

RECONSTRUCTION OF THE LOCAL GOVERNMENT MODEL BASED ON THE CONCEPT OF THE FOUNDING FATHERS AND THE 1945 CONSTITUTION JUNCTO THE 1945 CONSTITUTION OF THE REPUBLIC OF INDONESIA TOWARS MODERN LOCAL GOVERNMENT

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ABSTRACT

The model of local governance has always changed since Indonesian independence, namely centralized and decentralized model. According to Law Number 23 of 2014 on the Local Governemnt and Law Number 6 of 2014 on the Village, the model of local government returned to the traditional conservative centralized model. This model is not in accordance with the model of local government initiated by the founding fathers and norms of Article 18 of the 1945 Constitution and norms of Article 18, 18A and 18B of the 1945 Constitution of the Republic of Indonesia (after amendment). According to this problem, this research is conducted. The purpose of this study is to compare the models of local governance practiced since the colonial era until now with the model of local government conceived by the founding fathers and the 1945 Constitution. This research is a normative research with content analysis method. The result of the research is that the current system of local government deviates from the founding father conception (Muhammad Yamin, R. Soepomo, and Mohammad Hatta) and the 1945 Constitution. The conception of local government according to the founding fathers and the 1945 Constitution is modern urban decentralized local government while the regional and village governments are regulated by Law Number 23 of 2014 on The Local Government juncto Law Number 6 of 2014 on The Village is a conservative and traditionally centralized of the local governance model.

Keywords: Local Government, Founding Fathers, 1945 Constitution

A. INTRODUCTION

One characteristic of civil society is the implementation of a democratic, transparent, fair, effective, efficient and prosperous government. The practice of local government and village government at this time has not shown the main characteristic, namely to improve the welfare of citizens by providing public services to citizens. This happens because the provincial, district / city, and village governments only take care of themselves, and do not provide the public services needed by the people. Village/Urban Communities and Sub-District Governments do not serve

Identity Card, Family Card, licensing, land registration, new land clearing, and land inventory which includes proprietary land, customary land, cash land, land tenure (bent land), land owned by foreigners, land owned by corporation, idle land, and absentee land. Village, sub-district and regency/city governments also do not manage agricultural production facilities (seeds, fertilizers, medicines, tractors, plows and harvesting machines), microfinance institutions for farmers, supporting institutions for agriculture, trade, animal husbandry, fisheries, shipping, small-scale industries based on agriculture, agriculture-based handicrafts, small and medium enterprises, markets, clothing, food, shelter, basic education, courses, people's health, the poor and orphans, unemployed people, and general hygiene.

Provincial, regency/city, and village governments regulated by Law Number 23 of 2014 juncto Law Number 6 of 2014 only serves its own organization, does not serve citizens at the community level. Almost all programs and budgets are only for the activities and financing of their offices, not programs to be given to citizens. This happens because all government units do not have a public service agency at the community level. The provincial, regency/city, and village governments do not have a public service office in the village/urban communities. Village and Urban Communities offices are not the office of the public service but the office of the intermediary (*tussenpersoon*) of the public service. The public service office is located in the regency/city, not in the community. As a result, since the colonial era until now the people at the community level have not received public services from the State.

Actually the conception of founding fathers and the 1945 Constitution was to form a local government that provides public services to the community but the laws that have been made since the New Order regime are far from this conception. At the beginning of independence until 1965 the conception was tried to materialize by enacting six laws: 1) Law Number 1 of 1945; 2) Law Number 22 of 1948; 3) Law Number 1 of 1957; 4) Presidential Decree Number 6 of 1959; 5) Law Number 18 of 1965; and 6) Law Number 19 of 1965. All of these laws form modern urban decentralized local government and remove centralized/deconcentrated or local government administrations (*karesidenan* and *kawedanan*) units aimed at public services at the community level. However, when the Soekarno government fell and was replaced by the Soeharto government Law Number 18 of 1965 and Law Number 19 of 1965 annulled. The Suharto government then made a new law: 1) Law Number 5 of 1974 concerning Local Government and Law Number 5 of 1979 concerning Village Governance. Based on these two laws the model of government returned to the model of local government in the colonial era. It should be noted that the model of the local government of the colonial era was centralization which was affixed with decentralization to the province (*propintie/gewest*) and regency/municipality (*regentschap/stadsgemeente*) coupled with pure centralistic government units in *karesidenan* (*residentie*), *kawedanan* (*district*), and sub-districts (*onder -district*). In addition, the Government also established indigenous hamlet governments (*inlandsche gemeente*) as legal entities in rural communities that were

governed indirectly (indirect *bestuurd gebied*). The model of local government formed by the Soeharto regime is similar to the colonial era government model. Provinces and regencies / municipalities are centralized governments that are affixed with decentralization, while the working areas of auxiliary governors, regent auxiliary working areas, administrative cities and sub-districts are pure centralized/ deconcentrated government units known as administrative local government or administrative regions. Village government was also returned as a legal entity in the rural community which was governed indirectly (indirect *bestuurd gebied*) with the nomenclature of the village government. This village government was the same as the indigenous hamlet government in the colonial period under the 1906 IGO and 1938 IGGO arrangements.

The Suharto regime fell in 1998 and was replaced by the Reformation regime. During the reign of Habibie Law Number 5 of 1974 and Law Number 5 of 1979 was replaced by Law Number 22 of 1999. Based on these law, the model of regional governance shifts towards the founding fathers and 1945 Constitution conception of the founding fathers and the Article 18 of the 1945 Constitution of The Republic of Indonesia. Unit of centralized government (local government administrative or administrative region) removed: the working area of the vice governor, regents auxiliary working area, city administrative, and sub-districts. Although the district nomenclature is maintained but the status is different. Sub-district status under Law Number 22 of 1999 is a district / city regional apparatus, not a centralized/ deconcentrated government unit. The state only forms decentralized government in provinces and districts / cities. However, unfortunately this Law still maintains the Village as a legal entity for rural communities that are governed indirectly (indirect *bestuurd gebied*) as the colonial era under IGO 1906 juncto IGOB 1938 and the New Order under Law Number 5 of 1979.

