and value of the imposition base as well as a variety of transactions, such as the determination of beneficial owner, transfer pricing, permanent establishment, which has implications for increasing revenue from value-added tax, foreign tax, and corporate income tax. In this case, the government through the Director General of Taxes has mapped the tax potentials as a source of state revenue and issued implementing regulations based on the Taxation Law, especially in Law No. 36 of 2008 concerning Income Tax (Income Tax Law).

The president and vice president-elect, Prabowo-Gibran, have initiated a discourse on increasing the number of ministries/institutions. One of the new ministries/institutions that is considered relevant to answer development challenges is the State Revenue Agency (*BPN*). The idea has actually been studied several times by the government; even an article on the establishment of a Tax Revenue Agency (*BPP*) has been raised in the Draft Law on General Provisions and Tax Procedures (*KUP* Bill). However, the plan failed to be executed, both in the SBY and Jokowi eras. In the Prabowo-Gibran *Asta Cita* program, the formation of *BPN* was again initiated to increase the ratio of state revenue to gross domestic product (GDP) to 23%. The hope is that there will be adequate fiscal space for the implementation of development in order to realize the vision of a Golden Indonesia 2045.

However, the momentum of the establishment of *BPN* must go through a substantial and holistic redesign. The objective is not simply to separate the state revenue function from the

Ministry of Finance or only its structural position. The Directorate General of Taxes (*DGT*) is an echelon one unit under the Ministry of Finance that handles tasks related to tax administration in Indonesia. The *DGT* is led by a director general. *DGT*'s authority as an authority is regulated in the *KUP* Law.

The authority ranges from conducting audits for tax determination, collecting tax debts, deciding tax objection disputes, to conducting tax criminal investigations. *DGT*'s organizational structure consists of one head office with 14 directorate units and four reviewer positions. In addition, there are vertical units in the form of 34 regional offices, four tax service offices (*KPP*) for large taxpayers; nine special *KPPs*; 38 middle *KPPs*; 301 *pratama KPPs*; 204 tax service, counseling, and consultation offices (*KP2KP*); and three technical implementation units (*UPT*). Based on the *DGT* Annual Report, there are 44,787 human resources owned by the authority with 6,255 of them being tax auditors. In terms of budget, the *DGT* is provided with a ceiling of IDR 6.33 trillion or 0.35% of the total tax revenue in 2024 of IDR 1,818.20 trillion. In 2024, *DGT* focused on technology infrastructure through the renewal of the core tax administration system with a budget of IDR 7.39 trillion. The development of commercial off-the-shelf (*COTS*) based information systems was accompanied by database strengthening. The hope is that the system will be easy, reliable, integrated, accurate, and certain. With all the resources owned by *DGT* in carrying out its authority, Indonesia has still not been able to achieve the tax ratio as recommended by the World Bank, which is 15%, in the last decade. In 2023, the tax ratio dropped to 10.21% even though tax revenue still grew by 8.9%.

In recent decades, many countries have undertaken progressive fiscal transformations to carry out one of the most fundamental tasks of the state, namely collecting tax revenue. The transformation started in developing countries, such as Bolivia and Ghana, in the late 1980s. Today, the transformation has become a global trend as it has been adopted by 28 countries, including Australia, Malaysia, and Singapore.

The pattern in each country is relatively the same: separating the tax authority (sometimes including Customs and Excise) from the Ministry of Finance and establishing a Semi-Autonomous Revenue Authority. A lot of literature presents evidence of the successful adoption of Semi-Autonomous Revenue Authority in various countries. Kristiaji and Poesoro found that countries that adopt Semi-Autonomous Revenue Authority have the potential to increase the tax ratio by 3%-5% and decrease tax bribery by 8.4%. World Bank findings in 2004 showed that the *Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT)* in Peru succeeded in increasing the tax ratio from 8.4% in 1991 to 12.3% in 1998. The *Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT)* in Venezuela managed to increase the tax ratio from 5.9% in 1994 to 8.5% in 1998. In fact, the Uganda Revenue Authority (*URA*) experienced the highest increase in tax ratio, from 7.0% in 1991 to 11.9% in 1999.

The World Bank and the International Monetary Fund have formulated the institutional design of the Semi-Autonomous Revenue Authority based on academic literature and other countries' best practices. First, the legal foundation. All countries adopting Semi-Autonomous

Revenue Authority issue regulations at the statutory level as a legal basis. For this reason, in the Indonesian context, the government will amend the *KUP* Law as the legal basis for the establishment of the State Revenue Agency.

