



Repositioning the Tax Court Within Indonesia's Constitutional Framework: Judicial Independence and Institutional Reform

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Abstract. The 1945 Constitution of the Republic of Indonesia serves as the highest legal foundation, outlining state objectives and the role of judicial institutions. However, the Tax Court, established under Law No. 14 of 2002, lacks explicit constitutional recognition, unlike the Administrative Court (PTUN), which is regulated under Law No. 51 of 2009. This study examines the need to reposition the Tax Court within the Indonesian judicial system, aligning it with Article 24 paragraph (2) of the 1945 Constitution to ensure judicial independence and consistency. Using a normative-empirical legal approach, the research integrates legal rules, principles, and doctrinal analysis with an evaluation of legislative ethics. Data sources include primary legal materials (Constitution, taxation laws, and judicial power laws), secondary materials (books, journals, articles), and tertiary references (legal dictionaries, encyclopedias). Data collection methods encompass observation, interviews, and documentation, analyzed through qualitative normative methods to provide holistic and contextual solutions. The findings highlight the necessity of repositioning the Tax Court under the Supreme Court to enhance judicial independence, as current oversight by the Ministry of Finance and the Supreme Court undermines its effectiveness. Additionally, amendments to Article 24 paragraph (2) of the 1945 Constitution are proposed to separate the Tax Court from the PTUN, improve legal certainty, and ensure a more effective and equitable tax adjudication system. This reform is crucial for strengthening Indonesia's judicial framework and upholding the rule of law.

Keywords: Tax Court, Specialized Court, Constitution of the Republic of Indonesia 1945.



Abstrak. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (UUD 1945) merupakan landasan hukum tertinggi yang mengatur tujuan negara dan peran lembaga peradilan. Akan tetapi, Pengadilan Pajak yang dibentuk berdasarkan Undang-Undang Nomor 14 Tahun 2002 tidak memiliki pengakuan konstitusional yang tegas, tidak seperti Pengadilan Tata Usaha Negara (PTUN) yang diatur dalam Undang-Undang Nomor 51 Tahun 2009. Penelitian ini mengkaji perlunya reposisi Pengadilan Pajak dalam sistem peradilan Indonesia, dengan menyelaraskannya dengan Pasal 24 ayat (2) UUD 1945 untuk menjamin independensi dan konsistensi peradilan. Dengan menggunakan pendekatan hukum normatif-empiris, penelitian ini memadukan kaidah, asas, dan analisis doktrinal hukum dengan evaluasi etika perundang-undangan. Sumber data meliputi bahan hukum primer (UUD 1945, undang-undang perpajakan, dan undang-undang kekuasaan kehakiman), bahan sekunder (buku, jurnal, artikel), dan rujukan tersier (kamus hukum, ensiklopedia). Metode pengumpulan data meliputi observasi, wawancara, dan dokumentasi, dianalisis melalui metode normatif kualitatif untuk memberikan solusi holistik dan kontekstual. Temuan penelitian menyoroti perlunya reposisi Pengadilan Pajak di bawah Mahkamah Agung untuk meningkatkan independensi peradilan, karena pengawasan saat ini oleh Kementerian Keuangan dan Mahkamah Agung melemahkan efektivitasnya. Selain itu, amandemen Pasal 24 ayat (2) UUD 1945 diusulkan untuk memisahkan Pengadilan Pajak dari PTUN, meningkatkan kepastian hukum, dan memastikan sistem peradilan pajak yang lebih efektif dan adil. Reformasi ini penting untuk memperkuat kerangka peradilan Indonesia dan menegakkan supremasi hukum.

Kata kunci: Pengadilan Pajak, Pengadilan Khusus, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

1. Introduction

The 1945 Constitution of the Republic of Indonesia is the primary foundational legal document and serves as the highest legal basis in Indonesia.¹ Indonesia's constitution, in its opening section, states the nation's goals: to protect the entire nation and all Indonesians, to promote public welfare, to advance the nation's life, and to participate in establishing a world order based on lasting peace, social justice, and independence.² Article 1, paragraph (3) of the 1945 Constitution asserts that Indonesia is a state of law, establishing that every action and its consequences must be based on law.³ This concept of a law-based state, known as *rechtsstaat* in Continental Europe and the rule of law in English-speaking nations, highlights the critical role of the judiciary in upholding the rule of law.⁴

Indonesia's judicial system is governed by the 1945 Amended Constitution (UUD 1945). Article 24, Section 2, vests judicial authority in the Supreme Court and the courts within its system, including general courts, religious courts, military courts, administrative courts (*Pengadilan Tata Usaha Negara*/PTUN), and the Constitutional Court. The Constitution clearly delineates Indonesia's judicial institutions, requiring any additional courts to fall under the Supreme Court's jurisdiction. While the Tax Court functions as a specialized administrative court for tax disputes, it lacks official classification as a specialized court within the Tax Court Act. Article 2 of the Tax Court Law defines the court's role in resolving tax disputes but does not confer specialized court status. This creates an inconsistency with Article 24(2) of the 1945 Constitution, which establishes a limited framework for judicial authority. Conversely, religious courts, military courts, and administrative courts are recognized as specialized judicial bodies, each addressing distinct legal domains: Islamic law in religious courts, military discipline in military courts, and governmental matters in administrative courts. This structured system encompasses trial courts, appellate courts, and ultimately, the Supreme Court.

