

The Strengthening of Tax Court Independence in the Indonesian Judicial System

Virna Regika¹, Muspita Sari², Mirwan Fikri Muhkam³ and Irfan Amir⁴.

^{1,2,3,4} *Institut Agama Islam Negeri Bone, Indonesia.*

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Corresponding Author:

Irfan Amir.

E-mail: irfanamir066@gmail.com.

Abstract: This study aims to analyze the strengthening of the Tax Court's independence within Indonesia's judicial system following the Constitutional Court Decision No. 26/PUU-XXI/2023. The ruling alters the administrative structure of the Tax Court from a dual system to a unified system under the Supreme Court, transferring oversight authority that was previously under the Ministry of Finance. This research employs a normative juridical method with a statutory, conceptual, and case-based approach. The findings indicate that the implementation of this unified system is a significant step toward enhancing the independence and impartiality of the Tax Court, which was previously vulnerable to executive interference. Furthermore, this change aligns with the principle of the separation of powers as advocated by Montesquieu, emphasizing the necessity of separating judicial power from executive and legislative branches. The Constitutional Court Decision No. 26/PUU-XXI/2023 is expected to strengthen the role of the Tax Court as an independent judicial body, free from government influence, and tasked with upholding justice for taxpayers in Indonesia. This study provides a crucial contribution to understanding the constitutional implications of this decision for the judicial system in Indonesia.

1. Introduction

One of the fundamental principles in a state of law is the separation of powers and the independence of the judiciary. This principle is reflected in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 1 of Law No. 48 of 2009 concerning Judicial Power, which emphasizes that judicial power is an independent power to administer justice to uphold law and justice.¹ The application of this principle is important to guarantee the integrity and independence of the judicial institution from the influence of the executive, legislative, or other parties.² However, in practice, not all judicial institutions in Indonesia operate completely independently,

¹ Nur Agus Susanto, "Independensi Kekuasaan Kehakiman dan Efektivitas Sanksi untuk Kasus Hakim Penerima suap," *JURNAL YUDISIAL* 4, no. 01 (2011): 28-45, DOI: <https://doi.org/https://doi.org/10.29123/jy.v4i1.201>.

² Esty Maulana et al., "Legal Implications of the Constitutional Court Decision No. 18/PUU-XI/2013 on Simplifying Birth Certificate Registration Procedures in Indonesia," *Constitutional Law Review* 3, no. 1 (30 Mei 2024): 19-37, DOI: <https://doi.org/10.30863/clr.v3i1.5602>.

especially special courts such as the Tax Court.³

The main problem the Tax Court faces is the unclear position and institutional guidance within the Indonesian judicial system. Based on Article 27 paragraph (1) of Law No. 48 of 2009, this court is placed under the state administrative court environment. However, Law No. 14 of 2002 concerning the Tax Court defines it as a judicial body implementing judicial power to handle tax disputes. This creates legal ambiguity regarding the status and role of the Tax Court, especially about the relationship between the judiciary and executive powers. The dualism of guidance further complicates this problem, as in Article 5 of the Tax Court Law, where the Supreme Court fosters the judicial aspect. At the same time, the Ministry of Finance is responsible for the organizational, administrative, and financial aspects.⁴

In the context of this dualism, there are serious concerns that the Ministry of Finance's involvement as part of the executive in the development of the Tax Court could give rise to the potential for intervention and reduce the independence of the judiciary.⁵ The theory of separation of powers emphasizes that the judiciary must be free from executive influence to carry out its judicial functions independently and fairly.⁶ This lack of independence can negatively impact the judge's decision in tax cases, especially in cases involving the fiscal interests of the state. In this case, guidance by the Ministry of Finance contradicts the principle of judicial independence mandated by the Constitution.⁷

