



**THE CONSTITUTIONAL COURT  
REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION  
ON CASES NUMBER 10 / PUU-XVIII / 2020**

**Concerning**

**The Role of the Minister of Finance in Electing the Chairperson and Deputy Chairperson of the Tax Court and the terms of office of the Chairperson and Deputy Chairperson of the Tax Court**

- Petitioner** : **Haposan Lumban Gaol, et al.**
- Case** : Judicial Review Number 14 of 2002 concerning the Tax Court (Law 14/2002) against the 1945 Constitution of the Republic of Indonesia (UUD 1945);
- Case of Lawsuit** : Testing Article 5 paragraph (2) and Article 8 paragraph (2) of Law 14/2002 on Article 24 paragraph (1), Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution;
- Injunction** : 1. Granted requests the Petitioners in part;  
2. Declare Article 8 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) which states, "The Chair and Deputy Chairperson are appointed by the President from the proposed Judges. The Minister after obtaining the approval of the Chief Justice of the Supreme Court ", contradicts the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as" Chairperson and Deputy Chairperson are appointed by the President who is elected from and by *the Judges who are further proposed through Minister with the approval of the Chief Justice of the Supreme Court for 1 (one) term of office of 5 (five) years* ";
3. Declare the Petitioners' petition related to 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) cannot be accepted;
4. Refusing a request the Petitioners other than and the rest.
5. Order the loading of decisions this is in the State Gazette of the Republic of Indonesia as it should be.
- Date of Decision** : Monday, September 28, 2020;

## Decision Overview

The Petitioners are judges in the Tax Court who feel there is no freedom in choosing the Chairperson and Deputy Chairperson of the Tax Court and their career path is hampered because of the absence of terms of office for the Chairperson and Deputy Chairperson of the Tax Court.

In relation to the authority of the Court, because the Petitioners' petition is a review of Article 5 paragraph (2) and Article 8 paragraph (2) of Law 14/2002 against Article 24 paragraph (1), Article 28D paragraph (1) and paragraph (2) of the 1945 Constitution, the Court has the authority to adjudicate the Petitioner's petition;

Based on the Petitioners' argument, according to the Court, the Petitioners have specifically explained their constitutional rights which according to the Petitioners are considered to be impaired, namely the right to obtain fair legal certainty in which the Petitioners perceive such losses to be experienced by the enactment of Article 5 paragraph (2) and Article 8 paragraph (2) of Law 14/2002. With this description, it has also been seen that a causal relationship (causal verband) between the Petitioners' perceived losses as Judges at the Tax Court regarding their constitutional rights which were impaired by the enactment of Article 5 paragraph (2) and Article 8 paragraph (2) Law 14 / 2002, which is requested for testing so that if the a quo Petition is granted, the loss will no longer occur. Therefore,

In relation to the main petition of the Petitioners, in essence the Petitioners argued that Article 5 paragraph (2) and Article 8 paragraph (2) of Law 14/2002 caused the Tax Court Judge to be in legal uncertainty and independence due to the authority of the Minister of Finance to propose a Chair and Deputy A chair that is not transparent and with no limitation on the term of office of the Chairperson and Deputy Chairperson of the Tax Court, there will be the potential for someone to become authoritarian, abuse of power or abuse power, stagnating regeneration of organizational leadership and the emergence of individual cults that will cause legal uncertainty and unfair treatment and feasible in a working relationship because of the stagnation of organizational leadership regeneration. Regarding the Petitioners' argument, the Court is of the opinion as follows:

1. Whereas in relation to the Petitioners' argument regarding the constitutionality of Article 5 paragraph (2) of Law 14/2002, if the Court sees the Elucidation of Article 5 paragraph (2) of the Law 14/2002 only says that it is sufficient **clear**, and does not interpret or explain that the said organizational development includes the

election of the Chairperson and Deputy Chairperson of the Tax Court. Likewise, if the Court defines the word guidance itself, namely efforts, actions and activities carried out efficiently and effectively to obtain better results. Thus, the Court has not been able to see specifically the true meaning of the phrase organizational fostering in Article 5 paragraph (2) of Law 14/2002. It could be that the meaning contained in the phrase is not included in the election of the Chairman and Deputy Chair of the Tax Court as interpreted by the Petitioners. Therefore, according to the Court, if the Petitioners want the election of the Chairperson and Deputy Chairperson of the Tax Court to not be proposed by the Ministry of Finance, it is inappropriate by examining Article 5 paragraph (2) of Law 14/2002 against the 1945 Constitution because the definition of the phrase organizational development itself has not certainly can be interpreted as included in the election of the Chairman and Deputy Chairman of the Tax Court. Moreover, in the provisions of Article 5 paragraph (2) Law 14/2002 as a whole it does not regulate the procedures or requirements for proposing and appointing the Chairperson and Deputy Chairperson of the Tax Court. Therefore, it is actually irrelevant to attach the conditional enforcement of the norms of Article 5 paragraph (2) of Law 14/2002 with the requirements for proposing and appointing the Chairperson and Deputy Chairperson of the Tax Court.

