

THE RECONSTRUCTION OF PROGRESSIVE LAW-BASED BUREAUCRATIC LEGAL CULTURE OF HEALTH CARE SERVICES

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Abstract: Bureaucratic legal culture in health care services is extremely important. The expected bureaucratic legal culture is the one that is fair for the public so that the healthcare services can satisfy and be accepted by the public. The importance of bureaucratic legal culture in health care services becomes the reason why this research is done. The proposed research questions for the study on bureaucratic legal culture in health care services for mothers and babies are: (1) How is the current bureaucratic legal culture in health care services? (2) Why hasn't the current bureaucratic legal culture reflected the sense of justice for the people? (3) How should the ideal construction of progressive law-based bureaucratic legal culture in the health care services be to reflect the sense of justice for the people? This is qualitative research, which uses synergy between constructivism paradigm and a socio-legal approach. To reveal the practice of bureaucratic legal culture in the health care services, some theories of symbolic interaction, legal culture, bureaucratic, state administration, and power of authority are used. The participants of the study are determined through a purposive sampling method. The data gathering method is done through interviews, focus group discussions, and participant observation, which is analyzed by using an interactive method. This research showed that the bureaucracy in health care services applied Weberian and Marxian's models, which influenced the bureaucratic legal culture, resulted in the practice of health care services. The community's rights to attain fairness in health care services were ignored because of the economic and power factors that were in line with paternalistic and patron-client cultures, as well as the legal factor that did not side to the disadvantaged community and the people in the border areas. The principles of progressive law had been applied but they had not been understood thoroughly and done consistently to form a bureaucratic legal culture in health care services. Therefore, the bureaucratic legal culture in health care services should be reformed by using the principles of progressive law.

Keywords: Bureaucratic Legal Culture, Health Care Services, and Progressive Law

Introduction

Health care service is one of public services, that gains special attention from various parties, including practitioners, academicians, as well as public service and justice observers because the health care services in Indonesia are considered so complicated, procedural, ineffective, inefficient, and annoying. (Achmad Ainur Rohman, et. al..2010). It is proven by the fact of the low level of public services done by the bureaucracy, which is ranked in the second place after India in the efficiency of public services and foreign investment (Political and Economic Risk Consultancy (PERC), 2010). Similar finding is also found in the research results done by *Governance Assessment Survey*, which shows that public access in health care, education, and investment sectors are still low (Juniarso Ridwan and Achmad Sodik Sudrajat, 2009).

Although health care services as the part of public services become the authority of the regional government, (the amendment of the law No 32 Year 2004), but the services are still far from satisfactory to the community (Ratminto and Atik Septi Winarsih, 2010). The discrimination in health care services is deeply felt by the poor. They have no other option except using the government facilities of community health centers (Puskesmas) and regional public hospitals. To increase health care services for the public, decentralization policy has been issued. However, the MDGs target, especially to increase the health of mothers and babies, has not been met. This condition highly influences the attempt to increase Human Development Index (The Working Group of Mothers and Children Health of Medical Faculty of Gadjah Mada University, 2015).

Many researchers have been done to find out the causes of the low quality of health care services in Indonesia, including the research on bureaucratic culture, (Erwan Agus Purwanto, 2009) especially in association to the failure to implement some regulations governed by the law that is caused by the current legal culture (Esmi Warassih, 2011). Therefore, the aspect of bureaucratic legal culture in health care services is considered as the factor that significantly influences the quality of health care services so that further examination is needed.

The Focus of The Study and Research Problems

This research is focused on the reconstruction of progressive-law-based bureaucratic legal culture in health care services for mothers and babies in the attempt to reduce the mortality rate of mothers and babies. The focus of this study is done with several considerations, such as: (a) the government bureaucracy is a central and important factor in health care services, (b) the bureaucratic legal culture is so urgent to be examined because there is not any single research done in this field and also it can fasten the effort to reform the bureaucracy in Indonesia, (c) the focus of serving mothers and babies has a close relation with the effort to deal with the failure of Indonesia to reach the 2015 MDGs target and the mortality rates of mothers and babies in Sambas Regency is increasing, so it highly influence the Human Development Index in this regency, and (d) progressive law is said to be a means to reconstruct the bureaucratic legal culture in health care services because some of its principles state that progressive law is sided to the people and justice.

Considering the above backgrounds and focus, the problems of this research are: (a) How is the current bureaucratic legal culture in health care services? (b) Why hasn't the current bureaucratic legal culture reflected the sense of justice for the people? (c) How should the ideal construction of progressive law-based bureaucratic legal culture in the health care services be to reflect the sense of justice for the people?

Research Process and Locations

This is a qualitative research, (Lexy J. Moleong, 2012) on progressive law-based bureaucratic legal culture. Because this research examines the legal aspect viewed from social science perspective, the approach used in this research is socio-legal approach with constructivism paradigm and critical paradigm (Shidarta, 2012).