It is undeniable that many researchers have conducted studies on tax courts many researchers have conducted. For example, research conducted by Gotama et al. (2020) and Suciyani (2022) focuses on the dualism of guidance in the Tax Court but on the technical, legal, or procedural aspects.⁸ In addition, research conducted by Situmeang (2022) also highlights the dualism of guidance in tax courts and proposes placing them in a one-roof system, namely under the Supreme Court.⁹ Although both examine the position of the Tax Court, this study takes a different approach by providing a more in-depth analysis of the constitutional impact of dualism, especially in the context of Constitutional Court Decision No. 26/PUU-XXI/2023. This decision is considered an important turning point in efforts to overcome the unclear status of the Tax Court by stating that the organizational, administrative, and financial development must be fully transferred to the Supreme Court no later than December 31, 2026.¹⁰

³ Ananthia Ayu Devitasari, "Menakar Independensi Hakim Pengadilan Pajak Pasca Putusan MK Nomor 10/PUU-XVIII/2020," *Jurnal Konstitusi* 17, no. 4 (2021): 879-98, DOI: <https://doi.org/10.31078/jk1748>.

⁴ Budi Ispriyarso, "Penyatuan Pembinaan Pengadilan Pajak," *Administrative Law and Governance Journal* 2, no. 4 (2019): 650-60, DOI: <https://doi.org/10.14710/alj.v2i4.650-660>.

⁵ Kristendo Simolang, "Kedudukan Pengadilan Pajak Dalam Sistem Peradilan di Indonesia," *Lex Administratum* 6, no. 4 (2019): 5-11. Akses URL: <https://ejournal.unsrat.ac.id/v3/index.php/administratum/article/view/27565>.

⁶ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006), 45, www.mahkamahkonstitusi.go.id.

⁷ Rizkityas Sekar Handini, Budi Ispriyarso, dan Nabitatus Sa'adah, "Kewenangan Menteri Keuangan Dalam Pemilihan Ketua Dan Wakil Ketua Pengadilan Pajak Setelah Dikeluarkannya Putusan Mahkamah Konstitusi Nomor 10/PUU-XVIII/2020," *Administrative Law and Governance Journal* 5, no. 1 (2022): 90-102, DOI: <https://ejournal2.undip.ac.id/index.php/alj/article/view/14557>.

⁸ I Wayan Sentana Gotama, Ida Ayu Putu Widiati, dan I Putu Gede Seputra, "Eksistensi Pengadilan Pajak Dalam Penyelesaian Sengketa Pajak," *Jurnal Analogi Hukum* 2, no. 3 (2020): 331-35, DOI: <https://doi.org/10.22225/ah.2.3.2521.331-335>; Fitri Suciyani, "Kedudukan Pengadilan Pajak Dalam Sistem Peradilan Di Indonesia," "Dharmasisya" *Jurnal Program Magister Hukum FHUI* 2, no. 1 (2022): 375-88. DOI: <https://doi.org/10.30996/mk.v16i2.8909>.

⁹ Tomson Situmeang, "Reposisi Pengadilan Pajak Menurut Sistem Kekuasaan Kehakiman Di Indonesia," *Honeste Vivere* 32, no. 2 (27 Juni 2022): 108-22, DOI: <https://doi.org/10.55809/hv.v32i2.138>.

¹⁰ Lihat amar putusan angka tiga pada "Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023" (2023), h. 72-73.

The novelty of this research lies in the integrative analysis that links the principle of separation of powers with the problems faced by the Tax Court after the Constitutional Court's decision. While previous studies only highlighted the legalistic aspects of dualism in guidance, this study highlights the constitutional aspects and their impact on judicial independence. Thus, this study offers a new, more comprehensive perspective on how the Constitutional Court's decision can strengthen the position of the Tax Court in the Indonesian judicial system and its practical implications for tax justice.

This research is important because the Tax Court's lack of independence has a broad impact, not only on the independence of judges but also on public trust in the tax justice system. Increasing the Tax Court's independence through the implementation of the Constitutional Court's decision will ensure that tax disputes are resolved fairly and transparently and free from the influence of interested executive parties. This is important in the context of judicial reform in Indonesia, which continues to strive to increase transparency and public trust.

In theory, this study offers a new interpretation of the principle of separation of powers in the context of special courts such as the Tax Court. In practice, it provides input for policymakers to reform the tax court, especially regarding implementing the Constitutional Court's decision and strengthening its institutional independence. Thus, this research is not only academically relevant but also has significant applicative value in strengthening the justice system in Indonesia.

