

Comparison of Indonesian and Malaysian Tax Court Laws Following Constitutional Court Decision Number 26/PUU-XXI/2023

Sony Devano^{1,*}, Shelly Kurniawan², and Imam Irham³

ABSTRACT

Tax disputes in Indonesia are complex and have their own mechanisms. This study compares two Southeast Asian laws, namely Indonesian law and Malaysian law, by looking at the definition, characteristics, objectives, and legal systems in the tax court structure. The purpose of this study is to see and find advantages and disadvantages. When compared to the Malaysian legal system, Indonesia has many advantages, such as the overall dispute resolution time, which is relatively shorter when compared to tax disputes in Malaysia, but also has disadvantages, such as the status of independence against tax objections due to its unified position with the Directorate General of Taxes, as well as the tax court which is still under the Ministry of Finance. Indonesia, as a country of law, must have a good and definite legal system, with a court structure that considers the culture and customs of society like Malaysia, because law enforcement will be more effective if it is in accordance with the values or customs that have been formed in the community itself.

Submitted: September 30, 2024

Published: January 11, 2025

 10.24018/ejpolitics.2025.4.1.158

¹Bachelor of Law, Maranatha Christian University, Indonesia.

²Bachelor Program in Law, Maranatha Christian University, Indonesia.

³Bachelor of Law, Padjadjaran University, Indonesia.

*Corresponding Author:
e-mail: sony_maksi@yahoo.com

Keywords: Comparative law, Indonesia, Malaysia, tax court.

1. INTRODUCTION

Indonesia is a country of law. As stated in Article 1, paragraph (3) of the 1945 Constitution, which reads: "The State of Indonesia is a State of law." Everything within the State of Indonesia must be regulated and implemented in accordance with applicable laws. If there is something that is contrary to statutory law, then it is processed according to applicable laws. A legal state or *state based on the rule of law* in English and *rechtstaat* in Dutch and German means that there is a characteristic of limited power in the implementation of state power. Although both have different language backgrounds and meanings, both have the idea of limiting power (Asshiddiqie, 2016). One of the characteristics of a state of law is the existence of institutions that have the authority to manage all aspects of state life with their respective authorities.

In line with this understanding, according to Montesquieu in his book "*L'Esprit des Lois* (1748), which follows John Locke's line of thought, divides state power into three branches, namely: (i) legislative power as the power to draft laws; (ii) executive power as the implementer of laws; and (iii) judicial power for the power to judge or prosecute (Asshiddiqie, 2016). The term "Separation of powers" is based on the theory of *trias politica*, or three functions of power, which structurally must be distinguished and separated into organs or government institutions that do not pass through each other's powers.

State institutions in exercising state powers need to be limited so that they are not arbitrary, do not overlap authority, and do not centralize power in one institution. There needs to be a division or separation of powers. This is intended solely to guarantee the basic rights of its citizens so that they are not treated arbitrarily by the authorities. This is in line with Lord Acton's expression, "*power tends to corrupt, but absolute power corrupts absolutely*" (people who have power tend to abuse it, but people who have unlimited power will certainly abuse it). Therefore, power must be divided or separated so that it cannot be abused (Yulistyowati et al., 2016).



Independent judiciary is an important principle for judicial power. An independent judicial power means being free from interference from other parties and free from coercion, recommendations, and interventions originating from parties outside that power (Marpi, 2023). The independence of the judicial power guaranteed by the basic law of the state and the laws and regulations below it as operational implementation regulations is inherently implemented by the judges of the Court from the judicial bodies in all judicial environments in conducting the function of power in the judicial field (Suherman, 2019).

Judicial power in Indonesia is composed of the Supreme Court, the Constitutional Court, and the Judicial Commission (Witardi & Sianturi, 2022). According to this theory, judicial authority should operate independently, separate from the executive and legislative branches. Currently, the Tax Court operates under two distinct frameworks: it receives technical judicial guidance from the Supreme Court, while its administrative and financial oversight falls under the Ministry of Finance of the Republic of Indonesia. As of April 2023, the Tax Court remains under the Ministry of Finance, a situation that changed following the Constitutional Court's ruling on the judicial review of Law Number 14 of 2002 concerning the Tax Court in relation to the 1945 Constitution of the Republic of Indonesia, with decision number 26/PUU-XXI/2023.

Through this ruling, the Constitutional Court determined that the term "Finance Department" in Article 5, paragraph (2) of Law Number 14 of 2002 concerning Tax Courts is connected to the 1945 Constitution of the Republic of Indonesia and lacks binding legal force unless it is clarified. The Court stated that "The Supreme Court will be implemented in phases, with a deadline of December 31, 2026," thus amending Article 5, paragraph (2) of Law 14/2002 to read: "The organization, work procedures, and finances of the Tax Court are managed by the Supreme Court and implemented in stages no later than December 31, 2026." As a result of this decision, starting in 2027, the Tax Court will once again operate as a judicial institution under the Supreme Court. This ruling significantly affects tax justice in Indonesia and is likely to lead to a reconstruction or establishment of a new system with notable differences. In revising these regulations, it will be essential to benchmark against the judicial systems of Southeast Asian countries that are considered more advanced than Indonesia's.

The author of this study will compare the Indonesian tax court system with that of Malaysia. Although Malaysia adheres to the *Common Law system*, unlike Indonesia with its *Civil Law system*, this is precisely what needs to be studied, considering that in the *Common Law system*, the courts and judges have a key role in the formation of law in their country. It would be appropriate if we reflect on our neighboring countries, especially after the Constitutional Court Decision Number 26/PUU-XXI/2023. Previously, there was a study comparing the legal systems between Indonesia and Malaysia by Sumadiyono (2020) as well as research by Umar (2013), but this study will further describe and focus on comparing the resolution of tax disputes between Indonesia and Malaysia. This study will further explain the differences between the resolution of tax disputes in Indonesia and Malaysia. The formulation of the problem that will be discussed in this study is the position of the Tax Court in Indonesia after the Constitutional Court Decision Number 26/PUU-XXI/2023 and how the tax dispute law compares Indonesia and Malaysia.

