

The Position of the Tax Court in the Indonesian Judicial System After the Decision of the Constitutional Court Number 26/PUU-XXI/2023

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ABSTRACT

Background. The Tax Court, basically, has been regulated in Law Number 14 Year 2002 on Tax Court. However, there is an issue relating to the ambiguous position of the Tax Court.

Purpose. The purpose of this is to show that the position of the court is not independent, as it plays a role in both judicial and executive functions, which may result in a lack of independence in case decision making. Therefore, this study aims to determine the position of the tax court in the current judicial system in Indonesia.

Method. This research uses normative juridical research method by reviewing secondary data obtained. Based on the results of the research, it was found that the latest Constitutional Court Decision Number 26/PUU-XXI/2023 has determined that the Tax Courts must transfer their organizational, administrative, and financial development responsibilities to the Supreme Court before 31 December 2026.

Results. The consequence of this decision is that the organizational structure of the Tax Court will be directly under the supervision of the Supreme Court and no longer under the Ministry of Finance. Although the Tax Court will be transferred to the Supreme Court, it is important to maintain this situation as the transition requires adjustments in terms of organizational structure, employee status, and career opportunities for tax judges. All of these matters must be studied and solutions found by the Tax Court as the independence of tax judges means a lot to taxpayers seeking justice in their tax disputes.

Conclusion. In addition to independence, the public also expects competent expertise and knowledge from tax judges as enforcers of justice in tax disputes.

KEYWORDS

Tax Court, Judicial Power, Constitutional Court Decision

INTRODUCTION

State revenue in the form of taxes has a significant share compared to other revenue sectors such as oil and gas and non-oil and gas (Cheng dkk., 2020). If a country is successful in collecting taxes from its population, it will provide benefits in maintaining the country's economic stability (Kampf dkk., 2020). It is important for every country to impose taxes. Since the state has government objectives and functions, it needs to collect taxes from its citizens (Zhou dkk., 2019). The relationship between the

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state and citizens results in the state and citizens results in obligation for citizens to pay taxes to the state. Tax is one of the sources of state revenue that has an important contribution to current and

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future development. To ensure the continuity of development, it is important for members of the public, especially taxpayers, to understand the basic concepts of taxation (Walsh dkk., 2020). Understanding this concept becomes more important when compared to other revenue sectors such as oil and gas (O&G) and non-oil and gas. A country's ability to collect taxes from its population will have a positive impact on the country's economic stability (Roy dkk., 2019). Every country needs taxes because the purpose of the state and the functions of the government require the state to collect taxes from its citizens (Z. Wang dkk., 2019). The obligation to pay taxes for citizens to the state is a logical consequence of the relationship between the state and its citizens (Ali dkk., 2019). It is expected that public awareness will arise voluntarily to fulfill their obligations in paying taxes to the state.

Low levels of tax compliance are a common challenge faced by almost all countries with tax systems, and this has a negative impact on low tax revenues (Norris & Inglehart, 2019). Various studies have been conducted, and the conclusion is that tax compliance issues can be viewed from the perspective of public finance, law enforcement, organizational structure, manpower, ethics, or a combination of all these aspects.

In tax law enforcement efforts, it cannot be ignored that problems will arise, especially as the number of taxpayers and their understanding of their rights and obligations in complying with tax laws increase (Parisi dkk., 2019). Consequently, tax disputes will be inevitable. Therefore, there is a need for a Tax Court that is in accordance with the system of judicial power in Indonesia, capable of maintaining justice and providing legal certainty in the settlement of tax disputes. To fulfill this expectation, the Law of the Republic of Indonesia No. 14 Year 2002 on Tax Court was issued (Lurie dkk., 2020). The existence of the Tax Court, which was officially legalized with the enactment of Law No. 14 of 2002, still raises controversy, especially regarding the position of the Tax Court in the national judicial system.

Another provision that raises issues is related to the legal process of the Tax Court's decision as stipulated in Article 77 of Law Number 14 Year 2002 (Phillips dkk., 2020). The article states that "Tax court decisions are final and have permanent legal force. Parties involved in the dispute may file a judicial review of the Tax Court's decision to the Supreme Court (Carleo dkk., 2019)." Thus, the legal process that only allows for judicial review under Article 77 is considered not to provide permanent legal force and reduce the role and authority of the Supreme Court in resolving disputes at the cassation level (Abuhassna dkk., 2020). This causes misalignment with the general justice system which is usually centered on the Supreme Court. As a result, the resulting decision has not provided adequate legal protection in resolving tax disputes for taxpayers as parties seeking justice (Abuhassna dkk., 2020). Based on the background description above, the author provides the following problem formulation "What is the position of the Tax Court in the judicial system in Indonesia after the Constitutional Court Decision Number 26/PUU-XXI/2023?"

