

## THE CHANGE IN STATUS OF THE TAX COURT BASED ON THE CONSTITUTIONAL COURT DECISION NUMBER 26/PUU-XXI/2023

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**Abstract.** The Tax Court is a judicial institution where tax disputes are resolved based on Law Number 14 of 2002 concerning Tax Courts (Tax Court Law). There is a problem regarding the dualism of guidance in the Tax Court, namely by the Supreme Court and the Ministry of Finance as stipulated in Article 5 paragraph (2) of the Tax Court Law. Related to the dualism of guidance in the Tax Court, the petitioners submitted a judicial review through Case Number 26/PUU-XXI/2023 because it was considered contrary to the constitution and reduced judicial independence. The results of this research show that after the Constitutional Court Decision No. 26/PUU-XXI/2023, the authority to provide non-technical judicial guidance to the Tax Court was transferred from the Ministry of Finance to the Supreme Court no later than December 31st, 2026. In addition to the impact on the organization, the Constitutional Court Decision also impacts the position and procedural law. Steps are needed that must be prepared in a planned and thoughtful manner by the government after the Constitutional Court Decision Number 26/PUU-XXI/2023 so that the transition process can run well in accordance with the predetermined timeframe so that in the future, the Tax Court becomes part of the judicial power that upholds judicial independence and does not take sides with any power.

**Keywords:** tax court; judicial independence; constitutional court decision

### I. INTRODUCTION

Because taxes are one of the potential sources of governmental revenue, they play a critical role in achieving people's prosperity. The basis for tax collection as a source of governmental revenue is specified in the constitution of the Republic of Indonesia. Initially, tax collection was governed by Article 23 paragraph (2) of the 1945 Constitution of the Republic of Indonesia [1], and with the Third Amendment to the 1945 Constitution of the Republic of Indonesia on November 09th, 2001, the basis for tax collection was changed to Article 23A of the 1945 Constitution of the Republic of Indonesia, which states that "taxes and other compelling levies for state purposes shall be regulated by law." The phrase "based on law" has been changed to "regulated by law."

The meaning of the changes in the constitution entails that tax levies must be governed by laws and regulations, namely laws contained in the hierarchy of laws and regulations [2]. As quoted by Maria Farida Indrati from A. Hamid S. Attamimi, there are 9 (nine) points of the content material of the law, one of which is regulating the rights and obligations of citizens[3], including tax collection to the community. The collecting of taxes by the state does not bind the community in the absence of a law.

Furthermore, the taxation system in Indonesia is stipulated by Law Number 6 of 1983 on General Provisions and Tax Procedures (KUP Law). The law enacts a self-assessment system in which tax payments are not required based on tax assessments made by the tax administration. Taxpayers must

compute and pay taxes payable and report to the tax office. The amount of tax the taxpayer claims is correct as long as there is no proof to the contrary. When there is uncertainty regarding the veracity of what the taxpayer has reported, an audit is performed, the output of which is a Tax Assessment Letter (SKP) [4]. There may be discrepancies between the tax collector and the taxpayer on the tax payable when SKP is issued. These disparities are typically the result of differences in tax calculations or interpretation of rules, which can lead to tax disputes [5].

Tax disputes are resolved by a judicial institution known as the Tax Court. The Tax Court is a specific court under the Administrative Court that adjudicates tax disputes covering central tax, local tax, customs, and excise [6]. The Tax Court was formed by Law Number 14 of 2002 on the Tax Court (hence referred to as the Tax Court Law) to replace the role of the Tax Dispute Settlement Agency.

Based on the Tax Court Law, there is a dualism of guidance, also known as the dual roof system (two roofs). Article 5 of the Tax Court Law states that the Supreme Court is the institution that provides technical judicial guidance and general supervision of Tax Court judges [7]. In contrast, the institution that provides organizational, administrative, and financial guidance for the Tax Court is the Department of Finance (now Ministry of Finance) [7]. The dualism of the guidance demonstrates the Tax Court's status as a judicial institution that performs judicial functions. However, its position is under the executive power. The government argues

that the dualism of guidance in the Tax Court is necessary because tax disputes have a major influence on the state's revenue, so the Ministry of Finance must carry out guidance linked to non-technical justice.

