

Legal Reconstruction of the Position of Tax Courts Following the Issue of Constitutional Court Decisions No. 26/PUU-XXI/2023

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ABSTRACT

As stated in Article 1(8) of the Judicial Power Act, tax courts are special courts under the Supreme Court and part of the judicial branch. According to Article 1(5) of the Tax Court Law, tax disputes are those arising in the field of taxation between taxpayers and authorized officials as a result of a decision that can be appealed or challenged in the Tax Court, in accordance with tax laws and regulations. This includes lawsuits regarding the enforcement of tax collection based on the Tax Collection Act with a Summons. Law No. 17 of 1997 on Tax Collection by Means of a Forced Execution Letter regulates tax disputes arising from tax collection actions by officials that do not comply with legal procedures, causing taxpayers to feel aggrieved. Constitutional Court Decision No. 26/PUU-XXI/2023 is based on Article 24(1) of the 1945 Constitution of the Republic of Indonesia, which states that the Supreme Court and the courts under its authority exercise judicial power. The decision reaffirms that the Tax Court is part of the judicial power and that the Supreme Court must supervise it. Constitutional Court Decision No. 26/PUU-XXI/2023 aims to enhance the Tax Court's independence. Transferring the authority for the organization, administration, and finance of the Tax Court from the Ministry of Finance to the Supreme Court is expected to achieve this goal. Prior to the decision, the Tax Court was under the Supreme Court within the Administrative Court System. The Tax Court was also under the Ministry of Finance in terms of organizational, administrative, and financial supervision in accordance with Article 5(2) of Law No. 14 of 2002 on the Tax Court. However, the arrangement of the status of tax courts following the issuance of Constitutional Court Decision No. 26/PUU-XXI/2023 has raised the issue that the decision does not automatically amend the provisions of Law No. 14 of 2002 on Tax Courts, particularly Article 5(2). According to Constitutional Court Decision No. 26/PUU-XXI/2023, the Supreme Court is responsible for supervising the organization, administration, and finances of the Tax Courts. However, Article 5(2) of Law No. 14 of 2002 of the Republic of Indonesia on Tax Courts grants the Ministry of Finance the authority to supervise the organization, administration, and finances of the Tax Courts. These conflicting provisions result in the loss of the Tax Court's status as an independent judicial institution.

Keywords: Legal Reconstruction, Tax Adjudication, Post-Constitutional Court Decision.

Introduction

Resolving tax disputes is one of the most critical aspects of a country's tax system. Taxes play a central role in government funding and economic development. However, the complexity of tax regulations and differing interpretations can lead to conflicts between tax collectors and taxpayers. Disagreements over legal interpretations, rejection of tax calculations, and disputes over tax liability status are a few examples of tax disputes that can arise. The tax dispute resolution process is essential to maintaining fairness and legal certainty. Tax courts play a central role in ensuring the sustainability of an effective tax system by resolving disputes between taxpayers and tax authorities (Leandra Lederman, 2012).

The Tax Court is one of the specialized courts. The establishment of specialized courts is predicated on legislation that meticulously delineates the authority, organizational structure, and operational procedures of these institutions. Specialized courts occupy a position analogous to that of general courts within the Indonesian judicial system. These courts are obligated to adhere to fundamental principles of justice, including independence, impartiality, and accountability. The Tax Court is a judicial body entrusted with the adjudication of tax-related disputes between taxpayers and tax officials. The Tax Court constitutes an element of the judicial apparatus within the Indonesian legal system.

The primary function of tax courts is to adjudicate disputes pertaining to taxes that have arisen between the involved parties, namely taxpayers or tax guarantors and tax officials who execute supervisory and tax collection responsibilities. The establishment of tax courts is a critical component of the legal infrastructure, ensuring that disputes are adjudicated in a fair and lawful manner. Article 2 of the Tax Court Law stipulates that the Tax Court is a judicial body that exercises judicial power for taxpayers or tax guarantors seeking justice in tax disputes. Disputes or disagreements between taxpayers and authorized officials, particularly regarding the results of tax audits, arise from (Atep Adya Barata, 2018):

1. There is a divergence in perceptions regarding the interpretation of tax regulations between taxpayers and tax officials.
2. The issue of time constraints during tax audits by tax officials is of particular concern. These constraints are often the result of the officials' attempts to understand taxpayers' business processes and accounting systems.
3. Suboptimal communication from taxpayers regarding their business activities to tax officials has been identified as a salient issue.
4. The general public's understanding of tax regulations is limited due to a lack of knowledge and skills.
5. The general public tends to demonstrate a limited understanding of financial statements, particularly the distinction between commercial and fiscal statements.
6. A discrepancy exists in the recognition of a transaction and its corresponding supporting evidence.

Tax courts, as an integral component of the judicial branch, constitute specialized courts subordinate to the Supreme Court, as delineated in Article 1(8) of the Judicial Act. The decisions rendered by tax courts are considered final, thereby becoming binding on the parties involved in the tax dispute. Consequently, following the issuance of a decision by the tax court, the parties involved are obligated to adhere to its directives. The sole legal recourse available to challenge a tax court decision is an extraordinary legal remedy in the form of a review. According to Thuronyi, the tax court is involved in the adjudication of tax disputes (V. Thuronyi, 1996). In accordance with Article 2 of the Tax Court Law, the Tax Court possesses the authority to exercise judicial power for taxpayers or tax guarantors seeking justice in tax disputes. In addition, as outlined in Article 1(5) of the Tax Court Law, a tax dispute is defined as a disagreement that arises in the domain of taxation between a taxpayer or tax liability holder and an authorized official. This dispute occurs as a result of the issuance of a decision that may be appealed or challenged before the Tax Court in accordance with tax laws and regulations. This includes lawsuits concerning the enforcement of tax collection based on the Tax Collection Act with a Summons. Additionally, Law No. 17 of 1997 on Tax Collection by Means of a Summons also regulates tax disputes arising from tax collection actions by tax officials that do not comply with the procedures specified in the law, thereby causing taxpayers to feel aggrieved by such collection actions. According to Sundoro, tax disputes can be classified into two categories, formal and material tax disputes, which is (Sundoro, 2004).

