

Meritocracy and the Politicization of Supreme Court Justice Recruitment: An Evaluation of the Judicial Commission's Independence in 2024

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Abstract: This article examines the independence of the Judicial Commission (KY) in the recruitment process for Supreme Court justices, focusing on the 2024 selection data. In that selection process, 143 individuals applied for the positions of 2 Supreme Court justices in the Civil Chamber, 3 in the Criminal Chamber, 1 in the Religious Chamber, 1 in the Administrative Law Chamber, and 3 in the Special Tax Administrative Law Chamber. Of the 143 applicants, 133 passed the administrative screening. The selection process resulted in 19 Supreme Court justice candidates and 3 ad hoc human rights judge candidates being approved by the KY, as outlined in Announcement No. 11/PENG/PIM/RH.04.06/07/2024. This study examines the constitutional and normative foundations of the KY's authority, the stages of the selection process and mechanisms for ensuring independence, the challenges faced by the KY in maintaining its independence, and an analysis of the distribution of positions that reflects the institutional needs of the Supreme Court. This article also evaluates the institutional relationship between the Judicial Commission, the House of Representatives, and the Supreme Court within the Supreme Court justice recruitment process, and formulates recommendations to strengthen the Judicial Commission's institutional independence.

Keywords: Judicial Commission; independence; Supreme Court justice recruitment; Supreme Court; 2024 selection; ad hoc human rights judges; constitutional law; judicial power.

1. Introduction

The Judicial Commission (KY) is a state institution born out of the spirit of reform to ensure that the recruitment process for Supreme Court justices is conducted transparently, accountably, and free from undue political or socio-economic interference. Established through the third amendment to the 1945 Constitution in 2001 and operationalized through Law No. 22 of 2004 on the Judicial Commission, the KY serves as an independent institution tasked with proposing the appointment of Supreme Court justices and upholding the honor and dignity of judges.

The KY's independence is not merely an institutional slogan. It is a fundamental prerequisite for the realization of a truly independent judiciary, as mandated by Article 24(1) of the 1945 Constitution. If the recruitment process for Supreme Court justices is not conducted by a truly independent institution, there is a risk that the composition of the Supreme Court will reflect the interests of certain political parties or groups rather than judicial competence and integrity—which should be the primary criteria.

The year 2024 presents an opportunity to closely observe the Judicial Commission's (KY) practices in recruiting Supreme Court justices. The KY opened applications for a diverse range of positions: 2 justices for the Civil Chamber, 3 for the Criminal Chamber, 1 for the Religious Chamber, 1 for the Administrative Law Chamber, and 3 for the Special Tax Administrative Law Chamber. A total of 143 people applied, 133 of whom passed the administrative screening. Ultimately, the KY approved 19 Supreme Court justice candidates and 3 ad hoc human rights judge candidates, as announced in Announcement No. 11/PENG/PIM/RH.04.06/07/2024.

This article aims to: first, examine the constitutional and normative foundations of the KY's independence in the recruitment of Supreme Court justices; second, analyze the data and stages of the 2024 selection process; third, to evaluate the challenges faced by the KY in maintaining its independence; fourth, to examine the KY's institutional relationship with the House of Representatives (DPR) and the Supreme Court (MA); and fifth, to formulate recommendations for strengthening the KY's independence.

2. Constitutional and Normative Foundations of the Judicial Commission

A. Constitutional Basis of the Judicial Commission

The KY is an institution explicitly regulated in the post-amendment 1945 Constitution, as one of the most significant institutional innovations of the constitutional reform process. The relevant provisions are:

Article 24B of the 1945 Constitution	The Judicial Commission is an independent body authorized to propose the appointment of Supreme Court justices and possesses other powers to safeguard and uphold the honor, dignity, and conduct of judges.
Article 24A, paragraph (3) of the 1945 Constitution	Candidates for Supreme Court justices are nominated by the Judicial Commission to the People's Representative Council for approval and are subsequently appointed as Supreme Court justices by the President.
Article 24, paragraph (1) of the 1945 Constitution	Judicial power is an independent authority to administer justice in order to uphold the law and justice.