The issue of dualism in the Tax Court's guidance has raised public concerns about the Tax Court's independence, especially since the litigants in the Tax Court are echelon units under the Ministry of Finance (Directorate General of Taxes and Directorate General of Customs and Excise). For this reason, in order to examine the content material of the Tax Court Law against the 1945 Constitution of the Republic of Indonesia of the Republic of Indonesia, especially regarding Article 5 paragraph (2) of the Tax Court Law, 2 (two) judicial reviews have been carried out to the Constitutional Court. The results of the judicial review of the dualism of the Tax Court's guidance are contained in the Constitutional Court Decisions Number 10/PUU-XXI/2020 and 57/PUU-XVIII/2020. The Constitutional Justice dismissed the Petitioners' petition in both verdicts; hence, Article 5 paragraph (2) of the Tax Court Law was declared still valid.

Furthermore, in February 2023, an application for judicial review was submitted by 3 (three) petitioners, namely Nurhidayat (advocate) as Petitioner I, Allan Fatchan Gani Wardhana (Lecturer) as Petitioner II, and Yuniar Riza Hakiki (Researcher/Secretary General of PSHK UII) as Petitioner III. The Petitioner states that the norm of Article 5 paragraph (2) of the Tax Court Law is contrary to Article 1 paragraph (3), Article 24 paragraph (1), Article 24 paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia of the Republic of Indonesia. As part of the judicial power stipulated in Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia of the Republic of Indonesia, the Tax Court is a specific court within the Administrative Court. In line with this, Law Number 48 of 2009 regarding Judicial Power states that both judicial technical and administrative guidance should be the full authority of the Supreme Court (one roof). However, until 2023, 21 years after the Tax Court Law was issued, the Government (Ministry of Finance) retains control over organizational, administrative, and financial guidance, causing dualism in the Tax Court's guidance.

The petitioner considers that guidance under the Ministry of Finance is contrary to the principle of independent judicial power as guaranteed in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, both institutionally and personally. Article 5, paragraph (2) of the Tax Court Law does not comply with the principle of independence, which requires the need for separation of powers. The guidance authority given to the Ministry of Finance may potentially make the Tax Court not independent in carrying out its duties and functions [8]. The petitioner also mentioned that in the discussion of the Tax Court Bill, the original intent of the government was clear that the organizational, administrative and financial guidance should be transferred to the Supreme Court no later than five years after the Tax Court Law was enacted. However, the formulation was omitted when the Tax Court Law was enacted.

The authority given to the Ministry of Finance in relation to organizational, administrative, and financial guidance for the Tax Court has reduced the freedom of Tax Court judges to examine and decide tax disputes. Therefore, the Constitutional Court's Judges considered that, in order to preserve the dignity of the Tax Court institution, the Tax Court should ideally be directed toward efforts to establish an independent judicial system, also known as a "one-roof system," or a one-roof judicial system as an effort in order to realize independent judicial power.

In Constitutional Court Decision Number 26/PUU-XXI/2023, the Constitutional Court judges partially granted the request for judicial review of Law 14 of 2022 regarding the Tax Court. The Constitutional Court stated in its decision that "Organizational, administrative, and financial development for the Tax Court is carried out by the Department of Finance," is contrary to the 1945 Constitution of the Republic of Indonesia of the Republic of Indonesia and has no binding legal force as long as it is not interpreted to mean "the Supreme Court, which is gradually implemented no later than December 31st, 2026," thus, in its entirety, Law 14/2002's Article 5 paragraph (2) states, "The Supreme Court is responsible for carrying out the organizational, administrative, and financial development for the Tax Court, which will be gradually implemented by December 31st, 2026."

