

## **Legal Culture of Public Service Bureaucracy: A Response to the Policy of ASEAN Economic Community in the Border Areas**

**Dr. H. Jamiat Akadol, M.Si, MH**

The Rector

Islamic Study Institute of Sultan Muhammad Syafiudin Sambas

West Kalimantan

Indonesia

**DR. Dewi Sulistianingsih, SH., M.H.**

Lecturer

Faculty of Law

Universitas Negeri Semarang

Central Java

Indonesia

### **Abstract**

*This paper is presented to discuss about the legal culture of public service bureaucracy in Indonesia that is related to the mindset problems and bureaucratic attitude in the public service. This writing is the result of an in-depth study of the bureaucratic view of the law relating to the public service; then the attitude and actions on the applicable provisions and policies of the leadership and the influence of other non-legal factors. The ASEAN economic community policy that has been declared and agreed to be implemented in the Southeast Asian countries on December 31, 2015 should be a boost to the improvement of public services, but it is not utilized properly by the bureaucracy. There are many factors that hinder the bureaucratic response in addressing the AEC (MEA) which consequently disadvantage the people.*

**Keywords:** bureaucratic legal culture, public service, ASEAN Economic Community

### **1. Introduction**

The public service in Indonesia nowadays still becomes a focus by various levels of society, academics, and moreover business and public policy observers because the existing public services have not changed a lot since the implementation of bureaucratic reform. The fact is that the public services in Indonesia are still complicated, time-consuming and exhausting, even the quality of public services in Indonesia ranks the second worst in Asia after India in terms of its efficiency and foreign investment<sup>1</sup>.

A good public service is a manifestation of the implementation of the mandate of the constitution assigned to the state due to the establishment of the government of Indonesia is solely to promote the welfare of the peoples. Public services are the rights of every individual/ society which are protected by law and constitution. There have been various legislations on public services established such as Act No. 25 of 2009 on Public Services. There have also been established various laws and regulations in various sectors to improve public services. Even since 2010, the Indonesian government has established a policy of Bureaucratic Reform<sup>2</sup>.

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<sup>1</sup> The results of bureaucracy survey in 2010 by Political and Economic Risk Consultancy (PERC) to 1.373 expatriates early 2010. Media Indonesia daily dated on 4 Juni 2010. With the scale of 1 as the best and 10 as the worst where India ranks the worst with (9,41) points, Indonesia (8,59), Philipina (8,37), Vietnam (8,13), China (7,93), Malaysia (6,97), Taiwan (6,60), Jepang (6,57), Korea Selatan (6,13), Thailand (5,53), Hongkong (3,49) dan Singapura (2,53).

<sup>2</sup> The policy of bureaucratic reform is governed in Act No 17 of 2007 on National Long-Term Development Plan year 2005-2025, which is followed up with the Regulations of the President of Republic of Indonesia No81 of 2010 on the Grand Design of Bureaucratic Reform 2010-2025. Later the Road Map of Bureaucratic Reform of 2010-2014 was declared using the Regulations of the Minister of State Apparatus and Bureaucratic Reform No 20 of 2010 and the Road Map of

The bureaucratic reform is aimed at creating a professional bureaucracy with adaptive, integrity, high performance, clean and KKN-free characteristics, and serving the community well. With the policy of ASEAN Economic Community (AEC) aiming at integrating ASEAN economy in the sense of making ASEAN a single market and production-based which consist of 5 main elements, namely: (1). Free flow of goods; (2) Free flow for services; (3). Free flow of investment; (4). Free flow for capital, (5). Free flow for skillable is an opportunity as well as a challenge for the Indonesia to improve its competitiveness while improving the welfare of its people. In the case that AEC as an opportunity and a challenge for the improvement of people's welfare, this paper wishes to reveal deeper the role of government bureaucracy in responding to the policy of AEC. It will also more specifically discuss about the legal culture of bureaucracy in terms of mindset and bureaucratic actions in public service related to the AEC policy which is related to efforts to improve the welfare of the people.

## **2. The Opportunity and Threat of AEC**

### **2.1. The Prosperous AEC Policies**

Based on the ASEAN Economic Community Blue Print, there are characteristics of AEC among others:

- (1) AEC is based on the desire of ASEAN member countries to deepen and expand economic integration through appropriate initiatives and timing to act according to the principle of open-ended disclosure, driving the market economy consistent with multilateral regulation and adherence to the basic regulatory system, for fulfilling and effectively implementing in realizing a shared commitment.
- (2) AEC declares ASEAN to be a single market and production-based that makes ASEAN more dynamic and competitive with new mechanisms and dimensions to strengthen the implementation of existing economic policies, facilitate the movement of businesspeople, skilled workers and strengthen ASEAN institutions.
- (3) AEC will promote the development and acceleration of Cambodia, Laos, Myanmar and Vietnam integration through initiatives for ASEAN integration and other regional initiatives.

Based on consideration of those characteristics and observation to the need for ASEAN's external trade, including consideration of AEC's own interests, AEC considers the key characteristics, which are: (a). A single market and production base, (b). Highly competitive areas of economy, (c). Areas of equal economic development and (d) Areas which are deeply integrated in the global economy. A single and production-based market leads to at least the inclusion of free flow of goods, free flow of services, free flow of investment and free flow of capital and free flow of skilled/ educated workers. The free flow of goods is one of the main objectives of a single and production-based market. The free flow of goods and services as well as investment and skilled labor will strengthen the long-established ASEAN Free Trade Area (AFTA) policy with regular and consistent encouragement to eliminate tariffs and non-tariffs.

Meanwhile, the free flow of services seeks to eliminate all barriers to trade in services for four major service sectors: the air transport, e-ASEAN, health and tourism and logistics services. The liberalization of services is intended to: (1) improve efficiency and competitiveness, diversify production capacity and supply and distribution of services; (2) remove trade barriers to services; (3) liberalize service trades by deepening the level and scope of the liberalization beyond the services in GATS in realizing free trade<sup>3</sup>.

