

# BUDGET INDEPENDENCE OF THE SUPREME COURT IN THE IMPLEMENTATION OF THE FUNCTIONS OF JUDICIAL POWER

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## **Abstract**

*The Supreme Court in carrying out the function of judicial power is carried out independently so that it is not possible for intervention from other parties that can affect its function. However, the independence of the Supreme Court has not been fully strung together in accordance with the concept of independence in the exercise of judicial power. This can be seen in the Supreme Court's budget, the amount of which is still determined by the government. This condition will certainly affect its independence, because the budget is a support for the Supreme Court in carrying out the functions of judicial power. In this discussion, the method used is normative juridical. The benefit of this research is that it can become a reference for the Supreme Court to form an independent budget pattern so that it can carry out its functions independently. The conclusion of this study is that the Supreme Court has not been able to carry out its functions independently as outlined in Article 24 paragraph (1) of the 1945 Constitution, so it is necessary to make changes to regulations by aligning the rules so that the Supreme Court can prepare its budget independently.*

**Keywords:** *Judicial Power, Budget, Independence*

## **Abstrak**

Mahkamah Agung dalam menjalankan fungsi kekuasaan kehakiman dilakukan secara merdeka sehingga tidak dimungkinkan adanya intervensi dari pihak lainnya yang dapat mempengaruhi fungsinya. Namun kemerdekaan Mahkamah Agung belum sepenuhnya terangkai sesuai dengan konsep kemerdekaan pelaksanaan kekuasaan kehakiman. Hal ini nampak pada anggaran Mahkamah Agung yang besarnya masih ditentukan oleh pemerintah. Kondisi tersebut tentu akan mempengaruhi independensinya, karena anggaran merupakan penunjang bagi Mahkamah Agung dalam melaksanakan fungsi kekuasaan kehakiman. Dalam pembahasan ini, metode yang digunakan adalah yuridis normatif. Manfaat penelitian ini adalah dapat menjadi acuan Mahkamah Agung untuk membentuk pola anggaran yang independent sehingga dapat melaksanakan fungsinya secara merdeka. Kesimpulan dari penelitian ini adalah Mahkamah Agung belum dapat melaksanakan fungsinya secara merdeka sebagaimana digariskan dalam Pasal 24 ayat (1) UUD 1945, sehingga perlu dilakukan perubahan regulasi dengan menyelaraskan aturannya sehingga Mahkamah Agung dapat menyusun anggarannya secara mandiri.

**Kata kunci:** Kekuasaan Kehakiman, Anggaran, Independensi.

## **INTRODUCTION**

Indonesia choose and define his country as the state law. It is perhaps born from the founder of the nation who considers law as a manifestation of the wisdom of the collective citizens of the state (*collective wisdom*).<sup>1</sup>

The concept of a constitutional state of Indonesia is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), and makes it an instrument for creating a harmonious and orderly national life. The creation of a harmonious and orderly national life is realized by establishing an institution that carries out the functions of judicial power.

As a state of law, the regulation of judicial power needs to be regulated in such a way. Article 24 of the 1945 Constitution has regulated judicial power, which among other things stipulates that the

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<sup>1</sup> George H. Sabine, *A History of Political Theory*, Third Edition, Holt, Rinehart and Winston: London, 1961, page, 35.

Supreme Court and the judicial bodies under it and by a Constitutional Court are the institutions in charge of carrying out the functions of judicial power. Both of them carry out these functions based on the principle of independent power<sup>2</sup>, so that the enforcement of law and justice in order to create the life of the nation that is harmonious can be realized.

The principle of independent judicial power is then revealed in the provisions of the legislation under it. In this case, the provisions of the laws and regulations governing the Supreme Court are Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court which has been amended by Law Number 5 of 2004 in conjunction with Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court.

As a basic condition for the exercise of judicial power, an independent power is indeed not easy to establish, although it is known that the constitution which was first formed by Indonesia has mandated that the exercise of judicial power be carried out independently. This is as stated in the explanation of Article 24 and Article 25 of the 1945 Constitution before the amendment, namely in Chapter IX it is explained that judicial power is an independent power, meaning that it is independent of the influence of government power. In this regard, there must be a guarantee in the law regarding the position of judges.<sup>3</sup> The message contained in the explanation was later confirmed by the amended 1945 Constitution. As a result, the phrase *merdeka* is no longer included in the explanation, but is included in the formulation of norms contained in Article 24 paragraph (1) of the 1945 Constitution.

