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Can We Find An Ideal Format To Fill Public Positions? A Study On An Autonomous Province In Indonesia

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Abstract

⁸ There are various questions on the mechanism for filling public positions in a democratic country, especially in special autonomous provinces with local political parties. The main question is how local and national parties agree on the public positions; does the party's internal mechanism directly appoint them? This paper will discuss the issues of filling public offices. The author will use a comparative political approach using Germany as an example. Indonesia lacks regulations regarding the election and appointment of public officials, especially at the provincial level. The absence of supporting regulations at the provincial level may lead to conflicts of interest and other conflicts

Keywords: Public Position, National Political Party, Local Political Party

INTRODUCTION

This article will discuss the discourse on filling public positions at the provincial level in regions with special autonomy status. As the sample, the author selected the province of Aceh due to its specificity. One of its unique features is having local political parties that other provinces in Indonesia do not have.

Determination of an indicator as an ideal is relative because it involves a value judgment, which differs in different countries, places, societies, and many more (Rudner, 1953). The definition of an ideal relationship between political parties in the Indonesian and German constitutional systems can be similar, different, or contradictory (Schlosser, 2016) because the term ideal has various meanings.

The author will try to explain, in a simple way, the relationship between political parties in the political system of another country that already has national and local political party systems. It is expected that an ideal pattern of cooperation, according to the author's perspective, will be described based on the principle of law as a tool of political engineering, not politics as a tool of law engineering (Ziegenhain, 2016). A political party must voluntarily submit itself to a mutually agreed legal consensus, regardless of its strength. The consensus can be in the form of a constitution or other regulations that have been transformed into positive law (Hindma¹⁶2017).

The existence of local political parties in Indonesia is legally regulated in Act Number 11 of 2011 concerning the Government of Aceh (UU PA). The Act results from a lengthy negotiation process after the prolonged conflict in Aceh. The norms regarding local political parties regulated in the Act are relatively general; therefore, an implementing regulation is required to describe and interpret the norms practically. As ³²result, the Government Regulation of the Republic of Indonesia Number 20 of 2007 concerning Local Political Parties in Aceh was issued as the implementing regulation (Hamid, 2008).

The drafting of the Government Regulation seems to be carried out in a limited time (it consists of only 22 articles) to accommodate the activities of local parties who wish to participate in elections immediately. However, the lack of academic studies in the form of research and other studies and the fast-paced dynamics of Indonesian politics have caused several substantial issues

absent from the regulation. The issues include finance, internal conflict management, party supervision, management of external relations between regional and national political parties, and many more (Hadiz, 2004).

Given the complex issues of regional parties, this article will only discuss the ideal relationship between national parties, local parties, and the government in filling public positions. The topics to be discussed are (1) What is the ideal relationship between regional dan national parties? (2) How do the interests of coalition parties and the people's interests affect the process of public position appointments? (3) What is the experience of local political parties in Germany? This article is written using a black-letter law approach (legal textual) (Salter, 2007) combined with critical analysis and comparative political approach (F. Ross, 2014) by using Germany as a comparison country.

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The Ideal Relationship Between Local and National Political Parties

As a political party that emerged at the provincial level, local parties are more emotionally connected with their voters. From a political sociology perspective, kinship connections between voter groups are closely related to local parties. Personally, voters are more familiar with their envoys in regional parliaments; therefore, local parties feel closer to the electorate than national parties.

However, local parties cannot easily carry out the local party's Nawa Cita programs. The situation is due to the party's limited political space that cannot accelerate nationally in budgeting, national-level consultations, drafting and ratifying regulations, nominations for governors/regents/mayors, and many more. Therefore, political harmony between the local and national parties is required (Driyartana, 2010).

A clear example of the need for an ideal relationship between local and national parties is in the case of Aceh Qanun Number 3 of 2013 concerning the Aceh Flag and Emblem. The Qanun drew many protests, especially from the central government, for mentioning the use of a flag and emblem that embeds the former Aceh separatist movement (GAM) symbol (Fahrimal, 2016). As previously mentioned, a Qanun has an equal legal force as a regional regulation and, thus, cannot violate higher hierarchical legislation (Dini, 2016). Therefore, its position had to be evaluated from the perspective of higher hierarchical legislation.