Second, human resource management. Seventy percent (70%) of countries that adopt Semi-Autonomous Revenue Authority use HR arrangements that are separate from laws related to the state civil apparatus. *BPN* needs a more agile meritocracy and compensation system to retain and dismiss employees (e.g., under-performers, undisciplined, even corrupt). Current employees need to be retested to create a lean and agile bureaucracy. Third-party outsourcing can be used for administrative and service work. For example, the *Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT)* in Peru has managed to reduce its staff to two-thirds of the original number and increase remuneration by 20 times.

Similarly, the Kenya Revenue Authority (*KRA*) reduced a total of 415 employees due to poor performance and discipline. In another example, the *Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT)* in Venezuela managed to streamline to 74.5% of its total staff. In addition, the *Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT)* in Venezuela also recruited nearly 500 professionals from prestigious accounting and law firms to improve managerial quality.

Third, the source of financing. As many as 60% of countries that adopted the Semi-Autonomous Revenue Authority use a scheme of a certain percentage of tax revenue as a source of financing. The percentage varies, but the World Bank provides a benchmark of 2% as collection costs. The financing is directly deposited in the *NRB* account so that it can be linked to bonuses and performance incentives for achieving tax revenue targets.

For example, the *Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT)* in Peru and the Kenya Revenue Authority (*KRA*) incentivize a certain percentage of the excess of tax revenue achievements over tax revenue targets. Another example is the South African Revenue Service (*SARS*), which provides an additional premium of 30% for employees who have certain skills. Fourth, *NRB* governance. The board of directors model widely used in Semi-Autonomous Revenue Authority in Africa and Asia can be adopted. The board of directors is appointed by the president with the approval of the House of Representatives (*DPR*). As in the Kenya Revenue Authority (*KRA*) and Uganda Revenue Authority, the board of directors includes an *ex officio* government representative from the Ministry of Finance. In addition, the board of directors also needs to be filled with public representatives, be it from tax professional associations, academics, or certain business sectors. This is to balance perspectives in strategic decision-making. Although not a panacea, the establishment of *BPN* is a concrete effort by Prabowo-Gibran to fulfill their political promises. With strong political commitment from the government and legislature, *BPN* can be a catalyst to realize the vision of "*Bersama Indonesia Maju* Towards Golden Indonesia 2045."

Taxes are state revenues that have a large share in the country's economy compared to other state revenues. In the implementation of tax collection, it is not uncommon for various disputes to

arise between tax authorities and taxpayers. This dispute is a dispute that requires legal settlement, just like other legal disputes. Currently, using the tax collection system, a self-assessment system is applied, namely a collection system that gives full authority to taxpayers to calculate and declare their tax obligations in the Tax Return (*SPT*) and then pay their tax obligations. Giving full trust to taxpayers regarding the application of the self-assessment system should be accompanied by a tax audit control policy implemented by the government, but this control is often a factor in the occurrence of tax disputes between taxpayers and the state. A special court is needed to resolve tax disputes.

Tax dispute itself is a dispute arising between the tax authority and the taxpayer due to an appeal decision in the tax court or a lawsuit, including a lawsuit over the implementation of collection under the tax law or forced collection. Tax disputes are resolved in the tax court. The Tax Court is a court in Indonesia authorized to examine and resolve tax disputes. The absolute competence of the Tax Court is to process and resolve tax claims and appeals. The Supreme Court is the highest state court of all legal entities, which according to Article 24A of the 1945 Constitution of the Republic of Indonesia must be free in carrying out its duties. Furthermore, Chapter III of Law No. 48/2009 on Judicial Power regulates the actors of judicial power, where Article 18 states that the Supreme Court and the legal entities under it exercise jurisdiction in the general legal environment, religious legal environment, military judicial environment, state administrative judicial environment, and judicial constitution.

Tax collection is required by law, because tax is a transfer of wealth from the people to the government for which there is no reward that can be directly designated. Such transfer of wealth in everyday terms can only be in the form of garnishing, robbery, pickpocketing (by force), or giving gifts voluntarily and sincerely (without coercion). Therefore, tax collection must be based on the law. In the implementation of tax collection to implement tax provisions, it is not uncommon for taxpayers to feel dissatisfied with the tax assessment imposed on them; such dissatisfaction results in disputes.