2. Method

This study uses a normative research type, which, according to Soerjono Soekanto and Sri Mamudji, is also called library research. The research methods used are the statute, conceptual, and case approaches. Using primary legal data sources and secondary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law No. 14 of 2002 concerning the Tax Court, Law No. 48 of 2009 concerning Judicial Power, Constitutional Court Decision No. 26/PUU-XXI/2023. As well as secondary legal materials in books, manuscripts, journals, dictionaries, encyclopedias, and comments on court decisions related to the research study.¹¹ The obtained data and laws are then subjected to data review and analysis, namely data reduction, data display, and conclusion drawing and verification.

3. The Existence of Tax Courts in the Indonesian Justice System

From a historical legal perspective, the tax court was established through Law No. 14 of 2002. It was established in response to criticisms of previous tax dispute resolution mechanisms. Before the establishment of the tax court, tax disputes were resolved through the Tax Advisory Council (MPP) and the Tax Dispute Resolution Agency, which were considered ineffective and did not provide fair and fast solutions.¹²

¹¹ Depri Liber Sonata. "METODE PENELITIAN HUKUM NORMATIF DAN EMPIRIS: KARAKTERISTIK KHAS DARI METODE MENELITI HUKUM". *Fiat Justitia: Jurnal Ilmu Hukum* 8 (1). 2015. DOI: <https://doi.org/10.25041/fiatjustitia.v8no1.283>.

¹² Ismail Rumadan, "Kedudukan Pengadilan Pajak Dalam Sistem peradilan di Indonesia," *Neliti.com*, 2011, akses URL: <https://media.neliti.com/media/publications/278193-kedudukan-pengadilan-pajak-dalam-sistem-f1c433e2.pdf>. h. 44-45.

MPP and BPSP, although intended to resolve tax disputes, are often considered not independent and unable to guarantee neutrality in decision-making. Taxpayers who feel disadvantaged by tax decisions often feel they have not received adequate justice. Therefore, establishing a tax court is important in overcoming this dissatisfaction. The existence of the Tax Court in its development has also not escaped various criticisms. The Tax Court Law has also been tested several times in the Constitutional Court.

One of them is related to the position of the tax court in the judicial system in Indonesia. Law No. 4 of 2004 concerning Judicial Power before being enacted and Law No. 48 of 2009 concerning Judicial Power, especially in the explanation of Article 15, explains that the Tax Court is an example of a special court included in the State Administrative Court environment. Then, Article 27 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power regulates that "The Tax Court is a Special Court that is included in the State Administrative Court."¹³ Article 9A paragraph (1) of Law No. 51 of 2009 concerning State Administrative Courts explains, "In the State Administrative Court environment, special courts may be established which are regulated by law."¹⁴ The explanation of Article 9A paragraph (1) of Law No. 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts also states that "Special courts are a differentiation or specialization within the State Administrative Courts, for example, Tax Courts."¹⁵

On the other hand, the norm that is the reference for the Tax Court procedural law, Law No. 14 of 2002 concerning the Tax Court, does not contain any explanation of any Article or paragraph that states the Tax Court as a special judicial body included in one of the judicial environments under the Supreme Court. Law No. 14 of 2002 concerning the Tax Court only explains and defines the Tax Court as a judicial body that exercises judicial power for Taxpayers or those seeking justice for tax disputes.¹⁶ Thus, it raises the question of whether the position of the Tax Court is a judicial body implementing judicial power or a special court under the State Administrative Court. The question of this problem, through Decision of Case No. 26/PUU-XXI/2023, the Constitutional Court affirmed that "The Tax Court is part of the judicial power as regulated in Article 24 of the 1945 Constitution so that it is included in the scope of the judiciary under the Supreme Court in the State Administrative Court environment".¹⁷ This statement is in line with Winarto Suhendro's opinion¹⁸ The Tax Court is a special court within the State Administrative Court environment that deals with several provisions in the Tax Court Law and the State Administrative Court Law.