This research is done in the Community Health Centers and Public Hospitals in Sambas Regency of West Borneo. The choice of the research locations is based on several considerations. First, Sambas Regency is the only region located in the border area of Indonesia and Malaysia (Serawak), which make this area has unique or special characteristics. The focus of development in the border line area is closely related to the third NAWACITA policy, which is to develop Indonesia from the border areas by strengthening the regions and villages in the frame of the unitary state. In addition, the border areas should be developed in relation to the ASEAN Economic Community (AEC) which has been started on 31 December 2015, in which ASEAN becomes a single market entity and a united production base so that the flow of goods, services, investment, capitals, and skilled workforce become free. This condition is an opportunity as well as a challenge that should be addressed by Indonesia.

Sambas Regency is one of the pilot project areas of bureaucracy reform in Indonesia, which is specified in the Minister of State Administration and Bureaucracy Reform's Regulation Number 96, Year 2013 on the Determination of Pilot Project in Bureaucracy Reform in the Local Government. As a pilot project, it is expected that the goals of the bureaucracy reforms, especially in public services, can satisfy the community.

The Human Development Index of Sambas Regency is the lowest in West Borneo although there are 2 Public Hospitals—the regency in West Borneo with the highest number of public hospitals. The mortality rate of the mothers and the babies as one of the indicators of Life Expectancy Rate is increasing, in which the mortality rate of the mother increased from 15 cases (2011) to 17 cases (2012), 15 cases (2013), 13 cases (2014), and 21 cases (2015). On the other hand, the mortality rate of the babies increased from 98 cases (2012) to 108 cases (2013), 111 cases (2014), and 114 cases (2015)) (Sambas Regency Public Health Office, 2015).

In addition, it is recorded that the delivery process helped by traditional birth attendants (TBAs) are still high, which is 27.25% (2011) 34.28% (2012), and 20.08% (2013). Moreover, only 55.98% of the villages in Sambas have easy access to hospitals, 87.77% of the villages in sambas have easy access to community health centers, and 77.17% of the villages have easy access to doctors' services (Statistic Bureau of Sambas Regency 2014).

The Construction of Bureaucratic Legal Culture in Health Care Services

The Levels of Health and Health Care Services

The case of mothers' mortality decreased at the beginning, which was 11.7% or 17 cases in 2012 becomes 15 cases in 2013 and decreased by 15.4% or 13 cases in 2014. However, this number increased significantly in 2015 to 21 cases. Based on WHO criteria, 13 cases of mother's mortality ratio (MMR) out of 10,436 cases, or about 120 MMR per 100,000 live births was considered lower than West Borneo's MMR in the same year, which was 240 MMR per 100,000 live births and the national MMR of 259 per 100,000 live births (Public Health Office of West Borneo, 2015). Meanwhile, baby's mortality rate (BMR) in Sambas increased from 98 cases (2012) to 108 cases (2013), 111 cases (2014), and 114 cases (2015) or about 12 BMR

from 1,000 live births. Although the BMR in Sambas Regency tended to increase each year but compare to the BMR in West Borneo (31 per 1,000 live births) and national BMR in 2012 (32 per 1,000 live births) the number is considered lower based on WHO criteria, which is less than 20 per 1,000 live births.

From the secondary data analysis, it is understandable that there has been decreasing number of Minimum Standard Service (MSS) in the public health because from 22 indicators, only 10 indicators that could be attained in 2013. This number, however, is better than the achievements in 2012, which were 8 indicators. In 2014, only 5 indicators were reached. The number of pregnant mothers who attended health care services was targeted to reach 95%, but the reality was only 41% (2012), although increases to 95.97% (2013) and decreased again to 90.98% (2014). The scope of treated midwifery complications that was targeted to reach 100% was only attained for 70% (2012), 76.02% (2013) and 76.11% (2014). In addition, the scope of childbirths which are assisted by medical professionals that was targeted to reach 90% could be reach at the beginning, which was 92.20% (2012). However, this number decreased to 91.46% (2013) and 86.33% (2014). The percentage of childbirths which was assisted by medical professional in urban areas is 90.5% (2012) and 92.8% (2014), whereas in the rural areas, almost 90% of the entire rural areas in sambas only reached 59.1% (2012) and 67.8% (2014). The post labor services, which were targeted in MMS to reach 90% had never been realized, which was only 86% (2012), 86.88% (2013) and 83.12% (2014). Similarly, the scope of nonatus with treated complications which was targeted to reach 85% had also never been realized and even far from the target, which was only 58% (2012), 56.01% (2013) and 51.55 (2014). The scope of the babies' or infants' visit to the health care services which was targeted to reach 94% had also never been reached, which was only 63% (2012), 82.52% (2013) and 84.41% (2014). The service given to toddlers was still far from the target of 95%, which was only 32% (2012), 44.68% (2013) and 43.38 (2014). Worse, the scope of the supplementary food to breast milk for babies of 6-24 months old was not attained, which was 0% (2012), 81.22% (2013), and 0% (2014). Only the scope of assisting toddlers with malnutrition that reached the target of 100% in the last three years.

