



Characteristics of the Tax Court as a Special Court in an Independent Judicial Power System

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Abstract

This article is Characteristics of The Tax Court as a Special Court in an Independent Judicial Power System. This legal research uses legislation in accordance with the identified issues. The author identifies various methodologies used in legal studies, including the statute approach, historical approach, and conceptual approach. This thesis is composed using the statute approach, as explained in primary legal sources. The legislative approach involves evaluating all legal norms related to the legal situation at hand. The results of this evaluation serve as the basis for addressing current issues. This legal technique involves verifying the consistency and compliance between laws and regulations with the issues that the author will discuss. This revision will generate a debate to analyze and resolve the emerging difficulties. To understand and analyze the urgency of the legal position of the Tax Court within an independent judicial power system. The Tax Court has distinct characteristics from the four judicial bodies under the Supreme Court: the General Court, the Religious Court, the Military Court, and the State Administrative Court. These differences include the Tax Court's organizational structure, the judicial staffing system, the composition of the panel of judges, and the procedural law. while the author's suggestion is that the Tax Court as a special court within the State Administrative Court under the Supreme Court should have the same characteristics as other courts in general.

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Introduction

N. J. Feldmann asserts that taxes are obligations imposed unilaterally by the authorities, do not have a reciprocal performance, and are solely used to finance public expenditures ^[1]. According to Rochmat Soemitro, tax is a legally mandated contribution from individuals to the state treasury, collected without expecting direct reciprocal services, and used for public expenditures ^[2]. The Self-Assessment System is a tax collection mechanism in Indonesia. The community plays a role in the self-assessment system. The government heavily relies on community members as taxpayers to determine their own tax obligations. Taxes mandatory for citizens seem easy to ignore. A large number of taxpayers try to evade their responsibilities or engage in tax evasion. This tax evasion is an example of the neglect of justice and the welfare of society demonstrated by the taxpayers. Tax evasion by taxpayers weakens the government's economic capacity and its ability to distribute wealth. Based on the table above, it is known that the role of tax revenue as well as customs and excise in the 2019-2024 State Budget (APBN) is very dominant.

1 Abdul Halim, dkk. 2014, Perpajakan, Salemba Empat, Jakarta Selatan, p. 1.

2 Diana Sari, 2013, Konsep Dasar Perpajakan, PT. Refika Aditama, Bandung, p. 36.

Table 1: Role of Taxes in the State Revenue and Expenditure Budget for the Years 2019-2024 ^[3]

Uraian	2019	2020	2021	2022	2023	RAPBN 2024	
Tax Revenue	1.332,6	1.072,1	1.278,6	1.716,8	1.818,2	1.986,9	71,4%
Customs and Excise	213,5	213,0	269,2	317,8	300,1	321,0	11,5%
Oil and Gas Natural Resources Revenue	121,1	69,1	96,6	148,7	103,6	104,9	3,8%
Non-Oil and Gas Natural Resources Revenue	33,8	28,1	52,9	120,1	119,7	92,9	3,3%
Separated State Wealth	80,7	66,1	30,5	40,6	81,5	80,8	2,9%
Other Non-Tax State Revenue	124,5	111,2	152,5	196,3	131,5	111,0	4,0%
BLU Revenue	48,9	69,3	126,0	89,9	79,5	83,4	3,0%
Grants	5,5	18,8	5,0	5,7	3,1	0,4	0,0%
State Revenue	1.960,6	1.647,7	2.011,3	2.635,9	2.637,2	2.781,3	100%

Book II of the Financial Note and the 2018 State Budget mentions that tax disputes are a risk to state revenue, being one of the causes of not achieving tax revenue targets due to the tax administration system being considered complicated by taxpayers and frequently changing tax policies, which create uncertainty and increase tax disputes.

