

# **THE DUALISM OF COURTS' ABSOLUTE JURISDICTION OVER LAWSUITS CONCERNING THE IMPLEMENTATION OF TAXPAYER DETENTION: BETWEEN THE DISTRICT COURT AND THE TAX COURT**

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## **Abstract**

*Detention (gijzeling) of a tax obligor is a coercive administrative measure regulated under Law No. 19 of 2000, which amends Law No. 19 of 1997 on Tax Collection by Distress Warrant (PPSP Law). The regulation of absolute jurisdiction over lawsuits concerning the implementation of detention has resulted in dualism between the District Court and the Tax Court. This study analyses the regulation of exclusive jurisdiction over lawsuits related to the implementation of tax obligor detention, based on legislative provisions and judicial practice. The method consists of normative legal analysis using legislative and analytical approaches, along with case studies of court decisions. The findings indicate a normative discrepancy between Article 34(3) of the PPSP Law, which refers to the District Court, and Article 31(2) and Article 33 of the Tax Court Law, along with Article 50 of the General Court Law, which tend to place disputes over the implementation of tax collection, including detention, within the jurisdiction of the Tax Court. Additionally, inconsistencies in judicial interpretation are evident in practice. By applying the ratio legis approach and the principles of lex posterior derogat legi priori, lex specialis derogat legi generali, and lex specialis systematis, the Tax Court is more appropriately designated as the competent forum. Therefore, harmonisation of regulations is necessary to ensure legal certainty and protect taxpayers' rights.*

**Keywords:** Detention; Absolute Competence; District Court; Tax Court; Jurisdictional Dualism.

## **INTRODUCTION**

Article 1(3) of the 1945 Constitution of the Republic of Indonesia (UD NRI 1945) explicitly states that “Indonesia is a state governed by the rule of law”. The principle of the rule of law affirms that every exercise of state authority must be based on legal certainty, whilst guaranteeing protection and justice for citizens in the conduct of state affairs (Moh. Kusnardi & Bintan R Saragih: 1988). Furthermore, the Preamble to the 1945 Constitution of the Republic of Indonesia implicitly positions Indonesia as a welfare state, as reflected in the fourth paragraph, which sets out the state’s objective to “promote the general

welfare”. As a welfare state, the state does not simply function to maintain the rule of law, but also has an active responsibility to ensure that the welfare of society is realised (Darmini Roza & Gokma Toni Parlindungan S: 2019). These two functions are interrelated; Sudikno Mertokusumo argues that to protect human interests, the law must ensure legal certainty (Rina Melati Sitompul & Andi Maysarah, 2021).

Taxation is one of the state’s instruments for achieving the objectives of the welfare state by funding government administration and meeting the basic needs of the public, such as infrastructure development, education,



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and other public services. To ensure legal certainty, tax regulations are enshrined in Article 23A of the 1945 Constitution of the Republic of Indonesia. The central role of taxation is reflected in the significant contribution of tax revenue to the state's financial structure. In the 2026 State Budget, taxes constitute the largest source of state revenue, accounting for 85.4% of the total state revenue target (Ministry of Finance: 2026). Consequently, it is vital for the state to preserve sustainable tax revenue collection. A series of mechanisms has been established to enhance taxpayer compliance in tax payments, including tax collection mechanisms. Tax collection aims to enforce tax law *by collecting* overdue tax assessments from taxpayers, a function delegated to Tax Bailiffs (Angreni Fajrin, Budiman Ginting, Sunarmi, & Utary Maharany Barus, 2022). Tax collection is regulated under Law No. 19 of 2000, amending Law No. 19 of 1997 on Tax Collection with Distress Warrant Law (PPSP Law). The series of collection measures carried out by Tax Bailiffs includes immediate and simultaneous collection, the service of enforcement orders, seizure, and detention. Of all these measures, detention or *gijzeling* is the most severe form of active collection and is regarded as a last resort.

Article 1(21) of the PPSP Law defines detention as *“the temporary restriction of a taxpayer’s freedom by placing them in a specific location”*. Functionally, this measure is understood as *an ultimum remedium*, a last resort after all administrative collection measures have been employed but have failed to yield payment of the tax liability

determined (Alfina Najwa Kamila & Joko Priyono: 2025). In practice, detention isn't only intended to enforce tax law but also to deter taxpayers who do not comply with tax regulations. Detention directly restricts a person's freedom and is consequently more likely to trigger problems. Moreover, in the practical operation of tax liens against taxpayers, there is a possibility of official errors or abuse of authority by tax officials.