The Administrative Court, intended to uphold tax-related protections, currently operates under a “dual oversight” system, managed by both the Ministry of Finance and the Supreme Court. This arrangement conflicts with the foundational principles of the 1945 Constitution regarding the Tax Court. For

¹ Sri Praptini, Sri Kusriyah, and Aryani Witasari, “Constitution and Constitutionalism of Indonesia,” *Jurnal Daulat Hukum* 2, no. 1 (2019): 11.

² Juniarso Ridwan and Achmad Sodik, *Hukum Tata Ruang: Dalam Konsep Kebijakan Otonomi Daerah*, (Bandung: Nuansa Cendekia, 2023), 43.

³ Abu Daud Busroh and Abu Bakar Busro, *Asas-Asas Hukum Tata Negara*, (Jakarta: Ghalia Indonesia, 1983), 75.

⁴ Miriam Budiarjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia, 1983), 65. See also, Afdol and Sylvia Setjoatmadja, “Kedudukan, Eksistensi dan Independensi Pengadilan Pajak dalam Kekuasaan Kehakiman di Indonesia,” *Jurnal Hukum Bisnis* 1, no. 1 (2015): 44.

judicial independence and consistency, the Tax Court should be fully integrated within the Supreme Court's jurisdiction. Therefore, revising Article 24, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia is essential, enabling the Tax Court to function as an autonomous judicial body within the broader judicial system, alongside religious, military, administrative, and constitutional courts.

Previous studies provide a foundation for this research. Gotama et al.⁵ found that the dual oversight of technical matters by the Supreme Court and administrative matters by the Ministry of Finance threatens the Tax Court's independence. They also identified challenges such as the court's limited location in the capital and substantial administrative penalties imposed if an appeal is not fully granted. Other research has highlighted the importance of the Tax Court's independence for fair and efficient law enforcement, noting concerns that the current dual-institution structure may compromise this independence. Suciyani⁶ from a legal perspective, argued that the Tax Court should operate within the administrative court system, as stipulated by Law No. 48 of 2009 and Law No. 51 of 2009 on the State Administrative Court.

The Tax Court's specialized status derives from Article 23A of the 1945 Constitution, which governs taxes and levies for national purposes. The Tax Court falls within the administrative court system because tax disputes involve subjects and objects categorized as state administrative disputes. Law No. 14 of 2002 defines a tax dispute as a disagreement between a taxpayer or tax obligor and an authorized official regarding a tax decision, which can be submitted to the Tax Court.

The parties involved in tax settlement are the taxpayer or tax obligor and an authorized official. According to Law Number 28 of 2007 concerning General Securities and Tax Procedures, a taxpayer is an individual or entity (including tax agents and collectors) with a taxation license. The relevant officials include the Director General of Customs and Excise, the Director of Customs and Excise, the Governor, the Governor/Mayor, or other appointed officials. Thus, taxation involves citizens (taxpayers) and the government. Basah⁷ explained that disputes between citizens and the government are characteristic of administrative court disputes.

The objects of a tax dispute, as covered in the 2007 Tax Coverage, include taxpayers, tax withholding tax, and tax in accordance with provisions. Article 1 number 4 of Law Number 14 of 2002 defines a "Decision" as a written

⁵ I Wayan Sentana Gotama, Ida Ayu Putu Widiati, and I Putu Gede Seputra, "Eksistensi Pengadilan Pajak Dalam Penyelesaian Sengketa Pajak," *Jurnal Analogi Hukum* 2, no. 3 (2020): 335

⁶ Suciyani, Fitri, "Kedudukan Pengadilan Pajak Dalam Sistem Peradilan Di Indonesia," *"Dharmasraya" Jurnal Program Magister Hukum FHUI* 2, no. 29 (2022): 24.

⁷ Sjachran Basah, *Eksistensi dan Tolok Ukur Badan Peradilan Administrasi di Indonesia*, (Bandung: Alumni, 1985), 143.

determination in the field of taxation issued by an authorized official based on the Regulation on Tax Collection with a Letter of Compulsion. Tax settlement has distinct characteristics and substance compared to State Administrative Court settlements, particularly concerning the calculation of taxes and financial obligations specifically between taxpayers and the Directorate General of Taxes. Therefore, tax settlement is not included in State Administrative Court decisions.⁸

This study explores the unique characteristics of tax settlement, which differ significantly from State Administrative settlement, particularly in terms of tax calculations and financial obligations between taxpayers and the Directorate General of Taxes. Unlike administrative decisions, tax collection operates under distinct legal and procedural frameworks. Given these differences, the paper investigates the Tax Court System as a specialized judicial body within the framework of the 1945 Constitution of the Republic of Indonesia. The research aims to achieve three key objectives: (1) to analyze the repositioning of the Tax Court within Indonesia's judicial system, (2) to evaluate the independence of the judiciary, particularly in the context of the 1945 Constitution, and (3) to propose a reconstruction and formulation of Article 24 paragraph (2) of the 1945 Constitution to establish the Tax Court as a separate entity from the State Administrative Court. By addressing these objectives, the study seeks to enhance the effectiveness, fairness, and independence of the Tax Court, ensuring its alignment with constitutional principles and the broader judicial system.

