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Jurisdictional Transformation of Government Liability Disputes in Indonesia: The Role of the Tax Court

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Abstract: The transformation of governance in Indonesia can be traced through the shifting jurisdiction over disputes involving unlawful acts by the government (*onrechtmatige overheidsdaad*). Initially adjudicated by the General Courts under the paradigm of private law, these disputes were later reassigned to the Administrative Court following the enactment of Law No. 5 of 1986, reflecting the recognition of government actions as matters of public law. In the strategic field of taxation, Indonesia further established a specialized judicial body, the Tax Court under Law No. 14 of 2002, designed to address the complex, interdisciplinary nature of tax disputes, which involve not only law but also economics, accounting, and public policy. This article aims to analyze the role of the Tax Court in strengthening governance by ensuring accountability, transparency, and fairness in the resolution of government liability disputes. The study employs a normative juridical approach combined with comparative insights to explore the evolving jurisdictional framework. The findings indicate that the Tax Court's authority extends beyond the narrow scope of tax collection, encompassing a broader mandate to uphold legal certainty and public trust in fiscal administration. By situating tax adjudication within the context of global governance and welfare, the Tax Court contributes to aligning domestic legal practices with international standards, thereby reinforcing Indonesia's commitment to good governance. The conclusion underscores that jurisdictional transformation in government liability disputes not only redefines institutional arrangements but also strengthens interdisciplinary synergy between law and economics, fostering global welfare through improved accountability mechanisms.

Keywords: Judicial Transformation, Administrative Law, Tax Court, Governance, Global Welfare

INTRODUCTION

The transformation of jurisdiction over government liability disputes (*onrechtmatige overheidsdaad* or OOD) in Indonesia illustrates the dynamic relationship between law, governance, and public accountability. Historically, such disputes were adjudicated by the General Courts under the paradigm of private law, reflecting an understanding that unlawful acts by the government could be analogized to civil wrongs committed by private entities

(Ali, 1978). The enactment of Administrative Court Law (Undang-Undang No. 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara, n.d.) shifted this perspective by recognizing government actions as matters of public law, thereby placing OOD under the jurisdiction of administrative courts. More recently, the field of taxation has witnessed further transformation through the establishment of a specialized judicial body, the Tax Court Law (Undang-Undang No. 14 Tahun 2002 Tentang Pengadilan Pajak, n.d.), tasked with resolving complex disputes that involve not only legal interpretation but also economic and administrative considerations.

Despite these normative developments, the allocation of jurisdiction has remained contested, particularly after the enactment of Government Administration Law (Undang-Undang No. 30 Tahun 2014 Tentang Administrasi Pemerintahan, n.d.) and the issuance of Supreme Court Regulation No. 2 of 2019 (Peraturan Mahkamah Agung No. 2 Tahun 2019 Tentang Pedoman Penyelesaian Sengketa Tindakan Pemerintahan - Onrechtmatige Overheidsdaad, n.d.). Both instruments broadened the jurisdiction of PTUN to encompass factual actions of government authorities, potentially overlapping with the jurisdiction of the Tax Court over factual measures taken by the Directorate General of Taxes (DJP) and the Directorate General of Customs and Excise (DJBC).

As elaborated by Bimasakti (Bimasakti, 2018a), Article 87 of the Government Administration Law introduced a significant paradigm shift by incorporating factual actions (*feitelijk handelingen*) into the scope of administrative decisions (*Keputusan TUN*), a view reinforced by Supreme Court Circular No. 4 of 2016 (Surat Edaran Mahkamah Agung No. 4 Tahun 2016 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2016 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, n.d.). Rohman (Rohman, 2023) further highlights that this doctrinal shift marked the formal transition of jurisdiction over *onrechtmatige overheidsdaad* (OOD) from the General Courts to PTUN, affirming that both written decisions and factual measures are subject to administrative judicial review. Together, these perspectives illustrate the broader trend of expanding administrative justice to strengthen citizens' access to remedies against government misconduct.