The issue of detention becomes more complex when linked to the forum for resolving claims arising from its implementation. Conceptually, the absolute jurisdiction of the District Court over claims regarding the enforcement of tax liens raises problems, particularly when linked to the nature of tax law, which has traditionally been situated within the domain of tax administrative law, and to the tax dispute resolution system, which has been specifically regulated through independent bodies such as the Tax Court. The term 'tax administration' is narrowly defined as the procedures or processes involved in the imposition and collection of taxes (Heru Susilo: 2016). Meanwhile, in a wider sense, tax administration functions as a process, a system, and an institution. Some experts claim that this field of law is viewed from the perspective of dispute resolution, in which tax administration disputes are resolved by an independent court under the Supreme Court, namely the Tax Court (Hasanal Mulkan: 2023). This situation inevitably leads to inconsistencies in determining the absolute jurisdiction of judicial institutions, given that the resolution of tax disputes is specifically regulated by the Tax Court, unlike civil and criminal

cases, which fall within the absolute jurisdiction of the District Court.

In addition to conceptual problems, absolute jurisdiction over actions to enforce tax lien attachment also raises normative issues, namely a conflict of norms (*legal antinomy*). Article 34(3) of the PPSP Law states that “*A taxpayer subject to a tax lien may bring an action against the enforcement of the tax lien only before the District Court*”. This provision regarding the District Court’s exclusive jurisdiction over actions concerning the enforcement of tax liens is inconsistent with Article 31(2) of Law No. 14 of 2002 on the Tax Court, which states that “*The Tax Court, in the event of a lawsuit, shall examine and adjudicate disputes regarding the enforcement of tax collection or correction decisions or other decisions as referred to in Article 23( 2) of Law No. 6 of 1983 on General Provisions and Tax Procedures, as amended several times, most recently by Law No. 16 of 2000, and applicable tax legislation.*” The wording of the provision in the Tax Court Law allows for the absolute jurisdiction of the tax court over actions concerning the enforcement of the seizure of a taxpayer’s assets, as seizure constitutes one of the methods of tax collection under Article 1(21) of the Tax Collection and Enforcement Law.

Not only that, but when considered in conjunction with the provisions of Article 50 of Law No. 2 of 1986 on the General Courts, as last amended by Law No. 49 of 2009, which states: “*The District Court has the duty and authority to hear, adjudicate and settle criminal and civil cases at first instance*”. This further spotlights the inconsistent overlap of jurisdiction. District Courts are, in

principle, authorised to hear and adjudicate criminal and civil cases, whereas tax disputes do not fall within the scope of criminal or civil cases, and a specialised forum has been provided through the Tax Court. Consequently, the existence of Article 34(3) of the PPSP Law actually creates an exception that is not entirely consistent with the structure of the tax judicial system. In practice, such a situation can give rise to conflicting interpretations of the courts' absolute jurisdiction. In procedural law, absolute jurisdiction is imperative, implying it cannot be violated or agreed to be transferred by the parties (Muhammad Rizky Pratama et al.: 2025); consequently, an error in determining the forum for dispute resolution may result in the claim being declared inadmissible (*niet ontvankelijke verklaard / NO*).

Empirically, data indicate that the issue of absolute jurisdiction regarding claims concerning the enforcement of tax lien against a taxpayer first arose in 2015 in the Judgment of the District Court of Tanjung Pinang dated 30 April 2015 in Case No. 01/Pd.Pra/2015/PN.Tpg, relating to a pre-trial application by the Tax Guarantor against the seizure of assets from the Tax Guarantor, identified by the initials PH, by the Riau and Riau Islands Regional Office of the Directorate General of Taxes (DJP) cq. the Bintan Primary Tax Office. The panel of judges ruled that the application was inadmissible. In his complaint, the Taxpayer PH challenged the tax authorities' seizure action on the grounds that it was unlawful or inconsistent with applicable legal procedures. In response to the complaint, the judge stated that the Taxpayer's case did not fall within the

exclusive jurisdiction of the District Court. This reasoning was based on Article 31 of Law No. 14 of 2002 on the Tax Court, which stipulates that “*The Tax Court has the duty and authority to examine and adjudicate Tax Disputes.*”

From the entirety of these issues, it can be seen that the matter of absolute jurisdiction over a lawsuit concerning the enforcement of a tax guarantor’s seizure cannot be viewed merely as a theoretical debate. This issue constitutes a clear legal inconsistency, as there is a lack of harmony between Law No. 19 of 1997 on Tax Collection with Distress Warrant Law, Law No. 2 of 1986 on General Courts, and Law No. 14 of 2002 on Tax Courts. This confusion has direct impacts on legal certainty and may result in violations of the taxpayer’s constitutional rights, particularly the rights to legal protection and to access justice through the appropriate forum. This is contrary to the ideal condition whereby the law is established to create certainty and guarantee protection for citizens. Therefore, a study on the absolute jurisdiction of judicial institutions regarding lawsuits concerning the enforcement of tax liens is important to conduct, both to assess the consistency of legislative provisions and to identify the judicial forum that should have the authority to adjudicate disputes resulting from the enforcement of tax liens, thereby realising legal protection that is better able to guarantee justice and legal certainty for taxpayers.