2. Research Method

This research employs a mixed-methods approach, combining normative juridical and empirical research. This evaluative and normative method allows for the collection of data on policy implementation and the identification of potential weaknesses. The study adheres to applicable legal guidelines, utilizing a normative legal approach. Regulations reflecting government policies related to legislation are incorporated into a database, and an analysis is conducted to assess their vertical and horizontal integration. This study uses descriptive analysis with a normative evaluative approach, aiming to describe existing data without drawing generalized conclusions. It focuses on legal issues related to laws, court decisions, legal theories, and lawmakers' perspectives. The results are evaluated based on the collected and analyzed data to produce conclusions.

The data used in this study are secondary, consisting of: (a) primary legal materials, including the 1945 Constitution, various laws and regulations (including

⁸ Galang Asmara, *Peradilan Pajak Dan Lembaga Penyanderaan (Gijzeling) Dalam Hukum Pajak di Indonesia*, (Yogyakarta: Laksbang Pressindo, 2006), 54.

those on taxation, the Tax Court Law, and the Judicial Power Law); (b) secondary legal materials, such as books, research journals, papers, and other research findings; and (c) tertiary legal materials, including sources that explain or interpret primary and secondary materials, like legal dictionaries, and encyclopedias. Data analysis is performed qualitatively and normatively by classifying the data into patterns and categories.⁹ This qualitative research aims to holistically understand social or human issues, using word reports, and explains original perspectives in a natural context.¹⁰ The collected data must include comprehensive information from both primary and secondary sources to ensure high-quality study results.¹¹

3. Results and Discussion

3.1. Legal and Institutional Framework of the Indonesian Tax Court

Law, as a system, encompasses various aspects and has a broad scope, regulating all areas of life within both national societies and the ever-developing global community.¹² The definition of law varies depending on the approach used, such as its fundamental nature, source, societal effects, formal declaration methods, or intended goals. Various expert definitions reflect different perspectives: Georg Frenzel¹³ views it as *rechtsgewohnheiten*, Holmes¹⁴ defines it based on predictions of court decisions, Paul Bohannon¹⁵ considers it institutionalized obligations, Karl Von Savigny emphasizes the customs and feelings of the people,¹⁶ Immanuel Kant highlights conditions of freedom,¹⁷ and Hans Kelsen views it as a binding command.¹⁸ Generally, law is closely related to human life in society, regulating the

⁹ Sudarto, *Metodologi Penelitian Filsafat*, (Jakarta: Raja Grafindo Persada, 2002), 124.

¹⁰ John. W. Creswell, *Research Design Qualitatif, Quantitative, and Mixed Methods Approaches*, (California: Sage Publications, 2018), 43.

¹¹ Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik*, (Jakarta: Rineka Cipta, 2019), 97.

¹² Ahmad Ali, *Menguak Tabir Hukum*, (Jakarta: Ghalia Indonesia, 2008), 67.

¹³ Georg Frenzel, *Recht und Rechtssätze: Eine Untersuchung Über den Rechtsbegriff der Positiven Rechtswissenschaft (Classic Reprint)*, (London: Forgotten Books, 2018), 54.

¹⁴ Oliver Wendell Holmes Jr, *The path of the law*, (The Floating Press, 2009), 65.

¹⁵ Paul Bohannon, "The differing realms of the law," *American Anthropologist* 67, no. 6 (1965): 37. See also, Michael M. Sims, "Old roads and new directions: anthropology and the law," *Dialectical anthropology* 20, no. 3/4 (1995): 348.

¹⁶ Andreas Rahmatian, "Friedrich Carl von Savigny's Beruf and Volksgeistlehre," *The Journal of Legal History* 28, no. 1 (2007): 21.

¹⁷ Frederick Rauscher, *Kant's social and political philosophy*, 2007. Stanford Encyclopedia of Philosophy. Retrieved from <https://plato.stanford.edu/entries/kant-social-political/?ref=thelovepost.global>

¹⁸ Hans Kelsen, *Pure theory of law*, (California: Univ of California Press, 1967), 43.

order that must be followed.¹⁹ Raz²⁰ adds that the legal system is essential for the exercise of institutional power and acts as the main intermediary in social connectivity, including criminalization in criminal law.

The principle of prioritizing three basic values—justice, benefit, and legal certainty—put forward by Gustav Radbruch,²¹ is applied in achieving the objectives of law, with justice as the highest priority.²² Although Radbruch initially prioritized legal certainty, he revised his stance after witnessing the inhumane implementation of law by the national regime, ultimately emphasizing justice over certainty.²³ Meuwissen prioritized freedom,²⁴ while Aristotle defined justice as obedience to law and the equal distribution of rights.²⁵ John Rawls considered justice the foremost virtue of social institutions,²⁶ while Bentham and Mill's utilitarianism theory emphasizes utility as the purpose of law.²⁷ From a normative perspective, Meerbeeck²⁸ stresses legal certainty with clear and precise rules, while Gribnau²⁹ emphasizes on the stable rules that protect society from arbitrary interference and ensure fair enforcement of the law.³⁰

The applied theory used in this study is legal certainty. Legal certainty is a fundamental aspect of law, emphasizing that rules must be clear, precise, and stable, allowing for predictability and protection from arbitrary interference. Legal

¹⁹ Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2009), 90.