The Tax Court was established under the Tax Court Law Number 14 of 2002. Tax disputes involve the enforcement of taxation, customs and excise, and local tax regulations. The Tax Court carries out its duties and authorities and procedures in accordance with the Tax Court Law Number 14 Year 2002. This law also places the Tax Court under two government institutions, namely the Supreme Court and the Ministry of Finance. The Supreme Court provides guidance on technical matters, and the Ministry of Finance provides guidance on organization, management, and financing. The instructions given by the Ministry of Finance to the Tax Court are reflected in the appointment of the chairman, deputy chairman, and judges, which is carried out by the president on the recommendation of the Minister of Finance, as well as their dismissal. The remuneration of the chairman, deputy chairman, and judges is also regulated by regulation of the Minister of Finance.

Law No. 14 of 2002, which is still in force, stipulates that the status of the Tax Court is different from other courts that are only under the Supreme Court, for example, the Human Rights

Court, which is fully under the Supreme Court as a special court (*sub court*) within the general type of legal environment. The Tax Court being under these two institutions has caused confusion and concern among the public. To date, Law Number 14 of 2002 has been brought to the Constitutional Court (*MK*) as the supervisor of the Constitution. The concern relates to the independence of the judges, which is perceived to be lost when the Ministry of Finance provides guidance to them. Although Tax Court judges conduct their reviews independently and parties cannot intervene as it is guaranteed by law and is a technical authority under the jurisdiction of the Supreme Court, it should be noted that the Ministry of Finance is responsible for the appointment of judges, some of whom are former officials of the Directorate General of Taxes. Therefore, judges are more likely to favor the Directorate General of Taxes, which is always the defendant in the Tax Court. In addition, the tax court guidance regulations applied by the Ministry of Finance and the Supreme Court cause a duality of guidance. The explanation in Article 27 paragraph (1) of Law No. 48 of 2009 regulates the placement of the Tax Court as one of the special courts under the State Administrative Court. As a result of this arrangement, organizational, administrative, and financial controls that have been under the control of the Ministry of Finance must be transferred. Unfortunately, the Tax Court Law has not been revised to reflect the provisions of Law No. 48 of 2009, which means that there are regulatory inconsistencies in the structuring of the Tax Court.

Judicial independence is a core principle of the judicial system and the essence of democratic governance. Judicial independence is crucial to protect human rights, the rule of law, justice, and legal certainty. Lord McKay emphasized the importance of judicial independence: "Judicial independence requires that judges be able to carry out their judicial duties in accordance with the judicial oath and the laws of the country, without interference, improper influence, or pressure from other individuals or organizations." The judiciary must also place itself at the heart of drawing lines of demarcation of power between the three branches of power and draw these lines in the face of dynamic economic, political, social, and global contexts. Article 24(2) of the 1945 Constitution states that judicial power shall be exercised by a Supreme Court and the judicial bodies subordinate thereto within the general courts, religious courts, military courts, state administrative courts, and by a Constitutional Court. Judicial power is an independent power to administer justice in order to uphold law and justice. Based on this, an independent, impartial, and autonomous judicial power will always be a part that sustains legal certainty and justice.

The Constitutional Court (*MK*) Decision No. 26/PUU-XXI/2023 on the Examination of Law No. 14/2002 on Tax Court (Law 14/2002) against the 1945 Constitution of the Republic of Indonesia (*UUD NRI 1945*) has provided new arrangements regarding the development of tax courts. The norm provision tested for constitutionality in the Constitutional Court decision is Article 5 paragraph (2) which reads "Organizational, administrative, and financial guidance for the Tax Court is carried out by the Ministry of Finance." The provision is indicated to contain an element of dual authority because the technical judicial guidance for the Tax Court is carried out by the Supreme Court. However, organizational, administrative, and financial development for the Tax Court is carried out by the Ministry of Finance. Article 5 paragraph (2) of Law 14/2002 was

judicially reviewed because it was considered contrary to the provisions of Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution because it placed the judiciary under the executive.

Article 1 point 8 of Law No. 48/2009 on Judicial Power states that a special court is a court that has the authority to examine, hear, and decide certain cases that can only be established in one of the judicial bodies under the Supreme Court as regulated by law. In addition, the Explanation of Article 27 paragraph (1) explains that what is meant by special courts include juvenile courts, commercial courts, human rights courts, corruption courts, industrial relations courts, and fisheries courts within the general judicial system and tax courts within the state administrative judicial system.

