



## **DECISION**

**Case Number 004/PUU-II/2004**

**FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA**

Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in a case of petition for judicial review of the Law of the Republic of Indonesia Number 14 Year 2002 regarding the Taxation Court, (hereinafter referred to as the Tax Court Law) against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

**PT. APOTA WIBAWA PRATAMA**, represented by Ir. Cornelio Moningka Vega, MBA., Indonesian citizen, occupation: Director of PT. Apota Wibawa Pratama, domiciled at AKA Building 2<sup>nd</sup> Floor, Jl. Bangka Raya No. 2, South Jakarta, in this matter giving a power of attorney to Denny Palilingan, SH, Advocate and Attorney at Law, having his offices at Jalan Diponegoro No. 105 Manado and at Jalan Tirtayasa I No. 13, South Jakarta, based on a

Special Power of Attorney dated February 5,  
2004 hereinafter referred to as **PETITIONER;**

Having read the petition of the Petitioner;

Having heard the statement of Petitioner;

Having heard the statement of the Government;

Having read the written statement of the Government and the People's  
Legislative Assembly of the Republic of Indonesia;

Having examined the evidence;

Having heard the statements of Experts;

### **LEGAL CONSIDERATIONS**

Considering whereas the purpose and objective of the *a quo* Petitioner are  
as mentioned above.

Considering whereas that prior to examining the substance or the principal  
issue of the case as petitioned by the Petitioner, the Constitutional Court needs  
to first take the following matters into account:

1. The authority of the Court to examine the petition of the *a quo* Petitioner,
2. The legal standing of the *a quo* Petitioner.

## **1. Authorities of the Constitutional Court**

Considering whereas pursuant to the provisions of Article 24C Paragraph (1) of the 1945 Constitution and Article 10 Paragraph (1) of Law Number 24 Year 2003, the Court has the authority to hear at the first and final level to the decision of which shall be final in conducting the review a law against the 1945 Constitution. The Petitioner filed a petition for judicial review of Law Number 24 Year 2002 regarding the Taxation Court against the 1945 Constitution. Notwithstanding any dissenting opinion among the Constitutional Court Justices regarding Article 50 of Law Number 24 Year 2003, the Court has the authority to examine the *a quo* Petition.

## **2. Legal Standing of the Petitioner**

Considering whereas pursuant to Article 51 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court, the parties who may file a petition are those whose constitutional right or authority has been impaired by the coming into effect of a law, namely an individual Indonesian citizen, a customary law community unit so long as it is still in existence and in accordance to the development of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in law, a public or private legal entity, or a state institution. Therefore, in order to have the legal standing before the Court in the petition for judicial review of a law, the Petitioner must first explain the following:

- a. Qualification of the petitioner whether as an individual Indonesian Citizen, a customary law community unit, a public or private legal entity, or a state institution.
- b. The impairment of his constitutional right and/or authority due to the coming into effect of the *a quo* law.

Considering whereas the Petitioner is PT Apota Wibawa Pratama, in this matter represented by Ir. Cornelio Moningka Vega, MBA as Director, therefore the Petitioner meets the qualification set forth in Article 51 Paragraph (1) of Law Number 24 Year 2003, namely as a private legal entity;

Considering whereas as a private legal entity the Petitioner has been harmed by the coming into effect of Law Number 14 Year 2002 regarding the Taxation, the formulation and substance of which according to the Petitioner are contradictory to the 1945 Constitution;

Considering whereas based on the argument of the *a quo* Petitioner the Court is of the opinion that the Petitioner has the legal standing to file a petition for judicial review of a law to the Constitutional Court;

## **PRINCIPAL ISSUE OF THE CASE**

Considering whereas the Petitioner argued that Law Number 14 Year 2002 has been formulated by ignoring the formal aspect namely by, not following the process and procedures of drafting according to the legal norms, namely the absence of academic text, absence of consideration and legal study whether in terms of legal norms or the legal principles prevailing in the State of the Republic of Indonesia by the Minister of Justice, absence of dissemination or absence of the principle to be known by the general public/taxpayers, therefore making it legally defective;

Considering whereas the Court is of the opinion that the argument presented by the Petitioner is a matter that needs to be carried out in formulating a law, but which does not constitute a requirement set by the 1945 Constitution, therefore causing the lawmaking invalid if it is not carried out;

Considering whereas the Petitioner stated that Law Number 14 Year 2002 regarding the Taxation Court has deprived the person/taxpayer of their basic rights since it was created merely to increase tax sources, the Court is of the opinion that with the existence of Law Number 14 Year 2002, any tax dispute shall be resolved by a purely judicial process since in the past tax disputes were resolved by a quasi-judicial institution namely the Tax Consideration Court which was later superseded by the Tax Dispute Settlement Agency, which does not belong to the jurisdiction of the Supreme Court. A purely judicial process will better protect the rights of taxpayers compared to a quasi-judicial process;