²⁰ Joseph Raz, "The institutional nature of law," *The Modern Law Review* 38, no. 5 (1975): 497.

²¹ Heather Leawoods, "Gustav Radbruch: An Extraordinary Legal Philosopher" *Washington University Journal of Law & Policy* 2, no. 1 (2000): 489.

²² Muhammad Erwin, *Filsafat Hukum*, (Jakarta: Raja Grafindo, 2012), 75.

²³ Hajar Aswatiningih, "Kepastian Hukum Status Hak Milik Atas Satuan Rumah Susun Oleh Orang Asing Berdasarkan Peraturan Pemerintah Nomor 18 Tahun 2021," *Jurnal Hukum Dan Kenotariatan* 6, no. 2 (2022): 999

²⁴ D. H. M. Meuwissen, *Vijf Stellingen Over Rechtsfilosofie, dalam Een Beeld Van Recht*, (Nijmegen: Ars Aequi, 1979), 54.

See also, Barda Nawawi Arif, *Masalah Penegakan Hukum Dan Kebijakan Penanggulangan Kejahatan*, (Bandung: Citra Aditya Bakti, 2001), 51.

²⁵ Hyronimus Rheti, *Filsafat Hukum Edisi Lengkap (Dari Klasik Ke Postmodernisme)*, (Yogyakarta: Universitas Atmajaya, 2015), 78.

²⁶ Mark LeBar, *Justice as a Virtue*, 2002. Stanford Encyclopedia of Philosophy. Retrieved from <https://plato.stanford.edu/entries/justice-virtue/>. See also, M.Yasir Said and Yati Nurhayati, "A Review on Rawls Theory of Justice," *International Journal of Law, Environment, and Natural Resources* 1, no. 1 (2021): 32.

²⁷ A. Mangunhardjana, *Isme-Isme Dalam Etika Dari A Sampai Z*, (Yogyakarta: Kanisius, 1999), 76.

²⁸ Jérémie Van Meerbeeck, "The Principle of Legal Certainty in the Case Law of the European Court of Justice: From Certainty to Trust," *European Law Review* 41, no. 2 (2016): 279.

²⁹ Hans Gribnau, and Hans Gribnau, "Legal Certainty : A Matter of Principle," *Tilburg Law School, Legal Studies Research Paper Series*, no. 12 (2014): 78.

³⁰ Titon Slamet Kurnia, "Peradilan Konstitusional Oleh Mahkamah Agung Melalui Mekanisme Pengujian Konkret," *Jurnal Konstitusi* 16, no. 1 (2019): 72.

certainty is realized normatively when regulations are created and announced with clarity and logic Kansil³¹ as governed by general principles in the Western legal system.³² Without certainty, the law loses its meaning and cannot function as a tool for enforcing justice in society.³³

At the conceptual framework level, taxation must be discussed. A tax, as defined by Law No. 28 of 2009, is a compulsory, coercive contribution that does not provide direct compensation but is used for the benefit of the state and the welfare of the people.³⁴ Mardiasmo³⁵ defines taxes as contributions from the people to the state treasury without direct reciprocal services. Adriani³⁶ emphasize that taxes are obligations owed to finance general expenditure and public welfare. Taxes play an important role as a source of state revenue and a tool for regulating social and economic policies. State revenues for routine and development expenditures are covered by the budgetary function, while the regulatory function governs government policies outside the financial sector.³⁷ The tax court is a specialized judicial body that regulates taxation in Indonesia.³⁸ According to Article 2 of Law Number 14 of 2002, the Tax Court is a judicial institution—not a judiciary in the field of taxation—positioned as an executor of special judicial duties. This court is part of the State Administrative Court, as regulated in Law Number 4 of 2004 and Law Number 9 of 2004 (which amended Law Number 56 of 1956 and Law Number 48 of 2009), functioning as a specialized court within the State Administrative Court system. This confirms the Tax Court's position as part of the judicial system under the Supreme Court, although it is not included in the four main branches of the judiciary mentioned in the 1945 Constitution.

Based on Article 24, paragraph (2) of the 1945 Constitution Amendment, Law Number 48 of 2009 concerning Judicial Power, and Article 9A, paragraph (1) of the PTUN Law and its subordinates, the Tax Court should function as part of the State Tax Court, handling tax disputes, with the Supreme Court overseeing its technical, organizational, administrative, and financial development. However, the Tax Court Law stipulates that the Tax Court, as a special institution, is not fully under the Supreme Court's jurisdiction. The Tax Court does not follow the typical

³¹ Christine ST. Kansil, *Kamus Istilah Hukum*, (Jakarta: Gramedia Pustaka, 2009), 20.

³² Meerbeeck, “The Principle of Legal Certainty in the Case Law of the European Court of Justice,” 88.

³³ Christine ST. Kansil, *Pengantar Ilmu Hukum Dan Tata Hukum Indonesia*, (Profesional Psychology, 2002), 53.

³⁴ Vania Sulistiano and Tanudjaja Tanudjaja, “Pertanggungjawaban Hukum Bagi Wajib Pajak Berdasarkan Undang-Undang Nomor 7 Tahun 2021,” *Aladalab: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 3 (2024): 214.

³⁵ Mardiasmo, *Perpajakan*, (Yogyakarta: Andi, 2017), 59.