ASEAN members agree to put investment as the key component of ASEAN's economic development and make it one of the main objectives of ASEAN in its effort to realize ASEAN economic integration (AEC) in 2015<sup>4</sup>. The investment liberalization in the ASEAN regions is intended to open a wide investment inflow both from fellow ASEAN members and from outside ASEAN members. This investment free policy requires a conducive investment climate in which investment barriers are removed through deregulation and debureaucratization policies. This policy is very important and urgent since the results of the survey The Asian Wall Street Journal in 2005 suggests that 57 percent of entrepreneurs see Indonesia as the least attractive place in Southeast Asia region for investment purposes. Meanwhile, the Finance Corporation (IFC) report on Doing Business 2004-2009 stated that to start a business or investment in Indonesia one must go through 11 procedures and take up to 165 days.

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Bureaucratic Reform of 2015-2019 using the Regulations of the Minister of State Apparatus and Bureaucratic Reform No 11 of 2015.

<sup>3</sup> Andarwati, "The Preparation of East Java in Facing AEC" in Suparto Wijoyo and Prasetyo Rijadi (Editor).2015. "Pakde Karwo: The Gate of AEC 2015 Must be Open".Prenada Media Group.Jakarta page:71.

<sup>4</sup> Ibid, page 73

Other countries such as Singapore has only 7 procedures and 8 days, Australia with 2 procedures and 2 days, Malaysia with 8 procedures and 31 days and Thailand with only 9 procedures and completed within 42 days<sup>5</sup>.

The policy and agreement of ASEAN members to enact a single and production-based market in the ASEAN region is, in one hand, a very promising opportunity for the development of the region to be a developed, dynamic with equal economic growth that ultimately promises prosperity for the members. On the other hand, the single and production-based market is a challenge, especially for Indonesia which is the most populous among the ASEAN countries to be the market for other ASEAN countries' products. To that end, Ibrahim<sup>6</sup> also recommends improving the competitiveness of the products, namely through increasing quality assurance, efficient use of resources, environmentally friendly, appropriate technology and high commitment from all stakeholders in order to represent competitive prices. The role of government and local governments to improve product competitiveness is critical. The current competitiveness is not only able to improve products and services, but all single and product-based market components like goods, services, capital, investment and skilled workers. The availability of skilled workers in various sectors is urgently provided if it is to immediately improve the high competitiveness due to the availability of skilled and professional personnel is believed to be able to engineer and develop products of quality goods and services at competitive prices. ASEAN as a single market and a unity of production base is affirmed in the National Medium-Term Development Plan (RPJMN) of 2015-2019<sup>7</sup> as an opportunity and a challenge that need to be addressed carefully and integrated through improving the national and regional economic competitiveness and improvement of labor quality and quantity Indonesia. This provision provides the basis for the public service bureaucracy in Indonesia to immediately take the attitude to implement it seriously.

## **2.2. The Policy of AEC and its Impacts on the People in the Borders**

The president of the Republic of Indonesia, Joko Widodo in his first speech when attending the ASEAN Summit on November 12, 2014 in Nay Pyi Taw, Myanmar confirmed that Indonesia is committed to promote ASEAN cooperation, including in the realization of the ASEAN Economic Community (AEC) 2015. Although supporting the MEA, the president insisted that Indonesia would not be allowed to become the only market. Indonesia should be an important part of the regional and global production chains<sup>8</sup>. Furthermore, the president added that ASEAN should work together to overcome three things to welcome AEC<sup>9</sup>, namely:

"Firstly, to accelerate infrastructure development and connectivity in ASEAN countries, among ASEAN members, and among ASEAN and partner countries through master plan on ASEAN Connectivity. Second, to increase cooperation between industrial and manufacturing investment closer among ASEAN countries. Thirdly, to increase intra-ASEAN trade which is still quite low at 24.2 percent"

In the meantime, there is a joint statement of ASEAN-Australia leaders to enhance cooperation towards strategic and mutually beneficial relations. The joint statement was conducted simultaneously with the commemoration of the 40<sup>th</sup> ASEAN-Australia summit meeting. The Australian Prime Minister said that the ASEAN-Australia partnership will further boost the economies of ASEAN countries such as Malaysia, which will become a high-income country, Singapore whose GDP per capita is higher than that of Australia and Indonesia which is domestic super-power. When discussing about ASEAN, a discussion of border development cannot be separated since it has become the attention in the Jokowi government, which is stated in the third item in NAWACITA which is "building Indonesia from the borderland by strengthening the regions and villages within the framework of the unitary state".

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<sup>5</sup> Taufik Effendi.2013. Bureaucracy Reform and Investment Climate. Konstitusi Press.Jakarta. Page 9.

<sup>6</sup> Ibrahim.2015."The Importance of the Competitiveness of Domestic Product in Entering the Single Market" Asean Economic Community in Suparto Wijoyo and Prasetijo Rijadi (Editor).ibid. Pages: 208-209.

<sup>7</sup> The Regulations of President of Republic of Indonesia No 2 of 2015 on National Medium-Term Development Plan (RPJMN) Tahun 2015-2019.

<sup>8</sup> Directorate General of ASEAN Cooperation Ministry of Foreign Affairs. 2014. ASEAN Community. Edition 6/ December 2014. page: 4-5.

<sup>9</sup> Ibid. pages 10-11

The border development is conducted through security, welfare and environment approaches with strategies to establish National Strategic Area Centers (NSAC), accessibility opening, regulatory effort and trade cooperation between countries by relying on comparative advantage, an adequate availability of CIQS (Custom, Immigration, Quarantine and Security) and a well-coordinated border management program between central and local institutions<sup>10</sup>.