Ismail Rumadan¹⁹ states that a judicial body (including special courts) can be categorized as a judicial body that truly carries out judicial power if it fulfills the requirements stipulated in Article 11 paragraph (2), Article 13 paragraph (1), and Article 15 paragraph (1) of Law No. 4 of 2004 as amended by Law No. 48 of 2009 concerning Judicial Power, as follows:²⁰ The existence of

¹³ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakiman" (2009), sec. 27 (1).

¹⁴ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 51 Tahun 2009 Tentang Perubahan Kedua Atas Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara" (2009), sec. Pasal 9A ayat (1).

¹⁵ Indonesia, sec. Pasal 9A ayat (1).

¹⁶ Republik Indonesia, "Undang-Undang No 14 Tahun 2002 Tentang Pengadilan Pajak" (2002), n. Pasal 2.

¹⁷ Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h. 69.

¹⁸ Rio Bravestha & Syofyan Hadi. KEDUDUKAN PENGADILAN PAJAK DALAM SISTEM PERADILAN DI INDONESIA. *Mimbar Keadilan*. 1. (2017). DOI: <https://doi.org/10.30996/mk.v0i0.2197>.

¹⁹ Rumadan, h. 13.

²⁰ Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 4 Tahun 2004 Tentang Kekuasaan Kehakiman" (2004), Pasal 11, Pasal 13 dan Pasal 15.

the judiciary is regulated by law. The judicial body that is formed must be in one of the four existing judicial environments. All judicial bodies in the four judicial environments culminate in the Supreme Court as the highest state court. The Supreme Court has authority over the judiciary's organization, administration, and finances.

A judicial body must meet These four requirements, including special courts as executors of judicial power. If these four requirements are not met, the court that has been formed or will be formed is categorized as a pseudo court (*quasi rechtspraak*).²¹ Therefore, the Tax Court is classified as a pseudo court (*quasi rechtspraak*) because the Tax Court's coaching authority, as regulated in Law No. 14 of 2002 concerning the Tax Court, adheres to dual coaching (dualistic system). This is stated in the Provisions of Article 5 of Law No. 14 of 2002 concerning the Tax Court, which reads:²² The Supreme Court carries out technical guidance for the Tax Court. The Ministry of Finance provides the Tax Court with organizational, administrative, and financial guidance. According to the Explanation in the Article, technical guidance for the Tax Court is carried out by the Supreme Court, while organizational, administrative, and financial guidance for the Tax Court is carried out by the Ministry of Finance (Ministry of Finance). Thus, the Tax Court adopts a dualistic guidance system, which means the inclusion of the executive in the judicial power. A dual guidance system like this can reduce the freedom and independence of judges in carrying out judicial functions.²³ According to Syofrin Syofan and Asyhar Hidayat, the dualism of guidance in the Tax Court shows inconsistency with the existing judicial system, so the Tax Court cannot be fully categorized as a judicial body subject to the applicable judicial system.²⁴

Due to the problematic position of the Tax Court's development. Through the Constitutional Court Decision No. 26/PUU-XXI/2023, the Court determined that all authorities of the Ministry of Finance, including organizational, administrative, and financial development, were transferred under the authority of the Supreme Court. Therefore, all development for the Tax Court, technical, administrative, organizational, and financial development, is fully carried out by the Supreme Court, which will be implemented in stages no later than December 31, 2026.²⁵

The establishment of a one-roof judicial system in the Tax Court, as mandated by the Constitutional Court Decision No. 26/PUU-XXI/2023 regarding the judicial review of Article 5 of Law No. 14 of 2002 concerning the Tax Court, is a step to balance the position of the Tax Court by constitutional rules and the principles of the Indonesian judicial power. First, the existence of the tax court in the Indonesian judicial system as a judicial body has fulfilled the provisions of Article 11 paragraph (2), Article 13 paragraph (1), and Article 15 paragraph (1) of Law No. 4 of 2004 as amended by Law No. 48 of 2009 concerning Judicial Power so that the Tax Court is no longer categorized as a pseudo court (*quasi rechtspraak*). Second is the release of executive power, in this

²¹ Mohd. Yusuf DM, Atma Kusuma, Elvina Elisabeth Uli, Fhlorida Agustina Simanjuntak, Darwin Darwin, and Geofani Milthree Saragih. 2023. "Eksistensi Peradilan Pajak Dalam Kekuasaan Kehakiman Di Indonesia". *Jurnal Pendidikan Dan Konseling (JPDK)* 5 (1):1280-85. DOI: <https://doi.org/10.31004/jpdk.v5i1.11152>.

