

Judicial Commission Bill

Endemic corruption within the judiciary continually rates as one of Indonesia's most serious and intractable problems. Created in August 2005, the Judicial Commission was given the formidable task of overseeing the selection of judges and ensuring they conformed to a code of ethics.

However, during its first year it became obvious that the Supreme Court was not prepared to submit to the commission's oversight. All of the recommendations the commission made to the court were duly ignored and the body's Chief Justice, Bagir Manan, refused to respond to the commission's request that he answer bribery allegations.

The relations between the court and the commission eventually reached an all-time low in August 2006, when all 31 court judges brought a case against the commission to the Constitutional Court. Arguing that the commission was unconstitutional because it encroached upon judicial independence, the case was found to be proven and the commission was effectively stripped of its oversight powers.

At the time of this judgment, the head of the Constitutional Court, Jimmly Asshiddiqie, made it clear that his aim was not to weaken the oversight body. Rather, he explained, the law which gave the commission its powers was too vague and needed clarifying so that the commission could work more effectively. He entreated the legislature to revise the law on the commission within six months.

One year later and no such revisions have appeared. As the work of the body founders and the "court mafia" continues business as usual, the *Report* asked the executive director of Indonesian Court Monitoring, Denny Indrayana, to explain the reasons for the hold-up.

"We don't expect to see the revisions passed before the end of this year," Indrayana said. "The problem is that all of the legislators are currently focusing on passing the package of political laws, which will have an impact on the 2009 elections. They may not even get round to looking at the Judicial Commission Law in 2008 either, I fear that next year all their energies will be used to prepare for the elections too."

Although the bill has not yet reached the stage where it is discussed by House Commission III on Justice, Law and Human Rights, there are already two versions of possible revisions—one from the House's Legislative Committee and one from the Judicial Commission itself.

"The two versions are very similar. The only major difference concerns how far the commission should be allowed to analyse the decisions of the courts and what powers it will be given to change any suspect court verdicts," Denny told the *Report*. "Personally, I think the commission should be able to evaluate verdicts and make recommendations of follow-up actions, but it should not be able to annul court decisions," he added.

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One problem remains—to which body should the commission make recommendations? In its first year it made 18 such suggestions to the Supreme Court but all were ignored. Indrayana thinks that instead the commission should advise the President rather than a court that does not want scrutiny or input. However, while this idea has some appeal it could also open the door to executive interference in the judicial system—a problem that has only just begun to ease in the post-Soeharto era.

Whatever the Legislative Committee and the Judicial Commission agree to, Indrayana is certain that once the bill is eventually deliberated in the House Commission III, it will come up against more serious obstacles.

“Commission III is packed with legislators who have a conflict of interest,” he said. “Over 50 percent of those sitting on Commission III are lawyers. They are required by law to be inactive, but most of them still run their law firms from behind the scenes.”

Many of these legislators have important cases before the Supreme Court and are therefore keen to stay on the good side of the court’s justices, Indrayana said. This means they are unlikely to rock the boat when debating the revisions.

And as the Supreme Court judges have proven time and again, they would do away with the Judicial Commission altogether, given half the chance. □