



DO THE TAX COURT DECISIONS FULFILL TAX JUSTICE? LITERATURE REVIEW

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Abstract

Based on MK decision Number 26/PUU-XXI/2023, the Constitutional Court (MK) has determined that the Tax Court Institution, which was formerly under the Ministry of Finance, will henceforth be under the Supreme Court (MA) no later than December 31, 2026. In accordance with Tax Court Law Number 14 of 2002, the purpose of this study is to locate and evaluate tax court rulings with the goal of enhancing tax compliance. A qualitative technique is employed in the research methodology, together with a literature review analysis of research findings and tax laws pertaining to court rulings and tax compliance. The findings demonstrate how judicial rulings support tax justice. Taxpayers have great faith in the Tax Court to settle their tax disputes. It is hoped that by consolidating the Tax Court under the Supreme Court, the Tax Court will play a larger role in resolving tax disputes and offering justice.

Keywords: Literature Review, Tax Court Decisions, Tax Justice

Abstrak

Mahkamah Konstitusi (MK) telah memutuskan peralihan Kelembagaan Peradilan Pajak yang semula berada di bawah Kementerian Keuangan menjadi di bawah Mahkamah Agung (MA) berdasarkan putusan MK Nomor 26/PUU-XXI/2023 paling lambat tanggal 31 Desember 2026. Penelitian ini bertujuan untuk mengidentifikasi dan menganalisis putusan-putusan pengadilan pajak dalam rangka meningkatkan kepatuhan pajak menurut Undang-undang Pengadilan Pajak Nomor 14 Tahun 2002. Metode penelitian yang digunakan adalah pendekatan kualitatif dengan analisis literatur review dari hasil penelitian dan peraturan perpajakan terkait putusan pengadilan dan kepatuhan pajak. Hasil menunjukkan bahwa putusan pengadilan memberikan kontribusi dalam keadilan pajak. Wajib Pajak mempunyai kepercayaan yang tinggi terhadap penyelesaian sengketa pajak melalui Pengadilan Pajak. Harapan dari peralihan kelembagaan peradilan pajak menjadi satu atap di bawah MA adalah adanya peningkatan peran Pengadilan Pajak dalam memberikan keadilan dalam sengketa pajak.

Kata Kunci: Keadilan Pajak, Putusan Pengadilan Pajak, Studi Literatur

INTRODUCTION

On 3 May 2023, the Constitutional Court (MK) decided on a judicial review case submitted by Nurhidayat (henceforth "Applicant") against Article 5 section (2) Law Number 14 Year 2002 regarding the Tax Court (Konsitusi 2023) . The article states that the "organization, administration, financial, and human resource affairs" of the Tax Court is carried out by the Ministry of Finance, and therefore suggests "the two-roof system" of judicial institution (Pemerintah Republik Indonesia 2002). The system states that the Supreme Court is responsible for the technical supervision whereas the Ministry of Finance is responsible for the organization, administration, financial, and human resource affairs of the Tax Court (Basri and Muhibbin 2022)

Applicant argues that this provision does not represent judicial independence of the Tax Court which should be free from executive power (i.e. the Ministry of Finance) toward tax disputes. Constitutional judges had decided that the "organization, administration, financial and human resource affairs" of the Tax Court will be carried out by the Supreme Courts at the latest by the end of December 2026, therefore suggesting "the one-roof system" . It shows that the status of the court is not independent, as a judicial body that performs judicial functions and also performs executive functions which can result in no independence in the settlement of cases (Marpi 2023).

After more than 21 years since first established on 12 April 2002 based on Law Number 14 Year 2002, the Tax Court has drawn public attention after the Constitutional Court decision number 26/PUU-XXI/2023. Constitutional judges argue that Article 5 section (2) contradicts



the 1945 Constitution in particular Article 24 section (2) regarding judicial power. There are still a lot of issues with the Indonesian tax court, thus changes need to be made right away (Ispriyarso, Bayuseno, and Wahab 2021).

Many studies have discussed the post-decision impact of this constitutional court, regarding organization, administration and finance (Taufiqurrahman 2023) (Moningka and Rasji 2023) (Moningka and Rasji 2023). The majority of research related to constitutional court decisions discusses the position of the tax court after the constitutional court decision.