Based on the comprehensive analysis of the constitutional, institutional, and procedural challenges facing Indonesia's Tax Court system, this research aims to provide a thorough examination of the institutional redesign mandated by Constitutional Court Decision Number 26/PUU-XXI/2023, with specific objectives to: (1) analyze the constitutional and legal framework underlying the transformation of Tax Court oversight from dual-authority structure to unified Supreme Court jurisdiction, (2) evaluate the implementation mechanisms and procedural requirements for achieving seamless institutional transition by the December 31, 2026, deadline, (3) assess the implications of this institutional redesign for judicial independence, administrative efficiency, and taxpayer rights protection, and (4) provide evidence-based recommendations for optimizing the transition process while maintaining continuity in tax dispute resolution services. The benefits of this research extend to multiple stakeholders: for legal scholars and practitioners, it contributes to the understanding of specialized court administration and judicial independence principles; for policymakers and government officials, it provides actionable insights for implementing institutional reforms and legislative amendments; for taxpayers and their representatives, it clarifies the evolving framework for tax dispute resolution and access to justice; and for the broader Indonesian legal system, it establishes precedents for future institutional reforms within the judiciary. The implications of this research encompass immediate practical considerations for the transition period, medium-term impacts on tax administration effectiveness, and long-term contributions to Indonesia's broader judicial system modernization and constitutional governance principles.

RESEARCH METHODS

This research method uses a normative juridical approach supported by empirical evidence. Data analysis techniques go through four stages, namely descriptive, evaluative, interpretative, and argumentative. The descriptive stage is carried out in the form of describing the legal materials that have been obtained. Furthermore, an evaluation is carried out in the form of an assessment of the materials that have been obtained. In turn, an interpretation of what has been obtained is carried out in relation to the problem. The argumentative stage is carried out by arguing the answers to problems with data, relevant theories, and the results of previous research. The theories used as a

foundation in this research are Radbruch's triadic legal purpose theory and legal system theory. This theory provides a framework for predicting and explaining observed phenomena.

Data was collected through legal document searches that were analyzed qualitatively to answer the research questions. In addition, structured interviews were also conducted to obtain additional data. This research was accompanied by an interview permit application letter issued by the Pelita Harapan University Doctor of Law Study Program at the request of the researcher with Letter Number 465/DH-PPS-UPH/IX/2024 on September 26, 2024, addressed to Mr. Ali Hakim, S.H., S.E., Ak., M.Si., M.H., CA as Chairman of the Tax Court. The researcher received an answer and was invited to conduct an interview and was well received on October 16, 2024, at 1:00 PM and finished at 2:30 PM at the Tax Court Office in the leadership room. In the interview, the researcher was welcomed by:

1. Mr. Ali Hakim, S.H., S.E., Ak., M.Si., M.H., CA as the Chairman of the Tax Court.
2. Mr. Widhi Hartono, S.E., S.H., M.E. as Vice Chairman I of Non-Judicial Affairs.
3. Dr. Triyono Martanto, S.H., S.E., Ak., M.M., M.Hum., C.A. as Vice Chairman II of Judicial Affairs.

During the interview, the researcher conducted the interview accompanied by the Vice Chairman I of Non-Judicial Affairs and Vice Chairman II of Judicial Affairs. The results of these interviews were analyzed and presented as part of the research process, which were then summarized in the conclusion.

RESULTS AND DISCUSSION

Based on the interviews conducted, several important points were made regarding the issue of tax dispute resolution in the Tax Court. Respondents emphasized that there are no structural problems in the current tax court. However, the issue of the court's independence often arises from public assumptions, not from actual evidence. Potential non-independence may arise due to structural links with the Ministry of Finance, where some judicial employees come from the Directorate General of Taxes (DGT) or the Directorate General of Customs and Excise (DGCE). Nonetheless, there are no concrete data or decisions that suggest any particular preference. The tax court is said to work independently based on evidence and science. The Constitutional Court itself has issued a decision stating that this structure should be respected, so the issue of independence should not be an obstacle as long as there is no evidence to support the claim.

Regarding the decisions made by the Tax Court, the data shows that almost 60% of the decisions are in favor of taxpayers. This shows that the court performs its functions without intervention from any party, including the Ministry of Finance. The court's success in handling dispute cases is considered an objective indicator of independence, where decisions are based on available evidence, not on external pressure.