## **RESEARCH METHOD**

The method used in this study is normative legal *research*, namely research conducted through the

examination of literature or secondary data (Soekanto: 2013). This study applies a legislative approach, an analytical approach, and a study of court decisions to examine the research object, namely, the absolute jurisdiction over claims regarding the enforcement of tax guarantor seizures.

## **RESULTS AND DISCUSSION**

### **1. Regulation of Absolute Competence of Tax Detainment Lawsuit Based on Statutory Legislation**

*Gijzeling*, as part of a series of tax collection measures, is designed to provide legal certainty and protection for taxpayers subject to such actions. Legal protection for taxpayers includes the right to file a lawsuit challenging the enforcement of a tax seizure. These lawsuits serve as mechanisms for judicial oversight of tax officials' actions, meant to prevent abuse of authority. The procedure for filing these lawsuits is directed to the judicial body authorised to determine the legality of the seizure. Nevertheless, from a normative perspective, dualism persists in determining the competent court for these seizure cases.

- a. Provisions under Law No. 19 of 1997 on Tax Collection with Distress Warrant Law, as last amended by Law No. 19 of 2000

Provisions on absolute jurisdiction in actions to enforce tax liens against taxpayers were first explicitly set out in Law No. 19 of 1997 on Tax Collection with Distress Warrant Law, which was subsequently amended by Law No. 19 of 2000. The provision of Article 34(3) of Law No. 19 of 1997 on Tax Collection

with Distress Warrant Law, the substance of which has not been altered, states that “*A tax guarantor who has been detained may bring a lawsuit against the enforcement of detention only before the District Court*”. Based on this provision, the District Court is designated as the judicial body authorised to examine and adjudicate a lawsuit concerning the enforcement of the seizure of a taxpayer’s assets (Julius Sujianto: 2021).

Historically, the designation of the District Court as the forum for resolving disputes concerning the enforcement of tax liens cannot be separated from the institutional framework of the tax judiciary at the time the Law on Tax Collection with Distress Warrant Law (PPSP Law) was first enacted. At that time, the Tax Court had not yet been established as a specialised judicial body with the authority to adjudicate tax disputes; consequently, the District Court was positioned as the judicial institution deemed most appropriate to perform the function of judicial oversight. The Tax Court was only established in 2002 as a successor to the Tax Dispute Resolution Board (BPSP), with a specific mandate to resolve tax disputes in a more specialised and professional manner. Apart from institutional factors, detention is also viewed as an act that directly implies the temporary deprivation of a person’s liberty; consequently, it is conceptually considered closer to the field of civil law and the protection of human rights, which traditionally fall within the jurisdiction of the general courts.

This historical approach raises conceptual issues when analysed in light of the characteristics of tax law, which is essentially part of administrative law

(Sahal Hanafi, 2023). The detention of a taxpayer cannot be classified as a criminal sanction because it is not imposed by a criminal court judgment and is not intended as a form of punishment for an act contrary to criminal law. The detention of a taxpayer also does not fulfil the elements of a civil law act because it does not arise from a private legal relationship between equal parties. Conversely, the seizure of a tax guarantor is a coercive administrative act, carried out unilaterally by a state administrative official based on public authority in the context of tax law enforcement. Therefore, seizure must be understood as an integral part of administrative government action (*bestuursdaad*).

b. Regulations under Law No. 2 of 1986 on General Courts

The jurisdiction to hear (absolute jurisdiction) of the District Court may be found in Article 50 of Law No. 2 of 1986 on the General Courts, as last amended by Law No. 49 of 2009, which reads: “*The District Court is tasked with and has the authority to examine, adjudicate, and resolve criminal and civil cases at first instance*”. This makes it clear that the absolute jurisdiction of the District Court covers only two types of cases, namely civil and criminal cases. This provision poses a problem when considered in relation to the allocation of jurisdiction over claims regarding the enforcement of tax liens under Article 34(3) of Law No. 19 of 1997, which at the very least suggests that the legislature classified tax lien cases as falling within the scope of either civil or criminal cases. In fact, cases concerning the seizure of a tax guarantor are neither civil nor criminal cases. The seizure of a tax guarantor does

not meet the characteristics of a civil case, which generally results from a dispute between private legal entities of equal standing, stemming from civil law relationships such as contracts or unlawful acts (Lia Oktavia, 2024). The detention of a tax guarantor is also not a criminal sanction, as it is not based on a criminal court judgment and is not intended as punishment for a criminal offence (Ahmad Mathar: 2023). The seizure of a tax guarantor is, in fact, *a unilateral act* carried out by a tax official as a government body exercising public authority under the law, not as a consequence of a private legal relationship between the state and the taxpayer.

