



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 33/PUU-XXII/2024**

Concerning

**Statutory Regulations as the Basis
for Decisions of the Tax Court**

- Petitioners** : **PT. Central Java Makmur Jaya, et al.**
- Type of Case** : Judicial Review of Law Number 14 of 2002 concerning the Tax Court (hereinafter referred to as Law 14/2002) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
- Subject Matter** : The term “statutory regulations” in Article 78 of Law 14/2002 is contrary to the 1945 Constitution
- Verdict** : To dismiss the Petitioners’ petition in its entirety
- Date of Decision** : Monday, 15 July 2024
- Overview of Decision** :

Whereas the Petitioners are legal entities in the form of limited liability companies, in this case each of which is represented by the board of directors who has the legal capacity to represent the company before the court in accordance with their respective Deed of Establishment of the Limited Liability Company and has the constitutional right to obtain fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. Petitioner I and Petitioner III feels disadvantaged by the enactment of the provisions of Article 78 of Law 14/2002 because as a corporate taxpayer, Petitioner I had filed a lawsuit against the Tax Underpayment Assessment Letter (*Surat Ketetapan Pajak Kurang Bayar* or SKPKB) to the Tax Court and the said lawsuit was dismissed by the Panel of Judges of the Tax Court. The legal consideration of the said dismissal was only based on the Decree of the Director General of Taxes which was considered to be a statutory regulation. Meanwhile, Petitioner II as a corporate taxpayer also feels disadvantaged by the enactment of the provisions of Article 78 of Law 14/2002 because he is currently filing a lawsuit regarding the Return of an Application for Reduction or Cancellation of an Incorrect Tax Assessment Letter to the Tax Court and the said lawsuit is potentially decided by the panel of judges based only on statutory regulations, not the law.

Regarding the Court's authority, whereas the Petitioners petition for a review of the constitutionality of statutory norms, *in casu*, Law 14/2002 against the 1945 Constitution, therefore the Court has the authority to decide on the *a quo* petition.

Regarding the legal standing of the Petitioners, the Court considers that the Petitioners have fulfilled the qualifications as a private legal entity which has the right to a guarantee of fair legal certainty as stipulated in Article 28D paragraph (1) of the 1945 Constitution which

according to the Petitioners is considered to be disadvantaged by the enactment of the statutory norms which are being petitioned for review, namely the phrase "statutory regulations" in Article 78 of Law 14/2002. The alleged constitutional loss as referred to is specific and actual for Petitioner I and Petitioner III because their lawsuits have been dismissed by the Tax Court on the basis of legal considerations that are based only on the Decision of the Director General of Taxes which is considered to be a statutory regulation in accordance with the provisions whose constitutionality is being petitioned for review by the Petitioners. Meanwhile, for Petitioner II, the alleged constitutional loss is specific and potential because his lawsuit which has a similar subject matter with the other two previous lawsuits is in the process of being decided at the Tax Court. Therefore, without intending to assess the concrete cases experienced by the Petitioners, the alleged constitutional losses described by the Petitioners have a causal relationship (*causal verband*) with the enactment of the statutory norms for which a judicial review is being petitioned, if the Petitioners' petition is granted, the constitutional loss as described will no longer occur or the potential constitutional loss will not occur. Therefore, regardless of whether or not the unconstitutionality of the norms as argued by the Petitioners is proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas regarding the subject matter of the Petitioners' petition, since the subject matter or the substance of the Petitioners' petition is clear, the Court is of the opinion that there is no urgency and relevance in hearing the statements of the parties as intended in Article 54 of the Constitutional Court Law.

