



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

**THE SUMMARY OF THE DECISION  
CASE NUMBER 6/PUU-XIV/2016**

**Concerning**

**The Constitutionality of Judges at Tax Courts as Executor of Judicial  
Power**

Petitioners	:	Dr. Sartono SH, MH, M.Si., et al.
Type of Case	:	Law Number 14 of 2002 regarding Tax Court against the Constitution of the Republic of Indonesia of 1945 (1945 Constitution).
Subject Matter	:	Review over Article 8 paragraph (3) and Article 13 paragraph (1) letter c of the Tax Court Law against the 1945 Constitution.
Verdict	:	To grant the Petitioners' Petition in part
Date of Decision	:	Thursday, August 4th, 2016
Overview of Decision	:	

Whereas the Petitioners consist of 48 Judges at Tax Courts being members of the Indonesian Judges Association (IKAHI), the Tax Court Branch, who submitted a petition for the review over Law Number 14 of 2002 regarding Tax Court against the 1945 Constitution, as registered by the Registrar of the Court under Case Number 6/PUU-XIII/2016.

In relation to the jurisdiction of the Court, since the petition of the Petitioners is a review over the constitutionality of norms in a law, in this case the Review over the Constitutionality of Article 8 paragraph (3) and Article 13 paragraph (1) letter c of the Tax Court Law against the 1945 Constitution, the Court has the jurisdiction to hear the petition in this case.

In relation to the legal standing of the Petitioners, the Petitioners are judges at tax courts who are potentially damaged by the enactment of the above-mentioned Law, and the Court considers that the Petitioners have the legal standing to file the petition because the damage to the Petitioners' constitutional rights as maintained by the Petitioners may potentially occur. In addition, according to the Constitutional Court, the provisions of Article 24 paragraph (1) of the 1945 Constitution affirms that an independent judicial power is an instrument for upholding law and justice. Therefore, there should be no limitations that obstruct the judiciary independence in the context of upholding law and justice, including any limitation of the term of office and the dismissal of judges in a way that would obstruct their freedom to obtain proper respect for their status as judges. In other words, judges as the executor of judicial power should be free from any ambiguity and uncertainty regarding their term of office and dismissal.

Whereas in relation to the subject matter of the petition, the Petitioners essentially maintain as follows:

1. Whereas the Petitioners (Tax Judges) believe that their constitutional rights to obtain fair recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law have been impaired by the enactment of Article 8 paragraph (3) and Article 13 paragraph (1) letter c of the Tax Court Law. According to the Petitioners, the above-mentioned provision will be potentially detrimental to the constitutional rights of the Petitioners as the executor of judicial power guaranteed by the 1945 Constitution because it incorporates legal norms which cause an unfair treatment and discriminatory treatment before the law. Upon the entry into force of the above-mentioned provision, the Petitioners as Judges at Tax Courts have their constitutional rights get a fair treatment and legal certainty impaired, particularly in relation to the tenure and period of office of judges at tax courts.
2. The provisions requested to be reviewed by the Constitutional Court are Article 8 paragraph (3) and Article 13 paragraph (1) letter c of the Tax Court Law which stipulate as follows: **Article 8 paragraph (3):** "A Chief, a Deputy Chief and a Judge are appointed for a term of 5 (five) years which can be extended for 1 (one) term". **Article 13 paragraph (1) letter c:** "A Chief, Deputy Chief, and Judge are honourably dismissed from their positions by the President upon the recommendation of the Minister after obtaining the approval from the Chief Justice of the Supreme Court by reason of: ... c. reaching the age of 65 (sixty-five) years. Regarding Article 24 paragraph (1) of the 1945 Constitution, "Judicial power is an independent power to administer justice in order to uphold law and justice", and Article 28D paragraph (1) of the 1945 Constitution, "Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law" 1945 Constitution

In its legal considerations, the Court fundamentally argues as follows:

1. Whereas the Constitutional Court through its Decision Number 004/PUU-II/2004 dated December 13th, 2004, has considered the following: "That Article 22 of Law No. 4 of 2004 concerning Judicial Power states, against a court decision at the appeal level, an appeal can be requested to the Supreme Court by the relevant parties, unless the law provides otherwise. The Court is of the opinion that the absence of an appeal to the Tax Court does not mean that the Tax Court does not culminate in the Supreme Court. The existence of provisions in Article 5 paragraph (1) of Law No. 14 of 2002 concerning the Tax Court which states that the technical guidance of the judiciary for the tax Court is carried out by the Supreme Court, Article 77 paragraph (3) states that the disputing parties may apply for an appeal regarding the decision of the Tax Court to the Supreme Court, as well as Article 9A of Law No. 9 of 2004 concerning Amendments to Law No. 5 of 1986 concerning the State Administrative Court which states that within the State Administrative Court specializations can be made which shall be regulated by law, this is sufficient to provide the ground that the Tax Court is included in the scope of judiciary under the Supreme Court as stated in Article 24 paragraph (2) of the 1945 Constitution."
2. Whereas Article 1 point 8 and the Elucidation of Article 27 paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers state as follows: Article 1 number 8, "A special court is a court that has the jurisdiction to examine, adjudicate, and decide certain cases that

