

The Constitutional Court has ruled that Application for Judicial Review cannot be filed by State Administrative Institutions or Officials, **does it impact to the Director General of Taxes?**

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On Thursday, March 7, 2024, the Constitutional Court in Verdict Number 24/PUU-XXII/2024 has determined that a Court Verdict that has obtained permanent legal force can be submitted for Judicial Review (hereinafter referred to as "JR") to the Supreme Court, except by State Administrative Institution or Officials. Based on Article 1 point 8 of the State Administrative Court Law (hereinafter referred to as the PTUN Law), the definition of State Administrative Institution or Official is an Institutional or an Official that carries out government affairs based on applicable laws and regulations.

A. Background

The background of judicial review submission is in response to the lawsuit by Rahmawati Salam (Plaintiff) against the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (hereinafter referred to as the Minister of ATR/BPN RI or Defendant) which was granted entirety by the Jakarta Administrative Court and has been legally binding (*inkracht*). However, the Minister of ATR/BPN RI does not implement the results of the verdict *a quo* because they argue that there are still legal remedy for judicial review that will be pursued in accordance with Article 132 paragraph (1) of the PTUN Law. In consequence of that treatment, Rahmawati Salam considered that her **constitutional rights and/or authorities were impaired by the enactment of Article 132 paragraph (1) of PTUN Law which allows for Judicial Review**. By not limiting the authority of State Administrative Institution or Officials to apply for Judicial Review, **it creates legal uncertainty and injustice for the Applicant**.

B. The Subject of the Petition

Scope of Article that subjected to material review	Article 132 paragraph (1) of Law No. 5 of 1986 concerning State Administrative Courts
The Article context that subjected to material review	Court Verdicts that has obtained permanent legal force can be filed a petition for judicial review to the Supreme Court
Reasons for material review	<ol style="list-style-type: none">1. The article does not limit State Administrative Institution or Officials for filing a Judicial Review.2. There is legal uncertainty and injustice to the PTUN Verdict because the Minister of ATR/BPN RI postponed the implementation of the verdict because they are filing a Judicial Review.3. In accordance with Article 66 paragraph (2) of the Supreme Court Law, the petition for Judicial Review does not postpone or stop the implementation of the Court Verdict.
Article that Contrary to the Other Article that Subjected to review	<ol style="list-style-type: none">1. Article 1 paragraph (3) of the 1945 Constitution Law, "<i>The Republic of Indonesia is a state based on law</i>"2. Article 28D paragraph (1) of the 1945 Constitution Law, "<i>Every person shall be entitled to recognition, guaranty, protection, and equitable legal certainty as well as equal treatment before the law</i>".

C. The Verdict and Its Considerations

Constitutional Court Verdict Number 24/PUU-XXII/2024 has partially granted the petition for constitutional review of the provisions of Article 132 paragraph (1) PTUN Law against Article 28D paragraph (1) of the 1945 Constitution Law. The partial granting of the petition is because there is an inaccuracy in the Petition of the petition thus it is partially granted as follow:

Petitum of the Petition	The Constitutional Verdict
<p>No legal enforcement as long as it is not interpreted as <i>"to a Court verdict which has obtained permanent legal force, only a person or civil legal entity that can file a Judicial Review to the Supreme Court."</i></p>	<p>Stating that the interpretation of Article 132 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts (State Gazette of the Republic of Indonesia of 1986 Number 77, Supplement to State Gazette of the Republic of Indonesia Number 3344) become <i>"to a court verdict which has obtained permanent legal force can be filed a Judicial Review to the Supreme Court, except by a State Administrative Institution or Official".</i></p>

The considerations of the Constitutional Court in deciding the *a quo* case are as follows:

- 1) In principle, the PTUN Law was made with the aim that dispute resolution between citizens and State Administrative Institution and/or Officials can be resolved within the scope of a separate court, not through the General Court. This is because state administrative cases have special characteristics that are different from civil cases, among others:

- a) In a state administrative case, only a person or civil legal entity can be the Plaintiff, while Government Institution and/or Officials are always in the position of the Defendant.
- b) There is an imbalance between the position of the Plaintiff and the Defendant, because it is assumed that the Plaintiff is in a weak position compared to the Defendant as the holder of public power.
- c) The Judge's verdict applies not only to the parties to the dispute, but also to parties outside the dispute.