2. METHOD

The type of legal research used is normative juridical, namely examining law from an internal perspective, with the object of research being legal norms. Normative legal research is a scientific research procedure that finds the truth of scientific logic from its normative side. It functions to provide legal arguments when there is a vacuum, ambiguity, and conflict of norms. Normative legal research focuses on positive legal norms such as statutory regulations. In addition, this research is also based on secondary legal materials (Seokanto, 2014).

This research was conducted with a comparative approach, which is done by comparing the legal system of one country with the legal system of another country or between the constitution of one country with the constitutions of other countries (Diantha, 2016). According to Gutteridge, comparative law is a method of legal study and research (Paton, 1972). The use of this approach is to obtain similarities and differences between the Tax Court Law in our country and the Tax Court Regulation in Malaysia.

3. RESULTS AND DISCUSSION

3.1. Position of Tax Court in Indonesia after Constitutional Court Decision Number 26/PUU-XXII/2023

After the amendment of the 1945 Constitution, the Indonesian constitutional system adopted the doctrine of separation of powers. The separation is the legislative power that is in the hands of the DPR as the institution that drafts laws and regulations. Executive power is in the hands of the President and his cabinet, and the Judicial power (judicial power), whose power is held by the Supreme Court and the Constitutional Court as the highest judicial bodies. Each power has a legal basis in force, namely the 1945 Constitution of Indonesia.

However, our country does not fully adhere to the understanding of *trias politica* proposed by Montesquieu. The theory spreads the legislative, executive, and judicial branches of power absolutely without being based on a relationship that controls each other. The new system adopted by the 1945 Constitution after the Fourth Amendment is a system of separation of powers based on the principle of *checks and balances*, which means that each state institution must control or control one another's power so that there are no *ultra vires* or exceeding the limits of power that should even bring each other down. Even if the term *separation of powers* is not applied in real terms, the term *division of power* is used as proposed by Arthur Mass, namely capital division of power for the horizontal understanding and territorial division of power for the vertical understanding.

However, it should be noted that the term "division" of vertical or territorial division of power has been included in Article 18, paragraph (1) of the 1945 Constitution, which reads:

"The Unitary State of the Republic of Indonesia is divided into provincial areas, and the provincial areas are divided into districts and cities, each of which has a regional government regulated by law."

This means that in the NKRI container, there are provinces, which are its sub-regions, and each provincial region also has districts and cities, which are sub-regions of the provinces. In general, other countries have conducted separation of powers. However, along with the development of the era until the 20th century, in practice, there are different uses that have been adjusted to the understanding and needs of the countries themselves, such as the terms *division of power*, *distribution of power*, or the *term allocation of power*.

The application of this theory is important for the constitutional system of a state of law. Similarly, the foundation of our country, namely the 1945 Constitution, firmly applies the principles of power, but not with Montesquieu's theories of power as a whole, but based on the principle of checks and balances. This is done so that power is not limited to one state institution. The formation of laws carried out by the DPR as the legislator is not officially approved directly by the DPR institution but requires the approval of the President as the implementing institution. Therefore, the main objective of the amendment to the 1945 Constitution is to organize the balance of power of the Indonesian state institutions.

Based on Article 24 paragraph (1) of the 1945 Constitution, which reads: "Judicial power is an independent power to administer justice in order to uphold law and justice." The judicial system in Indonesia is firm, must be independent, and through a one-roof system or what is called a *one-roof system*. Judicial institutions whose functions are related to judicial power are regulated by law. As stated in Article 24 paragraph (3) of the 1945 Constitution *in conjunction with* Article 38 paragraph (1) of Law Number 48 of 2009, it has been determined that other bodies related to judicial power are regulated by law. This provision is further emphasized in Article 18 of Law Number 48 concerning Judicial Power (Basri & Muhibbin, 2022).

The judicial institution under the Supreme Court has a special judicial institution that tries certain cases, which is called a special court. Article 1 number 8 of Law No. 48 of 2009 explains the definition of a Special Court, namely, "A Special Court is a court that has the authority to examine, try and decide certain cases that can only be formed in one of the judicial bodies under the Supreme Court as regulated by law." One of the special courts is the tax court, which is a judicial body within the State Administrative Court.

The Indonesian nation uses a legal system inherited from the Dutch, which happened because of the Dutch colonization of Indonesia over more than three hundred years. Civil law that arrived in Indonesia today still uses the Civil Code inherited from the Dutch, which in its country of origin is no longer used or has been replaced. The influence of the Dutch, who have a *common law legal system*, is the reason Indonesia is divided between public law and private law, but it is still under one roof of justice. Article 24, paragraph (2) of the 1945 Constitution stipulates that judicial power is the power of

an independent state to organize trials to uphold law and justice. There are 4 (four) types of judicial scope, namely (Sumadiyono, 2020):

- a) **General Court:** This includes civil and criminal law disputes, governed by Law Number 13 of 1965 concerning Courts within the General Court and Supreme Court Environment. The District Court serves as the court of first instance, with the authority to adjudicate criminal and civil cases at the district or city level.
- b) **Religious Court:** This court handles matters for Muslim individuals related to waqf, family law, and other issues in muamalah. The governing law is Law No. 7 of 1989, which outlines the duties and authority of judges at the first level concerning marriage, inheritance, wills, grants, waqf, and sadaqoh, all based on Islamic law. The Religious Court serves as a special court for Muslim citizens regarding muamalah relations.
- c) **Administrative Court:** This court addresses disputes between citizens and state administrative officials, regulated by Law No. 5 of 1986 concerning the State Administrative Court, as amended by Law No. 9 of 2004. The State Administrative Court (TUN) resolves disputes arising from decisions made by state administrative officials, focusing on administrative issues. It includes two types of remedies: Administrative Efforts, which consist of administrative appeals and objections, and lawsuits.
- d) **Military Court:** This court specifically deals with crimes or violations committed by military personnel and is governed by Law No. 31 of 1997 concerning the Military Court. It has the authority to try offenses involving members of the military.
- e) **Special Courts:** These include courts like the Tax Court, which possess specific authority to adjudicate tax disputes.