The following research questions arise before the Constitutional Court decision. Firstly, does the current system (two-roof system) in which the Ministry of Finance is responsible for the organization, administration, and financial affairs of the Tax Court, contradict the independence of judicial power? Secondly, have the Tax Court decisions fulfilled justice in tax disputes?

LITERATURE REVIEW

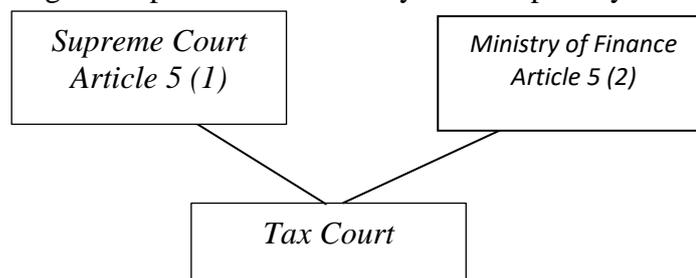
Tax Court

According to Law Number 14 Year 2002, the Tax Court is a judicial body that upholds judicial power in tax disputes (Pemerintah Republik Indonesia 2002). Its main task and authority are to provide justice in tax disputes. Its decision is final and binding. In Indonesia, the Tax Court is a unique court system tasked with resolving tax issues amongst taxpayers and the Directorate General of Taxation. The Tax Court's primary duty is to settle tax disputes fairly by rendering judgments that are legally binding.

Independence

Independency of Tax Court decisions refers to autonomy and freedom from pressure and/or influence from any parties including from the government. Independence is the core principle of a judicial system. Article 5 rules that the Supreme Court is responsible for the technical supervision whereas the Ministry of Finance is responsible for the organization, administration, and financial affairs of the Tax Court. However, such a mechanism must not degrade the judge's independence in examining and deciding on tax disputes.

The Tax Court Law specifies that the Supreme Court is responsible for providing judicial technical direction to the Tax Court. The Ministry of Finance provides organizational, administrative, and financial direction for the Tax Court. The Judge's discretion in considering and resolving Tax Disputes may not be diminished by the guidance as stated in paragraphs (1) and (2). The following diagram depicts the two-roof system adopted by the Tax Court.



Source: Law Number 14 the Year 2002 regarding the Tax Court

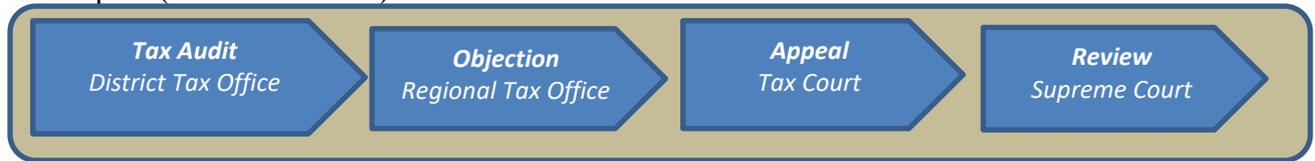
Law on Tax Court stipulates that to be appointed a judge, a candidate has to fulfill certain criteria including but not limited to, an Indonesian citizen, a minimum age of 45, and a vow to be loyal to Pancasila and the 1945 Constitution. In addition, a (tax) judge must have sufficient skills, experience, and knowledge of taxation.

Tax Court Decision

A tax court decision is a legal decision on a tax dispute between taxpayers and tax authorities (DG Taxes, DG Customs and Excise, and local governments. The protracted,



intricate, and costly procedure is why tax disputes in Indonesia are frequently in the news. Furthermore, the lengthy list of difficulties is further compounded by the recurrent disputes for cases that are similar (Saptono, Khozen, and Ayudia 2021). The following is the flowchart of a tax dispute (Butarbutar 2017).



Tax Justice

Tax justice refers to fundamental principles and norms in the tax system that ensure that tax collection is administered in a just, proportional, and based on principles of social justice. Principles of tax justice encapsulate the share of the tax burden, fair treatment to all taxpayers, and compliance with existing laws and regulations. Taxpayers have the right to apply for an objection, appeal, and postponement in tax payment. (Salman 2019)).