The independence of the Supreme Court in carrying out the functions of judicial power as stated in the 1945 Constitution which is interpreted by legislators does not mean releasing the relationship between the Supreme Court and other state institutions. The Supreme Court with state institutions such as the President, the House of Representatives (DPR) the Judicial Commission, and the Financial Supervisory Agency (BPK) in the context of carrying out their duties and functions as regulated in laws and regulations. However, the establishment of relations with other state institutions needs to take into

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<sup>2</sup> Article 24 paragraph (1) UUD 1945.

<sup>3</sup> See the explanation of article 24 and 25 UUD 1945 before amendment.

account the principle of an independent judicial power which is the main basis for the Supreme Court in carrying out its duties and functions.

Budget independence at the Supreme Court and judicial bodies under it is regulated in Article 21 paragraph (1) and paragraph (2) of Law Number 48 of 2009 concerning Judicial Power and Article 81A of Law Number 3 of 2009 concerning the Supreme Court. In the provisions of Article 21 paragraph (1) of Law Number 48 of 2009 concerning Judicial Powers it is explained that the Supreme Court, in addition to managing budgetary affairs within its institution, the Supreme Court is also given the power to manage financial affairs in the judicial bodies below it. Management of budget affairs in this context includes planning, implementation, and financial reporting of the Institution. However, the implementation of budget management is still not in line with the principle of independence of the judiciary. This can be seen in the process of preparing the Ministries/Agency Work Plans and Budgets (RKA K/L) of the Supreme Court and the judiciary below which refers to the Ministries/Agency Work Plans and Budgets (RKA K/L).<sup>4</sup> Thus, the Supreme Court's budgetary affairs must comply with Government Regulation Number 90 of 2010 concerning Preparation of Work Plans and Budgets of State Ministries/Institutions and Minister of Finance Regulation Number 177/PMK.05/2015 concerning Guidelines for Compiling and Submission of Financial Reports of State Ministries/Institutions .

In Article 1 paragraph (1) and paragraph (2) of Government Regulation Number 90 of 2010 and the provisions of Regulation of the Minister of Finance Number 177/PMK.05/2015 jo. Regulation of the Minister of Finance Number 222/PMK.05/2016 it can be concluded that the regulation regarding the preparation of Work Plans and Budgets of State Ministries/Institutions (RKA K /L) applies to all ministries and state institutions without distinguishing the hierarchy/position of state institutions, including the Supreme Court which is the primary state institution. Therefore, with this regulation, the Supreme Court, which is the primary state institution, has the same regulation as other state institutions whose position is under the authority of the government (executive).<sup>5</sup>

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<sup>4</sup> *Ibid.* Page. 408.

<sup>5</sup> *Ibid.* Page. 408-409.

If the Supreme Court's budget is still dependent on the Work Plan and Budget of State Ministries/Agencies (RKA K/L), then interest intervention is still very likely to occur in the judicial authority administering institutions, including individual intervention, and group interests within the scope Government. This can happen when the Supreme Court hears cases that affect the interests of individuals and groups within the scope of the Government, then the Government may intervene by withholding or reducing and/or cutting the allocated budget. In fact, law enforcement and justice should not be reduced in the slightest, because this is the purpose of the administration of the court, namely to guarantee fair recognition, guarantees, protection, and legal certainty for every human being.<sup>6</sup>

From the description, the formulation of the problem that becomes focused is how is the independence of the Supreme Court's budget management in carrying out the function of judicial power?

## **RESEARCH METHOD**

In this discussion, the method used is normative juridical. Normative juridical research is a legal research method that is carried out by literature review materials or secondary data. The method of thinking used is deductive thinking method (way of thinking in drawing conclusions from something general that has been proven true and the conclusion is intended for something specific).

Specifications research this is research descriptive - analytical which is a study to assess in a systematic about the Independence of the budgeting of Court Supreme in order to run a function of the Power of Justice. The study is included in the types of research library (*library research*), which will be presented in descriptive.