Article 1 paragraph (11) of Aceh Qanun Number 3 of 2013 stated that the Aceh flag is a unifying symbol of the Acehnese people, reflecting Aceh's privilege and distinctiveness. The Qanun is based on Article 246 paragraph (2) of Act Number 11 of 2006, which stated that, in addition to the red and white flag, the Aceh government could determine and stipulate a regional flag and symbol that reflects the privileges and specificity of Aceh. Furthermore, paragraph (3) stated that the flag is not a symbol of sovereignty and is not determined as the flag of sovereignty in Aceh.

Thus, it can be stated that the Aceh privilege law allows this region to determine its regional flag and symbol. However, as part of the unitary state of the Republic of Indonesia, a regional flag and symbol are ethically not allowed because Article 35 of the 1945 Constitution stated that the Indonesian flag is red and white. Similarly, Article 1 paragraph (1) and (2) of Act Number 24 of 2009 stated that the flag of the Republic of Indonesia is the red and white flag, and the national emblem is the Garuda Pancasila. However, regional flags and symbols that reflect the region's distinctiveness and a unifying symbol of the local community are not prohibited. However, it is expected that regional flags and emblems do not conflict with the state flag and emblem, which are symbols of sovereignty.

Due to its distinctiveness, Aceh can determine and ratify its regional flag and emblem as long as it is only a unifying symbol and not a sovereignty symbol. However, the current problem is that Aceh Qanun Number 3 of 2013, which is a manifestation of the Aceh Privilege Act, adopted

the flag and emblem that was once used ³⁷ by the Free Aceh Movement (GAM) during the earlier conflict as the symbol of the Aceh province.

The current issue is that the stipulation of the Qanun concerning the Aceh flag and emblem contradicts Article 6 paragraph (4) of Government Regulation Number 77 of 2007 concerning Regional Emblem. The regulation stated that the emblem and regional flag design could not have similarities, in principle or whole, to symbols and flag designs of prohibited organizations, associations, institutions, or separatist movements in the unitary state of the Republic of Indonesia. Thus, the adoption of the GAM flag and emblem as the symbol of the Aceh province in the Qanun violated the relevant Government Regulation. According to the legislative hierarchy, a Qanun's position is below Government Regulation, and lower legislation should not violate the higher ones (Kingsbury, 2006).

One of the reasons for this Qanun issue is the absence of an ideal relationship between local and national parties. As a local party that controlled 49% of the seats (KIP Aceh, 2017) in the Aceh parliament, the Aceh Party did not conduct political consultations with national parties because they felt that they were the sole ruler of the Aceh parliament. This problem has led to a lack of focus on important Aceh future development issues, such as the use of special autonomy funds (Andirfa, 2016), health service improvement, employment provision, improvement and equalization of education quality, tourism, and sharia application. It caused losses for all parties because the term of office was spent on discussing the emblem issues.

The absence of a political coalition at the national level limited the local parties' efforts to fight for their aspirations at the national level. Hence, a special regulation is required to regulate the ideal relationship between local and national parties at the regional level. It is expected that the principle of 'majority deciding all' can be minimized, and the people's future interests can be prioritized (Jeong, 2017).

Filling Public Positions, Between the Interests of the People and Political Party Coalition

After the amendment to the 1945 Constitution, there was a positive trend in which several substantial changes were made regarding the procedure to fill public positions (Noor, 2017: 158). There are certain positions in which their recruitment procedures are implicitly stated in the 1945 Constitution, namely Ambassadors, members of the Indonesian Audit Board, Supreme Court Judges, and members of the Judicial Commission. Other strategic positions, such as members of the Film Censorship Board, members of the Indonesian Hajj Supervisory Commission, members of the Central Information Commission, Chairperson, Deputy Chair, and members of the Ombudsman, Disaster Management Steering Element, and many more positions were also regulated in several other legislation. The details are presented in Table 1.

