

**WEAKNESSES OF TAX COURT IN INDONESIA
FROM THE ASPECTS OF LEGAL CERTAINTY AND JUSTICE**

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ABSTRACT

The composition of this article has the background of the existence of weaknesses in the Tax Court today, especially from the aspects of legal certainty and justice. The Tax Court regulated by Act Number 14 of 2002 meant to perfect the previously existing tax judiciary institution, which is the Tax Dispute Resolution Agency – TDRA (Badan Penyelesaian Sengketa Pajak – BPSP) and it is expected to be able to realize legal certainty and justice, in fact still has not been able to be as expected. Act Number 14 of 2002 still contains several weaknesses less reflecting legal certainty and justice. The weaknesses of Tax Court from the aspects of legal certainty among them are the uncertain position of Tax Court in the Indonesian Judiciary System and juridical controversies between the Tax Court Act and other acts. The weaknesses of Tax Court from the aspects of justice among them are the imbalance of positions between taxpayers and tax administrators having cases in the Tax Court, existence of judiciary mafia, and dualism of Tax Court management.

Keywords: Tax Court, legal certainty and justice

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A. INTRODUCTION

Indonesia as a *Welfare State* has the primary goal that is desired to be achieved, which is welfare for its entire people. In order to realize that public welfare, the state needs funds coming among them from the taxation sector. The role of tax for state revenue is a very vital matter because without tax, it can be sure that the state will be unable to run its activities. In Indonesia, tax is the main source of state revenue highly dependable for the funding of state expenses both in routine activities and in the development.

Various efforts had been taken by the government to increase tax revenue. One of them is by conducting TAX REFORM, which is, conducting basic reformation on the existing tax acts. This Tax Reform is the measure taken by the government in order to strengthen the independence of national development.

At the end of 1983, several old tax acts were abolished and replaced with the new tax acts. The government had conducted the perfection of the Law and Order of Taxation in 1983, 1994, 1997, 2000 and 2007 – 2008. The Indonesian Taxation System had also changed from the “*official assessment*” system to “*self-assessment*” system. The basic difference between both collection systems is on the focus of taxation activities. In “*official assessment*”, the focus of taxation activities is on the tax administrator or government. In this case, the tax administrator determines the amount of unpaid tax, the taxpayers are passive (they do not calculate the amount of tax that should be paid because it has been determined by the tax administrator in the Tax Assessment. On the other hand, in the “*self-assessment*” system, the taxpayers are trusted to count, calculate, pay and report also take responsible for the amount of unpaid tax. The government, in this case the General Directorate of Taxation, supervises the execution of that obligation of taxation.

In performing this obligation of taxation, there are tax disputes that may arise between taxpayers and tax administrator/government. These tax disputes are probably triggered by the differences of opinions between the taxpayers and the tax administrator concerning the amount of tax that should be paid.

The tax judicature institution having the authority to examine and adjudicate the tax disputes today is the Tax Court regulated based on Act Number 14 of 2002. This Tax Court is the perfection of the previously existing judicature institution, which is the Tax Dispute Resolution Agency – TDRA (Badan Penyelesaian Sengketa Pajak – BPSP).

It is expected that by the legalization of Act Number 14 of 2002, it may be able to cure the weaknesses of the previously existing tax judicature institution. Besides that, by the formation of Tax Court, it is expected that this institution is in accordance with the judiciary authority system and able to create legal certainty and justice in resolving tax disputes.

However, that expectation seems to be not realized yet because in Act Number 14 of 2002, there are still many provisions that reflect legal certainty and justice inadequately; among them are the dualism of Tax Court management, uncertain position of Tax Court, the requirement of 50% payment in tax appeal submission, residence of Tax Court in the state capital city, and so on. Besides that, Tax Court became public highlights recently, especially after the tax mafia was revealed, which is the supposition of the practices of taxation cases brokers conducted by the taxation officials (Gayus Halomoan P. Tambunan) having the money as much as twenty-five billion Rupiahs in his account.

Based in the description above, therefore, this research will study the weaknesses of Tax Court from the aspects of legal certainty and justice.

This article attamp to develop the previous study conducted by Jamal Wiwoho who he criticized the weakness of the tax court in Indonesia from justice aspect, Galang Asmara concerning tax court and Gijzeling institution within Indonesia Tax Law. The novelty of this article attamp a criticize of tax court in Indonesia from justice and legal certainty aspect.