The transfer of the Tax Court's authority to the Supreme Court is seen as a step that has the potential to improve taxpayer compliance. Respondents expressed hope that the independence of the courts would be maintained under the Supreme Court. However, concerns were raised

regarding the potential for structural intervention in the form of transfers or promotions of judges that could affect integrity. In addition, the planned dispersal of tax courts to different regions also raises concerns regarding the placement of judges, which could potentially affect the independence of their decisions.

From a legal perspective, there are no fundamental problems related to the regulations governing this transfer of authority. However, there is a need to speed up the process of resolving tax disputes. The slow decision process is caused by the large number of cases handled, although the public understands this challenge. The suggested solution is to amend the existing regulations to speed up the process and adjust the regulations with the Constitutional Court ruling.

Meanwhile, regarding the new government's plan under President-elect Prabowo Subianto, the establishment of a state revenue agency separate from the Ministry of Finance is considered potentially effective. This step is believed to improve public perception of the government's independence, including in tax court decision-making.

The tax consultant profession is also a concern, especially in terms of legal assistance to taxpayers. Respondents highlighted irregularities by some tax consultants who are more concerned with personal gain than providing assistance according to the rules. In the future, it is expected that this profession can be more independent and have integrity in carrying out its duties. The Ministry of Finance through PPPK is currently formulating new criteria to ensure tax consultants work in accordance with the principles of integrity and professionalism.

The conclusion of this interview confirms that an ideal legal basis is needed to regulate this transfer of authority through amendments to the tax court law and harmonization of its derivative legal products. In addition, increasing the integrity of judges in the Supreme Court who have in-depth knowledge in the field of taxation is a priority, as mandated in the Constitutional Court Decision Number 26/PUU-XXI/2023.

Regulation of Tax Court Specialty with the Issuance of Constitutional Court Decision Number 26/PUU-XXI/2023

In the Constitutional Court Decision number 26/PUU-XXI/2023 there is a constitutional mandate that explicitly states: It is important for the Court to determine by order that no later than December 31, 2026, it is considered a fair and rational grace period to unify the Tax Court's development authority under one roof under the Supreme Court. Therefore, since the decision on the a quo case was pronounced, stakeholders have gradually prepared regulations related to all legal needs, including procedural law in order to increase the professionalism of the Tax Court's human resources, and prepare other matters related to the integration of authority under the Supreme Court. Thus, no later than December 31, 2026, all Tax Court guidance is already under the Supreme Court. The constitutional mandate essentially provides guidance in the implementation of the transfer of tax court guidance from the Ministry of Finance to the Supreme Court. The guidelines are described as follows.

- a) Compliance with the provisions regarding the latest deadline in the transition of tax court guidance. The Constitutional Court gave a grace period of no later than December 31, 2026 or

approximately 3 years and 7 months after the Constitutional Court Decision was implemented. The grace period implies the importance of this constitutional mandate to be immediately implemented by the legislators (the President and the House of Representatives). Thus, the legislators must immediately include Law No. 14/2002 in the open cumulative list for revision on the basis of following up on the Constitutional Court Decision.

- b) Fulfillment of institutional integration of one-stop tax court development under the Supreme Court which can be equated as a special court as it has been running. This has been applied in several courts such as juvenile, commercial, human rights, corruption, industrial relations, fisheries, shipping and so on. Alternatively, the development of tax courts can be embedded under the field of state administrative law.
- c) Fulfillment of regulatory needs to ensure legal certainty of the transfer of tax court guidance. To implement this, it is necessary to revise in order to synchronize and harmonize several laws and regulations governing the development of tax courts, especially Law No. 14 of 2002, including the following.
 - 1) The Procedure for the Appointment of Ad Hoc Judges at the Tax Court was previously regulated by a Decree of the Minister of Finance (Article 9 paragraph (5) of Law No. 14 of 2002). The appointment decision should be issued by the Supreme Court.
 - 2) Allowances and other provisions for the Chairman, Deputy Chairman, Judges, Secretary, Deputy, Secretary, Substitute Secretary which were previously regulated by a Decree of the Minister of Finance (Article 22 of Law No. 14 of 2002). These provisions should have been regulated by the Supreme Court.
 - 3) The position of Secretary, Deputy Secretary, and Substitute Secretary is regulated which was previously regulated by Ministerial Decree (Article 27 of Law No. 14 of 2002). The provisions regarding these positions should have been regulated by the Supreme Court.
 - 4) The Working Procedure of the Secretariat of the Tax Court was previously stipulated by Ministerial Decree (Article 28 paragraph (2) of Law No. 14 of 2002). The provisions regarding secretarial work procedures should be integrated into the secretarial work procedures under the Supreme Court.
 - 5) The Registrar, Deputy Registrar, and Substitute Registrar are appointed and dismissed from their positions by the Minister (Article 29 paragraph (4) of Law No. 14 of 2002). The provisions regarding such appointment and dismissal should be stipulated by the Supreme Court.
 - 6) The requirements to become a legal representative that must be fulfilled, previously in addition to being regulated in Law No. 14 of 2002, were also determined by the Minister (Article 34 paragraph (2) of Law No. 14 of 2002). The requirements to become a legal representative should be set by the Supreme Court.
- d) The need for tax court procedural law in order to increase the professionalism of tax court human resources. Currently, procedural law is regulated in Articles 34 to 93 of Law No. 14 of 2002. The Law regulates procedural law on legal counsel, appeal, lawsuit, trial preparation,

