



# Tax Judges' Discretion in Assessing Electronic Evidence as A Legal Loophole in Upholding Justice Based on The Principle of Judicial Independence

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## Abstract

The development of information technology has encouraged the widespread use of electronic evidence in tax disputes, including proceedings before the Tax Court. Although the recognition of electronic evidence within the national legal system has been established through general legislation, these regulations have not been specifically designed to address the procedural requirements of tax law, which is characterized by strict liability and emphasizes legal certainty. This situation grants Tax Judges broad discretion in assessing the validity and evidentiary value of electronic evidence. On the one hand, such discretion is necessary to fill a normative gap; on the other hand, it has the potential to result in inconsistent judicial decisions and legal uncertainty. This study aims to critically analyze the existing normative framework, the judicial practice of assessing electronic evidence, and the implications of Tax Judges' discretion for protecting taxpayers' rights while safeguarding the state's fiscal interests. The research employs a normative legal research method using statutory, conceptual, and case-based approaches. The findings demonstrate that the absence of standardized criteria for assessing electronic evidence has caused judicial discretion to shift from an instrument for achieving justice into a legal loophole that threatens legal certainty. This study proposes an ideal framework for limiting judicial discretion by formulating normative parameters and judicial guidelines that balance the principle of judicial independence with the strict liability nature of tax law. This normative reconstruction is expected to strengthen the consistency of judicial decisions, ensure proportional justice, and enhance public trust in the tax adjudication system.

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## INTRODUCTION

The transformation of Indonesia's tax administration system demonstrates a fundamental shift from conventional practices to an integrated digital system (Wala, 2024). The processes of tax collection, reporting, auditing, and dispute resolution are increasingly reliant on information technology (Sasanti, 2022). This digitalization has legal consequences in the form of the increased use of electronic documents, digital data, and system records as primary evidence in tax disputes (Purnamasari, 2025). Electronic evidence is no longer

merely supplementary but has become a central instrument in proving tax obligations and violations, whether submitted by tax authorities or taxpayers (Mufidah, 2023).

This development has not been fully matched by updates to Tax Court procedural law. Existing laws and regulations do not explicitly regulate the standards for the admissibility, validity, or probative value of electronic evidence (Supriyadi, 2024). This regulatory gap creates broad room for interpretation, particularly during the evidence assessment stage in court. The absence of clear normative parameters causes the assessment of electronic evidence to rely heavily on the individual judge's beliefs and interpretations, thereby increasing the potential for divergent decisions in cases with similar evidentiary characteristics.

Tax Judges' discretion in assessing electronic evidence arises as a consequence of this normative context (Army, 2020). Discretion grants judges the freedom to assess the relevance, validity, and probative strength of evidence based on legal considerations and a sense of justice (Karyadi, 2022). On the one hand, this freedom manifests the principle of judicial independence as a pillar of judicial power. On the other hand, discretion without measurable limits has the potential to give rise to subjective decisions, particularly in tax cases that require a high degree of legal certainty (Rayfindratama, 2023).

This normative tension is further exacerbated by the formal, strict, and certainty-based nature of tax law (Sinaga, 2023). The principle of strict liability places the fulfillment of objective elements as the basis for accountability without emphasizing subjective fault (Barus, 2022). This characteristic demands the consistent application of uniform norms and standards of proof. Overly broad judicial discretion has the potential to shift the orientation of tax law enforcement from normative certainty to unpredictable flexibility in assessment (Mustamu, 2025).

The principle of judicial independence is fundamental in a state based on the rule of law (Kaeng, 2022). This independence ensures that judges are free from interference by any party in examining and deciding cases (Hambali, 2021). It is a prerequisite for fair and objective decisions. Judicial independence also includes the authority to assess evidence based on rational and well-reasoned judicial conviction. However, this principle is not intended to grant unlimited freedom, but rather responsible freedom bound by law (Irawan, 2024).

The limits of judicial independence are found in the principles of legal certainty, equality before the law, and due process of law (Sutrsino, 2025). Judges remain bound by applicable legal norms, general principles of good governance, and the principle of a fair trial (Susanto, 2021). The assessment of evidence must be conducted rationally, transparently, and with legal accountability (Hakim, 2025). Judicial discretion without a normative framework risks blurring the line between independence and subjectivity.

Judicial discretion in law enforcement is understood as a judge's freedom to choose and interpret legal norms in certain situations that are not specifically regulated by statutory provisions. This discretion differs fundamentally from the administrative discretion of executive officials. Judicial discretion operates in the realm of legal interpretation and the assessment of justice, while administrative discretion relates to government policy (Dadi, 2024). This distinction requires greater caution in exercising judicial discretion because it directly affects the rights and obligations of legal subjects.