Considering the data above, it can be concluded that the health care services for mothers and babies/children in Sambas Regency in the last three years were far from satisfactory although a policy on Financial Management for Regional Public Services (PPK-BLUD) for public hospitals had been applied to Pemangkat Public Hospital and Sambas Public Hospital since 2012 and to 27 (out of 28) Community Health Centers in Sambas regency since 2013. In addition, some other policies have also been applied, including:

- 1) The Acceleration of Human Development Index of Sambas Regency since 2012-now.
- 2) The Establishment of Bureaucracy Reform Roadmap with the Regent's Regulation Number 35, Year 2013 which was amended into Regent's Regulation Number 43, Year 2014 on Bureaucracy Reforms Roadmaps year 2015-2019. In addition, there is also a determination of Sambas Regency as a Pilot Project of Bureaucracy Reforms in the Regional level through the Minister of State Apparatus and Bureaucracy Reform Number 96 Year 2013.
- 3) The establishment of Sambas Regent's Regulation Number 44 Year 2012 on Safe Labor, Early Breastfeeding Initiative, and Exclusive Breastfeeding.
- 4) Pink flag installation in every house that has a pregnant mother in it.
- 5) Small workshops in district and regional level that are held regularly, which involve several components in the society.
- 6) Partnership with village midwives and TBAs to reduce the mother's mortality rates and to care for the infants.

- 7) Recruiting Scholars to assist the acceleration of Human Development Index (SP₃ IPM) to be located in every village in Sambas Regency in order to record the data, analyze, and plan prioritize programs in each of the village to accelerate the HDI in the village.
- 8) Determining several Community Health Centers for Basic Obstetric and Neonatal Emergency Services (PONED) and Public Hospitals for Comprehensive Obstetric and Neonatal Emergency Services (PONEK) to increase the labor services in emergency situations.
- 9) Forming multi stakeholder forum (MSF) in healthcare, which is a group of community members who are trained to record data, discuss, and agree upon the policy on health care services.
- 10) Determining goals in health care services that are discussed and agreed by health care providers and MSF in every working area of the Community Health Centers and Public Hospitals as a proof of commitment on health care services given to the people.

Although many policies in national and regional levels on the efforts to increase the health care services have been issued, the bureaucratic culture in the research locations has not changed much. The bureaucratic legal culture in health care services is still oriented to the power of authority instead for the public (Lawrence M. Friedman.1975). This fact implies that bureaucracy in health care services tends to follow Weberian (Miftah Thoha, 2010), and Marxian, (Miftah Thoha, 2010) although Public Service law Number 25 Year 2009 has adopted the good governance (Mustopadidjaja, et. al..2000) and New Public Service principles. Janet V.Denhardt and Robert B.Denhardt, 2003).

The Bureaucratic Legal Culture in Health Care Services That Does Not Reflect the Sense of Justice for The People

Bureaucratic Legal Culture and Economic Interest

The economic consideration in health care services by medical professional in the border area is basically rational because the professional, especially doctors, have lower economic opportunity that those who work in the cities. The law No. 36 Year 2014 on Medical Professionals only rewards them with special promotions. There is no other economic and non-economic incentive. Therefore, it is rational if they prefer the area with higher economic incentives. Posner calls it as an opportunity cost, which is a choice among two or several interesting alternatives with relatively similar cost. They can only choose one from the alternatives because it is impossible to choose all of them since the opportunity to choose are only available at that time (Richard A. Posner, 1998).

A similar case also applies to the community when choosing the health care services (in the labor process). The access to health care services by professional is low in the rural areas because of economic reason, such as the cost of going to the midwives is higher than TBAs. So, TBA is chosen because of the relatively lower cost so that they can save the money to hold a celebration for the coming of the baby. This tradition is highly valued and sacred for the community members because when it is not done, there was a social sanction. Worse, it is also believed that it can bring disadvantages to the life of the baby.

Bureaucratic Legal Culture and the Power of Authority

The power of authority factor in the bureaucracy in health care services can be seen in the Regional Budgeting Planning (APBD). It is started from the policy of the Local Government and the Local House of Representatives that agree to accelerate the HDI in Sambas Regency by prioritizing the development of facilities and infrastructures of health care services. After

that a regional budget is planned. However, the member of the House believed that the budgeting function belongs to the Regional House of Representatives, as is stated in the Law Number 2007 Year 2010 (amended in the Law No. 17 Year 2014 on MD₃) followed by Government Regulation No. 16 Year 2010 and Home Affairs Ministry Regulation No. 54 Year 2010 as the follow up of the Law No. 25 Year 2001 on National Development Planning System and Government Regulation No. 8 Year 2008 on Stages, Procedure of Preparation, Control and Evaluation of Local Development Plan, in which the Local House of Representatives have the authority to propose the budget as its subject matter. As a result, the budget for health care services allocated to the Local Government Working Units (SKPD) is recognized as the House's aspiration budget, which implementation should be discussed in person with certain members of the House. In this case, the SKPD in health care services feels that there is a pressure from the authority that highly impacts their services. The behaviors of the House's actors can potentially be viewed as an abuse of authority (Read Aminuddin Ilmar, 2014).