During the reign of Megawati Law Number 22 of 1999 was replaced by Law Number 32 of 2004. Under this Law the local government leads to the colonial/New Order model again, namely forming the Province as a decentralized government which is attached to a centralized/deconcentrated government. Only districts/cities are retained as decentralized government units. And the village is maintained as a legal entity in the rural community which is governed indirectly (indirect *bestuurd gebied*) as in the colonial era under IGO 1906 juncto IGOB 1938 and the New Order under Law Number 5 of 1979.

During the reign of Soesilo Bambang Yudoyono Law Number 32 of 2004 replaced with Law Number 23 of 2014. Under this Act the local government returns to the colonial model and the New Order, which forms Provinces and Regencies/Cities as decentralized governments which are attached with a centralized/deconcentrated government. This is based on First, the local government consists of two forms:

1) local administrative government or local state government and 2) local self-government or local autonomous governments. Local administrative government is a centralized government in the region using the principle of deconcentration while local autonomous governments is a government that is given the right to regulate and manage its own household affairs using the principle of decentralization.

Second, in Indonesia, the local government began with the formation of a local government under *RR* 1854. The local government formed was the local administrative government. Then under *Decentralizatiwet* 1903, the local administrative government was attached to local autonom governments, especially in *provincie and gemeente* (municipality) and *regentschap* (regency). At the time of independence, local government was formed alternately. During the Old Order era only local autonomous governments were formed. In the New Order era, local administrative government was re-established with local autonomous governments like the colonial era. In the Reformation era under Law Number 22 of 1999 only formed an local autonomous governments. However, under Law Number 32 of 2004 juncto Law Number 23 of 2014 local government was formed as in the New Order era and the colonial era, namely , local administrative government that were attached to local autonomous governments.

In addition, the Government also made Law Number 6 of 2014 concerning Villages. This Law is the same as IGO 1906 juncto IGOB 1938 in the colonial era and Law Number 5 of 1979 in the New Order era. Under Law Number 6 of 2014 Village status equals the status of a village in the colonial era and the New Order: as a legal entity in a rural community governed indirectly (*indirect bestuur gebied*).

The provincial, regency/city, and village governments from the colonial era until now can be classified into six models. First is the colonial / traditional conservative centralistic model. This model was adopted by *Decentralizatie Wet* 1903 and IGO 1906 Juncto IGOB 1938. This model has four main features: 1) provincial and district/city government units are made into a centralistic government that is attached to decentralized government; 2) created purely centralistic government units on *karesidenan* and *afdeling* (under *gewest/province*), *district/kewedanan* and *onder-district/sub-districts* (under *regency/ regentschap*); 3) legal entities of indigenous communities are made with the nomenclature of indigenous *haminte* governments (*inlandsche gemeente*) or the government of indigenous communities (indigenous *commune*) as indirect government (*indirect bestuur gebied*); and 4) not presenting public services at the community level by the State because community institutions are only used as intermediary legal entities (*tussenpersoon / mediators*) between the people and the superior government.

Second is modern urban decentralized models. This model is embraced by all countries in the world. The governance nomenclature is county, municipal, town, township, and *commune / gemeente* (Norton, 1994; Kemp, 2007). This model is adopted by Law Number 1 of 1945, Law Number 22 of 1948, and Law Number 1 of 1957 (Maryanov, 1958: p. 67). This model has four main characteristics: 1) The state only forms a decentralized government under the central government; 2) convert the indigenous community legal entity (indigenous *commune* or *inheems gemeenschap*)

into small autonomous regions; 3) removing all centralistic government units; and 4) presenting public services at the community level.

Third is the modern decentralized-deconcentristic model of the city. This model is adopted by Presidential Decree Number 6 of 1959 Juncto Law Number 18 of 1965 Juncto Law Number 19 of 1965. This model has four main characteristics: 1) the form of government is decentralized but under strict central government control; 2) the legal entity of the indigenous community (*indegenous commune or inheems gemeenschap*) is converted into small autonomous regions; 3) all centralistic / deconcentristic government units are removed; and 4) presenting public services at the community level.

Fourth is the second stage of a centralized conservative colonial / traditional model. This model is adhered to by Law Number 5 of 1974 of the Law Number 5 of 1979. This model has four main characteristics: 1) provincial and district/ city government units are made into a centralistic government that is attached to decentralized government; 2) made a centralistic government unit in the former *karesidenen* (under the province), former district/*kewedanan* and onder-district/ sub-district (under regency/*regenschap*); 3) an indigenous community legal entity is created with the nomenclature of village government in the former indigenous *haminte* government as an indirect government (*indirect bestuurd gebied*); and 4) not presenting public services at the community level by the State because community institutions are only used as intermediary legal entities (*tussenpersoon*/mediators) between the people and the Government of the Superior Government.

Fifth is a traditional decentralized model. This model is adopted by Law Number 22 of 1999. This model has four main characteristics: 1) provincial and district city government units are made into decentralized governments; 2) removing all centralistic government units in former *karesidenen* (under the province), former district/ financial authority, and onder-district/sub-district (under regency/*regenschap*); 3) an indigenous community legal entity is created with the nomenclature of village government in the former indigenous hamlet government as an indirect government (*indirect bestuurd gebied*); and 4) not presenting public services at the community level by the State because community institutions are only used as intermediary legal entities (*tussenpersoon*/mediators) between the people and the superior government.

The sixth is the third stage of a centralized conservative colonial/traditional model. This model is adhered to by Law Number 32 of 2004 Juncto Law Number 23 of 2014 Juncto Law Number 6 of 2014. This model has four main characteristics: 1) provincial and district/city government units are made into a centralistic government that is attached to government decentralized; 2) semi-centralized government units are created in former sub-district/sub-districts (under regency/*regenschap*); 3) an indigenous community legal entity is created with the nomenclature of village

government in the former indigenous hamlet government as an indirect government (indirect *bestuurd gebied*); and 4) not presenting public services at the community level by the State because community institutions are only used as intermediary legal entities (*tussenpersoon*/mediators) between the people and the Superior Government.