³⁶ Adriani, *Penagihan Pajak: Pajak Pusat Dan Pajak Daerah*, (Bogor: Ghalia Indonesia, 2011), 57.

³⁷ Siti Resmi, *Perpajakan Teori Dan Kasus*, (Jakarta: Salemba Empat, 2014), 43.

³⁸ Bachsan Mustafa, *Pokok-Pokok Hukum Administrasi Negara*, (Bandung: Alumni, 1979), 21.

Indonesian judicial system, which includes levels of examination such as first-instance courts, appeals, and the Supreme Court, or at least first-instance and second-instance courts.³⁹ This can be observed in Article 33, paragraph (1) of the Tax Court Law: “The Tax Court functions as the first and final court in handling and deciding tax disputes.” This means no legal remedies can be pursued beyond the Tax Court. This provision is not regulated within the Tax Court Law itself but rather in the Law on the Supreme Court and the Law on Judicial Power.

Although Article 5, paragraph (3) of the Tax Court Law states that the independence of judges in examining and deciding tax disputes is unrestricted, Article 5, paragraph (2) remains inconsistent with the principle of judicial power.⁴⁰ This is due to the executive's involvement in the organizational, administrative, and financial supervision of the Tax Court, which is part of the judicial authority in resolving tax disputes. According to Manan⁴¹ independent judicial power, separate from other authorities, aims to: (1) ensure and protect individual freedom; (2) prevent arbitrary actions and oppression by the government; and (3) legally assess the validity of government actions or legislation, so that the law can be applied and enforced effectively.

The Tax Court's current position under the jurisdiction of both the Ministry of Finance and the Supreme Court contradicts the provisions of Article 24 of the 1945 Constitution Amendment.⁴² Ideally, the Tax Court, as a specialized court, should be entirely under the Supreme Court, following a “one roof system” of judiciary.⁴³ This system ensures that the independence of judges in examining and deciding tax disputes is not influenced or diminished. Similar measures have been applied to other specialized courts under the Supreme Court, where judicial technical guidance, administration, and financial aspects are under the Supreme Court's jurisdiction.⁴⁴ Therefore, the Tax Court should be repositioned and included within the administrative court environment, in accordance with Article 9A, paragraph (1) of the Administrative Court Law and its explanation.

³⁹ Reni Ratna Anggreini, “Relasi Mahkamah Agung Dan Pengadilan Pajak Dalam Kekuasaan Kehakiman,” *Lex Renaissance* 6, no. 3 (2021): 543.

⁴⁰ Rinsifat Naibaho and Indra Jaya M. Hasibuan, “Peranan Mahkamah Agung Dalam Penegakan Hukum Dan Keadilan Melalui Kekuasaan Kehakiman,” *Nommensen Journal of Legal Opinion* 7, no. 4 (2021): 135.

⁴¹ Bagir Manan, *Kekuasaan Kehakiman Republik Indonesia*, (Bandung: LPPM Universitas Islam Bandung, 1995), 43.

⁴² I Gede Yudi Arsawan and Emil Maula, “Urgensi Peralihan Pembinaan Pengadilan Pajak Di Bawah Mahkamah Agung,” *Garuda: Jurnal Pendidikan Kewarganegaraan Dan Filsafat* 1, no. 3 (2023): 67.

⁴³ Suciyani, “Kedudukan Pengadilan Pajak,” 75.

⁴⁴ Hana Maria Wiyanto, “Peradilan Khusus Di Dalam Sistem Peradilan Di Indonesia,” *Jurnal Hukum Progresif* 10, no. 1 (2022): 79.

Repositioning the Tax Court is a crucial reform measure within judicial power in the field of taxation. As part of the judicial power system, the Tax Court must be independent and free from any form of government or other institutional interference.⁴⁵ This aligns with Article 24 (1) of the 1945 Constitution Amendment, which emphasizes that “Judicial power is an independent power to conduct justice in order to uphold law and justice.” According to Article 18 of Law No. 48 of 2009 on Judicial Power, this power is vested in the Supreme Court and the judicial bodies under its supervision in the general courts, religious courts, military courts, administrative courts, and the Constitutional Court.⁴⁶

Furthermore, Article 27, paragraph (1) of Law No. 48 of 2009 concerning Judicial Power explicitly stipulates that special courts may only be established within one of the judicial environments under the Supreme Court's jurisdiction, as regulated in Article 25. Article 25, paragraph (1) of the same law clarifies that judicial bodies under the Supreme Court include the general courts, religious courts, military courts, and the administrative court. In line with this, Article 9A of Law No. 51 of 2009 provides that special courts can be established within the administrative court environment through specific legislation. The explanatory note further elaborates that “specialization” refers to differentiation or specialization within the administrative court, such as the tax court.

3.2. The Judicial Independence of the Indonesian Tax Court

The 1945 Constitution of the Republic of Indonesia explicitly states that Indonesia is a state based on law. Article 24, paragraph (2) of the 1945 Constitution emphasizes that judicial power lies with the Supreme Court and the judicial bodies under it, as well as the Constitutional Court. In this context, the Tax Court, as a specialized judicial body, plays an important role in enforcing tax law, which regulates the rights and obligations of the state and citizens in tax collection. The existence of the Tax Court emphasizes the importance of independent law enforcement within the national judicial system.⁴⁷ In Decision Number 26/PUU-XXI/2023, the Constitutional Court emphasized the importance of the Tax Court's independence, highlighting that the dual oversight structure between the Tax Court and the Ministry of Finance can create potential conflicts of interest (Salinan Putusan Nomor 26/PUU-XXI/2023). This situation underscores the need to transfer administrative and technical authority from the Tax Court to the

⁴⁵ Prima Difa Warasaputra, and Reni Dwi Purnomowati, “The Authority of the Minister of Finance to Select the Chairman and Deputy Chairman of the Tax Court Based on Law No. 14 of 2002,” *Reformasi Hukum Trisakti* 6, no. 3 (2024): 1045.