TABLE 1: THE FILLING OF PUBLIC POSITIONS IN INDONESIA

No.	Position	Provision/Regulation
1	Ambassadors	The 1945 Constitution Article 13 (1) The President appoints ambassadors and consuls. (2) In the appointment of ambassadors, the President considers the opinion of the House of Representatives.*) (3) The President receives placements of ambassadors of foreign nations and in doing so shall consider the opinion of the House of Representatives.*)
2	Members of the	The 1945 Constitution Article 23F paragraph (1)

	Indonesian Audit Board	¹⁰ (1) The members of the Indonesian Audit Board are selected by the House of Representatives with regards to the opinion of the Regional Representative Council of Indonesia and inaugurated by the President.***)
3	Supreme Court Justices	The 1945 Constitution Article 24A paragraph (3) (3) Justice candidates are nominated by the Judicial Commission to the House of Representatives for approval and subsequently inaugurated by the President.*** ²⁷ Act Number 3 of 2009 concerning The Second Amendment of Act Number 14 of 1985 concerning The Supreme Court Article ²² 8 paragraph (1) (1) Supreme Court Justices are appointed by the President from candidates nominated by the House of ¹³ representatives. Act Number 48 of 2009 concerning Judiciary Article 30 paragraph (2) ⁶ (2) The supreme court justices, as referred to in paragraph (1), are selected by the House of Representatives from candidates nominated by the Judicial ²⁸ Commission. Act Number 5 of 2004 concerning The Amendment of Act Number 14 of 1985 concerning the Supreme Court Article ²² 8 paragraph (1) (1) Supreme Court Justices are formally appointed to office by the President from candidates nominated by the House of Representatives.
4	Members of Judicial Commission	The 1945 ¹⁷ Constitution Article 24B paragraph (3) (3) The members of the Judicial Commission are appointed and dismissed by the President with the approval of ¹¹ the House of Representatives.***)
5	Members of the General Election Commission	Act Number 15 of 2011 concerning The General Election Organizer Article 15 (2) ¹³ The House of Representatives selects the General ¹¹ Election Commission candidates based on the result of a fit and proper ¹¹ test.
6	Members of the General Election Supervisory Agency	Act Number 15 of 2011 concerning The General Election Organizer Article 89 (2) ¹³ The House of Representatives selects members of the General Election Supervisory Agency based on the result of a fit and proper test.
7	⁴⁵ Head of the State Intelligence Agency	Act Number 17 of 2011 concerning Intelligence Article 36 (1) The Head of the State ³ Intelligence Agency, as referred to in Article 35, is appointed and dismissed by the President after obtaining an opinion from the House of Representatives of the Republic of Indonesia.

8	Members of the Board of Commissioners of the Financial Services Agency	<p>Act Number 21 of 2011 concerning The Financial Services Agency Article 11</p> <p>(1) The members of the Board of Commissioners, as referred to in Article 10 paragraph (4) letter a to letter g, are selected by the House of Representatives based on candidates nominated by the President.</p>
9	Members of Amil Zakat National Agency	<p>Act Number 23 of 2011 concerning Zakat Management Article 10</p> <p>(2) The Amil Zakat National Agency community members are appointed by the President based on the Minister's nomination after obtaining an opinion from the House of Representatives of the Republic of Indonesia.</p>
10	Supervisory Board of the Social Security Administrative Body	<p>Act Number 24 of 2011 concerning The Social Security Administrative Body Article 30</p> <p>(3) The House of Representatives of the Republic of Indonesia select members of the Supervisory Board from elements of Workers, Employers, and community leaders, as referred to in paragraph (2), no later than 20 (twenty) working days since the date of receipt of the nomination from the President.</p>
11	Members of the Film Censorship Board	<p>Act Number 33 of 2009 concerning Films Article 64 paragraph (3)</p> <p>The President appoints the members of the Film Censorship Board after consulting the House of Representatives.</p>
12	Members of the Indonesian Hajj Supervisory Commission	<p>Act Number 13 of 2008 concerning The Organization of Hajj Article 16</p> <p>The Indonesian Hajj Supervisory Commission members are appointed and dismissed by the President based on the Minister's nomination after obtaining an opinion from the House of Representatives.</p>
13	Members of the Central Information Commission	<p>Act Number 14 of 2008 concerning Disclosure of Public Information Article 31 paragraph (1), (2), and (3)</p> <p>(1) A total of 21 (twenty-one) member candidates of the Central Information Commission, the result of recruitment, as referred to in Article 30 paragraph (2), are nominated by the President to the House of Representatives of the Republic of Indonesia.</p> <p>(2) The House of Representatives selects the members of the Central Information Commission through a fit and proper test.</p> <p>(3) The members of the Central Information Commission that the House of Representatives has selected are then inaugurated by the President.</p>