examination by ordinary procedure, examination by speedy procedure, proof, decision, implementation of decision, and review examination. In addition, there is also a Regulation of the Chairman of the Tax Court Number: Per- 03 / PP / 2016 concerning Procedure for Tax Court Hearings. Some of these provisions need to be evaluated in order to improve the professionalism of tax court human resources.

- e) Other matters related to the integration of authority under the Supreme Court. This provision is to accommodate other needs required in the context of integrating the authority of tax court development under the Supreme Court, so that stakeholders can still have a reference and foundation in the implementation of these other matters. Other matters may include the transition of organizational administration, budget and finance, secretariat, and organizational database.

Implementation of Tax Court Specialty Arrangements with the Issuance of Constitutional Court Decision Number 26/PUU-XXI/2023

Constitutional Court Decision Number 26/PUU-XXI/2023 is a decision made by a Constitutional Court judge in a case of judicial review of Law Number 14 of 2002 concerning the Tax Court. This decision was born due to a request for a review of Article 5 Paragraph 2 of Law Number 14 of 2002 concerning the Tax Court which was requested by three applicants. Applicant I named Nurhidayat, S.H. is an Advocate who specializes in handling taxation, as evidenced by several tax cases, Applicant II named Allan Fatchan Gani Wardhana, S.H., MH. is a lecturer who teaches Constitutional Law & State Law and Politics courses at the Faculty of Law, Islamic University of Indonesia located in the Special Region of Yogyakarta, as evidenced by the Lecturer Appointment Decree. Furthermore, Applicant III named Yuniar Riza Hakiki, S.H., M.H. is a Researcher as well as the Secretary General of the Center for Constitutional Law Studies of the Faculty of Law, Islamic University of Indonesia (PSHK UII) in Yogyakarta, as evidenced by the Decree on the Appointment of the Management of the Center for Constitutional Law Studies of the Faculty of Law.

In the decision, the petitioners made a request to conduct a judicial review of Article 5 Paragraph 2 of Law Number 14 of 2002 concerning Tax courts because of the existence of an unconstitutional which can be seen in Article 5 Paragraph 1 explained that “Technical judicial guidance for tax courts is carried out by the Supreme Court” in market 5 paragraph 2 states “Organizational, administrative, The statement in this Law makes the position of the tax court guidance to be under two different state institutions (dual roof system) namely the Supreme Court and the Ministry of Finance, this is clearly contrary to the judicial power policy that applies in Indonesia in accordance with the provisions of Article 24 of the 1945 Constitution of the Republic of Indonesia.

Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia states “Judicial power is an independent power to administer justice in order to uphold law and justice” Furthermore, Article 24 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states “Judicial power shall be exercised by a Supreme Court and judicial bodies subordinate thereto

within the general judicial sphere. The religious judiciary, the military judiciary, the state administrative judiciary and by a Constitutional Court” The above arrangement clearly limits the holders of judicial power in Indonesia to the Supreme Court and its four subordinate judicial bodies and the Constitutional Court. This means that the Ministry of Finance is not part of the judicial power in Indonesia. In addition, Article 5 Paragraph 2 of Law No. 14 of 2002 on the Tax Court makes the status of the Tax Court not independent as a court institution in carrying out its judicial duties to decide a case, because its guidance is carried out by two different institutions. The form of non-independence of the tax court can be seen in the form of guidance carried out by the Minister of Finance to the tax court related to the appointment of the chairman, deputy chairman, and judges made by the President on the proposal of the Minister of Finance and as well as the dismissal, it means that the Minister of Finance as an executive institution is involved in efforts to uphold the justice of the judiciary.