⁴⁶ Aditya Wiguna Sanjaya, “Celah Intervensi Kekuasaan Eksekutif Terhadap Kekuasaan Yudikatif Di Lingkungan Peradilan Militer,” *Jurnal Panorama Hukum* 3, no. 2 (2018): 205.

⁴⁷ Elfran Bima Muttaqin and Pasolang Pasapan, “Eksistensi Pengadilan Pajak Dalam Lingkungan Peradilan Tata Usaha Negara,” *Paulus Law Journal* 3, no. 2 (2022): 121.

Supreme Court to strengthen its position and independence in executing its judicial functions. This decision is a significant step in reinforcing the Tax Court's ability to function impartially and fairly, ultimately leading to better justice for taxpayers and a more robust tax administration system. More detailed information about this decision can be found on the official website of the Constitutional Court or relevant legal analysis platforms.⁴⁸

On May 25, 2023, Indonesia's Constitutional Court (MK) issued Ruling No. 26/PUU-XXI/2023, mandating the transfer of administration, organization, and financial management of the Tax Court from the Ministry of Finance to the Supreme Court by December 31, 2026. This ruling has significant implications for the Tax Court's concept and design, requiring adjustments to align it with the structure of courts under the Supreme Court. The Tax Court's dual primary jurisdictions — handling lawsuits and appeals — and its status as a specialized court necessitate harmonization with the administrative court system, namely the Administrative Court (*Pengadilan Tata Usaha Negara*/PTUN) and the High Administrative Court (*Pengadilan Tinggi Tata Usaha Negara*/PTTUN). This includes adjustments to the number and locations of Tax Courts to ensure broader national coverage. Currently headquartered in Jakarta, with sessions also held in Yogyakarta and Surabaya, the future positioning, number, and locations of Tax Courts will need to match the PTUN/PTTUN structure.

Institutional design reforms are essential, particularly regarding the appointment of judges, career progression, and tenure, to align with Supreme Court standards. This includes revising the Tax Court's leadership structure, which currently differs from other specialized courts in Indonesia. Indonesia can draw valuable lessons from the Netherlands, where tax disputes are resolved through specialized tax chambers within ordinary courts (district courts, courts of appeal, and the Supreme Court, *Hoge Raad*). This system eliminates the need for a separate judicial body while effectively handling tax disputes through a three-tiered court system. Insights from the Netherlands also emphasize differentiating procedural laws between lawsuits and appeals, an area yet to be addressed in Indonesia's Tax Court.

This reform aims not only to bring the Tax Court's administration under the Supreme Court but also to catalyze comprehensive system improvements. By adopting best practices from other countries while addressing domestic needs, Indonesia's tax judiciary is expected to become more effective, efficient, and aligned with the principles of justice.

⁴⁸ Adeb Davega Prasna, "Tinjauan Lembaga Peradilan Adat Minangkabau Dalam Sistem Peradilan Di Indonesia (Kajian Terhadap Peraturan Daerah Nomor 7 Tahun 2018 Tentang Nagari Di Provinsi Sumatera Barat)," *Humantech: Jurnal Ilmiah Multi Disiplin Indonesia* 2, no. 2 (2022): 427.

In *The Federalist Papers* No. 78, Alexander Hamilton⁴⁹ stated that the judiciary is the weakest branch of power and must be protected by the constitution to prevent abuse of power by other branches. Article 1 of Law No. 48 of 2009 concerning Judicial Power emphasizes that judicial power is an independent state authority in implementing regulations for the sake of justice. Jimli Asshiddikie emphasizes that independent judicial power must be free from executive and legislative influences, in accordance with the separation of powers applicable in a state of law.⁵⁰

As a specialized court, the Tax Court has significant relative and absolute competence within the Indonesian judicial system. According to Law No.14-2002, the Tax Court is authorized to examine and rule on tax disputes, both appeals and lawsuits, involving taxpayers and tax officials. This includes disputes related to tax decisions and tax collection enforcement. However, concerns have been raised regarding the Tax Court's independence, which could potentially affect its effectiveness in enforcing the law.⁵¹

Tax Court judges and Ministry of Finance officials revealed that the “dual oversight” structure between the Jakarta-headquartered Tax Court and the judicial power arrangement under Law No. 48 of 2009 could lead to conflicts of interest. For example, technical and administrative oversight by the Ministry of Finance, which also serves as the tax collector, may undermine the Tax Court's independence. The Ministry of Finance, as an executive body, should be separate from the judicial functions performed by the Tax Court. Consequently, Ministry of Finance oversight could create the perception that the Tax Court is not entirely independent from government influence.