The risk of abuse of discretion in the public legal system cannot be ignored. Discretion without guidelines has the potential to lead to inconsistent decisions, unequal legal treatment, and weakened public trust in the judiciary (Arifin, 2025). In tax law, these risks are even more serious because tax disputes involve both the state's fiscal interests and taxpayers' economic rights (Hasanah, 2025). Unequal assessment of electronic evidence can create legal uncertainty with systemic impacts. The principle of strict liability emphasizes that tax law is oriented toward formal compliance with statutory obligations. Evidence in tax disputes is directed toward ensuring the fulfillment of objective elements of an obligation or violation (Tanudjaja, 2024). This principle demands clear, measurable, and consistent standards of proof. The relationship between strict liability and evidence is crucial because uncontrolled laxity has the potential to erode the fundamental character of tax law.

Electronic evidence differs from conventional evidence. It relies on technological systems, data integrity, and information security mechanisms. Its validity and evidentiary strength are determined not only by the content of the information but also by the processes of its creation, storage, and presentation (Lubis, 2024). A comparison of the regulation of electronic evidence in general procedural law and tax law reveals a significant normative gap. This gap places Tax Judges in a strategic yet problematic position in determining the direction of tax justice enforcement.

## **METHOD**

This study employed a normative legal research method using conceptual, statutory, and case-based approaches. It examined legal norms concerning the position of Tax Judges, judicial independence, strict liability in tax law, and the regulation of electronic evidence in relevant laws and regulations. Primary legal materials, including laws and implementing regulations, were systematically analyzed to identify regulatory patterns, normative gaps, and inconsistencies in legal application. Secondary legal materials, such as legal doctrines, scholarly literature, and expert opinions, were used to strengthen the theoretical framework. The data were analyzed qualitatively through legal interpretation by emphasizing argumentative rationality, normative coherence, and the relevance of applicable legal principles. The findings were then synthesized to formulate limits on Tax Judges' discretion that align with judicial independence and legal certainty in the tax system.

## **RESULTS AND DISCUSSION**

### **Normative Framework and Practices for the Assessment of Electronic Evidence in Tax Courts**

The regulation of electronic evidence in the Indonesian national legal system has undergone significant developments along with the recognition of information technology as part of legal activities, as affirmed in Law Number 1 of 2024 concerning Electronic Information and Transactions. Article 5 paragraphs (1) and (2) of the ITE Law explicitly state that electronic information and electronic documents, including their printouts, constitute valid legal evidence and have the same evidentiary force as other forms of evidence. Electronic evidence is understood as information or documents generated, sent, received, or stored through an electronic system, provided they meet the validity requirements as stipulated in Article 6 of the ITE Law. This normative recognition marks a paradigm shift in

evidence from a physical approach to a digital approach in the national legal system. However, these regulations are formulated for general needs across legal fields and are not specifically designed to address the formal and strict nature of evidence in tax law. This situation raises the issue of normative adaptation in tax courts, as Tax Court procedural law has not explicitly integrated standards for assessing electronic evidence into the evidentiary framework specific to tax disputes.

The relevance of electronic evidence for resolving tax disputes is undeniable, given that almost all modern tax activities are digitally based. Transaction data, electronic financial reports, tax administration systems, and digital communication records are the primary sources of evidence. Tax Court procedural law itself still relies on conventional and formalistic evidentiary norms. This limitation creates a gap between digital tax practices and the legal instruments used to assess them. Tax judges are often confronted with electronic evidence without adequate normative guidance on how to assess its authenticity and evidentiary strength. This situation widens the scope for interpretation, which does not always lead to uniform decisions.

The lack of clarity and ambiguity in norms is a central issue in the assessment of electronic evidence in the Tax Court. Existing regulations do not provide standard standards for technical validation, data authentication, or proving the integrity of electronic systems. This ambiguity makes the assessment of electronic evidence highly dependent on the judge's individual understanding of technology and the law. Differences in digital literacy levels among judges also affect the quality and consistency of assessments. As a result, cases with relatively similar evidentiary characteristics can result in different decisions. This situation has the potential to undermine the principle of legal certainty that underpins tax law.

The position of Tax Judges within the judicial system is unique compared to judges in general courts. Tax Judges perform judicial functions within a specialized court environment that handles tax administration disputes. This status places Tax Judges as the final arbiters of disputes between taxpayers and fiscal authorities. The existence of the Tax Court as a specialized court demands professionalism and independence on a par with other courts. Tax Judges serve not only as interpreters of legal norms but also as technical assessors of tax data and documents. This role makes judges' authority highly strategic in determining the direction of tax justice.

The scope of a Tax Judge's authority encompasses the assessment of all evidence presented by the parties, including electronic evidence. This authority is inherent in the judicial function, which allows judges to determine the relevance and probative weight of evidence. This assessment must be conducted rationally and based on the law, although available norms are not always detailed. The absence of specific standards has led to this authority evolving into broad discretion. This discretion is both a crucial instrument and a critical point in tax judicial practice. Judges are in a decisive position without always having clear normative guidelines.