The techniques used in collecting data in the study of the law is using the technique of the Study of Literature. The study of the Literature, carried out with how to collect material library that is

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<sup>6</sup> Secretary of Supreme Court Republic Indonesia, *Rencana Strategis Mahkamah Agung Republik Indonesia 2020 – 2024*, Secretary of Supreme Court Republic Indonesia: Jakarta, 2020. Page. 68.

obtained from various literature or books, and the laws that are associated with problems in the research of this. How that is taken is to read, understand, learn, citing the materials that are associated with the problem.

Analysis of data is carried out by way of the analysis of the qualitative, namely with how to decipher the results of the research are detailed in the form of sentences per sentence so as to obtain an overview of the general , which is clear from the answers to the problems that will be discussed and can be found a conclusion.<sup>7</sup> While in the interesting conclusion from the analysis the using way of thinking Deductive, i.e. the way of thinking in the exciting conclusion of the above factors that are common, then drawn conclusions that are special, that is the answer of the problem based on the results of the research.

## **DISCUSSION**

### **A review of the Theory over the Independence of the Budget Power of Justice**

Management of budget Institutions of the Judiciary in essence holding the role of important in supporting the implementation of the duties of the principal and the functions of the main institutions of the judiciary in resolving the case and provide a sense of justice for the community.<sup>8</sup> Management of budget the effective and efficient surely give an impact that is significant from the implementation of the task.<sup>9</sup> The definition of budget of the state is an instrument that is very potential for the government to implement the policy and its use should be used based on the law that applies.<sup>10</sup>

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<sup>7</sup> *Ibid.* Page. 122.

<sup>8</sup> Supreme Court, *Laporan Tahunan Mahkamah Agung RI - Tahun 2008*, Secretariat of Supreme Court: 2008, Page. 133

<sup>9</sup> *Ibid.*

<sup>10</sup> Atep Adya Barata and Bambang Trihartanto, *Kekuasaan Pengelolaan Keuangan Negara/Daerah*, Elex Media Komputindo: Jakarta, 2004, Page. 22.

Regarding the budget for the Supreme Court as stated in Article 81A paragraph (1) of Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, that "The Supreme Court's budget is charged to a separate budget item in the revenue and income budget. state spending". From the provisions, it can be interpreted that the Supreme Court's budget comes from the state revenue and expenditure budget (ABPN). In addition, the implied meaning is that there is a mandate to the Supreme Court to seek independence, both in budgeting and in budget execution.

Law No. 1 of 2004 concerning the State Treasury is a form of legal regulation that regulates the state budget. In the provisions of Article 14 paragraph (1) it is stated that after the APBN is stipulated, the Minister of Finance notifies all ministers/heads of institutions to submit budget implementation documents for each state ministry/institution. Furthermore, in paragraph (2) it is regulated that the minister/head of the institution shall prepare the budget implementation document for the state ministry/institution he leads based on the budget allocation determined by the President.<sup>11</sup>

From this elaboration, it means that the Supreme Court's budget in its budgeting is further regulated and determined by the government. Whereas on the other hand, the Supreme Court is a state institution whose independence needs to be maintained.

In terms of state independence, according to Jack M. Beermann, independent state institutions have the following characteristics:

- a. They are headed by multi-member commissions or boards.
- b. The agency heads serve for a term of years usually longer than the term of the President.
- c. The agency heads may not be removed without good cause.
- d. The agency must be bipartisan with the usual requirement being that no more than half plus one of members (e.g. three of five) may be of the same political party. (The state institution must be supported by political parties with certain conditions that are

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<sup>11</sup> Law Number 1 Year 2004 about State Treasury.

not more than half plus one member (for example: three out of five), maybe the commissioner consists of the same political party).<sup>12</sup>

Furthermore, H. Franken et al gave the characteristics of a state of law (*rechtstaat*), including:

1. Er is een consitutie die bedinde voorschriften bevat voor de betrekking tussen overheid en burgers (there is a constitution that contains binding rules/stipulations for the relationship between government and citizens).
2. In deze constitutie wordt een scheiding van machten verzekerd, waarbij wordt vereist dat (in the constitution a separation of powers is determined which is manifested by):
  - a. wetgeving tot stand komt door of in overeenstemming met het parlement (lawmaking originates and is approved by parliament).
  - b. er een onafhankelijke rechterlijke macht bestaat, die niet alleen geschillen tussen de burgers onderling, maar ook die tussen overheid en burgers beslist (the existence of an independent judicial power which not only decides disputes/cases between citizens, but also between the government and citizens).
  - c. het optreden van het bestuur op de wet beust (government action based on law).
3. In de constitutie worden de grondof vrijheidsrechten van de burgers omschreven en gewaarborgd. (basic rights and freedoms of citizens are listed and guaranteed in the constitution).<sup>13</sup>

Furthermore, Jimly Asshiddiqie conceptualizes the independence of judicial power in 3 (three) meanings:<sup>14</sup>

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<sup>12</sup> Jack M. Beermann, *Inside Adminastrative Law: What Matters and Why*, The Netherlands: Wolters Kluwer: 2011. Page. 7.

<sup>13</sup> Franke, H, et al., *Inleiden tot Rechtswetenschap*, Gouda Quint D. Brouwer en zoon, Arnhem: 1990, Page. 293

<sup>14</sup> Muchsin, *Kekuasaan Kebakiman yang Merdeka dan Kebijakan Asasi*, STIH IBLAM: Jakarta, 2004. Hal. 10

1. Structural independence, namely institutional independence, here can be seen from the organizational chart that is separate from other organizations such as the executive and judiciary.
2. Functional independence, namely independence in terms of guaranteeing the implementation of the functions of judicial power from extra-judicial intervention.
3. Financial independence, namely independence in terms of its independence in determining its own budget which can guarantee its independence in carrying out its functions

The Supreme Court is a state institution that carries out the functions of judicial power. In the trias politica theory, judicial power should be separated from other powers so that arbitrariness does not occur. To make it happen, it is not only the authority that needs to be separated, but in terms of budgeting it also needs to be done separately.

### **Independence of the Supreme Court as the Exercise of Judicial Power**

The Supreme Court as an independent Executor of Judicial Power has been agreed and stated in the 1945 Constitution. The meaning of 'freedom' contained in Article 24 paragraph (1) of the 1945 Constitution indicates that there is no bond and is not subject to anything. In other words, 'independent judicial power' means power that is not bound, free, and subject to other powers.<sup>15</sup>

Lubet said that judicial independence contains basic values: fairness, impartiality, and good faith. An independent judge will provide equal and open opportunities for each party to be heard without relating it to the identity or social position of the parties. An independent judge will be impartial, free from unrelated influences and immune from external pressure. An independent judge decides in good faith, based on

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<sup>15</sup> Muchsin, *Kekuasaan Kebakiman yang Merdeka dan Kebijakan Asasi*, STIH IBLAM: Jakarta, 2004. Page. 10

the law as he knows it, regardless of personal, political or financial consequences.<sup>16</sup>

### **1. Portrait of the Independence of the Supreme Court's**

#### a. The Allocation Of Funding To The Court Supreme

##### 1) Budget Allocation for the Supreme Court

Regarding the allocation of the budget to the Supreme Court as an institution of judicial power, it is quite a long twist. In the reformation era, the Supreme Court's budget was restructured in the constitutional system, including the judicial system. This is as contained in the Decree of the People's Consultative Assembly Number X/MPR/1998 concerning the Principles of Development Reform in the Context of Saving and Normalizing National Life as a State Policy.

According to this Decree of the People's Consultative Assembly, the development of judicial institutions by the executive is an opportunity for the authorities to intervene in the judicial process as well as the development of collusion and negative practices in the judicial process. Therefore, there must be a clear separation between the judicial and executive functions.