Considering whereas as a judicial institution, the Tax Court has a special characteristic because its authority concerns taxes as a compulsory collection by the state. Tax disputes that fall under the authority of the Tax Court are disputes between taxpayers and the Official as the government representative who exercises the state power due to a tax stipulation;

Considering whereas tax payment is an obligation for all citizens and resident foreigners of Indonesia, in which the state has the authority to compel the payment of an outstanding tax arising upon the occurrence of the events or things determined by the tax law, the amount of the outstanding tax being in accordance with the prevailing tax law. The outstanding tax is not incurred as a penalty or punishment against the taxpayer or due to the existence of a civil relationship between the taxpayer and the state, but merely due to the existence of the taxpayer's obligation. One of the principles of fairness in tax collection is that "the taxpayer performs a self-assessment on the payable tax due " and "tax shall be collected promptly after the tax becomes payable and the collection shall not be delayed", since such delay may impose a heavier burden on the taxpayer;

Considering whereas a prompt tax collection method is a system not to burden the taxpayer, since delaying tax payment may cause an accumulation of tax payments which will eventually become a burden to taxpayers. From the State finance aspect, direct and fast tax payment will increase the flow of State finance fund, so that the State can immediately also have a fresh fund source to fund state obligations;

Considering whereas therefore timely tax payments have two aspects namely to accommodate the taxpayer and to guarantee fund availability for the state to fund its duties or obligations, and not to serve the mere interest of the executive *cq.* the Director General of Taxation as argued by the Petitioner. The special nature of the tax law is also reflected in the tax dispute settlement process in the tax court;

Considering whereas the Petitioner argued the Article 1 Paragraph (7) of the *a quo* law is contradictory to Article 24, Article 27 and Article 28A through Article 28J of the 1945 Constitution, but the Petitioner did not specifically provide any reason as to why Article 1 Paragraph (7) of the *a quo* law which contains the definition of “lawsuit” in the *a quo* law is contradictory to the Articles of the 1945 Constitution that he referred to. The Petitioner simply based his reason on what he said to be “the Petitioner’s confusion in the procedural law process of the Tax Court since according to the Petitioner the articles were not drafted systematically” as stated by the petitioner in his petition. The Court is of the opinion that there is no sufficient reason to declare Article 1 Paragraph (7) to contradictory to the Articles of the 1945 Constitution referred to by the Petitioner.

Considering whereas the Petitioner stated that Article 2 of the *a quo* law overlapped with Article 36 Paragraph (4) and claimed that the existing obligation to pay 50% already constituted a verdict and an assumption of guilt and therefore this Article 36 Paragraph (4) contravenes the Constitution. The Court is of the opinion that the opinion of the Petitioner, stating the obligation to first pay the

50% tax prior to filing an appeal as required by Article 36 Paragraph (4) to be a verdict so that it contradicted the principle of presumption of innocence, is incorrect. The tax court is not a criminal judiciary which decides on the guilt or innocence of a person under the criminal law, but rather, it determines the correct implementation of the tax law. Therefore, the principle of presumption of innocence in the criminal sense is not relevant to the tax court. The obligation to pay 50% is not based on a verdict of criminal guilty or a penalty, but rather as a partial payment of the outstanding tax of the taxpayer as well as a requirement for filing an appeal. If it transpires that the Tax Court decision stipulates the disputed outstanding tax amount of the taxpayer to be lower, then the state will be obliged to return the difference; likewise, if the amount turns out to be greater, the taxpayer shall only pay up the difference. If the state has to return a payment difference, it will even be obligated by law to pay a monthly interest of 2% as set forth in Article 87 of the *a quo* law;

Considering whereas the Petitioner argued that the decision passed against the Petitioner was made by a judge that did not comply with Article 24A of the 1945 Constitution, therefore the legal force of the decision was legally defective. The Petitioner did not describe clearly what he meant by the deciding judge being non-compliant with Article 24A of the 1945 Constitution, since Article 24A of the 1945 Constitution provides for the Supreme Court, which had no relation to the judge who passed the decision on the *a quo* petition;