Realizing the importance of tax issues, the Indonesian government established the Tax Review Committee in 1951, which was tasked with examining various categories of taxes managed by the tax office ^[4]. Initially appointed as the Tax Advisory Council (MPP), this institution was established based on the *Regeling van het Beroep di Belastingzaken* (Staatsblad No. 29 Tahun 1927), as later revised by Law Number 5 of 1959 concerning the Amendment of the *Regeling van het Beroep di Belastingzaken* ^[5]. Due to its development, the MPP became inadequate, leading to the establishment of the Tax Dispute Resolution Agency (BPSP) as a tax court in 1997, in accordance with Law Number 17 of 1997 concerning the Tax Dispute Resolution Agency, Article 2. Tax law enforcement begins after a violation of tax regulations, whether in an administrative or criminal context. The application of tax law in tax disputes primarily serves to provide legal protection for taxpayers and tax officials acting on behalf of the state ^[6]. Taxpayers are granted legal protection against violations of their rights and obligations, while tax officials are provided legal protection that legitimizes tax collection, which serves to increase the state treasury as a reflection of the fulfillment of taxpayers' obligations ^[7]. Tax Dispute Tax Dispute is defined in Article 1 number 5 of Law Number 14 of 2002 concerning the Tax Court (Law 14/2002) as a conflict that occurs in the field of taxation between the Taxpayer and the authorized officials, originating from the issuance of a decision that can be appealed or contested in the Tax Court, in accordance with tax legislation, including lawsuits in the context of enforcing tax collection law with an execution order. Rochmat Soemitro emphasizes that disputes arise due to differences of opinion between both parties, thus requiring "assistance" from a neutral and impartial third party. According to Article 2 in conjunction with Article 3 of Law 14/2002, tax disputes are adjudicated in the Tax Court located in the capital city, with the option to be relocated if deemed necessary. In accordance with the Tax Court Law, the Tax Court was

established in 2002 to facilitate independent adjudication in resolving tax issues. The establishment of a judicial body to adjudicate tax disputes began with Law Number 6 of 1983, which was later amended by Law Number 6 of 2007. The Tax Court holds judicial authority for taxpayers who wish to resolve tax disputes (See: Article 2 of Law Number 14 of 2002). According to Article 5 of Law Number 14 of 2002, the Supreme Court provides technical support to the Tax Court, while the Ministry of Finance oversees the organization, administration, and budget ^[8].

This research primarily examines Article 5 of Law Number 14 of 2002 concerning the Tax Court, which mandates the establishment of a tax court dependent on two entities, namely the Supreme Court (judicial authority) and the Ministry of Finance (executive authority), potentially jeopardizing the required judicial independence.

Problem Formulation

Based on the description, the author conducted research titled "The Urgency of the Legal Position of the Tax Court in an Independent Judicial Power System," and the problem formulation is: What are the characteristics of the Tax Court as a special court in an independent judicial power system?

Purpose

To understand and analyze the urgency of the legal position of the Tax Court within an independent judicial power system.

Methods

This legal research uses legislation in accordance with the identified issues ^[9]. Peter Mahmud Marzuki identifies various methodologies used in legal studies, including the statute approach, historical approach, and conceptual approach. This thesis is composed using the statute approach, as explained in primary legal sources ^[10]. The legislative approach involves evaluating all legal norms related to the legal situation at hand. The results of this evaluation serve as the basis for addressing current issues. This legal technique involves verifying the consistency and compliance between laws and regulations with the issues that the author will discuss. This revision will generate a debate to analyze and resolve the emerging difficulties ^[11].

3 Kementerian Keuangan Republik Indonesia, 2005, Buku II Nota Keuangan RAPBN TA 2024.

4 Tim Edukasi Perpajakan Direktorat Jenderal Pajak, 2016, Materi Terbuka Kesadaran Pajak untuk Perguruan Tinggi, Direktorat Jenderal Pajak Kementerian Keuangan RI, Jakarta, p. 61.

5 Kumariah dan Ali Purwito, 2006, Pengadilan Pajak, Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta, p. 37.

6 Muhammad Djafar Saidi, 2007, Perlindungan Hukum Wajib Pajak dalam Penyelesaian Sengketa Pajak, PT RajaGrafindo Persada, Jakarta, p. 9.

7 Asriyani, "Upaya Hukum Dalam Penyelesaian Sengketa Pajak", Program Studi Magister Ilmu Hukum Pascasarjana Universitas Tadulako: e-Jurnal Katalogis, Volume 5 Nomor 8, Agustus 2017, p. 169-181.

8 https://karya.brin.go.id/id/eprint/15242/1/Jurnal_Tomson%20Situmeang_Universitas%20Kristen%20Indonesia_2022-5.pdf

9 Ibid.

10 Ibid.

11 Ibid.

Discussion

A. Tax Court in Indonesia

a. Appeal Process in the Tax Court

1. **Object:** Objection is a normalized legal source that allows taxpayers to seek justice and truth regarding legal actions taken by officers in tax collection. Taxpayer objections relate to the substance or content of the legal actions taken by tax officers and the process of tax deduction or collection, specifically concerning: a) the amount of loss; b) the amount of tax; c) tax deduction or collection; d) determination of tax rates; e) use of percentage criteria to determine net income; f) application of administrative sanctions; g) use of non-taxable income; h) calculation of current year income tax; i) calculation of tax credits. Calculation of tax credits^[12].