The legal reform in the Decree of the People's Consultative Assembly Number X/MPR/1998 was followed up by the issuance of Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power. According to this Law Number 35 of 1999, the organizational, financial, and administrative affairs of the courts must be under the Supreme Court. The law states that the process of transferring organizational, financial, and administrative affairs from the courts is carried out in stages over a maximum period of 5 years. The one-roof process was then considered to be perfect with the enactment of Law Number 4 of 2004 concerning

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<sup>16</sup> Lubet, Steven, *Judicial Discipline and Judicial Independence: Law and Contemporary Problems*, Vol. 61, No. 3, Year 1998, Page 61

Judicial Powers.<sup>17</sup> Although considered perfect, 5 years later Law Number 4 of 2004 concerning Judicial Power was replaced with Law Number 48 of 2009 concerning Judicial Power because it was considered no longer in accordance with the development of legal and constitutional needs according to the 1945 Constitution.

b. Judge Salary System in the Supreme Court Environment

Hans Kelsen in his book entitled *The General Theory of Law and State* says about the position of Judges that "He is an organ because and in so far as he performs a law-creating or law-applying action". In Hans Kelsen's statement it means that a judge is a state institution in a narrow sense because a judge is chosen and appointed according to his function, because he must serve according to his position in a professional manner and therefore he receives regular payments or salaries from the state originating from state finances.<sup>18</sup>

From Hans Kelsen's explanation, it shows the important role that judges have in carrying out the functions of judicial power. Therefore, the salary given by the state must come from state finances so that independence can be maintained.

In Indonesia, during the New Order era, the position of judges was regulated in Law Number 14 of 1970 concerning the Basic Provisions of Judicial Power. In the arrangement it applies a two-roof system. This causes judges to depend on two institutions, namely the government and the Supreme Court. However, in terms of salary, promotion and transfer, it is in the Ministry/Government.

In this era, regarding the salary of judges, there is also no definite independence. The salary of judges regulated in Government Regulation Number 94 of 2012 concerning Financial Rights and Facilities of Judges Under the Supreme Court is considered to be uncertain, inappropriate, and inconsistent with the position and dignity

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<sup>17</sup> Supreme Court, *Ketua MA : Tidak Ada Tawar Menawar Untuk Independensi Peradilan*, <https://www.mahkamahagung.go.id/id/berita/2325/ketua-ma-tidak-ada-tawar-menawar-untuk-independensi-peradilan>, accessed at June 10, 2021

<sup>18</sup> *Ibid.*

of judges as state officials. Therefore, the Government Regulation Number 94 of 2012 *jo* Government Regulation No. 74 of 2016 was annulled through a material review. The cancellation of the government regulation by considering that the amount of the judge's base salary which is the same as the basic salary of civil servants is contrary to the law and therefore is no longer relevant and must be changed.

Government Regulation No. 94 of 2012 which has been canceled has not been followed up by the government by issuing the latest regulations regarding the provisions on judge salaries.<sup>19</sup> In the changes, namely Government Regulation No. 74 of 2016 judges are still positioned on a par with civil servants.

However, if comparing with other countries, state institutions that carry out the functions of judicial power such as in Sudan have been able to provide high salaries to judges because the judiciary has full independence, from planning to budgeting. Payroll affairs and judge facilities are managed by a special body which is under the control of the Chief Justice of the Sudanese Supreme Court.<sup>20</sup>

c. Provision of facilities and infrastructure for Implementing  
Judicial Powers.

In the exercise of judicial power, facilities and infrastructure are very important to support performance in order to realize the implementation of an independent judicial power. The facilities and infrastructure needed by the Supreme Court are certainly something that can be a tool and support to carry out their duties, namely to carry out the judicial process.

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<sup>19</sup>Supreme Court, *Regulasi Gaji Hakim Belum Jelas, Puslitbang Mahkamah Agung Lakukan Penelitian*, <https://bldk.mahkamahagung.go.id/id/puslitbang-hukum-dan-peradilan/dok-kegiatan-puslitbang/43-puslitbang-kumdil/dok-keg-litbang/1570-regulasi-gaji-hakim-belum-jelas,-puslitbang-mahkamah-agung-lakukan-penelitian.html>, accessed June 11 2021

<sup>20</sup> Hermansyah, *Seputar Ditjen Badilag*, <https://badilag.mahkamahagung.go.id/seputar-ditjen-badilag/seputar-ditjen-badilag/hakim-agung-sudan-anggaran-independen-gaji-kami-tertinggi-226>, accessed June 11, 2021.