After the Constitutional Court Decision Number 26/PUU-XXI/2023, which undoubtedly has a significant impact on the Tax Court, deliberate and mature steps are required to ensure that the process of transferring guidance from the Ministry of Finance to the Supreme Court runs smoothly. Based on this, it is necessary to examine further how the Tax Court's status has changed based on the Constitutional Court Decision Number 26/PUU-XXI/2023.

## II. RESULTS AND DISCUSSION

### *Development of the Tax Court Agency*

According to its history, the progenitor of the tax settlement agency was founded in 1915 by the Dutch East Indies Government through a tax dispute resolution agency called *Raad van het Beroep voor Belastingzaken*, based on Staatsblad Number 707 [9]. At the time, taxes were still simple, with only 3 (three) kinds of taxes recognized: income tax, household tax, and *verponding*. If a taxpayer objected to the collecting of taxes, the objection was filed with the *Direkteur van Financien*. If the taxpayer is dissatisfied with the director's decision, they may file an appeal with the tax dispute resolution agency. The Agency is subordinate to the Governor-General and is chaired by the *Direkteur van Financien* by virtue of its position (*ex officio*) [10], who is aided by four ordinary members and alternate members for a four-year term. Along with the times, improvements were made related to tax dispute resolution with the issuance of Staatsblad Year 1927 Number 29.

After the proclamation of independence, there was a change in the order of the tax dispute resolution agency by changing its name to the Tax Advisory Panel (MPP), formed under Law Number 5 of 1959. This Council was intended as a

means of legal protection for taxpayers and was domiciled in Jakarta. The MPP is in charge of ruling on appeals concerning state taxes, regional swatantra taxes, and swapraja taxes [11].

MPP is made up of a chairperson and 4 (four) members. The President appoints the chairperson, while the President appoints one of the members as an alternate chairperson. The members are appointed by two members nominated by the Supreme Court and two members nominated by the Jakarta Chamber of Commerce and Crafts (now known as the Chamber of Commerce and Industry). At least one alternate member shall be appointed for each member. The President has the authority to dismiss any member or alternate member prematurely, whether at its request or not. The dismissal shall be made by a decree stating the reasons for the dismissal.

With the growth of tax regulations and the increasing potential for disputes in the tax sector, the MPP is no longer thought to be sufficient for settling tax disputes. For this reason, the government established a more comprehensive judicial institution in the field of taxation, namely the Tax Dispute Resolution Agency (BPSP), based on Law Number 17 of 1997. The establishment of BPSP is the implementation and command of the KUP Law (in this case, Law Number 9 of 1994 regarding Amendments to the KUP Law). Article 27 of the KUP Law mandates the establishment of a tax court agency [12]. The direction and purpose of its formation are as follows [13]:

1. The BPSP is responsible for examining and deciding tax disputes in the form of:
  - a. appeal against the implementation of the decision of the competent authority.
  - b. lawsuit against the execution of tax laws and regulations in the field of collecting.
2. BPSP decisions are final and have the same executorial power and legal status as court decisions that have permanent legal force.
3. Filing an appeal or a lawsuit with the BPSP is taxpayers' final remedy, and the decision cannot be appealed to the general court or the Administrative Court (PTUN).

The BPSP is defined as a tax judicial body that solely handles administrative disputes (calculation and accounting aspects), does not handle tax crimes, and does not yet have the status of a judicial body culminating in the Supreme Court. In this regard, a tax judicial body that can realize justice and legal certainty in order to resolve tax disputes is required in accordance with Indonesia's judicial power system. For this reason, the government issued Law Number 14 of 2002 regarding the Tax Court (Tax Court Law).

Through the Tax Court Law, the Tax Court was established, which is "a judicial body that exercises judicial power for taxpayers or tax insurer seeking justice in tax disputes." The Tax Court was established as an effort to encourage judicial reform and as a result of the amendment of the 1945 Constitution of the Republic of Indonesia which gave rise to several specific courts under the Supreme Court. The Tax Court is the first and ultimate court in examining and deciding tax disputes. The Tax Court's ruling can only be reviewed by the Supreme Court.