²² Republik Indonesia, Undang-Undang No 14 Tahun 2002 Tentang Pengadilan Pajak, Pasal 5 ayat (1) dan (2).

²³ Fadhlhan Taufiqurrahman, "Pembinaan Organisasi, Administrasi, dan Keuangan Pengadilan Pajak Pasca Terbitnya Putusan Mk Nomor: 26/Puu-Xxi/2023 Terhadap Kekuasaan Kehakiman yang Merdeka," *UNES Law Review* 6, no. 2 (2023): 6058-64, DOI: <https://www.review-unes.com/index.php/law/article/view/1443>.

²⁴ Budi Ispriyarsa, Athasius P. Bayuseno, dan Harlida Abdul Wahab, "Legal Reformation of Tax Court in Indonesia: Reforming Legal Culture, Institutional and Legislative Aspects," *International Journal of Criminology and Sociology* 10 (2021): 722-28, DOI: <https://doi.org/10.6000/1929-4409.2021.10.86>.

²⁵ Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h. 73.

case, the Ministry of Finance, in resolving tax disputes in the Tax Court. Thus, in carrying out its judicial function, the Tax Court can be independent, free, and independent as required by Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Article 1 of Law No. 48 of 2009 concerning Judicial Power.

4. Legal Considerations for Constitutional Judges in deciding case number 26/PUU-XXI/2023

The existence of institutions such as the Constitutional Court is a real manifestation of the implementation of the principle of checks and balances, which plays an important role in maintaining the balance of power in a democratic system, ensuring that every political policy and legal rule remains in line with the Constitution to prevent abuse of power.²⁶ Law No. 8 of 2011 concerning Amendments to Law No. 24 of 2003 concerning the Constitutional Court states that “The Constitutional Court is one of the independent judicial authorities that has an important role in upholding the constitution and the principles of the rule of law by its authority and obligations as stipulated in the 1945 Constitution of the Republic of Indonesia.”²⁷ The Constitutional Court functions as the guardian of the Constitution, the final interpreter of the Constitution, the protector of human rights, the protector of citizens’ constitutional rights, and the protector of democracy.²⁸

On May 25, 2023, the Constitutional Court issued Decision No. 26/PUU-XXI/2023. Decision of the Constitutional Court No. 26/PUU-XXI/2023 is a decision on the Judicial Review of Article 5 of Law No. 14 of 2002 concerning the Tax Court against the 1945 Constitution of the Republic of Indonesia, which stipulates that the phrase “Ministry of Finance” in Article 5 paragraph (2) of Law No. 14 of 2002 concerning the Tax Court is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force as long as it is not interpreted as “the Supreme Court which will be implemented in stages no later than December 31, 2026”.²⁹ Constitutional Court Decision No. 26/PUU-XXI/2023 stipulates the position of the tax court in two positions: as part of the judicial power as regulated in Article 24 of the 1945 Constitution of the Republic of Indonesia, so that it is included in the scope of the special court under the State Administrative Court, which is under the Supreme Court.³⁰ Moreover, organizational, administrative, and financial development can be transferred under the authority of the Supreme Court. Based on Constitutional Court Decision No. 26/PUU-XXI/2023, the Supreme Court is the only state institution authorized to guide the Tax Court. Constitutional Court Decision No. 26/PUU-XXI/2023 was issued based on an application submitted by Nurhidayat, Allan Fatchan Gani Wardhana, and Yuniar Riza Hakiki. The Applicants applied on February 28, 2023, which was received at the Constitutional Court Clerk’s Office on February 27, 2023, based on the Applicant’s Application Submission Deed Number: 20/

²⁶ Tohadi Tohadi dan Dian Eka Prastiwi, “Rekonstruksi Hukum Dalam Mewujudkan Kepatuhan Pembentuk Undang-Undang Terhadap Putusan Mahkamah Konstitusi Sebagai Mekanisme Checks And Balances,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 11, no. 1 (2022): 19, DOI: <https://doi.org/10.33331/rechtsvinding.v11i1.849>.