B. Weaknesses of Tax Court from the Aspects of Legal Certainty

B.1. Uncertain position of Tax Court in the Indonesian Judicature System

A Tax Court is a judicature body executing the judiciary authority for taxpayers or tax underwriters seeking for justice concerning tax disputes. In order to find out the position of Tax Court in the Indonesian Judicature System, therefore, several articles of Act 14 of 2002 should be known beforehand.

Based on the provisions in Act 14 of 2002, the following matters can be found:

1. Tax Court is a judicature body executing the judiciary authority;
2. Tax Court is under the Supreme Court;
3. Tax Court is the first and last level of court in tax disputes;
4. Tax Court does not acknowledge the judicature body of appeal and cassation;
5. The Supreme Court has the authority to adjudicate tax disputes in the process of Judicial Review.

If the above-said provisions are studied, therefore, there is no article in Act 14 of 2002 mentioning clearly the position of Tax Court in the Indonesian judicature system. The provisions existing in Act Number 14 of 2002 imply that the position of Tax Court is outside the four judicature areas existing in the Act of Judiciary Authority. This is surely not synchronized with / against Act Number 48 of 2009 concerning Judiciary Authority. The existence of juridical controversies between Act Number 14 of 2002 and Act of Judiciary Authority concerning Tax Court cause uncertainty concerning the position of tax in the Indonesian judicature system.

Wiratni Ahmadi, a lecturer of the Postgraduate Program of Business Legal Science of Bandung Pajajaran University, emphatically stated that Act Number 14 of 2002 is in contradiction to the 1945 Constitution of the Republic of Indonesia because Article 24 verse (2) of the third amendment of the 1945 Constitution strictly states that it recognizes only four judicature areas, which are the public court, religious court, military court, and state administration court.¹

Meanwhile, Sutan Remy Sjahdeini stated that it is very absurd and confusing about the position of tax court in the Indonesian judicature system.² This uncertainty of tax court position is emphasized by Galang Asmara, that the position of Tax Court as regulated in Act 14 of 2002 as a judicature institution that is outside of 4 (four) judicature areas established by the 1945 Constitution can be said as *inconsistence* and *unconstitutional*.³

B.2. The existence of juridical controversies between the provisions existing in Act Number 14 of 2002 and other acts (vertically and horizontally)

Besides its uncertain position in the Indonesian judicature system, there are also several provisions in Act Number 14 of 2002 with the provisions regulated in other acts causing the uncertain position of Tax Court. The juridical controversies between Act Number 14 of 2002 and other acts can be seen in the following table 1:

Table 1:

Juridical controversies between Act Number 14 of 2002 and other acts

	Act No. 14 of 2002	1945 Constitution	Act No. 48 of 2009	Act No. 51 of 2009	Act No. 28 of 2007
Position of Tax Court	Outside of the four judicature areas, Article	Inside of the four judicature areas, Article 24	Special Court of the State Administration Court, Article 27	Special Court of the State Administration Court, Article 9	Special Court of the State Administration Court, Article

¹ www.set.pp.depkeu.go.id/data the file was accessed on June 2, 2011

² Sutan Remy Sjahdeini, "Eksistensi Pengadilan Pajak", One Day Taxation Seminar of the Existence of Tax Court in the Global Era and the Techniques in Solving Tax Disputes, Jakarta: Borobudur Hotel, May 12, 2009, page 4.

³ Galang Asmara, op.cit., page 103

	33, Article 77		and its explanation	verse (1)	27 verse (2)
Appeal and Cassation	Does not exist, Article 33 (1), 77 (1), and 80 (1)		Appeal and Cassation		
Conditions of Appeal Submission	Pay 50%, Article 36 verse (4)				Does not pay, Article 25 verse (10)
Tax Court Management	Dualism of management, Article 5		Under the Supreme Court, Article 21 verse (1)		

Based on the above table, it can be found that the juridical controversies include the following matters:

- a. Provision concerning the Position of Tax Court in the Indonesian judicature system

Act Number 14 of 2002

Based on the articles of provisions in Act Number 14 of 2002, the position of Tax Court in the Indonesian judicature system is not regulated clearly. The position of Tax Court is outside of four Judicature areas determined in the Act of Judiciary Authority.

The provision is in contradiction to:

Article 24 verse (2) of the 1945 Constitution:

“The judiciary authority is conducted by a Supreme Court and judicature bodies existing under it in the areas of public court, religious court, military court, state administration court and by a Constitutional Council.”