B. Legal Framework Governing the Judicial Commission

Under the 1945 Constitution, the Judicial Commission's authority is operationalized through several laws:

- Law No. 22 of 2004 on the Judicial Commission, as amended by Law No. 18 of 2011, comprehensively regulates the composition, status, authority, duties, and operational procedures of the Judicial Commission, including the mechanism for selecting Supreme Court justices.
- Law No. 14 of 1985 on the Supreme Court, as amended by Law No. 5 of 2004 and Law No. 3 of 2009, sets forth the qualifications for becoming a Supreme Court justice, which form the basis for the Judicial Commission's selection criteria.
- Law No. 48 of 2009 on Judicial Power sets forth the principles of an independent judiciary, which serve as the philosophical foundation for the KY's independence.
- The KY regulations governing the selection process include provisions regarding the selection stages, evaluation criteria, and mechanisms for public transparency.

C. The Nature of the KY's Independence in the Recruitment of Supreme Court Justices

The KY's independence in the recruitment of Supreme Court justices has two interrelated dimensions. First, structural independence: The KY must be free from pressure or intervention by other institutions—whether executive, legislative, or judicial—in carrying out its selection functions. Second, substantive independence: The criteria used in the selection process must be strictly based on legal technical competence, integrity, and professional track record, not on political preferences or group interests.

The paradox facing the KY is that, although it is constitutionally independent in conducting the selection process, the results of its selection must pass through one more stage that is inherently political: approval by the House of Representatives (DPR). This institutional design reflects a compromise between the need for merit-based selection and the need for democratic legitimacy in the appointment of the highest judicial officials. The challenge for the KY is to ensure that the technical selection stage it conducts on its own is truly carried out independently, even though the subsequent stage (in the DPR) carries the potential for politicization.

3. 2024 Supreme Court Justice Selection Data

A. Statistical Overview of the Selection

The 2024 Supreme Court justice selection process provides quite informative data on the state of recruitment for Indonesia's highest-ranking judicial officials:

143 Total Applicants <i>2024 Supreme Court Justice Selection</i>	133 Passed Administrative Screening <i>93.0% of total applicants</i>	19 Supreme Court Justice Candidates <i>Approved by the Judicial Commission and Submitted to the House of Representatives</i>	3 Candidates for Ad Hoc Human Rights Judges <i>Announcement No. 11/2024</i>
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B. Distribution of Positions by Chamber

The distribution of Supreme Court justice positions in the 2024 selection process reflects the diverse institutional needs of the Supreme Court. The positions cover several judicial chambers with varying numbers, as well as the recruitment of ad hoc human rights judges, which follows a separate process:

Chamber/Category	Quota	Administrative Data	Notes
Civil Chamber	2	143 total applicants; 133 passed the administrative screening	The fiercest competition, proportionally, per position
Criminal Division	3	Part of the 133 who passed the administrative screening	Largest position category in the 2024 selection
Religious Chamber	1	Part of the 133 who passed the administrative screening	Limited openings; high competition
Administrative Court	1	Part of the 133 who passed the administrative screening	Specialized expertise in administrative law
Specialized Tax Administrative Court	3	Part of the 133 who passed the administrative screening	Requires expertise in taxation and administrative law
Ad Hoc Human Rights Judge	3 (out of 3 candidates)	Separate recruitment; special human rights process	Selected concurrently with the selection of Supreme Court justices
Total Supreme Court Judge Positions	10 positions	19 candidates passed the KY selection process	A ratio of 1.9 candidates per seat to be submitted to the House of Representatives

An interesting aspect of this distribution is that the Special Tax Administrative Chamber has 3 seats—the same number as the Criminal Chamber. This reflects the increasing volume and complexity of tax disputes handled by the Tax Court as a specialized court under the Supreme Court, meaning the Supreme Court requires Supreme Court Justices with deep specialization in tax law and administrative law.

