



The Constitutional Court ruled that the Authority over the Tax Court shall be transferred from the Ministry of Finance to the Supreme Court

July 2023

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1. Introduction

The Constitutional Court/Mahkamah Konstitusi (“MK”) has recently released Constitutional Court Decision Number 26/PUU-XXI/2023, stipulating that control over the organizational, administrative, and financial aspects of the Tax Court must be transferred to the Supreme Court/Mahkamah Agung (“MA”) by 31 December 2026 at the latest.

The decision was made in response to a petition submitted by three individuals, including an advocate and two academics, who argued that the involvement of the Ministry of Finance in the Tax Court's affairs compromised its independence.



2. What requests have been made by the Petitioners?

The petitioners requested the Constitutional Court to amend Article 5, paragraph (2) of Law No. 14 of 2002 on the Tax Court (“**Tax Court Law**”), which regulated that: “*Development on organization, administration, and finance for Tax Court is conducted by the Department of Finance*,” transferring the organizational, administrative, and financial development of the Tax Court from the Department of Finance to the Supreme Court. They argued that the involvement of the Ministry of Finance compromises the independence of the judiciary, which is essential to uphold the rule of law and ensure justice.

Until now, the Ministry of Finance has been in charge of the organizational, administrative, and financial aspects of the Tax Court. The petitioners requested to change this so that the Supreme Court could take over these responsibilities. More practically, the Petitioners have submitted a request to amend the aforementioned article to read as follows: “*The organizational, administrative, and financial development of the Tax Court will be carried out by the Supreme Court*.”

Furthermore, the petitioners are concerned that the existence of dual authorities over the Tax Court, particularly the Ministry of Finance's involvement, has the potential to compromise the independence of the judiciary. This is because they can exert control over the Tax Court's functions and responsibilities, even if it is limited to organizational, administrative, and financial matters.

So, the petitioners believed that the said article is regarded as inconsistent, incompatible, or in conflict with the principles of the rule of law and the independence of the judiciary., as stipulated in Article 24 paragraph (1) of the 1945 Constitution, which states that “*the judicial power is an independent power to administer justice in order to uphold law and justice.*”

3. What considerations did the Constitutional Court make?

- 1) The panel of judges made it clear that the Tax Court is a part of the judicial power, as stated in Article 24 of the 1945 Constitution. Therefore, Article 5, paragraph (2) of the Tax Court Law goes against the constitution.



- 2) The existence of dualism of coaching authority at the Tax Court has complicated the development of judicial institutions. Instead, there should be one institution responsible for the judicial power and should be separated from executive power and any other power.
- 3) The Court acknowledges that an essential component of the rule of law is the independence of the judiciary. Judicial independence ensures that the judicial power remains unbiased and unaffected by external influences. Without judicial independence, there is a risk of compromising justice, abuse or misuse of power, and the disregard of human rights by state authorities.

4. Constitutional Court Decision

In conclusion, the Constitutional Court decided that the control over the Tax Court shall be shifted from the Ministry of Finance to the Supreme Court no later than December 31st, 2026.

In detail, Constitutional Court decided that the phrase "Department of Finance" in Article 5, paragraph (2) of Law Number 14 of 2002 pertaining to the Tax Court is deemed inconsistent with the 1945 Constitution. Therefore, it lacks binding legal force unless interpreted as "The Supreme Court, which will gradually take over by 31st December 2026". Consequently, Article 5, paragraph (2) of Law 14/2002 shall be read as follows: "The organizational, administrative, and financial development of the Tax Court will be carried out by the Supreme Court in a phased manner, with full implementation by 31 December 2026."

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