Law Number 23 of 2014 and Law Number 6 of 2014 bring back the reign of *pangreh praja* (*binnenlands bestuur*) which is centralized and the indigenous haminte government as the colonial era indirect government (indirect *bestuurd gebied*) in the modern era and current democracy. The presence of a centralistic government would defeat decentralized government and the presence of village government to the continuation of the indigenous *haminte* government of the colonial era eliminated public service at the community level. Public service at the community level is absent because the local government of this model does not form a public service department at the community level. The provincial government only forms a public service office in the provincial capital. District/city governments also only form public service offices in the district/city capital. The village government, which is only a pseudo/fake government unit, does not have a public service office at all.

Under the regulation of Law Number 6 of 2014, the Village was outside the formal government system as it was regulated under the IGO 1906 Juncto IGOB 1938. As in the colonial era and the New Order the village administration only functioned as *tussenpersoon*/mediator. It only functions as a *tussenpersoon*, a village office not as a public service office but only as an intermediary office for villagers who ask for administrative services.

The village government itself also does not have a public service function but only as a Superior Government instrument to carry out its tasks: withdrawing people's taxes, implementing programs, and disbursing projects. As a result, villagers from the colonial era until now have not received basic services: modern agricultural irrigation, basic education, basic health, clean water, public transportation in rural areas, road networks between villages, districts/cities, electricity in rural areas, agricultural production facilities, the guarantee prices of agricultural products, and micro-finance institutions in rural areas.

B. PROBLEM STATEMENT

Based on the introduction, it is necessary to study more deeply the model of regional governance initiated by the founding fathers and norms of the 1945 Constitution and the model of local governance practiced now. Based on the results of this study, new construction of local government needs to be made. In the future that is in accordance with the conception of the founding fathers and the 1945 Constitution that can truly improve the welfare of the people at the community level.

C. RESEARCH METHODS

This study is using normative research methods, which are explorative-analytical. The data used is secondary data, in the form of primary legal materials and secondary legal materials in the form of documents, books, scientific papers and papers, journal magazines and others. After the secondary data is collected, it is analyzed qualitatively with a comparative law approach. The form is to analyze the comparative law, principles, positive legal norms, and opinions of scholars / legal experts through literature review.

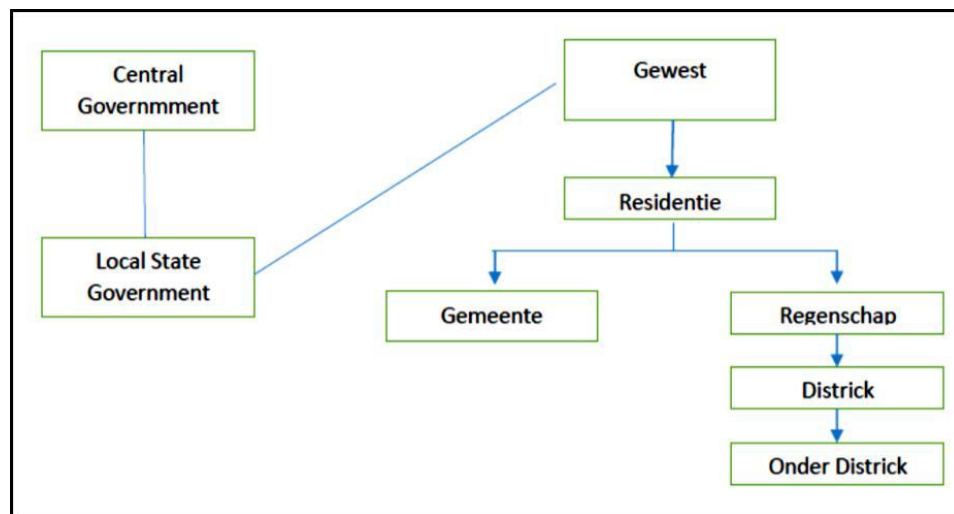
D. DISCUSSION AND RESEARCH RESULT

1. The History Of Local Governance In Indonesia

a. Indonesian Local Government During The Dutch East Indies Colonization Era

In the Dutch era the model of government was centralistic under the *Reglement op het beleid der Regering Nederlands Indie* 1854 (RR 1854) which was enacted on May 1, 1855. This RR 1854 was valid for the *Nederlandsch Oost - Indie* (Dutch East Indies): Bintang Riau Islands, Lingga, Karimon, Tambelan, Anambas, Bangka, Belitung, Java - Madura, Borneo, Celebes, Sunda and Timor, Maluku islands, and Nieuw - Guinea (Statistical data of Kaart Melvill van Carnbee). The governance model implemented in the colonies uses a centralized system based on the principle of deconcentration. This model is known as *binnenlands bestuur*. Power is centered on the Governor General (*een hoofdig bestuur*) as the Dutch Deputy Crown in Indonesia. The Governor General then deconcentrates his authority to his subordinate officials hierarchically: Governor (*Gewest Chair*), Resident (*Chair Residentie*), Regent/Mayor (*Chair of Regentschap/Stadsgemeente*), Wedana (*Chair of Distrcit*) and Assistant *Wedana* (*Chair of Onder-District*). Pay attention to the chart below:

Chart model of the local government system based on *Reglement op het beleid der Regering Nederlands Indie 1854*



On July 23, 1903 it was promulgated *de wet houdende decentralisatie van het bestuur in nederlandsch-indie* lewat *staatsblad voor nederlandsch indie* Number 329. *Decentralisatie Wet 1903* is the addition of 3 (three) new Article on “*Reglement op het beleid der Regering Nederlands Indie*” abbreviated (*R. R.*), namely Articles 68a, 68b, and 68c (Soejito, 1984: p 79-80) enables the *Gewest* or part of *Gewest* granted autonomy. *Decentralisatie Wet 1903* contains the following settings (Wahyono, 2009: p. 65):

- 1) It is possible to establish an area / region (*gewest*) or part of the *gewest* with its own finances to finance the household needs of its own area whose arrangements and supervision are carried out by a council (region and part of the region).
- 2) Every year the central government allocates a sum of money to regions that fulfill the requirements (general allocation funds) as autonomous regions.
- 3) Each region formed regional council, whose chairman is held by central officials who became head of the region concerned. As for parts of the region, a local council was formed. This section then sets the background for the birth of municipal or *gemeente* governments.
- 4) Board members are partly appointed because of their positions in government or in organizations and some are elected.
- 5) Board members are authorized to establish regulations concerning matters relating to the interests of their regions as long as they are not regulated by the general regulations of the central government.