Article 27 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power explains the position of the Tax Court, namely “what is meant by special courts include the Juvenile Court, Commercial Court, Human Rights Court, Corruption Court, Industrial Relations Court, and Fisheries Court which are within the General Court environment, as well as tax courts which are within the state administrative court environment.” The Tax Court was established and formed by Law No. 14 of 2002 and has jurisdiction to resolve disputes in the field of taxation. Tax disputes are disputes that arise in the field of taxation between taxpayers or tax persons and the competent authorities as a result of the issuance of decisions that can be appealed or appealed to the Tax Court based on tax law, including lawsuits over the implementation of collection based on the Tax Bill Collection Law.

The existence of the Tax Court is a form of legal protection and justice for the community in the taxation sector. Although the state has the right to collect a certain amount of money from the community based on applicable administrative law, the existence of a Tax Court is expected to be able to maintain objectivity towards the law and uphold justice when conducting trials to resolve tax disputes because a community will submit to and obey a regulation or decision issued if the regulation and decision are in favor of law and justice.

The explanation of the tax court can be explained that the tax court is an appellate court institution (see Article 33, paragraph (1) of Law No. 14 of 2002) that conducts the function of the Supreme Court, namely the judicial power tasked with adjudicating tax disputes. Taxpayers have the right to maintain their tax calculations. Likewise, the Director General of Taxes has an obligation to maintain the tax assessment letter (SKP) that has been issued.

The Tax Court has been organized under two distinct institutions (see Fig. 1): it receives judicial technical guidance from the Supreme Court, while its administrative and financial organization is overseen by the Ministry of Finance. In early 2023, a material test was conducted concerning the organizational guidance of the Tax Court, specifically addressing Article 5, paragraph (2) of Law Number 14 of 2002 regarding the Tax Court. This application, registered as Number 26/PUU-XXI/2023, was submitted by Nurhidayat, an advocate specializing in tax cases. The challenge argued that Article 5, paragraph (2), which pertains to the Ministry of Finance’s oversight of the Tax Court’s financial administration, is conditionally contradictory to several provisions of the 1945 Constitution, including Article 1, paragraph (3), Article 24, paragraphs (1) and (2), and Article 24d, paragraph (1).

Previously, at the preliminary trial, it was explained that the requirements to become a legal representative in the tax court that must be met, in addition to those regulated in the Tax Court Law, are also determined by the Minister. In fact, the requirements to become a legal representative in Tax Court as regulated in Article 34 of the Tax Court Law, but in Article 34 paragraph (2) letter c of Law Number 14 of 2002 concerning the Tax Court, there are also other requirements determined by the Minister of Finance. These requirements include having extensive knowledge and expertise regarding tax regulations as evidenced by:

- a. Bachelor’s degree/Diploma IV in fiscal administration, accounting, taxation, and/or customs and excise from an accredited university; or

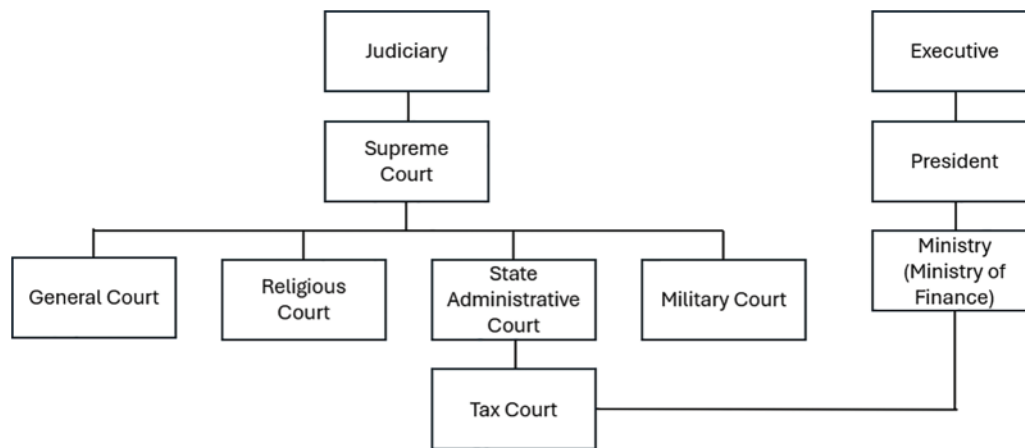


Fig. 1. Tax court position chart in Indonesia before the constitutional court decision.

- b. Bachelor's degree/Diploma IV from an accredited university other than in the field referred to in letter a, accompanied by one of the following additional evidence:
- 1) Diploma III in taxation and/or customs and excise from an accredited university;
 - 2) tax brevet from the agency or institution that organizes tax brevets;
 - 3) customs and excise expertise certificate from a customs and excise education and training agency or institution; or
 - 4) a letter or document showing experience working in a government agency in the technical field of taxation and/or customs and excise.

According to the Applicant, this is the impact of the Minister of Finance's authority over the organizational and administrative development of the Tax Court as regulated in Article 5 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court, so that the Minister of Finance also has the authority to regulate the area of the advocate profession which can complicate the Applicant. This is because it changes the requirements that have been met by the Applicant to become an attorney in the tax court. In performing his duties and profession, of course, the Applicant feels disadvantaged because the tax court where the Applicant fights for the interests of clients is still gripped by executive power.

For this reason, in its petition, the Applicant requested that the Court declare Article 5 paragraph (2) of Law Number 14 of 2002 concerning the Tax Court regarding the phrase "Finance Department" compared to the 1945 Constitution conditionally and not legally binding, as long as it is not interpreted as "Supreme Court". So that the provisions of the norm of Article 5 paragraph (2) further read, "The development of the organization, administration, and finances of the Tax Court is carried out by the Supreme Court". In May 2023, the Constitutional Court (MK) granted part of the petition for judicial review of Law Number 14 of 2002 concerning the Tax Court through the Constitutional Court decision numbered 26/PUU-XXI/2023. The petition submitted by Nurhidayat *et al.* essentially asked the Panel of Constitutional Justices to assess the constitutionality of Article 5 paragraph (2) which reads "The development of the organization, administration, and finances of the Tax Court is carried out by the Ministry of Finance".