According to Agus Dwiyanto, position in paternalistic bureaucracy is viewed as a function of trust from the super ordinates, whereas from rational bureaucracy, position is the function of working achievements. Moreover, in paternalistic, loyalty and seniority become criteria that is more important than achievement at work (Agus Dwiyanto, 2015). Conversely, in rational bureaucracy, working achievements are more important than loyalty. In the reality, it is common that a staff always seeks for his or her super ordinate's considerations and agreement in every action that he or she does, such as by asking for disposition or "asking for directions". Ideally, the staff gives suggestion, considerations, and alternatives to help his or her super ordinate in the decision making. However, in its practice, the super ordinates have already decided something, and the staff's duty is only to prepare the administration in line with the leader's decision. If the staff does this, the person is considered as a loyal and dedicated staff because there is no evidence that the leader command something to the staff. When a legal issue happens, the one to blame is the staff, instead of the leader. This kind of bureaucracy is classified as pre-bureaucratic type or the mixture between Weberian and Marxian by Nonet and Selznick (Philippe Nonet and Philip Selznick, 2013).

The Law That Does Not Side the Special Interests of Areas in The Border

There are several rules that do not side the interest of the public, especially those who live in the border area, such as:

1. The Ministry of Health's Regulation Number 741/Menkes/Per/VII/2008 on the Minimum Standard in Health Care Services in the Regency/Municipality, especially which states that the labor process done by professional midwives is 90% in 2015. This rule is interpreted that one day, there will be no more labor process that is not attended by health care professionals. If this is what is intended by the regulator, the rule can be considered immoral because it destroys the local wisdoms and mutual cooperation among community members in the rural and border areas. TBAs are a symbol of local wisdom, a patron-client culture that is still highly valued by villagers and communities in the border areas. Meanwhile, village midwives are the symbol of modernization and capitalism because their services are valued with money. The conflict of interest creates worrisome in the society (Kausar, 2009).
2. As a result, Sambas government try to initiate partnership between midwives and TBAs in the attempt to save the mothers and babies by sharing roles and cooperation (working in a team) (Philippe Nonet and Philip Selznick, 2013).
3. Article 37 verse (2) of the law No. 29 Year 2004 on Medical Practice that governs a doctor to maximally serve 3 institutions. This rule is considered unfair by the public although it has been decided that this rule does not against the constitution by the Supreme Court (Titon Slamet Kurnia, 2015).

4. The Minister of Health's Regulation No 75 Year 2014 on Community Health Center (Puskesmas), which is considered insensitive to the development of the community in the border areas because it is not in line with the development policy in border areas that has been established in RPJMN year 2004-2009 with President's Regulation No. 7 Year 2005 and RPJMN 2010-2014 with President's Regulation No. 2 Year 2015. In those RPJMN, it has been determined that Sambas Regency in the Central of National Strategic Activities (PKSN). The Health Minister's Regulation No. 75 Year 2014 should be in accordance to the national policy by creating special criteria for urban *Puskesmas* that has the quality of C type Hospital.
5. The regulation of the Social Security (BPJS) is considered unfair by the public because of the constantly changing rules that it has that have not been socialized properly to the community. The BPJS rules often conflicted to those made by the Ministry of Public Health. This Include the minimum number of doctors as a basis of the tariff of IDR 6,000 is when the community health center has at least 3 doctors, with the ratio of 1 doctor for maximum of 5,000 participants. However, the Ministry's rule says that the minimum number of doctors in an out-patient center is 2 doctors and in an in-patient center is 3 doctors. In the reality, the number of doctors who are willing to be assigned in remote areas is limited although the local government has given additional incentives. Moreover, the ration of doctors and patients in Sambas Regency is 1 doctor for 11,000 patients with only one medical specialist for more than 100,000 citizens.
6. The rule in the Article 8 of Government's Regulation Number 100 Year 2000 on the appointment of civil servants in the structural position, which is still in force at the moment contradict to Article 34, verse (1) of the law Number 44 Year 2009 about Hospital. Based on the Government Regulation Number 100 Year 2000, a functional officer appointed to a structural position will automatically loose his or her functional position. It means that if a doctor (a functional officer) is appointed to a structural position, the person cannot run his or her practice as a doctor. Meanwhile, to be appointed as the director of a Public Hospital based on the Law Number 44 Year 2009 about Hospital, someone should be a medical professional (a doctor). If the Public Hospital's director should be a doctor and the structural position is basically having managerial qualification, so for Sambas Regency that is lack of doctors will feel that the rule is unfair because once the doctor is appointed as the director of a Public Hospital, he or she will lose his or her functional position. This condition does not reflect justice for the doctors or other medical professions.