- 6) Each decision of the council must obtain authorization or approval from the governor general as the opperbestuur holder on behalf of the queen.
- 7) Local councils are authorized to collect taxes.

Based on the *Decentralisatie of Wet 1903*, the Central Government separated finance from the National Budget and then submitted it to the local council (local *raden*). The local council is given the authority to use the money to finance household matters. The Local Council is given autonomy, namely the freedom to regulate and manage its household affairs without direct interference from the Central Government. This is what is called autonomy. The Central Government only supervises. After the local council establishes the rules then gives an order to the college (implementing agency) which is formed to provide public services to the community under its jurisdiction.

With the decentralization law of 1903, autonomous regions were formed in the gewest and gewest parts (*gedeelte van gewesten or afdeelingen*). The parts of the gewest given autonomy for the first time are groups of Europeans who live and form communities in big cities like Bogor, Bandung, Semarang, Surabaya, Malang, Medan, and others. The community given the autonomy of its government nomenclature is *gemeente* (municipality). *Gemeente* literally means community, in this case the Dutch/European community living in the city. Therefore, *Gemeente* is translated as municipality (city government). *Gemeente* is a prototype that is in the Netherlands. *Gemeente* is led by *burgemeester* (*mayors*) with *stadsgemeenteraad* partners (city council).

In 1922 the Dutch East Indies Government changed and restructured its system of government with *Besluitshervorming wet 1922* (Stbl. 1922-216). The government added three new articles in *Reglement op Het Beleid der Regering van Netherland Indie (Regeringsreglement)*: article 67a, 67b, and 67c which later became Articles 119, 120 and 121 *Indische Staatsregeling* (Wahyono,2009: p. 85). Based on the 1922 *Besluitshervorming wet* several ordinances were made (Wahyono,2009: p. 89):

- 1) “*Provincieordonnantie*”⁴⁵
- 2) “*Regentschapordonnantie*”⁴⁶
- 3) “*Stadsgemeenteordonnantie*”⁴⁷
- 4) “*Java provincie-kiesordonnantie*”⁴⁸
- 5) “*Regentschap- kiesordonnantie*”⁴⁹
- 6) “*Kiesordonnantie Gemeenteraden*”⁵⁰
7. “Some provisions obtained in S 1926-28, changed with S 127-124”.

Under the 1922 *Bestuurhervormingswet* the parts of the *gewest* given autonomy were expanded so that the regions given autonomy became *gewest* (later changed to *propintie*), *gemeente* (changed to *stadsgemeente*), *regentschap* (regencies), and *groupsgemeenschap* (legal community groups). In the autonomous government units the council was formed (*raad*). The ruling is authorized to regulate and manage the *gewest* household affairs and their parts that have been designated as autonomous regions. The *Raad* can also defend the interests of his region to the governor general. *Raad* can also make policies to collect local taxes.

Although *propintie*, *stadsgemeente*, *regentschap*, and *groupsgemeenschap* were given autonomy so that they could carry out their own government affairs (*zelfbestuur*) and their territory became autonomous local government or autonomous regions but their status as centralized organs (administrative local administrations or administrative regions) were maintained. Thus, *propintie*, *regentschap/stadsgemeente*, and *groupsgemeenschap* are dual status: as autonomous local governments or autonomous regions as well as administrative local administrations or administrative regions. In addition there are government units that are dual status (autonomous regions as well as administrative regions) are also maintained by pure government units of deconcentration / organ of the central government (local administrative administration/administrative area) namely *residentie* and *afdeling* under *propintie* and *district* and onder-district under *regentschap* which are government units that are not mixed government units between local administrative government and local autonomous governments.

Comparison of the provisions of *Decentralisatie Wet* 1903 with the provisions of the 1922 *Besstuurshervorming* wet regional administration in the safe period of the Dutch East Indies are as follows:

Table 1
Comparison of Local Government
Under Regulation of *Decentralisatie Wet* 1903 *Bestuurshervorming*
wet 1922

No	Category	<i>Decentralisatie</i> Wet 1903	<i>Bestuurshervorming</i> wet 1922
1	Autonomous Region	Gewest and gewest parts	1. Province 2. Districts and Municipalities

No	Category	<i>Decentralisatie Wet 1903</i>	<i>Bestuurshervorming wet 1922</i>
2	The board	Local raad	1. Provincial Council 2. District Council 3. City Council
3	Division of region	1. Central 2. Gewest 3. Residency 4. Afdeeling (resident assistant) 5. District/City 6. District/Kawedanan 7. Onder-district/Sub-District	1. Central 2. Province 3. <i>Karesidenan</i> 4. Afdeeling (held by resident) 5. District/City 6. District/ <i>Kawedanan</i> 7. Onder-district/Sub-District
4	District structure	1. Regent 2. Vice Regent	1. Regent 2. District Council 3. District Government Board
5	District supervisor	Resident	Provincial Council (college van gedeputeerden)
6	The nature of	There has been no decentralization to the district	Decentralization is not only for provinces and municipalities but also for districts.
7	Regent position	Head of indigenous government	Head of the autonomous region as well as the head of the administrative area.
8	The center of indigenous power	Regency (regent)	The district council carried out collectively collegial with other district fittings such as college van gecommiteerde, and district government councils.