Whereas before considering the constitutionality issue being petitioned for review by the Petitioners, the Court first considers that the phrase "regulated by the law" in Article 23A of the 1945 Constitution essentially emphasizes that the legal basis for imposing taxes and other levies for state purposes must be the law. This is actually a common practice in various countries as expressed by the principle of "*no taxation without representation*" (no tax without regulation by the law), or "*taxation without representation is robbery*" (taxation without regulation by the law is robbery). In relation to this principle, the 1945 Constitution has provided at least 2 (two) perspectives related to the legal basis for the laws on imposing taxes and other compulsory levies for the state purposes. *First*, in general, Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution has regulated that the principle of the sovereignty of the people and the rule of law are the principles of a democratic rule of law (*demokratische rechtsstaat*). The principle of popular sovereignty requires that the administration of the state must always be based on the will of the people, while the teachings of the rule of law require that the administration of the state must be based on the law. Therefore, any provisions that will bind the citizens and/or burden the citizens must obtain the approval of the relevant citizens through their representatives in the parliament. *Second*, Article 28H paragraph (4) of the 1945 Constitution has given a guarantee that "Everyone has the right to have personal property rights and such property rights cannot be taken arbitrarily by anyone". This means that the taking of property rights without the owner's consent is an arbitrary act (*willekeur*). In this context, the taxes and other levies for the state purposes are essentially a transfer of personal (private) property rights to the state (public) which must be carried out in accordance with the law. Therefore, it is clear that the meaning of the phrase "regulated by the law" in Article 23A of the 1945 Constitution is a constitutional order that the law must regulate what (objects) can be subject to tax and other compulsory levies for the state purposes.

Furthermore, regarding the issue currently being faced by the Petitioners related to tax disputes, without the Court intending to assess the concrete case currently being faced by the Petitioners, especially regarding the dispute resolution process at the Tax Court, the Court is of the opinion that if the Petitioners feel disadvantaged due to the enactment of the Regulation of the Minister of Finance which is used as the basis for legal considerations by the Panel of Judges of the Tax Court in deciding the case and the Petitioners believe that there is a material delegation of authority from the law concerning the taxation which according to the Petitioners has given rise to over capacity of power to the Minister of Finance because the

said law not only regulates technical-administrative matters, but also contains the contents of a law, such matters are not within the authority of the Court to assess.

Then, in considering the constitutionality issue as petitioned by the Petitioners, the Court is of the opinion that the Petitioners' intent and purpose are to narrow down the scope of the phrase "statutory regulations" in the field of taxation as one of the legal basis for the making of decisions by the Tax Court, in addition to the results of the assessment of evidence and the Judge's conviction. Therefore, in its legal considerations, the Court essentially considered that the scope of regulations on taxation in Indonesia is very broad, both vertically, which includes several laws in the field of taxation, and horizontally, which also includes various implementing provisions under the law, starting from the Government Regulations, Presidential Regulations, to the Minister of Finance Regulations, and even the Director General of Taxes Regulations and so on, which are of a technical-administrative nature. Therefore, in relation to the constitutionality of regulations in the field of taxation which open up the possibility of being regulated by statutory regulations under the Law, the Court is of the opinion that this may be justified to the extent that the delegation of authority is derived from the law and the content is only technical-administrative in nature.

In addition, the Court also considers that various technical arrangements as stipulated in the statutory regulations under the law may provide clear and specific guidance regarding the interpretation and application of various laws in the field of taxation. Technical tax regulations also provide a more in-depth and technical explanation of how to calculate taxes, which can be an important consideration for the Judges in the Tax Court in resolving any disputes in the field of taxation. Therefore, if the Court acknowledge the Petitioners' argument which interprets the phrase "statutory regulations" to only include the Laws, Provincial Regulations, or Regency/Municipal Regulations, then this will actually narrow the norm of Article 78 of Law 14/2002 and limit the space for the Judges to comprehensively assess the legal basis in the field of taxation and it will even hinder the dispute resolution process which will ultimately have an impact on reducing the fulfilment of a sense of justice for the community. Therefore, if the Court narrows the meaning of the phrase "statutory regulations" as stipulated in Article 78 of Law 14/2002 to "Laws, Provincial Regulations, or Regency/Municipal Regulations" as petitioned by the Petitioners, it is the same as limiting the scope of the legal basis which could be used by the judges in deciding any tax dispute cases.

Pursuant to all the legal considerations above, the Court is of the opinion that it has been proven that the phrase "statutory regulations" in the provisions of Article 78 of Law 14/2002 has provided legal certainty in the field of taxation and it is not contrary to Article 1 paragraph (3), Article 23A, and Article 28D paragraph (1) of the 1945 Constitution, instead of as argued by the Petitioners. Therefore, the Petitioner's arguments are entirely legally unjustifiable.

Accordingly, the Court subsequently passed down a decision which verdict states to dismiss the Petitioners' petition in its entirety.