

# The Judicial Commission and Institutional Challenges in the Appointment of Judges in Indonesia's Reform Framework

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## Abstract

This paper critically examines the position of the Judicial Commission within Indonesia's post-reform judicial structure, focusing on its constitutional mandate established through the 1999–2002 constitutional amendments. Although initially designed as an independent supervisory body tasked with overseeing judicial behaviour and ethics, the Commission's constitutional authority has been significantly constrained by the legal resistance from the Supreme Court, particularly through lawsuits brought before the Constitutional Court. Central to this study is the Judicial Positions Bill (RUU Jabatan Hakim), which reimagines the procedure of judicial appointments through a collaborative framework between the Supreme Court and the Judicial Commission to encourage judicial independence, accountability, and integrity through a transparent and merit-based selection process. Using a socio-legal and comparative approach, the study advocates for a more inclusive and participatory approach to judicial selection by incorporating public engagements such as civil society, experts, and professionals. The findings highlight the need to strengthen the Judicial Commission's role, emphasising that its involvement in the recruitment process is crucial to tackling judicial corruption and enhancing the integrity of Indonesia's judiciary. This study contributes to the broader discussion on judicial reform in the Global South, emphasising the importance of integrating institutional frameworks with accountability.

**Keywords:** Judicial Commission; Judicial Appointments; Institutional Reform

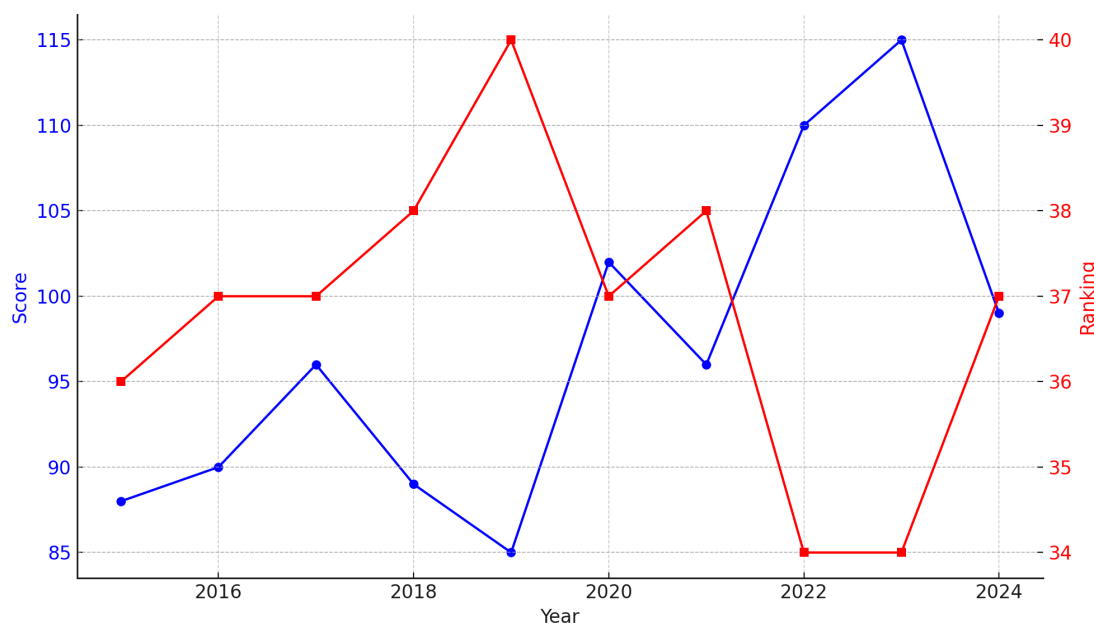
## Introduction

The 1999-2002 constitutional amendments reconfigured judicial power in Indonesia, particularly by establishing *Komisi Yudisial* (Judicial Commission) as outlined in Article 28B of the 1945 Constitution. This institution is crucial in supervising judges' conduct and ethical standards (Subiyanto, 2016). Since its establishment, the Judicial Commission has become a prolonged focal point in discussions about judicial reform, especially its relationship with *Mahkamah Agung* (Supreme Court). Tensions often arise between these two institutions regarding judges' appointments and ethical supervision, reflecting their struggle to interpret constitutional powers (M. R. Hakim, 2018), which is caused by unclear boundaries of the Commission's constitutional powers (Siregar, 2016). Amid these contentious power dynamics, the Judicial Commission is regarded merely as a 'state auxiliary organ' (Eddyono, 2010), which reflects an unequal position within the constitutional framework. Aligning with these issues, the Judicial Positions Bill (*RUU Jabatan Hakim*) once emerged as a source of hope and concern, aimed to regulate the positions, powers, appointment processes, and disciplinary mechanisms to ensure judicial independence (Antara, 2024). It also promises a cooperative framework between the Supreme Court and the Judicial Commission, positioning judges as state officials (Hukumonline, 2020). Although the Bill has been largely neglected, recent developments, including a nationwide judges' strike, suggest renewed legislative interest (Kompas, 2024).