After *Decentralisatie wet 1903* juncto *Bestuurshervormings wet 1922* is implemented, an autonomous region that is considered successful were the municipalities (*stadsgemeente*) because it has a greater ability to implement autonomy than the district that has just implemented autonomy based on

Regentschap Ordonnantie (Stbl. 1924 Number 79 juncto Stbl. 1925 Number 398). The factors that make the municipal government (*stadsgemeente*) more successful than the regency government (*regentschap*) (Angelino, 1931: p. 388-396) are, (1) the municipal area is narrower, (2) members of the community who sit in raad are educated people, (3) members of the community consist of Dutch people and white people who are educated and prosperous, and (4) the structure of the government directly provides public services to the community. Under the *burgemeester* (mayor) there are no district-*hoofd/wedana* and *ondersistrict-hoofd*/head of district, moreover, head of village, head of commune leader, and neighborhood head. Indeed there *mesteerwijk*/ head of the village but its function is not the same with the neighborhood head. Under the *burgemeester* (mayor) are public service agencies that take care of highways, street lighting, traffic, housing, buildings, city parks, maintenance of drainage and culverts, solid waste, drinking water supply, animal welfare, slaughterhouses, markets, health care, sports fields, swimming pools, schools and libraries, fire department, and the maintenance of the poor (Surianingrat, 1981: 23). This is different from the district. Until the fall of the Dutch East Indies government, autonomy in the regency did not develop because, (1) the territory was very large, (2) members of the community who were in the raad were low-educated and inexperienced, (3) most of the community members were illiterate villagers, (4) the structure of government is complicated, consisting of subordinate government units that are hierarchical: district, onder-district, and indigenous *haminte* or legal entities of indigenous communities, and (5) cannot provide public services directly to community members because they are hindered by the existence of haminte natives as a legal entity (*rechtspersoon*) which is semi-autonomous (Surianingrat, 1981: 23).

b. The Indonesian Local Government is based on Osamu Seirei Number 1 in 1942 During The Japanese Government Colonization

In 1942, it was known that the Japanese government entered and replaced the Dutch colonizers. On March 7, 1942 Indonesia was divided into 3 (three) parts, namely:

- 1) Java and Madura which are under the control of the 16th Japanese army commander in Jakarta.
- 2) Sumatra which is under the control of the 25th Japanese army commander in Bukittinggi.
- 3) Whereas the other islands in Indonesia are under the Japanese navy (Kaigun) domiciled in Ujung Pandang.

In the government system during the Japanese occupation in Indonesia, only in Java. This is not surprising, because in the Dutch East Indies era only the island of Java had a Departmental organization, whereas in Bukittinggi or in Ujungpandang only one *gewestelijk* organization was obtained. Thus, to prevent the emergence of a government vacuum, the Japanese Government through Osamu Sairei Number 1 of 1942 Article 3 stipulates that "all governmental bodies and their powers, laws and Acts from the former Government (Dutch East Indies Government) it is still recognized as valid for the time being as long as it does not conflict with the rules of Japanese military government". Based on these provisions, at a glance it reflects that the Japanese Military Government implemented the same system of local government as the model of the Dutch East Indies government, but in practice the Japanese government changed some local government systems at that time. This can be seen, one of which is in the villages, villages in the Japanese government to become a model of corporatism government continued but the organizational structure was changed and added with the formation of sub-corporations namely *aza* and *tonarigumi*. In addition, there are also *bujing kai*, *seinendan*, *heiho* and *keibodan* (M.A. 1955: p. 76).

c. Indonesian Local Government During the Early Era of Independence (Old Order)

After the Proclamation of Independence on 17 August 1945 and the 1945 Constitution, local government was regulated in Article 18. According to Article 18 the autonomous regions consisted of large autonomous regions and small autonomous regions. The first law regulating local government is Law Number 1 of 1945 concerning the Position of the Regional National Committee which was ratified on 23 November 1945 (three months after the Proclamation of Independence). This Act consists of only 4 Articles. Article 1 stipulates that the Regional National Committees are formed in residencies, autonomous cities, regencies and other areas deemed necessary by the Minister of Home Affairs. According to this article the external structure of local government consists of residency, autonomous city, district, and other regions. Province is not included. This is in accordance with the Japanese government structure which eliminated the provincial government units. Article 2 stipulates that the Regional National Committee becomes the Regional Representative Agency (*BPRD*), which together and led by the Regional Head carries out the work of managing the regional households, provided that it does not conflict with the Central Government Regulation and the Local Government that is wider than it. Article 3 stipulates that

some members of the Regional National Committee or *BPRD* (at most 5 people) are elected to sit on the Executive Board (*BE*). This Executive Board together with the Regional Head leads the daily local government. According to this article, day-to-day governance is held collegially: jointly between regional heads and *BPRD* elements represented by members sitting in the Executive Board.

Based on Article 2 and Article 3 the structure in the local government consists of the heads of regions (*KD*), *BE*, and *BPRD*. *BPRD* and *KD* regulate and manage their own household affairs by the way these two institutions make policies related to their household affairs. Policies made by *KD* and *BPRD* are then implemented by *KD* and *BE*.

Law Number 1 of 1945 was the first regional autonomy policy in independence. In the Elucidation of Law Number 1 of 1945 affirmed that the autonomy of the region according to this Law his is not regional autonomy Dutch style and also not regional autonomy Japanese style but regional autonomy in the style of the Indonesian, which upholds the principle of the sovereignty of the people.

Law Number 1 of 1945 was later replaced by Law Number 22 of 1948. This law regulates the external structure of local governments consisting of Provinces as large autonomous regions, Regencies (Large Cities) as medium autonomous regions, and Villages (Small Cities), State, Marga, and so on as small autonomous regions. The internal structure consists of the Regional Head (*KD*), the Local Government Agency (*BPD*), and the House of Region Representatives (*DPRD*).

n 1949 the form of the Indonesian state changed: from a unitary state to a federation / union. The 1945 Constitution was replaced by the *RIS* Constitution. Accordingly, the 1945 Constitution does not apply. However, *RIS* in August 1950 disbanded because all *RIS* states agreed to merge themselves in The Unitary State of the Republic of Indonesia. Based on the Provisional Constitution of 1950, enacted Law Number 1 of 1957 concerning the Principles of Local Government. Under Law Number 1 of 1957 the outer-level arrangement of the local government consists of first-level autonomous regions, second-level autonomous regions, and third-level autonomous regions, while the inner structure consists of *KD*, Regional Executive Council which is then called the Regional Government Council (*DPD*), and the House of Region Representatives (*DPRD*). *KD* and *DPRD* members are filled through elections while *DPD* members are filled in by *DPRD* members.