1. Formal disputes arise when tax officials fail to adhere to the prescribed procedures and regulations outlined in pertinent tax legislation, such as Law Number 6 of 1983 on General Provisions and Procedures for Taxation (KUP Law), as subsequently amended by Law Number 7 of 2021 on Harmonization of Tax Regulations (HPP Law) and Tax Court Law. The provisions of the UU KUP encompass a range of regulatory functions, including but not limited to: the governance of tax audit procedures and regulations, the issuance of tax assessments, and the issuance of objection decisions.
2. Material disputes arise when, subsequent to tax calculations, the determined amount corresponds to the taxpayer's calculated amount. Such discrepancies may stem from divergent interpretations of pertinent legal provisions, varied interpretations of tax regulations, disputes over a particular transaction, or a multitude of other factors. These discrepancies can result in a discrepancy between the tax amount determined by the tax official and the amount calculated by the taxpayer.

The types of tax decrees or decisions that may be subject to dispute based on tax laws and regulations include (Zaka Firma Aditya, Muhammad Adiguna Bimasakti dan Anna Erliyana,2023):

1. The subject has received a tax assessment letter due to an underpayment.
2. The subject has received a tax assessment letter notifying them of an additional underpayment.
3. Tax assessment letter for overpayment;
4. The subject of this correspondence is a tax assessment letter indicating that no taxes are owed.
5. The act of deductions or collections by third parties in accordance with the established tax laws and regulations.
6. The enforcement of legal instruments such as writs of execution, orders for seizure, and auction notices is a critical aspect of judicial proceedings.
7. Decisions pertaining to the implementation of tax decisions, with the exception of those stipulated in Article 25(1) and Article 26 of the Tax Collection Law.
8. The following section is a précis of the correction decisions as outlined in Article 16 of the Tax Collection Law with regard to tax invoices.
9. As delineated in Article 36 of the Tax Collection Law, the following decisions pertain to tax invoices.

Furthermore, as outlined in Supreme Court Circular Letter No. 1 of 2022, the Tax Court possesses concurrent jurisdiction to adjudicate disputes pertaining to factual actions within the domain of taxation by the Directorate General of Taxes or the Directorate General of Customs and Excise. This is due to the fact that customs and excise are considered integral components of taxation (Teguh Satya Bhakti,2021), this encompasses a range of strategies, including the prevention, sealing, and blocking of tax disputes. Tax courts constitute the primary jurisdiction for the adjudication of tax-related disputes. The legal and judicial processes in tax courts are of paramount importance in achieving justice and legal certainty. The proliferation of intricate business operations and the intricacy of contemporary taxation regulations have given rise to an escalating frequency of tax disputes. The establishment of tax courts in Indonesia was primarily motivated by several factors, including:

- 1) The objective is to enhance the effectiveness and efficiency of tax dispute resolution.
- 2) The objective is to ensure legal certainty for taxpayers.
- 3) The establishment of a tax court is imperative for the consolidation of the judicial system under the jurisdiction of the Supreme Court.

Tax courts have several advantages over tax dispute resolution in administrative courts in general, including:

- 1) Judges in tax courts possess specialized knowledge in the domain of taxation.
- 2) Tax courts have been known to employ more streamlined and expeditious procedures for the examination and resolution of disputes.
- 3) Tax courts are vested with the authority to render definitive and binding resolutions on tax disputes.

Tax courts fulfill a pivotal function within Indonesia's taxation framework. Tax courts fulfill the fundamental role of ensuring legal certainty for taxpayers, fostering public confidence in the taxation system, and enhancing the effectiveness and efficiency of tax dispute resolution. Ensuring legal certainty for taxpayers is of paramount importance in the implementation of tax collection. The provision of legal certainty has been demonstrated to engender a sense of security and comfort among taxpayers as they fulfill their tax obligations. The preservation of public confidence in the tax system is of paramount importance. The cultivation of public trust has been demonstrated to positively influence taxpayer compliance, leading to an enhancement in the fulfillment of tax obligations. The efficacy and efficiency of tax dispute resolution also necessitates enhancement. Tax disputes that are not resolved in an effective and efficient manner have the potential to result in injustice for taxpayers and economic instability. The enhancement of public cognizance of tax courts has the potential to engender a more profound comprehension of their function and role. A potential strategy to enhance public confidence in tax courts is to ensure their autonomy. The independence of tax courts can be interpreted as the freedom of tax courts to carry out their duties and functions without influence from other parties, including the government, taxpayers, or other parties.

The autonomy of tax courts is paramount to ensure the delivery of equitable and impartial verdicts. Fair tax court decisions have the potential to enhance public confidence in the judicial system, thereby encouraging individuals to seek resolution for tax-related disputes within the court's jurisdiction. There are several measures that can be implemented to ensure the autonomy of tax courts. These include:

- 1) A distinct organizational framework is to be established for tax courts. Tax courts are required to possess an organizational structure that is distinct from the government, both structurally and functionally. This is done to prevent government influence on tax courts.
- 2) The selection of qualified tax court judges is a critical component of the judicial system. Judges of the Tax Court are selected based on rigorous criteria, encompassing educational qualifications, professional experience, and a demonstrated commitment to integrity. This is to ensure that tax court judges possess the requisite competence and integrity to carry out their duties.
- 3) The establishment of a suitable remuneration system for judges of the tax court is imperative. It is imperative that tax court judges be provided with adequate income to guarantee their independence and welfare. This is to prevent corruption or collusion between tax court judges and other parties.
- 4) The allocation of sufficient financial resources to the tax courts is imperative. It is imperative that tax courts are allocated sufficient financial resources to facilitate the effective execution of their responsibilities and operations. This is to prevent corruption or collusion between tax court judges and other parties.

Regarding the organizational structure of the tax court, there is currently a Constitutional Court (MK) Decision Number 26/PUU-XXI/2023 (Muhammad Addi Fauzani et.al, 2023). Prior to the issuance of Constitutional Court Decision No. 26/PUU-XXI/2023, the position of the Tax Court as regulated in Law No. 14 of 2002 on the Tax Court (Tax Court Law) was under the jurisdiction of the Ministry of Finance in terms of organizational,

administrative, and financial supervision, while technical judicial supervision was carried out by the Supreme Court (Ratih Wedhasari dan I Wayan Parsa, 2021).