The New Construction of Progressive Law-Based Bureaucratic Legal Culture in The Health Care Services

The Practice of Progressive Bureaucratic Legal Culture in Health Care Service

The implementation of PPK-BLUD in the health care facilities is the follow-up action from the Law Number 1 Year 2004 on National Treasury and the Government Regulation Number 23 Year 2005 on the Financial Management of Public Service Agency which was amended in the Government Regulation Number 74 Year 2012 and The Home Affair Ministry's Regulation on the Technical Guideline on Financial Management of Public Service Agency. The implementation of PPK-BLUD is a special policy in financial management that is establishes to give public services in the form of goods/services without emphasizing on seeking for profitability. Its implementation is based the efficiency principles and business patterns. PPK-BLUD is a financial management that gives flexibility to the management to implement healthy business practices to improve services to the public in order to promote general welfare and educate the nation (The Minister of Home Affairs' Regulation No. 61 Year 2007). PPK-BLUD is implemented to correct the former financial management that hindered public services.

According to Mediya Lukman, the execution of BLUD as the new form of public service administration was a breakthrough to change the old Weberian bureaucracy system and traditional public administration. (Mediya Lukman, 2013).

The policy to enforce PPK-BLUD in health care services is an attempt to break the general rules that were no longer satisfactory for the public (rule-breaking) and at the same time form a new rule (rule-making), which have distinctive characteristic from other form of financial management (Romli Atmasasmita, 2010). The direct impacts that are felt by the public and the public service officers due to the changing of the bureaucracy in health care sector include:

- (1) The public satisfy with the health care services after the application of PPK-BLUD in Community Health Centers and Public Hospitals, which is proven from the Community Satisfaction Index done by the government of Sambas Regency in 2013 and 2015.
- (2) The societies participate actively in various policies in health care services although their participation in the attempt to improve the level of health is still low. The community's involvement in the development of health care services in Sambas Regency include: (a) the formation of Multi Stakeholders Forum (MSF) in Sambas Regency, (b) the involvement of the community members to form and determine the goals of health care services in all community health centers and public hospitals (Sambas and Pemangkat Hospitals), (c) the community's active participation in small workshops in health care sectors, especially in the effort to reduce the mortality rates of mothers and babies as well as malnutrition problems, (d) the active participation of the society to install pink flag in the household that has a pregnant mother, and (e) the active participation of the community to weigh their babies regularly in the integrated health care services center (Posyandu) every month.

The partnership of village midwives and TBAs was initiated by the local government together with the community and was facilitated by USAID-Kinerja and PKBI of Sambas Regency, West Borneo. The program was then continued by the local government and facilitated by PKBI of Sambas Regency since 2012 up to now. The main goal of this partnership is to reduce the mortality rate of mothers and babies that is still high in Indonesia and in Sambas Regency.

Based on the report of the Statistic Bureau of Sambas Regency on *Susenas* Survey 2012, the scope of labor process attended by TBAs was 34.28%, midwives 56.94%, doctor 4.84% and other medical professionals 3.94%. The scope of labor process attended by TBAs in Sambas Regency was also high, which was 27.25% (2011), 34.38% (2012), 20.08% (2013), and 13.67% (2014) although the number of midwives in Sambas Regency is increasing from 43.05 (2012) became 59.36 (2013) and 127.02 (2014). (Public Health Office of Sambas Regency, 2015).

The policy of partnership between village midwives and TBAs is viewed to be the policy that implements the principles of progressive law, which is a policy to change positivistic point of view of health care professionals. The positivistic point of view means that they always blame the TBAs' practices and think that only midwives are able to give labor services in the areas because it is allowed and legal based on the current rules. However, the fact is that the community still uses the service of TBAs in the delivery process. The partnership between midwives and TBAs is a real example of New Public Service (NPS) in health care services, especially in relation with the collaboration between medical professionals and the community in forming and creating the policy to increase the level of community's health, especially for mothers and babies.

The New Construction of Progressive Law-Based Bureaucratic Legal Culture in Health Care Services

Previously, it has been discussed that the bureaucracy in health care services is still traditional. The construction of bureaucratic legal culture from the traditional perspectives includes:

1. The current values of bureaucratic health care services are:
 - a. The value of authority, in which bureaucracy is the ruler, the one who knows everything, the party that is most needed. Public, on the other hand, is a vulnerable party who do not know what to do. This value is rooted in the health care services' bureaucracy so that it becomes a bureaucratic legal culture related to the formation and enforcement of law. It is believed that law can or may not be done depending on the interpretation and the interests of the bureaucracy. Public should follow whatever decision is made by the bureaucracy because bureaucracy is a development agent. This belief is pre-bureaucratic bureaucracy or old public administration.
 - b. The value of obedience toward the enforced law. Law is enforced if it is considered beneficial economically and can promote the long-lasting position in someone's social status. The obedience toward the leader is valued better than the obedience toward the law.
 - c. The value of concern toward the poor and the disadvantaged. The economic and power orientation cause the concern to the poor and the disadvantaged ignored. As a result, the poor and the disadvantaged are seen as burdens, whereas the wealthy members of the society are viewed as the source of income so that they need to be paid attention to maximally to make them satisfy and become regular patients. The relationship toward working colleagues is based on mutual benefits.
2. The current attitudes of health care bureaucracy can be described as follow:
 - a. The attitude to wait for the command from the leader to work. This attitude of seeking guidance is a part of the consequences of paternalistic and/or patron-client culture in the bureaucracy, and from the hierarchy Weberian bureaucracy and authority-based Marxian bureaucracy. The staff of public services does not have courage to do something unless there is a direct order or guidance from the leader. As a result, the service becomes ineffective and complicated. This creates difficulties for the field staff that directly face the public.
 - b. The attitude to serve the leader, instead of the public. This attitude is rooted in the bureaucracy behaviors through the honoring behavior displayed when a leader approach him or her. A completely different behavior is shown when they face the public/patients. Often, the officers are not friendly when facing the public/patients and even when facing the patients' family. On the other hand, the officer would be so friendly to treat patients who have privilege from the position or wealth they have.
 - c. The superiority and seniority over other parties. Doctors are the skillful experts, so that they are positioned in an honorable place and they should receive higher reward than other professionals, including the managerial positions. The attitude of being the most important causes the doctors to be indisciplined. They come late and go home earlier although maybe there are still patients waiting for the doctors' services to save them.
3. The hopes for the current health care bureaucracy, especially from the medical professionals in the border areas are:

- a. That there will be distinctive in the rule of law in health care services and civil servants who work in the border areas. For example, the midwives and nurses are allowed to open clinics to help the sick people.
- b. It is expected that there is a policy from the central government and local government to give incentive for the medical professionals who work in the border area. The incentive can be additional income, priority to get technical trainings regularly, and priority to continue to higher education or to higher level of position. It is also expected that international quality health care facilities and infrastructure are constructed.

The new construction of bureaucratic legal culture in health care services based on progressive law is values, attitudes, and expectations of fairer health care services, including:

1. The values that should be established in health care bureaucracy are:
 - a. Responsibility to save people which should be put above other values, such as economic orientation that viewed patients as the source of income. The responsibility to save the people is above the enforced law. It means that although something is forbidden, but if the purpose is to save people's lives, it can be done. Things related to the values of progressive law are that the law should be pro people and pro justice. In addition, the law is made for happiness of the public. This is especially in the border area where the facilities, infrastructures, and human resources are limited so that the public expect the service of the medical professionals when they are sick or in emergency situations.
 - b. The value of togetherness and the spirit to help each other which should be developed because health care services are not only the duty of the medical professionals, but also other parties, such as other related Government Working Unit and even the community in general.
2. The attitude that should be constructed and developed to increase the bureaucratic legal culture of health care services are:
 - a. Viewing the patients and their families with dignity and understanding that they have an equal position with the health care professionals since they are partners that can be invited into discussion to find solutions to cure their diseases. Health care professionals with the knowledge and skills they have are also vulnerable to mistakes in diagnosing and making decision to cure the patients.
 - b. Other attitude that is considered important is also available in the new bureaucratic legal culture, which is the sincerity to serve the patients as a good deed that will be rewarded by God.
 - c. Being humble so that with the knowledge and skills, the medical professionals do not threat other as stupid low people. This will be followed by developing respect to other people and tolerance so that everyone can collaborate easily.
3. The expectation toward the bureaucratic legal culture in health care services is when the health care services are improving in the future and able to satisfy the public, the community becomes healthier because preventive and promotive health care services have been fully supported by the people.

In the researcher's point of view, there are two kinds of reconstructions that should be proposed to improve bureaucratic legal culture in health care services, including: a) the reconstruction of mindsets or point of view in progressive health care bureaucracy, and b) the reconstruction of working methods of progressive health care bureaucracy

In order to make the new construction of bureaucratic legal culture in health care services mindsets and culture sets of progressive health care services should be changed.

1. The reconstruction of mindsets of progressive health care bureaucracy.

It is time to reconstruct the mindsets of progressive healthcare bureaucracy because the traditional mindsets can no longer be applied in today's era. The current bureaucracy follows the positivistic point of views, which identified through the current rules of laws. The laws are enforced based on the procedures and cannot be changed except by the authority makers who make the same level of rules. Law is an order from the state (central and/or local government) which is imposed to the public and the public must follow it. Violation or rejection toward the law is illegal and should be punished.

The progressive law refuses the rigid positivistic principles, which claims that the law created by the authority is the righteous one. The progressive law does not mean to reject the positive law, as long as the law is fair and acceptable. However, if the law does not bring the sense of justice or fairness, the law can be ignored (Mahfud MD, et. al., 2013). The progressive law does not only aim to impose the law and follow the procedures, but the law should also be viewed as a wholesome human issue. Progressive law is made for human being, whether to interact with other people or with the nature or universe (Syamsudin, 2012). Thus, in progressive law, to determine whether or not a law should be enforces should be based on whether or not the law has substantial fairness (not be based on personal consideration). It can be seen from the response and expectation of the public. The responses and expectations are resulted from intensive dialogues with the public (through collaboration).