Article 27 of Act Number 48 of 2009:

“A special court is established only in one of the judicature areas existing under the Supreme Court as mentioned in Article 25.”

Explanation of Article 27:

“What is meant by special courts, among them, are: juvenile court, commercial court, human rights court, corruption crime court, industrial affairs court and fishery court existing in the public court, and tax court is in the area of the state administration court.”

Article 9A verse (1) of Act Number 51 of 2009 concerning State Administration Judicature:

“in the area of the state administration court, a special court may be established, regulated by acts.”

Explanation of Article 9A verse (1):

“A special court is a differentiation or specialization in the area of state administration judicature, for example, tax court.”

Article 27 verse (2) of Act Number 28 of 2007 concerning the General Provisions and Taxation Procedures:

“The verdict of a Tax Court is the verdict of a special court in the area of state administration judicature.”

- b. Provisions of appeal and cassation

Act Number 14 of 2002:

Does not recognize appeal and cassation in the settlement of tax disputes. That provision is in contradiction to:

Article 23 of Act Number 48 of 2009:

“Court verdict in the appeal stage may be requested for cassation to the Supreme Court by the involved parties except if the acts determine otherwise.”

Article 26 of Act Number 48 of 2009:

“Court verdict in the first stage may be requested for appeal to the High Court by the involved parties except if the acts determine otherwise.”

c. Provision of the condition of appeal submission

Article 36 verse (4) of Act Number 14 of 2002:

“Besides the conditions as mentioned in verse (1), verse (2), verse (3), and Article 35, in the case of an appeal is submitted concerning the amount of unpaid tax. Appeal may be submitted only if the amount of said unpaid tax had been paid as much as 50% (fifty percent).”

The provision is in contradiction to:

Article 25 verse (1) of Act Number 28 of 2007 concerning the Third Amendment of Act Number 6 of 1987 concerning the General Provisions and Taxation Procedures:

“In case that the taxpayer submits an appeal, the administration sanction in form of fine as much as 50% (fifty percent) as mentioned in verse (9) is not imposed.”

d. Provision of the management of Tax Court

Article 5 of Act Number 14 of 2002:

- (1) The judicature technical management of Tax Court is conducted by the Supreme Court.
- (2) Organizational, administrative, and financial managements of Tax Court are conducted by the Department of Treasury.

The provision is in contradiction to:

Article 21 verse (1) of Act Number 48 of 2009:

“Organization, administration, and financial of the Supreme Court and judicature bodies under it are under the authority of the Supreme Court.”

The existence of juridical controversies between Act Number 14 of 2002 and other acts surely causes legal uncertainty. This is not in accordance with one of the principles of legal certainty said by Fuller, stated that one of the conditions of legal certainty is the absence of contradictory regulations. Besides that, it is also not in accordance with:

1. One of the principles of legal certainty proposed by Adam Smith with his theory, The Four Maxims.
2. One of the conditions of the composition of taxation act proposed by Rochmat Soemitro, which is the juridical condition that a taxation act should provide legal certainty, besides a tax act should provide justice.

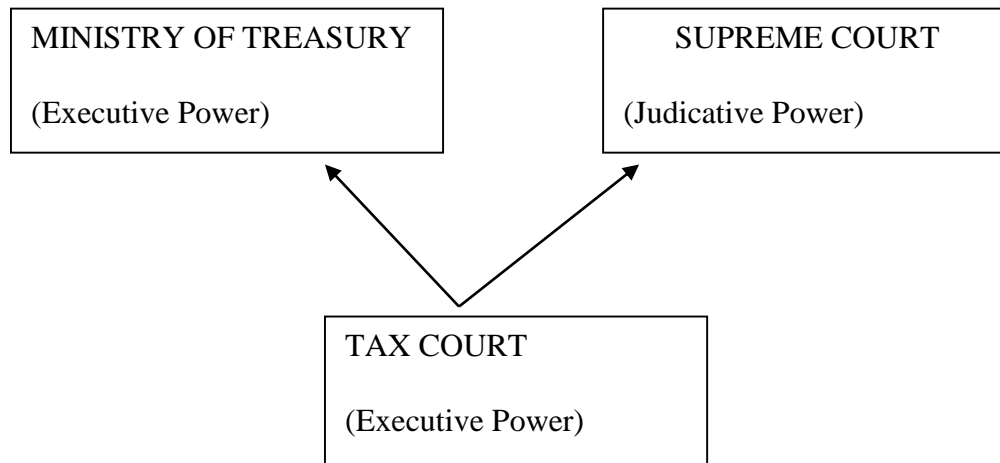
C. Weaknesses of Tax Court from the Aspects of Justice