The legal instruments used by tax officers to collect disputable taxes include: a) tax payment notice; b) tax settlement letter; c) settlement letter for underpayment; c) settlement letter for underpayment; d) additional settlement letter; e) additional settlement letter; f) excess tax settlement letter; f) zero-rate tax settlement letter; g) tax collection letter^[13].

The legal procedure for withholding or collecting taxes involves presenting evidence of such actions to the taxpayer who must withhold or collect. Failure to provide proof of tax withholding or collection to the taxpayer constitutes a violation of tax law, as the taxpayer has the right to request such proof from the withholding or collecting agent. On the other hand, the tax withholding agent is obligated to provide the appropriate proof of tax withholding to the taxpayer^[14].

2. **Appeal:** Because the basis for an objection is the Objection Decision (SKP), the tax dispute resolution system at the Objection Institution level, an appeal cannot be filed before the objection is submitted^[15]. According to Article 1 paragraph (16) of the Tax Court Law, an appeal is a legal effort that can be used by Taxpayers to file an objection against the objection decision at the Tax Court level. An appeal can also be defined as follows: An appeal is a legal means that can be used by Taxpayers against a decision that can be debated based on tax regulations.

3. **Legal action:** Article 1 paragraph (7) of the Tax Court Law defines that legal action is a legal process that can be used by taxpayers who dispute decisions subject to active tax regulations. Legal action, as a conventional legal effort, differs from administrative efforts, because administrative efforts can annul the contested decision, as they do not have binding force. In legal action, what is contested is not the objection letter from the Directorate General of Taxes, but rather the decision made by the tax officer regarding tax collection. Legal action is exclusively designed so that taxpayers can challenge the tax collection or the decision on the

implementation of the collection that is deemed inconsistent with the tax law framework. In essence, tax officials in the litigation process consistently act as the defendants, while taxpayers act as the plaintiffs. Legal actions related to unpaid taxes, the determination of administrative sanctions, the determination of tax rates, and the calculation of tax credits. Actions can be explained in tax collection notices, correction decisions, simultaneous and joint billing decisions, execution orders, and rulings as execution orders, indicating that these documents are not the subject of actions but merely summarize disputes that can be brought to court^[16]. The requirements for filing a lawsuit are defined as follows:

a) The action must be submitted in writing in Indonesian; b) The petition must be submitted to the Tax Court; c) The petition must contain a clear objective and indicate the date of receipt of the tax assessment notice or the disputed tax decision; d) The petition must be accompanied by a copy of the disputed documents; e) The petition must be submitted within the agreed timeframe, except in cases of force majeure (urgent circumstances); and f) If the petition is drafted and signed by the plaintiff's lawyer, it must be accompanied by an official special power of attorney^[17]. According to Muhammad Djafar Saidi, the requirements for the validity of a legal action are: a) The identity of the parties involved, including the plaintiff and the defendant, covering name, profession, tax identification number, tax identification number or tax entrepreneur identification number (excluding tax employees), address, and position; b) *Fundamentum petendi* (*posita*), which is a detailed description of the reasons for the legal action, including factual and legal reasons; and c) *Petitum*, which is the specific request made by the plaintiff to obtain legal assistance^[18].

4. **Judicial Review:** When consensus cannot be reached in the Tax Court, the disputing parties can use a judicial review (PK) to the Supreme Court. PK is an extraordinary legal remedy used by the disputing parties with the aim of contesting an irrevocable decision of the Tax Court. Reconsideration (PK) is a new legal remedy in the context of the Tax Court. No one knows when this review will be conducted during the Tax Consideration Assembly (MPP) and the Tax Dispute Resolution Agency (BPSP). This is the result of the failure of both tax courts to reach the Supreme Court. Articles 77 to 92 of the Tax Court Act regulate the review process^[19].