In response to this ambiguity, the Supreme Court clarified in Supreme Court Circular No. 1 of 2022 (Surat Edaran Mahkamah Agung No. 1 Tahun 2022 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2022 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, n.d.) that decisions and factual actions in the field of taxation and customs, such as prevention, sealing, and account blocking, fall within the absolute competence of the Tax Court. This clarification reaffirmed the principle of *lex specialis derogat legi generali*, positioning the Tax Court as the authoritative forum for resolving tax-related government liability disputes.

Within this context, the role of the Tax Court extends beyond technical adjudication of tax collection. Its function in resolving government liability disputes contributes directly to strengthening good governance, ensuring transparency, accountability, and legal certainty in fiscal administration. Previous research by Herman and Apriadi (Herman & Apriadi, 2019) further highlighted the effectiveness of law enforcement in the Tax Court in resolving tax disputes, particularly through statistical analysis of cases and decisions during the 2013–2018 period. Their study demonstrated that the Tax Court functions as the primary gateway for justice seekers in taxation.

In line with this, Artono and Anggari (Artono & Anggari, 2018) emphasize that the Tax Court serves not only as a specialized forum for adjudicating fiscal disputes but also as an essential mechanism of legal protection for taxpayers and tax insurers. Their study distinguishes between preventive protection, allowing taxpayers to file objections before a decision is finalized and repressive protection, enabling them to pursue appeals or lawsuits before the Tax Court. Importantly, they highlight that judicial review (*peninjauan kembali*) to

the Supreme Court constitutes the only extraordinary legal remedy against Tax Court decisions, thereby underscoring both the finality of tax adjudication and its role in safeguarding taxpayer rights. This perspective situates the Tax Court as a guardian of fairness, expediency, and legal certainty within Indonesia's fiscal system, complementing the broader governance functions explored in this paper.

Other previous research has largely focused on the institutional design of administrative justice and the procedural mechanisms of PTUN, with relatively little attention paid to the Tax Court's role as a specialized judicial body with broader implications for governance and global welfare. While Herman and Apriadi (Herman & Apriadi, 2019) focused primarily on effectiveness and case outcomes, they did not examine in depth the institutional dimensions of the Tax Court in relation to governance and international standards. This paper therefore seeks to fill that gap by analyzing the jurisdictional transformation of government liability disputes in Indonesia, with particular emphasis on the role of the Tax Court in reinforcing governance standards and aligning domestic practice with international norms.

METHOD

This study is conducted through normative legal research, which emphasizes the examination of legal norms, statutory frameworks, and judicial practices rather than empirical observation. The focus is placed on analyzing laws, regulations, judicial interpretations, and doctrinal writings to assess how jurisdiction over government liability disputes has transformed in Indonesia (Saptomo, 2009).

The primary sources of data include Tax Court Law, Government Administration Law, and Administrative Court Law, as well as derivative instruments such as Supreme Court Regulation No. 2 of 2019 and Supreme Court Circular No. 1 of 2022. Complementary sources include judicial decisions and academic literature that interpret and critique the evolving scope of jurisdiction in cases involving unlawful government acts (*onrechtmatige overheidsdaad*) and factual measures by fiscal authorities.

Three methodological approaches are employed in this research, reflecting the need to address the issue from multiple dimensions of legal analysis:

1. Statutory approach, examining the hierarchy and interpretation of relevant legal provisions, particularly under the principle of *lex specialis derogat legi generali*.
2. Case approach, analyzing disputes and judicial practices concerning decisions and factual actions by the Directorate General of Taxes (DJP) and the Directorate General of Customs and Excise (DJBC), including cases of prevention, sealing, and account blocking.
3. Conceptual approach, applying theoretical frameworks of administrative law, governance, and judicial specialization to assess the broader implications of the Tax Court's jurisdiction.

The analytical technique applied is qualitative and descriptive, aiming to identify patterns of jurisdictional transformation and evaluate their implications for legal certainty, accountability, and good governance. By combining statutory interpretation with doctrinal and institutional analysis, this research ensures validity, reliability, and relevance within the framework of normative legal inquiry.