C. Official Announcement of Selection Results

Announcement of the 2024 KY Selection Results	
Announcement Number	11/PENG/PIM/RH.04.06/07/2024
Issued by	The Leadership of the Judicial Commission of the Republic of Indonesia
Month	July 2024
Number of Supreme Court Justice Nominees	19 candidates were approved by the Judicial Commission (KY) to be submitted to the House of Representatives

Number of Ad Hoc Human Rights Judge Candidates	3 candidates approved for ad hoc human rights judges at the Supreme Court
Total Applicants	143 people registered for the 2024 selection process
Passed the Administrative Screening	133 out of 143 applicants (93%)
Next Stage	Submission of candidate names to the House of Representatives for the fit and proper test

4. Selection Stages and Independence Mechanisms

A. Stages of the KY Selection Process

The KY's selection process for Supreme Court justices is designed in stages to ensure that only the most competent and ethical candidates are approved. Each stage has a different screening mechanism, and collectively, they are designed to safeguard the independence and quality of the process:

No	Stage	Description	Critical Notes
1	Registration & Job Opening Announcement	143 people registered for the 2024 selection process	Open to the public in accordance with KY requirements
2	Administrative Screening	133 out of 143 applicants passed (93%)	Document review, formal requirements, employment history
3	Quality Screening (Scientific Papers & Essays)	Further screening of the 133 candidates	Assessment of substantive competence in the field of law
4	Health and Personality Screening	Follow-up to the quality assessment stage	Medical check-up and psychological assessment
5	Track Record & Integrity	Investigation of employment history and track record	The KY may solicit public input regarding candidates
6	Open Interviews	Interviews open to the public	Transparency and accountability in the selection process
7	Announcement of KY Results	19 Supreme Court justice nominees + 3 ad hoc human rights judge nominees	Set forth in Announcement No. 11/PENG/PIM/RH.04.06/07/2024
8	Submission to the House of Representatives	The KY submits the names of the candidates to the DPR	The DPR conducts a fit and proper test
9	Appointment by the DPR & Swearing-In by the Supreme Court	The DPR elects and appoints; the President swears them in	Supreme Court Justices are officially sworn in and begin serving on the Supreme Court

B. Administrative Selection Stage: Initial Screening

In the 2024 selection process, out of 143 applicants, 133 passed the administrative screening. This administrative pass rate of 93.0% indicates that the majority of applicants met the basic formal

requirements. However, the administrative stage is only the first step; subsequent, more substantive stages will involve stricter screening.

The administrative requirements to become a Supreme Court justice include a number of fairly strict criteria based on the Supreme Court Law and KY regulations:

- An Indonesian citizen who is devout to God Almighty and loyal to Pancasila and the 1945 Constitution.
- Hold a bachelor's degree in law or another degree with a background in law.
- At least 45 years of age.
- Mentally and physically capable of carrying out duties and responsibilities.
- Have at least 20 years of experience as a judge, including at least 3 years as a high court judge (for the career judge track).
- Must never have been sentenced to imprisonment for committing a criminal offense.
- Must never have been subject to a temporary suspension due to violations of the code of ethics and conduct for judges.

C. Transparency as a Guarantee of Independence

One of the most effective mechanisms for safeguarding the KY's independence from external interference is transparency. The KY implements several transparency mechanisms in the selection process:

- Open interviews: The interview stage in the selection of Supreme Court justices is conducted openly and is open to public observation. This allows the public to directly assess the quality and integrity of the candidates.
- Official Announcement: Selection results are officially announced through officially numbered announcements, such as Announcement No. 11/PENG/PIM/RH.04.06/07/2024, which serves as the reference for this study.
- Public participation in track record assessment: KY has established a channel to receive public input regarding candidates currently undergoing the selection process, particularly concerning their track record and integrity.
- Annual report: The KY publishes an annual report that is accessible to the public, providing a comprehensive overview of its performance and the selection processes that have been conducted.

