

## **The Role of The Tax Court in The Judicial System: Implications of Constitutional Court Decision No. 26/PUU-XII/2023 For Tax Law**

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**Abstract.** *This article examines the implications of the Constitutional Court Decision No. 26/PUU-XXI/2023 for the Tax Court within Indonesia's judicial system. The decision transfers oversight of the Tax Court from the Ministry of Finance to the Supreme Court, enhancing judicial independence and addressing governance dualism. This study employs a normative legal research methodology to analyze how this ruling fortifies the principles of separation of powers and checks and balances as enshrined in the 1945 Constitution. It highlights the importance of the Tax Court's role in protecting taxpayer rights and ensuring impartiality in tax dispute resolution. The findings underscore the necessity for further reforms to eliminate remaining executive influence and promote a cohesive judicial framework, thereby reinforcing the rule of law and enhancing the credibility of the judiciary in Indonesia.*

**Keywords:** *Constitutional; Court; Decision; Judicial; Tax.*

### **1. INTRODUCTION**

The Constitutional Court of Indonesia is an integral part of the nation's judicial system, serving as the guardian of the Constitution. According to Article 24, Paragraph (2) of the 1945 Constitution (UUD 1945), judicial authority is granted to the Supreme Court and other judicial bodies, which includes the Constitutional Court. In addition, Article 24C, Paragraph (1) further expands the Court's jurisdiction, empowering it to resolve cases at both the initial and final stages, and issue decisions that are final and binding. This includes several key functions, such as reviewing the constitutionality of laws, resolving disputes regarding the powers of state institutions, disbanding political parties, and adjudicating election-related disputes. The scope of these powers is reinforced by Article 10, Paragraph (1), letter a of Law No. 7 of 2020, which amends Law No. 24 of 2003 on the Constitutional Court (UU 7/2020). This amendment solidifies the Court's authority to evaluate the constitutionality of laws. Additionally, Law No. 48 of 2009, Article 29, Paragraph (1) on Judicial Power, also provides the Court with the power to examine laws, settle institutional conflicts, dissolve political parties, and resolve election disputes, among other responsibilities.

As the protector of the Constitution, the Constitutional Court holds the authority to declare any legal provisions that contradict the 1945 Constitution as having no binding legal effect. The Court also has the responsibility to offer authoritative interpretations of statutory provisions. In this regard, taxation is understood as a compulsory levy imposed on individuals or legal entities, which is made without direct compensation

and intended to promote the welfare of the state. Indonesia's current taxation system operates on a self-assessment basis, where taxpayers are responsible for calculating, reporting, and fulfilling their tax obligations. This system requires stringent oversight to ensure compliance and proper execution of tax laws.

The Tax Court, as a key institution for resolving tax-related disputes, plays an essential role within Indonesia's taxation system. Under Law No. 48 of 2009 on Judicial Power, various courts within the judiciary, including the Tax Court, are overseen by the Supreme Court. However, the relationship between the Tax Court and the broader legal structure raises potential conflicts. The Tax Court Law establishes that the Supreme Court manages technical judicial development, while the Ministry of Finance oversees organizational, administrative, and financial matters. This division has the potential to undermine the Tax Court's independence, which is crucial for ensuring unbiased and objective decisions free from external interference.

On May 25, 2023, the Constitutional Court issued Decision No. 26/PUU-XXI/2023, which partially accepted a constitutional challenge related to the Tax Court Law. In its ruling, the Court determined that the reference to the Ministry of Finance in Article 5, Paragraph (2) of the Tax Court Law violated the 1945 Constitution. As a result, the responsibility for managing the organizational, administrative, and financial aspects of the Tax Court was transferred to the Supreme Court. This decision has important implications for the Court's autonomy and its role within the Indonesian judiciary.

The ruling significantly alters the legal and operational landscape of the Tax Court. This study aims to explore the consequences of the Constitutional Court's decision on the dual management system within the Tax Court and its broader impact on the Court's independence and efficiency. The analysis will examine the legal ramifications of this shift and assess how it affects the Tax Court's functionality within Indonesia's judicial system.

## **2. RESEARCH METHODS**

This research employs a normative legal research approach, which centers on identifying pertinent legal norms, principles, and doctrines to address the existing legal issues. The outcomes of this research are expected to provide a foundational reference for developing solutions to the identified problems. As noted by Peter M. Marzuki, legal research is fundamentally a process dedicated to uncovering legal norms and doctrines to effectively address legal challenges.