²⁷ A. Fajri, & Irfan Amir. Penegakan Hak Konstitusional Melalui Constitutional Question Serta Relevansinya Terhadap Negara Hukum Pancasila. *Constitutional Law Review*, 1(1), (2022): 39-56. DOI: <https://doi.org/10.30863/clr.v1i1.3372>.

²⁸ Tim Penyusun Hukum Acara Mahkamah Konstitusi, *Hukum Acara Mahkamah Konstitusi Republik Indonesia* (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010), h. 10.

²⁹ Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, 73.

³⁰ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.69-70.

PUU/PAN. MK/AP3/ 02/2023 with Number: 26/PUU-XXI/2023.³¹ Based on the considerations of the Constitutional Court, the three applicants meet the requirements as parties with legal standing as stipulated in Article 4 paragraph (2) of PMK No. 2 of 2021 concerning Procedures in Cases of Judicial Review of Laws and Article 51 paragraph (1) of Law No. 7 of 2020 concerning the Constitutional Court, namely:³² Indonesian citizens; customary law community units as long as they are still alive and by the development of society and the principles of the unitary state of the Republic of Indonesia as regulated by law; public and private legal entities, or state institutions.

Based on Article 51 paragraph (1) of Law No. 7 of 2020 concerning the Constitutional Court and Article 4 paragraph (2) of PMK No. 2 of 2021 concerning Procedures in Judicial Review Cases. According to the Constitutional Court, Applicant I and Applicant III have the legal standing to act as Applicants in the quo application because they have been able to specifically describe both the actual and potential losses of their constitutional rights due to the enactment of the norm of Article 5 paragraph (2) of Law No. 14 of 2002 concerning the Tax Court. In addition, there also appears to be a causal relationship (causal verband) between the alleged losses in question and the enactment of the legal norms requested for review, which, if the application is granted, the assumption of actual and potential losses as referred to by Applicant I and Applicant III does not occur and will not occur again.³³ Meanwhile, regarding Applicant II Allan Fatchan Gani Wardhana, according to the Constitutional Court, the existence of the provisions of the Article norms that are requested does not make Applicant II as a lecturer have been harmed by his constitutional rights, because there are no obstacles for Applicant II in providing lecture materials to his students. Therefore, according to the Constitutional Court, Applicant II has no legal standing to act as Applicant in the application.³⁴

The Applicants are challenging the phrase “Department of Finance” contained in the norm of Article 5 paragraph (2) of Law No. 14 of 2002 concerning the Tax Court, requesting that the Panel of Judges of the Constitutional Court declare the phrase a quo to be conditionally unconstitutional with the 1945 Constitution of the Republic of Indonesia and not have binding legal force, “as long as it is not interpreted (replaced by) the Supreme Court.”³⁵ The Applicants also asked the Law Makers to make improvements to Law No. 14 of 2002 concerning the Tax Court within a maximum period of 3 (three) years since this decision was pronounced. If, within this period, no updates are made, Law No. 14 of 2002 concerning the Tax Court will become permanently unconstitutional.³⁶

The judicial review of Article 5 paragraph (2) of Law No. 14 of 2002 concerning the Tax Court has previously been submitted for judicial review to the Constitutional Court several times, namely Constitutional Court Decision No. 10/PUU-XVIII/2020 and Constitutional Court Decision No. 57/PUU-XVIII/2020. Examining Article 60 paragraph (2) of Law No. 7 of 2020 concerning the Constitutional Court and Article 78 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Cases of Judicial Review of Laws, which states: ³⁷ No re-testing may be requested for the content of a paragraph, Article, and/or section of a law that has been tested. The provisions referred to in paragraph (1) may be excluded if the content of the 1945 Constitution of the Republic of Indonesia used as the basis for the test is different.