RESULT AND DISCUSSION

1. Normative Development of Government Liability Disputes

The jurisdictional transformation of government liability disputes in Indonesia has been shaped by a series of legislative milestones (Mertokusumo, 2019). Initially, such disputes were adjudicated by the General Courts under the private law paradigm, before the enactment of Law No. 5 of 1986 on the Administrative Court (PTUN) reassigned them to the administrative judiciary, recognizing government acts as matters of public law (Simanjuntak,

2018b). Further development came with the promulgation of Government Administration Law, which explicitly allowed citizens to challenge not only administrative decisions but also factual actions of government officials (Simanjuntak, 2018a). To operationalize this, the Supreme Court issued Supreme Court Regulation No. 2 of 2019, confirming that *onrechtmatige overheidsdaad* (OOD) fell under PTUN jurisdiction (Bimasakti, 2018b).

As elaborated by Bimasakti (Bimasakti, 2018a), Article 87 of the Government Administration Law introduced a significant paradigm shift by incorporating factual actions (*feitelijk handelingen*) into the scope of administrative decisions (*Keputusan TUN*), a view reinforced by Supreme Court Circular No. 4 of 2016. Rohman (Rohman, 2023) further highlights that this shift formally marked the transfer of jurisdiction over OOD from the General Courts to PTUN, demonstrating a broader trend of expanding administrative justice to enhance citizens' access to remedies against government misconduct. Together, these perspectives underscore how the normative framework has progressively consolidated PTUN's role as the principal forum for challenging unlawful acts of government (Prodjodikoro, 2021).

At the same time, the enactment of Tax Court Law established the Tax Court as a specialized judicial body with absolute jurisdiction over tax disputes, including those arising from factual measures taken by tax and customs authorities. This created a unique overlap: while general administrative law instruments positioned PTUN as competent for OOD cases, tax-related OOD and factual actions were also explicitly claimed under the jurisdiction of the Tax Court.

2. Jurisdictional Conflict: PTUN vs. Tax Court

The broad scope of PTUN's competence after Government Administration Law and Supreme Court Regulation No. 2 of 2019 generated interpretive uncertainty regarding tax-related disputes. For example, actions such as prevention from traveling abroad, sealing of assets, and blocking of taxpayer bank accounts are inherently administrative measures but are carried out within the framework of tax law enforcement in Tax Collection Law (Undang-Undang No. 19 Tahun 2000 Tentang Penagihan Pajak Dengan Surat Paksa, n.d.). This ambiguity risked creating forum shopping and inconsistency in judicial review.

As highlighted by Bimasakti (Bimasakti, 2018), the expansion of PTUN's competence under the Government Administration Law and its confirmation through Supreme Court Circular No. 4 of 2016 was intended to ensure that factual actions of government authorities could be directly reviewed as part of administrative justice. While this development strengthened the protective function of PTUN in addressing unlawful government conduct, it also inadvertently widened the potential for jurisdictional overlap with the Tax Court in cases involving fiscal authorities. In particular, when factual measures such as asset sealing, account blocking, or travel bans are undertaken within the context of tax enforcement, the dual recognition of PTUN's competence and the Tax Court's absolute jurisdiction created interpretive uncertainty.

Rohman (Rohman, 2023) reinforces this view by underscoring that the doctrinal shift under Article 87 of the Government Administration Law was meant to expand citizens' access to remedies against government misconduct. Yet in the fiscal sector, this expansion clashed with the Tax Court's *lex specialis* competence, demonstrating how reforms intended to broaden justice simultaneously produced institutional tension.

To address this ambiguity, the Supreme Court sought clarification through SEMA No. 1 of 2022. Widodo (Widodo et al., 2023) observe that although the circular attempted to resolve the jurisdictional conflict by reaffirming the Tax Court's competence over factual measures, its normative foundation remains fragile. They argue that absolute jurisdiction cannot be expanded by judicial circulars alone, as under Indonesian law such authority must

be granted by statute. This critique highlights the structural weakness of relying solely on SEMA as the legal basis for jurisdictional resolution.

Doctrinally, the resolution lies in the principle of *lex specialis derogat legi generali*. The Tax Court Law serves as a special regulation governing tax disputes, and therefore overrides the general competence of PTUN in this sector. This position ensures that disputes arising from tax-related government liability remain within the specialized expertise of the Tax Court, aligning with the nature of tax law as both legal and economic in character.