The relationship between judicial authority and the principle of judicial independence is close and inseparable. Judicial independence ensures that the assessment of evidence is conducted without external pressure and interference from vested interests. This principle is an absolute requirement for a fair and independent judiciary. This freedom is not intended to be limitless, but rather a responsible freedom. Judges remain bound by the law, the principle

of justice, and the rationality of their arguments. Tension arises when this freedom confronts the absence of norms that should provide objective boundaries.

Tax judges' discretionary practices in assessing electronic evidence exhibit diverse patterns. Some judges consider electronic evidence to be equal to written evidence as long as its authenticity can be verified. Others are more restrictive and require additional evidence to ensure the reliability of electronic data. These differing approaches reflect the absence of uniform operational standards. Assessment patterns are heavily influenced by the experience, background, and technical understanding of each judge. This variation demonstrates the dominant role of discretion in tax court practice.

Variations in decisions resulting from differences in the assessment of electronic evidence have serious implications for legal certainty. Taxpayers and tax authorities face uncertainty regarding the standards of proof to be applied in court. This uncertainty has the potential to undermine trust in the tax court system. Inconsistent decisions also complicate the formation of stable jurisprudence. Legal certainty, a key principle of tax law, is undermined by non-standardized assessment practices. This situation demands a critical evaluation of the existing discretionary space.

Indications of excessive discretion are evident in the tendency for highly subjective assessments of electronic evidence. Some decisions demonstrate that judges' personal beliefs predominate over structured normative arguments. Unmeasured discretion has the potential to create unequal legal treatment between parties. This risk is even greater in a tax legal system that demands high levels of consistency and certainty. Excessive discretion can turn into legal loopholes that disadvantage one party. The condition reveals the urgency of limiting discretion without eliminating the independence of judges.

All of these practices demonstrate that the assessment of electronic evidence in the Tax Court is still in a normative transition phase. Positive law has not yet fully kept pace with developments in tax technology. Tax judges play a crucial role as a balance between the rigidity of norms and the demands of justice. This role requires caution to ensure that discretion does not exceed its corrective function. An imbalance between authority and limitations has the potential to disrupt the entire tax law enforcement system. This reality forms an important basis for the need for normative reconstruction in the next stage of analysis.

### **Critical Analysis and Reconstruction of Limitations on Tax Judge Discretion**

Tax judge discretion emerged as a response to a normative vacuum that failed to address the complexities of electronic evidence. The absence of detailed normative standards placed judges in the position of having to interpret and assess evidence based on their personal legal reasoning. This situation demonstrates that discretion does not arise solely from the judge's will, but rather from the limitations of positive law. This discretionary space serves as an adaptive mechanism to maintain the judicial process. Discretion ultimately serves as a bridge between outdated norms and the evolving reality of digital taxation.

The development of discretion without normative constraints has the potential to shift its function from an instrument of justice to a legal loophole. Discretion, initially intended to fill a normative vacuum, can transform into a realm of uncontrolled subjectivity. Judges have the potential to apply varying personal judgments to similar electronic evidence. This shift

creates serious problems because the assessment results become unpredictable. Discretion that exceeds its corrective function risks eroding the principle of legality in tax law.

Inconsistency in decisions is a clear consequence of unmeasured discretion. Cases involving relatively similar electronic evidence can be decided differently by different panels of judges. This variation creates uncertainty for taxpayers and tax authorities in planning legal strategies. Legal certainty, a fundamental principle of tax law, is weakened. Inconsistent decisions also hinder the formation of a stable and referenceable jurisprudential framework.

The principle of judicial independence is a key pillar of the judicial system, guaranteeing the independence and objectivity of decisions. This independence allows judges to assess evidence without external pressure. This principle is rooted in the concept of a state based on the rule of law, which positions the judiciary as the guardian of justice. Judicial independence also carries dimensions of moral and legal responsibility. Every exercise of this freedom must be justified through rational legal argumentation.

The principle of strict liability in tax law presents a distinct character compared to other branches of law. This principle emphasizes the fulfillment of objective elements of tax obligations without emphasizing subjective errors. Tax law is designed to ensure certainty and effectiveness in tax collection. This rigid nature demands consistent and measured application of norms. Excessive flexibility in assessments has the potential to conflict with the fundamental nature of tax law. The normative tension between judicial independence and strict liability is a central issue in the assessment of electronic evidence. Judicial independence allows for flexibility, while strict liability demands formal certainty. These principles operate on different logics and often compete with each other. The assessment of electronic evidence becomes both a meeting point and a point of conflict between the two. This tension demands a mature, balanced approach that avoids extremes.