In 1957-1959 political conditions were uncertain. Rebellion occurred in several regions. In addition, the Constituent in charge of drafting the new Constitution never completed its task. To overcome the uncertain state of the country the President issued a Decree. Based on Presidential Decree 1959, the 1945 Constitution applies again. Under the 1945 Constitution, the results of the Presidential Decree Law Number 1 of 1957 "refined" with Presidential Decree Number 5 of 1959 and Number 6 of 1960.

At the end of the Old Order regime enacted Law Number 18 of 1965 concerning Local Government. Under Act Number 18 of 1965 the outer structure consists of first-level autonomous regions, second-level autonomous regions, and third-level autonomous regions, while the internal structure consists of regional heads (*KD*) and House of Region Representatives (*DPRD*). The position of regional heads and *DPRD* members is filled through appointment. In addition, the Law Number 19 of 1965 concerning *Desapraja*. *Desapraja* is an custom based autonomous region as a conversion of villages, *nagari*, clans, *gampong*, and others (*inlandsche gemeente*) which in Dutch era were regulated under IGO 1906 and IGOB 1938. Law Number 19 of 1965 abolished the *inlandsche gemeente* which was governed by the 1906 IGO and the 1938 IGOB.

Up to this period the external structure of the local government only consisted of a decentralized government (autonomous region). The government is based on deconcentration (administrative territory) inheritance of the Dutch East Indies consisting of provinces, *karesidenan*, areas of residence of resident / *controleur* or *afdeling* assistant, and district *kawedanan* is liquidated. The *onderdistrict/subdistrict* division is maintained because it will be prepared as a third level autonomous region. The "government" of the village community of indigenous *haminte* government model as regulated by IGO 1906 and IGOB 1938 was converted into a third-level autonomous region (Law Number 22 of 1948, Law Number 1 of 1957) or *Desapraja* (Law No 19 of 1965). However, in terms of the style of government and the filling of regional heads and members of the local council there is a fundamental difference between the arrangements under Law Number 22 of 1948 Juncto Law Number 1 of 1957 with the regulation under Law Number 18 of 1965. The difference is, 1) the regional executive which was originally a collegial turned into a single, 2) the charging head of the regional and local council which originally selected to be appointed by the President, and 3) the pattern of government that was originally decentralized be centralized.

d. Indonesian Local Government in the New Order Era

In 1966 there was a change of power from the Old Order regime to the New Order. Law Number 18 of 1965 and Law Number 19 of 1965 was frozen and replaced. The New Order Regime then enacted Law Number 5 of 1974 concerning the Principles of Governance in the Regions and Law Number 5 of 1979 concerning Village Governance. Under Law Number 5 of 1974 the outer structure consists of two forms of government. The first form is a decentralized government (local self-government, autonomous local government or autonomous regions) and the second form is a deconcentration-based government (local state-government, local administrative government or administrative area). The decentralized (first form) government consists of first level autonomous regions and second level autonomous regions. The deconcentration-based government (second form) consists of the provincial administration and subordinates in a hierarchical manner downwards: the former residency area which was removed in 1963 with the nomenclature of the governor's auxiliary area, district / municipality administration area, regent auxiliary area (former *kawedanan*), administrative city and sub-district. In addition, under the sub-district a *pseudo*/fake government unit called the village government was formed based on Law Number 5 of 1979. First-level autonomous regions are the same region, congruent, and coincide with local administrative administrations or provincial administrative regions. And the second level autonomous regions are the same, congruent, and coincide with local administrative government or district/municipality administrations. The composition of the level I and level II autonomous regions consists of regional heads (*KD*) and the House of Region Representatives (*DPRD*). This political policy is a revitalization of the government of the colonial era *binnenlads bestuur* government model.

Law Number 5 of 1974 has a fundamental difference with the three previous laws. First, the three previous laws only form a decentralized government (autonomous local government or autonomous regions) which consists of three levels and eliminates the deconcentration-based government (administrative local administration or administrative area). However, Law Number 5 of 1974 formed autonomous local governments or only two levels of autonomous regions and reshaped deconcentrated government inherited from the Dutch East Indies and even added two more forms, administrative cities and villages. Second, the appointment of *DPRD* members is similar to Law Number 18 of 1965 which is partially elected and partially appointed from the Armed Forces and functional groups. Third, the appointment of *KD* is the same as Law Number 18 of 1965 that was appointed by the

President. Fourth, how to hand over government affairs from the Central to autonomous regions by installments and levels: from the Central to Level I Regions and from Level I Regions to Level II Regions. Fifth, the style of government is more centralized than the local government under Law Number 22 of 1948 and Law Number 1 of 1957. In addition, the hierarchy and bureaucratic structure of the regency/municipality administration are equated, consisting of regents/mayors, administrative mayors, district head assistant, sub-district heads, and village heads, adopting the Pangreh Corps/indigenous civil service governance model (*Inlandse Binnenlands Bestuur Corps*) the Dutch era. Whereas in the Dutch era only the regency government had the kawedanan, sub-district and village, while the municipal government (*stadsgemeente*) did not know it.