This is clearly contrary to the Indonesian constitution as a state of law. Where an independent and independent judiciary in administering justice is one of the fundamental elements of the rule of law, in the Indonesian state constitution as a state of law it has also been explicitly stated in Article 24 of the 1945 Constitution of the Republic of Indonesia as a state of law, one of the factors causing the importance of the independence of a judicial body because of the possibility of disputes arising between the government (executive agency) and the community. Therefore, Indonesia as a state of law is very important to maintain a free and independent judicial power, and has independence from all elements of any power. Without the independence of a judicial body, the sense of justice and the strength of the law produced by the court will be undermined because there is an opportunity for abuse or deviation of power that results in the neglect of one's human rights by the state authorities. In this regard, judges as a functional body of the executive of judicial power have the most important position in a court, while in the tax court in determining the judge there is still interference from the power of another institution, namely the minister of finance. This contradiction to the Constitution is the reason why the applicants filed a petition for judicial review of Article 5 Paragraph 2 of Law No. 14/2002 on the Tax Court.

The result of this tax court law review or the ruling of the Constitutional Court Decision Number 26/PUU-XXI/2023 is to grant the petition of several applicants in part. As well as stating that the phrase “Ministry of Finance” is contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as “the Supreme Court which is gradually implemented no later than December 31, 2026.”

With the issuance of Constitutional Court Decision Number 26/PUU-XXI/2023, it has a fundamental impact on the tax justice system, namely ending the dualism of arrangements related to the position of the tax court which is under the Supreme Court and also the Ministry of Finance, where the dual roof system arrangement that has been adopted by the Tax Court system in Article 5 Paragraph 2 relating to the words “Ministry of Finance” was decided by the Constitutional Court judges to be contrary to the 1945 Constitution of the Republic of Indonesia. In addition, the Constitutional Court Decision Number 26/PUU-XXI/2023 also places the tax court in its proper

position, namely a one roof system under the Supreme Court. It can be seen in the following table the changes that occurred in Article 5 paragraph 2 of Law Number 14 of 2002 concerning the Tax Court before and after the issuance of Decision Number 26/PUU-XXI/2023.

Table 1 Comparison of the contents of Article 5 Paragraph 2 of Law Number 14 Year 2002 on Tax Court

Before the issuance of Constitutional Court Decision No.26/PUU-XXI/2023	After the issuance of Constitutional Court Decision No.26/PUU-XXI/2023
“Organizational, administrative, and financial guidance for the Tax Court is provided by the Ministry of Finance”	“Organizational, administrative and financial guidance for the Tax Court is carried out by the Supreme Court which is gradually implemented no later than 31 December 2026”

Source: Constitutional Court Decision Number 26/PUU-XXI/2023

Based on this, the impact of the Constitutional Court Decision Number 26/PUU-XXI/2023 on Law Number 14 of 2002 concerning the Tax Court related to the position of the tax court after the issuance of the decision, such as:

1. The tax court is a specialized court under the scope of the State Administrative Court under the Supreme Court.

The transfer of the tax court into one roof under the Supreme Court makes the position of the tax court the same as the position of other special courts within the scope of justice under the Supreme Court. And the position of the tax court as a special court under the scope of the State Administrative Court becomes the same as other special courts.

This transition will certainly be in accordance with the power and authority of the Supreme Court, which formally juridically after the implementation of the one-stop court in Indonesia as the central implementation of judicial power to manage, foster and supervise the four judicial institutions under it, namely; General Courts of First Instance and Appeal, Religious Courts of First Instance and Appeal, State Administrative Courts of First Instance and Appeal as well as Military Courts of First Instance, High Military Courts and Main Military Courts in terms of judicial technicalities as well as in terms of administrative, organizational and financial guidance and other main tasks become a heavy burden for the institution of the Supreme Court.

2. Development of tax courts related to organization, finance and administration shall be under the Supreme Court no later than 31 December 2026.