b. Tax Court Decision

M. Natsir Asnawi defines a verdict as a conclusion or statement by a judge that is rendered in a decision and pronounced in an open court to the public to end the dispute between the parties. The decision made can be an absolute decision (unanimous decision) or a decision based on the majority vote (majority decision)^[20]. Sudikno Mertokusumo

12 Ibid., p. 4.

13 Ibid., p. 5.

14 Muhammad Djafar Saidi, *Perlindungan ... op.cit.*, p. 167.

15 Ibid., p. 172.

16 *ibid.*

17 Ibid., p. 186.

18 Ibid., p. 194.

19 *Ibid.*

20 M. Natsir Asnawi, 2014, *Hermeneutika Putusan Hakim*, UUI Press, Yogyakarta, p. 13.

states that a verdict is a declaration made by a judge as a state official authorized to do so, pronounced in court, and aimed at ending or resolving a case or dispute between the parties. M. Yahya Harahap stated that a verdict is a determination by a panel or a single judge that contains the resolution of a disputed matter through the judicial institution ^[21].

B. Tax Dispute

a. Understanding Tax Disputes

Article 1, number 5 of the Tax Court Law explains the definition of a tax dispute, namely: A dispute arising in the tax sector between a taxpayer and an authorized official, resulting from the issuance of a decision that can be appealed or sued in the tax court in accordance with tax laws and regulations, including lawsuits regarding the implementation of collection under the Tax Collection Law with an execution order.

Tax disputes arise between taxpayers, tax withholding or collecting officials, and tax officials regarding the interpretation of tax provisions. The parties involved in the dispute are: (1) the taxpayer and the tax official; (2) the tax withholding or collecting official and the tax official; (3) the taxpayer and the tax withholding or collecting official; or (4) the taxpayer and the tax official. The subject of the dispute is the amount of the tax liability or the application of administrative sanctions, including interest, fines, or additional charges ^[22].

b. Classification of Tax Disputes

Tax disputes can be categorized as follows: a. Formal Disputes. Occur when the tax authority, the taxpayer, or both fail to comply with the procedures or methods specified by tax legislation and tax court regulations; b. Substantive Disputes. If there is a discrepancy in tax obligations, it can result in overpayment (refund) or underpayment (deficiency) ^[23].

c. The Emergence of Tax Disputes

Mustaqiem identifies the causes of tax disputes as follows: A. Differences in the legal basis used; B. Differences in legal interpretation; c. Controversy regarding certain agreements ^[24].

According to Muhammad Djafar Saidi, the origin of tax disputes is based on two fundamental principles. First, failing to perform legal actions as mandated by tax legislation. Second, performing legal actions that do not comply with the provisions of tax legislation. The parties involved in the emergence of tax disputes include taxpayers, tax deductors or collectors, tax guarantors, and tax officials. These parties are the origin of tax disputes, which stem from a lack of legal awareness in the implementation or enforcement of tax law ^[25].

Taxpayers are considered the origin of tax disputes because they fail to fulfill the legal obligations mandated by tax legislation, such as not submitting the Tax Return (SPT)

within the specified deadline or committing acts contrary to tax legislation, such as not settling tax payments after the specified deadline. Tax withholding or collecting agents are identified as sources of tax disputes due to their failure to fulfill legal obligations as mandated by tax laws, such as neglecting to remit the amount of tax withheld or collected to the state treasury. In addition, they may take legal actions that violate legal standards, such as applying incorrect tax rates during the deduction or collection process ^[26].

d. Time and Place of Tax Dispute Resolution

Taxpayers can handle tax issues more fairly and successfully in an environment and timeframe where adjudicators are separate entities, both institutionally and practically. There are several ways to address tax issues within the framework of the Indonesian tax system, specifically ^[27].

- 1. During a protest or decision reversal:** At the time of objection, the jury or decision-maker is the tax officer, which indicates that, both theoretically and practically, the likelihood of obtaining satisfaction and justice from the opposing party, who also serves as the jury, is reduced compared to a scenario where the jury does not simultaneously act as the opposing party. In an objection or cancellation session, the taxpayer's position is significantly weaker than that of the tax officer.
- 2. At the time of litigation or appeal:** Conflict resolution in tax courts requires the involvement of a third party, specifically a panel of judges or a single judge, who are completely independent from tax influence both in principle and in practice. The prospects for taxpayers to obtain justice in the tax court are greater than the prospects obtained through efforts to challenge tax assessments at the objection or cancellation stage. The equality between taxpayers and tax officials is fully realized within the context of the tax court institution.

e. The End of the Tax Dispute

Tax disputes are resolved by legal instruments found in tax law. The legal tax instruments designated for tax officials to resolve national tax disputes are: a. Tax assessment letter; b. Underpayment tax assessment letter; c. Additional underpayment tax assessment letter; d. Overpayment tax assessment letter; e. Nil tax assessment letter; f. Tax collection letter; g. Compulsory letter; h. Objection decision letter; i. Appeal decision; j. Lawsuit decision; and k. Review decision ^[28].