14	Chairperson, Deputy Chair, and Members of the Ombudsman	Act Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia Article 14 The House of Representatives selects the Chairperson, Deputy Chair, and Members of the Ombudsman based on the President's nomination.
15	Disaster Management Steering Element	Act Number 24 of 2007 concerning Disaster Management Article 14 paragraph (3) (3) The members of the steering element, as referred to in paragraph (2) letter b, are selected through a fit and proper test conducted by the House of Representatives of the Republic of Indonesia.
16	Members of the National Energy Council	Act Number 30 of 2007 concerning Energy Article 13 paragraph (2) (2) The members of the National Energy Council, as referred to in Article 12 paragraph (5) letter b, are selected by the House of Representatives.
17	Members of the Witness and Victim Protection Agency	Act Number 13 of 2006 concerning Witness and Victim Protection Article 23 paragraph (1) (1) Members of the Witness and Victim Protection Agency are appointed by the President with the approval of the House of Representatives.
18	Members of the Indonesian Audit Board	Act Number 15 of 2006 concerning the Audit Board of the Republic of Indonesia Article 14 (1) The members of the Indonesian Audit Board are selected by the House of Representatives with regards to the opinion of the Regional Representative Council of Indonesia.
19	Governor, Senior Deputy Governor, and Deputy Governor of Bank Indonesia	Act Number 3 of 2004 concerning the Amendment of Act Number 23 of 1999 concerning Bank Indonesia Article 41 paragraph (1) (1) The Governor, Senior Deputy Governor, and Deputy Governor are proposed and appointed by the President with the approval of the House of Representatives.
20	Judicial Commission	Act Number 22 of 2004 concerning the Judicial Commission Article 27 paragraph (1) (1) The members of the Judicial Commission are appointed by the President with the approval of the House of Representatives.
21	Commander of the Indonesian National Armed Forces	Act Number 34 of 2004 concerning the Indonesian National Armed Forces Article 13 paragraph (2) (2) The Commander, as referred to in paragraph (1), is appointed and dismissed by the President with the approval of the House of Representatives. Act Number 3 of 2002 concerning the National Defense Article 17 paragraph (1) (1) The President appoints and dismisses the Commander with the approval of the House of Representatives.
22	Chief of the	Act Number 2 of 2002 concerning the Indonesian

	Indonesian National Police	National Police Article 11 paragraph (1) and (2) (1) The Chief of the Indonesian National Police is appointed and dismissed by the President with the approval of the House of Representatives. (2) The proposal to appoint and dismiss the Chief of the Indonesian National Police is submitted by the President to the House of Representatives accompanied by the justifications.
23	Members of the Child Protection Commission	Act Number 23 of 2002 concerning Child Protection Article 75 paragraph (3) (3) The Commission members, as referred to in paragraphs (1) and (2), are appointed and dismissed by the President after obtaining an opinion from the House of Representatives of the Republic of Indonesia for 3 (three) years term of office and can be reappointed for other term of office.
24	Head of the Corruption Eradication Commission	Act Number 30 of 2002 concerning the Corruption Eradication Commission Article 30 paragraph (1) (1) The Head of the Corruption Eradication Commission, as referred to in Article 21 paragraph (1) letter a, is selected by the House of Representatives of the Republic of Indonesia based on the candidates nominated by the President of the Republic of Indonesia.
25	Members of Indonesian Broadcasting Commission	Act Number 32 of 2002 concerning Broadcasting Article 10 paragraph (2) and (3) (2) The Central Indonesian Broadcasting Commission members are selected by the House of Representatives of the Republic of Indonesia, while the Regional Indonesian Broadcasting Commission members are selected by the Provincial House of Representatives, based on the community's proposal through a public fit and proper test. (3) The Central Indonesian Broadcasting Commission members are appointed administratively by the President based on nomination from the House of Representatives of the Republic of Indonesia, while the Regional Indonesian Broadcasting Commission members are appointed administratively by the Governor based on nomination from the Regional House of Representatives.
26	The Supervisory Board of the Radio of the Republic of Indonesia and the Television of the Republic of Indonesia	Act Number 32 of 2002 concerning Broadcasting Article 14 paragraph (5) (5) The supervisory board of the Radio of the Republic of Indonesia and the Television of the Republic of Indonesia is appointed by the President based on the nomination from the House of Representatives of the Republic of Indonesia; or by the Governor, Regent, or Mayor for local Public Broadcasting Institutions based on the nomination from the Regional House of Representatives, after a transparent fit and proper test based on the inputs from the government and/or