In terms of Tax Court guidance aspect, the Tax Court Law regulates it in the Fourth Section, specifically in Article 5, which states, (1) "Technical judicial guidance for the Tax Court is conducted by the Supreme Court"; (2) "Organizational, administrative, and financial guidance for the Tax Court is provided by the Department of Finance"; (3) "The guidance referred to in paragraphs (1) and (2) shall not diminish the Judge's freedom in examining and deciding tax disputes".

#### *Tax Court Issues and the Urgency of One Roof Development in the Tax Court*

The formulation of Tax Court Law Article 5, paragraphs (1) and (2) demonstrates the dualism of judicial guidance, also known as the "dual roof system" [14]. Dualism in the guidance of judicial bodies occurred in all judicial bodies in Indonesia, particularly during the enactment of Law Number 14 of 1970, which made organizational, administrative, and financial matters of judicial bodies the authority of each relevant department (government). Meanwhile, the Supreme Court carries out the technical guidance. According to Daniel S. Lev, the dualism of judicial development is a Dutch legal doctrine and tradition.

The process of organizational, administrative, and financial transition of the judiciary, which was previously under the authority of the government, began with the enactment of the People's Consultative Assembly Decree Number X of 1998, which stipulated that the judicial power was independent of the executive power, which was then followed up by the establishment of Law Number 35 of 1999 and Law Number 4 of 2004. Since then, the judiciary in Indonesia has adopted a one-roof system [15].

The Tax Court's dualism of guidance has limited the Supreme Court's power in terms of guidance only related to judicial technicalities, while non-technical judicial affairs (namely organizational, administrative, and financial guidance) are carried out by the Ministry of Finance, including the proposal and dismissal of Tax Court judges. The Indonesian Constitution, as stated in Article 24 of the 1945 Constitution of the Republic of Indonesia of the Republic of Indonesia, guarantees judicial independence and mandates the Supreme Court as one of the actors of judicial power. It is highlighted further in Law Number 48 of 2009 regarding Judicial Power (Judicial Power Law), which calls for a one-roof court under the Supreme Court in Article 21 of the Judicial Power Law [16].

One of the essential things of a legal state (*rechtsstaat*) is the independence of judicial power or judicial independence. The independence of the judiciary is inextricably linked to the theoretical dispute over the *separation of powers* [17]. The doctrine of *trias politica* with the system of division of powers in accordance with Montesquieu states that the judiciary must be independent in the sense that its institutional position must be free from political influence [18].

As quoted by Amran Suadi, Alexander Hamilton mentioned that judicial independence is necessary among the three branches of power. The judiciary is "the least dangerous to the political rights of the constitution." The judiciary has neither power nor financial influence compared to the executive



and legislative powers. Judicial power only has power in the form of a judge's "decision [19]."

The main purpose of being free of the executive's influence and power is to ensure the realization of a fair and just trial (*to ensure a fair and just trial*) and to enable the judiciary to play a role in overseeing all government actions (*to enable the judges to exercise control over government action*) [20]. According to Shimon Shetreet, the executive should not have authority over judicial functions or matters connected to the judicial process, such as case management, court scheduling, judges' days off, and salary determination. If the judicial power lacks independence and freedom, it is guaranteed that it will not be neutral, especially when there is a conflict between the government and the citizens [21].

Although there is a guarantee in Article 5 paragraph (3) of Law Number 14 of 2002, which stipulates that "The guidance as referred to in paragraphs (1) and (2) shall not reduce the freedom of Judges in examining and deciding Tax Disputes", the provision still has the potential to reduce the freedom of judges in deciding tax disputes and has an impact on reducing trust and creating doubts for people seeking justice in the field of taxation. Furthermore, a unit under the Ministry of Finance is one of the parties to the Tax Court dispute. The Ministry of Finance also handles the Tax Court's non-technical guidance, such as salaries and allowances, and the courtroom is still housed in a Ministry of Finance building so that every decision tends not to be independent.