*can only be formed in one of the judicial bodies under the Supreme Court which is regulated by law”.*

Elucidation of Article 27 paragraph (1), “*What is meant by "special courts" are, among others, juvenile courts, commercial courts, human rights courts, corruption criminal courts, industrial relations courts and fisheries courts within the general judiciary, and **tax Court** within the state administrative courts*”. Based on the description and considerations above, it is clear that the Tax Court is part of the judicial power as regulated in Article 24 of the 1945 Constitution.

In addition, the Court in its legal considerations also stated that although the Tax Court has been included in the scope of the judiciary at the Supreme Court, in fact in the *Law a quo*, the Supreme Court's jurisdiction does not fully regulate all matters related to the Tax Court, the Supreme Court is only given the jurisdiction in terms of regulating the technical development of the judiciary for the Tax Court while any matters related to organizational, administrative, and financial development for the Tax Court is carried out by the Ministry of Finance [vide Article 5 paragraph (1) and paragraph (2) of the Tax Court Law]. The authority given to the Ministry of Finance in this case The Minister of Finance, in particular related to organizational, administrative, and financial development of the Tax Court, including the nomination and dismissal of tax court judges, according to the Court, such authority has reduced the freedom of tax judges in examining and deciding tax disputes. Therefore, according to the Court, to maintain the dignity of the tax court institution in an effort to realize an independent judicial power, the tax court should be directed to the efforts to establish an independent judicial system or what is known as a “one roof system” or a one-stop justice system. This has been done to other judicial environments under the Supreme Court where technical, judicial as well as organizational, administrative and financial guidance are under the jurisdiction of the Supreme Court and not under the Ministry. Moreover, there has been an acknowledgment that the Tax Court is part of the State Administrative Court, so there should be equal treatment under one roof (one roof system) against the Tax Court. This should be an important note for future legislators.

Whereas therefore, the Court needs to determine the provisions regarding the honourable discharge of any judges of the Tax Court who reach a certain age limit from the office of judges in a way that is reasonable and fair, which shall be the same as the provisions for honourable dismissal of any high judges who reach a certain age limit from the office of judges at the State Administrative High Court as mentioned in the verdict below.

Whereas because the judges of the tax court are the same as or equal to the judges of the State Administrative High Court, the High Court of the General Court, and the Religious High Court, the provisions regarding the honourable dismissal of judges at the tax court must also be adjusted to the provisions regarding the honourable dismissal from the position of a high judge in the state administrative court as described in the paragraph above, then regarding the periodization or tenure of a tax judge so as not to cause differences, the term of office of a tax court judge should also be as regulated in Article 8 paragraph (3) of the Tax Court Law, there is no term of office or periodization.

Based on all of the above legal considerations, the Court subsequently render these following verdicts:

1. To grant the petition of the Petitioners in part;
2. To state that Article 8 paragraph (3) 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 of the Republic of Indonesia;
3. To state that Article 8 paragraph (3) of Law Number 14 of 2002 concerning the Tax Court (The State Gazette of the Republic of Indonesia of 2002 Number 27, Supplement to the State Gazette of the Republic of Indonesia Number 4189) does not have binding legal force;
4. To state that the phrase "*is 65 (sixty five) years old*" in Article 13 paragraph (1) letter c Law Number 14 of 2002 concerning 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 of the Republic of Indonesia **as long as it is not interpreted as equal to the age of honourable dismissal of the high judge at the state administrative high court;**
5. To state that the phrase "*is 65 (sixty five) years old*" in Article 13 paragraph (1) letter c Law Number 14 of 2002 concerning Tax Court (The State Gazette of the Republic of Indonesia of 2002 Number 27, Supplement to the State Gazette of the Republic of Indonesia Number 4189) has no binding legal force **as long as it is not interpreted as equal to the age of honourable dismissal of the high judge at the state administrative high court;**
6. To dismiss the rest of the Petitioners' petition;
7. To order the recording of this decision in the State Gazette of the Republic of Indonesia as appropriate.