## **3. RESULT & DISCUSSION**

### **3.1. The Role of the Tax Court in Indonesia**

The establishment of the Tax Court in Indonesia, which replaced the Tax Dispute Resolution Agency originally created under Law No. 17 of 1997 and later amended by Law No. 14 of 2002, has prompted extensive debate regarding its function within the Indonesian judicial system. As a judicial body assigned to exercise judicial authority in resolving tax disputes, the Tax Court is defined in Article 2 of the Tax Court Law as a body that performs judicial power. This designation raises critical questions about its role and positioning within the wider context of judicial authority in Indonesia.

Indonesia's judicial system is grounded in the principle of separation of powers, as outlined in Article 24, Paragraph (2) of the 1945 Constitution of the Republic of

Indonesia. This provision assigns judicial power to the Supreme Court, as well as to other judicial bodies that fall under its jurisdiction, including the General Judiciary, Religious Judiciary, Military Judiciary, and the Administrative Judiciary (TUN). The Judicial Power Law, which has undergone several revisions, further reinforces the Supreme Court's position as the highest judicial authority, alongside other courts that operate under its oversight.

A key element of this judicial structure is the creation of specialized courts. According to Article 27, Paragraph (1) of the Judicial Power Law, such courts can only be established within one of the judicial bodies under the Supreme Court, as specified in Article 25. This provision highlights that judicial bodies falling under the Supreme Court include the General Judiciary, Religious Judiciary, Military Judiciary, and Administrative Judiciary (TUN). These specialized courts are endowed with the authority to hear and adjudicate specific types of cases that are beyond the scope of the general judicial bodies.

The Supreme Court, as the foremost judicial authority, holds the responsibility for supervising the development of all judicial bodies under its jurisdiction, including specialized courts. This oversight includes technical legal and administrative supervision to ensure that special courts function effectively within the applicable legal framework. Additionally, external institutions such as the Judicial Commission play a vital role in supervising the performance of judges and the judiciary, thereby enhancing the overall integrity of the judicial process.

Furthermore, the "Judicial Power Law" outlines the scope and organization of judicial authority in Indonesia. Article 18 of this law incorporates the provisions set forth in Article 24, Paragraph (2) of the 1945 Constitution, which stipulates that judicial power is composed of the Supreme Court and its subordinate institutions across several domains, such as the General Judiciary, Religious Judiciary, Military Judiciary, Administrative Judiciary, and the Constitutional. This comprehensive legal framework establishes distinct judicial jurisdictions, each with its designated functions and powers, ensuring that all courts operate in compliance with the relevant laws and regulations. Through these mechanisms, the Indonesian judicial system aims to ensure the supremacy of the law while preserving the autonomy and efficiency of its judicial institutions.

The promulgation of Law No. 5 of 1986 concerning the Administrative Judiciary, as subsequently amended by Law No. 51 of 2009, establishes the legal foundation for the creation of specialized courts, such as the Tax Court, within the framework of the Administrative Judiciary. Article 9A, Paragraph (1) acknowledges such specialization, which is further elucidated in its explanatory notes, indicating differentiation that includes the Tax Court. Furthermore, Article 27, Paragraph (2) of Law No. 6 of 1983, which addresses General Provisions and Tax Procedures and was subsequently amended by Law No. 28 of 2007, stipulates that decisions issued by the Tax Court are categorized as rulings of a specialized court under the jurisdiction of the Administrative Judiciary.

As an entity within the Administrative Judiciary, the Tax Court is obligated to comply with the development and oversight administered by the Supreme Court. All judicial bodies, including the Tax Court, fall under a tiered system of legal technical supervision concerning ordinary legal remedies, such as appeals and cassation, as well as

administrative and organizational oversight. The Supreme Court is tasked with ensuring that the Tax Court functions independently while adhering to the applicable legal framework.

Within Indonesia's judicial system, special courts are defined as distinct institutions with designated powers. Article 27, Paragraph (1) of the Judicial Power Law outlines these special courts, which include the Corruption Crime Court, Juvenile Court, Fisheries Court, Commercial Court, Industrial Relations Court, and Human Rights Court, all falling under the jurisdiction of the General Judiciary. The Tax Court, by contrast, functions under the Administrative Judiciary, emphasizing its specific role in handling disputes related to tax administration.

As a critical component of the Administrative Judiciary, the Tax Court holds an important position under the Supreme Court's oversight. Article 27, Paragraph (1) of the Judicial Power Law confirms that the Tax Court, along with other special courts, is supervised by the Supreme Court. This arrangement signifies that the Tax Court functions not only as a judicial institution but also as a vital element within a larger judicial structure, benefiting from the Supreme Court's supervision and developmental support. Consequently, the Tax Court plays an essential role in the effective management of tax disputes within Indonesia's legal framework.