The applicant argued that the phrase "Finance Department", unless interpreted as referring to the "Supreme Court (MA)," is conditionally unconstitutional in relation to Article 1, paragraph (3), Article 24, paragraphs (1) and (2), and Article 28D, paragraph (1) of the 1945 Constitution. Nurhidayat, as Applicant I, contended that the connection to the Ministry of Finance creates an impression of bias within the Tax Court. Additionally, many Tax Court judges are former Directors General from the Directorate General of Taxes, further compromising impartiality. Therefore, Article 5, paragraph (2) of Law 14/2002 undermines the independence of the judicial power. It is essential for the Tax Court to operate independently, free from influence by other institutions, particularly the government; however, this is not the case in practice. The Tax Court Law places its authority under both judicial and executive powers, creating a conflict.

In its considerations, the Constitutional Court is of the view that one of the fundamental elements of a state of law is the existence of an independent court. One of the most important characteristics of a state of law is the independence of the judicial institution. One of the principles of a state of law is the presence of a free and independent judiciary, independent of the influence of any element of power. The Constitutional Court considers that based on Chapter IX Article 24 paragraph (2) of the 1945 Constitution, judicial power in Indonesia is exercised by a Supreme Court, and also judicial institutions

under it in the general court environment, religious courts, military courts, and state administrative courts, and by a Constitutional Court of the Republic of Indonesia. The tax court is expected to be able to provide justice in the field of tax collection as an effort to increase tax compliance and state revenue in the tax sector. The tax court needs to have judges who meet strict requirements for both integrity and competence.

The Constitutional Court sees that the Tax Court has been organized by two different institutions, namely the Supreme Court for judicial technical guidance and the Ministry of Finance (Kemenkeu) related to the organization, administration, and finance of its guidance. The dualism of guidance authority in the Tax Court is considered to have mixed up the guidance of judicial institutions which should be integrated in one institution that conducts the function of judicial power and is separate from executive power and any other power.

According to the Constitutional Court, the Tax Court was established as a continuation of the Tax Dispute Resolution Agency (BPSP) based on Law Number 14 of 2002 concerning the Tax Court, where the Tax Court has special characteristics compared to other courts. Since the issuance of Law Number 14 of 2002 concerning the Tax Court, the Constitutional Court has assessed that there have been changes in the judicial system in Indonesia based on amendments to the 1945 Constitution and amendments to Law Number 48 of 2009 concerning Judicial Power, including provisions on special courts and their relationship with the judicial environment under the Supreme Court.

The Constitutional Court has determined that since 2004, there are four recognized judicial environments in Indonesia: General Courts, Religious Courts, State Administrative Courts, and Military Courts. Consequently, a special court can only be established within one of these judicial environments. Thus, the Tax Court has been categorized as a Special Court within the State Administrative Court environment under the Supreme Court.

The authority granted to the Ministry of Finance over the Tax Court's organizational, administrative, and financial matters including the appointment and dismissal of tax court judges has been deemed by the Constitutional Court to undermine the independence of tax judges in reviewing and resolving tax disputes. To uphold the dignity of the Tax Court, it should aim for an independent justice system, commonly referred to as a one-roof system. This model has already been applied to other courts under the Supreme Court, where both technical judicial development and administrative matters fall under the Supreme Court's authority rather than the Ministry of Finance.

The Constitutional Court set a deadline of December 31, 2026, for consolidating the authority to oversee the Tax Court under the Supreme Court. In its ruling, the Court stated that the phrase "Department of Finance" in Article 5, paragraph (2) of Law 14/2002 is inconsistent with the 1945 Constitution and lacks binding legal force unless interpreted to mean "the Supreme Court, which will implement this gradually no later than December 31, 2026." Thus, Article 5, paragraph (2) of Law 14/2002 now reads: "Organizational, administrative, and financial development for the Tax Court is carried out by the Supreme Court, which will be implemented gradually no later than December 31, 2026."

3.2. Comparison of Indonesian and Malaysian Tax Dispute Tribunals

3.2.1. Differences between the Malaysian and Indonesian Legal Systems

When discussing the legal system, it's essential to connect it to the concept of law, as these two elements are interrelated. According to the Big Indonesian Dictionary, a system is defined as a collection of interrelated elements that form a cohesive whole. Law, on the other hand, refers to the binding regulations of a country that compel citizens to adhere to them. Thus, the legal system can be understood as the comprehensive set of rules governing what individuals must or must not do, which is binding and interconnected, aiming to achieve specific objectives (Siregar, 2022).

Many observers consider Malaysian law to be significantly more advanced than Indonesian law, a perspective supported by Malaysia's progress in various areas. Over the past decade, Malaysia's legal sector has seen substantial advancements in the quality of its legal products, as well as increased public trust in its judicial and law enforcement institutions. One notable feature of Malaysia's legal system is its pluralism, which constitutionally recognizes Islamic law alongside other religious laws, along with a dual judicial system for addressing violations of Islamic and civil norms. Article 3, paragraph (1) of the Malaysian Federation Institutions states, "Islam is the religion of the Federation, but other religions may be practiced safely and peacefully in all parts of the Federation."

Malaysia is a federal kingdom consisting of thirteen states covering the Malacca Peninsula, namely Johor, Malak, Pahang, Negeri Sembilan, Selangor, Perak, Terengganu, Kelantan, Penang, Kedah, and Perlis, which are located in West Malaysia and East Malaysia which consists of Sabah and Sarawak which are located in Northern Kalimantan. This federation was formed on September 16, 1963. The Head of State of Malaysia is a king with the title "Yang Dipertuan Agung." The government is in the hands of the Prime Minister, who has the right to form the Cabinet (Yusrizal, 2017).