Observations of the judicial process at the Tax Court also reveal challenges in ensuring the institution's independence. In practice, concerns have arisen regarding potential bias in decision-making, possibly influenced by relationships with tax officials or certain political interests. Interviews with several Tax Court judges indicated that while they strive for objectivity, the possibility of conflicts of interest remains a concern.⁵²

According to Article 27 of Law No. 48 of 2009, the Tax Court is part of the Administrative Court, meaning it must adhere to Administrative Court rules. This association raises questions about the Tax Court's operational independence compared to other courts under the Administrative Court system. The theory of separation of powers suggests that, to maintain independence, the Tax Court should be placed entirely under the Supreme Court, without interference from executive institutions.

⁴⁹ Hamilton, Alexander, James Madison, and John Jay. (*The Federalist Papers*, 1961), 55.

⁵⁰ Afdol and Setjoatmadja, “Kedudukan, Eksistensi dan Independensi Pengadilan Pajak,” 43.

⁵¹ David Yosua Umboh, “Prosedur Penyelesaian Sengketa Pajak Di Pengadilan Pajak Menurut Undang Undang Nomor 14 Tahun 2002,” *Lex Administratum* 9, no. 8 (2021): 23.

⁵² Interview with Judges A, B, and C, Jakarta, July 20, 2024.

The Tax Court's current position under the Ministry of Finance presents challenges regarding transparency and accountability, key principles in an independent judicial system. Observations indicate that the overlapping oversight between the Ministry of Finance and the Supreme Court could hinder the implementation of public information transparency and justice. This could reduce public trust in the Tax Court's integrity and objectivity in resolving tax disputes.⁵³

As a solution, reforming the Tax Court into a “single roof” institution entirely under the Supreme Court is suggested. This reform is expected to strengthen judicial independence by ensuring that all aspects of technical, administrative, and financial management are handled by a single institution without executive interests. This would avoid conflicts of interest and ensure the Tax Court can effectively and objectively carry out its functions.

Judicial independence in decision-making must also be maintained through transparency and accountability. Impartiality of judges, as stated by Jeremy Bentham, is a primary condition for upholding justice.⁵⁴ Judicial decisions must be based on law and the facts presented in court, not on relationships with the parties involved. Therefore, public oversight and openness to court proceedings need to be enhanced to ensure that Tax Court decisions are accepted fairly and transparently.

The Tax Court's existence as a specialized judicial institution is crucial in providing solutions to tax disputes between taxpayers and the government. With proper reforms, the Tax Court can effectively uphold tax justice and improve public services that are simple, swift, and affordable. These reforms are expected to ensure that the Tax Court truly reflects the principles of the rule of law and provides fairness for all involved parties.

3.3. Repositioning the Tax Court within the Judicial Power System in Indonesia

The need to amend Article 24, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia to distinguish the Tax Court from Administrative Court is a significant issue in Indonesia's legal reform efforts. Article 24, Paragraph (2) establishes that judicial authority in Indonesia is exercised by the Supreme Court, the Constitutional Court, and other courts as determined by law. While this provision forms the foundation of Indonesia's judicial structure, it does not

⁵³ Nabitatus Sa'adah, and Kadek Cahya Susila Wibawa, “Batasan Kewenangan Mengadili Sengketa Pajak Antara Pengadilan Pajak Dan Pengadilan Tata Usaha Negara,” *Masalah-Masalah Hukum* 52, no. 1 (2023): 24.

⁵⁴ Andi. M. Asrun, *Krisis Peradilan Di Bawah Mahkamah Agung*. (Jakarta: Elsam, 2004), 90.

specifically address specialized courts like the Tax Court, creating challenges for judicial authority, particularly in tax courts.⁵⁵

The Tax Court and Administrative Court have very different characteristics, thus requiring a specialized approach in handling their respective cases. The Tax Court is governed by Law No. 14 of 2002 on the Tax Court, which establishes the Tax Court as a special judicial body to resolve tax disputes. These disputes involve taxpayers or tax guarantors and tax officials, with the object of dispute being decisions issued by tax officials. The process often involves in-depth technical analysis of tax calculations, tax regulations, and the legal implications of tax obligations. Therefore, the Tax Court requires specialized expertise in taxation and tax administration, which differs from that of the Administrative Court.⁵⁶

Conversely, the Administrative Court handles disputes between citizens and government bodies concerning administrative decisions. Administrative disputes usually involve decisions made by the government, such as permits, regulations, and other administrative policies. These cases do not require specialized technical expertise, as in tax cases, but rather focus on assessing whether the administrative decisions comply with applicable laws and principles of good governance.

Combining these two types of courts under one institution risks inadequate handling of complex tax cases due to a lack of specialization. The Tax Court must compete with administrative cases in the same forum, leading to inefficiency and suboptimal judicial processes. This not only hinders the resolution of tax disputes but also potentially causes unfairness to the parties involved. Interviews with judges from both the Tax Court and Administrative Court revealed deep concerns about the inefficiency of judicial processes when tax cases must compete with administrative cases in the same forum.⁵⁷ Judges expressed that this merging often results in longer processing times for tax cases, which should ideally receive special and expedited attention. Tax Court judges reported that, despite their best efforts to maintain objectivity in deciding tax cases, the additional burden of administrative cases often affects the speed and quality of their decisions. Moreover, field observations confirmed these concerns. In hearings involving tax cases, researchers noted that judges frequently had to shift their focus from complex tax technicalities to more general administrative issues.