The Administrative Judiciary in Indonesia, as defined by Law Number 5 of 1986, is responsible for the resolution of disputes pertaining to matters of administration, including those related to taxation. Article 9, Paragraph (1) of the Administrative Judiciary Law permits the establishment of specialized courts, such as the Tax Court, which is authorized to examine and resolve tax disputes, thereby highlighting the necessity for specialization in this domain. Nevertheless, the rationale of acting "in urgent circumstances for the public interest" can give rise to challenges, as defining "public interest" is often subjective and can vary based on the perspectives of the relevant authorities. This ambiguity may have a detrimental impact on the broader community. It is thus incumbent upon judges in the Administrative Judiciary to base their decisions on objective criteria in accordance with applicable laws, thereby ensuring the protection of community rights from arbitrary actions.

The Tax Court plays a vital role within the Administrative Judiciary, functioning specifically to handle tax disputes while integrating into the overall judicial structure. This organization enhances the fairness and effectiveness of the judicial system. Taxes serve as a critical source of state revenue, necessary for economic stability and enabling the government to implement essential public services and policies. Tax obligations are imposed on individuals and entities without direct compensation, often leading to disputes with tax authorities. The Tax Court serves as a resolution mechanism to protect taxpayers' rights against unfavorable decisions. It addresses disputes between taxpayers and officials, focusing on specific adverse decisions made by tax authorities, distinct from broader administrative disputes which involve final decisions from administrative bodies.

Although the Tax Court Law does not explicitly clarify the court's position within the judicial structure, it functions similarly to special courts under Administrative Jurisdiction. Article 2 of the Tax Court Law defines its role in handling tax disputes, but this designation does not fully align with the provisions of the 1945 Constitution, which

establishes the Supreme Court and its subordinate bodies as a permanent judicial framework.

The Tax Court in Indonesia must have a clearly defined role within the national judicial structure to ensure legal certainty and clarify its authority as part of the Administrative Judiciary. This clarity is essential for the Tax Court to effectively and fairly resolve tax disputes. Various types of tax decisions are issued within the Indonesian taxation system, including Underpayment Tax Assessment Letters, Overpayment Tax Assessment Letters, and Objection Decision Letters, among others. Taxpayers can appeal these decisions to the Tax Court, as outlined in Article 1, number (5) of the Tax Court Law. Prior to an appeal, taxpayers must submit an objection to the relevant authority. Notably, filing a lawsuit does not automatically suspend tax collection, although taxpayers may petition for a postponement if they can demonstrate urgent circumstances that would negatively impact their interests.

As the first and final instance for tax disputes, the Tax Court's decisions are conclusive and possess permanent legal force, as stated in Article 33, Paragraph (1) of the Tax Court Law. Parties dissatisfied with these decisions may seek reconsideration from the Supreme Court. The Tax Court's structure is distinct from other judicial institutions in Indonesia, which generally include multiple levels of appeal and cassation. For instance, the Administrative Court Law specifies a hierarchy of Administrative Courts. However, the Tax Court operates independently within the Administrative Judiciary framework. Article 27, Paragraph (2) of the Law on Taxation General Provisions and Procedures clarifies that decisions from the Tax Court are classified as special court decisions, reinforcing its position as a specialized court within the Administrative Judicial System.

### **3.2. The Impact of The Constitutional Court Decision**

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) establishes Indonesia as a rule-of-law state. One of the core principles of this framework is the assurance of an independent judicial power, which functions without interference from other branches of government. The key objectives of maintaining judicial independence include:

1. **Protection of Individual Rights:** Within the system of checks and balances, the judiciary plays a crucial role in safeguarding individual rights against arbitrary actions by authorities.
2. **Prevention of Arbitrary Authority:** An independent judiciary serves to prevent oppressive or unilateral actions by government officials.
3. **Legal Review of Government Actions:** The judiciary is tasked with assessing the legality of government actions and legislation, thereby ensuring the proper implementation of the legal system.

These goals collectively emphasize the critical role of an independent judiciary in upholding the rule of law and safeguarding the rights of citizens in Indonesia. While the 1945 Constitution stresses the distribution of power rather than a strict separation, it reinforces judicial power as an autonomous authority for enforcing law and justice. The Constitutional Court plays a pivotal role in this structure, acting as a high state institution with the authority to adjudicate cases at both the first and final instance.