Given that the jurisdiction of the District Court is normatively limited to civil and criminal cases under the General Court Act, assigning jurisdiction over lawsuits concerning the enforcement of the seizure of a taxpayer's assets to the District Court is inconsistent with accepted legal norms and the prevailing judicial system.

c. Provisions under Law No. 14 of 2002 on the Tax Court

Pasal 31 ayat (2) UU 14/ Article 31(2) of Law No. 14 of 2002 states that *“The Tax Court, in the event of a lawsuit, shall examine and adjudicate disputes concerning the enforcement of tax collection or correction decisions or other decisions as referred to in Article 23( 2) of Law No. 6 of 1983 on General Provisions and Tax Procedures, as amended several times, most recently by Law No. 16 of 2000, and applicable tax legislation”*. The wording of this provision indicates that the Tax Court's exclusive jurisdiction in litigation cases is

broadly designed, not limited solely to disputes concerning specific tax administrative decisions, but also encompassing disputes originating from the enforcement of tax collection.

The definition of *“tax collection”* itself can be found in Article 1(21) of Law No. 19 of 1997, which states that *“Tax collection is a series of actions to ensure that the Taxpayer settles tax debts and tax collection costs by issuing a formal notice or warning, carrying out immediate and simultaneous collection, serving a writ of execution, proposing preventive measures, carrying out seizure, carrying out attachment, and selling seized goods”*.

The detention of a taxpayer as a form of active, systematic and functional tax collection falls within the category of *“tax collection enforcement”* as provided for in Article 1(21) of Law No. 19 of 1997 (unchanged). Therefore, although Article 31(2) of Law No. 14 of 2002 does not explicitly mention the term *“seizure”*, the existence of seizure within the definition of tax collection under the Tax Collection and Enforcement Act automatically brings it within the scope of the Tax Court's jurisdiction. Moreover, neither the provisions of Article 31(2) nor the explanatory notes to that article contain any exclusionary clauses limiting the Tax Court's absolute jurisdiction over claims concerning the enforcement of a tax lien against a taxpayer. The absence of such an exception reinforces the argument that, normatively, the Tax Court possesses a strong and valid basis of jurisdiction to examine and adjudicate disputes resulting from seizure actions as part of the enforcement of tax collection.

Furthermore, Article 33 of the Tax Court Law states that “*the Tax Court is the court of first and final instance in examining and adjudicating tax disputes*”. This provision is of significant importance as it reaffirms the exclusivity of the Tax Court’s jurisdiction in tax disputes. If a claim regarding the enforcement of tax liens is classified as part of a dispute concerning tax collection enforcement, then, in legal terms, there is no longer any scope for the District Court to examine and adjudicate such a case. Article 33 of the Tax Court Law reinforces that once a case falls within the category of a tax dispute, its resolution must take place within the Tax Court as a specialised forum, which is final at both the first and last instance, and established to handle tax disputes professionally.

When viewed through the principle of ‘Lex Posterior Derogate Legi Priori’, which states that a later law supersedes an earlier one, Law No. 14 of 2002 on the Tax Court was enacted after Law No. 19 of 1997, as last amended by Law No 19 of 2000 on Tax Collection with Distress Warrant Law. This situation creates a conceptual framework whereby, in matters concerning legal actions against the enforcement of tax seizures, the provisions contained in the Tax Court Law—namely, the jurisdiction of the Tax Court in cases concerning legal actions against tax collection enforcement (including seizures)—should apply.

Furthermore, this is also consistent with the legal principle of Lex Specialis Derogate Legi Generali, which means that a more specific law takes precedence over a general law. In this case, the Tax Court Law constitutes a specific regulation concerning dispute resolution

mechanisms in the field of taxation, whereas the jurisdiction of the District Court under the General Judicial System Act is of a general nature for civil and criminal cases. Since the subject matter of the dispute in question is a measure taken in the context of tax collection, the more appropriate legal regime to be applied is the tax law regime, as the specific regulation. On that basis, the Tax Court, as the specialised forum in the field of taxation, should have greater jurisdiction to adjudicate claims regarding the enforcement of tax lien against the taxpayer compared to the District Court, which is of a more general nature.

From these provisions as a whole, it is evident that the issue of the courts’ exclusive jurisdiction over claims concerning the enforcement of tax guarantor seizures is not simply a technical matter regarding the choice of judicial forum, but a basic issue relating to the protection of the tax guarantor’s constitutional rights regarding where the tax guarantor should file a claim. Where there is uncertainty as to whether a lawsuit should be brought before a District Court or a Tax Court, it is not only the order of judicial administration that is at risk, but also the right of people seeking justice to access a forum that is appropriate, rapid and effective. The lack of clarity about the forum risks the claim being declared inadmissible (Niet Ontvankelijke Verklaard) on grounds of absolute jurisdiction, whilst at the same time the taxpayer is facing a restriction of their freedom through tax seizure. In such circumstances, legal uncertainty transforms into a real barrier to access to justice.