The tax law instruments designated for tax officials to resolve regional tax disputes are: a. Tax notification letter; b. Regional tax assessment letter; c. Regional tax underpayment assessment letter; d. Additional regional tax underpayment assessment letter; e. Regional tax overpayment assessment letter; f. Regional tax nil assessment letter; g. Regional tax bill; h. Compulsory collection letter; i. Objection decision letter; j. Appeal decision; k. Lawsuit decision; and l. Review decision ^[29].

21 Muhammad Djafar Saidi, *Perlindungan...* op.cit., p. 264.

22 Ibid., p. 91.

23 Mustaqiem, 2014, *Perpajakan Dalam Konteks Teori Dan Hukum Pajak Di Indonesia*, Cetakan Pertama, Buku Litera Yogyakarta, Yogyakarta, p. 101.

24 Ibid., p. 102.

25 Muhammad Djafar Saidi, *Perlindungan ...* op.cit., p. 95.

26 Ibid., p. 96.

27 Karianton Tampubolon, 2013, *Praktek, Gugatan, dan Kasus-Kasus Pemeriksaan Pajak*, Cetakan Pertama, PT Indeks, Jakarta, p. 18.

28 Muhammad Djafar Saidi, *Perlindungan ...* op.cit., p. 38.

29 Ibid., p. 38.

One of the many tax law instruments for resolving state tax disputes and regional tax disputes that involves coercive measures is the forced letter because it can affect the taxpayer's mental and physical well-being. The forced letter can be followed up with legal actions permitted by tax law in the following forms: a. Decision letter for the seizure of taxpayer or tax guarantor's property; b. Decision letter for auction; c. Decision letter for prevention; and d. Decision letter for detention^[30].

C. Characteristics of the Tax Court as a Special Court

a. Duties, Functions, and Authorities of the Tax Court

The Tax Court procedural law aims to regulate the resolution of disputes in the Tax Court, so that it can comply with tax legislation. Judges who adjudicate tax cases must adhere to the legal procedural standards of the tax court. This is important to humanize taxpayers and judges who are required to obey the law, especially tax regulations. This commitment must not be overlooked in the application of tax law in the Tax Court, so that the Tax Court remains a solid refuge for taxpayers seeking justice. The procedural regulations of the tax court are very important to regulate the behavior of the disputing parties and the judges who adjudicate tax cases in the tax court^[31].

The Tax Court, as regulated in Article 2 of the Tax Court Law, is a judicial body authorized to adjudicate taxpayers who file legal remedies in tax disputes. In their work titled "Seeking Justice in the Tax Court," Djazoeli Sadhani, Syahriful Anwar, and K Subroto emphasize that the Tax Court has three main functions: 1. Handling Appeals Related to Tax Disputes; 2. Handling litigation regarding the execution of tax collection or decisions subject to legal action based on relevant tax laws and regulations; and 3. Supervising legal advisors^[32].

Unlike the Tax Dispute Settlement Agency (BPSP), which was established before the Tax Court based on Law Number 17 of 1997 concerning BPSP, Article 28 of Law Number 17 of 1997 concerning BPSP stipulates that the responsibility of BPSP is to examine and decide Tax Disputes. Meanwhile, the authority of BPSP as referred to in Articles 28, 29, and 30 of Law Number 17 of 1997 concerning BPSP includes: 1. Conducting assessments and deciding Tax Disputes; 2. Supervising legal representatives who provide legal assistance to parties involved in disputes at the Tax Dispute Settlement Agency; 3. To ensure the smooth resolution of tax disputes, the Tax Dispute Settlement Agency is authorized to summon or request data or information related to tax disputes from third parties in accordance with the provisions of the legislation^[33].

b. Overview of the Case and Case Handling Process

Article 1 number (5) of the Tax Court Law explains that a tax dispute is a dispute that occurs in the field of taxation between a taxpayer or tax officer and an authorized official, originating from the issuance of a decision. The decision can be appealed or contested in the Tax Court in accordance with the provisions of tax legislation. The decision also falls under the lawsuit for the enforcement of tax collection based on the Tax Collection with Forced Letter Law (UU PPSP).