On March 21, 2023, the Constitutional Court (MK) issued Constitutional Court Decision No. 26/PUU-XXI/2023, which granted in part the petition for judicial review of the Tax Court Law. In the petition, one of the issues that was reviewed was the authority to supervise the organization, administration, and finances of the Tax Court. The Tax Court, as established under Article 9A of Law No. 9 of 2004 Amending Law No. 5 of 1986 on Administrative Courts, constitutes a specialized court within the administrative court system (Teguh Satya Bhakti, Agus Budi Susilo, dan Ruth Endang Lestari, 2018). In its ruling, the Constitutional Court determined that the authority to supervise the organization, administration, and finances of the Tax Court must be transferred from the Ministry of Finance to the Supreme Court. The Constitutional Court's ruling is effective as of the date of its pronouncement on March 21, 2023. Consequently, the status of the Tax Court in the aftermath of Constitutional Court Decision No. 26/PUU-XXI/2023 is as follows:

The Tax Court is first in order of precedence in the judicial hierarchy of the United States. It is subordinate to the Supreme Court. This demonstrates that the Tax Court possesses autonomy and independence from the government (as the fiscal authority) in carrying out its duties and functions. Secondly, in terms of function, the Tax Court maintains its responsibility to examine, adjudicate, and resolve tax disputes. These duties and functions are autonomous and immune to interference by the government.

The Constitutional Court's decision in case No. 26/PUU-XXI/2023 is founded upon Article 24(1) of the 1945 Constitution of the Republic of Indonesia, which delineates that judicial power is to be exercised by the Supreme Court and the courts within its purview. The decision serves to reinforce the notion that the Tax Court constitutes an element of the judicial apparatus, thereby necessitating its oversight by the Supreme Court. The Constitutional Court's decision in case number 26/PUU-XXI/2023 seeks to bolster the autonomy of the Tax Court. The autonomy of the Tax Court is paramount for ensuring equitable and unbiased adjudication. A dissertation study on the institutionalization of the Tax Court following Constitutional Court Decision No. 26/PUU-XXI/2023 can contribute to strengthening the independence of the Tax Court. The impending Constitutional Court Decision No. 26/PUU-XXI/2023 is anticipated to offer legal certainty to the parties involved in disputes at the Tax Court.

The establishment of legal certainty is paramount in fostering a conducive investment climate. The transfer of authority over the organization, administration, and finance of the Tax Court from the Ministry of Finance to the Supreme Court is expected to increase the independence of the Tax Court. The autonomy of the Tax Court is paramount to ensure the delivery of equitable and impartial verdicts. Fair tax court decisions have the potential to enhance public trust in tax courts, thereby encouraging the public to resolve tax disputes in tax courts. The following are some of the positive impacts of the transfer of authority over the organization, administration, and finance of the Tax Court from the Ministry of Finance to the Supreme Court:

- 1) The necessity of ensuring the autonomy of the Tax Court is paramount. The Tax Court, by virtue of its subjection to the Supreme Court, will possess enhanced autonomy and independence in the execution of its duties and functions.
- 2) The objective is to enhance the quality of decisions rendered by the Tax Court. The autonomy of the Tax Court is expected to motivate its judges to deliver equitable and unbiased rulings.
- 3) The objective is to enhance public confidence in the Tax Court. Decisions made by the Fair Tax Court will have the effect of enhancing public confidence in the institution.

The transfer of authority over the organization, administration, and finance of the Tax Court from the Ministry of Finance to the Supreme Court has also faced several challenges, namely:

- 1) A comprehensive review of the organizational structure and work procedures is imperative to ensure the effectiveness and efficiency of the Tax Court's institutional structure. The transfer of the Tax Court from the Ministry of Finance to the Supreme Court will necessitate institutional adjustments to the Tax Court. The transition of the Ministry of Finance to the Supreme Court necessitates substantial adjustments to the institutional framework of the Tax Court, thereby ensuring its effective functioning within the Supreme Court's jurisdiction.
- 2) There is a pressing need to enhance the capacity and competence of tax court judges. It is imperative that tax court judges enhance their capacity and competence to ensure the delivery of high-quality decisions.
- 3) To this end, it is imperative to garner support from the government and the public. The transfer of authority over the organization, administration, and finances of the Tax Court from the Ministry of Finance to the Supreme Court is a process that requires support from the government and the public.

Ensuring effective coordination between the Supreme Court and the Tax Court is imperative to achieve harmonization of policies, procedures, and resources. This harmonization is imperative to ensure that the Tax Court can function effectively under the Supreme Court without encountering administrative or structural impediments. Moreover, it is imperative to disseminate these modifications to all pertinent parties, including judges, staff, and other relevant individuals. Transparent and effective communication has been demonstrated to reduce resistance to change, increase understanding of the objectives of the transfer of authority, and ensure the positive involvement of all parties in this process. In conclusion, it is imperative to implement a systematic and ongoing process for the regular monitoring and evaluation of the transfer of authority implementation.

The objective of this initiative is to identify potential challenges, assess the impact of modifications, and implement adjustments as necessary to ensure the long-term success of the integration of the Tax Court into the Supreme Court. By taking these factors into consideration, it is anticipated that the transfer of authority will proceed in an orderly manner, yielding beneficial outcomes and further consolidating the tax justice system in its entirety. The Constitutional Court's decision indicates that the Tax Court is under the jurisdiction of the Supreme Court rather than that of the Ministry of Finance. This finding suggests that the Tax Court possesses autonomy and independence in carrying out its duties and functions. From a functional perspective, the Tax Court operates in a manner that is distinct from the government. The Tax Court is responsible for examining, adjudicating, and resolving tax disputes, both between taxpayers and the government and between taxpayers themselves. These duties and functions are autonomous and immune to interference by the government. The separation of structure and function is imperative to ensure the autonomy of the Tax Court.