Some of the facilities needed for the Supreme Court include information technology that facilitates the adjudication process, ease of making payments for litigants, technical guidance, buildings, facilities and infrastructure to respond to and support the implementation of the Juvenile Criminal Justice System Law and facilities for persons with disabilities in litigation. Of the various needs for these facilities and infrastructure, the Supreme Court currently has them, but there are several other facilities and infrastructure that have not been fulfilled so that it has an impact on the disruption of the implementation of an independent judicial power.

The forms of facilities and infrastructure required by the Supreme Court as recorded in the Strategic Plan of the Supreme Court of the Republic of Indonesia 2020-2024 include the Supreme Court Personnel Information System (SIKEP), ATR applications, e-SKUM, e-Courts, One Stop Service Centers, Training and Education, Buildings, facilities and infrastructure to respond to and support the implementation of the Juvenile Criminal Justice System Act and facilities for persons with disabilities who have litigation in court.

SIKEP is used as a means of storing data and electronic documents. In addition, SIKEP is used as a tool to provide automation of personnel services for all Supreme Court Employees, where geographically the 4 (four) judicial work units under the Supreme Court are located in 34 Provinces to the Regency/City level with communication and transportation difficulties, whose solution must be facilitated so that it is not constrained in terms of providing services for its personnel administration.<sup>21</sup> The ATR application is used as a work application for the completion of court proceedings, and the e-SKUM application as a means of calculating the down-payment of court fees online in 2016.<sup>22</sup>

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<sup>21</sup> *Op Cit*, Secretary of Supreme Court, *Rencana Strategis ...* Page. 32

<sup>22</sup> *Ibid.* Page. 32

The One Stop Integrated Service Center or known as PTSP is a system built by the Supreme Court which is expected to make it easier for people seeking justice to get legal certainty and justice.

Furthermore, the ATR application is an application that is used to transcribe from spoken language to written language. This application is also expected to make it easier for clerks to record the proceedings and reduce disparities in differences to make it easier for judges to make legal considerations. This is because the accuracy of the data or the inaccuracy of manual recording of witness statements and the trial process which results in delays in making the Minutes of the Session (BAS), decisions and case minutes as well as transparency and accountability of the trial process.<sup>23</sup>

In the case that e-SKUM is a system that is used to facilitate public access to register cases in court, the Supreme Court makes an application that makes it easier for the public to determine the amount of down-payment of court fees independently called the e-SKUM application. Determining the amount of down-payment for court fees is often a question for people seeking justice, with this application, the public can calculate for themselves how much down-payment the court fees must be paid without asking for help from court officials to help calculate it, so that public opinion about the high costs in court can be automatically neutralized.<sup>24</sup>

Electronic Court is structured as a means and infrastructure to reduce court costs because the judicial process is carried out electronically, such as summons fees, attendance at court to answer questions, prove and listen to verdicts. With the proliferation of civil cases submitted through e-Court and the implementation of trial examinations using e-Litigation, the Supreme Court must prepare supporting facilities and infrastructure for the implementation of electronic trials.<sup>25</sup>

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<sup>23</sup> *Ibid.* Page 21

<sup>24</sup> *Ibid.* Page 19

<sup>25</sup> *Ibid.* Page 96

Training to be a facility to support the increase in source power apparatus in the environment of the Court of justice. With the distributed technical guidance, it will provide equal rights for all Supreme Court apparatus to gain increased knowledge, especially in the technical field of justice.<sup>26</sup>

Furthermore, the need for buildings as a means to carry out this judicial function in some areas has not yet occupied the building itself, but is still borrowed from the local government for which there is no information technology facility.

In terms of facilities and infrastructure to respond to and support the implementation of the Juvenile Criminal Justice System Act, namely by preparing human resources, facilities and infrastructure to support the Juvenile Criminal Justice System, especially Facilitators, Juvenile Justice Judges and Courts as the last bastion in the process of settling children facing the law in court. However, the information technology facilities and infrastructure for the children's courtroom are not up to standard.

Lastly, regarding facilities for persons with disabilities in litigation, this has not been fulfilled, especially regarding information technology facilities and infrastructure for persons with disabilities.