As a former British colony, Malaysia continues to uphold the tradition of the English common law system. This common law legal framework originated in England and later spread to the United States and its former colonies. The term “Anglo-Saxon” refers to the people who initially invaded and settled in England before being conquered by William the Conqueror, the Duke of Normandy. William preserved the customary laws of the local populations while incorporating elements from the Continental European legal system (Wignjodipoero, 1983). In Malaysia, this legal tradition coexists with the Islamic legal system, which is implemented through Sharia courts and the customary laws of various indigenous groups. As a multi-ethnic, multicultural, and multireligious nation, Malaysia’s legal system reflects its diverse society, shaped by both external influences and indigenous traditions.

The term “common law” historically also comes from the French “*commune –ley*” (from Lat: *communis lex*), which refers to unwritten customs in England which were made legally binding through judicial decisions (Noho, 2020). Common law, which developed in England and spread to former colonies such as the United States, Canada, Australia, and India, has characteristics and principles that are different from civil law. This system is based on legal precedents, which are previous decisions made by judges in similar cases. A basic principle of common law is the doctrine of *stare decisis*, which means “to stand by previous decisions.” In other words, judges in a common law system must respect and follow the precedents that have been set by higher or equivalent courts in the same jurisdiction (Suhartanto & Febrianty, 2024).

A distinctive feature of the English legal system is the significant role of the jury in the justice process. The origins of this system date back to the 12th century, coinciding with the development of common law. Juries in new legal cases emerged as a means to move away from “*godsoordelen*,” or decisions based on divine judgment. For instance, in 1166, the king issued a new writ called the writ of novel disseisin, instructing the sheriff to assemble twelve individuals from a specific area to testify under oath about whether the current landholder had unlawfully expelled the plaintiff. This development effectively reduced the prevalence of judicial duels in legal proceedings (Aulia & Al-Fatih, 2017).

The word “system” comes from the Greek term “*systema*,” which refers to a whole composed of different elements. Subekti defines a system as a structured arrangement where interconnected parts are organized according to a specific design or plan. An effective system minimizes conflicts and eliminates any redundancy or overlap among its components. Therefore, a system is governed by various principles that guide its formation (Syafie, 2003).

The definition of a system, according to H. Thierry, is “*a set of interrelated components, the sum of its parts, the sum of its parts, the sum of its parts*,” which, if translated freely, means all parts that influence each other according to a predetermined plan, to achieve a certain goal, while what is meant by justice is a process carried out in court which is related to the task of examining, deciding and trying cases (Suciyani, 2022).

As a former Dutch colony, Indonesia adheres to the Civil Law System and maintains the Dutch legal tradition, especially in criminal law, alongside Islamic law and customary law. Like Malaysia, Indonesia has a plural legal system that incorporates a national legal framework shaped by various cultures and traditions. While the Malaysian legal system blends Common Law, Sharia law, and customary law, Indonesia’s legal framework merges Civil Law, Islamic law, and customary law traditions.

The legal system known as “Civil Law” originated in mainland European countries and is based on the codification of laws from the Roman Empire during Emperor Justinian’s reign in the 6th century BC. The Civil Law system has three main characteristics: the existence of codification, judges not being bound by precedents, making laws the primary legal authority, and an inquisitorial judicial process. Its defining feature is the binding nature of laws, established through regulations and systematically organized in codifications. This principle aims for legal certainty, which can only be realized when human actions in society are regulated by written laws. Therefore, judges cannot create laws with general applicability; instead, they interpret and apply existing regulations within their jurisdiction. A judge’s decision is binding only on the parties involved, in accordance with the *Res Judicata* Doctrine (Suciyani, 2022).

Malaysia chose not to discard or completely replace its foundational legal system, which was established long before English law was introduced. This decision aimed to preserve laws that align with the values and traditions of Malaysian society. Doing so fosters the development of legal awareness more effectively than if the entire existing legal culture were replaced with a new one. The English common law system exists alongside the Islamic legal system (administered by Sharia Courts) and the customary laws of various indigenous communities (Sumadiyono, 2020).

The justice system in Malaysia is structured to accommodate laws while preserving the arbitration system in line with societal values. Malaysian law is derived from three main sources: written or national law, Islamic law, and customary law. Customary law includes English law and principles of equity that have evolved within Malaysian courts, often leading to potential conflicts with written law. Adjusting the validity of these laws is seen as an effective approach to resolving such legal conflicts.

3.2.2. Comparison of Indonesian and Malaysian Tax Dispute Court Law

In contrast to Indonesia's Civil Law system, Malaysia operates under a Common Law legal system, where jurisprudence serves as the primary source of law. This underscores the crucial role of the courts as they establish the legal foundations for subsequent trials at all levels. Despite having a different legal framework, Indonesia can still draw insights from the judicial practices of more developed countries like Malaysia.

The justice system in Malaysia is divided and adjusted to the laws made without eliminating the arbitration system in accordance with the values that exist in their society. The sources of Malaysian law consist of three, namely, written/national law, Islamic law, and customary/customary law. Customary law consists of English law and the rules of equity that have developed in Malaysian courts, where there is a high possibility of conflict with written law (Sumadiyono, 2020).

The justice system in Malaysia is structured and adapted to its laws while preserving the arbitration system in line with societal values. Malaysian law derives from three main sources: written or national law, Islamic law, and customary law. Customary law encompasses English law and equity principles that have evolved in Malaysian courts, often leading to potential conflicts with written law.