- 2) If the defeated State Administrative Institution or Official is still given the opportunity to file a Judicial Review as stipulated in the norms of Article 132 paragraph (1) of the PTUN Law, then this shows that the defeated State Administrative Institution or Official has shifted out the existence of the State Administrative Court as an instrument of legal protection for citizens.
- 3) According to the Court, as a form of strengthening, respecting, and encouraging compliance with PTUN verdict that have permanent legal force (*in kracht van gewijsde*) and at the same time as a form of legal protection for citizens (*rechtsbescherming voor de samenleving*), the Judicial Review in the PTUN should be interpreted as only being able to be conducted and given to a person or civil legal entity, and cannot be given/conducted by a State Administrative Institution or Official whose decision and/or action is the object of a dispute in the PTUN and has been declared defeated by the PTUN.
- 4) Giving the right/authority to the State Administrative Institution or Official to

file a Judicial Review is counterproductive and creates legal uncertainty and intolerable injustice, which has an impact on the delay in implementation of a verdict that has the potential effect to deny justice as the adage of "*justice delayed justice denied*".

However, there are dissenting opinions from 2 (two) of 9 (nine) Constitutional Judges who examined the case *a quo*. Dissenting opinion from the Constitutional Judge of Suhartoyo and Daniel Yusmic P. Foekh which essentially states as follows:

- 1) The position of the Plaintiff (person or civil legal entity) and the Defendant (state administrative institution or official) are equal. There is a principle of equality before the law, where the parties have equal rights before the law in the judicial process without discrimination and the principle of *audi et alteram partem*, where the judge hears both parties equally.
- 2) Administrative trial should be considered as cases "other criminal trial", so that state administrative institution/officials who issue Administrative Decisions can still be given the authority to file for judicial review. Furthermore, in taxation cases,

if the right to file a judicial review is not given to the state administrative institution/officials and if there is a possibility of an error in calculating the amount of tax, it will be very detrimental to the state.

D. The Impact of the Constitutional Court Verdict on the Tax Court Verdict

The Constitutional Court Verdict Number 24/PUU-XXII/2024 will bring refreshment to taxpayers as seekers of justice. This verdict strengthens the rights of individuals or entities litigating in State Administrative Courts, including Tax Courts, so that taxpayers will get better legal protection.

That Constitutional Court Verdict is expected to provide legal certainty and protection regarding who can file a judicial review of the Tax Court Verdict to the Supreme Court. It should be noted that the Tax Court is within the State Administrative Judiciary and fully under the Supreme Court. This is in line with Article 24 of the 1945 Constitution Law after the Fourth Amendment (2002), which stated that **judicial power is exercised by the Supreme Court and the judicial institution under it are within** the general judicial court, religious judicial court, military

judicial court, and **state administrative court**.

Furthermore, the Article 18 of Law No. 48/2009 on Judicial Power, also stipulated that **judicial power is exercised by a Supreme Court**. The courts under it, namely:

- 1) the general judicial court,
- 2) the religious judicial court,
- 3) the military judicial court, and
- 4) **the state administrative court.**

Based on above considerations, **the Supreme Court may establish a Special Court in the judicial circles under the Supreme Court, which one of the special courts in the State Administrative Courts namely the Tax Court** as explained in the Elucidation of Article 9A paragraph (1) of Law Number 51 Year 2009 regarding the Second Amendment to Law Number 5 Year 1986 on State Administrative Courts.

In the scope of Tax Court, the subject of the dispute are Taxpayer or a Tax Guarantor and the competent authorities who issued Decision as stipulated in the Article 1 number 5 of the Tax Court Law below:

"Tax dispute shall be a dispute that arises in the taxation sector between a Taxpayer or a Tax Guarantor and the competent authorities as a result of the

issuing of a decision in respect of which an Appeal or Lawsuit can be filled with the Tax Tribunal pursuant to taxation laws and regulation, including a Lawsuit in respect of the implementation of tax collection in accordance with the Law on Tax Collection by Distress Warrant.”