Based on the Government Regulation No. 26 of 2008, the border district is designated as the National Strategic Area Center (NSAC). Furthermore, the Presidential Regulation No. 2 of 2015 on RPJMN 2015-2019 stipulated that 10 NSACs and 187 districts become priority locations in 41 regencies/ cities and 13 provinces which need to be addressed. However, based on LIPI research results in Sambas, West Kalimantan and Nunukan regencies in North Kalimantan, the determination of NSAC has not been effective for border development, including the launching of Integrated Independent City (IIC) of Sebatik and Sri Manggaris in Nunukan<sup>11</sup> Regency and IIC Sebunga in Sajingan Besar District in Sambas Regency, West Kalimantan<sup>12</sup>. The concept of border development carried out so far is partially done and tend to be top-down. The negative impacts of these policies that are most felt by regions and communities in border areas are among others:

- (1) In the border area are various cross-border law violation activities such as illegal Trading, illegal mining, illegal drugging or sand, illegal migration, illegal logging, human trafficking, people smuggling, smuggling, fish piracy and so on<sup>13</sup>. This is partly due to the lack of supervision from the security apparatus and other relevant authorities.
- (2) The national parallel road constructions in the borderlands in one hand are beneficial for the people living surrounding them, especially when related to the improvement of distribution and farming, plantation, and forest product transportation to domestic markets. Before the road constructions, the people sold their products to the neighboring country, i.e. Malaysia with the price set by them. However, the road constructions in the borderlands lead to several new problems, like:
  - (a) The illegal practices mentioned above have not been overcome thoroughly; even they tend to increase due to the lack of supervision in certain areas or in unofficial roads (shortcuts).
  - (b) The people experience culture shock because there is a shift in their paradigm that the better the roads are the easier it becomes for them to work or shop in Malaysia. Another example is there are more land selling practices because the Malaysians can offer higher prices. The above examples can cause a consumptive behavior if it is not overcome and it may disadvantage the people themselves. The policy of road and bridge infrastructure constructions in the borderlands as the NSAC should be accompanied with a policy and development action to increase the production of farming, plantation, trade, and processing industries. This is urgent to be carried out because the condition of the borderland people is badly apprehensive, like:
    - (1) The Human Development Index (HDI) of Sambas regency as one of the borderland areas in 2015 was at 64.14 which ranks the fifth from 14 regencies/ cities in West Kalimantan. It is under the index of West Kalimantan which is 65.59. West Kalimantan's index ranks the 29<sup>th</sup> out of 34 provinces in Indonesia in 2015 when Indonesia's index was 69.55 or the 121<sup>st</sup> out of 187 countries around the world. Sambas regency as one of the NSAC areas ought to have an extra attention because its average schooling years in 2016 was 6.42 years. Given the fact above, we can conclude that the human resource in the borderland areas is relatively low and it is certain that they will face a great deal of difficulties when competing with people from other ASEAN countries<sup>14</sup>.
    - (2) Indonesian Centre Statistics Bureau released the growth of per capita Gross Regional Domestic Product (PDRB) in West Kalimantan was 3.20% and in North Kalimantan was -0.68%. It was under the national per capita PDRB which was 3.44% in 2015.

<sup>10</sup> MitaNoveria, et.al .2017. Indonesian Sovereignty in Border Areas: A Multi-Dimensional Perspective. YayasanObor Indonesia and LIPIJakarta. page: 164.

<sup>11</sup> Ibid. page: 165

<sup>12</sup> The Result of the Writer's Observation in the IIC locations and Interviews with Regional Development Board and The Head of Transmigration and Workforce Office of Sambas Regency

<sup>13</sup> The Regulation of National Border Management No. 2 of 2011 on Master Plan for the Management of Country's Border and Border Area of 2011-2014. page 13.

<sup>14</sup> The Centre Statistics Bureau of Sambas. 2017. Human Development Index (HDI). Sambas Regency 2016.

Besides, the two borderland areas are the most poor population in Kalimantan<sup>15</sup>. In addition, it is shown in the GRDP data that there seem to be huge imbalances of the people livelihood in West Kalimantan, Serawak, and Brunei Darussalam. The West Kalimantan's GRDP in 2014 was very small, which was 0.32% compared with the national GRDP. The GRDP of Serawak is nine times higher than that of West Kalimantan. In fact, the GRDP of Serawak is the 3<sup>rd</sup> after Kuala Lumpur and Selangor. The GRDP of Brunei Darussalam is 43 times that of West Kalimantan<sup>16</sup>. The fact that Kalimantan's border regions with Sabah and Sarawak (Malaysia) considered as underdeveloped which is characterized by the low rate of education and public health and the poor population was revealed by a writer and researcher of the Islamic University of Sultan Syarif Ali of Brunei Darussalam<sup>17</sup>. It further discloses that: **"the education and health development and transportation infrastructure in West Kalimantan is limited and underdeveloped compared to its neighbor—Sarawak. This has caused the socio-economic relations of the border communities of Kalimantan to be closer to the people in the Sarawak border area than to the central government which is far from their area"**<sup>18</sup>.

Although the Kalimantan-Malaysia border area is underdeveloped with its poor population, it can be developed into an advanced area as it is proved that in 2010 there were 21,809 visitors to Sarawak through Entikong in West Kalimantan and in 2012 it increased to 417,072 visitors<sup>19</sup>. Meanwhile, in North Kalimantan (formerly East Kalimantan), despite the infrastructure constraints, where the cost of transporting goods from Nunukan to Tawau is cheaper than it is to Tarakan, people prefer shopping to Malaysia than to their own country. In addition, the items needed for daily use are available in Tawau at a cheaper price while selling products from North Kalimantan to Malaysia with ease. As a result, there was a high dependence on goods from Malaysia. Even from 2010 to 2013, there was a deficit trade, in which the flow of imported goods from Malaysia is greater than the outflow (exports) with the highest difference in 2012 reaching Rp. 3.15 billion<sup>20</sup>.