The decisions made by the Constitutional Court regarding the constitutionality of laws are final, and the Court is often regarded as the "guardian of the constitution." One of its principal functions is to perform constitutional reviews, which protect minority rights and ensure that legislation adheres to constitutional standards. In instances where a law conflicts with the 1945 Constitution, the resolution of these conflicts is entrusted to the Constitutional Court. In addition, the Court plays a critical role in interpreting the constitution, ensuring that legal provisions are in harmony with constitutional values. This interpretive function is crucial for maintaining the system of checks and balances within the government, underscoring the Court's vital role in Indonesia's legal framework.

The position of the Tax Court has been significantly enhanced, with its ability to exercise independent judicial power in upholding law and justice having been affirmed (Constitutional Court Decision No. 26/PUU-XXI/2023). A critical aspect of this decision is that organizational, administrative, and financial oversight of the Tax Court has been reassigned from the Ministry of Finance to the Supreme Court, with the goal of improving supervision and development being pursued. This integration under the Supreme Court is expected to foster more effective oversight and ensure the Tax Court's independence in resolving tax disputes, ultimately benefiting the community through the delivery of justice and legal certainty. The constitutional basis for independent judicial power is found in Article 24, Paragraph (1) of the 1945 Constitution, which asserts that judicial power is an independent authority tasked with upholding law and justice. This is further substantiated by the Judicial Power Law, which serves to reinforce the commitment to maintaining the independence of the judiciary. The principles of independent judicial power include:

1. Judicial Function: The authority to examine and decide cases, with some allowance for oversight.
2. Judicial Independence: Ensuring judges operate without external pressures.
3. Objectivity and Integrity: Requiring judges to act impartially and honestly.
4. Internal Supervision: Implementing oversight within the judicial system.
5. Prohibition of Interference: Preventing outside influences on judicial proceedings.
6. Law Enforcement: Ensuring all actions related to judges conform to legal standards.

These principles collectively support the integrity and effectiveness of the judicial system, particularly concerning the Tax Court's role in Indonesia. The principles of power limitation and the rule of law in a democratic state are intrinsically linked to the concept of independent judicial power. As noted by Suseno, the prevention of the abuse of power and the safeguarding of human rights are seen as crucial aspects of this independence.

In Indonesia, the legal foundation for independent judicial power is provided by the 1945 Constitution, which stipulates that judicial power must be independent to uphold law and justice (Article 24, Paragraph (1) of the 1945 Constitution). This principle is further reinforced by the Law on Judicial Power, which defines judicial power as an independent state authority that is tasked with administering justice in accordance with Pancasila and the Constitution, ensuring that the implementation of Indonesia's laws is effectively carried out (Article 1, number (1), of the 1945 Constitution).

A robust framework for the realization of constitutionally independent judicial power is collectively established by these provisions, thereby emphasizing the necessity of such independence for the existence of a state governed by law. The notion of "independence" in this context encompasses both functional and institutional dimensions, emphasizing that judicial power must operate free from interference by governmental authority.

Bagir Manan outlines several critical aspects of independent judicial power, emphasizing its foundational role in the legal system. Firstly, independent judicial power includes the ability to review and resolve legal disputes, as well as to make binding legal decisions. While some degree of oversight by other powers is permissible, the management of general administration is also included within judicial power, as specified in various laws, including Law Number 35 of 1999 (now revoked), Law Number 4 of 2004, Law Number 5 of 2004, Law Number 3 of 2006, and Law Number 48 of 2009. However, specific exceptions to this are outlined in the 1945 Constitution or related to governmental functions, such as budget implementation.

Secondly, independent judicial power is designed to ensure that judges operate without fear or apprehension regarding the implications of their decisions or the legal provisions they enforce. This principle reinforces the need for judges to act with objectivity, honesty, and impartiality. Furthermore, the supervision of judicial power occurs through ordinary or extraordinary legal mechanisms within the judiciary itself, thereby maintaining its autonomy. An independent judiciary prohibits any interference from external powers, ensuring that all actions taken against judges adhere strictly to legal frameworks. Consequently, it is essential for the judiciary to remain free from outside influences, except in cases specifically addressed by the 1945 Constitution. Bagir Manan further links the concept of an independent judiciary to the principles of power limitation, particularly the separation of powers and the rule of law in a democratic state. Suseno supports this view, arguing that a key requirement for a functioning rule of law is an independent judiciary. Without such independence, especially if subjected to executive influence, there is a heightened risk of power abuse and violations of human rights.