C.1. Dualism of Tax Court Management

As described previously, concerning the management of Tax Court, Act Number 14 of 2002 concerning Tax Court in fourth section concerning management Article 5 verse (1) states, “judicature technical management for tax court is conducted by the Supreme Court,” and Article 5 verse (2) states, “organizational, administrative, and financial managements for tax court are conducted by the Department of Treasury.”

About the management of Tax Court, it can be seen in the following scheme number 1.

SCHEME 1 TAX COURT MANAGEMENT



That formulation of Article 5 shows the dualism of Tax Court management, which is by the Supreme Court and Department of Treasury.

This formulation shows that a tax court is a form of a merger of judicative and executive power.

Reviewing “Trias Politica” as proposed by Emmanuel Kant and Montesquieu and developed by John Locke through the teaching of “Separation of Power”, that:⁴

There can no be liberty when the legislative and executive powers are jointed in the same persons or body of lords because it to be feared that the monarch or body will make tyrannical laws to be administered in tyrannical way. Nor is there any liberty if the judicial power is not separated from the legislative and executive power.

That there is no freedom if the judicative, legislative, and executive powers are in one hand or body. If such powers are in one hand, it will create a “tyranny”. Here, power separation between legislative and executive also judicative powers and legislative and executive powers.

Based on the provision in Article 5 verse (1) and verse (2) of Act Number 14 of 2002, it shows that the judges of tax court are “two-headed or one ship with two captains,” which are the Supreme Court and Department of Treasury.

The technical management of Tax Court by the Supreme Court is the correct thing because it relates to the freedom of examining and deciding tax disputes. However, the organizational, administrative, and financial managements by the Department of Treasury will be a polemic and it will bring out doubts for the taxpayers searching for justice. So that, it can be felt that there is a dependency of judges of tax court on the Minister of Treasury influencing every verdict in every tax dispute, involving the parties managing it from the organizational, administrative, and financial aspects. All of them will influence on the independence of the verdicts of tax disputes. If there is any tax dispute, therefore, the applicant or taxpayer is impossible to receive justice in the tax court because the judges are paid / remunerated by the executive (Minister of Treasury) and the location of trial is at the Treasury Building (executive), so that, it will be considered that every verdict tends to be not independent.

Dualism of management of Tax Court in the Indonesian Judicature System is an unusual thing in the Judiciary Authority nowadays, because, based on the provision of Article 21 of Act Number 48 of 2009 concerning Judiciary Authority, all organizational, administrative, and financial matters of the Supreme Court with the Judicature Areas under the Supreme Court are under the Supreme Court.

⁴ <http://www.transparansi.or.id/kajian/reformasi-perpajakan-mewujudkan-pengadilan>, accessed on February 6, 2012.

Besides that, concerning the appointment of Tax Court judges involving the executive (Minister of Treasury) as regulated in Article 8 verse (1) and verse (2) of Act Number 14 of 2002, it is also in contradiction to the Judiciary Authority Act.

Article 8 verse (1) and verse (2) of Act Number 14 of 2002 concerning Tax Court, it is determined that the judge is appointed by the President from the list of candidates proposed by the Minister after it received an approval from the Head of Supreme Court.

Based on the Judiciary Authority Act, the appointment, dismissal, and mutation of judges is fully the authority of Judiciary Authority and it is not the executive authority, both the Ministry of Treasury and the Ministry of Law and Human Rights.

In Act Number 48 of 2009 concerning Judiciary Authority Chapter IV Article 39 verse (1) mentions that the highest supervision of judicature administration in all judicature under the Supreme Court, in administering the judiciary authority is conducted by the Supreme Court, and verse (2) mentions that the Supreme Court conducts the highest supervision on the administration of administrative and financial tasks.

The above article may be interpreted that the Supreme Court is the highest supervisory institution in the administration of judiciary authority on the execution of administrative and financial tasks in all judicature under it, including tax court in the area of state administration court. Thus, Article 5 verse (2) of Act Number 14 of 2002 concerning Tax Court and Article 8 verse (1) and (2) are clearly in contradiction to Act Number 48 of 2009 concerning Judiciary Authority Article 39 verse (2).