As previously delineated, a multitude of tax cases and tax dispute resolution mechanisms exhibit distinctive characteristics that diverge from the general legal framework. This underscores the significance of the Tax Court's contemporary stance. This assertion is substantiated from two distinct vantage points. Firstly, there is an exigent need for the public to have a guarantee of proper tax collection. This guarantee is essential for the advancement of social welfare through national development funding. Secondly, there is a legal imperative for taxpayers to be protected against the threat of maladministration within the tax collection and management bureaucracy. The significance of the role of tax courts as an integral

component of an autonomous judicial apparatus remains underappreciated in practical applications. This phenomenon can be attributed to the presence of legal gaps and the absence of mechanisms that would establish tax courts as independent judicial bodies. The following section will provide a detailed overview of the legal process by which these issues can be substantiated:

First, the position of the tax court as a special court under the Supreme Court is not clearly regulated. This is evident in the provisions of Article 25 Paragraph (1) of Law No. 48 of 2009 on Judicial Power, which states that, "*badan peradilan yang berada di bawah Mahkamah Agung meliputi badan peradilan umum, peradilan agama, peradilan militer, dan peradilan tata usaha Negara*". Based on this provision, tax courts are not mentioned as special courts under the Supreme Court.

Secondly, Article 5 (2) of Law Number 14 of 2002 of the Republic of Indonesia on Tax Courts stipulates that the organization, administration, and finance of Tax Courts are subject to the oversight of the Ministry of Finance. The presence of Constitutional Court Decision No. 26/PUU-XXI/2023 does not inherently modify the provisions of Law No. 14 of 2002 of the Republic of Indonesia on Tax Courts, particularly Article 5(2) of Law No. 14 of 2002 of the Republic of Indonesia on Tax Courts. This results in dualism in the supervision of the organization, administration, and finances of the Tax Court, where, according to Constitutional Court Decision No. According to Article 26/PUU-XXI/2023, the authority for the supervision of the organization, administration, and finances of the Tax Court is vested in the Supreme Court. However, Article 5 (2) of Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts grants the authority for organizational, administrative, and financial supervision of Tax Courts to the Ministry of Finance. The provisions of Article 5 (2) of Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts result in the loss of the Tax Court's status as an independent judicial institution.

Another salient aspect in considering the position of the Ministry of Finance, as represented by the Ministry of Finance, in exercising organizational, administrative, and financial supervision over the Tax Court is that such supervision is the authority of the institution directly overseeing the judiciary, namely the Supreme Court. This is due to the fact that the Ministry of Finance, as represented by the Department of Finance, does not constitute a judicial institution and is not the parent institution of the tax court. The Ministry of Finance, as represented by the Department of Finance, is entrusted with the responsibility of exercising administrative authority over the management of state finances. This assertion is codified in Article 4 of Presidential Regulation of the Republic of Indonesia Number 57 of 2020 on the Ministry of Finance, which stipulates that "The Ministry of Finance bears the responsibility of overseeing government affairs in the domain of state finance, with the objective of providing support to the President in the execution of state administration." A similar statement is also made in Article 4 of Regulation of the Minister of Finance of the Republic of Indonesia Number 118/Pmk.01/2021 on the Organization and Work Procedures of the Ministry of Finance, which states that "The Ministry of Finance has the duty to carry out government affairs in the field of state finances and state assets to assist the President in carrying out state administration." This clearly indicates that financial matters related to the funding of the duties and functions of the tax court are part of the financial administration of the tax court, which is regulated by its parent institution, the Supreme Court. Moreover, the distinction between administrative and supervisory matters is unambiguous. The tax court is not a state financial institution under the supervision of the Ministry of Finance; consequently, supervision and administrative procedures must also be regulated by the Supreme Court as the parent institution of the tax court. The Ministry of Finance functions as an assistant to the President in the exercise of executive power. Consequently, the Ministry

of Finance operates within the executive branch, while the tax court falls under the judicial branch. This principle is explicitly articulated in Article 24 of the 1945 Constitution of the Republic of Indonesia, which stipulates that:

- 1) Judicial power is defined as the independent authority to administer justice for the purpose of upholding law and order.
- 2) Judicial power is exercised by a Supreme Court and judicial bodies under it within the general court system, the religious court system, the military court system, the administrative court system, and by a Constitutional Court.
- 3) A number of other bodies exist whose functions are related to the exercise of judicial power. These entities are subject to regulation by law.
- 4) Moreover, Article 24A paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that "The Supreme Court possesses the authority to adjudicate cases at the cassation level, to examine regulations that fall below the legal status, and to exercise other powers that are conferred by law."

In consideration of the aforementioned provisions, it is evident that the role of the Ministry of Finance as the supervisory authority for organizational, administrative, and financial matters within the Tax Court is in direct contravention with Article 4 of Presidential Regulation of the Republic of Indonesia Number 57 of 2020 on the Ministry of Finance, Article 4 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 118/Pmk.01/2021 on the Organization and Work Procedures of the Ministry of Finance, and Articles 24 and 24A(1) of the 1945 Constitution of the Republic of Indonesia.

These fundamental issues have led to the erosion of the tax court's autonomy and its loss of status as an independent judicial institution, immune to the influence of other state institutions. This situation is in direct opposition to the mandate of Article 24(2) of the 1945 Constitution, which states that: "Judicial power is exercised by a Supreme Court and judicial bodies under it within the general court system, the religious court system, the military court system, the administrative court system, and by a Constitutional Court." Based on the above background, this article is titled "**Legal Reconstruction of the Position of Tax Courts Following the Issuance of Constitutional Court Decision No. 26/PUU-XXI/2023**" which outlines the following three issues:

First, what was the institutional structure of the tax court prior to Constitutional Court Decision No. 26/PUU-XXI/2023? Second, What is the dualism in the regulation of the status of tax courts following the issuance of Constitutional Court Decision No. 26/PUU-XXI/2023? And third, What is the institutional framework of the Tax Court following the issuance of Constitutional Court Decision No. 26/PUU-XXI/2023?

Methods Research

This study employs a **qualitative normative legal research method**, focusing on the philosophical and juridical aspects of Pancasila as the ethical foundation of Indonesian law and governance. The normative method is applied to analyze laws, doctrines, and legal principles derived from statutory regulations, philosophical texts, and academic literature related to Pancasila as a source of legal values and moral guidance for national development.

The research uses several analytical approaches. The **philosophical approach** examines Pancasila as a system of thought and ethical paradigm that underlies Indonesia's constitutional and legal order. It explores the ontological, epistemological, and axiological dimensions of Pancasila, emphasizing how its principles of divinity, humanity, unity, democracy, and social justice can be operationalized in law and public policy.

The **statutory and conceptual approaches** are employed to interpret the relationship between Pancasila and Indonesia's legal system, especially in the context of the Constitution

(UUD 1945), national legislation, and legal development strategies. These approaches allow the study to trace how Pancasila functions as both a normative source of law and a guiding philosophy for legal reform.