Therefore, the dualism of absolute jurisdiction in tax seizure cases must be viewed as a form of legal disharmony that has a direct impact on legal certainty and the protection of rights. Solving this issue requires more than a partial reading of the legal provisions; it must be achieved using systematic interpretation, harmonisation of legislation, and a confirmation of the limits of absolute jurisdiction so that legal protection for the taxpayer can be truly guaranteed.

## **2. Implementation and Resolution of Absolute Jurisdiction in Tax Seizure Claims**

The implementation of the provisions on absolute jurisdiction in actions concerning the enforcement of tax liens against taxpayers can be analysed through a review of existing case law or court rulings. By examining court rulings, it becomes apparent how the same legal provisions can be interpreted differently depending on the perspective and legal arguments employed.

Court rulings, as a source of law, act not only as a reference for resolving similar cases but also as an indicator of the development of legal thought within the judiciary (Aidil Firmansyah, 2024).

In judicial practice, there are differing interpretations among judges regarding which judicial body possesses absolute jurisdiction to hear and determine claims concerning the enforcement of tax lien (*gijzeling*). The majority of rulings indicate that when a claim is brought before the District Court, the judge holds that the dispute indeed falls within the absolute jurisdiction of the District Court. However, there are rulings that reflect a different view, namely that the resolution

of claims regarding the enforcement of tax guarantor attachment should fall within the jurisdiction of the Tax Court, given that the substance of the matter is closely related to tax administration. The difference in rulings regarding claims concerning the enforcement of tax guarantor attachment can be observed as follows:

a. Pematang Siantar District Court Case No. 29/Pdt.G/2021/PN Pms

The District Court of Pematang Siantar declared that it had absolute jurisdiction to examine and adjudicate the case brought by the claimant regarding the subject matter of the claim relating to the government's legal actions in the enforcement of tax collection. However, after examining the substance of the case, the panel of judges held that the plaintiff had failed to prove any legal violation in the actions taken by the tax authorities, and consequently, the claim was declared unfounded and dismissed in its entirety.

b. Pangkal Pinang District Court Case No. 44/Pdt.G/2016/PN Pgp in conjunction with Cassation Case No. 3135 K/Pdt/2017

At first instance, the judge ruled that the tax collection measures, from the stage of issuing the enforcement letter to the seizure, were unlawful, and consequently, the detention of the taxpayer was also unlawful. The appeal judgment upheld the first-instance judgment. At the cassation stage, the judge considered that:

a) The District Court has jurisdiction to hear claims

- against the enforcement of the detention of the taxpayer;
- b) The Tax Court has jurisdiction to examine and adjudicate tax disputes.
- c. Bandung District Court No. 214/Pdt.G/2016/PN Bdg
- The Bandung District Court stated that it did not have absolute jurisdiction to hear the case *in question* because the claim contained two types of legal claims falling within the jurisdiction of different courts. In this case, the judge stated that matters relating to the enforcement of tax liens fall within the jurisdiction of the District Court, whilst tax disputes in the form of claims against collection actions, such as the enforcement of a Writ of Execution, SPMP/seizure, and auction notices, fall within the jurisdiction of the Tax Court.

Among the three judgments outlined above, several fundamental similarities can be identified, showing a relatively consistent pattern of legal reasoning across the majority of courts. Firstly, in their legal arguments, judges generally base their absolute jurisdiction to hear claims regarding the enforcement of tax liens against taxpayers on Article 34(3) of Law No. 19 of 1997 on Tax Collection with Distress Warrant Law (PPSP Law). This provision essentially affirms that legal claims against seizure measures may only be brought before the District Court. This article is frequently treated as a strict and restrictive norm, leading judges to view it as leaving no room for different interpretations regarding the competent judicial body. Consequently, the existence of this provision is frequently interpreted

as a form of *direct attribution* of absolute jurisdiction to the District Court, leaving no room for wider interpretation.

Secondly, in several cases initiated by the filing of an objection, the defendant, in this instance the Directorate General of Taxes (DJP), frequently bases its objection regarding the court's jurisdiction on Article 31 of Law No. 14 of 2002 on the Tax Court. This provision explicitly regulates the duties and powers of the Tax Court to examine and adjudicate disputes in the field of taxation. The arguments put forward usually emphasise the special character of the Tax Court as an administrative court possessing technical expertise and specialisation in the tax sector. In this regard, the DGT seeks to frame the dispute over the seizure as an integral part of a series of tax collection measures that systematically fall within the regime of tax administrative law, rather than merely a general civil law matter. It is this conflict between the normative basis in the PPSP Act and the construction of jurisdiction as regulated in the Tax Court Act that subsequently became the centre of the debate regarding absolute jurisdiction within the judicial system.