From the explanations and facts above we can understand that Indonesia, in its efforts to engage in AEC, should be fully aware that Indonesia is still dependent on Malaysia for economic services, especially in the border areas of Malaysia - Indonesia. Some of the causes of the dependence are a big economic gap, the high price of basic needs in the domestic market, the limitations of infrastructure like roads and transportation and partial border development policies.

### 3. The Legal Culture of Public Service Bureaucracy in Responding ASEAN Economic Community

#### 3.1. The Legal Culture of Public Service Bureaucracy in the Border Areas

The legal culture of public service bureaucracy in this paper is defined as a set of knowledge, values, beliefs, perceptions, perceptions and expectations that underlie bureaucratic attitudes and behaviors against the law applicable in its activities to provide services to the public<sup>21</sup>.

<sup>15</sup> Mita Noveria, et.al.2017.op.cit. pages:143-144. The poor population percentage in West Kalimantan is 7,87 % and in North Kalimantan is 6,23 %. Meanwhile, the poor population in Indonesia in 2016 based on the information of the Minister of National Development Planning was 10,6 %. The minister further explained that the gini ratio tends to be high which means that the economies of West Kalimantan were prone to hiking imbalances. For further information, read Koran Tribun Pontianak on 29 Agustus 2017.

<sup>16</sup> Manto Saidi, "The Opportunities and Challenges of Borderland Areas in Facing ASEAN Economic Community: A Socio-Cultural Approach in the Development of Kalimantan Island". A paper presented in the 1<sup>st</sup>International Conference on ASEAN Economic Community: Chance and Challenge of the Countries in Borneo Region.Sambas 1 Agustus 2015.

<sup>17</sup> Rose Abdullah, "The Human and Social Culture Development of Borderland Communities in Borneo: Opportunities and Challenges of Borderland Regions in Facing ASEAN Economic Community. A paper presented in the 1<sup>st</sup>International Conference on ASEAN Economic Community: Chance and Challenge of the Countries in Borneo Region.Sambas 1 Agustus 2015, page: 60

<sup>18</sup> Ibid. page: 61

<sup>19</sup> Ibid. pages: 68-69

<sup>20</sup> Chitra Indah Yuliana, "The Sovereignty from Economic Aspect: A Dynamic Portrait of Dependency in Fulfilling Essential Needs in the Borderland" in Mita Noveria, et.al.2007.op.cit. page:154

<sup>21</sup> JamiatAkadol. 2016. A Dissertation on Doctoral Program of Law Science of Diponegoro University Semarang entitled: "The Reconstruction of Bureaucratic Legal Culture of Progressive Law-based Health Services (A Study of Bureaucratic Legal Culture of Maternal and Infant Health Services at Puskesmas (Community Health Services) and RSUD in Sambas Regency, West Kalimantan). unpublished.

Meanwhile, what is meant by bureaucracy is the government bureaucracy<sup>22</sup> that can be called a bureaucrat, that is government officials who carry out government activities in this case the executives. The government bureaucracy as the focus in the discussion of the legal culture of public service bureaucracy is an important and decisive element because of the authority it has and the expectation of service improvement from the community. The authority of the bureaucracy in providing public services as a consequence of the unitary state of the Republic of Indonesia and as a welfare state is mandated in the preamble and articles of the 1945 Constitution. The state, in this case is the government bureaucracy, is obliged to prosper its people. All of the basic needs of the people are the responsibility of the state, namely basic needs like education services, health services and basic administrative needs related to self-identity, infrastructure such as roads, irrigation and transportation facilities<sup>23</sup>. Thus, public service is not merely an act of fulfilling the state's obligation to prosper its people, but rather as the evidence of citizens' trust in the existence of the state, the evidence that the state is near its people and concerned with the interests of its people. Since the public services for the people of a country is so important, Haryatmoko<sup>24</sup> defines public services as all activities that their fulfillment must be guaranteed, regulated and overseen by the government because it is necessary for the realization and development of social interdependence and, basically, its realization is difficult to accomplish without the interference of government power. Thus, the public service is an activity or a series of activities in order to fulfill the need for services in accordance with the laws and regulations for every citizen and resident for goods, services and/ or administrative services provided by the public service providers<sup>25</sup>.

### 3.1.1. The Influence of Community Culture

The legal culture of the public service bureaucracy is strongly influenced by the culture of the society in which the bureaucracy performs its duty to serve the community. According to Friedman the social change in society will affect the change of legal culture including bureaucratic legal culture. Friedman<sup>26</sup> further explains that:

***“Social change leads to change in legal culture, which in turn lead to legal change, a spiral of demands is characteristic of the welfare state, the spiral steams for specific changes in legal culture, which I have tried, rather briefly, to sketch out, and to relate to gross facts of social change in the modern world. Social change is the first and most crucial term in the equation. New technology leads to social change. Technology does not explain everything that happens in modern society, but it is important, and must be taken into account”.***

In his other writings Friedman<sup>27</sup> says that legal culture refers, then to those part of thinking-that the band of social force toward or away from the law and the particular ones. The same thing is stated by EsmiWarassih that a person uses or does not use or disobey law depending on his legal culture<sup>28</sup>. The bureaucratic legal culture is thus of great importance to the movement of the legal system because it is based on the fact that<sup>29</sup>:

- a. Whether a person uses or does not use or disobeys the law is very dependent on his legal culture. That is, the existing law will function or not according to expectations of its formulation is very dependent on the acceptance or rejection of the community.
- b. when we see law enforcement as a process for realizing legal objectives into reality, then the process always involves the makers and implementers of the law as well as the people.
- c. law has a reciprocal relationship with its people because the law itself is a means of regulating society and working within the community. That is why, the law is inseparable from ideas and opinions that live among the members of the community. The structure of society can be an obstacle as well as social means to enable the law to be applied as well as possible."

