



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF
INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 26/PUU-XXI/2023**

Concerning

**Organizational, Administrative, and
Financial Oversight of the Tax Court**

Petitioners	: Nurhidayat, Allan Fatchan Gani Wardhana, and Yuniar Riza Hakiki
Type of Case	: Judicial review of Law Number 14 of 2002 concerning the Tax Court (Law 14/2002) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Judicial review of Article 5 paragraph (2) of Law 14/2002 against Article 1 paragraph (3), Article 24 paragraph (1), Article 24 paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution
Verdict	: <ol style="list-style-type: none">1. To declare Petitioner II's petition inadmissible;2. To grant Petitioner I and Petitioner II's petition in part;3. To declare that the phrase "the Department of Finance" in Article 5 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court (State Gazette of the Republic of Indonesia of 2002 Number 27, Supplement to the State Gazette of the Republic of Indonesia Number 4189) is contrary to the 1945 Constitution and has no legal binding force to the extent that it is not construed as "the Supreme Court which shall be implemented in stages no later than 31 December 2026", so that Article 5 paragraph (2) of Law 14/2002 shall be read in full, "Organizational, administrative and financial oversight for the Tax Court shall be carried out by the Supreme Court which shall be implemented in stages no later than 31 December 2026";4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate;5. To dismiss the remainder of the petition of Petitioner I and Petitioner II.
Date of Decision	: Thursday, 25 May 2023

Overview of Decision :

The Petitioners are individual Indonesian citizens who work as tax advocates, lecturers, and researchers whose constitutional rights, according to reasonable reasoning, have potentially been harmed when proceeding in the Tax Court.

Whereas regarding the authority of the Court, because what is being petitioned for review is law *in casu* Law 14/2002, the Court has the authority to hear the *a quo* petition.

Whereas regarding legal standing, Petitioner I is an advocate specializing in handling tax cases. Petitioner I believes that his constitutional rights have been harmed because to become legal counsel in the Tax Court, apart from being stipulated in Law 14/2002, one must get approvals from the Minister of Finance. This is an impact of the Minister of Finance's authority for the organizational, administrative, and financial oversight of the Tax Court, so that the Minister of Finance has the authority to arrange for an advocate who intends to accompany or represent a client having a dispute with the Directorate General of Taxes, which is under the authority of the Ministry of Finance to proceed at the Tax Court. Apart from that, in handling tax cases, Petitioner I will definitely face the Directorate General of Taxes. Suppose the efforts made by the Directorate General of Taxes will lead to a dispute settlement at the Tax Court, while the position of the Tax Court is under the authority of the Ministry of Finance. In that case, it will certainly create the impression of partiality, especially since Tax Court judges generally are former Director Generals at the Directorate General of Taxes. Provisions of Article 5 paragraph (2) of Law 14/2002 have clearly undermined the independence of a free and independent judicial power, so that in reasonable reasoning, they have harmed Petitioner I's constitutional rights to obtain fair legal certainty in handling cases at the Tax Court because in carrying out his profession to fight for the interests of clients, he remains to be limited by executive power and partiality. Then, Petitioner II is a lecturer teaching Law of Constitution and Constitutional Law and Politics courses. Petitioner II also serves as Head of the Center for Law and Constitutional Studies (PSHK). Petitioner II believes that his constitutional rights have been harmed because, as a lecturer who often teaches the independence of judicial power implemented in judicial bodies, it is taught that it must be free from the intervention of any branch of power, *in casu* executive power. However, it turns out that there is a judicial body, *in casu* the Tax Court which until now has not been entirely handed over to the Supreme Court, so Petitioner II will experience difficulties in explaining to his students why the Tax Court, *in casu* organizational development, administration and finance oversight remains to be at the Ministry of Finance. This is not easy to explain and even cannot be explained by Petitioner II. Furthermore, Petitioner III is a taxpayer who has a Taxpayer Identification Number (NPWP) and proof of filing the 2021 tax return and the 2022 tax return and works as a researcher and serves as Secretary-General at PSHK of Faculty of Law, Indonesian Islamic University (UII). Besides that, Petitioner III is also active in carrying out studies and research, including on a judicial power that is independent and free from any form of intervention. Petitioner III believes that her constitutional rights have been harmed because the enactment of Article 5 paragraph (2) of Law 14/2002, which regulates organizational, administrative, and financial oversight carried out by the Ministry of Finance, has harmed Petitioner III's constitutional rights when she needs to explain and design legal norms regarding ideal tax dispute resolution which is appropriate under the principle of judicial power independence as in the studies of PSHK, UII.