Moreover, the bureaucrats in health care services think that the law is done if it brings economic or social advantages (non-positivistic). This is wrong and against the law. One clear example is there are still many Public Hospitals and community health centers in the local government levels that do not apply PPK-BLUD although the policy is oriented for public services, which are pro people and pro justice. BLUD Policy is a rule-breaking toward the traditional regulation of financial and assets management. BLUD is a progressive policy, which break the current law in the creation of a new rule under the Law, Government Regulation, and Minister's Regulation.

Another example of non-positivistic bureaucracy in health care services is that when the officers do not respond quickly to the bad conditions of the patients only because the patients have not registered in the registration booth. There is also a case where doctors refuse to help emergency patients because they are not in duty, so they don't want to break the ethic code. On the other hands, in the remote areas, there are many midwives and nurse who open clinics (helping patients), doing something which should be done by general practitioners or medical specialists. It is done with the reason to help people in need.

It is traditionally believed that only the nation has the authority to create the law. The fact is that the public can create a law. For example, in the research was found there was a community (MSF) that created an agreement with health care providers in the form of "service goals/promises". The promises were written to be met and if they are broken, there will be sanction. The sanction can be in a form of warning, position mutation, and/or dishonor dismissal as civil servants (Based on the Law No. 25 Year 2009 on Public Service and Government Regulation No 46 Year 2012 on the implementation of Law No. 25 year 2009 on Public Services). Another example of reconstruction is the partnership between village midwives and TBAs to decrease the mortality rates of mothers and babies in the research

location. The creative mindsets to adopt the progressive law through the partnerships are ways to uphold humanity over the rule of law, which is to save the people. The midwives and TBAs build partnership because they put the safety of the people (mothers and children) over their personal interests (economic, social, pride, etc.). They equally support each other in a harmonic partnership for saving the people's lives.

The positivistic in health care bureaucracy is so dominant. Through this principle, the law should be enforced based on procedural and rational principles. The law is believed to be a foundation that can govern the people. The law is considered to be enforced if the logical procedures are done based on the legal substance. It does not see whether or not the law is fair or just.

The positivistic is not humane because the law is not made for human but for the law itself. The law is indeed created as a logical attempt to make the law universal and can be accepted by people in general, to make sure that legal certainty is achieved. Law is seen as a formal justice in which it is enforces based on the applied legal substances and procedures. On the other hand, the progressive law is made for human beings and not the other way around. Therefore, the law should be beneficial and fair for the people because the law is made to govern the people so that they can live in good orders and prosperous. The law that is oriented to the people tends to establish substantial, instead of formal justice.

The dominance of positivistic point of view in Indonesia is because this country is still in pre-bureaucratic stage which is in progress toward bureaucratic (P.Nonet and Selznick, 2013). The power of authority is also dominant in public services, including in health care sector. In addition, many regulations and procedures of public services have been made to characterize that the health care services in moving toward bureaucratic. The overwhelming laws and regulations make the health care services become more rigid. The officers do not have courage to act away from the law although they often face situations in which they need to be tolerant, such as when they face poor or disadvantaged patients.

When health care officers take actions that violate the law in an attempt to help poor patient, the actions will for sure be blamed by the examiners. The officers often have to pay the services they give from their own money. Therefore, positivistic mindsets are the safest way to escape from the legal consequence although it is against their consciousness. Therefore, the positivistic bureaucracy that has been governed by the state through so many legal products makes the bureaucracy in health care services inhumane. The Constitution has stated that health care services are part of the human rights that must be realized by the bureaucracy (the state).

The implication of progressive mindsets that refuses the positivistic mindsets is a philosophical and legal change in mindsets. It is philosophical because there is a shift in mindsets of the officers who at first only wait for commands become more creative and innovative. It means that they ideally can meet the fact that fulfilling the health of mothers and children is part of the attempt to fulfill human rights that should be done (ontology aspect) and the implementation should be done in humane and constitutional ways (epistemology and axiology aspects). Creativity comes because the officers always want to give the best services. They tend to seek for information and discuss them with the public to find out what is best for the people. It is continuously done and becomes a never-ending process. Further implications are that the bureaucracy in health care services are dynamic, always changed, and improved depending on the needs or interest of the public, which are stipulated in the rule of laws in health care services.

2. The Progressive Reconstruction of Culture Sets

The culture sets are the basis to govern attitude and behavior in the working place. It is based on the values owned by the officers. If the officer's orientation of working is to get as much money as possible and ignore other people's burdens, he or she will display different attitudes and behaviors when working in a place where he or she can easily get money and when working in a place with no potential of earning money.

Earning money is not forbidden, but if it becomes the only reason to work, it will be unfair for the public. The services in health care sectors are full of humanity values because most of the patients are sick people and poor people. From the research, it was found that some mothers' mortality cases came from poor people. They were not helped by the professionals or when they were helped, the treatment was not maximum. They could only give limited amount of money or they often asked for free services because they did not have money. They preferred to go to TBAs because they did not have the budget of IDR 600,000 to be given to get the service from midwives. Going to the TBA was usually free of charge. This economic orientation influences the officers' behaviors in giving services.