In Malaysia, the High Court handles cases and serves as the first level of appeal for decisions made by the Sessions Court and the Magistrate's Court. The judicial structure in Malaysia is organized as follows:

- a) **High Court:** Malaysia has two high courts: the High Court in Peninsular Malaysia, referred to as the Malaya High Court, and the High Court in East Malaysia, known as the Sabah and Sarawak High Court. These courts have full jurisdiction over cases, except for matters that fall under the authority of the Syariah courts, and their jurisdiction is not restricted by territorial boundaries (Dikuraisyin, 2017).
- b) **Court of Appeal:** In Malaysia, the courts of appeal include the Supreme Court and the Federal Court (Supreme Guild). The Court of Appeal is made up of the Chief Justice and ten judges. The High Court's role is to hear appeals from lower courts and to exercise additional authority as outlined by federal law. It serves as the court that reviews decisions made by high courts. In Indonesia, the Court of Appeal is equivalent to the High Court, whereas in Malaysia, it acts as a court of first instance, functioning at the same level of appeal as the Sessions Court and the Magistrate's Court.
- c) **Federal Court:** The Federal Court is composed of the Chief Justice of the Federal Court, the President of the Court of Appeal, the Chief Justice of the High Court, and seven additional judges appointed by the king on the advice of the Chief Justice of the Federal Court. This court has the jurisdiction to assess the validity of a law if it is deemed outside the legislative powers of Parliament or state law. The king can also refer questions regarding the implications of legal provisions to the Federal Court. Additionally, the Federal Court resolves disputes between the state and the federation or among different states. If a law's effect on proceedings in another court is in question, the Federal Court has the authority to address this issue and may transfer the case to another court as per its provisions.
- d) **The Sessions Court:** The Sessions Court has the authority to handle criminal cases for all offenses not punishable by death. It also addresses civil matters related to vehicle accidents, landlord-tenant disputes, and other cases with compensation claims of up to approximately 250,000 ringgit. Additionally, it can hear cases involving higher claims if agreed upon by the parties involved. However, civil disputes regarding requests for specific actions—such as contract rescission, injunctions, declaratory judgments, or trust executions—are beyond the jurisdiction of the Sessions Court.
- e) **First Instance Court:** The First Instance Court handles criminal cases with a maximum sentence of 10 years in prison or a fine. It can impose penalties including up to 5 years of imprisonment, a fine of \$10,000, twelve strokes of the cane, or a combination of these. Additionally, it hears appeals from the Pengulu Court. The Magistrate's Court, on the other hand, deals with second-tier civil cases involving claims of up to 30,000 ringgit, as well as criminal cases with a maximum sentence of 12 months. It can impose sentences of up to 6 months in prison, a fine of 1,000 ringgit, or a combination of both.
- f) **The Court of the Chief:** The Pengulu Courts, located in West Malaysia, deal with cases involving Asian parties who speak and understand Malay. These courts also handle civil cases with claims up to 50 ringgit, as well as minor offenses that carry a maximum fine of 25 ringgit.
- g) **Juvenile Court (Children's Court):** Juvenile offenses committed by individuals aged 10 to 18 are tried in a juvenile court unless the crime is deemed serious. This court is comprised of two counselors, one of whom is ideally female. The judge makes the final decision on the case, while the counselors provide guidance on appropriate penalties. Imprisonment is considered a last resort, with preference given to placing the juvenile in a designated special school.

- h) **Sharia Court:** Sharia courts are state-level courts that operate independently from federal courts, which do not hold jurisdiction over them. In other words, federal courts do not have the authority to adjudicate cases that fall under the jurisdiction of Sharia courts.

Jurisdiction for tax disputes in Indonesia is under the authority of a special court, namely the tax court. This is different from Malaysia, where there is no tax court, but the authority to try the tax dispute is by the high court or *High Court*. The process of filing objections to the review of the tax dispute between Indonesia and Malaysia is not much different, with the following details (Mckenzie, 2024):

Based on the chart of differences (Table I), there are several things that are different between the objection process in Indonesia and Malaysia. In Malaysia, before an objection is submitted to the High Court, the *Inland Revenue Board* (IRB) forwards the objection to the Special Commissioner. This special commission is a special commission consisting of a number of people who have judicial experience or other legal experience (i.e., experience as an advocate, as a member of the judicial and legal service, or as an office holder subject to the Judges' Remuneration Act 1971 [Act 45]) and if the Yang di-Pertuan Agong (King) deems it necessary, he can appoint one of these people to become the Chairman of the Special Commissioner, as per chapter 6, Article 2, number 98, paragraph (3) of the Income Tax Act 1967 Malaysia. This special commissioner, if compared structurally with the tax court, is the Malaysian tax court.

The Special Commissioner is tasked with reviewing appeals from taxpayers who are unhappy with income tax determinations made by the Director General of Domestic Revenue (DJNP). The Special Commissioner of Malaysia has the following authorities:

- a) The power to summon any individual he believes can provide relevant evidence for the appeal.
- b) The authority to examine summoned individuals as witnesses, either under oath or in another manner.
- c) The ability to require summoned individuals to present any books, papers, or documents in their possession that are deemed necessary for the appeal.
- d) The discretion to reimburse reasonable expenses incurred by summoned individuals related to their attendance.
- e) All powers typically held by lower courts concerning the compulsion of witness attendance, evidence examination under oath, and contempt of court punishments.
- f) The authority to accept or reject any submitted evidence, whether oral or written, regardless of its admissibility under current laws regarding evidence.
- g) The power to postpone or adjourn appeal hearings as needed, including the ability to delay while considering decisions.

A party involved in proceedings before the Special Commissioner may appeal on any legal question regarding a determining order by requesting the Special Commissioner to present the case for the High Court's opinion and by paying the applicable fees to the Registrar as set by the Minister for each order being appealed. The High Court will hear and resolve any legal questions arising from the case and may, in its decision:

- a) Confirm, cancel, or modify the original judgment,
- b) Return the case to the Special Commissioner along with the court's opinion on the issue,
- c) Issue any other orders that are considered fair and appropriate.

Before resolving any legal questions in a case, the High Court may decide to return the case to the Special Commissioner for revision or request further findings of fact and additional statements from the Special Commissioner. When the Director General of Income Tax (DGIR) and the taxpayer are involved with the Special Commissioner, both parties can raise legal questions regarding any orders or decisions made during the proceedings. A legal question pertains to the interpretation of laws (statutory rules or legal principles) and how these laws apply to the specific facts of each case. Such legal questions are submitted to the High Court by paying a fee to the clerk of the Special Commissioner. The Special Commissioner is then obligated to provide all relevant information regarding the tax dispute to the High Court.