5. Institutional Relations: KY, DPR, and MA

A. Institutional Architecture of Supreme Court Justice Recruitment

The recruitment of Supreme Court justices in Indonesia involves three institutions that play distinct roles within a chain designed to ensure both technical quality and democratic legitimacy. Understanding this architecture is crucial for assessing where the greatest potential threats to independence lie:

Aspect	Role of the KY (Judicial Commission)	Role of the DPR
Technical Recruitment/Selection	The KY has full authority to conduct selection based on competence, integrity, and track record	The DPR has no authority to intervene in the technical selection process conducted by the KY
Nomination of Candidates	The KY submits candidates who have passed the selection process to the DPR for election	The DPR receives the names from the KY—it does not determine who is eligible to be on the list

Fit and Proper Test	The KY is not involved in the DPR's fit and proper test process	The DPR conducts the fit and proper test as the final stage before appointment
Appointment	The KY has no authority to appoint; it only submits nominations	The DPR selects and appoints from among the candidates nominated by the KY
Supervision of Judges	The KY has the authority to monitor judges' conduct and recommend sanctions	The Supreme Court exercises technical-judicial oversight; the KY focuses on ethics and conduct
Accountability	The KY is accountable to the public; the selection process is conducted transparently	The House of Representatives is accountable to the people; fit-and-proper decisions have political implications

B. Vulnerable Point: The DPR's "Fit and Proper" Test

From the perspective of merit-based recruitment independence, the most vulnerable point in the existing institutional architecture is the DPR's "fit and proper" test. Constitutionally, the DPR has a legitimate role in approving Supreme Court justice nominees put forward by the KY. However, in practice, the DPR's "fit and proper" test often becomes a more political arena than a technical-judicial one.

Several issues have been identified in the practice of the DPR's fit and proper test:

- The DPR does not always follow the KY's recommendations: Some candidates who have passed the KY's rigorous selection process have been rejected by the DPR on grounds that are not entirely technical or judicial in nature.
- A process that is not entirely transparent: Although the fit-and-proper test is open to the public, the DPR's evaluation criteria are not always as clear and measurable as the KY's selection criteria.
- Party political considerations: The tendency of DPR members to consider political factors when evaluating Supreme Court justice nominees poses a real threat to the independence of the recruitment process.

C. The Relationship Between the KY and the Supreme Court: A Source of Institutional Tension

The relationship between the KY and the Supreme Court has not always been harmonious. Since its inception, the KY and the Supreme Court have experienced a number of institutional tensions stemming from differing interpretations of the boundaries of their respective authorities, particularly regarding the oversight of judges.

These tensions have indirect implications for the independence of the recruitment process: if Supreme Court justices recruited through the KY process later come to view the KY as an "adversary" in matters of oversight, there is a risk that these strained institutional relations will undermine perceptions of the independence and integrity of the system as a whole. Therefore, stabilizing the KY-MA relationship is a shared interest that must be prioritized.

6. Challenges to the KY's Independence in Recruitment

A. Matrix of Challenges and Implications

The KY's independence in the recruitment of Supreme Court justices faces a series of challenges that need to be systematically identified and mitigated:

Challenge	Description	Level	Implications
House Representatives of	The DPR often rejects candidates nominated by the KY based on political	High	Undermines the KY's independence if the DPR

Intervention in the Fit and Proper Test	considerations rather than competence		does not follow competency-based recommendations
Transparency of Selection Criteria	Not all of the KY's selection criteria have been published in detail and in a measurable manner	Moderate	Reduces public accountability for the selection process
Capacity to Investigate Track Records	The KY has limited resources for in-depth investigations into candidates' track records	Moderate-High	Problematic candidates could potentially be approved if their track records are not thoroughly investigated
Politicization of the Process in the House of Representatives	The House of Representatives' fit-and-proper test risks becoming a battleground for party political interests rather than an assessment of competence	High	Reduces the effectiveness of the merit-based selection process conducted by the Judicial Commission (KY)
Pressure from the Supreme Court	Tense relations between the KY and the Supreme Court regarding judicial oversight could potentially affect perceptions of independence	Moderate	A clear separation is needed between the functions of recruitment and judicial oversight
Gender Representation & Diversity	The composition of successful Supreme Court justice candidates does not always reflect diversity	Moderate	The Judicial Commission needs to consider diversity in the selection process

B. In-Depth Analysis: The Greatest Challenges

1. DPR Intervention in the Fit and Proper Process

The most significant challenge—and the one that most directly threatens the independence of the recruitment process—is the risk that the House of Representatives will reject candidates nominated by the Judicial Commission based on non-technical considerations. In a number of historical cases, the House of Representatives has rejected Supreme Court justice nominees who had passed the Judicial Commission's rigorous selection process, citing reasons that cannot always be transparently verified.