Tax disputes can be classified into two categories: appeal disputes and lawsuits against decisions made by authorized tax officials. The entities authorized in the field of taxation are the Directorate General of Taxes, the Directorate General of Customs and Excise, and local governments according to their respective authorities.

The process of resolving a tax case goes through several stages, namely the initial examination, appeal, and judicial review. The next section will explain these stages by categorizing them into three main phases: administrative efforts, appeal to the Tax Court, and review by the Supreme Court.

1. Administrative Efforts

Administrative actions are only taken for tax disputes through decisions (*beschikking*) that can be appealed, whether issued by the Directorate General of Taxes (DJP), the Directorate General of Customs and Excise (DJBC), or local governments (*pemda*). Meanwhile, litigation is not necessary because it must go through administrative legal efforts.

In tax disputes, objections are filed against the Tax Assessment Letter (SKP). Before the SKP is issued, the DJP will inform the taxpayer of the audit results. The taxpayer can discuss the audit findings with the DJP. In this process, the taxpayer can submit quality assurance (QA) to resolve disputes related to proposed changes, particularly concerning legal issues, as regulated in Article 1 number 37 and Article 8 paragraph (2) letter 'i' of the Minister of Finance Regulation Number 15 of 2025 concerning Tax Audits.

Objections to the SKP must be submitted to the Directorate General of Taxes within three months from the date the tax assessment letter is sent or from the date of tax withholding or collection according to the central tax collection decision, as regulated in Article 25 paragraph (3) of the KUP Law. Additionally, based on Article 26 paragraph (1) of the General Provisions and Tax Procedures Law (KUP Law), the Directorate General of Taxes is obliged to make a decision on the objection within a maximum period of 12 months from the date the objection letter is received. Disputes regarding customs and excise, like disputes over central tax collection, must first be resolved through an administrative objection to the Director General of Customs and Excise before appealing to the Tax Court. The regional head is required to make a decision within a maximum period of 12 months from the receipt of the objection letter, as stipulated in Article 104 paragraph (1) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies (PDRD Law) in conjunction with Article 90 paragraph (3) of Government Regulation Number 35 of 2023 concerning General Provisions on Regional Taxes and Regional Levies. Regarding regional tax complaints, the regional head or designated official is required to make a decision within a maximum period of six months. If the DJP, DJBC, and local government do not make a decision within the specified period, the objection is considered granted, as stipulated in Article 26 paragraph (5) of the KUP Law in conjunction with Article 104 paragraph (3) of the PDRD Law.

30 Ibid., p. 39.

31 Muhammad Djafar Saidi, *Op.Cit.*, p. 12-13.

32 Binsar Sitorus, "Independensi Hakim Dalam Sistem Peradilan Pajak Di Indonesia", *Jurnal Yuridika*, Volume 28 Nomor 1, 2013, h. 29-43. <https://ejournal.unair.ac.id/YDK/article/view/5714/3610>.

33 https://karya.brin.go.id/id/eprint/15242/1/Jurnal_Tomson%20Situmeang_Universitas%20Kristen%20Indonesia_2022-5.pdf

expedited procedure. There is no fundamental difference between standard procedure and expedited procedure in the examination at the Tax Court. Unlike the Administrative Court, there are differences in the panel composition and examination schedule for the expedited process^[38].

All provisions related to examination under standard procedure apply equally to examination conducted under expedited procedure in the Tax Court. The examination referred to as expedited procedure in the Tax Court is conducted without an appeal statement, response letter, or objection letter.

The next phase is the announcement of the decision, which must be conducted in an open court session. The Tax Court's decision is definitive and has enduring legal authority, thus it cannot be subject to lawsuits, appeals, or cassation. The decision can only be reviewed by the Supreme Court.

3. Legal Efforts for Judicial Review at the Supreme Court

The tax court system does not permit cassation. This is stipulated in Article 80 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court. A request for judicial review may be filed with the Supreme Court against a Tax Court decision, as stipulated in Article 77 paragraph (2) of the Tax Court Law.