RESEARCH METHODOLOGY

This research was conducted using the normative juridical legal research method, which is a library-based legal research approach. This method involves tracing library materials or secondary data as the main source of information (Glare dkk., 2019). This research aims to collect various materials, such as theories, concepts, legal principles, and legal regulations related to the topic being discussed. According to Soerjono Soekanto, the scope of normative legal research includes the

following: a) Research on legal principles (Adegbeye dkk., 2020); b) Research on legal systematics; c) Research on vertical and horizontal legal harmonization; d) Legal comparison; and e) Legal history. This research is conducted by analyzing the applicable legal principles, both written and unwritten, in order to identify the scope of the research (Lisio dkk., 2019). This research has the potential to apply legal principles in the process of interpreting laws and regulations. In addition, this research can also be used to find legal principles that have been formulated explicitly or implicitly (Yatabe dkk., 2019). The approach applied consists of a statutory approach and a conceptual approach. In data collection, a secondary data collection technique is used that focuses on legal sources.

RESULT AND DISCUSSION

The Position of the Tax Court in Indonesia After the Constitutional Court Decision Number 26/PUU-XXI/2023

The 1945 Constitution of the Republic of Indonesia stipulates that the Republic of Indonesia is a state based on law. This means that law has a very important position in the Indonesian government system. This is also emphasized in the explanation of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that Indonesia is a state based on law or what is known in German as "rechtsstaat" (Y. Wang dkk., 2020). The concept of rechtsstaat or state of law comes from European countries with a Civil Law legal system. In this concept, there are several elements that make a country considered a state of law. According to Julius Stahl, one of the jurists, the rule of law consists of four main elements (Zong dkk., 2019):

Guarantee of human rights (grondrechten)

The rule of law must provide strong protection for human rights (Van Trotsenburg dkk., 2021). This includes the basic rights inherent in every individual, such as freedom of speech, freedom of religion, the right to justice, and so on.

Division of power (scheiding van machten)

The principle of division of powers between government institutions is one of the hallmarks of the rule of law (Johdi & Sukor, 2020). State power is divided horizontally between the executive, legislature and judiciary, so that no one institution has too much power.

Government by rule of law (wetmatigheid van het bert)

A rule of law state must operate based on clear and transparent rules of law (Zemek dkk., 2019). There must be no arbitrary action on the part of the government, and policies must be based on a strong legal foundation.

Administrative justice (administratief rechtspraak):

An independent and fair judicial system, including administrative courts, is an essential part of the rule of law. Administrative courts serve to resolve disputes involving the actions of the government or administrative agencies.

In Indonesia, the concept of the rule of law is an important basis in running the government system and provides direction in policy-making and decision-making based on applicable legal principles.

The existence of the tax court as an integral part of the administrative justice system is an important factor for Indonesia as a state of law. The relationship between the Tax Court and other judicial institutions is regulated by Article 24 of the 1945 Constitution of the Republic of Indonesia

and Law No. 48 of 2009 on Judicial Power. As in the constitution in general, the 1945 Constitution of the Republic of Indonesia also regulates three fundamental aspects, namely the guarantee of basic rights and obligations for citizens, the basic government structure, and the division and limitation of government duties which are also fundamental (Basri & Muhibbin, 2022).

In the opinion of Paulus E. Lotulung, the discussion of courts and the judicial system cannot be separated from Chapter IX on judicial power in the 1945 Constitution of the Republic of Indonesia Article 24 paragraph (2) after the third amendment. The article states that judicial power is an independent power to administer justice in order to apply law and justice. This provision is also explained and strengthened in Article 1 of Law Number 4 of 2004, which was last amended by Law Number 48 of 2009 on Judicial Power. This article states that judicial power is an independent state power to carry out justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the realization of the rule of law of the Republic of Indonesia. The principle of independent judicial power is an important aspect of judicial power. Independent judicial power means that it is free from interference by the power of other parties and is not bound by pressure, recommendations, or interventions originating from parties outside the power (Basri & Muhibbin, 2022).

There are two principles recognized in judicial power according to the 1945 Constitution of the Republic of Indonesia, namely the principle of independence of judicial power and the principle of division of powers. These two principles have an impact on the system and organizational structure of judicial power, where the Supreme Court functions as the highest court in the judicial system with the authority of cassation against decisions issued by courts at all levels. According to Himawan Estu Bagio, general principles in the judiciary include the principle of openness (transparency), the principle of independence, the principle of fair trial (objective), the principle of audi et alteram partem, the principle of fast, simple, and affordable justice, and the principle of trial open to the public (Basri & Muhibbin, 2022).

To examine the role of the Tax Court as a judicial institution, the first step to consider is to analyze the provisions of the Tax Court Law as the legal basis governing the existence of the Tax Court. The question to be answered is whether this institution falls within the scope of the Judicial Power Act or within the scope of the Taxation Act. Similarly, in examining the legal remedies exercised in the settlement of tax disputes, especially the technical supervision under the Supreme Court as the highest court, it is also necessary to pay close attention.