#### *Changes in Tax Court Status Based on Constitutional Court Decision Number 26/PUU-XXI/2023*

The Tax Court Law's legal norms, as stated in Article 5 paragraph (2), have not been nullified by the Constitutional Court through Decision Number 26/PUU-XXI/2023. The *judicial review* of the Tax Court Law was conducted in order to test the validity of the law against the 1945 Constitution of the Republic of Indonesia, whether the law is constitutional or unconstitutional in light of the 1945 Constitution of the Republic of Indonesia, in this case, regarding the institution authorized to provide guidance to the Tax Court [22].

With the Constitutional Court Decision No. 26/PUU-XXI/2023, there is a unification/integration of the Tax Court (*one-roof system*). So, both technical and non-technical judicial guidance in the Tax Court will be under the Supreme Court. The decision also set a deadline for the transfer of non-technical judicial guidance to the Tax Court, which was formerly carried out by the Department of Finance *in casu* of the Ministry of Finance, to be under the guidance of the Supreme Court by December 31<sup>st</sup>, 2026, at the latest. It demonstrates that the pertinent parties have about 3 (three) years to be prepared for the Tax Court's organizational, administrative, and financial guidance transition process.

In their consideration, the Constitutional Court judges stated that if the dualism of guidance in the Tax Court is maintained, it can impair the independence of the judicial body and provide opportunities for other powers to regulate the

implementation of the Tax Court's duties and authority. Meanwhile, if a one-roof judicial system is realized, there will be a judicial body free of the influence of other parties, allowing the hope for an independent judicial institution to be realized and gaining public trust in justice seekers and legal certainty [23].

Based on the history of its establishment, the Tax Court was designed to replace the BPSP, which had not yet been formed as a judicial body, culminating in the Supreme Court. For this reason, it is necessary to have a court that conforms with Indonesia's judicial power system and is capable of creating justice and legal clarity in resolving tax disputes [24]. This is aligned with the spirit of GBHN 1999, which states that policy in the legal sector must be capable of realizing an independent and impartial judiciary.

Furthermore, during the discussion of the Tax Court Bill, particularly Article 5, the government's *original intent* was that the Supreme Court would provide technical guidance to the judicial, while the Department of Finance would provide organizational, administrative, and financial guidance, which would be gradually transferred to the Supreme Court. Non-technical judicial guidance can be transferred if necessary supporting sources (including human resources) are met. As a result, the government allows for a maximum transfer time of five years from the day the Tax Court Law was enacted.

However, when enacted into the Tax Court Law, the provision of norms regarding the transition of guidance from the Department of Finance to the Supreme Court was eliminated. It caused the affairs of organizational, administrative, and financial development to continue to fall under the purview of the Ministry of Finance. In contrast, if we follow the Government's view as expressed during the Tax Court Bill discussion, non-technical judicial development ought to have been placed under the purview of the Supreme Court no later than five years following the establishment of the Tax Court. Particularly when considering the Supreme Court's present state, which is thought to be prepared to handle the Tax Court's organizational, administrative, and financial guidance.

Judge Triyono Martanto of the Tax Court explained that in order to follow up on reforms in the judiciary that were then underway, the Minister of Finance issued Minister of Finance Decree No. 191/KMK.01/2010 regarding the Tax Court reform team and had formulated steps to improve the Tax Court. These steps were divided as follows [25]:

- a) Short-term Program, a Memorandum of Understanding on the supervision and guidance of Tax Court judges, was formulated by the Supreme Court, Judicial Commission, and Ministry of Finance. It was signed on July 16<sup>th</sup>, 2010. Additionally, a verification system for the assets report of state officials from Tax Court judges was formulated.
- b) Medium-term Program, by formulating a policy for the recruitment of Tax Court judges, establishing a mechanism for the transparency of Tax Court decisions, establishing procedures for improving the case documentation system in the Tax Court and formulating a mechanism for evaluating the performance of Tax Court judges.