The impossibility of cassation was one of the main topics discussed in the Tax Court Bill. Several factions criticized this, including the TNI/Polri faction, the United Development faction, and the Democracy and Love for the Nation faction.³⁹ These three factions questioned the feasibility of cassation against Tax Court decisions, which they deemed deviated from the applicable legal framework.

The government responded by emphasizing that tax disputes require a swift and effective resolution mechanism. The existence of cassation raises concerns about the length of the dispute resolution process. This is due to concerns that parties may file for judicial review after the cassation decision is issued^[40]. Furthermore, cassation can only assess issues of legal application. A judicial review can reassess both legal and factual elements.

Therefore, the government believes that the only acceptable legal remedy is a judicial review because it can fulfill the objectives of the cassation process^[41]. This government view is not entirely incorrect.

Philosophically, there is a functional difference between a cassation and a judicial review; a judicial review primarily assesses facts based on new evidence or circumstances (novum)^[42]. However, in practice and regulation, a judicial review can also reassess aspects of the application of the law that fundamentally fall under the jurisdiction of the cassation court. This is due to provisions in many laws and regulations, including the Supreme Court Law, the Criminal Procedure Code, and the Military Courts Law, which stipulate that the basis for filing a judicial review is a clear error or mistake by

the judge.

The prevalence of these errors or mistakes has resulted in a large number of judicial review applications in Indonesia, prolonging the dispute resolution process. Consequently, a judicial review can be considered a "second cassation," further lengthening the dispute resolution process^[43].

Article 77 paragraph (3) of Law Number 14 of 2002 concerning the Tax Court stipulates that a judicial review may be filed by "a disputing party." This provision, although implicit, indicates that judicial reviews can also be filed by tax authorities, including the Directorate General of Taxes, the Directorate General of Customs and Excise, and local governments, as tax authorities are one of the parties to disputes before the Tax Court.

The tax authority's position as a state administrative body or official capable of filing a judicial review has been questioned following Constitutional Court Decision No. 24/PUU-XXII/2024. The Constitutional Court's ruling on Article 132 of Law No. 5 of 1986 concerning State Administrative Courts stipulates that judicial reviews cannot be filed by state administrative bodies or officials. This ruling, although not referring to Article 77 paragraph (3) of the Tax Court Law, raises the question of whether Tax Court decisions are part of state administrative courts and therefore binding. The question that arises is whether only taxpayers can file a Tax Court decision, but not tax officials. This question was also raised by Constitutional Justice Daniel Yusmic Foekh in his dissenting opinion.

In a dissenting opinion, Daniel Yusmic Foekh emphasized that the exclusion of state administrative bodies or officials from those eligible to file for judicial review, as stipulated in Article 132 of the State Administrative Court Law, would also impact the parties mentioned in the Tax Court Law. This indicates that tax authorities are not permitted to file for judicial review^[44].

c. Tax Court Organization



Fig 2: Schematic Diagram of the Organizational Structure of the Tax Court^[45]

38 The expedited proceedings at the Tax Court differ from the expedited proceedings at the State Administrative Court (PTUN). Under Article 98 of the PTUN Law, expedited proceedings at the PTUN are only applied to urgent state administrative disputes, namely cases requiring immediate resolution to avoid greater or irreparable losses. The examination is conducted by a single judge. The deadline for responses and submission of evidence for both parties is set at no more than 14 days.

39 Buku 1 Proses Pembahasan Rancangan Undang-Undang tentang Pengadilan Pajak, p. 131 dan p. 231.

40 Risalah Sidang Jawaban Pemerintah atas Pandangan Umum DPR RI mengenai Rancangan Undang-Undang tentang Badan Peradilan Pajak, Rapat Paripurna DPR-RI, tanggal 22 Februari 2001, p. 263 dan p. 265.

41 Buku 1 Proses Pembahasan Rancangan Undang-Undang tentang Pengadilan Pajak, p. 264- 265.

42 Binziad Kadafi, 2023, *Peninjauan Kembali: Koreksi atas Kesalahan dalam Putusan*, Kepustakaan Populer Gramedia, Jakarta.

43 Ibid.

44 Putusan Mahkamah Konstitusi Nomor 24/PUU-XXII/2024, p. 48-49.

45 Liza Farihah, dkk., op.cit., p. 60.

The Tax Court Law mandates the president to appoint a chief justice and deputy chief justice from among judges recommended by the minister, subject to the approval of the Chief Justice of the Supreme Court. This provision was previously explained in Constitutional Court Decision Number 10/PUU-XVIII/2020. The Constitutional Court Decision stated that the Ministry of Finance's directive to the Tax Court did not imply the ministry's involvement in the appointment of the chief justice and deputy chief justice.