Based on the legal facts and information provided by the Special Commissioner, the High Court may decide to confirm, cancel, or modify the case. Additionally, the High Court can send the case back to the Special Commissioner along with an opinion note regarding the matter or issue other orders it deems fair. This represents a significant difference between the tax dispute systems in Indonesia and Malaysia.

The presence of the Special Commissioner allows the High Court to provide legal interpretations that can guide the Special Commissioner, leading to more objective and thoughtful decisions. This

TABLE I: CHART OF DIFFERENCES IN SUBMISSION PROCEDURES: TAX OBJECTIONS TO THE FINAL STAGE

No.	Tax dispute stage	Malaysia	Indonesia
1	The first appeal deadline after disagreement with the assessment made by the tax authority	Taxpayers may file an appeal by submitting a notice of appeal to the Director General of Inland Revenue (DGIR) no later than 30 (thirty) days after the tax assessment notice is delivered. If the appeal is not filed within the specified period, an application for extension of the appeal period may be filed, which will be considered by the DGIR. If the DGIR rejects the taxpayer's application for an extension of time, the taxpayer may file a further appeal to the Special Commissioner of Income Tax ("Special Commissioner") regarding the DGIR's decision.	The deadline for filing an objection application (i.e., the first stage of the appeal process) is three months after the date of delivery of the tax assessment letter. "Delivery date" is defined as the postmark date, facsimile date, or the date the taxpayer receives the tax assessment letter directly if the tax auditor delivers the tax assessment letter directly to the taxpayer.
2	Appeals procedure	<p>The tax appeal process in Malaysia involves the following stages:</p> <ol style="list-style-type: none"> Taxpayers may file an appeal by submitting a notice of appeal to the Director General of <i>Inland Revenue</i> (DGIR) no later than 30 (thirty) days after the tax assessment notice is delivered. If the appeal is not filed within the specified period, an application for extension of the appeal period may be filed, which will be considered by the DGIR. If the DGIR rejects the taxpayer's application for an extension of time, the taxpayer may file a further appeal to the Special Commissioner of Income Tax ("Special Commissioner") regarding the DGIR's decision. Following the submission, DGIR has 12 months to consider the appeal. <i>The Inland Revenue Board (IRB)</i> will review the assessment notice and submission and may contact the taxpayer to discuss the matter in more detail or consider an amicable settlement. If the IRB is of the view that an amicable settlement is not possible, it will refer the matter to the Special Commissioner within 12 months from the date of receipt of the submission. Once the Special Commissioner receives the submission (after it has been forwarded by the IRB), the Special Commissioner will fix the matter for mention, case management, hearing, and decision. The final appeal on this matter will be filed with the appellate court. An alternative is to file a judicial review process against the DGIR to the high court. However, this is a discretionary remedy by the court, which is only available in exceptional circumstances when the public authority does not have jurisdiction or in cases of abuse of power or violation of law in making a decision. 	<p>Taxpayers who are dissatisfied with the tax assessments set by the local tax office may consider the following legal remedies:</p> <ol style="list-style-type: none"> Submit an objection application to the Directorate General of Taxes (DGT): Within three months from the date of sending the tax assessment letter, taxpayers have the right to submit an objection to the tax assessment letter by submitting an objection application addressed to the Head of the DJP Regional Office. File an appeal to the tax court, and If the DGT rejects the objection to the decree of the DGT's decision, the taxpayer must file a written appeal to the tax court within three months of receiving the decision. File a judicial review application with the Supreme Court: The tax court's decision is final and binding. However, under certain circumstances, taxpayers can take extraordinary legal action and challenge the tax court's decision by filing a written judicial review application (also known as a civil judicial review application) with the Supreme Court, which is the highest court in the Indonesian legal system.

TABLE I: CONTINUED

No.	Tax dispute stage	Malaysia	Indonesia
3	Average time to reach a final decision	Generally, the time taken to resolve a tax dispute in Malaysia depends on the complexity of the dispute. Once a taxpayer has filed an appeal, the DGIR has a period of 12 months from the date of filing the appeal to consider it. If the IRB is of the opinion that a settlement is unlikely, the IRB will refer the case to the Special Commissioner. A hearing date is usually set within one to three years from the date the notice of appeal is forwarded to the Special Commissioner. If the case is heard all the way to the highest appellate level (court of appeal), it may take up to three to five years to reach a final decision.	The time of the tax litigation process will depend on the complexity of the case. a) Objection stage: The DGT must issue a decision within 12 months. If the DGT does not meet the deadline, the objection application is considered granted. b) Appeal stage: The tax court is obliged to issue a decision on the appeal within 12 months from the date of receipt of the appeal application (with a maximum extension of three months). c) Stages of application for judicial review: The application must be filed within three months after the tax court decision is rendered. The Supreme Court is required to issue a decision on the application for judicial review within six months of receiving the application. However, in practice, this process can take up to one or two years.
4	Mandatory or optional administrative appeal procedures before judicial procedures	Must	Must

system also helps reduce the caseload at the High Court level and speeds up the resolution of tax disputes. However, a drawback is that the Special Commissioner is not fully independent, as the High Court has a role in interpreting the law for disputes within the Special Commissioner's jurisdiction.

The tax court specifically addresses tax disputes, with no options for appeals or cassation; thus, the only extraordinary legal recourse available is a Judicial Review to the Supreme Court. If this system is implemented, the Supreme Court will play a role before disputes reach the Judicial Review stage, specifically through the cassation process, allowing the Supreme Court to provide legal certainty regarding decisions made by the tax court.