³¹ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.6-10.

³² Republik Indonesia, Undang-Undang Nomor 7 Tahun 2020 tentang Mahkamah Konstitusi, Pasal 51 ayat (1).

³³ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.58.

³⁴ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.58.

³⁵ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.52.

³⁶ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.52-53.

³⁷ Republik Indonesia, Undang-Undang Nomor 7 Tahun 2020 tentang Mahkamah Konstitusi, Pasal 60.

This Article stipulates that a request for re-testing of Articles that have been assessed and determined to be valid by the Court may only be made if there is a difference in the basis for the test and/or a difference in justification for the request. Regarding the test of Article 5 paragraph (2) of Law No. 14 of 2002 concerning the Tax Court in the Constitutional Court Decision No. 26/PUU-XXI/2023, several bases for testing have been used in the Constitutional Court Decision No. 10/PUU-XVIII/2020 and the Constitutional Court Decision No. 57/PUU-XVIII/2020. This means that the Constitutional Court Decision No. 26/PUU-XXI/2023 can result in a *Nebis in idem* decision as referred to in the provisions of Article 60 paragraph (2) of Law No. 7 of 2020 concerning the Constitutional Court and Article 78 of the Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Cases of Judicial Review of Laws. Reviewing the object of the application of the Constitutional Court Decision No. 10/PUU-XVIII/2020 and the Constitutional Court Decision No. 57/PUU-XVIII/2020 regarding the constitutional review of Article 5 paragraph (2) of Law No. 14 of 2002 concerning the Tax Court, it was found that the two Constitutional Court Decisions had different touchstones and reasons for the application which were different from the Constitutional Court Decision No. 26/PUU-XXI/2023. The reason for the petition in the Constitutional Court Decision No. 26/PUU-XXI/2023 is that the applicants want the organizational, administrative, and financial development of the Tax Court to no longer be carried out by the Ministry of Finance but handed over to the Supreme Court, as committed by the legislators in the Minutes of Discussion of Bill No. 14 of 2002 concerning the Tax Court.³⁸ Therefore, the Constitutional Court considers that the provisions of Article 60 paragraph do not hinder the application for Constitutional Court Decision No. 26/PUU-XXI/2023 (2) of Law Number 7 of 2020 concerning the Constitutional Court and Article 78 of Constitutional Court Regulation Number 2 of 2021 concerning Procedures in Cases of Judicial Review of Laws, so that the provisions of the norm of Article 5 paragraph (2) of Law No. 14 of 2002 concerning the tax court can be requested for judicial review again.³⁹

Based on the assessment results and considerations of the Constitutional Court Panel regarding Case No. 26/PUU-XXI/2023, the arguments in the petition submitted by the Applicants are legally justified in part.⁴⁰ Considering that a judicial institution must be independent of the judicial system in Indonesia, the Constitutional Court has established a one-roof judicial system for the Tax Court as for judicial bodies in general, where technical judicial development, as well as organizational, administrative, and financial development, are fully under the authority of the Supreme Court without any interference from other institutions.⁴¹ By realizing a one-roof judicial system, a judicial body will be obtained that is free from the influence of other parties; this shows the role of an independent judicial institution that can truly be utilized by justice seekers (justifiable) to obtain justice and legal certainty as expected and trusted by the public.⁴²

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³⁸ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.17.

³⁹ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.62-63.

⁴⁰ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.71.

⁴¹ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.70.