Consistent with Herman and Apriadi (Herman & Apriadi, 2019), the effectiveness of the Tax Court in adjudicating tax disputes demonstrates that this specialized forum plays a strategic role not only in resolving fiscal controversies but also in safeguarding legal certainty. The empirical data on the number and variation of decisions from 2013 to 2018 further reinforce the argument that the Tax Court's absolute jurisdiction constitutes a *lex specialis* compared to the Administrative Court. This rationale also explains why the Supreme Court, through Circular Letter No. 1 of 2022, reaffirmed the exclusive competence of the Tax Court over factual actions in the field of taxation.

3. Supreme Court Clarification through SEMA No. 1 of 2022

To settle the jurisdictional ambiguity, the Supreme Court issued Supreme Court Circular No. 1 of 2022 (Surat Edaran Mahkamah Agung No. 1 Tahun 2022 Tentang Pemberlakuan Rumusan Hasil Rapat Pleno Kamar Mahkamah Agung Tahun 2022 Sebagai Pedoman Pelaksanaan Tugas Bagi Pengadilan, n.d.). It explicitly stated that decisions and factual actions in the field of taxation and customs—such as prevention, sealing, and account blocking—fall under the absolute jurisdiction of the Tax Court, as provided by Article 31 of Tax Court Law. This clarification has been pivotal in harmonizing judicial practice, ensuring consistency, and safeguarding legal certainty. By reaffirming the Tax Court's competence, the Supreme Court also underscored the importance of specialization in resolving disputes that involve complex interactions of law, economics, and fiscal governance.

However, as Widodo (Widodo et al., 2023) point out, while Supreme Court Circular No. 1 of 2022 provides a practical solution to fill the legal vacuum, it cannot permanently settle the jurisdictional conflict because a circular does not carry the same normative authority as a statute. They argue that absolute jurisdiction must be determined by legislation, not by secondary instruments. Thus, Supreme Court Circular No. 1 of 2022 should be seen as a stopgap measure that ensures taxpayers are not left without judicial protection, but its legitimacy and durability remain limited. This critique reinforces the urgency of legislative reform to codify the Tax Court's jurisdiction over factual measures within the framework of the Tax Court Law.

In contrast to the normative-formal perspective of Widodo (Widodo et al., 2023), which emphasizes that the expansion of absolute jurisdiction must await legislative amendment, this paper adopts a more substantive and governance-oriented stance. It argues that Supreme Court Circular No. 1 of 2022, while limited in its normative status, nevertheless provides an essential and immediate safeguard for taxpayers against unlawful fiscal measures. By recognizing the Tax Court's competence over factual actions, even through a circular, taxpayers are not left unprotected in the interim. This pragmatic approach ensures legal certainty and access to justice without delay, while legislative refinement can follow as a longer-term solution. In this sense, the contribution of the Tax Court is not confined to technical dispute resolution but extends to protecting taxpayer rights, reinforcing fiscal accountability, and aligning Indonesia's tax governance with global standards of transparency, due process, and accountability.

4. The Role of the Tax Court in Governance and Global Welfare

Building on this pragmatic perspective, the role of the Tax Court in Indonesia transcends its technical function of adjudicating disputes between taxpayers and fiscal authorities (Ahmadi, 2006). First, the court serves as a guardian of legal certainty and public trust in the fiscal system. By ensuring that decisions and factual measures taken by tax and customs authorities—such as prevention, sealing, or account blocking—are subject to impartial judicial review, the Tax Court guarantees that the exercise of state power in taxation complies with the rule of law. This oversight not only protects taxpayer rights but also strengthens public confidence in the fairness and reliability of fiscal administration, which is essential for voluntary tax compliance.

This protective function of the Tax Court has also been underlined by Artono and Anggari (Artono & Anggari, 2018), who examined the institution primarily from the perspective of legal protection for taxpayers and tax insurers. They argue that the Tax Court embodies both preventive protection—through mechanisms such as objections filed before a decision becomes final—and repressive protection—through appeals or lawsuits lodged before the court. Furthermore, they emphasize that judicial review (*peninjauan kembali*) to the Supreme Court constitutes the only extraordinary remedy available against Tax Court decisions, highlighting the dual character of finality and protection embedded in its jurisprudence. Their findings reinforce the idea that the Tax Court not only ensures fairness and expediency in dispute resolution but also serves as a structural safeguard of taxpayer rights within Indonesia's fiscal administration.