According to Hanif Nurcholis (2016), village government under Law Number 5 of 1979 is a State Corporatism Government model. According to Hanif Nurcholis (2016), village government under Law Number 5 of 1979 is a model of state corporatism administration. This model is a plagiarism of the Ku government of the Japanese colonial era and the indigenous haminte government of the Dutch East Indies era. Law Number 5 of 1979 and its implementing regulations only changed the nomenclature: Ku became a village government, kuchoo became the village head, the clerk became the village secretary and the foreman became the head of affairs. Likewise, the sub-corporations: aza became Neighborhood, tonarigumi became Hamlet, bujinkai became Family Welfare Development, and as a person became Youth Organization, heiho became Community Protector and keibodan became Community Security (Nurcholis. 2016: 12). Still according to Hanif Nurcholis, the model of state corporatism in the colonial village is increasingly consolidated under Law Number 22 of 1999 Juncto Law Number 32 of 2004 concerning Law Number 6 of 2014 by adding a new sub-corporation, namely the Village Community Resilience Institute (LKMD), Family Welfare Development (PKK), Village Consultative Bodies (BPD), Village Community Empowerment Institute (LPMD), Water User Associations (P3A), and Integrated Service Posts (Posyandu) (Nurcholis. 2016: p. 12).

e. Indonesian Local Government in the Reformation Era

In 1998 there was a change of power from the New Order regime to the Reformation regime. The Habibie government enacted Law Number 22 of 1999 on the Local Government. Under Law Number 22 of 1999 the outer structure consists of provinces and districts/cities as autonomous regions

and their internal composition consists of *KD* and *DPRD*. In addition, the same as Law Number 5 of 1974, under a district a pseudo / fake government unit was formed (the Village Government). Law Number 22 of 1999 has a principle difference with Law Number 18 of 1965 Juncto Law Number 5 of 1974. This law erased all forms of deconcentrated government. Provincial administration area, district/municipality administration area, administrative city government area, sub-district administrative area, and administrative area of the village are removed. The appointment of members of the *DPRD* is done by partly elected by the people and partly appointed from the Armed Forces. The appointment of the Regional Head is elected by the *DPRD* members. In addition, the weight of regional autonomy is placed in the district / city area. Provincial autonomous regions only regulate and manage government affairs across districts / cities and across provinces. The method of submitting government affairs by general competence or open end arrangement model is by making a previous general statement with an ultra vires model, detailed one by one. The style of government is very decentralized, in contrast to the government under Law Number 5 of 1974 which is very centralistic.

During the Megawati Administration Law Number 22 of 1999 was replaced by Law Number 32 of 2004. Under Law Number 32 of 2004 the outer structure consists of provinces and district/cities and the internal structure consists of *KD* and *DPRD*. In addition, the same as Law Number 5 of 1974 Juncto Law Number 22 of 1999 under a district/city a pseudo/ fake government unit was formed (Village Government). This law changes fundamentally the conception of Law Number 22 of 1999. First, the appointment of *KD* and *DPRD* members is carried out by being directly elected by the people. Second, the Governor besides being the head of the autonomous region is also ex officio as the representative of the central government. Third, the method of submitting government affairs no longer uses general competence or open end arrangement models but with ultra vires doctrine models combined with concurrent models between governments.

The Soesilo Bambang Yudoyono government replaced Law Number 32 of 2004 with Law Number 23 of 2014 on the Local Government. In addition, he also enacted Law Number 6 of 2014 on The Villages. Under Law Number 23 of 2014 the outer structure of local government consists of two forms: 1) decentralized government (autonomous local government or autonomous region) and 2) deconcentration-based government (administrative local government or administrative area). The decentralized government consists of the autonomous regions of the province and autonomous districts/cities while the deconcentration-based government consists of the provincial

administration area and the district/city administrative area. Thus, in one autonomous region as well as the administrative area (dual model). The composition consists of *KD* and *DPRD*. In addition, as the previous Law under the district/city a pseudo/fake government unit was formed (Administrative Village Structure and Traditional Village) based on Law Number 6 of 2014. Election of *DPR* and *DPRD* members is directly elected. How to submit government affairs is the same as Law Number 32 of 2004 which uses ultra vires combined with concurrent models between governments. This law brings back the deconcentration-based government in the provinces and districts / cities which has been abolished by Law Number 22 of 1999 and was re-established only for the province by Law Number 32 of 2004. Based on the description above, the periodic system of local government in Indonesia is as follows:

Table 2
Period of Local Government System in Indonesia

1800-1903 Centralization	1903-1942 Decentralization	1942-1945 Centralization (Japanese era)	1945-1949 Decentralization	1950-1959 Centralization + Decentralization
R.R 1854	<ul style="list-style-type: none"> • <i>Decentralizatie Wet</i> 1903 • <i>Bestuurshervorming wet</i> 1922 	<ul style="list-style-type: none"> • Osamu Seirei Number 1/1942 	<ul style="list-style-type: none"> • Law Number 1 of 1945 • Law No 22 of 1948 	Law No 1 of 1957 Presidential Determination Number 6 of 1959
1960-1965 Centralization + Decentralization	1966-1998 Centralization	1999-2004 Decentralization	2004-2014 Centralization + Decentralization	2014-present Centralization
<ul style="list-style-type: none"> • Law No 18 of 1965 • Law No 19 of 1965 	Law No 5 of 1974	<ul style="list-style-type: none"> • Law No 22 of 1999 	Law No 32 of 2009	<ul style="list-style-type: none"> • Law No 23 of 2014 • Law No 6 of 2014

Judging from the normative side, it appears that the structure of the local government, both the outside structure and the internal structure, has continued to change since independence until now. Likewise the style of government. Prof. Dr. Bhenyamin Hoessein (1995) in his Professor's inaugural speech explained that there were five rounds of centralization for administrative efficiency to decentralization for the democratization of local communities and vice versa. The choice of external structures and internal structures and the centralization-decentralization has an impact on the extent of regional autonomy, central-regional relations, financial balance, staffing models, and community participation in the administration of local

governance (Bhenyamin. Speech,1995). The outer structure that is too long creates a long-winded bureaucratic hierarchy while its centralization and refinement deconcentration creates narrow autonomy which makes local communities tight, the loss of regional independence, lack of people's participation in government. The model for the transfer of government affairs also alternates: from ultra vires in installments, to general competence, to ultra vires combined with concurrent. Submission of governmental affairs in installments during the New Order period resulted in the absence of significant governmental affairs at the Level II Region, submission in general makes the Center and Province stutter, and submission with ultra vires combined with concurrent creating overlapping authority between governments.