It was determined by the Constitutional Court (MK) that the reference to the "Department of Finance" in Article 5, Paragraph (2) of the Tax Court Law was found to be inconsistent with the 1945 Constitution and lacked binding legal authority. As a result, the provision was revised, stating that "organizational, administrative, and financial development for the Tax Court will be gradually implemented by the Supreme Court no later than December 31, 2026."

These rulings are intended to strengthen the crucial role of an impartial judicial system within a state that adheres to the principles of the rule of law. The integration of the judicial system is stressed as essential for enhancing both the independence and effectiveness of the Tax Court. By placing the Tax Court under the jurisdiction of the Supreme Court, the ruling aims to improve supervision and guidance while reducing potential interference from the executive branch. This integration is considered vital for the judicial system to function effectively, fulfilling public expectations for justice and legal certainty (Constitutional Court Decision Number 26/PUU-XXI/2023).

As an entity under the Supreme Court, the Tax Court is required to carry out its functions independently, a requirement that is embedded in the 1945 Constitution

(Article 24, Paragraph (2)). However, the dual structure resulting from the overlapping responsibilities between the Ministry of Finance and the Supreme Court in overseeing the Tax Court has complicated the development of judicial institutions. An integrated judicial framework, governed by a single entity and free from executive interference, is considered necessary to ensure the Tax Court can effectively fulfill its duties and authorities. The lack of independence within the Tax Court is viewed as contrary to the constitutional principle that judicial power must be independent in order to organize justice and uphold law (Article 24, Paragraph (1) of the 1945 Constitution).

Significant implications for the development of the Tax Court in Indonesia are presented by Constitutional Court Decision Number 26/PUU-XXI/2023. The oversight of the Tax Court is integrated into the Supreme Court (MA) by this ruling, with the authority of the Ministry of Finance over the organization, administration, and financial management of the Tax Court being eliminated. This change is anticipated to reinforce the dignity of the judicial body, ensuring its independence from interventions by other state powers in executing its responsibilities. In this regard, it is crucial to highlight that the independence of the judicial body serves as the foundational principle of judicial power.

The independence of the judicial body can be examined from three key perspectives: structural, functional, and administrative. From a structural viewpoint, judicial independence necessitates a clear separation of powers among various state institutions, a concept articulated by Montesquieu, who categorized power into executive, legislative, and judicial branches. Montesquieu contended that such a separation is essential to prevent the abuse of power by governmental authorities. Consequently, the judicial body, which performs judicial functions, must operate without interference from other institutions, particularly during the processes of examination, trial, and case resolution.

From a functional perspective, judicial independence guarantees that the execution of judicial functions remains unimpeded by external influences. Courts must be able to fulfill their duties autonomously, free from any pressure exerted by unrelated entities. Furthermore, from an administrative standpoint, the exercise of judicial power requires autonomy in managing administrative affairs, encompassing both personnel and budgetary matters, without interference from outside parties.

The Judicial Power Law, specifically Chapter II, Article 3, highlights the essential principle of judicial independence, mandating that judges uphold this independence free from external interference, except as specified by the 1945 Constitution of the Republic of Indonesia. Violations of this principle can lead to criminal penalties as outlined in relevant laws. The article emphasizes that judicial independence involves freedom from both physical and psychological pressure from outside parties. Moreover, judicial independence encompasses broader concerns, including the consistent application of law, legal certainty for involved parties, and the public interest. Judges may encounter personal biases that challenge their objectivity, indicating that while judicial independence is vital, effective management and supervision are necessary to ensure the judicial system's integrity and efficiency.

The development and oversight of the Tax Court are significantly influenced by Constitutional Court Decision Number 26/PUU-XXI/2023, especially regarding the independence of this judicial institution. Previously, the appointment and dismissal of

Tax Court judges involved participation from the executive branch. Prospective judges are nominated by the Minister of Finance and submitted to the President for approval, with consent from the Chief Justice, as stated in Article 8, Paragraph (1) of the Tax Court Law. Similarly, the dismissal of judges is carried out following a proposal from the Minister of Finance and consent from the Chief Justice, with the President's involvement required. It is also noted that many judges in the Tax Court have been former Directors General of the Directorate General of Taxes.

This involvement of the executive branch raises concerns about the potential impact on judicial independence. While Article 5, Paragraph (3) of the Tax Court Law asserts that judges have the freedom to examine and decide tax disputes, the provisions in Article 5, Paragraph (2) imply that executive interference exists in the organizational, administrative, and financial aspects of the Tax Court. This situation contradicts the principle of an independent judicial power, as emphasized by Situmeang (2022).