This issue stems from a constitutional design that grants the DPR the authority to approve, not merely to ratify. In situations where the DPR is dominated by a coalition with a strong stake in the composition of the Supreme Court—for example, in cases where the Supreme Court is handling matters involving the interests of a particular party or figure—the risk of the “fit and proper” test being politicized becomes very real.

2. Capacity for Background Investigations

The Judicial Commission (KY) has limited resources to conduct in-depth background investigations on every Supreme Court justice nominee. With 133 candidates who passed the administrative screening in the 2024 selection process, significant investigative capacity is required to ensure that every candidate is truly free of problematic backgrounds.

These limitations could potentially allow candidates with problematic track records to slip through undetected due to the KY's limited investigative capacity. Strengthening investigative capacity—both in terms of human resources and the authority to access information—is an urgent necessity.

The KY's independence in merit-based selection is threatened by the subsequent, politically driven stage in the House of Representatives (DPR). If the DPR consistently selects candidates not based on the KY's competency recommendations but rather on party political calculations, then the KY's efforts to build a

merit-based recruitment system will be in vain. A more robust constitutional mechanism is needed to ensure that the DPR respects the KY's recommendations unless there are substantive, justifiable reasons to the contrary.

7. Ad Hoc Human Rights Judges: Special Recruitment

A. The Unique Nature of Ad Hoc Human Rights Judges

In the 2024 selection process, in addition to 19 Supreme Court justice nominees, the KY also approved 3 nominees for ad hoc human rights judges. Ad hoc human rights judges constitute a category distinct from career Supreme Court justices: they are appointed for a fixed term and specifically serve on the Human Rights Court, which is a specialized court established under Law No. 26 of 2000 on the Human Rights Court.

The recruitment of ad hoc human rights judges has distinct characteristics that set it apart from the general recruitment of Supreme Court justices. First, candidates for ad hoc human rights judges do not need to have a background as career judges; they may come from academia, the legal profession, or human rights activism and possess in-depth expertise in international and national human rights law. Second, the term of office for ad hoc judges is limited (5 years, renewable once), unlike that of Supreme Court justices, who serve until retirement age.

B. Significance of the Recruitment of 3 Ad Hoc Human Rights Judge Candidates

The selection of three ad hoc human rights judge candidates through the same process as that for regular Supreme Court justices reflects Indonesia's need to continue maintaining its capacity to handle cases involving gross human rights violations. Although Indonesia's human rights courts have been in operation for a long time, they still face serious challenges in processing and adjudicating cases of gross human rights violations from the past.

The presence of competent and ethical ad hoc human rights judges is a critical component of Indonesia's transitional justice system. The recruitment of this category of judges by the Judicial Commission (KY) should be conducted with the same—or even higher—standards of independence, given the sensitivity and complexity of the human rights cases they will handle.

8. Recommendations for Strengthening the KY's Independence

A. Constitutional and Regulatory Strengthening

To ensure the KY's independence is more robust in the long term, strengthening measures are needed at the constitutional and regulatory levels:

1. Revision of the KY Law to Clarify the DPR's Rejection Standards: The KY Law and the Supreme Court Law need to be revised to establish clearer and more measurable standards regarding the conditions under which the DPR may reject candidates nominated by the KY. The DPR's rejection should only be based on substantive grounds that are legally justifiable, not solely on political considerations.
2. Strengthening the KY's investigative authority: The KY needs to be granted stronger authority to access information necessary for investigating a candidate's track record, including the authority to request data from relevant agencies (the police, the prosecutor's office, anti-corruption agencies, and the courts).
3. A transparent objection mechanism: If the House of Representatives rejects a candidate nominated by the Judicial Commission, there must be a mechanism requiring the House to provide the reasons for its rejection in writing and make them publicly accessible.