The existence of executive/Minister of Treasury interference in the appointment of Tax Court judges is in contradiction to the Judiciary Authority Act. This is also the effect of dualism of Tax Court management.

Organizational, administrative, and financial management of Tax Court existing under the Minister of Treasury, viewed from the justice aspects, is feared to influence the independence/freedom of the judge in giving verdicts.

Concerning this independence of judges, the character of court based on the autopoietic system is emphasized that the independence of court and judge's freedom are not influenced by the forcing factors coming from the outside. The inputs from the surrounding areas are still important but the authority is still in judge's hand.⁵

Likewise, in the Tax Court, in giving verdicts, the judges in the Tax Court are not allowed to experience outside interventions, both from the executive and other parties. Therefore, as mentioned above, the organizational, administrative, and financial managements of Tax Court by the Department of Treasury is feared to influence the independence of judge's verdicts in the Tax Court.

Besides that, because the Supreme Court only supervises the judges of Tax Court indirectly, it causes the weakness of Tax Court; especially the supervision of tax court judges by the Supreme Court is not maximal.

This situation is suspected to be one of the causes hindering the independence of the judges to be able to give verdicts to the tax dispute cases fairly.⁶

B.2. Existence of the condition of 50% payment imposed to the taxpayers who will submit the appeal at the Tax Court

Based on the provision in Article 36 verse (4) of Act Number 14 of 2002, it is stated that appeal may only be conducted if the taxpayers who will submit the appeal had paid as much as 50% of the amount of unpaid tax taken into dispute.

That provision in Article 36 verse (4) is one of many injustice forms imposed to the taxpayers or tax underwriters having disputes at the Tax Court. The 50% (fifty percent) advanced payment will burden the justice seekers very much economically, especially for the taxpayers who are not wealthy. The taxpayers or tax underwriters surely will not submit the appeal (seeking for further justice) if they do not have money to pay as much as 50% of the amount of unpaid tax that should be paid.

Moreover, if it is examined, the enormous authority is given (vested in) to the tax judicature. Based on the provision of Article 33 verse 1, the Tax Court is the first and final stage in examining and deciding Tax Disputes. In Article 87 of Act Number 14 of 2002, it indeed provides balancing compensations in the case of the taxpayers submitting appeal are partly or wholly won against the appealed. If the verdict of Tax Court grants a part

⁵ Suteki, "Sinergi Pers Dalam Sistem Autopoietik Pengadilan", The paper was presented in a seminar with the theme: *No Trial by the Press*, IKAPS, Semarang, December 15, 2011, page 4.

⁶ <http://www.transparansi.or.id/kajian/reformasi-perpajakan-mewujudkan-pengadilan>, accessed on February 6, 2012.

or a whole of the appeal, the excess of tax payment is returned added with 2% (two percent) interest in a month for no more than 24 (twenty-four) months, according to the provision of the prevailing taxation law and order. However, the essence of justice is not on the provision of compensation or dispensation in case of the establishment of tax amount conducted incorrectly by the tax administrator so that it becomes the object of dispute. That justice essence should firstly reflected from the confession of the tax administrator official that there is a mistake or wrongdoing in establishing the tax amount consuming energy, time, concentration or maybe good name of the taxpayer. Then, for the official who did such mistake or was not careful in conducting his/her task given to him/her, it would be better if a legal suit and discipline sanction are imposed to him/her based on the prevailing regulation. Thus, there will be careful actions from the tax administrator in having relations to the tax establishment.⁷

Therefore, in order to cure the weaknesses existing in the provision of Article 36 verse (4) of Act Number 14 of 2002, in its development, the provision of Article 25 verse (10) of Act Number 28 of 2007 concerning the Amendment of Act Number 6 of 1983 concerning General Provisions and Taxation Procedures, it determines that the taxpayers do not have to pay 50% (fifty percent) of the unpaid tax amount before submitting the appeal. However, until today, the provision of Article 36 verse (4) in 2012 has not been abolished and still prevails.

If the provision of Article 36 verse (4) of Act Number 14 of 2002 is related to the principle of the presumption of innocence principle, therefore, the provision of Article 36 verse (4) is in contradiction to this principle. This is because the taxpayers have to pay as much as 50% of the unpaid tax amount before any verdicts having permanent legal forces. In this case, there is an imbalance of position between taxpayers and tax administrator/government in having cases in the Tax Court.