To uphold the independence of judges in the Tax Court, it is vital that their appointment is conducted transparently and accountably by the Supreme Court and the Judicial Commission. This process should include public access to information and community involvement. In accordance with the Constitutional Court's ruling, Tax Court judges will no longer be appointed solely through the Minister of Finance's proposals. The dismissal mechanism has also changed, allowing the President to dismiss judges based on recommendations from the Chief Justice and/or the Judicial Commission.

Integrating the guidance of Tax Court judges under the Supreme Court is intended to prevent government interference, which could undermine judicial independence and lead to corruption or nepotism. While this measure does not eliminate all risks, it is essential for maintaining the integrity of the judicial system (DM et al., 2023). Additionally, this unification enhances internal supervision by the Supreme Court and external oversight by the Judicial Commission, aimed at preserving the honor and conduct of judges. Previously, overlapping supervisory roles from the Ministry of Finance, the Supreme Court, and the Judicial Commission caused confusion regarding authority. (Afdol & Setjoatmadja, 2015).

Although judges are given independence, this does not mean that judges can be arbitrary in deciding cases without considering the surrounding circumstances. The independence of judges aims to provide justice without outside intervention, but must still adhere to the law, facts in court, and systematic considerations. The independence of judges must also consider the interests of consistent application of the law, legal certainty for the parties to the case, and the public interest. The Supreme Court of Indonesia plays a crucial role in ensuring the independence of the judiciary, as delineated in Article 18 of the Judicial Power Law. This legislation designates the Supreme Court of Indonesia as the supervisory authority over four judicial domains, thereby establishing its indispensable role in upholding judicial integrity.

According to Article 21 of the Judicial Power Law, the Supreme Court holds authority over the organization, administration, and financial management of itself and the lower judicial bodies. Furthermore, Article 39 elaborates on the MA's responsibility for the highest supervision regarding the implementation of justice, administrative processes, financial management, and the conduct of judges. This supervisory role is essential in upholding the competence and professionalism of judicial officials.

From a human resource management perspective, the administration and financial oversight under the MA represent significant advancements in law enforcement reform in Indonesia since the reform era that began in 1998. The third amendment to the 1945 Constitution affirms the independence of judicial power, establishing a unified judicial system under the Supreme Court aimed at safeguarding judges' independence in adjudicating cases. In line with the provisions of the Judicial Power Law, particularly Article 21, the MA is tasked with providing technical guidance concerning court operations, administration, and finance. Importantly, such guidance is designed not to impede the autonomy of judges in resolving disputes.

However, the application of the one-roof system diverges in the context of the Administrative Judiciary compared to the Tax Court. The Tax Court, as a specialized entity, operates under the Administrative Judiciary but does not adhere to the regulations established in the Administrative Court Law. This results in a dualistic framework for the Tax Court's governance, as articulated in Article 5 of the Tax Court Law, which stipulates that while the Supreme Court conducts technical guidance, organizational, administrative, and financial oversight falls under the purview of the Ministry of Finance.

Significant concerns are raised regarding adherence to the principle of a unified judicial system mandated by Article 21 of the Judicial Power Law due to the overlapping authority between the Supreme Court of Indonesia and the Ministry of Finance. While several key provisions of the 1945 Constitution specifically Articles 5(1), 20, 23A, 24, and 25 are referenced by the Tax Court Law, along with Law Number 14 of 1970 on the Main Provisions of Judicial Power, compliance with the one-roof principle, intended to ensure judicial independence, is not achieved.

This division of authority leads to contradictions, as the Ministry of Finance concurrently exercises both executive and judicial functions in matters of tax disputes, which undermines the fundamental expectation that these roles should be distinctly separated. Article 39 of the Judicial Power Law restricts the MA's supervisory powers to lower court bodies within the judicial framework; thus, the Tax Court, not being encompassed within this framework, falls outside the Supreme Court's full supervisory authority. Although the MA can request case files to evaluate the conduct of judges, the absence of established appeal and cassation mechanisms in the Tax Court Law limits its capacity for effective oversight.

The recruitment process for judges, as stipulated in Article 8 of the Tax Court Law, is further complicated in relation to the issue of judicial independence. Judges are appointed by the President based on nominations submitted by the Minister of Finance, with approval required from the Chief Justice of the Supreme Court. The process, which also includes the appointment of the Chief Justice and Deputy Chief Justice, demonstrates a significant influence exerted by the Ministry of Finance, which compromises the autonomy of judicial officers.