This analysis is grounded in the constitutional framework, relevant legislation, and the Constitutional Court's decision regarding the powers vested in the Supreme Court and the Judicial Commission. This study posits that their relationship is particularly important to be examined through a legal-formal lens and the accompanying political and institutional dynamics. This relationship embodies a contest between judicial independence and public accountability, reflected in the roles of the Supreme Court and the Judicial Commission (Chandranegara, 2019). In addition, adequate supervision of the judiciary while retaining its independence is increasingly critical, especially as post-reform Indonesia grapples with persistent challenges in establishing clean governance and combating judicial corruption (Kristiana & Hutahayan, 2024). The

Commission's authority to supervise judicial behaviour is central to addressing these issues, yet institutional weaknesses and resistance often marginalise its role in judicial reform (Rasyid et al., 2023).

**FIGURE 1.** Corruption Perceptions Index in Indonesia 2015-2024 (TI, 2025)



The dysfunction of Indonesia's judiciary is well-documented, with corruption perception surveys consistently placing it among the most corrupt sectors (TII, 2025). Despite its low ranking, Indonesia has shown general upward scores in its Corruption Perceptions Index (CPI) over the past decade (TI, 2025). Transparency International Indonesia reported the latest result, indicating a return to the early stage of anti-corruption efforts as several indicators reflecting stagnation and regression (TII, 2024). This troubling data has spurred calls for reform, particularly in judicial recruitment processes involving the Judicial Commission. A robust and transparent selection process is critical to fostering a professional judiciary and ethical standards and resisting corrupt influences (Rishan, 2016). The Commission's involvement in judge recruitment is not only constitutionally mandated (Butt, 2023) but also necessary for integrity-based, participatory procedures. Recalibrating the institutional framework between the

Supreme Court and the Judicial Commission within the framework of the Judicial Positions Bill is essential to addressing systemic problems in Indonesia's judiciary.

While existing scholarship has thoroughly examined jurisdictional tensions (Suparto et al., 2024), judicial independence (Butt, 2007), and the institutional rivalries between the Supreme Court and the Judicial Commission regarding judicial supervision and appointment (Hamdan et al., 2022), most analyses emphasise constitutional conflicts rather than practical avenues for collaboration in law reform. This paper presents an alternative perspective by exploring the evolving relationship between these two bodies, notably the transition from antagonism to institutional collegiality, rather than efforts through constitutional amendments (Suparto et al., 2024). In doing so, this study situates the domestic transformation within a broader comparative framework by examining the judicial appointment in South Africa and presenting a reflective benchmark for institutional and normative reform. The central aim of this study is to critically assess how the proposed collaborative framework between the Supreme Court and the Judicial Commission is articulated in the Judicial Positions Bill and whether such a model advances the broader initiative of judicial reform. This study contributes to the growing discussion of constitutional law in Indonesia and the Global South, particularly in efforts to craft the institutional design for realising judicial professionalism and integrity. It also highlights the value of comparative analysis in evaluating the capacity of legal institutions to sustain reform due to corruption and institutional inertia.

This paper comprises four parts of the discussion. First, it briefly explores the concept of judge recruitment adopted in the Judicial Positions Bill. Second, it revisits the role of the Judicial Commission introduced in the constitutional amendments, which is regarded as an alternative institution in the face of increasing judicial corruption. Third, given Indonesia's complex and proximity issues, this section examines the concept of judicial recruitment in South Africa from the establishment of the Judicial Service Commission. Fourth, it proposes the design of institutional relations to the recruitment process within the judicial reform framework.