		community.
27	Head of Oil and Gas Implementing Agency	Act Number 22 of 2001 concerning Oil and Natural Gas Article 45 paragraph (3) (3) The Head of the Implementing Agency is appointed and dismissed by the President after consulting with the House of Representatives of the Republic of Indonesia, and in carrying out his duties is responsible to the President.
28	Chairperson and Members of the Committee of Oil and Gas Regulating Agency	Act Number 22 of 2001 concerning Oil and Natural Gas Article 47 paragraph (3) (3) The chairperson and members of the Regulating Agency Committee, as referred to in paragraph (1), are appointed and dismissed by the President after obtaining approval from the House of Representatives of the Republic of Indonesia.
29	Ad Hoc Supreme Justice	Act Number 26 of 2000 concerning the Human Rights Court Article 33 paragraph (4) (4) The ad hoc Supreme Justices are appointed by the President as the head of state based on the nomination from the House of Representatives of the Republic of Indonesia.
30	The Members of the National Commission of Human Rights	Act Number 39 of 1999 Article 83 paragraph (1) (1) Thirty-five members of the National Commission of Human Rights are selected by the House of Representatives of the Republic of Indonesia based on the nomination from the National Commission of Human Rights and inaugurated by the President as the head of state.

Source: <http://setkab.go.id/kewenangan-pengangkatan-pejabat-sejak-era-reformasi/>

The table above shows that the role of the President as an executive appeared to be highly dominant; thus, at a national level, the public positions, especially the ministerial-level positions and other strategic positions, are filled by national parties in coalition with the election-winning party. Experts in their fields sometimes fill the public positions; however, coalition members can also be appointed. The justification for this policy is to stabilize political power, especially in parliament, and minimize the opposition power. It means that all coalition members must obtain one ministerial position; the remaining is then handed over to someone else.

The procedure to fill public positions, as previously mentioned, has its advantages and disadvantages. The advantages are faster appointment procedure; thus, accelerating the prepared work program, and less budget for the selection process for public officials. However, this procedure also has a fundamental disadvantage if the appointed public official does not understand the field of responsibility. The situation worsens if they do not understand the technical problems of implementation at a general level. This condition may be detrimental to programs that have been previously designed. Planned corruption arranged by the subordinates can also happen, which is even more fatal (Yahya, 2016).

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The phenomenon of filling public positions at the national level also occurs at the provincial level. The difference is only a matter of location. Targeted public positions at the national level are ministries and State-Owned Enterprises (BUMN), while at the provincial level are heads of offices and Regional Owned Enterprises (BUMD). The recruitment procedures are relatively similar. The regional party officials will automatically decide which public officials will be elected without a selection process and competency test in a province with local parties that win the general election. This situation allows fast changes and mutations of public officials (Kompas, 2017).

According to several existing regulations, the recruitment process of structural officials at the provincial is closely related to staffing regulations (Peraturan Pemerintah, 2003), i.e., a specific position can only be filled by someone having a certain rank and class. Therefore, if no one meets the rank and class requirements, regional leaders face the difficult task of selecting officials who meet the rank and class requirements but do not have a sufficient performance capacity. The situation is likely to occur in newly created regencies or provinces. In order to solve the problem, public officials with good performance can be brought in from other regions while still prioritizing the due diligence test for the candidates.