Vertical justice and horizontal justice are two-dimensional aspects that are used to measure the share of tax burden and treatment of taxpayers in the taxation system (Rahayu 2017). By combining these two concepts, the taxation system is expected to create fair tax burden distribution as a whole. The fair distribution of tax burden (vertical justice) and the fair treatment of taxpayers (horizontal justice) help to create a fair tax system based on social justice principles.

METHOD

This research is a normative judicial study or a study of literature that examines secondary data. Reviews of the literature serve as a crucial basis for all kinds of study (Snyder 2019). In the first step, the researcher compiles previously published research under the theme "tax court". Subsequently, the researcher summarizes and combines the compilation with literature on tax court and tax justice. In addition, the researcher provides current empirical data to support the analysis and to draw conclusions.

Researchers conduct literature reviews before to, during, and following the collection of field data. Researchers gather and examine relevant literature, including books, journals, scientific works, newspaper articles, laws, and government regulations. They also search electronic mass media, including television and internet news, for information relevant to the Directorate General of Taxes' tax court context when handling tax dispute. In order for researchers to fully grasp the concepts pertinent to the research topic from the outset of the study (before heading to the field), these data are utilized to supplement data from field studies.

Table 1. List of Literature Study

Name and Title	Methodology	Results
Position, Existence and Independence of the Tax Court in Judicial Power in Indonesia (Afdol and Setjoatmadja 2015)	Juridical-normative	The Tax Court is an appellate level court like Law which applies universally. The Tax Court is part of the State Administrative Court (PTUN) and has its own procedural law. Independence, if it is an article in Law 14 of 2002 concerning the Tax Court, has the character of separate independence from the Supreme Court, as can be seen from the nature and type of decisions.
The Position of the Tax Court in the Judicial System in Indonesia	Normative legal research	Special courts must stand independently in the judiciary both from supervision, budget and guidance by the Supreme Court. Special



(Sumolang 2019)		courts can only be formed in one of the judicial circles under the Supreme Court. The position of the special court is completely subordinate to the Supreme Court so that it can be an independent institution without standing between the government and the Supreme Court.
The Existence and Role of the Tax Court in Providing Substantive Justice to Taxpayers (Wahyudi 2019)	method normative legal research	The examination must result in the general principles of the court and special principles as a state administrative court, which have been fulfilled by the procedural law applicable in the Tax Court, and the application of the procedural law of the Tax Court fulfills the elements of substantive justice.
The Existence of Tax Courts in Resolving Tax Disputes (Gotama, Widiati, and Seputra 2020)	Normative research	The Tax Court is a technical court carried out by the Supreme Court and the organizational, administrative and financial side is carried out by the Ministry of Finance, which is regulated in Article 5 paragraph (2) of the Tax Court Law.
The Relationship between the Supreme Court and the Tax Court in Judicial Power (Angreini 2021)	normative law	The Supreme Court has a position as supervisor and supervisor in the tax court, namely providing guidance on judicial technicalities and supervising judicial duties and the behavior of judges. Meanwhile, it does not have the authority to correct first and second level decisions in the tax court, and decide tax disputes at the cassation level.
The Position of The Tax Courty in The Judicial System in Indonesia (Basri and Muhibbin 2022)	normative legal research methods	The Tax Court is a two-stop system, technically located in the Supreme Court, organizational, administrative and financial under the control of the Ministry of Finance, does not provide legal remedies for appeals and cassation.
The Existence of the Tax Court in Judicial Independence Settlement of Tax Disputes Judging from the Constitutional Court Decision Number 26/PUU-XII/2023 (Marpi 2023)	normative legal research	Constitutional Court Decision Number 26/PUU-XXI/2023 which mandates that the organizational, administrative and financial guidance of the Tax Court must be transferred to the Supreme Court

Source: Previous Research

Based on the research above, it can be concluded that the Tax Court is an appellate level court like Law which applies universally. Independence, if it is an article in Law 14 of 2002 concerning the Tax Court, has the character of separate independence from the Supreme Court, as can be seen from the nature and type of decisions. Special courts must stand independently in the judiciary both from supervision, budget and guidance by the Supreme Court. The review must result in general court principles and specific principles for state administrative courts, which are fulfilled by the procedural law applicable in the Tax Court, and the application of the procedural law of the Tax Court fulfills the elements of substantive justice.