## Research Method

This study uses doctrinal legal research, which centres on analysing and understanding issues through legal principles, rules, and doctrines established in formal laws in Indonesia, outlined in Law 12/2011, and relevant court decisions. The research process comprises several stages: identifying relevant laws, interpreting them, and analysing their application within a specific legal context. The primary emphasis of this research is on the legal texts and contexts of the institutional powers of the Judicial Commission, as well as other legal instruments associated with this agency, to facilitate an analysis aimed at proposing legal reform. While the study relies on legal texts to analyse legal authority, it also incorporates library-based research by examining legal documents and relevant literature on judicial powers, which is often characterised as qualitative analysis in legal studies. Furthermore, the comparative approach that situates the Judicial Service Commission alongside the Judicial Commission is particularly relevant. These institutions represent judicial-related cases in the Global South, where their respective countries simultaneously experienced important constitutional reforms in the late 20th century: South Africa's transition from apartheid and Indonesia's *Reformasi* to shift from authoritarianism. This approach will provide insight into the potential concept based on the Judicial Service Commission's best practice in bringing South Africa's judicial reform.

## Results and Discussions

### The Concept of Judge Recruitment in the Judicial Positions Bill

The judicial selection process, outlined in the Judicial Positions Bill, can epitomise an effort to enhance the quality and integrity of the judiciary in post-reform Indonesia (Harijanti, 2014). This Bill has re-emerged as a key focus in the national legislative initiative, especially after the 2024–2029 Indonesian House of Representatives expressed its commitment to advancing deliberations on the

Bill (Kompas, 2024). This legislative response to demands voiced by the Indonesian Judges Solidarity (Antara, 2024) reflects a long effort to voice improved welfare and clearer status for judges (Kusworo & Fauzi, 2024). This Bill proposes a framework involving the Supreme Court and the Judicial Commission under a responsibility system (Hukumonline, 2020) so that the Judicial Commission and the Supreme Court can determine judicial formation needs, design selection instruments, and assess judicial candidates. It embodies institutional participation, mirroring the reformist demand for a transparent, objective, and integrity-based recruitment process. In addition, the Bill's concept, which shifts judges to state officials, accentuates the ethical behaviour and accountability inherent to judicial positions (Nurjannah, 2015).

This Bill embodies the long-standing contentious dual roof system. While the Supreme Court holds responsibility for judicial decisions, administrative and financial duties are assigned to the President through the Minister of Justice (Aprillia, 2022). This arrangement is often cited as a reason for the lack of independence among judges in Indonesia, prompting ongoing advocacy for a unified judiciary under the Supreme Court (Rishan, 2019). In a one-roof system, all bureaucratic and financial responsibilities would rest with the Supreme Court (Aprillia, 2022). Aligning with this concept, the Bill introduces substantive prerequisites to ensure the professionalism and independence of judicial candidates. Although no final draft has been agreed upon, discussions have emerged regarding the proposed minimum age requirement of 30 years and a minimum of five years of legal practice (Komisi Yudisial, 2021). These criteria are intended to establish a merit-based mechanism that prevents appointing individuals who lack professional maturity and emotional readiness (Komisi Yudisial, 2021). This approach is complemented by mandatory job analysis and regular projections of judicial needs, signalling a shift from ad hoc appointments to a more planned, data-driven recruitment process. It aligns with the demand for realising accountable and efficient judicial governance (Lubis et al., 2024) and addresses criticisms regarding judges' historically uneven geographic and quantitative distribution (Suara, 2025).

However, the new appointment method may confront the deeply rooted institutional conflict, which has long characterised the contentious relationship between the Supreme Court and the Judicial Commission. The Supreme Court has frequently opposed the Commission's role in supervising judges' behaviour. This situation has been further complicated by the Constitutional Court's decision declaring that the Judicial Commission's supervision of Supreme Court judges and Constitutional Court judges is unconstitutional (Colbran, 2009). This decision was grounded in the argument that Law 22/2004, governing the judge supervision, including both supreme judges and constitutional judges, resulted in legal certainty and was interpreted as interfering with judicial affairs, undermining judicial independence. The Court highlighted that the legislation did not clearly outline the supervision mechanism, identify subjects and objects of supervision, establish a proper basis for such supervision, and misrepresent the relationship between the Supreme Court and the Judicial Commission as checks and balances. This tension is not merely administrative but reflects a discursive struggle between the Supreme Court's claim to judicial independence and the Commission's advocacy for public accountability (Hamdan et al., 2022). This resistance often manifests in contentious arguments to reject the Judicial Commission's recommendations (Komisi Yudisial, 2018).