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<sup>22</sup> Miftah Thoha.2010. The Bureaucracy and Politics in Indonesia.PT. Raja Grafindo Persada.Jakarta. page:2.

<sup>23</sup> Hesti Puspitosari, et.al.2011. The Philosophy of Public Services: The Dark Image of Public Services in Overcoming Paradigm Change of Public Services. Setara Press.Malang. page: 22.

<sup>24</sup> Haryatmoko.2013. The Public Ethics for the Integrity of Public Officials and Politicians.PT.Gramedia Pustaka Utama.Jakarta. page: 13.

<sup>25</sup> Act No 25 of 2009 on Public Services

<sup>26</sup> Lawrence M.Friedman. "Legal Culture and The Welfare State" in Gunter Teubner.1986.Dilemmas of Law in the Welfare State.Welter and Gruyter.New York.

<sup>27</sup> Lawrence M.Friedman.1975.The Legal System: A Social Science Perspective. Russell Sage Foundation.New York. page: 5

<sup>28</sup> EsmiWarassih. 2011. Legal Regulations: A Sociological Study. UNDIP Press. Semarang. Page: 63

<sup>29</sup> Ibid. pages: 78-90

Observing the above opinion, it can be understood that the legal culture of bureaucracy is strongly affected or at least can be influenced by the culture of the community. The results of the authors' research on licensing services and health services in some areas in the border areas of West Kalimantan with Sarawak Malaysia tend to apply patron-client and paternalistic culture. The principle of loyalty in the body of bureaucracy is misinterpreted by the bureaucracy and society. Loyalty is defined as following what the boss instructs, although it is realized that what is ordered is against the law and does not take sides with the people. Doing whatever is ordered to be carried out by the leadership of government should be implemented is what they call as loyalty to the leadership. As a result, the subordinates do not dare to take discretion action, although he is authorized to do so. According to Kausar<sup>30</sup>, patron-client relationships can occur because of the mutual understanding and emotional connection between superiors and subordinates caused by the existence of the linkage of resource ownership between the patron as the owner of power (a governor/ or a regent/ a mayor) with support and loyalty by staff as clients. Meanwhile, paternalistic relationships in public service bureaucracy occur among others in the decision-making process. A staff member who should provide suggestions and alternatives (choices) in making decisions, tend to submit entirely to the leadership. The staff only dares to make notes, "what's your order" to the leader. According to Agus Dwiyanto<sup>31</sup> that paternalistic pattern of bureaucracy in Indonesia more reflects the relationship of father and the child. A staff member feels his behavior is inappropriate (breaking the custom) if making suggestions to a leader since he or she believes that it will be rejected by the leader. Meanwhile, leaders will argue that staff suggestions which are not in accordance with their oral directions of the leadership as an act of resistance or at least considered "not in line". On the other hand, the community is very much in tune with the actions of the leader who disrupts the unlawful staff as the leadership "should be" supported by all of the staff or "all-pervasive" people, even though what they order is against the law. Whatever has been decided by the leadership must be secured by all means.

### **3.1.2. The Influence of Applicable Law**

The reform that has occurred since the fall of the New Order government, Soeharto was so incessant and various legislation products (applicable laws) have been made, replaced, even abolished. However, there are still many old legislations still used for appropriateness reasons, although their elements of philosophy and the purpose are not in accordance with their era. There is a paradigm shift from centralized to decentralized. There are also who mention a paradigm shift from power to empowerment and many other terms used to explain the changing conditions that occur. This relatively quick change happens on the system of local government, when Act No. 5 of 1974 on Regional Government is amended by Act No. 22 of 1999 on Regional Government. It changed the total system of regional autonomy, i.e. the broadest autonomy from the original autonomy that was real and responsible. Authority is given to almost all areas of affairs except for defense and security affairs, monetary, foreign and religious affairs and domestic political affairs. Any unexpected abrupt changes may result in a mazy implementation. It seems that the transfer of power only diverts the problem from center to region. Instead of achieving an ease of service and welfare, what happens is that the regional authorities take advantage of this power for other purposes from the real objective of granting such autonomy (abuse of authority). Based on the general explanation of Act No. 23 of 2014 on Regional Government, it is affirmed that through the granting of regional autonomy as wide as possible, the region is expected to be able to accelerate the realization of people's welfare through service improvement, empowerment and participation. Previously, the Act No. 32 of 2004 on Regional Government also confirmed that through the broad autonomy, the region is expected to improve its competitiveness by taking into account the principles of democracy, equity, justice, uniqueness and specificity and potential of regional diversity within the system of the Unitary State of the Republic of Indonesia. Thus, the main objective of providing regional autonomy is to prosper the community through public services, improve regional competitiveness and increase community participation in development activities in the region.

The public services by the government bureaucracy (state) to the public is an important and urgent element because in addition to the fact that public service is still minimum, it is also mandated by the constitution as stated in the preamble of the 1945 Constitution, it is also reaffirmed in consideration in formulating Act No. 25 in 2009 on Public Services, that the state is obliged to serve every citizen and people to fulfill his basic needs within the framework of public services as mandated in the 1945 Constitution.

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<sup>30</sup> Kausar. 2009. *The System of Regional Government Bureaucracy under Patron-Client Culture Shadows*. Alumni. Bandung. pages: 8-9.

<sup>31</sup> Agus Dwiyanto. 2008. *The Public Bureaucratic Reform in Indonesia*. Gajahmada University Press. Yogyakarta. page: 95

The state shall provide for the welfare of its people by providing goods, services and administration to community. HestiPuspitosari<sup>32</sup> said that providing the basic needs of society is the responsibility of the state. Meanwhile, the public service required by society is not merely to prepare instruments for the run of bureaucracy to fulfill the state's obligations, but more than that, that public service is the fundamental essence for the realization of social justice.