RESULTS AND DISCUSSION

The following are summary of previous studies on tax court. (Afdol and Setjoatmadja 2015), (Gotama, Widiati, and Seputra 2020), and (Basri and Muhibbin 2022) state that the Tax Court is a part of an Administrative Court system with a specific formal law. Despite adopting a "two-roof system", the Tax Court is independent of the characteristics and types of decisions standpoint. In addition, (Basri and Muhibbin 2022) state that as a special court, the Tax Court does not allow it. (Anggreini 2021) argues that another special characteristic of the Tax Court is despite providing technical supervision, the Supreme Court does not have the authority to rectify the Tax Court decisions. (Sumolang 2019) argues that a special court is supposed to be independent in the judicative power under the Supreme Court which also incorporates supervision, budget, and development. On the contrary, (Wahyudi 2019) argues that the Tax Court specialty under the two-roof system has provided justice in tax disputes.

It can be concluded that the Tax Court is a special judicial court under the Supreme Court. As a special court, the Tax Court is a part of the Administrative Court system and has a specific formal law. Nevertheless, the Tax Court is argued to have provided substantive justice in tax disputes.

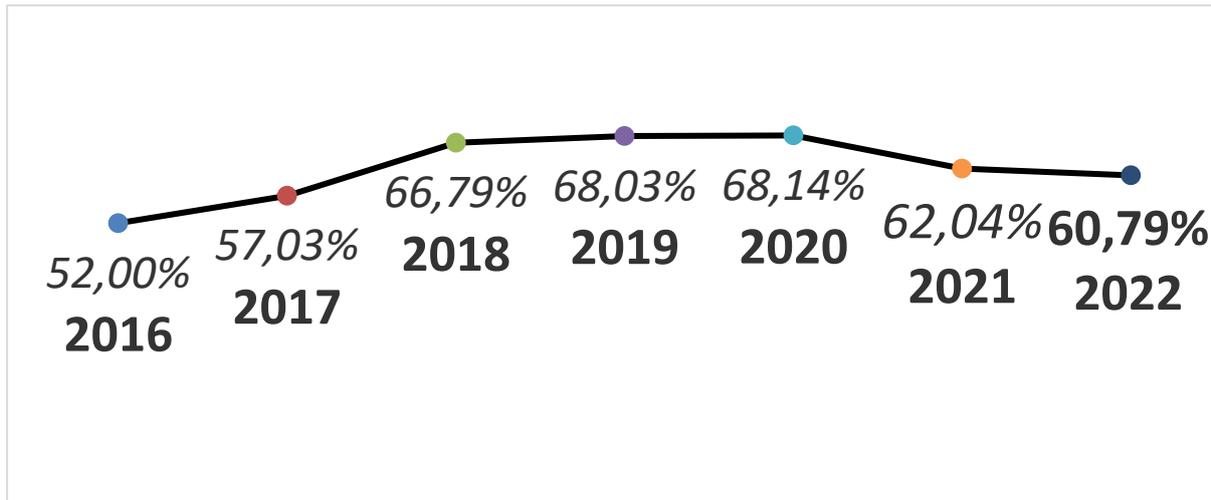
The following is empirical data regarding Tax Court Settlement in the years of 2016 – 2022

No	Decision Results	Year							Total
		2016	2017	2018	2019	2020	2021	2022	
1	Revocation	1.350	1.524	250	240	141	232	507	4.244
2	Unacceptable Acceptabel	1.782	701	1.053	621	573	1.381	959	7.070
3	Decline	2.900	2.600	1.997	2.388	2.507	3.297	4.634	20.323
4	Additional Tax to be Paid	8	1	9	1	6	9	1	35
5	Granting a part of the request	1.353	1.373	1.389	1.903	2.282	2.590	3.004	13.894
6	Granting a whole request	5.332	4.982	5.228	4.937	4.598	5.338	6.374	36.789
7	Cancellation	128	50	37	76	21	112	82	506
Total		12.853	11.231	9.963	10.166	10.128	12.959	15.561	82.861

Source: Secretariat of the Tax Court.

According to Article 80 section (1) Law Number 14 the Year 2002, the Tax Court decision consists of appeal not granted, appeal partially or fully granted, court order an additional tax due, appeal application rejected, amendment of errors in tax assessment; or annulment/ nullification of tax assessment. Taxpayers may revoke their appeal application, therefore the Tax Court decision in this regard is "revocation".