Excessively broad discretion has the potential to obscure the application of strict liability in tax court practice. Excessively flexible assessment of electronic evidence can incorporate considerations beyond the objective elements that should be the primary focus. This shift in orientation risks weakening the consistency of tax law enforcement. The formal and strict character of tax law is not fully reflected in decisions. Discretion can ultimately modify the principle of strict liability implicitly without a clear normative basis.

Substantive justice is often used as a legitimation for the use of broad discretion. Judges strive to achieve outcomes that are deemed fair to the parties based on the concrete circumstances of the case. This effort has important moral value in the judicial system. Substantive justice does not always align with legal certainty if it is not framed by clear norms. An imbalance between substantive justice and legal certainty has the potential to create systemic uncertainty. Taxpayers' positions in electronic evidence tend to be vulnerable. Taxpayers must face inconsistent standards for evaluating evidence. Unclear evidentiary parameters make it difficult for taxpayers to predict the outcome of disputes. Their rights to legal certainty and fair treatment are threatened. This situation can undermine taxpayer trust in the tax justice system.

The state's fiscal interests are also impacted by the uncertainty surrounding the assessment of electronic evidence. The state requires a tax court system capable of enforcing the law consistently and predictably. Excessively varied rulings complicate the tax authorities' enforcement function. The certainty of state revenue becomes dependent on

individual judges' interpretations. This situation is inconsistent with the principle of effective tax collection.

Proportional justice is a crucial concept for bridging the interests of taxpayers and the state. This justice demands balanced treatment based on the rights and obligations of each party. The assessment of electronic evidence must adhere to proportionality to avoid undue burden on either party. Measured discretion can serve as a tool to achieve this balance. Without clear boundaries, proportionality is difficult to consistently achieve.

The need to limit the discretion of Tax Judges arises in response to the various risks outlined. These limitations are not intended to eliminate the independence of judges, but rather to provide an objective framework. Standardization of the assessment of electronic evidence is an urgent need in modern tax courts. These standards can serve as both guidelines and a means of control. Clear boundaries will strengthen the legitimacy of judges' decisions.

Objective parameters in judicial discretion are necessary to ensure that the assessment of electronic evidence is not dependent on personal preferences. These parameters can include data authenticity, system integrity, and the relevance of the evidence to the subject matter of the dispute. The existence of parameters will enhance the consistency and transparency of decisions. Judges retain discretionary authority, but within defined boundaries. This approach supports the accountability of tax justice.

Harmonizing the principles of judicial independence and legal certainty is the primary objective of limiting discretion. Judicial independence remains a fundamental principle, while legal certainty is strengthened through clear standards. This harmonization creates a balance between flexibility and rigidity. The tax justice system will gain stronger legitimacy, and public trust in judicial decisions can be sustainably enhanced.

The ideal model for assessing electronic evidence by Tax Judges needs to be built on clear normative criteria. These criteria should reflect the strict liability-based nature of tax law. Integrating the principle of strict liability into electronic evidence will strengthen the consistency of law enforcement. Judicial guidelines can be designed without compromising judicial independence. This model is expected to close legal loopholes while maintaining the quality of tax justice.

## **CONCLUSION**

Tax Judges' discretion in assessing electronic evidence is a direct consequence of gaps and ambiguities in Tax Court procedural law. This discretion essentially serves a corrective function by maintaining the continuity of the judicial process and bridging the limitations of written norms. However, problems arise when discretion develops without adequate normative boundaries, potentially giving rise to subjective assessments and inconsistent decisions. The character of tax law, which adheres to the principle of strict liability, demands a high degree of certainty and consistency. Therefore, the use of overly broad discretion risks obscuring the orientation of tax law as a formal and strict branch of public law. The findings of this study confirm that Tax Judges' discretion cannot be positioned as absolute freedom but must be understood as limited authority that remains subject to the principles of legal certainty and legal rationality. The legal issues examined are addressed by affirming the need to balance the principle of judicial independence with objective standards of proof in assessing electronic evidence.

Based on these conclusions, this study recommends reforming Tax Court procedural law by formulating clear and measurable normative standards for assessing electronic evidence. These reforms are expected to guide Tax Judges without compromising their independence in carrying out judicial functions. Policies aimed at strengthening legal certainty should be directed toward harmonizing substantive justice with the strict liability nature of tax law so that tax disputes can be resolved fairly and consistently. Strengthening judicial guidelines on electronic evidence is also crucial to preventing disproportionate variations in assessment and increasing the accountability of judicial decisions. Further research is recommended to examine the technical aspects of electronic evidence in greater depth and to compare electronic evidence assessment practices in tax courts across jurisdictions. This research direction is expected to enrich the development of national tax law that is adaptive to digitalization without sacrificing legal certainty.

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