This is due to the autonomy of judges in exercising judicial authority. Constitutional Court Decision Number 10/PUU-XVIII/2020 mandates the president to appoint a chief justice and deputy chief justice from among judges recommended by the minister, subject to the approval of the Chief Justice of the Supreme Court. This decision grants the Tax Court considerable authority to determine its own organizational structure. Article 7 of the Tax Court Law stipulates that the leadership of the Tax Court consists of a chief justice and a maximum of five deputy chief justices. The elucidation of Article 7 of the Tax Court Law stipulates that the number of deputy chief justices may be more than one. This provision depends on the number of tax disputes that need to be resolved ^[46].

If a deputy chief justice is no longer able to handle the large number of tax disputes, an additional deputy chief justice is required. The Tax Court is currently led by a chairman and three vice-chairmen: a chairman and vice-chairman for judicial matters, a vice-chairman for non-judicial matters, and a vice-chairman for the development and oversight of judge performance.

The roles of the vice-chairman and secretary in the Tax Court differ from those of the vice-chairman and secretary in the State Administrative Court.

The presence of multiple vice-chairmen in the Tax Court and the role of the secretary, who also performs clerkship duties, must be considered in the transfer of the Tax Court to the Supreme Court.

A key aspect of this section is the change in the number of vice-chairmen in the Tax Court. The appointment of the Vice-chairmen of the Tax Court is currently based on the division of authority and responsibilities, specifically in the judicial, non-judicial, and oversight domains, as well as the domain of judicial performance improvement.

The increase in the number of vice-chairmen in the Tax Court, as previously described, depends on the number of tax disputes requiring resolution, as stipulated in the Tax Court Law. The current requirements do not align with the provisions set out in the legislation.

Furthermore, if adjustments are made taking into account the jurisdiction of the tax office, comprehensive interviews with informants indicate that the highest number of taxpayers filing lawsuits with the Tax Court are in Jakarta, Yogyakarta, and Surabaya. This situation indicates that the distribution of respondents among tax office regions is uneven across Indonesia. Consequently, changing the number of deputy chairpersons by tax office region is also inappropriate. The division of responsibilities among the deputy chairpersons, which encompasses the judicial and non-judicial domains, as well as the supervision and guidance of judges' performance, appears to be based on the premise that the Tax Court requires a supervisory and coaching role at the leadership level for both the judicial and non-judicial domains, as well as for the

evaluation of judges' performance. Within the overall court structure, this function is carried out through a hierarchical system that includes the courts of first instance, the courts of appeal, and the directorate general of the Supreme Court.

d. Compatibility of the Tax Court with the Judicial System

Since its inception, the Tax Court has exhibited several important differences from other judicial bodies. These differences are as follows: 1. Judicial Personnel System. Tax judges are appointed based on tenure, rather than through a conventional judicial career path. This imbalance can create difficulties in the transition of the staffing system under the Supreme Court. Consequently, the tax judge position framework requires modification to align with the judges' career development system; 2. Organizational Framework. The roles of the substitute secretary and the secretary who performs administrative duties differ from those of other courts, which have separate clerk and secretary positions; 3. Procedural Jurisprudence. The Tax Court has a unique level of legal remedies, specifically judicial review, without appeal or cassation, which distinguishes it from other judicial systems; 4. Composition of the Judicial Panel. The current composition of tax judges is largely composed of civil servants from the Ministry of Finance who do not have a legal background. This presents an obstacle to harmonizing legal positions in trials, which can affect the quality of Tax Court decisions; 5. Compensation Framework. Tax judges and Tax Court employees receive a different salary and allowance structure than courts under the Supreme Court. The remuneration system is governed by separate regulations, separate from the general remuneration guidelines for judges. This can lead to complications during the transfer process.

Closing

Conclusion

The Tax Court has distinct characteristics from the four judicial bodies under the Supreme Court: the General Court, the Religious Court, the Military Court, and the State Administrative Court. These differences include the Tax Court's organizational structure, the judicial staffing system, the composition of the panel of judges, and the procedural law.

Suggestion

The Tax Court as a special court within the State Administrative Court under the Supreme Court should have the same characteristics as other courts in general.

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