At the same time, this paper argues that recognizing the Tax Court's competence over factual actions—even through Supreme Court Circular—provides an indispensable safeguard that prevents taxpayers from being left in legal limbo. In this sense, the Tax Court not only functions as a specialized dispute-resolution forum but also as an institutional safeguard of fairness, legal certainty, and fiscal accountability, thereby complementing its broader governance role.

Second, the Tax Court plays a pivotal role in harmonizing domestic legal practice with international standards. In an increasingly globalized fiscal environment, principles such as transparency, due process, and accountability have become integral to international tax governance frameworks, including those promoted by the OECD and G20. Through its specialized jurisprudence, the Tax Court aligns Indonesia's tax dispute resolution system with these global standards, thereby reducing risks of double taxation, enhancing cross-border cooperation, and fostering a predictable investment climate. Such harmonization is critical for integrating Indonesia into the global economic order and for attracting foreign investment that supports national development.

Third, the Tax Court contributes directly to good governance and fiscal accountability. Its decisions establish benchmarks for administrative conduct, discouraging arbitrary or excessive use of fiscal authority, while promoting proportionality and accountability in the implementation of tax laws. This judicial function complements broader governance reforms by reinforcing checks and balances within the state apparatus. Ultimately, by promoting fair taxation and responsible fiscal administration, the Tax Court advances not only domestic governance goals but also the broader objective of global welfare, since effective and equitable tax systems underpin sustainable public finance and social development.

CONCLUSION

The jurisdictional transformation of government liability disputes in Indonesia reflects the dynamic evolution of administrative justice and the increasing specialization of judicial bodies. Government Administration Law and Supreme Court Regulation No. 2 of 2019 broadened the competence of PTUN to include factual actions of government authorities,

marking a paradigm shift from private law remedies in the General Courts to public law adjudication in the Administrative Courts. As highlighted by Bimasakti (Bimasakti, 2018a) and reinforced by Rohman (2023), this development was intended to strengthen access to justice, yet it also created institutional tension with the Tax Court, which retains absolute jurisdiction under its own statute.

The overlap between PTUN's expanded competence and the Tax Court's *lex specialis* mandate produced interpretive uncertainty, particularly in tax-related disputes involving factual measures such as prevention, sealing, and account blocking. To address this ambiguity, the Supreme Court issued Supreme Court Circular No. 1 of 2022, reaffirming the absolute jurisdiction of the Tax Court. While Widodo et al. (2023) regard this step as only a temporary solution lacking sufficient normative authority, this paper adopts a more pragmatic and substantive stance: Supreme Court Circular, though limited in formal hierarchy, should be treated as an immediate safeguard for taxpayers. By doing so, taxpayers are not left in limbo without judicial protection, while statutory reform can follow as a long-term consolidation.

This governance-oriented approach situates the Tax Court not only as a technical dispute-resolution body but also as a guardian of taxpayer rights, a guarantor of fiscal accountability, and a forum that reinforces legal certainty. As emphasized by Artono and Anggari (Artono & Anggari, 2018) the court embodies both preventive and repressive protection mechanisms, while empirical evidence from Herman and Apriadi (Herman & Apriadi, 2019) demonstrates its effectiveness as a *lex specialis* institution for tax disputes.

Ultimately, the contribution of the Tax Court extends beyond the narrow domain of tax collection. By ensuring immediate protection for taxpayers against unlawful fiscal measures, reinforcing good governance, and aligning domestic practice with international standards of transparency, accountability, and due process, the Tax Court advances both national legal development and global welfare. The findings of this study therefore underscore the dual imperative of providing protection first, reform later: ensuring that taxpayers are safeguarded today through Supreme Court Circular, while continuing to pursue legislative refinement to secure long-term coherence and durability of Indonesia's tax dispute resolution framework.

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