As political dynamics play a critical role in shaping the direction and success of implementing the Bill, fears of "interference" by the Judicial Commission in the judiciary are often used as arguments to oppose the expansion of the Commission's powers. The ongoing tug-of-war continues as the parliamentary representative seeks to restore the Commission's oversight of constitutional judges (Media DPR, 2023). However, a recent statement from the Judicial Commission indicates that it is no longer responsible for supervising constitutional judges following the Constitutional Court's decision in 2006 (Komisi Yudisial, 2025). Amid these controversies, in Indonesia's often transactional legal politics, initiatives to foster clean and professional judicial governance face challenges from those who benefit from the established institutional status quo. Therefore, resistance to this collaborative design can be



viewed as a legal-technical issue and the broader arena of inter-institutional powers.

In this context, the urgency of the Bill can be viewed as an effort to improve the integrity and accountability of the judicial appointment mechanism. The engagement of the Judicial Commission in the selection process can hinder the power monopoly, which is a strategy for improving accountability and strengthening the legitimacy of judicial institutions. This design can shift the relationship between the Supreme Court and the Judicial Commission from rivalry to more productive collegiality. However, this success largely depends on institutional attitude changes and the political will of decision-makers to prioritise integrity and accountability as the foundational principles in the future development of Indonesia's judicial system.

## **The Judicial Commission as an Alternative Institution**

The 1998 Reform marked a crucial turning point in efforts to improve Indonesia's judicial system, with one of its key demands being eradicating corruption, collusion, and nepotism (Prasisko, 2016). Despite over two decades of reform, corruption remains rampant in Indonesia, including within the judiciary, particularly under the Supreme Court (Subiyanto, 2015). Corrupt practices, collusion, and nepotism within the Supreme Court have become an open secret, deliberately left unaddressed due to the absence of an effective formula to overcome them (Indrayana, 2008). Although widely known, these practices are often overlooked because of systemic weaknesses and ineffective oversight mechanisms (Jawa et al., 2024). Historically, appointing Supreme Court justices grants significant authority to the President, creating opportunities for political interference that threaten the judiciary's independence (Pompe, 2005). Sri Soemantri even described the position of Supreme Court justices as the "political taste of the president," highlighting executive dominance in the formation of the Supreme Court, thereby weakening the principle of separation of powers and causing the judiciary to be subordinated to political power (Taufik, 2014).



Within this context, the effort to realise the Supreme Court as an independent and professional judicial institution is closely intertwined with fundamental reforms in the appointment mechanisms of Supreme Court justices. An independent judiciary can only be established through an open, transparent, and accountable selection process (Suparto et al., 2024). This process should involve multiple institutions to prevent power monopolisation; even the Constitutional Court's decisions to repeal the Commission's supervision highlight the presence of a conflict of interest (Rishan, 2022). This institutional approach reflects the new landscape of adopting pluralism in judicial selection while maintaining integrity by prioritising candidates' competence, track record, and personal integrity as prerequisites to produce judges capable of working professionally and free from corrupt practices.

In retrospect, during the constitutional reforms, the Judicial Commission was established as an independent institution constitutionally equal to the Supreme Court and the CC within the judicial trinity. The Supreme Court, the Judicial Commission, and the Constitutional Court are respectively outlined in Articles 28A, 28B, and 28C of the 1945 Constitution. The establishment of the Judicial Commission represents a structural transformation of Indonesia's judicial system, serving as a regulatory innovation aligning with checks and balances within the judiciary by positioning the Commission not to interfere in the form of oversight as known for other institutions outside the judicial power. Given that its inception manifests reformist demands for a structural overhaul of the judiciary, being an independent institution on par constitutionally with the Supreme Court and the Constitutional Court following the amendments, the Judicial Commission broadens the judicial power architecture, which can be understood as legal innovation. It embodies aspirations for a judiciary characterised by authority grounded in impartiality, transparency, accountability, and insulation from corruption and political interference (Hoesein, 2016). Although the Commission does not exercise judicial powers, its role is important to uphold and maintain judges' dignity and conduct (Hamdan et al., 2022). The importance of the Commission's role asserts the long-standing demand voiced during the *Reformasi* to strengthen the accountability and

integrity of judicial institutions (Rishan, 2019). In other words, it is part of Indonesia's constitutional and legal innovation that introduces an independent institution with external supervisory functions within the judicial framework. External judges fill an institutional void that has long hindered judicial reform despite their role as a critical instrument to limit political and bureaucratic dominance in the recruitment system.