Some examples of legislation established to improve public services in the investment and health services sector are Act No. 25 of 2009 on Public Services, Act No. 25 of 2007 on Investment, Act No.36 of 2009 on Health, Act No. 29 of 2004 about Medical Practice, Act No. 44 of 2009 on Hospital, Act No. 18 of 2014 on Mental Health and Act No. 36 of 2014 on Health Personnel and Act No. 38 of 2014 on Nursing. To improve the health service, Act No. 40 of 2004 on National Social Security System and Act Number 24 of 2011 on the Social Security Administering Body (BPJS) have been established. In the effort to improve health service, Act No. 1 of 2004 on State Treasury, Government Regulation No. 23 of 2005 regarding Management of Public Service Board has been enhanced with Government Regulation No 74 of 2012. Also, Government Regulation No. 58 of 2005 is stipulated on Financial Management Areas followed up by Minister of Home Affairs Regulation No. 61 of 2007 on Technical Guidelines for Financial Management of Regional Public Service Bodies (PTPK-BLUD). Based on the results of research in West Kalimantan areas, it is found among others as follows:

#### 1) Health Services

Health services should be better and satisfy the community with the many regulations that support it. Nevertheless, it turns out even to be more severe and disappointing for the people. Perhaps this is the case given by Charles Samford<sup>33</sup> in his book *The Disorder of Law: A Critique of Legal Theory* which says that the more the things are arranged the more disordered they become. In accordance with the prevailing provisions, health service centers such as Regional General Hospital (RGH) and Public Health Centers should be part of the Regional Public Service Agency (RPSA). RGH and Public Health Centers which are financially managed as RPSA are given the freedom to apply business principles and have their own cash outside the local treasury. The freedom to manage income from health services for health service centers that implement RPSA research dislocations is not utilized by the health care centers. There are only two RGHs that apply RPSA in managing their finances namely those in Sambas and Singkawang. Even the provincial government of West Kalimantan has not implemented RPSA. Meanwhile, the Public Health Centers that have implemented new RPSA in Sambas Regency, other areas are still preparing, whereas the provisions that regulate RPSA have been very long established. Based on interviews with some leaders of hospitals and health centers that have not implemented RPSA explained that there has been no direction from the leadership (Governor and/ or Regent/ Mayor) to apply it. This fact indicates that health service bureaucracy does not have the intention to serve the people, although it is a constitutional duty that must be implemented by the government. The low level of health services at the study sites is also influenced by the lack of doctor's responsibility in providing health services. Doctors who are also as the State Civil Apparatus (SCA) assigned to hospitals and Public Health Centers paid and given a large incentive by the Regional Government prioritize more providing health services outside where they were assigned. This may be the case because they are possible to practice in 3 (three) locations based on the provisions of Act No. 29 of 2004 on Medical Practice.

Health services are getting worse because there is no Standard Operating Procedure (SOP). Based on Article 20 of Act No 25 of 2009 regarding Public Service, it is emphasized that public service providers must formulate and set service standards by taking into account the capability of the organizers, the needs of society and environmental conditions. Furthermore, in preparing and stipulating service standards, they shall involve the community and related parties. Then under the article 54, it is stipulated that the organizers or implementers who violate the provisions of not preparing the SOP shall be dismissed with respect not at their own request. Meanwhile, the organizers who make and apply SOP do not involve the public shall be subject to sanctions exempted from office. In fact, there are not many SOPs been established and if the SOPs are made by health providers, they do not involve the community. Moreover, there is no sanction by the local government leaders to such public service providers.

#### 2) Investment Licensing Services

<sup>32</sup> HestiPuspitosari, et.al. 2011. op.cit. page: 22

<sup>33</sup> ReadCharles Samford's work.1989.*The Disorder of Law: A Critique of Legal Theory*.T.J.Press (Padstow) Ltd,Patstow, Cornwall, Great Britain



Capital investment or commonly called investment today is needed because it will provide business opportunities and income for the community that ultimately provides welfare for them. Nevertheless, in order that an investment goes into an area or country there must be an attractive investment climate. According to the results of the Working Group of the Capital Market Consultation Group study as quoted by Taufiq Effendi<sup>34</sup> that the investors' decisions to invest their capital are determined by:

- (1). The stability of political and security environment conditions
- (2). Governance and corruption prevention system
- (3). Legal Frame Work and The Rule of Law
- (4). Market share and economic growth prospects
- (5). Commensurate labor costs with the level of productivity from cheap labor alone
- (6). Inadequate infrastructure"

The governance and corruption prevention system in Indonesia are considered very conducive because it is until now proven with the establishment of various provisions on bureaucratic reform and efforts to prevent and eradicate corruption. The prescribed provisions for bureaucratic reform are Act No. 27 of 2007 on the National Long Term Development Plan (RPJPN) for 2005-2025; Presidential Regulation No. 81 of 2010 concerning Grand Design of Bureaucratic Reform; and the Regulation of the Minister of Finance of the Republic of Indonesia No. 20 of 2010 concerning the Road Map of Bureaucratic Reform 2010-2014 which was amended by Regulation of the Minister of State Apparatus Empowerment and Bureaucracy Reform No. 11 of 2015 on the Road Map of Bureaucracy reform 2015-2019. Even more specific, in order to the create work culture which serves the community the minister has also made the Decree No. 25/ Kep/ M.PAN/ 4/2002 that was later replaced with the regulation of Minister of State Apparatus Empowerment and Bureaucracy Reform No.: 34 of 2012. Because of the importance of building a working culture and legal culture bureaucracy in order to improve public services, it is regulated in RPJPN and RPJMN. However, the legal culture of public service bureaucracy has not changed much. This can be proven from:

- (1) There are still many SOPs that have not been made and the SOPs are made unilaterally by the organizers without involving the community
- (2) The regions do not delegate all licensing authority and non-licensing of investment to the One Stop Service licensing service provider as mandated by Act No 25 of 2009 on Public Service and its implementation regulations. The direct consequence of the two things mentioned above is the investment licensing service is not clear and tends to change and be time consuming. It is very detrimental for the investors and the public because if they do not so invest their capital, they will not have any job opportunities and income. The act of bureaucracy and/ or an official who does not fulfill such constitutional obligations if sued by the public will be justified or constitutional<sup>35</sup>.