The **data sources** in this research consist of:

1. **Primary legal materials** – including the 1945 Constitution, the Pancasila philosophical texts, and national laws that explicitly or implicitly reflect Pancasila values.
2. **Secondary legal materials** – such as books, journal articles, and expert opinions discussing the interpretation and implementation of Pancasila in legal theory and practice.
3. **Tertiary materials** – such as encyclopedias and legal dictionaries to clarify key terminologies and concepts.

Data collection was carried out through a **literature review**, focusing on textual analysis of relevant documents and scholarly works. The collected data were analyzed using **qualitative descriptive analysis**, which identifies patterns, meanings, and relationships between philosophical principles and legal norms. The analysis results are then used to construct a conceptual framework that demonstrates the centrality of Pancasila as the foundation of Indonesia's legal and moral order.

Results and Discussion

Institutionalization of the Tax Court Following Constitutional Court Decision No. 26/Puu-Xxi/2023

The Constitutional Court was established as an effort to uphold the principles of the rule of law. As one of the highest state institutions, the Constitutional Court possesses the authority to adjudicate at the first and final level, where its decisions are definitive in reviewing the constitutionality of a law against the 1945 Constitution. Given this authority, it is not surprising that the Constitutional Court is often referred to as the guardian of the constitution, which has a judicial review function. Judicial review is a mechanism designed to protect the rights of minority groups that have been violated in the formation process and the substance of a law. It is also noteworthy that a law may be reconsidered and revised if deemed necessary, including during its implementation. Consequently, if a law is regarded by citizens as being inconsistent with the 1945 Constitution, the Constitutional Court possesses the authority to adjudicate it. The Constitutional Court's role as the interpreter of the constitution signifies its authority to provide interpretations of legal provisions, ensuring their alignment with constitutional values as part of the system of checks and balances (Farel Rifandanu, 2024).

The issuance of Constitutional Court Decision No. 26/PUU-XXI/2023 signifies a pivotal restoration of the judicial body's dignity, particularly that of the Tax Court. This decision ensures the exercise of judicial authority in an autonomous manner, with the overarching objective being the upholding of the law and justice. Consequently, the transfer of the organizational, administrative, and financial oversight of the Tax Court from the Ministry of Finance to the Supreme Court under a unified authority warrants the support and oversight of the public. The integration of the Tax Court within the Supreme Court framework would facilitate enhanced oversight and supervision, thereby ensuring a more efficient and effective regulatory environment. This principle encompasses the autonomy and assurance of judicial independence afforded to the Tax Court in its adjudication of tax disputes. Consequently, the functions of the judicial body can operate in accordance with their designated purpose, thereby ensuring justice, legal certainty, and public benefit. The Constitutional Court has ruled that the phrase "Ministry of Finance," as contained in Article 5, Paragraph (2) of the Tax Court Law, is inconsistent with the 1945 Constitution. The Court has determined that this phrase lacks legal binding force unless it is interpreted as "the

Supreme Court, which shall be implemented gradually by no later than December 31, 2026." Consequently, Article 5, Paragraph (2) of the Tax Court Law now states: The organization, administration, and finance of the Tax Court are subject to the supervision of the Supreme Court. This supervision is to be implemented in stages and is scheduled to be completed by December 31, 2026.

The Constitutional Court has determined that an independent judiciary is an essential component of a state founded on the rule of law. In a state governed by the rule of law, the principle of independence of the judiciary is paramount. This independence is crucial to ensure that the judicial system is free from external influences and able to function effectively. In instances where the judiciary exhibits a lack of independence and is reliant upon external entities, it has the potential to erode the public's perception of justice and elevate the likelihood of human rights abuses or violations by state actors. This principle should also apply to the Tax Court, which is part of the judicial system and is under the Supreme Court in accordance with Article 24, Paragraph (2) of the 1945 Constitution. However, the division of authority between the Ministry of Finance and the Supreme Court in the supervision of the Tax Court engenders confusion in the supervision of judicial institutions. To rectify this issue, it is imperative to integrate the supervision of judicial institutions under a single entity that exercises judicial power separately from the executive branch or other powers. This integration will prevent judicial institutions from performing their duties and exercising their authority independently and optimally. The absence of judicial autonomy in the Tax Court stands in direct contravention to Article 24(1) of the 1945 Constitution, which stipulates that "judicial power is an independent power to administer justice in order to uphold the law and justice." Consequently, the establishment of an integrated judicial system is imperative to establish a judicial institution that is autonomous from external influences, thereby ensuring that justice and legal certainty are genuinely accessible to those seeking recourse. This, in turn, would align justice and legal certainty with public expectations and trust. The implications of Constitutional Court Decision No. 26/PUU-XI/2023 extend to the integration of the supervision of Tax Courts into the Supreme Court, as well as the potential loss of the Ministry of Finance's authority to supervise the organization, administration, and finances of Tax Courts. The integration of the supervision of the Tax Court under the Supreme Court will undoubtedly restore the dignity of an independent judicial body. The independence alluded to herein signifies the autonomy of the judicial entity from external interference by other state authorities in the execution of its duties and powers within each judicial body, including the Tax Court. Consequently, in the exercise of judicial power, it is incumbent upon every judicial body to uphold independence. The principle of judicial independence constitutes the foundational principle of judicial power, which can be examined from three distinct perspectives: structural, functional, and administrative. From a structural standpoint, it is imperative that a separation of powers from other state institutions be established. As articulated by Montesquieu, the establishment of a separation of powers is imperative to ensure that those in positions of authority do not exercise their responsibilities in an arbitrary manner. Accordingly, Montesquieu conceptualized power as comprising three distinct branches: executive, legislative, and judicial. Consequently, it is imperative that judicial bodies entrusted with the administration of justice be permitted to function without undue interference from other institutions, particularly in the examination, adjudication, and determination of legal cases. Secondly, from a functional perspective, it is imperative to ensure the autonomy of the judicial function, ensuring it is immune to interference from any external party. Thirdly, from an administrative perspective, the exercise of judicial power by judicial bodies must be free from interference by other parties in determining administration,

whether in the form of personnel or budget. Moreover, there are several implications for the integration of the Tax Court into the Supreme Court.