The Judicial Commission embodies the complex interplay of power and resistance within Indonesia's judicial bureaucracy. While institutionally recognised as a key reform mechanism, the Judicial Commission often encounters significant resistance from the Supreme Court and entrenched actors intent on preserving established interests. The most profound resistance was made through the judicial review of specific Judicial Commission Law 22/2004 provisions on the Judicial Commission's authority to supervise judges. This lawsuit brought by 31 Supreme Court judges challenged the expanded definition of 'judge', specifically the inclusion of Supreme Court justices and Constitutional Court judges, and sought this inclusion to be declared unconstitutional by the Constitutional Court (Maladi, 2010). The context was that the Supreme Court refused to cooperate with the Judicial Commission's investigation into corruption allegations involving several of its judges, arguing that the Corruption Eradication Commission (KPK) was already handling the case and, therefore, the Judicial Commission did not need to intervene (Butt, 2023). The Constitutional Court's decision effectively curtails the Judicial Commission's supervisory Scope over the highest judiciary members, substantially limiting its external control role (Lubis et al., 2024). This decision presents a complex dilemma. It affirms judicial independence by shielding judges from external pressures that could compromise their impartiality (Butt, 2023). On the other hand, the decision appears to overlook the deteriorating integrity and performance of Indonesia's judiciary, particularly within the Supreme Court, which has frequently been plagued by corruption and maladministration (Rishan, 2022). The decision weakens institutional accountability and erodes public trust in the judiciary as it eliminates the possibility of independent external oversight over Supreme Court justices and Constitutional Court justices.

Recent studies highlight a conflict of interest within the Constitutional Court in deciding this case (Maladi, 2010), as it reviewed legislation related to its position and powers (Rishan, 2022). The decision also indicates that the Court did not want to be subject to external oversight (Maladi, 2010). In the absence of the Judicial Commission's power to oversee Supreme Court and Constitutional Court judges, several subsequent incidents were linked to judicial corruption—most notably involving the Chief Justice of the Constitutional Court, Akil Mochtar (BBC Indonesia, 2014), and Constitutional Court judge Patrialis Akbar (Detik, 2017). These were followed by a series of ethical violations committed by Constitutional Court judges Arsyad Sanusi (Hukumonline, 2011), Arief Hidayat (Dewan Etik MK, 2016), and Anwar Usman (MK, 2023). Apart from the controversy of supervising the Supreme Court and Constitutional Judges, the Judicial Commission's authority over lower-tier judges remains intact. However, this exception to supervise Supreme Court and Constitutional Court judges illustrates the tension between institutional and political authorities within the judiciary. This reality contradicts the hope that the Judicial Commission will symbolise progress and democratic deepening within Indonesia's judicial institutions (Kristiana & Hutahayan, 2024). This issue has emerged as the Judicial Commission's political and institutional position is frequently perceived as a subordinate auxiliary organ to the Supreme Court and the Constitutional Court (Ayu, 2009), both of which are regarded as the judiciary's principal institutions (Suparto, 2017). This hierarchical disparity fuels institutional tensions and conflicts, particularly concerning the Commission's supervisory reach over judges, including justices of the Supreme Court. The Supreme Court's overt resistance to external oversight results in power struggles and inter-institutional contestations, transcending the administrative disputes and exposing deeper political and cultural obstacles to reform.

From the regulatory perspective, these developments assert the critical challenges in achieving a transparent, accountable and independent judiciary. This aspiration is particularly vital to realise within the context of the *Reformasi* (Subiyanto, 2016). Although the Judicial Commission was designed as an

innovative external oversight body, its operationalisation must contend with entrenched political realities and complex power structures. Accordingly, its empowerment requires a conducive political commitment, adaptive regulatory reforms, and constructive institutional dialogue to surmount resistance and ensure adequate supervision. Such measures are indispensable for the Judicial Commission to fulfil its mandate optimally, uphold judicial integrity, and strengthen public confidence in the judicial system (Rishan, 2022). Furthermore, efforts to strengthen the Judicial Commission have been accompanied by reforms to the judge recruitment system. Previously centralised under the authority of the Supreme Court, the recruitment process has shifted to a joint responsibility between the Supreme Court and the Judicial Commission (Rishan, 2016). This collaborative model reflects an institutional governance innovation that balances authority and accountability among judicial bodies. Under this new system, candidates who pass the joint selection process are appointed with the status of state officials rather than civil servants, thereby allowing for higher standards of integrity and professionalism and greater flexibility in the management of judicial human resources (Aprillia, 2022). Nevertheless, this transformation introduces structural and political challenges, particularly regarding implementing shared authority without generating new jurisdictional conflicts. More broadly, it demands political consistency, genuine commitment to institutional reform, and strengthening legal and procedural frameworks that support inter-institutional cooperation in building a democratic, transparent, and justice-responsive judicial system.