### 3.1.3. The Influence of Politics and Governance System

The direct Regional Electoral System (PILKADA) as we know it today is in one hand very positive in the context of political education and building democracy in the regions. The people are free to choose their leaders to accelerate the welfare of the people. Meanwhile, the direct elected leaders are expected to keep their political promises because the people will see and oversee their implementation. On the other hand, they are very influential on the legal culture of public service bureaucracy in the region. The bureaucracy that should be neutral<sup>36</sup>, from the political influence of the bureaucracy that must implement various laws that apply without favoritism,

<sup>34</sup> Taufiq Effendi. 2013. op.cit. page: 218

<sup>35</sup> Hesti Puspitosari, et.al.2011.op.cit. page: 8.

<sup>36</sup> Bureaucratic neutrality is regulated in Act No. 5 of 2014 on State Civil Apparatus (SCA), namely in:

- (1). Article 1 paragraph (5) that SCA management is the manager of SCA to produce professional SCA employees, have basic professional ethical values, free from political intervention, clean of corruption, collusion and nepotism.
- (2). Article 2point f, on the implementation of SCA policy and management based on the principle of neutrality. The principle of neutrality is that every SCA employee does not take sides from any form of influence and is impartial to anybody's interests. To maintain the neutrality of the bureaucracy (SCA employees) is carried out by the State Civil Service Committee (SCSC) as defined in article 31 paragraph (1) point a

was influenced by the political interests of the regional head and his success team. Using the authority possessed by the head of the region, he then mutates regional officials without considering the competencies they have. As a result, professional bureaucratic officials in their field are moved to another new place and must learn again from the beginning. It occurred, at the study site that the official mutation was only for "retaliation or revenge". Officials who do not have the expertise, but are meritorious in supporting/ winning the head of the region during the regional election are placed in a prestigious place. While officials who support other losing candidates are transferred to another Regional Working Unit (SKPD) or even not given a job (non-job). Even in some areas, official mutations are influenced by the political officials and success teams in the region. Mutation of positions deliberately touted by politicians who support the winners of the election with the intention that the officials and the prospective officials approach them or even offers certain positions in return for development projects or even money or valuables and/ or other property. The act of winning the regional election mentioned above is very influential on the legal culture of public service bureaucracy. They think it is useless to be professional and competent in providing services because it does not necessarily guarantee them to be placed in a place that suits their expertise. It is better looking for a broker/ a success team even if they have to shell out important money to position. Such bureaucratic behavior tends to make the bureaucratic culture of public service very disappointing for the community. The practice of corruption, collusion and nepotism keep flourishing because it takes so long to get the desired position and when they do, they think how to return the money that has been spent to get the job. The type of bureaucracy that confuses private business with public affairs is the pre-bureaucratic type<sup>37</sup>. This type of bureaucracy should not be applied in the current era of reform and globalization demanding legal certainty and speed. Investors are more interested in investing in countries and regions that offer ease in terms of time, low cost, ease and friendliness, especially during the licensing process. How we can compete with Singapore, Malaysia and even now Vietnam in providing investment licensing with only few terms or procedures and completion time that is only a matter of hours, if in Indonesia, the licensing process requires dozens of terms and take a very long time, and even years.

It is as if it was intentional in making the licensing SOPs that there are many conditions and there seem to be multi interpretations for the terms and conditions so that potential investors wishing to get permission are forced to use the services of the brokers and must give up some money because people who gave permission are considered the most honorable people who should be rewarded fairly. Examples of such case are the inability to operate private vehicles for entry in and out of the area Cross Country Border post in Aruk-Biawak in Sambas Regency, West Kalimantan. According to MantoSaidi and Zainal Abidin<sup>38</sup> that private vehicles anytime can go back and forth in PLBN Aruk-Biawak from West Kalimantan Governor agreed because the Malaysian side has long been ready with transportation workers. While we (Indonesia) are not ready with unclear reasons. However, it is questionable that in the PLBN Badau-LubukHantu, Kapuas Hulu, West Kalimantan private vehicles are allowed to go back and forth in the PLBN. There are assumptions that there are political interests involved there, but whether it is wise or not, it inhibits economic activity of the people in the distribution of people and goods.

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(3). Article 4 point d, that is to explain the SCA duties professionally and impartially, point e makes Decisions based on the principles of expertise and item f, creates a non-discriminatory working environment, and item h, takes account of its performance to the public

(4). Article 5 paragraph (2) item d, performs its duties in accordance with the provisions of legislation, point e, performs its duties in accordance with the orders of superior or authorized officers insofar as they are not contrary to the prevailing laws and regulations of government.

<sup>37</sup> Read further Phillippe Nonet and Philip Selznick.2013. Responsive Law translated by RaisulMuttaqin. Nusa Media. Bandung. pages: 25-32. It is explained that bureaucracy evolved from the pre-bureaucratic, bureaucratic and post-bureaucratic stages. Judging from its purpose, pre-bureaucratic is pluralistic which confuses between private and public interests. Bureaucratic objectives are definite, public and identified with defined jurisdiction. While the post-bureaucratic goal is mission-oriented and flexible. In making decisions, pre-bureaucratic is ad-hoc-subject to one's will. Bureaucratic decision-making is systematic, routine, delegative and stable. The post-bureaucratic decision-making is participatory, centered on issues and broad delegations.