The provisions in Article 11 of the Tax Court Law indicate that while general guidance and supervision of judges are placed under the Supreme Court, the Deputy Chairperson, judges, and the Secretary/Registrar are overseen by the Chairperson of the Tax Court. Potential conflicts of interest can be created by this division of responsibility, as the role of the Supreme Court in judicial oversight is contrasted with

the administrative control exercised by the Ministry of Finance, which complicates the implementation of the Tax Court's duties.

Moreover, the lack of a hierarchical review system within the Tax Court presents inherent challenges; its decisions are not subject to correction by a higher court, even in cases of judicial error. Although constitutional review offers an extraordinary legal remedy, its limitations restrict broader access to justice. In response to the Constitutional Court Decision Number 26/PUU-XXI/2023, it is essential to develop ordinary legal remedies, such as appeals and cassation, to enhance judicial access and ensure that decisions made by the Tax Court align more closely with the principles of justice. This reform aims to address the concerns of parties dissatisfied with the outcomes, thereby reinforcing the integrity and effectiveness of the judicial system as a whole.

The Constitutional Court of Indonesia's recent decision has far-reaching implications for the judicial system, particularly in relation to the structure and development of the Tax Court. The dualism inherent in the judicial development process is addressed by this decision, which has resulted in inconsistencies within the one-roof judicial system established by the 1945 Constitution of the Republic of Indonesia. A unified judicial framework under the Supreme Court (Mahkamah Agung, MA) is mandated by both the Constitution and the Law on Judicial Power to ensure the independence of judges. It is explicitly stated in Article 21 of the Law on Judicial Power that the technical development of the judiciary, encompassing administration and finance, is the responsibility of the Supreme Court, and this must be carried out without compromising the freedom of judges to adjudicate disputes.

However, the practical implementation of these principles within the Tax Court reveals significant deviations. According to Article 5 of the Tax Court Law, while technical development is overseen by the Supreme Court, organizational, administrative, and financial development falls under the jurisdiction of the Ministry of Finance. This overlapping authority contradicts the stipulations of Article 21, which advocates for a cohesive judicial system. It has been pointed out that the inconsistency in the development structure of the Tax Court arises from the assignment of technical aspects to the Supreme Court, while organizational, administrative, and financial functions are managed by the Ministry of Finance.

The ramifications for judicial independence are further illuminated by Constitutional Court Decision Number 26/PUU-XXI/2023, which stipulates that the appointment of ad hoc judges must be conducted by the Supreme Court, rather than through determinations made by the Minister of Finance. This requirement aims to prevent potential conflicts of interest and ensures that the regulation of ad hoc judges aligns with the standards set for other judicial systems, such as the Administrative Judiciary. Previously, these appointments were governed by the Decree of the Minister of Finance Number 449/KMK/01/2003; however, the current mandate requires adherence to procedures established by the Supreme Court. Furthermore, ad hoc judges are now required to serve fixed terms and meet qualifications comparable to those of judges in the Administrative Judiciary.

The Constitutional Court's decision also extends to the authority over the appointment and dismissal of key Tax Court officials, including the Registrar, Deputy Registrar, and Substitute Registrar. This authority is now vested in the Supreme Court, rather than

the Ministry of Finance. Additionally, regulations prohibit these officials from holding concurrent positions in other courts to mitigate any conflicts of interest.

Lastly, following the Constitutional Court's ruling, the determination of allowances and other provisions for Tax Court officials must be governed by decisions from the Supreme Court, rather than ministerial directives. This change is crucial for achieving uniformity in remuneration and allowances throughout the Indonesian judiciary. Such consistency is expected to enhance compliance with equitable and consistent judicial standards, thereby reinforcing the integrity of the judicial system.

The Constitutional Court Decision Number 26/PUU-XXI/2023 significantly impacts the structure and function of the Tax Court, particularly concerning guidance and supervision mechanisms. Article 13(1) of the Tax Court Law, which governs the honorable dismissal of judges, contradicts the provisions of the 1945 Constitution of the Republic of Indonesia unless interpreted in alignment with the dismissal age of high judges within the Administrative Judiciary. This disparity highlights the inconsistencies in the guidance mechanisms between the Tax Court and the more coherent one-roof court system employed in the Administrative Judiciary.