## A Judge Recruitment in South Africa

The Judicial Service Commission (JSC) of South Africa offers a model for constructing a democratic, inclusive, and accountable judicial system, particularly for Global South countries such as Indonesia. However, meaningful comparative reflection requires more than a normative approach, demanding careful attention to the legal-political context of the country in question. In the post-reform era, Indonesia has undergone an institutional expansion that moves beyond the classical Montesquieu's *trias politica*, which traditionally divides the

state into the legislative, executive, and judicial branches. Instead, this expansion includes independent institutions designed to enhance the effectiveness of modern governance (L. Hakim, 2010). One such institution is the Judicial Commission, which was established to safeguard the integrity of judicial power. As noted by Hakim, state organs in contemporary constitutionalism are no longer confined to the three traditional branches but now also encompass alternative bodies created in response to the complexities of modern governmental administration (L. Hakim, 2010).

Despite its constitutional recognition, the Judicial Commission has faced significant limitations in exercising its supervisory functions over Supreme Court justices. Although the Commission is formally granted the authority to participate in the recruitment of Supreme Court judges, much of this power remains concentrated in other institutions—namely, the House of Representatives and the President. In practice, the Judicial Commission is only authorised to nominate candidates, while the House of Representatives selects from these nominees, and the President makes the final appointments. A dynamic follows during the process, allowing room for political interference and threatening judicial independence. In light of these challenges, Indonesia may draw inspiration from best practices from South Africa, which has developed a more transparent and accountable judicial appointment system through its Judicial Service Commission. Nevertheless, this paper recognises that any comparative borrowing should be filtered through Indonesia's distinct political and institutional characters, such as the persistence of executive dominance (Setia Negara et al., 2024), a weak multiparty system (Gammon, 2023), and limited public participation (Gusman & Syofyan, 2023).

South Africa established the JSC in 1994 as part of its post-apartheid institutional transformation. The 1996 South African Constitution, especially Section 178, provides the constitutional basis for the Judicial Service Commission as an independent body separate from executive control, with a robust constitutional mandate (Malan, 2014). This mandate includes the authority to select, appoint, discipline, and remove judges (Malan, 2014). The JSC is also tasked with ensuring that the judiciary operates with integrity,

impartiality, and accountability. Through its transparent selection procedures, the JSC has enhanced public accountability and contributed to the transformation of the judiciary, leading to less public controversy than when the executive controlled such selection processes (Du Bois, 2006). Far from being a mere administrative organ, the Judicial Service Commission has become an institutional pillar supporting a fair and equitable legal system aligned with the values of social justice enshrined in South Africa's democratic constitution.

One of the principal strengths of South Africa's JSC lies in its representative composition, which embodies pluralism and inclusivity. The Judicial Service Commission comprises members from the Constitutional Court, the Supreme Court of Appeal, the executive, a multiparty parliament, legal academics, the legal profession, and civil society (Hoexter, 2017). This structure ensures a balanced and collaborative representation of various interests—both from within the state apparatus and from non-state actors (Pillay, 2017). In contrast to Indonesia's centralised model of judicial recruitment, the Judicial Service Commission reflects a more deliberative model grounded in a robust system of checks and balances. However, the multiparty system in Indonesia, marked by non-ideological coalition but more transactional politics (Ulum, 2020), may complicate efforts to replicate such pluralistic composition, risking institutional deadlock, conflict of interests, and elite capture rather than genuine balance of representation.

The inclusive composition of the Judicial Service Commission demonstrates that the authority to appoint judges should no longer be the exclusive domain of specific institutions such as the President, the House of Representatives, or the Supreme Court, as remains the case in Indonesia's appointment process for Constitutional Court judges. Thus, the JSC does not operate as an instrument of any single institution but as a deliberative forum capable of weighing diverse public interests in judicial decision-making. This institutional design further reinforces checks and balances within South Africa's constitutional architecture. In Indonesia, however, deliberative institutionalism may be hampered by elite interests, a lack of transparency, and limited public engagement in judicial appointments. Any attempt to import the JSC model

would require more foundational reforms in bureaucratic practices and political accountability.