Nevertheless, there are also rulings showing a different interpretative approach, one of which is the Decision of the Tanjung Pinang District Court No. 01/Pd.Pra/2015/PN.Tpg. In that pre-trial case, the District Court actually stated that a claim regarding the enforcement of a tax debtor's seizure did not fall within its absolute jurisdiction. The panel of judges based its reasoning on Article 31 of Law No. 14 of 2002, emphasising that "*the Tax Court has the authority to examine and adjudicate disputes in the field of*

*taxation*". A tax dispute is defined as a disagreement in the field of taxation between a Taxpayer or Tax Guarantor and an authorised tax official, arising from an administrative decision or action which, under the provisions of legislation, may be subject to an appeal or a lawsuit before the Tax Court. Included within this scope are disputes relating to the enforcement of tax collection, one of which is the seizure of a liable party's assets as regulated in the PPSP Act. This difference of views indicates that the issue of absolute jurisdiction in lawsuits concerning the enforcement of the seizure of a liable party's assets still leaves considerable room for interpretation in judicial practice.

The difference in the judges' reasoning between the three initial rulings, which stated that the District Court has absolute jurisdiction to hear the case, and the ruling of the Tanjung Pinang District Court, which stated that the Tax Court has absolute jurisdiction to hear the case, cannot be regarded as judicial incompetence, but rather as a symptom of normative ambiguity. Normative ambiguity occurs when two norms of equal standing both provide guidance on jurisdiction, but do not provide a resolution mechanism where the subject matter of the dispute lies in the overlap between tax collection measures and the restriction of personal liberty through detention. In this context, the judge is essentially dealing with a design of norms that is not yet harmonised, where on the one hand the norm positions a claim regarding detention as part of a tax dispute, but on the other hand places a claim regarding detention within the general court system. Consequently,

differing rulings are more accurately understood as a direct consequence of a legal framework permitting interpretative leeway, rather than merely a result of the quality of the judge's reasoning.

To determine which court should have exclusive jurisdiction to hear claims regarding the enforcement of tax liens, one approach that can be used is to trace *the ratio legis* of the concept of "lien" itself. The *ratio legis* approach seeks to understand the legislature's purpose behind a legal norm, so that the determination of the judicial forum is not based solely on the textual wording of the provision, but also on the values, functions, and legal interests intended to be protected. Through this perspective, the focus of the analysis is not only on "who has the authority", but also on "why that authority is vested" in a particular judicial institution.

Historically, the concept of detention (*gijzeling*) was recognised in *the Herziene Inlandsch Reglement* (HIR), specifically Articles 209 and 210, which essentially provide that if a debtor has no property or their assets are insufficient to secure the enforcement of a judgment, the President of the District Court may order the seizure and detention of the debtor (Resmaya Agnesia Mutiara Sirait, 2020). A key point of this provision is that detention is carried out in the context of civil enforcement, namely as a means of compulsion to ensure the debtor fulfils the obligations determined by the court. Therefore, from the outset, detention was not intended as a punishment, but rather as a legal instrument of pressure to ensure the effectiveness of the judgment. As it involves the restriction of a person's liberty, detention is carried out by order of

the President of the District Court; consequently, from the outset, detention in a civil context has contained elements of strong judicial 'control' and oversight.

Subsequently, SEMA No. 2 of 1964 was issued, abolishing the concept of *gijzeling* as it was deemed contrary to humanitarian values and had the potential to lead to abuse of authority. However, the concept was subsequently revived through Perma No. 1 of 2000 with a more restrictive approach, namely treating physical restraint as a last resort (*ultimum remedium*) and requiring a court order. This change indicates a paradigm shift from a coercive approach towards one that places greater emphasis on the protection of human rights, without entirely eliminating the need for coercive measures in certain situations. This historical pattern presents a consistent thread: detention is not a criminal sanction, but rather the final instrument of coercion to ensure an obligation is fulfilled. However, as its object is a person's liberty, such action is, in principle, always subject to strict judicial review and judicial legitimacy.

When this concept was adopted into the domain of taxation, detention was defined as the final resort of active collection measures in the form of the temporary restriction of a taxpayer's freedom (Julius Sujianto, 2021), subject to conditions including a tax debt of at least Rp100,000,000 and doubts regarding the taxpayer's good faith. However, unlike the HIR or Perma frameworks, which place the court as the party issuing the order, tax seizure is carried out by a Tax Bailiff based on a Tax Seizure Order from an official, after obtaining written permission from the Minister or

Governor, without requiring a prior court order or judgment. This difference in structure constitutes a shift in the point of control from the judicial to the administrative sphere at the initial stage of implementing the measure. It is therefore more appropriate for proceedings concerning the enforcement of tax liens against the taxpayer to fall under the jurisdiction of the Tax Court.