From the facilities and infrastructure needed by the Supreme Court as described above, almost all of the existing courts under the Supreme Court are currently available, but they are not maximized and evenly distributed.

### **Budgetary Independence of the Supreme Court in the Context of Carrying out the Function of Judicial Power**

The Supreme Court is designated as a state institution that carries out the function of an independent judicial power as stipulated in Article 24 paragraph (1) of the 1945 Constitution. The meaning of an independent judicial power can be interpreted simply as carrying out the function of administering a judiciary to enforce law and justice without

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<sup>26</sup> *Ibid.* Page. 99

being intervened by parties. anywhere. So that all decisions made can actually bring justice to the community.

According to Jimly Asshiddiqie, the concept of independence/independence of judicial power has the characteristics of financial independence, namely independence in terms of its independence in determining its own budget which can guarantee its independence in carrying out its functions- The independence of the Supreme Court in managing the budget can be reflected in several provisions of the laws and regulations that govern it. Below is a table of laws and regulations, whether directly or indirectly, have regulated and determined the direction of the Supreme Court's budget management.

**Table Provision of Law and Regulations Governing Budget of  
 The Supreme Court**

No.	the Terms of the Norm of	the Content of the Norm	Description
1	Article 24 paragraph (1) The 1945 CONSTITUTION	the Power of Justice is a power that is independent to hold the judiciary to enforce the law and justice	Norm is to be footing the Court Supreme to manage the budget for independent so it can run the function of the power of his judgment in the independent, so can't be intervened by parties other.
2	Article 21 paragraph (1) of Law No. 48/2009	Organization, administration, and financial Court of justice	The norm is to give flexibility to the supreme Court the Supreme set/

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	concerning Judicial Powers	and the agency of the judiciary , which is located in the bottom are at the bottom of the power of the Court Supreme.	determine the budget itself.
3	Article 81A of the Act No. 3/2009 concerning State Finance	Budget Supreme Court charged in their budget and expenditure of the state.	The norm is to determine that the allocation of the budget of the supreme Court specified in the state Budget
4	of Article 6 paragraph (1) of Law No. 17/2003 concerning State Finances	the President as the Head of Government holds the power management of the finances of the country as part of the power of government.	The norm this option to set the power management of the finances of the country held by the president. Power management of the financial state of them were given authority to draw up the state Budget.

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4	Article paragraph (2) Law No. 1/2004 concerning the State Treasury	14	Ministry/leader of the institutions composing the documents the implementation of the budget for the ministry state/institution that leads based on the allocation of the budget that is set by the President.	Budget that has been determined by the supreme Court adjusted with the allocation of the budget that is set by the President.
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Budget management as regulated in Article 21 paragraph (1) Law Number 48 of 2009 concerning Judicial Powers stipulates that organizational affairs, administration, including financial matters are under the authority of the Supreme Court. This provision means that the Supreme Court is authorized by law to regulate its budget independently. The budget arrangement independently then according to Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court is included in the APBN in a separate budget item. The preparation of the State Budget as stipulated in Article 6 paragraph (1) of Law Number 17 of 2003 concerning State Finances is under the authority of the president. Furthermore, Law Number 1 of 2004 concerning the State Treasury determines that the budget that has been determined by the Supreme Court independently and is specifically included in the budget items in the APBN needs to be adjusted to the budget allocation determined by the President.

The regulations governing the Supreme Court's budget as described in the table above show that the law governing the Supreme

Court is determined by the Supreme Court to be authorized to manage its own budget, but in the provisions of the law governing state finances, the Supreme Court denies the power of the Supreme Court to manage its budget independently. Thus, the Supreme Court does not yet have independent power in regulating its budget, so that the characteristics of financial independence do not exist in the Supreme Court.

## **CONCLUSION**

There are contradictions in the Supreme Court's budget management arrangements, so the size of the budget still depends on government policies. Therefore, there is still potential for intervention from the government which results in the function of an independent judicial power not being fully implemented.

## **REKOMENDATION**

The laws and regulations governing the Supreme Court's budget need to be amended by harmonizing the rules so that the Supreme Court can prepare its budget independently and independence in exercising judicial power can be realized as mandated by Article 24 paragraph (1) of the 1945 Constitution.

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