According to the provisions stipulated in the Tax Court Law, the recruitment pattern for the appointment and dismissal of Tax Court judges involves the executive branch in the process. This involvement is evident in Article 8(1) of the Tax Court Law, which states that the appointment of prospective judges is proposed by the Minister of Finance to the President with the approval of the Chief Justice of the Supreme Court. Conversely, the removal of a judge is executed by the President, contingent upon a recommendation by the Minister of Finance and the approval of the Chief Justice of the Supreme Court. Furthermore, the majority of judges at the Tax Court are former Directors General of the Directorate General of Taxes. This scenario has the potential to compromise the autonomy of the judicial apparatus in its examination and adjudication of tax disputes. While Article 5(3) of the Tax Court Law does not impose restrictions on the judges' freedom to examine and decide tax disputes, Article 5(2) of the Tax Court Law is inconsistent with the principles of an independent, impartial, and free from interference by other institutions due to executive intervention in the organization, administration, and finances of the Tax Court as one of the institutions exercising judicial power in resolving tax disputes.

The selection of judges for the Tax Court is to be conducted through a selection process that is transparent, accountable, and participatory. This process is to be carried out by the Supreme Court and the Judicial Commission. This indicates that all individuals have the capacity to access and procure information regarding the conduct of the judge selection process. The selection process is obligated to adhere to the principles of accountability as delineated by the prevailing laws and regulations, with the active involvement of the public in the selection process. Consequently, the appointment of Tax Court judges will no longer be contingent exclusively on the recommendation of the Minister of Finance. The same principle applies to the mechanism for dismissing judges. Judges can be dismissed by the President upon the recommendation of the Chief Justice of the Supreme Court and/or the Judicial Commission through the Supreme Court. The unification of the appointment and dismissal of judges at the Tax Court under the Supreme Court has been demonstrated to facilitate the avoidance of government interference in the independence of the Tax Court. Such interference has the potential to lead to corruption, collusion, and nepotism. This unification has been shown to ensure that judges are able to make decisions independently. While the consolidation of judicial power under the Supreme Court does not ensure the absence of corruption, collusion, and nepotism, it is imperative to uphold the integrity of the judicial system as an institution that safeguards the rule of law and justice, unencumbered by external influences, thereby minimizing undesirable incidents. The unification of the training system has the potential to streamline the supervision of Tax Court judges by the Supreme Court internally and by the Judicial Commission externally. This harmonization of oversight aims to uphold the honor, dignity, and conduct of judges. To date, the responsibility for oversight has been divided between the Ministry of Finance, the Supreme Court, and the Judicial Commission. This distribution of authority may lead to resistance to oversight by the agency responsible for conducting oversight based on its authority. Another salient issue is the appointment of ad hoc judges in tax courts.

An ad hoc tax court judge is a specialist who serves as a temporary judge with the expertise and experience to examine, adjudicate, and decide on a specific tax dispute. At the Tax Court, ad hoc judges are appointed by the Chief Justice of the Tax Court. The appointment procedures are outlined in Minister of Finance Regulation No. 449/KMK/01/2003 on the Procedures for Appointing Ad Hoc Judges at the Tax Court. The recent Constitutional Court Decision No. 26/PUU-XXI/2023 has brought about a significant

shift in the appointment of ad hoc judges. Previously, the appointment of these judges was subject to the regulation of a Minister of Finance Decision. However, the recent decision has transferred this responsibility to the Supreme Court, thereby vesting the judicial authority in the Supreme Court. Moreover, the appointment of ad hoc judges at the Tax Court should adhere to the same criteria as those for the Administrative Court, specifically the prerequisite of a designated time period for service as an ad hoc judge. Consequently, ad hoc judges are not merely appointed for specific tax disputes that have already been adjudicated and determined in court, after which they are dismissed. This step is necessary to ensure uniformity and consistency in the regulation of ad hoc judges, with the aim of building a robust system and avoiding different treatments that could potentially violate the constitution. The subsequent aspect pertains to the appointment and dismissal of court clerks, deputy court clerks, and substitute court clerks. The Tax Court Law stipulates that the appointment and dismissal of the Registrar, Deputy Registrar, and Deputy Registrar are to be conducted by the Minister of Finance. The Registrar of the Tax Court may concurrently serve as Secretary, Deputy Secretary, or Deputy Secretary, who are civil servants within the Ministry of Finance. In the wake of Constitutional Court Decision No. 26/PUU-XI/2023, the Tax Court is now obligated to confer upon the Supreme Court the authority to appoint and remove the Registrar, Deputy Registrar, and Deputy Registrar. Furthermore, the Registrar, Deputy Registrar, and Deputy Registrar are prohibited from concurrently holding other judicial positions, such as court secretary, deputy court secretary, deputy registrar, junior registrar, deputy registrar, bailiff, deputy bailiff, and other structural officials. This is done to align with the rules of the Administrative Court and to prevent conflicts of interest. The subsequent component pertains to the allowances and other provisions for the chairperson, deputy chairperson, judges, secretary, deputy secretary, and deputy secretary.

In accordance with Constitutional Court Decision No. 26/PUU-XXI/2023, the regulations pertaining to allowances and other provisions for the Chairperson, Deputy Chairperson, Judges, Secretary, Deputy Secretary, and Secretary should no longer be subject to ministerial decision-making. Instead, these provisions should be governed by a Supreme Court Decision. This is to ensure consistency in remuneration, particularly allowances, with other judicial institutions in Indonesia. The subsequent component pertains to the administrative procedures of the secretariat. The secretariat of a court plays a crucial role in providing support in administrative, organizational, financial, human resources, and infrastructure matters within the relevant court environment. The secretariat of the Tax Court performs analogous duties, functions, and responsibilities, with the sole distinction lying in the technical intricacies of its work procedures, which are overseen by the Ministry of Finance. Consequently, a revision of the secretariat's operational procedures is imperative. This is due to the fact that the Tax Court Secretariat is under the jurisdiction of the Ministry of Finance, which may result in the appearance of bias and a lack of independence in the exercise of its authority. Subsequently, the matter of legal representation requirements must be addressed. A legal representative is defined as an individual who accompanies or represents the parties involved in a trial at the court. In the context of the Tax Court, the parties involved in a dispute may be accompanied or represented by one or more legal representatives who have been granted a Special Power of Attorney, thereby providing substantiating evidence. In the context of proceedings at the Tax Court, legal representatives are obligated to adhere to a set of stipulated requirements, one of which is the requirement stipulated by the Minister of Finance. These requirements are stipulated in Article 5 of Minister of Finance Regulation Number 184/PMK.01/2017 concerning Requirements to Become a Legal Representative at the Tax Court. One such requirement is that individuals who have previously served as Tax Court Judges must have passed a period of two years