An alternative approach to examining *the ratio legis* is to apply the principle of derogation. The term 'derogation' derives from the word '*derogat/derogate*', meaning 'to retreat' or 'to diminish', and may also be interpreted as 'to lower in value or rank' or 'to cause loss' (Ranuhandoko, 2008). Conflicts of norms between legal regulations are, in essence, a common phenomenon in a flexible legal system, particularly when several laws regulate the same subject matter from different perspectives. In such circumstances, legal reasoning is required to determine which norm should take precedence in application.

In this study, there is a *legal antinomy* between regulations of equal rank, namely Law No. 19 of 1997 (PPSP), Law No. 2 of 1986 (General Courts), and Law No. 14 of 2002 (Tax Courts); one of the principles that can be applied is *Lex Posterior Derogat Legi Priori*. This principle applies where there are two regulations of equal rank, but the newer regulation conflicts with the older one; in such cases, the older regulation is set aside (Moh Sumriyadi, Ahmad Althof 'Athoillah). The reasoning is that newer regulations are generally considered to better reflect legal needs and social developments at the time of their

enactment, and thus, in theory, possess greater contemporary relevance.

Law No. 19 of 1997 on Tax Collection with Distress Warrant Law (PPSP) was indeed last amended by Law No. 19 of 2000, but the provision of Article 34(3), which states that “*a claim regarding the enforcement of the seizure of a taxpayer’s assets may only be brought before the District Court*”, has not undergone any substantial changes, so the reference remains to the first structure of Law No. 19 of 1997. Law No. 2 of 1986 on General Courts has also been amended by Law No. 8 of 2004 and Law No. 49 of 2009, yet the provision of Article 50 regarding the jurisdiction of District Courts to hear criminal and civil cases at first instance remains unchanged. Meanwhile, Law No. 14 of 2002 on the Tax Court has not been amended to date, so Article 31(1), which states that the Tax Court has the authority to hear and adjudicate tax disputes, remains in force in its original wording. When viewed in terms of the year of enactment of the referenced articles, Law No. 14 of 2002 is the most recent regulation compared to the other two laws. Therefore, based on the principle of *‘Lex Posterior Derogat Legi Priori’*, the provisions in Law No. 14 of 2002 are deemed to supersede those in Law No. 19 of 1997 and Law No. 2 of 1986. Through this construction, the competent forum for adjudicating claims regarding the enforcement of tax lien is generally directed towards the Tax Court.

Another principle of derogation that may be applied is the *Lex Specialis Systematis* principle, which is a development of *Lex Specialis Derogat Legi Generali*; this is applied when two rules of equal rank conflict, but one is

specific (*specialis*), and the other is general (*generalis*), in which case the general rule is set aside (Bagir Manan, 2004). *Lex Specialis Systematis* is used to resolve conflicts of norms when the conflicting provisions are both special laws and are at the same hierarchical level (Dhoni Martien, 2022).

There are a number of parameters that determine whether a law can be classified as a *Lex Specialis Systematis*. Firstly, the existence of substantive provisions that differ from the general rules in force. Secondly, the existence of formal provisions that also differ from existing provisions. Third, the legal subjects regulated in the law are of a special or specific nature (Edward Omar Sharif Hiariej, 2021). In the tax law system, it is important to emphasise that the specificity of the Tax Court Law is mainly found in the procedural (formal) sphere of tax dispute resolution, namely in determining the forum, the types of legal remedies, and the procedures for examination and adjudication. Meanwhile, the PPSP Law is a *lex specialis* that dominates the substantive (material) sphere of collection, as it regulates the instruments, stages, and active collection measures, including seizure as part of the administrative enforcement apparatus. When the matter in dispute is the jurisdiction to adjudicate, which constitutes an absolute competence, the issue is essentially one of procedural law; therefore, the *lex specialis* that should be prioritised is the Tax Court Law as the special procedural legal regime in the field of taxation, not the PPSP Law, which governs the material aspects of collection. With this construction, the conflict of jurisdiction is

no longer understood as a competition between two equal special norms, but rather as the proper placement of norms according to their domain: procedural (forum) takes precedence above substantive (substance of the action). Thus, a comprehensive normative conclusion can be drawn that the court that should have absolute jurisdiction to hear a claim regarding the enforcement of the seizure of a taxpayer's assets is the Tax Court.

Based on the above analysis, a divergence in outcomes is evident between the *ratio legis* analysis and the analysis using the principle of derogation. The *ratio legis* approach tends to assign jurisdiction to the District Court, as it emphasises the protection of personal liberty and judicial review mechanisms, whereas the principle of derogation points towards the Tax Court, given its consideration of temporal hierarchy and the specific nature of tax dispute regulations. This difference in conclusions ultimately gives rise to a dualism of absolute jurisdiction, which results in legal uncertainty not only for the judiciary and the Directorate General of Taxes (DJP) but primarily for taxpayers or tax guarantors who require certainty regarding the forum for dispute resolution in order to achieve *access to justice*.