Next, the officers display different attitudes when servicing poor patients because their orientation is economical. They face the 3rd class security card holder differently from the VIP patients. This attitude should be reconstructed through the understanding that the main purpose of the service is to save people. The progressive law teaches moral values based on the consciousness and spiritual values—a deeply rooted substantial justice. The substantial justice in health care services can be changed if the working orientation is shifted to charity orientation. According to the researcher's opinion it is a concrete example or real practice on the implementation of conscious and progressive law-based legal principle.

The new construction of culture sets in progressive law-based health care service bureaucracy can influence the real action of culture sets as mandated in the goals of bureaucracy reforms (Ministry of State Apparatus and Bureaucracy Reforms Number 20 Year 2010 on Bureaucracy Reforms Roadmap Year 2010-2014 and Number 11 Year 2015 on Bureaucracy Reforms Roadmap Year 2015-2019). Philosophically, the new construction can trigger the authority and officers in health care services to work better through better discipline, better behaviors (polite, friendly, ethic), and serve with heart (sincere in helping others in need). Moreover, they can make some efforts to form contextual health care regulations when the existed law is considered unfair for the people. It can be done in line with the regional autonomy principles, which is to serve the public and to create prosperous society.

Conclusion

Based on the discussion above, the conclusions of this study are:

First, the current bureaucratic legal culture in health care services tends to adopt Weberian and Marxian theories in its practice because: (1) the implementation of health care bureaucracy that still implement traditional ways, in which they think of themselves as rulers instead of public servants, (2) in its practice, the bureaucracy try to cover its mistakes through so many ways, including hiding behind the SOP that the old-fashioned and complicated procedure have met the SOP although the SOP itself was made for personal interest, was not properly written, and was not legally issued, (3) Indiscipline practice of bureaucracy in performing its duties, including coming to the office as the wish, (4) bureaucracy practice, which emphasize on the hierarchy of the authority so that the officers who directly face the public cannot make any decision if they face a concrete problem, (5) bureaucracy practice that consider patients as vulnerable people who know nothing so that they only rely on the medical professionals' helps,

(6) bureaucracy practice, which has economic orientation for his or her own interests, (7) disintegrated bureaucracy practice who works discretely without the help of other profession, (8) bureaucracy practice that consider the law can and/or may not be enforced (plastically) depending on personal judgment and direction from the super ordinates because law is enforced only if it benefits interest of the authority economically, and (9) No matter how rational, hierarchy, and professionally written, the bureaucracy can be changed through direct order from the leader and because of the loyalty reason and paternalistic and patron-client culture that are flourished in the government bureaucracy.

Second, the rights of the public to seek for justice or fairness in health care services are ignored because: (1) The health care professionals seek for more economic interests rather than the need to serve and save the patients, (2) the political interests and the interest of the authority holders in the government, including the member of the House of the Representatives, force the bureaucrats to side on their interests because the bureaucrats cannot escape from the patron-client chain, and (3) the legal factors that never side the interests of the people so that it influence in the bureaucratic legal culture in health care services. This includes the law that does not give incentive to health care professionals who work in the border areas except a special promotion for them.

Third, it is the construction of new bureaucratic legal culture in health care services that is based on common values and responsibilities, supported by mutual respect toward other people as partners and as fellow human beings that have ability to work together and stay humble toward the skills that they have so that it will then be followed by tolerance and mutual helps, which resulted on good supports from various parties to establish better level of health for the community.

Recommendation

In order to make the results of this research to be beneficial for the improvement of community health care services, especially those who live in the border areas, it is suggested that:

1. The local government leader in the border area should:
 - a. Use the result of this research to form some policies, such as:
 - (1). Forming and stipulate policy to improve public service's bureaucratic legal culture, especially in health care services, as a part of regional bureaucracy reform policy.
 - (2). Socialize the policy to all divisions in the regional government institution, especially in health care provider's institutions so that all of their personnel understand and enforce the law of health care services so that the community will feel satisfied.
 - b. Follow up the discussion, analysis, and suggestions written in this research, supported by the availability of funds and human resources.
2. The central government is suggested to:
 - a. Create special policies in health care services for border areas, including:
 - (1). If the regulation that doctors should be available in every community health center, as stated in the Minister of Health's Regulation No. 75 Year 2014, the government should provide incentives for the doctors and other health care professionals apart from the special promotion reward as stated in the Law No. 36 Year 2014 on health care professionals. The incentives include: (a). to be prioritized to continue education in higher level with the fund from the central government, (b) to be given complete health care services' facilities, and (c) to be given opportunities to participate in technical trainings.

- (2). In line with NAWACITA policy, which is the development from the suburbs and underdeveloped as well as border and isolated area, it is suggested to create policies in health care sector in those area to be planned and directly managed by the central government. This policy is supported by all related parties in the central, provincial, and local levels of the border areas.
- b. Enforcing the policies in the border areas, which are supported by National Budgeting, though (a) the construction of Central Government's Owned Public Hospital and (b) the establishment of higher education institution to support the development in health care sector.

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