after being honorably dismissed from that position. This phenomenon engenders the perception that, in the course of their professional obligations to advocate for their clients' interests, these attorneys continue to be profoundly influenced by and in alignment with the executive branch. Consequently, the authority to regulate attorneys seeking to represent clients in tax dispute cases at the Tax Court lies with the Minister of Finance. However, the requirements for becoming a legal representative essentially fall within the technical realm of the judiciary, which is overseen by the Supreme Court. Consequently, with the issuance of Constitutional Court Decision No. 26/PUU-XI/2023, it is anticipated that these specific requirements will undergo review, and it is hoped that no party will interfere in the regulation of attorneys practicing before the Tax Court. The final aspect to be addressed is the legal remedy aspect. In the context of the Tax Court, conventional legal remedies are not available to challenge the decisions that have been rendered. In essence, the decisions rendered by the Tax Court are regarded as definitive and enforceable. This observation suggests that the Tax Court is a court devoid of hierarchical levels. This predicament is predicated on the recognition that Tax Court decisions are not subject to correction by a higher court, even in instances where the decisions are found to be erroneous. Concurrently, the legal remedy of Review is regarded as an extraordinary legal remedy with explicit limitations. Consequently, in accordance with Constitutional Court Decision No. 26/PUU-XXI/2023, it is anticipated that conventional legal remedies such as appeals and cassation will be accessible. The objective of this initiative is to furnish affected parties with the opportunity to seek redress for perceived deficiencies in Tax Court decisions that they deem to be unsatisfactory and inconsistent with the principles of justice.

Dualism in the Regulation of the Position of Tax Courts Following the Issuance of Constitutional Court Decision No. 26/PUU-XXI/2023

The most pressing legal concern that the author identifies following the issuance of Constitutional Court Decision No. 26/PUU-XXI/2023 is the recognition that the existence of Constitutional Court Decision No. 26/PUU-XXI/2023 does not inherently modify the provisions of the Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts, particularly Article 5 (2) of the Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts. This results in dualism in the organizational, administrative, and financial oversight of Tax Courts, as the Constitutional Court Decision No. 26/PUU-XXI/2023 grants the authority for the organizational, administrative, and financial oversight of Tax Courts to the Supreme Court, while Article 5 (2) of the Law of the Republic of Indonesia No. According to Article 14 of Law No. 14 of 2002 on Tax Courts (XXI/2023), the authority for the organization, administration, and finance of the Tax Court is vested in the Supreme Court. However, Article 5 (2) of the same law grants such authority to the Ministry of Finance. The provisions of Article 5(2) of Law No. 14 of 2002 on Tax Courts result in the loss of the Tax Court's status as an independent judicial institution.

The decision of the Constitutional Court does not inherently modify existing legal provisions; consequently, the Constitutional Court's decision should be accompanied by amendments to the pertinent regulations, in accordance with the fundamental principles articulated in the Constitutional Court's decision. The decisions of the Constitutional Court (henceforth referred to as "Constitutional Court Decisions") have engendered diverse interpretations and varying attitudes toward the "application" of such decisions. A significant number of Constitutional Court decisions have not been accompanied by the implementation of regulatory measures, and in their execution, these decisions appear to be "non-binding." An examination of the normativity of the Constitutional Court's decisions, as illuminated by the Explanation of Article 10 of Law No. 24 of 2003 on the Constitutional Court, as amended

by Article I, Point 8 of Law No. 8 of 2011 in conjunction with Law No. 7 of 2020, reveals the court's decisions to be of a definitive nature. This definitive nature is further reinforced by the decisions' inclusion of the force of law, thereby rendering them final and binding. The term "final" signifies that the Constitutional Court's decision has become irrevocable and binding, thereby precluding the availability of additional legal remedies. However, the term "binding legal force" remains undefined in the aforementioned legislation, thus giving rise to a multitude of interpretive perspectives. Maruarar Siahaan elucidated that the binding nature of the decision is not limited to the parties involved in the case before the Constitutional Court; rather, it extends to all parties (*erga omnes*).

The interpretation of the nature of the "binding legal force" of the Constitutional Court's decision is not intended for all parties (*erga omnes*), but rather for the institutions authorized to follow up on the Constitutional Court's decision, namely the House of Representatives or the President, in accordance with the provisions of Article 10 paragraph (1) letter d and paragraph (2) of Law No. The formation of regulatory laws was established in 2011, as outlined in Law No. 12 of 2011 on the Formation of Regulatory Laws. This legislation was subsequently amended by Law No. 13 of 2022, which introduced amendments to Law No. 12 of 2011. Henceforth, the two laws shall be collectively referred to as the "Law on the Formation of Regulatory Laws." Moreover, the MK is positioned as a judicial institution (exercising judicial power) and not as a legislative institution (an institution authorized to make laws). Consequently, MK decisions cannot be applied as positive law; rather, they serve as a source of law in the formulation of laws (Maruarar Siahaan, 2008).

Article 10 paragraph (1) letter d and paragraph (2) of the Law on the Formation of Legislation stipulate:

- 1) The content that must be regulated by law includes:
 - a. Additional provisions concerning the stipulations of the 1945 Constitution of the Republic of Indonesia.
 - b. The act of establishing a legal precedent that is subject to subsequent regulation by the same law.
 - c. Ratification of certain international agreements;
 - d. Subsequent to the decisions rendered by the Constitutional Court; and/or
 - e. The fulfillment of legal needs in society is of paramount importance.
- 2) The subsequent action following the decision of the Constitutional Court, as referenced in paragraph (1) letter d, shall be executed by the House of Representatives or the President.