Considering whereas the Petitioner argued that with the existence of Article 33 paragraph (1) in conjunction with Article 77 Paragraph (1) of the *a quo* law the Tax Court did not comply with the basic legal principle of the state since appeal or cassation remedies are unavailable against the decision of the Taxation Court and there is only direct judicial review, therefore said two Articles contravene with the judicial process pursuant to Law Number 14 Year 1970 which was amended with Law Number 35 Year 1999. In relation to the existence of the presented submitted by the Petitioner, the authority of the Court is to review a law against the Constitution and not to review the conformity of one law with another. The Court is of the opinion that the Tax Court process under the *a quo* law is the same as the examination process at the State Administration High Court due to the availability of an administrative appeal effort for justice seekers. Taxpayers have the remedy to state an objection to a tax stipulation to a higher agency within the ranks of the Directorate General of Taxation;

As for the opinion of the Petitioner that the unavailability of a cassation effort at the Tax Court has caused the law *a quo* to be invalid, the Court is of the opinion that although no formal cassation effort may be pursued against a Taxation Court decision due to Article 77 Paragraph (3) of the *a quo* law, substantially the cassation review by the Supreme Court will be done indirectly. This is due to the fact that one of the reasons that could be used to file for a judicial review pursuant to Article 91 Sub-Article (e) of the *a quo* law is when a decision clearly does not comply with the prevailing legislative provisions. The basis of this reason is substantially the same as the reason for filing a cassation

mentioned in Article 30 of Law Number 14 Year 1985 regarding the Supreme Court which was amended with Law Number 5 Year 2004 which states that cassation shall be filed for the following reasons: (a) the court has no authority or acted beyond the limits of its authority, (b) the court has misapplied or violated a prevailing law, (c) negligence in meeting the terms obligated by the legislation that would penalize the negligence by canceling the decision in question;

Considering whereas the basis for canceling the decision at the cassation level is certainly contained in the legislation, so that in substance, another judicial review of the Tax Court Law as contained in Article 91 Sub-Article e is the same as the substance of the cassation. Although Article 24A Paragraph (1) of the 1945 Constitution states that the Supreme Court has the authority to examine at the cassation level, however this does not mean that to determine that the judicial environment culminates with the Supreme Court; an option to file for a cassation should always be kept open for every case decided upon by the court in question;

Considering whereas Article 22 of Law Number 4 Year 2004 regarding Judicial Power states that any court decision at the appellate level may be filed for cassation to the Supreme Court by the related parties, *unless the law determines otherwise*. The Court is of the opinion that the absence of cassation remedies at the Tax Court does not mean that the Tax Court does not culminate with the Supreme Court. The existence of the provision of Article 5 Paragraph (1) of Law Number 14 Year 2002 regarding the Tax Court which states that judicial

technical guidance for the Tax Court shall be undertaken by the Supreme Court, Article 77 Paragraph (3) states that parties in dispute may file for a judicial review of the Tax Court decisions to the Supreme Court, and Article 9A of Law Number 9 Year 2004 regarding Amendment to Law Number 5 Year 1986 regarding the State Administration Court which states that within the State Administration Court, a special condition may be provided with a law, are sufficient grounds that the Tax Court falls under the Jurisdiction of the Supreme Court as specified by Article 24 Paragraph (2) of the 1945 Constitution. The reason of the Court above may also be used as the basis for considering the to argument of the Petitioner that Article 80 Paragraph (2) which states that no further suit, appeal and cassation may be filed against on a Tax Court decisions, contravenes the 1945 Constitution;

Considering whereas the Court has stated its opinion in responding to the arguments of the Petitioner as mentioned above and regarding other matters expressed by the Petitioner but the Court did not give any consideration on the matters since they were not relevant for review by the Court according to its authority. With the above considerations, the Court is of the opinion that the petition of Petitioner is groundless, and therefore must be rejected;

In view of Article 56 Paragraph (1) of Law Number 24 Year 2003 regarding the Constitutional Court;

### **PASSING THE DECISION**

**To declare that the petition of Petitioner is rejected;**

**Dissenting Opinion:**

Considering whereas with respect to the abovementioned decision of the Court, Constitutional Court Justices Prof. Dr. H.M. Laica Marzuki, SH, Prof. H. A. Mukthie Fadjar S.H., MS and Maruarar Siahaan, SH had a dissenting opinion as follows:

With regard to the majority opinion of the court justices in the principal issue of the case, we express a dissenting opinion regarding the petition for judicial review of Law Number 14 Year 2002 regarding the Tax Court, as follows:

1. Whereas Law Number 14 Year 2002 regarding the Tax Court enacted on April 12, 2002 is a law enacted following the coming into effect of the Third Amendment to the 1945 Constitution on November 9, 2001, the said amendment include the changes in the judicial power as mentioned in Article 24 Paragraph (1) and Paragraph (2) of the 1945 Constitution which state that: (1) Judicial power shall be an independent power to organize the judicial administration to uphold law and justice. (2) Judicial power shall be exercised by a Supreme Court and its inferior courts, in the jurisdictions of general courts, the religious affairs courts, the military tribunal, the state administration courts, and by a Constitutional Court. Therefore, the Tax Court Law should refer to and must not contravene Article 24 of the 1945 Constitution, which constitutes a part of an

- independent judiciary and should be under one of the jurisdictions under the Supreme Court;
2. Whereas Law Number 14 Year 2002 regarding the Tax Court has no clear position under any jurisdiction, up to the enactment of Law Number 9 Year 2004 regarding Amendment to Law Number 5 Year 1986 regarding the State Administration Court which stated that “Specialization may be made within the State Administration Court jurisdiction with a law,” the elucidation of which mentions that “Referred to by “special circumstances” is the differentiation or specialization within the state administration jurisdiction, such as the tax court”.
  3. Since the Tax Court is included under Special Court within the State Administration Jurisdiction, any judicial body that fall under the judicial power system pursuant to the 1945 Constitution, must be subject to the ranks of technical judicial oversight in the form of ordinary legal remedies, such as appeal and cassation, and shall in terms of organizational administration fall under the oversight of a hierarchical higher court under the Supreme Court, namely the State Administration Court (PTUN) and State Administration High Court (PTTUN). In Law Number 14 Year 2002 regarding the Tax Court, it is evident that the legal remedies which may be taken only take the form of extraordinary legal remedies, namely judicial review; furthermore, there are no indicators that the PTUN and the PTTUN have any access to supervise the Tax Court. Even the provision of Article

- 5 Paragraph (2) of the *a quo* law which stated that “Organizational, administrative, financial guidance for the Tax Court shall be conducted by the Department of Finance”, while the *a quo* law was enacted after Law Number 35 Year 1999 which also constitute one of its legal bases which have asserted that the technical guidance of the jurisdiction, and organizational, administrative and financial guidance shall be conducted by the Supreme Court;
4. Whereas the provision set forth in Article 36 Paragraph (4) of the Tax Court Law which requires initial payment of 50% of the indebted tax for any appeal remedy to be filed to the Tax Court to constitutes a violation of the right to fair legal guarantee which constitutes one of the human rights protected by the 1945 Constitution. The provision has closed up access to justice seekers (*justisiabelen*) who cannot afford to pay the 50% requirement to obtain a second opinion in the form of an appeal remedy against an unfair decision served to him, a right guaranteed and protected by the 1945 Constitution, namely the right to be heard and considered, whether in terms of arguments or evidence presented before an independent and impartial judicial body as a manifestation of the principle of *audi et alteram partem*;
  5. Based on the foregoing, it can be said that Law Number 14 Year 2002 regarding the Tax Court does not meet the requirements with respect to the judicial powers as referred to in Article 24 of the 1945 Constitution and even

contravenes it. Therefore, Law Number 14 Year 2002 should be declared as not having any binding legal effect, and be recommended for revision to be in accordance with the judicial power system pursuant to the 1945 Constitution;

Hence the decision was made in the Consultative Meeting of the Constitutional Court Justices on **Wednesday, December 8, 2004**, and was pronounced in a Plenary Session of the Constitutional Court open for the public on this **Monday, December 13, 2004** by us: **Prof. Dr. Jimly Asshiddiqie, S.H.**, as the Chairman and concurrent Member, accompanied by: **Prof. H.A. Mukthie Fadjar, S.H., M.S., Soedarsono, S.H., Dr. Harjono, S.H., MCL., H. Achmad Roestandi, S.H., I Dewa Gede Palguna, S.H., M.H., and Maruarar Siahaan, S.H.**, respectively as Members and assisted by **Cholidin Nasir, S.H.**, as Substitute Registrar, and in the presence of the Petitioner/his Attorney and the government.

CHIEF JUSTICE

signed

**Prof. Dr. Jimly Asshiddqie, SH.**

JUSTICES

Signed

**Prof. Dr. H.M. Laica Marzuki, SH.**

signed

**Prof. H.A.S. Natabaya, SH. LLM.**

Signed

**Prof. H.A. Mukthie Fadjar, S.H., M.S.**

Signed

**Soedarsono, S.H.,**

Signed

**Dr. Harjono, S.H., MCL.,**

signed

**H. Achmad Roestandi, S.H.**

Signed

**I Dewa Gede Palguna, S.H., M.H.,**

Signed

**Maruarar Siahaan, S.H.**

SUBSTITUTE REGISTRAR

**Cholidin Nasir, S.H.**