If it is related to the principles of tax judicature proposed by Rochmat Soemitro, therefore, the provision of Article 36 verse (4) of Act Number 14 of 2002 is not in accordance with the following principles:

1. The principle of freedom to seek for justice
The final purpose of law is justice, so that, everybody according to his/her basic rights has the extensive rights to search for justice. If the taxpayers feel that they are treated in injustice manners, therefore, they always have rights to search for justice through legal channels provided by the law. The principle of freedom to seek for justice is included in the human rights attached to human beings.
2. The principle of equality before the court
The parties in disputes in the court have equal positions before the court. The parties having disputes before the court have the rights to demand to be treated equally in term of being provided with equal opportunity freely. The court is not allowed to treat the parties differently, meaning that one party is given more rights than the other.

B.3. Residence of Tax Court located in the State Capital City (Jakarta)

The form of injustice related to Tax Court as a judicature institution resolving tax disputes is the matter of its residence.

Concerning the residence of Tax Court, it is determined in Article 3 of Act Number 14 of 2002 as follows:

“With this act, tax court is established residing in the state capital city.”

Then, in Article 4 of Act Number 14 of 2002, it is determined that:

- (1) The trial of Tax Court is conducted at its residence and, if necessary, it can be conducted at other places;
- (2) The residence of trial as meant in verse (1) is determined by the chairman.

Meanwhile, in the Explanation of Article 4 verse (1) of Act Number 14 of 2002, it is explained as follows:

“In its essence, the location of Tax Court trial is conducted at its residence. However, with the consideration of making smooth and quick handling of Tax Disputes, the location of trial may be conducted at other places. This is in accordance with the principle of case resolutions conducted simply, quickly, and affordably.”

⁷ http://maspurba.wordpress.com/2009/07/18/pengadilan-pajak-2/Pengadilan_Pajak, accessed on February 6, 2012.

Based on the above provision, therefore, in brief, it can be said that the place of Tax Court trial is in the state capital city (Jakarta), however, if necessary with the consideration of making smooth of the tax dispute resolution process, it can be conducted at other places. These other places besides the capital city are determined by the Chairman.

That provision has weaknesses, which are, there is no certainty of what kind of tax dispute that may be brought to the trial at other places and there is no certainty of those “other places”. Where are those other places? (Tax Service Office or the regional office) – and how is the procedure?⁸

The residence of Tax Court that is only in the state capital city is related to the other judicature institutions, such as the Public Court and State Administration Court, is not in accordance. For example, in the Public Court, it is known the term as First Stage Court residing in every city/regency and Second Stage / Appeal Stage Court, residing in the provincial capital state. Meanwhile, Tax Court is only one and resides in Jakarta.

The residence of Tax Court that is only one in Jakarta is also a form of injustice to the taxpayers residing far away from Jakarta, who will search for justice at the Tax Court. It is because it requires a lot of expenses to bring the case at the Tax Court, although in the Procedural Code at the Tax Court the presence of taxpayers is not necessary. The presence of taxpayers is only when they are required to. Besides that, the resolution process of Tax Disputes through the Tax Court only obliges the presence of the appealed or accused, meanwhile, the appeal submitter or plaintiff may come to the trial by his/her own intention, except if he/she is summoned by the judge with certain bases.

Again, this shows that there is an imbalance of position between taxpayers and tax administrator in having cases at the Tax Court. The appealed/accused (in this case, the tax administrator) has more benefits because the residence of Tax Court is in Jakarta and the appealed/accused is obliged to present so that the appealed may address the description at the trial freely compared to the taxpayers.

The Tax Court residing in Jakarta and the existence of condition to pay 50% to submit the appeal to the Tax Court show that the Tax Court based on Act Number 14 of 2002 harms the taxpayers who will bring the cases to the Tax Court, especially those who are not financially wealthy.

B.4. Recruitment of Tax Court Judges

Concerning the number of judges in quantity compared to the number of cases handled by them, it is still inadequate. So that, this factor of the number of judges is one of many factors causing case arrears at the Tax Court.