Mahfud MD emphasized that (Moh. Mahfud MD, 2010): "In the course of exercising its authority, the Constitutional Court must not exceed its established limits and encroach upon the domain of other branches of government, thereby becoming politicized. The following ten points have been identified as crucial: The Constitutional Court, in issuing its decisions, must refrain from including regulations, including the manner, content, and institutions governing the content of a law, as such matters fall within the domain of the legislative branch. Consequently, the Constitutional Court's authority is limited to determining the alignment of legislative content with the constitutional framework. It is imperative that the Constitutional Court refrain from issuing decisions of an *ultra petita* nature, as this would impede the legislative authority..."

In consideration of the dichotomy between Constitutional Court Decision No. 26/PUU-XXI/2023 and Article 5 (2) of Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts pertaining to the status of tax courts, it is evident that the validity of Article 5 (2) of Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts is contingent upon the

absence of any amendment that would contravene the stipulations outlined in Constitutional Court Decision No. According to Article 26/PUU-XXI/2023, the applicable provisions shall remain those of Article 5 (2) of Law of the Republic of Indonesia Number 14 of 2002 on Tax Courts. This article places tax courts not as fully independent and autonomous judicial institutions due to the overlapping authority of the Ministry of Finance regarding the management of tax courts. These courts are not actually part of the executive branch in the fiscal sector.

Reconstruction of the Legal Framework for the Position of Tax Courts Following the Issuance of Constitutional Court Decision No. 26/PUU-XXI/2023.

In order to establish legal certainty regarding the status of tax courts as independent and autonomous judicial institutions, it is necessary to undertake a legal reform of Law No. 14 of 2002 on Tax Courts, based on the Decision of the Constitutional Court No. 26/PUU-XXI/2023.

First, the position of the tax court as a special court under the authority of the Supreme Court is not clearly regulated. This is evident in Article 25(1) of Law No. 48 of 2009 on Judicial Power, which states that "judicial bodies under the Supreme Court include general courts, religious courts, military courts, and administrative courts." According to the stipulated provision, the tax court is not designated as a distinct judicial entity within the framework of the Supreme Court.

Secondly, Article 5(2) of Law No. 14 of 2002 on the Tax Court stipulates that the organization, administration, and finance of the Tax Court are to be managed by the Ministry of Finance. The presence of Constitutional Court Decision No. 26/PUU-XXI/2023 does not inherently modify the provisions of Law No. 14 of 2002 concerning Tax Courts, particularly Article 5(2) of the aforementioned Law. This results in dualism with respect to the supervision of the organization, administration, and finances of the Tax Court. According to Constitutional Court Decision No. According to Article 26/PUU-XXI/2023, the authority for the supervision of the organization, administration, and finances of the Tax Court is vested in the Supreme Court. However, Article 5(2) of the Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts grants the authority for organizational, administrative, and financial supervision of Tax Courts to the Ministry of Finance. The provisions of Article 5(2) of Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts result in the loss of the Tax Court's status as an independent judicial institution.

In light of the aforementioned issues, the legal reconstruction is hereby outlined as follows:

First, the reconstruction of the position of the tax court as a special judicial institution under the Supreme Court. This legal reconstruction was carried out by amending Article 25 Paragraph (1) of Law-Law No. 48 of 2009 on Judicial Authority by adding tax courts as one of the special judicial institutions so that this legal provision becomes "judicial bodies under the Supreme Court include general courts, religious courts, military courts, tax courts, and administrative courts".

Second, the legal reconstruction is followed by removing the provisions regarding the authority of the Ministry of Finance in matters of organizational development, administration, and finance for the Tax Court, considering that the tax court is not an executive financial institution under the Ministry of Finance, but rather a judicial institution under the Supreme Court that is independent and autonomous and has full authority as the executor of the state's judicial power. The legal reconstruction carried out is by removing the provisions in paragraph (2) of Article 14 of Law Number 14 of 2002 on Tax Courts and adding provisions regarding the position of the Ministry of Finance as an institution that partners

with the Supreme Court in conducting education and training for judges in the field of taxation to fill the tax court chambers that require judges with expertise in taxation. This provision is set forth in Article 5(3) of Law No. 14 of 2002 on Tax Courts. Thus, Article 5 of Law No. 14 of 2002 on Tax Courts now reads as follows:

- 1) The Supreme Court is responsible for providing technical guidance to tax courts.
- 2) The aforementioned guidance, delineated in paragraphs (1) and (2), is not intended to curtail the discretion of judges in their examination and adjudication of tax disputes.
- 3) **The Supreme Court collaborates with the Ministry of Finance to conduct education and training programs on tax administration and tax law. The objective of these programs is to develop judges who are experts in tax matters within the tax court system.**

Conclusion

In light of the aforementioned issues, the following conclusions can be drawn: First, in the period preceding Constitutional Court Decision No. 26/PUU-XXI/2023, the Tax Court was under the jurisdiction of the Supreme Court and constituted a component of the Administrative Court. Prior to the aforementioned Constitutional Court Decision, the Tax Court was also subject to the oversight of the Ministry of Finance in terms of organizational development, administration, and finance, as stipulated in Article 5(2) of Law No. 14 of 2002 on the Tax Court.

Secondly, tax court proceedings in the United States are conducted in two ways. Legal proceedings for tax disputes that cannot be resolved at the executive level may be brought before the "Court of Original Jurisdiction" or "Trial Courts." Subsequently, the matter was referred to the judicial system in the context of a tax dispute. In the Japanese legal system, tax adjudication is conducted by the National Tax Tribunal (NTT), and appeals can be lodged with one of the forty-seven District Courts within the taxpayer's respective jurisdiction. In the context of Malaysia, however, there is no specialized tax court comparable to the one currently in operation in Indonesia.

Thirdly, the establishment of the tax court's status following the issuance of Constitutional Court Decision No. 26/PUU-XXI/2023 has given rise to the issue that the Decision does not automatically amend the provisions of Law No. 14 of 2002 on Tax Courts, particularly Article 5 (2) of the Law of the Republic of Indonesia No. 14 of 2002 on Tax Courts. This has resulted in dualism in the supervision of the organization, administration, and finances of Tax Courts. According to Constitutional Court Decision No. 26/PUU-XXI/2023, the authority for the supervision of the organization, administration, and financial supervision of the Tax Court is vested in the Supreme Court. However, Article 5(2) of Law No. 14 of 2002 on the Tax Court grants such authority to the Ministry of Finance. The provisions of Article 5(2) of Law No. 14 of 2002 on the Tax Court result in the loss of the Tax Court's status as an independent judicial institution.

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