With the enactment of Law No. 14 of 2002 on Tax Courts, the Tax Court became a specialized part of the four judicial spheres mentioned above. This changes the issues arising from Law No. 17/1997 on the Tax Dispute Settlement Body (BPSP), which was previously outside the national judicial system (judicial power) under the executive authority, to the Tax Court under the judicial power. Nonetheless, it is also important to emphasize that the Tax Court is included in one of the four courts in accordance with the applicable national judicial power law (Supandi, 2016).

There is no provision in Law No. 14 of 2002 on the Tax Court that expressly regulates that the tax court is within the judicial environment as stipulated in Article 24 paragraph (2) of the 1945 Constitution and Article 25 paragraph (1) of Law No. 48 of 2009. According to Article 2 of Law No. 14 of 2002, the Tax Court is a judicial body tasked with resolving tax disputes for taxpayers or taxpayers seeking justice. However, the provision does not clearly state under which judicial environment the Tax Court operates.

Most recently, the Constitutional Court (MK) has issued Constitutional Court Decision Number 26/PUU-XXI/2023 which ruled that the Tax Court must transfer their organizational, administrative and financial guidance to the Supreme Court by 31 December 2026. As a result of the ruling, the organizational structure of the Tax Court will be directly under the Supreme Court and no longer under the Ministry of Finance. Previously, under Law No. 14/2002 on the Tax Court, the organizational, administrative, and financial guidance of the Tax Court was carried out by the Ministry of Finance.

The Constitutional Court in its consideration emphasized that the Tax Court is part of the judicial power in accordance with the provisions of Article 24 of the 1945 Constitution. Therefore, based on the judicial review petition against the Tax Court Law submitted to the Constitutional Court, Article 5 paragraph (2) of the Tax Court Law was declared unconstitutional. Article 5 paragraph (2) states that "Organizational, administrative, and financial development for the Tax Court shall be conducted by the Ministry of Finance." With this change, overall, the responsibility for guidance in these three matters, including technical guidance, will fall under the Supreme Court. However, this change will bring its own challenges to the Tax Court, especially in carrying out its duties as a court of law in tax disputes between taxpayers and the Directorate General of Taxes (DGT).

The Tax Court currently faces two fundamental challenges. First, challenges related to future organizational governance and human resource management, especially related to the position of tax judges compared to other judges and the employment status of other employees. In terms of organization, the Tax Court needs to find a new, more ideal form. So far, they have a Tax Court Secretariat that plays a role in supporting the duties of tax judges in deciding tax disputes fairly. The Secretariat is an echelon II unit under the Secretariat General of the Ministry of Finance. Even after becoming part of the Supreme Court, the Tax Court will still need an organization that carries out the duties and functions previously carried out by the Tax Court Secretariat, given the turbulence caused by the Constitutional Court decision.

The second issue that needs attention is the management of Human Resources (HR). So far, except for the tax judges, all employees and officials in the Tax Court come from the Ministry of Finance. Of course, the decision of the Constitutional Court (MK) will have a major impact in determining the status of employees and officials in the Tax Court going forward. They will need to determine whether they will remain employees of the Ministry of Finance or switch to being part of the Supreme Court. This issue also has great potential to affect the performance of the Tax Court, especially if we consider the differences in the remuneration systems implemented by the two institutions. Fortunately, the Court's decision gives the Tax Court three years to formulate an ideal and effective strategy to address this transition so that it can run smoothly without significantly disrupting the Tax Court's performance.

Despite these challenges, the Court and the public certainly hope that the Tax Court can become a more independent and effective institution in carrying out its duties when it operates outside the control of the Ministry of Finance. Although until now organizational, administrative, and financial oversight has been conducted by the Ministry of Finance, which also oversees the DGT, this does not diminish the independence of the Tax Court and the independence of the judges in adjudicating and deciding tax disputes.

CONCLUSION

The independence of tax judges has great significance for taxpayers seeking justice in their tax disputes. If they perceive a potential reduction in the independence of the judges, this may affect the reputation of the institution. Parties filing tax disputes have concerns that the Tax Court will favor the DGT due to its association with the same ministry. However, if the taxpayer successfully wins the dispute against the DGT, the Ministry of Finance still has the obligation to refund the tax that should not have been paid, even though this will reduce the country's tax revenue. In addition to independence, the public also expects competent expertise and knowledge from tax judges as enforcers of justice in tax disputes. Currently, many tax judges have a good understanding and knowledge of taxation so that they can decide tax disputes fairly and uphold the truth. Although the Tax Court will move to the Supreme Court, it is important to maintain this condition. However, the transition process requires adjustments in terms of organizational structure, employee status, and career paths of tax judges. All of these things need to be mapped out immediately and the best solution found by the Tax Court.

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