In light of this regulatory dualism, harmonisation of regulations is required through the reformulation of provisions that explicitly determine which court has jurisdiction to hear claims regarding the enforcement of tax guarantor seizures. Clarifying the competent forum is important to prevent recurring disparities in rulings, whilst providing legal certainty

for parties seeking to bring claims regarding the enforcement of tax guarantor seizures.

The immediacy to reformulate these regulations has grown stronger following the issuance of Constitutional Court Decision No. 26/PUU-XXI/2023, which orders that the functions of organisational, administrative, and monetary oversight of the Tax Court be transferred to the Supreme Court by no later than 31 December 2026. Prior to this decision, pursuant to Article 5(2) of Law No. 14 of 2002 on the Tax Court, the organisational, administrative, and financial management aspects of the Tax Court remained under the coordination of the Ministry of Finance. This arrangement gave rise to an institutional configuration commonly seen as a 'two-pronged' model, whereby the Tax Court falls within the scope of the Supreme Court from a technical judicial perspective, whilst from an administrative and organisational standpoint it remains under the executive branch. This split oversight model is often seen as potentially raising doubts regarding institutional independence, although in practice, judicial authority continues to be exercised autonomously by the judges.

Constitutional Court Decision No. 26/PUU-XXI/2023, which requires the transfer of the functions of organisational, administrative, and financial supervision of the Tax Court to the Supreme Court, has substantial institutional consequences and implications (Farel Rifandanu, 2024). With the implementation of this decision, the organisational structure of the Tax Court will henceforth be entirely under the supervision of the Supreme Court and no longer fall under the Ministry of Finance; consequently, the 'two-tier'

model, which has often been perceived as raising doubts on institutional independence, will no longer apply. This change is not simply administrative in nature, but also shifts the conceptual position of the Tax Court within the national judicial system as a fully integrated part of the judicial branch under the Supreme Court. Whereas previously, the filing of claims regarding the enforcement of tax liens against taxpayers in the District Court was frequently justified on the grounds of human rights protection through a forum deemed to possess a higher degree of independence compared to the Tax Court—given that the Tax Court was still under the Ministry of Finance, such reasoning loses its rational basis following the implementation of this ruling or post-integration. In the post-integration phase, the Tax Court is part of the same judicial branch as the District Court, so concerns regarding institutional independence are no longer relevant as a legal basis for transferring judicial control over tax liens to the general courts. Therefore, this situation can be viewed as a tactical opportunity to restructure the system through the reformulation of absolute jurisdiction rules, including resolving the overlap of authority with the District Courts regarding absolute jurisdiction in lawsuits concerning the enforcement of tax liens. It is hoped that the reformulation of norms at this stage will not only put an end to the problem of dualism of authority, but also strengthen legal certainty, maintain consistency in rulings, and clarify the structure of the judiciary in the field of taxation, whilst simultaneously strengthening the normative justification for centralising the

resolution of tax-related disputes within the Tax Court.

## **CONCLUSION**

Based on the results of a normative analysis of legislative provisions, judicial practice, and the approaches of ratio legis and the principle of derogation, it can be concluded that:

1. The regulation of absolute jurisdiction over actions concerning the enforcement of tax liens indicates a dualism of absolute jurisdiction between the District Court and the Tax Court. Section 34(3) of the PPSP Act grants jurisdiction to the District Court, whilst Section 31(2) in conjunction with Section 33 of the Tax Court Law indicates that disputes concerning the enforcement of tax collection, including seizure, fall within the jurisdiction of the Tax Court. Given the nature of seizure as a tax administrative measure, and the application of the principles of *Lex Posterior Derogat Legi Priori* and *Lex Specialis Derogat Legi Generali*, the Tax Court is the more appropriate competent forum. This dualism creates legal uncertainty and has the potential to restrict access to justice for taxpayers.
2. In practice, the exclusive jurisdiction over actions concerning the enforcement of tax liens (*gijzeling*) still exhibits normative ambiguity, giving rise to a dualism of exclusive jurisdiction between the District Court and the Tax Court. On the one hand, some judicial decisions in practice designate the District Court as the competent forum, relying on the wording of Article 34(3) of the

Law on Tax Collection with Distress Warrant Law (PPSP Law) and a ratio legis approach that views seizure as a form of restriction on individual liberty. However, on the other hand, through the lens of the principles of derogation, including the principles of 'Lex Posterior Derogat Legi Priori' and 'Lex Specialis Systematis', the Tax Court possesses an equally strong basis for argument, given that this dispute stems from the tax administration regime and is therefore of a formal nature, making it more appropriate to refer to the Tax Court Law. The issuance of Constitutional Court Decision No. 26/PUU-XXI/2023 also constitutes a milestone in the Tax Court's independence in adjudicating tax disputes, notably about the detention of taxpayers.

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