The above conditions are situational cases and do not always occur. If there are several potential candidates for office, it is necessary to conduct a due diligence test by examining their track records. Therefore, a special regulation is required to regulate governance at the provincial level, especially regarding the election of public officials. The regulation also regulates the limits of local and national parties' involvement in selecting public officials at a provincial level.

The Experience of Regional Parties in Germany

For the comparative constitutional law approach, the author used Germany as a sample. Germany was selected because the author has made study visits to several cities in Germany, such as Göttingen, Frankfurt, and Berlin, which are the locations of the German Parliament, and Karlsruhe, the location of the German Constitutional Court. Furthermore, local parties in several states in Germany, with their respective ideologies, are rapidly growing (Hochstadt, 2016).

Germany adopted a multi-party system (Beck, 2016), and in 2017, the Bundestag (the German Parliament) had representatives from 14 national parties. The Christlich Demokratische Union Deutschlands (German Christian Democratic Union) party, which Angela Merkel currently leads, won a majority in the 2013 election. Among the 14 parties, a unique party, Piratenpartei Deutschland (German Pirate Party), adopted pirate politics and social liberalism as their ideology. This party is currently led by Stefan Körner (Baldini, 2016).

In addition to having national parties, Germany also adopts a local party system spread across several states, e.g., Südschleswigscher Wählerverband in the state of Schleswig-Holstein, Bürger in Wut in the state of Bremen, and the Brandenburger Vereinigte Bürgerbewegungen/Freie Wähler in the state of Brandenburg. Based on the election record, these local parties have never won an election in their state. They only hold a minimum number of seats in the state parliament, ranging from one to three seats. The local parties experienced difficulties in attracting the voters who are highly loyal to national parties that have dominant votes, such as the Christlich Democratic Union Deutschlands (CDU), Sozialdemokratische Partei Deutschlands (SPD), and Christlich-Soziale Union in Bayern (CSU) (Tosun, 2016).

The above facts cause difficulties for local parties to bargain for certain public positions, especially for important positions such as Mayor or Governor. Based on the author's observation, the public positions in these states are filled through direct appointments by the winning party in that state. The mechanism can be carried out in Germany because the state life has been running using systems and mechanisms of checks and balances that have been tested for decades. Thus, deviations in the form of abuse of authority are unlikely to occur.

The fact shows that the existence of local parties is only a manifestation of freedom of association, assembly, and politics as regulated in the German constitution. The German policy, which does not adhere to a winner-takes-all system (Attewell, 2001), as is the case in America, has allowed local parties to thrive; therefore, the voice of political democracy can be channeled through these local parties. Meanwhile, in America, local parties can disappear rapidly with a winner-taking-all system because all votes from small parties are taken by big parties, such as Republicans and Democrats, who are regular winners of the election (Balliet, 2016).

CONCLUSION

The term 'ideal' has various standards and perspectives; therefore, it is difficult to draw a reference to state something is ideal or not. However, based on the analysis, the author argues that in the context of the relationship between national and local parties in filling the public office, the 'ideal' is the existence of legal certainty and legal compliance to a consensus that has been agreed upon appointing public positions.

Several public positions have been regulated in the 1945 Constitution and other legislation, including staffing regulations, considering certain ranks and class requirements for certain positions. However, these arrangements remain general; specific arrangements are still needed for the appointment of public officials at the provincial and regency levels. Some provinces conduct a due diligence test, but other regions conduct a direct appointment system.

For uniformity and consistency, regulations related to regional public positions are needed. Therefore, the principle of a sophronize person for a sophronize position can be realized by prioritizing professional, moral-religious, and corruption-free principles.

Furthermore, Indonesia still has equally important tasks regarding their local party system, such as increasing understanding of the Indonesian political system, the principle of obedience to the law, party conflict resolution mechanisms, and sound political education. The tasks are necessary considering the young local party system in Indonesia. Another problem is the local party monitoring system that the Governor has carried out. The system may cause difficulties for regional parties to develop because the Governor's supervision can be very subjective, especially for local parties that are not part of the coalition of the Governor in office.

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