This is similar to the statement said by the Secretary of Tax Court, Juni Hastoto, confessing that there are about 15,000 taxation cases that have not been handled by the tax court until this year (2011). Juni said that this was because of the lack of council and judge personnel in that institution, that day. Therefore, the number of judges at the Tax Court should be increased because the number of cases that should be handled at the Tax Court was outnumbering the number of judges. Today, the Tax Court has only 17 council members and needs 51 judges, while the available judges this day are 38 people.⁹

The number of judges at the Tax Court until May 2011 was 38 judges consisting of 10 (ten) people having the background of Bachelor of Law while the other 28 had the education of Bachelor of Economics.¹⁰

Most of the judges at the Tax Court came from the area of ex-officials of the Department of Treasury. Today's composition of tax court judges mostly come from the ex- or officials of the Ministry of Treasury (about 90 percent), both from the Inspectorate corps or Custom and Duty corps. Whereas for representatives and consultants, business organization representatives and the other, are only about 10 percent. It is often that the problem of this composition influences the independence of the judge in giving verdicts; it also influences the descriptions provided by the tax administrator when the trial process is ongoing.¹¹

The composition of the number of judges at the Tax Court that most of them come from the ex-officials of the General Directorate of Taxation is because the Tax Court is a judicature institution requiring judges having

⁸ Jamal Wiwoho, *Dasar-dasar Penyelesaian Sengketa Pajak*, op.cit., page 130.

⁹ http://www.today.co.id/read/2011/04/14/24768/15000_kasus_mandek_di_pengadilan, accessed on February 24, 2012.

¹⁰ Suwartono, “Kebebasan Hakim Dalam Memutus Sengketa Pajak” Tesis Program Magister Kenotariatan, Universitas Diponegoro, 2011, page 10.

¹¹ <http://www.transparansi.or.id/kajian/reformasi-perpajakan-mewujudkan-pengadilan>, accessed on February 6, 2012.

special expertise/knowledge in the area of taxation. Therefore, in the recruitment of judges of tax, that factor becomes the consideration in the appointment of judges of tax.

However, most of the judges of tax court consisting of the ex-officials of the General Directorate of Taxation may influence the justice because the party faced by them is the appealed/accused, which is their junior in the General Directorate of Taxation, so that, it is possible for collusions to take place.

Besides that, from the aspects of justice as described previously in the appointment and dismissal of the judge of Tax Court, there is an involvement of the Minister of Treasury. The existence of that governmental intervention in the appointment and dismissal of the judges of tax court may influence the independence of judges in giving verdicts.

B.5. Tax Judicature Mafia

The mass media tell the bad performance of the judicature institution frequently; among them are judicature mafia, case mafia, bribery, law taking side on certain groups, judges playing with regulations, the law that is not run to achieve welfare and justice but for the sake of justice desired by the law enforcers themselves, and so on. Among the society, people tend to play judges by themselves frequently.

This also happens in the law enforcement at the tax judicature institution. Almost similar to the other courts in Indonesia that are full of law mafia, there is also judicature mafia at the Tax Court. Many people succeeded to evade tax through the court, both by the help of the people in the tax offices and the judges giving verdicts to cases.¹²

The example of the existence of judicature mafia at the Tax Court is the case of “Gayus Tambunan”. Tax Court becomes the public highlight especially when the existence of tax mafia is revealed, which is the existence of the supposition of taxation case broker practices conducted by taxation officials (e.g. Gayus Halomoan P. Tambunan) having the money as much as twenty-five billion Rupiahs in his account. In the recent development, a ‘fat account’ belongs to an ex-official of the General Directorate of Taxation as much as Rp 64,000,000,000.00 (sixty-four billion Rupiahs) is found by the Financial Transaction Reports and Analysis Center, suspected from the crime actions of tax embezzlement.¹³

¹² Amir Syamsuddin, “Pajak dan Korupsi”, Jurnal Keadilan Vol. 5 No. 1 of 2011, Jakarta, 2011, page 1.

¹³ <http://www.korankaltim.co.id/read/news/2012/24584/ada-gayus-baru-di-ditjen-pajak.htm>, accessed on February 10, 2011.

CONCLUSION

Based on the above description, it can be concluded as the followings:

- The Tax Court existing today based on Act Number 14 of 2002 still has weaknesses from the aspects of legal certainty and justice;
- The weaknesses of Tax Court from the aspects of legal certainty among them are the uncertain position of Tax Court in the Indonesian judiciary system, juridical controversies between the Tax Court Act and other acts.
- The weaknesses of Tax Court from the aspects of justice, among them are the imbalance of position between taxpayers and tax administrator in having cases at the Tax Court, existence of judiciary mafia, and dualism of Tax Court management.

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