This created uncertainty and unfairness for the parties involved in the tax disputes. For instance, in a tax case involving complicated tax liability calculations, the trial process was often delayed as judges had to divide their time with

⁵⁵ Dedi Sugiyanto, "Analisis Yuridis Pasal 5 Ayat 2 Undang-Undang Republik Indonesia Nomor 14 Tahun 2002 Tentang Pengadilan Pajak Ditinjau Dari Pasal 24 Ayat 1 Dan Ayat 2 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Al-Adl: Jurnal Hukum* 13, no. 1 (2021): 116.

⁵⁶ Umboh, "Prosedur Penyelesaian Sengketa Pajak Di Pengadilan Pajak," 22.

⁵⁷ Interview with Judges D, E, F and G, Jakarta, July 23, 2024.

administrative cases that did not require the same level of technical expertise. Delays in handling tax cases caused by this merger also impact the country's fiscal interests. Delays in resolving tax disputes can hinder tax revenues and add administrative burdens to taxpayers. Additionally, uncertainty in Tax Court rulings can reduce taxpayer compliance and undermine public trust in the tax system.

Based on interviews and observations, an amendment to Article 24, Paragraph (2) of the 1945 Constitution to separate the Tax Court from the Administrative Court is necessary. This proposed amendment aims to create a more integrated and focused judicial framework by explicitly incorporating the tax judiciary as part of the Supreme Court. Consequently, the Tax Court will operate under one roof, with full independence, free from dual supervision by both the Ministry of Finance and the Supreme Court.⁵⁸

This separation is expected to address current issues such as uncertainty in decision-making and delays in judicial processes. With a clearer and separate structure, the Tax Court can better focus on its mandate to resolve tax disputes effectively and fairly. This will ensure that each tax case receives the appropriate level of expertise and attention, improving the quality of decisions and efficiency in dispute resolution.

Moreover, this amendment will enhance public trust in the judicial system by ensuring that the Tax Court has sufficient autonomy to handle tax cases without external influence that may compromise its independence. The separation will create a more responsive and effective judicial system capable of delivering fair and timely decisions for all parties involved.

The proposed amendment to Article 24, Paragraph (2) of the 1945 Constitution to separate the Tax Court from the Administrative Court has significant implications for legal reform and efforts to improve the quality of Indonesia's judicial system. First, this separation will strengthen the principle of justice by ensuring that each type of dispute is handled by a specialized institution. This will allow the Tax Court to focus more on technical taxation and tax administration matters, thereby improving the quality of decisions and efficiency in resolving tax disputes.⁵⁹

Second, the amendment will help reduce conflicts of interest and interference in the tax judiciary process. With a separate tax judiciary institution, there will be less risk of external influence affecting judicial decisions. This will increase judicial independence and ensure that decisions are objective and based on applicable law.⁶⁰

⁵⁸ Situmeang Tomson, "Reposisi Pengadilan Pajak Menurut Sistem Kekuasaan Kehakiman Di Indonesia," *Honeste Vivere* 32, no. 2 (2022): 108.

⁵⁹ Adiel Muhammad Kanantha and Ferry Edwar, "Independensi Pengadilan Pajak Ditinjau Dari Pasal 24 Ayat (1) UUD NRI 1945," *Reformasi Hukum Trisakti* 4, no. 1 (2022): 46.

⁶⁰ Ratih Wedhasari and I Wayan Parsa, "Independensi Pengadilan Pajak Dalam Sistem Kekuasaan Kehakiman Di Indonesia," *Kertha Negara : Journal Ilmu Hukum* 9, no. 3 (2021): 37.

Third, the separation of the Tax Court from the Administrative Court will simplify coordination and management of judicial administration. With a clear and separate structure, administrative and case management processes will become more efficient, reducing the complexity that arises from dual oversight. This will help improve taxpayer satisfaction and public trust in the tax judicial system.

4. Conclusion

The findings showed that repositioning the Tax Court under the Supreme Court is key to ensuring judicial independence and consistency, in accordance with Article 24 of the 1945 Constitution Amendments and Law No. 48 of 2009 on Judicial Power. Under a single umbrella, the Tax Court can operate independently without executive intervention, ensuring fair and effective resolution of tax disputes.

Thus, the independence of the Tax Court as a specialized judicial institution needs to be strengthened in line with the principles of the 1945 Constitution, which emphasizes an independent judiciary. Currently, the Tax Court is under the auspices of the Ministry of Finance and the Supreme Court, which can lead to conflicts of interest and disrupt judicial effectiveness. To ensure independence, the Tax Court should be reformed into an institution entirely under the Supreme Court's authority. With this reform, the Tax Court will be able to operate independently, maintain transparency, and avoid government influence, thereby effectively and fairly carrying out its judicial functions.

To enhance the Tax Court's effectiveness and independence in resolving tax disputes, amending Article 24, Paragraph (2) of the 1945 Constitution is essential. The existing dual oversight structure presents various challenges in the judicial process, ranging from uncertainty in decisions to administrative issues. An amendment separating the Tax Court from the Administrative Court will provide legal certainty, increase judicial independence, and ensure a more effective and fair tax judicial process. This research provides a strong foundation for the proposed constitutional changes that will bring positive improvements to the tax judiciary system in Indonesia.

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