2. Whereas furthermore, after careful observation in the posita and petitum sections of the Petitioners' petition, there were apparently inconsistencies. Where, in the description of the petition's argument, it describes the tax court guidance as if it were limited to the word "organizational development" in bold (bold) letters, but in the petitum section it requests that the word "development" by the ministry of finance be seen as a whole coaching, including also both finance and administration. This shows the existence of "contradictio in terminis" from the position of the Petitioners, on the one hand the Petitioners in the phrase "organizational development" are petitioned to be declared not including proposing the chairman and vice chairman of the tax court but on the other hand, the overall development including finance and administration also includes those requested to be declared not including proposing the chairman and vice chairman of the tax court. Furthermore, apart from the inconsistencies, the Petitioners' petition has ambiguity in another section, namely the Petitum of the Petitioners' petition which states that the norms of Article 5 paragraph (2) of Law 14/2002 remain constitutional as long as it does not include proposing the chairman and vice

chairman of the tax court, even though the norm of the article the a quo is clear enough that it does not include proposing the chairman and vice chairman of the tax court. Thus with regard to the constitutionality of Article 5 paragraph (2) of Law 14/2002, according to the Court, the Petitioners' petition is unclear or obscure. However, if the Petitioners' petition is not vague, quod non,

3. Whereas in relation to the Petitioners' argument regarding the constitutionality of Article 8 paragraph (2) of Law 14/2002, according to the Court, in addition to the Judges, they must be able to implement their freedom as a responsible freedom, freedom in the corridor of order and order of laws and regulations that apply by performing tasks the principal of judicial power in accordance with applicable procedural law and laws and regulations without being influenced by the government, interests, pressure groups, print / electronic media, and influential individuals, judges must also have freedom in the management of their organization as in a judicial body in general. , including in this case the Tax Court. Because, the meaning of freedom to judges, apart from judges in carrying out the duties of judicial power, also may not be bound by anything and / or pressured by anyone, but judges are also free to do anything, one of which is to organize their existence in a judicial body by elects the chairman and vice chairman to lead the judges themselves in carrying out their daily duties. In addition to serving as judges who exercise judicial power to examine and decide cases, the chairperson and deputy chairperson of the judiciary body also has duties in internal organizing the judicial body such as supervising or implementing the duties and behavior of judges and ranks in a judicial institution as well as regulating the division of tasks of the judiciary. judge. Furthermore, in carrying out their daily duties in a judicial body, of course, interact with each other, whether related to their main duties or those related to daily personal life, so that the judges can get to know each other or deepen their character. of each judge himself. Thus if there is an election for the leadership of a judicial body, In this case, the chairperson and vice chairman of the Court are actually the judges able to choose or determine the judge who is their choice to be the leader who brings the progress of the organization in serving justice seekers. So that the judges no longer need external involvement from the court in selecting the chairman and vice chairman. Based on these considerations, according to the Court, the election of the Chairperson and Deputy Chairperson of the Tax Court is from and by the tax court judges, and must be released from the involvement of the Minister of Finance so that the judges can reflect more on their

choices according to their conscience. Meanwhile, the role of the Minister of Finance is only administrative in nature to follow up on the results of the election for the chairman / deputy chairman which is forwarded to the President after obtaining approval from the Chief Justice of the Supreme Court.

4. Whereas with regard to the terms of office of the Chairperson and Deputy Chairperson of the Tax Court, according to the Court, because the leader must have a period of time in office, the periodization in a position is not only so that management changes occur, but no less important it creates a process of regeneration and regeneration an institution or career path of the initiators of the organization. Based on these considerations, in this case, it is very important that the head of the tax court, namely the Chairperson and Deputy Chairperson of the Tax Court, is given a limit of term of office or periodization to avoid any worries as considered by the Court. Therefore, when referring to the legal considerations in question, then the relevant terms of office for the Chairperson and Deputy Chairperson of the Tax Court are one five-year term. With accordingly based on considerations according to Article 8 paragraph of the Court

(2) Law 14/2002 must declared conditionally unconstitutional as stated in this ruling.

Based on the considerations as described in above, the Court pass the decision whose rule is as follows:

1. Granted the Petitioners' petition in part;
2. Article states 8 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) which states, "The Chair and Deputy Chairperson are appointed by the President from the Judges proposed by the Minister. after obtaining the approval of the Chief Justice of the Supreme Court ", contradicts the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as" the Chairperson and Deputy Chairperson are appointed by the President who is elected from and by the Judges who are subsequently proposed through the Minister with the approval Chief Justice of the Supreme Court for 1 (one) term of office of 5 (five) years ";
3. Declare the Petitioners' petition related to Article 5 paragraph (2) 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) cannot be accepted;

4. Refusing a request the Petitioners other than and the rest.
5. Order the loading of decisions this is in the State Gazette of the Republic of Indonesia as it should be.