The role of the Minister of Finance in appointing legal counsel remains pertinent, as outlined in Article 34 of the Tax Court Law, which specifies certain qualifications for legal counsel, including expertise in tax regulations. This requirement is further supported by the Regulation of the Minister of Finance Number 06/PMK.01/2007. In contrast, the Administrative Court Law demonstrates a more effective implementation of the one-roof system, as the appointment and dismissal of judges and clerks are fully governed by the Supreme Court (MA), without interference from the Ministry of Finance. Articles 14a, 16, and 37 of the Administrative Court Law clearly delineate the Supreme Court's authority in these appointments, thereby fostering a more integrated and independent judicial framework.

In stark contrast, the dual-roof structure in the Tax Court Law undermines judicial independence, as it still necessitates the Ministry of Finance's involvement in the recruitment process. This involvement contravenes the principle of judicial independence, which should be free from external influences. As noted by Muchsin, judicial independence encompasses more than just the absence of overt coercion from powerful entities; it also pertains to safeguarding the integrity of judges' decisions from various pressures.

Moreover, Articles 25 and 29 of the Tax Court Law further exemplify the Ministry of Finance's involvement in the appointment and dismissal of Registrars, Deputy Registrars, and Substitute Registrars, which is at odds with practices in other judicial environments. Article 29(5) specifies that while technical guidance for clerks is under the Supreme Court, the actual appointment remains within the minister's purview. This creates uncertainty regarding the independence of the Tax Court and emphasizes the need for structural reforms and enhanced supervision mechanisms to achieve alignment with other judicial systems in Indonesia. The incongruities between the age of dismissal provisions for judges and constitutional requirements potentially jeopardize the existence and autonomy of the Tax Court.

The Constitutional Court's decision affects the independence of the Tax Court in several key areas:

### 1. Reform of Legal Counsel Requirements:

[a] Special Requirements: Article 5 of the Regulation of the Minister of Finance Number 184/PMK.01/2017 establishes specific criteria for legal counsel litigating in the Tax Court, including a two-year waiting period for former Tax Court judges before they can serve as legal counsel. The Constitutional Court's decision necessitates a review of these requirements to prevent any interference that could undermine independence.

[b] Executive Influence: These criteria raise concerns that legal counsel may remain susceptible to executive influence, further eroding the independence of the judicial process.

### 2. Independence of the Tax Court:

[a] Influence of the Ministry of Finance: The Constitutional Court's ruling highlights the Tax Court's failure to fully align with the principles of collective and personal independence. Ministry of Finance involvement in regulating legal counsel can significantly impact the court's autonomy.

[b] Collective and Personal Independence: Drawing from Shimon Shetreet's concept of independence, the Tax Court exhibits deficiencies in both collective independence—requiring constitutional safeguards—and personal independence, encompassing the appointment, term, and dismissal of judges.

### 3. Evaluation of the Tax Court Structure:

[a] PMK Regulation and Presidential Decree: Regulations such as Minister of Finance Regulation No. 206.01/PMK.01/2014 and Presidential Decree No. 83 of 2003, which govern the Tax Court Secretariat, necessitate review to ensure alignment with the Constitutional Court's decision. The regulatory and administrative authority currently held by the Ministry of Finance must be assessed to avoid conflicts of interest.

[b] Comparison with the Administrative Judiciary: The Administrative Judiciary Law, which designates administrative responsibilities to the Supreme Court, contrasts sharply with the Tax Court's administrative framework. This evaluation is crucial for ensuring that the Tax Court operates independently without undue interference.

## 4. CONCLUSION

The Tax Court operates as a specialized tribunal within the Administrative Judiciary, with a mandate to adjudicate tax disputes that bear resemblance to administrative disputes, though with significant differences in their underlying tenets. Nevertheless, the Tax Court has not yet fully actualized the principles of independent judicial power, as evidenced by the continued involvement of the executive branch, particularly the Ministry of Finance, in its operations. This interference is reflected in the overlapping authorities between the Supreme Court and the Ministry of Finance, as articulated in Article 5 of the Tax Court Law. This can compromise the independence of judges when adjudicating cases. The issuance of Constitutional Court Decision Number 26/PUU-XXI/2023 represents a notable strengthening of the Tax Court's role within the Indonesian judicial system. These ruling highlights the imperative for the Tax Court to enjoy enhanced independence, both in terms of its institutional standing and the autonomy of its individual judges. It is anticipated that this decision will, in the long term, serve as a catalyst for structural reforms and the revision of relevant regulations,

including measures to diminish or eliminate executive interference in the judicial proceedings of the Tax Court.

As a result, this decision has the potential to reinforce the Tax Court's autonomy, enhance public trust in the fairness of the tax justice system, and reinforce the rule of law in the resolution of tax disputes in Indonesia.

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