Whereas regarding the description of the Petitioners' legal standing, in the Court's opinion, Petitioner I, who describes that he is an advocate and has handled taxation issues in the tax court, and Petitioner III, who describes that she is a taxpayer, have been able to specifically describe their constitutional rights, which is presumed, in the opinion of Petitioner I and Petitioner III, to have been actually or potentially harmed by the enactment of the norm of Article 5 paragraph (2) of Law 14/2002. In addition, it is *evident* that there is a causal relationship (*in casu*) between the presumed loss and the enactment of the norm of the law being petitioned for review. If the petition is granted,

the presumed actual and potential loss, as described by Petitioner I and Petitioner III, does not and will no longer occur. Thus, regardless of whether the arguments of Petitioner I and Petitioner II's petitions are proven or not, in the Court's opinion, Petitioner I and Petitioner III have the legal standing to act as Petitioners in the *a quo* petition. Meanwhile, regarding Petitioner II, the Court is of the opinion that the existence of the provisions of the norm of the article being petitioned for review has not harmed the constitutional rights of Petitioner II as a lecturer because Petitioner II has no obstacles in giving lecture materials to his students regarding the enactment of a law, nor he can judge whether norms for the laws being taught are unconstitutional. Therefore, in the Court's opinion, Petitioner II cannot act as a Petitioner in the *a quo* petition.

Because the Court has the authority to hear the *a quo* petition and Petitioner I and Petitioner III (hereinafter referred to as the Petitioners) have the legal standing to submit the *a quo* petition, the Court will then consider the subject matter of the petition.

Whereas before assessing the constitutionality of the norm of Article 5 paragraph (2) of Law 14/2002, the Court will first consider the Petitioners' petition in relation to the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Judicial Review Cases (PMK 2/2021), whether or not the *a quo* norms may be re-submitted for review. The Court has carefully read the material of the Petitioners' petition and compared it with previous petitions which have reviewed the unconstitutionality of the norm of Article 5 paragraph (2) of Law 14/2002, namely Case Number 10/PUU-XVIII/2020 which reviews the constitutionality of the norm of Article 5 paragraph (2) of Law 14/2002 on the review basis of Article 24 paragraph (1), Article 28D paragraph (1), and paragraph (2) of the 1945 Constitution, and Case Number 57/PUU-XVIII/2020 which reviews the constitutionality of the norm of Article 5 paragraph (2) of Law 14/2002 on the review basis of Article 1 paragraph (3), Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution. In this case, the *a quo* petition uses the review basis of Article 1 paragraph (3), Article 24 paragraph (1) and paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution, which partly has been used in Cases Number 10/PUU-XVIII/2020 and Number 57/PUU-XVIII/2020. However, the review of the norm of Article 5 paragraph (2) of Law 14/2002 in the two petitions uses different reasons for the petitions, and the decisions of the two cases declare that the petitions inadmissible so that the subject matter of the petitions have not been considered. Thus, the Court is of the opinion that the *a quo* petition is not prevented by the provisions of Article 60 paragraph (2) of the Constitutional Court Law and Article 78 of PMK 2/2021, so that the provisions of the *a quo* norm may be re-submitted for review.

After the Court has carefully read the Petitioners' petition along with the evidence submitted, regarding the subject matter of the petition, the Court considers, in essence, that the judicial body in the field of taxation carried out by the Tax Court as a special court has a very strategic position, because its decisions affect the level of taxpayer compliance and the increase in state's revenues of taxes. Accordingly, the organizers must be competent, honest, fair, and authoritative. The existence of special requirements to become a Tax Court judge apart from those stipulated in Article 9 paragraph (1) of Law 14/2002 makes the Tax Court a court whose judges and staff are required to have particular expertise, for example, in the field of taxation or customs and excise. Tax court judges functionally have the primary position in carrying out the functions of judicial power as judges in other judicial bodies because this is also mandated in the Indonesian Constitution that judicial power consisting of the functions of each judicial body is carried out under the provisions of laws. This means that in implementing the functions of judicial power, judges must be professional in carrying out the scope of obligations and duties provided in statutory regulations. Besides judges, all parties integrated within judicial bodies are also expected to have sufficient competence and be honest in carrying out their duties, which are integrally under the auspices of an oversight body that is intact and inseparable. However, the requirements for realizing