As well as based on legal considerations by judges in examining the principal petition of the applicant, there is a constitutional mandate that provides guidance in the context of implementing the transfer of tax court guidance from the Ministry of Finance to the Supreme Court, in the Constitutional Mandate issued in legal considerations in Constitutional Court Decision Number 26/PUU-XXI/2023 considering that:

“It is important for the Court to determine by order that no later than December 31, 2026 is

considered a fair and rational deadline to unite the authority to develop the Tax Court under one roof under the Supreme Court. Therefore, since the decision on the a quo case was pronounced, gradually the stakeholders have immediately prepared regulations related to all needs, including procedural law in order to increase the professionalism of the Tax Court's human resources, as well as preparing other matters related to the integration of authority under the Supreme Court. Thus, no later than December 31, 2026, the entire guidance of the Tax Court is already under the Supreme Court”.

From the mandate of the Constitutional Court Decision, it can be seen that the House of Representatives (DPR) as a law-making stakeholder must immediately include Law Number 14 Year 2002 in the open cumulative list for revision as a form of following up on the Constitutional Court Decision and no later than December 31, 2026 must formalize the new Tax Court Transfer Law. This means that the author realizes the need to form a transfer and structuring team by one of the Ministry of Finance or the Supreme Court which will be determined based on the Presidential Decree that will be issued later as a legal umbrella in order to carry out the transfer as mandated by this decision perfectly, where the duties of this legal umbrella are as follows;

- a) Transferring and organizing institutions, employees, assets, finances, archives and documents.
- b) Preparing regulations, among others:
 - 1) Regulations on the organization and work procedures of the registrar and secretariat of the Tax Court.
 - 2) Regulations on the financial rights of Tax Court employees
 - 3) Regulations on the appointment of the president/judge of the Tax Court 3.

In addition, the relevant stakeholders, namely the Supreme Court, Ministry of Finance, Kemenpan RB, BKN, Head of National Archives, Tax Court also need to coordinate during this transition process, considering that the changes made are quite complex as written in the ruling which states “Organizational, administrative, and financial guidance for the tax court is carried out by the Supreme Court”.

Regarding how to interpret what changes are included in the ruling, the research refers to Presidential Decree No. 21/2004 on the Transfer of Organization, Administration, and Finance in the General and State Administrative Courts, and Religious Courts to the Supreme Court, it can be seen that what is covered by Organization, Administration and Finance is as follows;

- 1) Organization → Includes Position, Duties, Functions, Authority and Organizational Structure (Article 1 Number 1)
- 2) Administration → Covers Personnel, State Property, Finance, Archives, and Documents (Article 1 Point 2)
- 3) Finance → Covers the current budget (Article 3 Point 3)

This means that although only Article 5 Paragraph 2 was challenged in the review of the Tax Court Law, the change in the transfer of the Ministry of Finance to the Supreme Court in accordance with the decision of the Constitutional Court Judge also binds other articles in the Tax Court Law relating to the authority that the Ministry of Finance has had in the Tax Court

related to, the authority to propose, the authority to dismiss, and the authority to regulate which must also be reviewed in the transfer arrangement.

The Ministry of Finance (MoF) no longer has the authority to carry out the guidance of the tax court.

3. The Ministry of Finance (MoF) no longer has the authority to provide guidance to the tax courts.

Since the issuance and stipulation of the Constitutional Court Decision Number 26/PUU-XXI/2023, since then the Ministry of Finance no longer has the authority to provide guidance to the tax court, because in accordance with the ruling all forms of tax court guidance are transferred to the Supreme Court.

CONCLUSION

Constitutional Court Decision Number 26/PUU-XXI/2023 is a decision in the examination of Law Number 14 of 2002 concerning the Tax Court. The position of the Tax Court after Constitutional Court Decision Number 26/PUU-XXI/2023 is to become a specialized court within the scope of the state administrative court under the auspices of the Supreme Court. Furthermore, related to the guidance of the Tax Court relating to organization, finance, and administration, this becomes the authority of the Supreme Court no later than December 31, 2026. The Ministry of Finance (MoF) no longer has the authority to provide guidance to tax courts. The legal considerations of the judges used in deciding Constitutional Court Decision Number 26/PUU-XXI/2023 were to give time to the Supreme Court to manage the Tax Court. In addition, the time limit given is also intended to allow lawmakers to formulate legal rules related to tax courts, including procedural laws that will be used in Tax Court trials.

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Journal of Law and Regulation Governance