- c) Long-term Program, by preparing an academic paper on the Tax Court Law Amendment, drafting a bill on the amendment of the Tax Court Law and

*Preparing a phased procedure to transferring the Tax Court's administrative and financial guidance from the Ministry of Finance to the Supreme Court.*

Through the KMK in question, the Ministry of Finance has taken steps to prepare for the transfer of non-technical judicial guidance from the Ministry of Finance to the Supreme Court. However, no tangible efforts were made to realize it until 2023, until the third *judicial review* of Article 5 paragraph (2) of the Tax Court Law, which was decided by the Constitutional Court Decision Number 26/PUU-XXI/2023.

With the decision of the Constitutional Court, even though Article 5 paragraph (2) of the Tax Court Law is the only provision subject to *judicial review*, the transfer of authority also affects other provisions in the Tax Court Law, particularly those that contain formulations about the authority of the Ministry of Finance in the Tax Court, such as the appointment and removal of Tax Court judges, the Tax Court's allowances for human resources, and the requirements to become a Tax Court Attorney-at-Law.

These provisions will undoubtedly need to be adjusted, given that in the future, the Supreme Court will have authority over the appointment, dismissal, allowances, transfer, and increasing the competence of judges through education and training, among other things, at the Tax Court.

Furthermore, Constitutional Court Decision Number 26/PUU-XXI/2023 affects not only the organization but also the Tax Court's position and its procedural law. Regarding the Tax Court's position, no article in the Tax Court Law explicitly specifies that it is an administrative, judicial environment and a specific court. The reasons for this specificity are because of, among others:

- 1) The Tax Court applies a specific material law, tax law, and certain groups of people, taxpayers (not all citizens are taxpayers) [26];
- 2) Tax dispute resolution necessitates specific expertise for judges (in addition to mastering the theory of tax laws and regulations, they must also grasp the technical practice of taxes), and the majority of Tax Court judges are not law graduates, as is the case with other judicial bodies;
- 3) Disputes processed in the Tax Court specifically related to tax disputes;
- 4) No further lawsuit, appeal, or cassation may be filed against the tax court;
- 5) Tax Court judges are the same or equivalent to judges of the high administrative court as in the Constitutional Court Decision Number 6/PUU-XIV/2016;
- 6) There is only 1 (one) Tax Court, which is located in the country's capital;
- 7) There is no pattern of mutation and promotion for Tax Court judges as there is only one Tax Court and no level of judges' positions.

The establishment of a special court is not forbidden by law. However, the Judicial Power Act stipulates that a specific court can only be constituted in one of the existing four judicial environments. The four judicial environments are limitations, which means that there is no option to add other judicial environments.

The mention of the Tax Court is part of the administrative court and is a specific court, as stated in [27]:

- 1) Explanation of Article 9A paragraph (1) of Law Number 51 of 2009 regarding the Second Amendment to Law Number 5 of 1986 regarding Administrative Courts. Article 9A paragraph (1): "Within the administrative court, specific courts may be established which shall be regulated by law." Explanation of Article 9A: "Specific courts are differentiations or specializations within the administrative court, such as state tax courts and tax courts."
- 2) Explanation of Article 27 paragraph (1) of Law Number 48 of 2009 regarding Judicial Power. Article 27: "Specific courts can only be established in one of the judicial environments under the Supreme Court, as specified in Article 25." Explanation of Article 27 paragraph (1): "What is meant by specific courts are, among others, juvenile courts, commercial courts, human rights courts, corruption courts, industrial relations courts and fisheries courts within the general judicial system, as well as tax courts within the administrative court."
- 3) Article 27 paragraph (2) of Law Number 7 of 2021 regarding Harmonization of Tax Regulations. "The decision of the Tax Court is a specific court decision within the administrative court."