The Judicial Service Commission can also supervise judges, especially regarding their conduct and suitability for office. Section 178 of the South African Constitution outlines that the JSC is responsible for investigating complaints against judges, advising the government on judicial matters, and exercising disciplinary powers (Siyo & Mubangizi, 2015). The JSC may recommend their removal if certain judges are found incapacitated, grossly incompetent, or guilty of serious misconduct, subject to approval by a two-thirds majority in the National Assembly (Oxtoby, 2021). Through these powers, the JSC plays a crucial role in upholding the integrity and accountability of the judiciary. However, any comparable enforcement power in Indonesia would likely pose institutional challenges from within the Supreme Court; therefore, it would require a constitutional amendment, which is a politically arduous task in Indonesia's current legal and political framework.

The Judicial Service Commission conducts judicial selection through a transparent and participatory process. Vacancies for judicial positions are publicly announced, followed by consultations involving judicial bodies and professional legal associations (Tilley & Ndlebe, 2021). These deliberations and decisions are broadcast in the mass media, allowing public observation and scrutiny (Du Bois, 2006). This participatory mechanism not only enhances public trust in the judiciary but also strengthens the substantive accountability of the judicial system. Moreover, the involvement of civil society and the legal community in the selection process has catalysed social transformation within the judiciary, including improved representation of women and marginalised minorities who have historically been excluded from conventional judicial structures. By contrast, judicial appointments in Indonesia tend to be opaque and elite-driven, without sufficient public involvement in the decision-making process that enables access to candidates' professional records. Any move toward transparency and public participation must overcome political inertia, which is relatively challenging.



More than a technocratic institution, the JSC plays a crucial role in South Africa's legal and political landscape. It symbolises national reconciliation and a tangible manifestation of transitional justice, prioritising public inclusion and participation in reconstructing a post-apartheid legal order. From a socio-legal perspective, the Judicial Service Commission functions as a bridge between societal demands for justice and the institutional needs of the state. The South African experience illustrates that judicial reform oriented toward substantive justice requires inclusive institutional design and political will to insulate judicial processes from undue political interference.

For Indonesia, the primary lesson from the Judicial Service Commission is establishing an independent, participatory, and constitutionally grounded judicial institution. The JSC offers an institutional model that could meaningfully enhance the role of Indonesia's Judicial Commission in managing judicial human resources. The powers of selection, oversight, and dismissal of judges should ideally reside in the Judicial Commission, which holds greater independence than the Supreme Court or the President. Nevertheless, replicating the JSC model in Indonesia would require extensive local adaptation, particularly in safeguarding against elite capture and redefining the role of political institutions to align with Indonesia's constitutional and legal constraints.

The JSC model presents a framework capable of reconciling the demand for institutional justice with the realities of a dynamic sociopolitical context. South Africa's experience provides both inspiration and a strategic reference for designing judicial reforms that are inclusive, transparent, and democratic. However, this model must be incorporated not as a rigid blueprint but as a flexible guide to locally tailored institutional innovation. By adopting this approach, Indonesia could move toward a more autonomous, participatory, and democratic judicial system—a critical step in consolidating the rule of law across the Global South. Strengthening the Judicial Commission requires normative reform and structural enhancement, alongside a realistic appraisal of Indonesia's legal culture, power relations and political dynamics, to ensure full authority over judicial selection, supervision, and removal processes.

## **Institutional Relations within the Judicial Reform Framework: A Proposal**

South Africa's experience in establishing the JSC offers a critical lesson for Indonesia in redesigning the institutional relationship between the Supreme Court and the Judicial Commission. In Indonesia, characterising the Judicial Commission merely as an auxiliary organ of the Supreme Court is no longer adequate (Eddyono, 2010), either constitutionally or in light of evolving state practices. Such a subordinative relationship hinders the transformation of the judicial system, which ought to be guided by checks and balances, judicial independence, and public accountability. As such, shifting the paradigm between the Judicial Commission and the Supreme Court from a jurisdictional competition to a strategic partnership grounded in shared responsibility for strengthening institutional integrity is timely. External oversight of judicial conduct, often a source of institutional tension, should instead be framed as an integral component of a collective effort to ensure a clean, professional, and free judiciary from corruption and conflicts of interest. In this regard, a socio-legal perspective is essential. Judicial integrity is not merely a legal-formal issue but is deeply intertwined with public perception, social legitimacy, and trust in the judiciary as a guarantor of substantive justice.