B. Strengthening the KY's Institutional Capacity

Beyond regulatory changes, strengthening the KY's internal capacity is also essential:

1. Enhancing investigative capacity regarding track records: The KY needs to be equipped with personnel possessing adequate investigative expertise, supported by a sufficient budget to conduct in-depth investigations into every candidate on the shortlist.

2. Development of a database system for judicial candidates: The KY needs to build a comprehensive database on the track records of judges who are potential candidates for the Supreme Court, so that when the selection process opens, the necessary information is already systematically available.
3. Strengthening transparency and public communication: The KY needs to raise transparency standards in its communication with the public regarding the selection process and criteria, so that the public can provide more informed and meaningful input.

C. Strengthening Institutional Relations Between the KY and the Supreme Court (MA) and Between the KY and the House of Representatives (DPR)

Institutional tensions between the KY, the Supreme Court, and the House of Representatives are structural issues that need to be addressed systematically:

1. Regular KY–MA Dialogue Forum: A formal and regular dialogue forum between the KY and the MA is needed to discuss issues that have the potential to cause conflicts of authority, including the boundaries between the KY’s oversight of judges and the MA’s technical judicial oversight.
2. KY–DPR Communication Protocol in the Recruitment Process: The KY and the DPR need to develop a more structured communication protocol for the recruitment of Supreme Court justices, including a mechanism for early consultation on the competency requirements that should be prioritized before the selection process begins.
3. Strengthening the KY’s Budgetary Independence: The KY’s independence also depends on its financial independence. A KY budget that is not dependent on the goodwill of other institutions—particularly the Supreme Court—is a prerequisite for genuine institutional independence.

9. Conclusion

Based on the analysis conducted, this article draws the following conclusions:

1. The 2024 Supreme Court justice selection process demonstrates that the KY has conducted a sufficiently transparent and structured recruitment process: out of 143 applicants, 133 passed the administrative screening, and ultimately 19 candidates for Supreme Court justices and 3 candidates for ad hoc human rights judges were approved via Announcement No. 11/PENG/PIM/RH.04.06/07/2024. The distribution of positions across various chambers—including the Special Administrative Court Chamber for Tax Matters—reflects the KY’s responsiveness to the institutional needs of the Supreme Court.
2. The KY’s independence, as a constitutional principle, derives directly from Article 24B of the 1945 Constitution and is a fundamental prerequisite for the realization of an independent judiciary. However, this independence faces serious challenges, particularly from the risk of politicization of the fit-and-proper test in the House of Representatives (DPR), limitations on investigative capacity, and institutional tensions with the Supreme Court.
3. The institutional architecture for the recruitment of Indonesian Supreme Court justices—which involves the KY, the DPR, and the President—creates a trade-off between merit-based selection (the KY’s domain) and democratic legitimacy (the DPR’s domain). The challenge is to ensure that the political stage does not undermine the results of the technical stage conducted by the KY.
4. The recruitment of three ad hoc human rights judge candidates is a crucial part of Indonesia’s efforts to maintain its capacity to handle cases of gross human rights violations. The KY must conduct the selection process for this category of judges with standards of independence that are equal to or higher than those applied in the selection of regular Supreme Court justices.
5. Key recommendations include: strengthening the criteria for the DPR’s rejection of KY nominees, enhancing the KY’s investigative capacity, developing a comprehensive database of judicial candidates, and establishing a more formal and structured dialogue mechanism between the KY and the Supreme Court.

Ultimately, the KY’s independence in recruiting Supreme Court justices is not merely an institutional issue—it reflects the depth of Indonesia’s commitment to the principle of an independent judiciary.

Supreme Court justices recruited through a truly independent and merit-based process represent a long-term investment in the quality of the Supreme Court's rulings and public trust in Indonesia's judicial system as a whole.

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