the independence of judicial bodies, which should always be systemically integrated, are, in fact, only limited to ideals and enthusiasm because, factually, the Tax Court has so far been carried out by two different institutions, on the one hand, it is subject to technical judicial oversight carried out by the Supreme Court, but on the other hand other obligations regarding organization, administration, and financial oversight, are subject to the Ministry of Finance. The existence of the dualism of oversight authority at the Tax Court then creates a mixed oversight of the judicial institution, which should be integrated into one institution carrying out the functions of judicial power and separated from the interference of the executive or any power. This is because, universally, the meaning of oversight is to *provide* technical guidance, both judicial and non-judicial, which potentially overlap given that they cannot be separated from one another and constitute a unified pillar of the independence of the judicial body. Furthermore, allowing the oversight of the judicial body under non-integrated institutions can affect the independence of the judicial body or at least potentially bring the potential for other institutions to control the implementation of the duties and authorities of the judicial body *in casu* the Tax Court. Even if it only deals with organization, administration, and finance, the Tax Court cannot optimally carry out its duties and authorities independently. Moreover, in the perspective of the country of laws and its connection with judicial systems and law enforcement processes to *provide* justice and also legal certainty for justice seekers, strengthening the position of the judicial body as an integral implementation of the concept of the country of laws which aspires the supremacy of laws and fair law enforcement, is a fundamental element. Regarding the existence of the Tax Court, it is a special court under the State Administrative Court, which is in line with the Decision of the Constitutional Court Number 6/PUU-XIV/2016, pronounced in a plenary session open to the public on 4 August 2016. In accordance with the excerpt of the legal considerations of the *a quo* decision, the Court reinforces that the Tax Court is part of the judicial power stipulated in Article 24 of the 1945 Constitution so that it is included in the scope of the judicial body under the Supreme Court. Thus it is necessary to implement a “one-roof system” in which the judicial technical oversight and organizational, administrative, and financial oversight are entirely under the Supreme Court's authority without any interference from other institutions.

In line with the existence of a one-roof judicial system, after the Court examines the *evidence* submitted by the Petitioners, it is also *evident* that Law 14/2002 is in the process of deliberating the Draft Law on the Tax Court, in which Article 5 of the *a quo* Bill is formulated as follows:

- (1) Judicial technical oversight for the Tax Judicial Body is carried out by the Supreme Court;
- (2) Organizational, administrative, and financial oversight of the Tax Judicial Body is carried out by the Ministry of Finance;
- (3) The oversight, as referred to in paragraph (2), will be transferred to the Supreme Court in stages;
- (4) The oversight, as referred to in paragraph (1) and paragraph (2), must remain to guarantee the Judges' freedom in examining and deciding tax disputes.

The *evidence* on the draft law further convinces the Court that the legislators intended to ideally put in stages the entire oversight of the Tax Court under one roof, namely under the Supreme Court. Likewise, the legal considerations in the Decision of the Constitutional Court Number 6/PUU-XIV/2016 have also explicitly reminded legislators to consider putting the entire oversight of the *a quo* Tax Court under the Supreme Court. However, until now, legislators have not realized this, so the Court concludes that it is reasonable in the *a quo* case decision to determine a definite time limit for legislators rather than messages only as in the previous Court decision. In this regard, the Court needs to stipulate a definite limit of no later than 31 December 2026. It is considered a fair and rational time limit to integrate the supervisory authorities of the Tax Court under one roof which is the Supreme Court. Therefore, since the decision on the *a quo* case is pronounced, the stakeholders shall immediately prepare, in stages,

regulations regarding all legal needs, including procedural law, to improve the professionalism of the Tax Court human resources and prepare other matters related to the integration of authority under the Supreme Court. Thus, no later than 31 December 2026, all Tax Court administration will have been under the Supreme Court. In accordance with all descriptions of the legal considerations above, it is *evident* that the provisions of the norm of Article 5 paragraph (2) of Law 14/2002 have created legal uncertainty and injustice, as argued by the Petitioners. However, because the interpretation petitioned by the Petitioners in their *petitum* differs from the interpretation made by the Court as stated in the verdict of the *a quo* case, the argument of the Petitioners' petition is legally justified in part.

In accordance with all of the above considerations, the Court subsequently passes down a decision that states:

1. To declare Petitioner II's petition inadmissible;
2. To grant Petitioner I and Petitioner II's petition in part;
3. To declare the phrase "the Department of Finance" in Article 5 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court (State Gazette of the Republic of Indonesia of 2002 Number 27, Supplement to the State Gazette of the Republic of Indonesia Number 4189) is contrary to the 1945 Constitution and has no legal binding force to the extent that it is not construed as "the Supreme Court which shall be implemented in stages no later than 31 December 2026", so that Article 5 paragraph (2) of Law 14/2002 reads in full, "Organizational, administrative and financial oversight for the Tax Court shall be carried out by the Supreme Court which shall be implemented in stages no later than 31 December 2026";
4. To order the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate;
5. To dismiss the remainder of the petition of Petitioner I and Petitioner II.