Based on this, and given that, following the Constitutional Court Decision 26/PUU-XXI/2023, the Tax Court's guidance assumes the complete authority of the Supreme Court, it is vital to emphasize the Tax Court's position and make other related adjustments by quickly revising the Tax Court Law. As for the procedural law, it is still essential to await the decision of the Supreme Court, as the Tax Court's technical and non-technical supervisor, on whether changes will be made or the current procedural law will be maintained, as specified in the Tax Court Law.

Furthermore, in order to support the process of transferring non-technical judicial guidance (organization, administration, and finance) at the Tax Court from being under the Ministry of Finance to under the Supreme Court, steps must be prepared in a planned and thoughtful manner by the government after the Constitutional Court Decision Number 26/PUU-XXI/2023. The following are some steps that must be taken:

- a. Coordinate with all relevant Ministries/Institutions, including the Supreme Court, Ministry of Finance, Ministry of Administrative and Bureaucratic Reform of the Republic of Indonesia and the National Civil Service Agency (related to organization and work procedures and staffing), ANRI (related to archives need to be considered particularly

during the process of moving the Tax Court office, in case it will be moved), and the Tax Court;

b. Issue a Presidential Decree that governs the transfer of organization, administration, and finance from the Ministry of Finance to the Supreme Court (as was done during the judicial authority unification process following the enactment of Law Number 35 of 1999). It can be followed up by establishing a transition/transfer team and cross-ministerial/institutional arrangements to facilitate a seamless transition. As related to the task, including preparing:

- 1) Regulations relating to the organization and work procedures and staffing of the clerkship and secretariat at the Tax Court;
- 2) Regulations relating to the financial rights of personnel in the Tax Court (both judges and civil servants working in the Tax Court Secretariat) whereby currently the financial rights among judges in the Tax Court and general judges under the Supreme Court differ in amount. The transfer of guidance must not be detrimental to the judges and personnel of the Tax Court.
- 3) Regulations regarding the appointment of the chairperson/judge of the Tax Court.

Furthermore, once the regulation is formed, the process of transferring personnel and state property to the Supreme Court, as well as budgeting for the current fiscal year, can be prepared for the next stage prior to the transfer deadline set by Constitutional Court Decision Number 26/PUU-XXI/2023, which is December 31<sup>st</sup>, 2023.

c. Simultaneously with the transfer process, the Tax Court may begin drafting a Bill on Amendments to the Tax Court Law to conform pertinent provisions related to the Ministry of Finance's transfer of guidance authority to the Supreme Court.

### III. CONCLUSIONS

Prior to the Constitutional Court ruling on Constitutional Court Decision Number 26/PUU-XXI/2023, the Tax Court was guided by two (two) different institutions: the Supreme Court for technical judicial guidance and the Ministry of Finance for organizational, administrative, and financial guidance. The dualism of guidance poses problems, particularly with the independence of the judiciary. The Tax Court's guidance, as stated in Constitutional Court Decision Number 26/PUU-XXI/2023, states that organizational, administrative, and financial guidance be transferred from the Ministry of Finance to the Supreme Court by December 31<sup>st</sup>, 2026, at the latest. The decision has impacts on the Tax Court's future, among others related to the organization, position, and procedural law. Planned and thoughtful steps are required to ensure a smooth transition from the Ministry of Finance to the Supreme Court. So that the Tax Court, as part of the judicial power, can carry out its duties and functions optimally, resulting in the establishment of an independent Tax Court.

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- [23] Constitutional Court Decision Number 26/PUU-XXI/2023, p. 65-70.
- [24] See Consideration Precautions in Law Number 14 of 2002 regarding Tax Courts letters d and f, 2002.
- [25] Triyono Martanto as in Regular Tax Discussion Webinar Event, "Pengadilan Pajak Pasca Putusan Mahkamah Konstitusi Nomor 26/PUU-XXI/2023, accessed on <https://www.youtube.com/watch?v=EqFgVWAjM7o>, September 20th, 2023.
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- [27] It can also refer to the Constitutional Court Decision Number 6/PUU-XIV/2016 on August 04th, 2016.