⁴² Republik Indonesia, Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, h.70-71.

by the public.⁴³ According to this teaching, there is no right to interference or influence between one power and another; each is separate in carrying out its duties and functions. Freedom is impossible if the executive power is combined with the legislative, judicial, or executive power or if the legislative power is combined with the judicial power.⁴⁴

Montesquieu asserted that there would be no freedom if the judiciary were not separated from the legislative and executive powers. Judges join the legislature, then it will be arbitrary because the judges will act as lawmakers. Likewise, if the judiciary is combined with the executive power, the judges will act violently and oppress.⁴⁵ In Montesquieu's view, a judge must have legal immunity to exercise independent judicial power and achieve independence, freedom, and independence of judicial power. This legal immunity is related to the right to refuse to answer executive and legislative questions regarding the reasons for the decision made, legal immunity from investigations into decisions made, or judicial officers' immunity from lawsuits in carrying out justice (judicial officers are immune from suit in respect of judicial act).⁴⁶ Therefore, an independent judicial institution does not only mean institutional independence but also that judges are personally independent in the judicial process, from examining the case and the evidence to handing down the verdict.⁴⁷

The consideration of the Constitutional Court Judge regarding the Decision of case No. 26/PUU-XXI/2023 is based on evidence of consideration of Decision Number 6/PUU-XIV/2016, evidence of the discussion process of Draft Law No. 14 of 2002 concerning the Tax Court submitted by the applicant that Article 5 of the a quo Bill is formulated as follows:⁴⁸ The Supreme Court carries out technical guidance of the Tax Court; Organizational, administrative, and financial guidance of the Tax Court is carried out by the Ministry of Finance; Guidance as referred to in paragraph (2) will be transferred to the Supreme Court in stages; Guidance as referred to in paragraph (1) and paragraph (2) must continue to guarantee the freedom of Judges in examining and deciding tax disputes. The draft law convinces the Court that there is an intention from the legislators to ideally place all guidance of the Tax Court in stages under one roof under the Supreme Court.⁴⁹ The legislators have also been firmly reminded through legal considerations in the Constitutional Court Decision No. 6/PUU-XIV/2016 to consider the existence of the Tax Court to be placed under the Supreme Court as a whole. The Constitutional Court also ordered the transfer of administrative, organizational, and financial development authority to the Supreme Court no later than December 31, 2026. This deadline is considered fair and rational to unite the Tax Court's development authority under one roof under the Supreme Court. Therefore, once the quo case was decided, the stakeholders gradually began to prepare regulations related to all legal requirements, including procedural law, to improve the professionalism of the Tax Court's human resources. As well as other matters related to integrating authority under the Supreme Court.⁵⁰

⁴³ Bahder Johan Nasution Negara Hukum Dan Hak Asasi Manusia (Bandung: Mandar Maju, 2012), h. 63.

⁴⁴ Titik Triwulan Tutik, Konstruksi Hukum tata Negara Indonesia Pasca-Amandemen UUD 1945 (Jakarta: Kencana, 2015), h. 62.

⁴⁵ Titik Triwulan Tutik, Konstruksi Hukum..., h.63.

⁴⁶ Moh. Amir Hamzah, Hukum Acara Perdata Peradilan Tingkat Banding, (Malang: Setara Press, 2013), h.41.

⁴⁷ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor26/PUU-XXI/2023, h.37-39.

⁴⁸ Republik Indonesia, Rancangan Undang-Undang Nomor 14 Tahun 2002 tentang Pengadilan Pajak, Pasal 5.

⁴⁹ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor26/PUU-XXI/2023, h.70-71.

⁵⁰ Republik Indonesia, Putusan Mahkamah Konstitusi Nomor26/PUU-XXI/2023, h.71.

5. Conclusion

Constitutional Court Decision No. 26/PUU-XXI/2023 is an important step in strengthening the independence of the Tax Court in the Indonesian judicial system. By transferring the authority to oversee the organization, administration, and finances from the Ministry of Finance to the Supreme Court, this decision ends the dualism of supervision that previously gave rise to the potential for executive intervention in the courts. Implementing a one-roof system under the Supreme Court is in line with the principle of separation of powers, which is essential for maintaining the independence and impartiality of the judiciary. This strengthening is expected to ensure that the Tax Court functions as a truly independent judicial institution, free from government influence and capable of providing better justice for taxpayers. The full implementation of this decision, until the deadline of December 31, 2026, is expected to bring positive changes to the tax court system, strengthen public trust in judicial institutions, and guarantee the protection of the constitutional rights of justice seekers in Indonesia.

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