As stipulated in the Article 1 number 1 of the Tax Court Law, the definition of competent authority in tax disputes shall be Director General of Taxation, Director General of Customs and Excise, Governor, Regent/Mayor or officials appointed to implement tax laws and regulations.

Thus, with the issuance of the Constitutional Court Verdict which stipulates changes in the meaning of Article 132 paragraph (1) of the PTUN Law, it will cause important changes in the interpretation and implementation of law in the state administrative court, especially give significant impact on the Tax Court and the procedure for filing a judicial review. This is because the definition of the Article in the State Administrative Court that is subjected to Constitutional Review, also regulated in the Tax Court Law as follow:

PTUN Law	Tax Court Law	The interpretation of PTUN Law based on Constitutional Court Verdict
<p>Article 132 paragraph (1)</p> <p><i>"to a court verdict that has obtained permanent legal force, a petition for judicial review can be filed to the Supreme Court"</i></p>	<p>Article 77 paragraph (3)</p> <p><i>"Parties in dispute can file a judicial review of a Tax Court verdict to the Supreme Court."</i></p>	<p>Article 132 paragraph (1)</p> <p><i>"to a court verdict that has obtained permanent legal force, a petition for judicial review can be filed to the Supreme Court, except by a State Administrative Institution or Official"</i></p>

By the re-interpretation of the scope of Article 132 paragraph (1) of the PTUN Law in accordance with the Constitutional Court Verdict Number 24/PUU-XXII/2024, which essentially stipulates that a petition for judicial review to the Supreme Court can be submitted **except by a State Administrative Institution or Official**, thus the Constitutional Court Verdict should also give the same meaning to the scope of Article 77 paragraph (3) of the Tax Court Law. This considering the fact that the Constitutional Court Verdict is *erga omnes* which means it is binding on all institutions and State Administrative Officials.

Concluding Remarks

The Constitutional Court Verdict Number 24/PUU-XXII/2024 will give the significant impact for the Director General of Taxes, Director General of Customs and Excise, Governors, Regents/Mayors as State Administrative Officials which have a legal obligation to comply with the Constitutional Court's Verdict.

With the issuance of that Constitutional Court Verdict, the Tax Court Verdict may not be filled for judicial review by the Director General of Taxes, Director General of Customs and Excise, Governors, Regents/Mayors as State Administrative Officials. In this case, if the Constitutional Court Verdict number 24/PUU-XXII/2024 is implemented, the Director General of Taxes cannot file a judicial review. Therefore, the legal remedy in the Tax Court is maximally attempted by the Taxpayer by preparing relevant tax laws regulations, supporting documents of the dispute that strengthen the position of the Taxpayer as well as the strategy and presentation of arguments, so as to strengthen the confidence of the Tax Court Judges in deciding the dispute. Thus, the Tax Court Verdict may grant the Taxpayer's appeal or lawsuit and become an *inkracht* verdict.

As of the publication of this newsletter, there are no regulations governing the timeframe for the implementation of the Constitutional Court Verdict. In general procedure, after a Constitutional Court Verdict is issued, the verdict shall be published in the State Gazette of the Republic of Indonesia, then followed up by the House of Representatives (DPR) and the President through the National Legislation Program (Prolegnas) which contains planning for the formation of central-level laws with a priority scale.

Thus, if there is an implementing regulation related to the Constitutional Court Verdict Number 24/PUU-XXII/2024 and that Constitutional Court Verdict will impact to the Tax Court, it will give the significant alteration as follows:

1.

Tax Court and institutions within the state administrative administration **need to adjust their procedures and provisions to comply with Constitutional Court Verdict Number 24/PUU-XXII/2024** and its implementing regulations.

2.

This verdict is **expected to increase legal certainty and protect the rights of parties disputing** in state administrative courts.

3.

Potential subject changes in the mechanism for filing judicial review, especially in the Tax Court Law.

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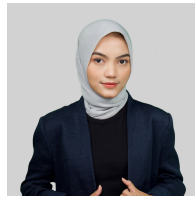
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