<sup>38</sup> An interview with Border Management Representative of West Kalimantan Province and Head of Transportation Office of Sambas Regency, West Kalimantan. Sambas Regency Government has proposed the opening of access and entry of private vehicles in PLBN Aruk-Biawak to the Governor of West Kalimantan but has not been decided by the Governor of West Kalimantan. PLBN Aruk-Biawak has been officially operating on 11 November 2011 and was re-open by President Jokowi on 17 February 2017.

However, in the northern region of West Kalimantan there are many economic activities that if well-supported by opening the access for the private vehicles in PLBN Aruk-Biawak, certainly this area will quickly develop. The progress in Sambas regency also means the progress in West Kalimantan and the progress in northern Indonesia.

### **3.2. The Reconstruction of Bureaucratic Legal Culture for Public Services**

Observing the condition of the bureaucratic legal culture for public services above, it would be necessary to immediately take concrete steps to change the public service bureaucracy for the better and more competitive with other ASEAN countries. Some policies that can be done, to reconstruct the bureaucratic legal culture for public service:

#### 1) Short Term

The policy that should be done for a short period of time within the next year is:

- a. To inventory the economic potential that can be developed for investment;
- b. To train existing public service personnel in the region, especially the superior public services;
- c. To make SOPs of all types of licenses and public services;
- d. To reaffirm the authority of public services in the form of regulations or decrees of the regional leader;
- e. To prepare the hardware and software for public services gradually, determining their priority scale.

#### 2) Medium Term

The five-year medium-term program includes:

- a. Making various local regulations related to public services;
- b. Cooperating with universities and research and development institutions to design improvement of public services;
- c. Investigating potential investment in the region;
- d. Preparing trained/ professional personnel through education and training at universities either locally or abroad;
- e. Expanding meetings with other central and regional governments or even with neighboring ASEAN governments to discuss investment, skills training and opportunities for export-import of goods and other services;
- f. Proposing a variety of regulatory and deregulation policies as well as debureaucratization in public services to provincial and central government.

### **4. Closing**

AEC is at hand and we must do something to actively engage in it. The central government has made various policies to respond to the agreed AEC policy implemented since 31 December 2015. Local governments on the border with neighboring countries should actively respond to AEC. However, the opportunity has not been utilized properly. Instead of improving the public services, as the gate of investment, they are undermined by the private interests of public officials in the region. The effects of the destruction of existing public service system are very prominent on the bureaucratic legal culture for public services. As a result, the aims and objectives of the bureaucracy become increasingly uncertain. Therefore, it is suggested to the local government, central government and universities and business world to work together to improve the bureaucracy through activities such as:

- 1) Conducting both formal and non-formal meetings which are initiated by any party<sup>39</sup>, to discuss the civitas's response to AEC.

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<sup>39</sup> So far, the initiators of meetings always come from the government and very rarely from universities let alone from the business world. It is time for the society and universities to initiate the meeting because in the concept of New Public Service introduced by Janet V. Denhardt and Robert B. Denhardt in his book *The New Public Service: Serving, Not Steering* states that: (1). The public administrator works for the public good not for himself. Public interest is the result of a dialogue on shared values rather than individual collections of opinions. It is therefore necessary to build strong trust and collaboration relationships between citizens, (2). Public administration must play an active role in building a common understanding for the public interest, (3). Public interest can be better achieved between the government and citizens who are committed to making the best contribution to society, (4). Publicly needed policies and programs can only be achieved if done collaboratively, (5). The government should be more responsive than the market, (6). The government uses shared value-based leadership in helping its citizens to articulate and discover common interests, (7). Public organizations in

- 2) Encouraging the public service bureaucracy toward the New Public Service paradigm by eliminating the myths that have influenced the mindsets and bureaucracy culture sets, namely:
1. The liberal myth, the government can be improved by spending more and doing more. In fact, disbursing a lot of funds on a non-functioning system will not bring any real results.
  2. The conservative myth, the government can be improved with less spending. In fact, withdrawing money from a malfunctioning system may save taxpayer money, but not improve government performance.
  3. The business myth, that is government can be improved by running it like a business. In fact, there is an important distinction between business and government.
  4. The employee myth, employees will work well if they are a lot of money. In fact, we must change the way resources are used if we want the results to change.
  5. The myth of people, that is government can be improved by employing other good people. In fact, the problem is not with people but on systems that get them trapped.<sup>40n</sup>
- 3) The law is for man, not the otherwise man for law<sup>41</sup>. The bureaucratic mindset of public service should be changed from assuming that the law should be exercised no matter what the reason is. The unequal and painful law of society and business world should be abandoned, let alone its multi interpretation formulation, hence a discretion authority should be applied as regulated in Act No. 30 of 2014 about Administration of Government.

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participating in the public interest will succeed in the long run if through a process of collaboration and leadership together mutual respect

<sup>40</sup>David Osborne and Peter Plastrik.2000. *Banishing Bureaucracy: Five Strategies Towards Entrepreneurial Governance*. Translator: Abdul Rosyid and Ramalan.PPM.Jakarta. page:16.

<sup>41</sup>This legal way of thinking was suggested by SatjiptoRahardjo which he named Progressive Law. Read the books related to Progressive Law, among others: (1). SatjiptoRahardjo.2006.*Recognizing Progressive Law*. Kompas.Jakarta. (2). Mahrus Ali.2013. *Understanding the Progressive Law*.AswajaPresindo.Yogyakarta. (3). Awaludin Marwan.2013. *Progressive Law Philosophy*. DuaSatria Offset. (4). Mahfud MD.2013.*Deconstruction and Progressive Law Thought Movement*.Thafa Media.Yogyakarta.

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