4. CONCLUSION

The Indonesian tax court, which was previously under the jurisdiction of the Ministry of Finance after the Constitutional Court decision No. 26/PUU-XXI/2023, will be transferred to the Supreme Court, again following the *Trias Politica* theory where government power is divided into executive, legislative, and judicial functions. In this case, Indonesia can learn from Malaysia, where the tax dispute justice system is the authority of the high court. However, before going to the high court level, the same as in Indonesia, tax disputes in Malaysia begin with the process of submitting objections to tax assessment letters. However, the difference lies in a special institution, namely the Special/Special Commissioner, whose job is to hear appeals from taxpayers who are dissatisfied with the determination of income tax made by the Director General of Domestic Revenue (DJNP). This special commissioner has the authority to decide tax disputes and can also ask the High Court for an opinion on the dispute. This system is not present in Indonesia's tax dispute resolution system. Indonesia needs to complete the tax dispute resolution system at a cassation level to provide legal certainty regarding the tax court decisions given so as to provide justice to taxpayers and certainty about legal certainty.

CONFLICT OF INTEREST

The author declares that there is no conflict of interest.

REFERENCES

- Asshiddiqie, J. (2016). *Pengantar ilmu hukum tata negara* [Introduction to Constitutional Law]. PT Raja Grafindo Persada.
- Aulia, F., & Al-Fatih, S. (2017). Perbandingan sistem hukum common law, civil law dan Islamic law dalam perspektif sejarah dan karakteristik berpikir [Comparison of common law, civil law, and Islamic law legal systems in historical perspective and thinking characteristics]. *Legality Scientific Journal of Law*, 25(1), 98–113.
- Basri, H., & Muhibbin, M. (2022). Kedudukan pengadilan pajak dalam sistem peradilan Indonesia [Position of tax court in the Indonesian judicial system]. *Journal of Law and Notary*, 6(3), 1442–1458.
- Diantha, I. M. P. (2016). *Metodologi penelitian hukum normatif dalam justifikasi teori hukum* [Normative Legal Research Methodology in Justification of Legal Theory]. Prenada Media Group.
- Dikuraisyin, B. (2017). Sistem hukum dan peradilan Islam di Malaysia [Islamic legal and judicial system in Malaysia]. *Online Journal of Kopertais Region IV (EKIV)*, 1(3), 1–11.
- Marpi, Y. (2023). Eksistensi pengadilan pajak dalam independensi peradilan penyelesaian sengketa pajak ditinjau dari putusan Mahkamah Konstitusi nomor 26/PUU-XII/2023 [The existence of the tax court in the independence of the tax dispute settlement judiciary reviewed from the decision of the Constitutional Court Number 26/PUU-XII/2023]. *Execution: Journal of Law and State Administration*, 1(3), 73–81.
- McKenzie, B. (2024, August 8). *Tax Disputes Resolution Timelines*. Baker McKenzie. <https://resourcehub.bakermckenzie.com/en/resources/tax-dispute-resolution-timelines>.
- Noho, M. D. H. (2020). Mendudukan common law system dan civil law system melalui sudut pandang hukum progresif di Indonesia [Positioning the common law system and civil law system through the perspective of progressive law in Indonesia]. *Journal of Rechtsvinding National Legal Development Media*, 2020, 1–4.
- Paton, G. W. (1972). *A Textbook of Jurisprudence*. Oxford University Press.
- Seokanto, S. (2014). *Pengantar penelitian hukum* [Introduction to legal research] UI-Press.
- Siregar, P. J. W. S. (2022). Perbandingan sistem hukum civil law dan common law dalam penerapan yurisprudensi ditinjau dari politik hukum [Comparison of civil law and common law legal systems in the application of jurisprudence reviewed from legal politics]. *Dharmasisya Journal of the Master of Law Program*, 2(2), 1027–1036.
- Suciyani, F. (2022). Kedudukan pengadilan pajak dalam sistem peradilan di Indonesia [The position of the tax court in the Indonesian judicial system]. *Dharmasisya Journal of the Master of Law Program*, 2(1), 375–388.
- Suhartanto, F. P., & Febrianty, Y. (2024). Perbandingan sistem hukum civil law dan common law [Comparison of civil law and common law legal systems]. *Journal of Defense Science, Law and Communication Science*, 1(3), 72–83.
- Suherman, A. (2019). Implementasi independensi hakim dalam pelaksanaan kekuasaan kehakiman [Implementation of judicial independence in the implementation of judicial power]. *SIGn Jurnal Hukum*, 1(1), 42–51.
- Sumadiyono, S. (2020). Perbandingan sistem hukum antara Indonesia dan Malaysia [Comparison of legal systems between Indonesia and Malaysia]. *Wajah Hukum Journal*, 4(2), 414–420.
- Syafiie, I. K. (2003). *Sistem administrasi negara Republik Indonesia* [State Administration System of the Republic of Indonesia]. Bumi Aksara.
- Umar, N. (2013). Studi Hukum Perbandingan Sistem Ketatanegaraan Malaysia dan Indonesia [Comparative Legal Study of the Constitutional Systems of Malaysia and Indonesia]. *Jurnal IAIN Ambon: Tahkim* 9(2), 112–126.
- Wignjodipoero, S. (1983). *Pengantar dan asas-asas hukum adat* [Introduction and Principles of Customary Law]. Gunung Agung.
- Witardi, R. J., & Sianturi, S. (2022). Eksistensi penerapan *trias politica* dalam pemisahan kekuasaan yang sejajar beserta dampaknya terhadap kekuatan lembaga negara independen [The existence of the implementation of Trias Politica in the separation of equal powers and its impact on the strength of independent state institutions]. *Journal of Legal and Social Dynamics*, 5(1), 1–10.
- Yulistiyowati, E., Pujiastuti, E., & Mulyani, T. (2016). Penerapan konsep *trias politica* dalam sistem pemerintahan Republik Indonesia: Studi komparatif atas Undang-Undang Dasar Tahun 1945 sebelum dan sesudah amandemen [Implementation of the Trias Politica concept in the government system of the Republic of Indonesia: a comparative study of the 1945 Constitution before and after the amendment]. *Journal of Social and Cultural Dynamics*, 18(2), 328–338.
- Yusrizal, Y. (2017). Studi komparatif pelaksanaan peradilan Islam di negara Malaysia dan Saudi Arabia [Comparative study of the implementation of Islamic justice in Malaysia and Saudi Arabia]. *De Lega Lata Journal of Legal Studies*, 2(2), 445–471.