Based on the above classification, "annulment", "appeal partially granted" and "appeal fully granted" could be generalized/ grouped as tax court decisions in favor of taxpayers, whereas other types of decision could be generalized/ grouped as in favor of tax authorities. Referring to this classification, in 2022, the proportion of tax court decisions in favor of taxpayers was 60,79%. Surprisingly, for the last 7 years, the proportion consistently stands above 52% with 2020 records the highest (68,14%). It could be inferred that for the last 7 years, more than half of tax court decisions "amend" or "revised" tax authorities' assessment in tax disputes. In other words, despite adopting a two-roof system, evidence shows that the tax court judges were independent.



Source: Secretariat of the Tax Court

In conclusion, the Tax Court's independence is not reduced despite its organization, administration, financial, and human resources affairs being undertaken by the Ministry of Finance. The Ministry of Finance and the Supreme Court have separate guidelines that do not diminish the independence of justices who hear cases involving taxes (Wiwoho and Djatikumoro 2004). In the tax court, the Supreme Court plays the roles of supervisor and supervisor, offering advice on judicial procedural matters and monitoring judges' conduct (Anggreini 2021).

What is the response of tax authorities to tax court decisions that are mostly in favor of taxpayers? According to media publications, the response from the tax authorities so far has been focused on tax overpayments as a result of such court decisions. There are concerns that such overpayments will reduce tax revenue.

This paper aims to analyze previous theoretical and empirical studies regarding the role of the Tax Court and its relationship with tax justice, regardless of whether the Tax Court adopts a one-roof or two-roof system. In addition, this paper suggests a potential research gap for future empirical studies to analyze the relationship between Tax Court decisions and tax compliance in Indonesia. Since 2002, Indonesia's tax administration has advanced significantly, but there is still room to strengthen internal control mechanisms, increase the openness of administrative decisions, and improve tax officer training as well as the administration's audit and litigation capabilities. More tax audits based on compliance risks should be assigned to the audit system to further improve it (Arnold 2012).

Empirical evidence from tax justice studies shows that individuals with high trust in the government (including trust in the judicial system/ court) tend to have high tax justice. It can be concluded that if citizen's trust in the judicial system is high, tax compliance is high. On the contrary, if trust in the judicial system is low, tax compliance is low.

The abovementioned studies do not specifically mention tax court. However, as part of the judicial system, the tax court has the same position as other state institutions, therefore previous empirical evidence is relevant in this study.

It is suggested that further empirical studies examine the direct relationship between tax court decisions and tax morale and tax compliance in Indonesia. To conclude, the researcher argues that cross-country empirical evidence from previous studies shows that the existence of a tax court as a part of the judicial system (alongside other state institutions) positively affects tax compliance, despite whether it adopts a one-roof or two-roof system. The findings of this study indicated that the Supreme Court ought to be given complete control over the Tax Court following the Constitutional Court's Decision Number 26/PUU-XXI/2023. In order to give legal certainty regarding the long-standing overlap of authority between the executive and



judicial powers toward the Tax Court, which should only be a part of the judiciary, it is advised that the transfer of guidance authority be implemented in stages as soon as possible (Arsawan and Maula 2023).

CONCLUSION

Policy recommendations based on previous analysis suggest that the integration of the Tax Court into the Supreme Court under a one-roof system is positively correlated with tax morale. Therefore, tax court decisions play an important role in increasing tax compliance both from the perspective of tax authorities and taxpayers.

However, despite adopting the two-roof system, empirical evidence shows that The Tax Court has undertaken a fair trial and provided substantive justice to taxpayers in tax disputes. In the future, the implementation of a one-roof system is expected to strengthen this achievement.

The integration of The Tax Court under a one-roof system requires preparation on institutional infrastructure, education, and socialization for every stakeholder including taxpayers. The upcoming implementation will be an interesting subject to be examined. This research is expected to provide empirical evidence on the role and function of the tax court in tax disputes. The limitation of this study, however, is to find a direct link/relationship between tax court decisions and fairness perception and tax compliance of respected taxpayers. Such a gap is expected to be explored in future studies.

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