In Indonesia, the limited authority granted to the Judicial Commission in the recruitment of Supreme Court justices, paired with its complete exclusion from the selection of lower court judges, remains a critical flaw in the constitutional design of judicial governance. Neither the Judicial Commission Law nor the Law on Judicial Power reflects a genuine commitment to comprehensive judicial reform. The Commission's role is confined to merely nominating candidates for the Supreme Court, while the final appointment authority rests with the House of Representatives (Savitri, 2013). Compounding this limitation, the Judicial Commission does not select Constitutional Court judges, whose appointments are determined by a power structure and representation involving the House of Representatives, the President, and the Supreme Court (Wantu et al., 2021). These parallel recruitment processes, both

lacking meaningful involvement from the Judicial Commission, create considerable space for political intervention, patronage, and interest-based co-optation (Taufik, 2014)—factors that seriously undermine the independence and professionalism of the judiciary (Walujan, 2023). A regulatory overhaul is urgently needed to address these systemic weaknesses and expand and clarify the Judicial Commission's role as an institutional counterweight in managing judicial human resources. Integrating the functions of recruitment and oversight within a single body would significantly strengthen internal accountability mechanisms in the judiciary.

Institutional cooperation between the Judicial Commission and the Supreme Court in selecting judicial candidates through a co-regulation or joint responsibility model—offers a promising middle ground (Aprillia, 2022). Such an approach enables a form of deliberative institutionalism in which decisions are not unilaterally dominated by one institution but are shaped through inclusive institutional dialogue based on constitutional norms. This model could ease inter-institutional tensions while enhancing the quality of candidate selection, as decisions would be made through transparent and participatory deliberative mechanisms. The Judicial Commission's involvement in the judicial selection process also creates opportunities for civil society and the legal community to participate—stakeholders who have long been excluded from recruitment processes (Muhlizi & SH, 2013). Mechanisms such as public vetting, independent monitoring, and publication of judicial candidates' track records would strengthen public trust and curtail opportunities for nepotism and the buying and selling of judicial appointments. The long-term effect of such reform would be the creation of a judicial ecosystem that is not only technically competent but also morally grounded and socially legitimate.

Accordingly, the relationship between the Judicial Commission and the Supreme Court should no longer be framed in terms of institutional rivalry but rather as a normative collaboration to realise a democratic, independent, and accountable judiciary. Indonesia's judicial institutional reform cannot advance without a fundamental paradigm shift in inter-institutional relations. The South African experience with the JSC offers a compelling foundation for Indonesia to

reconfigure its judicial institutional architecture in a way that is more responsive to socio-political challenges and citizens' demands for justice. Within this reimagined framework, the Judicial Commission and the Supreme Court are no longer adversaries but equal partners in building a judiciary grounded in integrity and justice.

## **Conclusion**

The establishment of the Judicial Commission in Indonesia's post-reform constitutional system represents a significant institutional alternative aimed at strengthening the credibility and accountability of the judiciary through oversight of judicial conduct. As its mandate has evolved, the Judicial Commission has come to encompass supervisory functions and the authority to recruit prospective judges—a practice already adopted in South Africa in response to concerns over judicial integrity. This study affirms that expanding the Commission's mandate is a critical element of judicial reform, particularly in addressing entrenched corruption and nepotism that have long undermined the quality of judicial appointments in Indonesia.

Within the Judicial Positions Bill framework, the concept of shared responsibility between the Supreme Court and the Judicial Commission in the selection process of judicial candidates constitutes a strategic institutional innovation. It reflects a broader reform agenda tailored to the national context. This research reveals that the proposed changes in selection patterns and procedures under the Bill are not merely administrative adjustments but rather a fundamental shift that directly responds to long-standing criticisms of the Supreme Court's exclusive control over judicial appointments. Through this collaborative model, the selection process is rendered more participatory, transparent, and accountable—thereby reducing the risk of corruption and enhancing the quality of human resources within the judiciary.

The significance of this research extends beyond Indonesia's borders, contributing to the broader discourse on judicial reform in the Global South, where many countries grapple with similar challenges in safeguarding judicial independence and integrity. This socio-legal and institutional political approach

highlights that judicial reform must consider the complex interaction between formal legal frameworks, political interests, and social dynamics. Nevertheless, the study is subject to certain empirical limitations, given that the full implementation of the Judicial Commission's recruitment authority in Indonesia remains early and awaits comprehensive regulatory codification. Accordingly, further research is necessary to assess the effectiveness of the Judge Positions Bill, its impact on the institutional culture of the judiciary, and public perceptions thereof. Such research would also enable a broader comparative analysis of judicial selection practices in the Global South, reinforcing contextually grounded and practical policy recommendations for judicial reform.

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## Competing Interest

None.