The development of local government system in Indonesia, which change could not be separated from political influence. The linkages of law and politics cannot be separated. This is based on what was stated by Mahfud MD that legal politics includes the process of making and implementing law that can show the nature and direction in which the law will be built and enforced (MD. 2001: p. 9). Then also Daniel Lev stated that the most decisive in the process of law is the conception and the structure of political power. Namely the law is more or less always a political tool, and that the place of law in the state is dependent on political balance, the definition of power, the evolution of political, economic, social, and so on (S. Lev. 1990: p. xii). This is related to the desire of the central government both before independence and after independence to always enter in regional arrangements. As a result, local government law is always changing. During the Dutch East Indies colonial period, local government system in Indonesia adheres to the centralization-decentralization, at a time when the Japanese government adheres a centralized system of government, and when Indonesia became independent until now it continued to change.

Design and structure of local government that is not stable certainly affects the ability of local governments to improve people's welfare through the provision of public services: 1) administrative services; 2) public and social facilities services; 3) economic facilities and infrastructure services to improve the welfare of the people; 4) service for community development programs; and 5) protection services to the public from security and riot/chaos threats, fire hazards, damage to natural disasters, and the dangers of disease outbreaks. For this reason, it is necessary to consider the design and structure of a modern and efficient local government based on the 1945 Constitution and local government theory.

2. The Reconstruction Of The Local Government Model Based On The Concept Of The Founding Fathers And The 1945 Constitution Towards Modern Local Government

The conception of local government was put forward by the founding fathers at the *BPUPKI* Session in 1945 before the Proclamation of Independence which was later used as a constitutional norm in Article 18 of the 1945 Constitution. The founding father who conveyed his conception of local government was Muhammad Yamin, Soepomo, and Muhammad Hatta. Mohammed Yamin (State Secretariat of the Republic of Indonesia, 1995: p. 22) in his speech May 29, 1945 conveyed the composition of the state as follows.

- a. Country, village and alliances of customary law that are renewed by the way of rationalism and the renewal of the times, are made as the foot of the state structure as the bottom;
- b. The Central Government is formed around the Head of State, divided into:
 - 1) Deputy Head of State;
 - 2) One Ministry around a Ministry Leader;
 - 3) Central Representative Parliament Center, which is divided into Assembly and House of Representatives.
- c. Between the top and bottom chart a central part is formed as a Local Government to run the Government of Internal Affairs, *Pangreh Praja*;
- d. The State of the People of Indonesia carries out the division of state work on the road to decentralization and deconcentration ...

Country, Village and alliances of customary law that are renewed by the way of rationalism and renewal of the times, are made as the foot of the arrangement as the bottom. Between the upper and lower parts a central part is formed as a Local Government to run the Internal Affairs Government, *Pengreh Praja*.

The thoughts of Muhammad Yamin (Yamin, 1959: p. 230-231) were conveyed again at the *BPUPKI* Session on 11 July 1945 as follows.

The government in this republic will first be composed of community bodies such as villages, namely the lowest administrative structure, this government I call subordinate government.

Between superiors and subordinate governments is a government that I call a middle government. I don't need to talk about the village case here, but we hope that it will be renewed or adapted to the needs of the new age.

But what needs to be emphasized here is that villages, countries, citizens and others remain into the feet of the Government of the Republic of Indonesia. And in the midst of superiors and subordinates, we centralize the Local Government.

On July 15, 1945 at the BPUPKI session Soepomo (Yamin, 1959: p. 310) stated:

"We have agreed to the form of a unitary state (*eenheidstaat*). Therefore, there is no subordinate state under the Indonesian State, there is no "*onderstaat*", but there are only areas of government. The division of the regions of Indonesia and the form of local government are determined by law. According to article 16 (later changed to article 18 in the 1945 Constitution, pen.) The division of the Indonesian region over large regions and small regions with the form of government structure is stipulated by the Law, by observing and commemorating the basis of the discussions in the state government system and the rights of origin propose in special areas. Thus, the draft Constitution provides the possibility to divide the Indonesian region into large areas and to divide the large areas over small areas. By looking at and remembering the "basis of deliberation", meaning that regardless of the form of local government, the government must be based on deliberation, so for example by holding a regional council. Rights of origin in special regions must be commemorated as well. These special regions are the first kingdom area (Kooti), both in Java and outside Java, the regions in Dutch are called "*zelfbesturende lanschappen*". The two small regions that have the original composition, are *Dorfgemeinschaften*, small areas that have indigenous structures such as villages in Java, *nagari* in Minangkabau, hamlets and clans in Palembang, *huta* and *kuria* in Tapanuli, *gampong* in Aceh".

Then, at the second trial Soepomo (Yamin, 1959: p. 310) delivered his idea again,

"So, the draft Basic Law gives the possibility to divide the regions of Indonesia in large regions and to divide the large regions over small areas. By looking at and remembering the "basis of deliberation", meaning that regardless of the form of local government, the government must be based on deliberation, so for example by holding a regional council. The rights of origin in a special area must be commemorated as well. The purpose of the committee is that there should be these special areas, namely the kingdom area (*zelfbesturende lanschappen*) and the villages are respected by respecting and improving their original structure".

The ideas of Muhammad Yamin and Soepomo became Article 18 of the 1945 Constitution. Sound Article 18 of the 1945 Constitution is as follows.

The division of the Indonesian region into large and small regions, with the form of government structure is stipulated by law, by observing and remembering the basis of deliberation in the system of state governance, and the rights of origin in special regions.

Thus, the norm of Article 18 of the 1945 Constitution is the regulation of large autonomous regions and small autonomous regions. Large autonomous regions and small autonomous regions that are formed must be based on the basis of consultation or democracy. In addition, large autonomous regions and small autonomous regions must also pay attention to the rights of origin in special regions. What is meant by special regions are areas of the former sultanates / indigenous kingdoms and former indigenous *haminte* governments (villages, villages, clans, villages, etc.). These two special regions when used as large autonomous regions or small autonomous regions must pay attention to their original composition.

In 1948 Law Number 22 of 1948 concerning Local Government. Memory The explanation reads as follows "According to this basic law, the lowest autonomous regions are villages, countries, clans, small cities and so on. The village is placed in a modern government environment not drawn outside as a past time. At that time, of course, the colonial government understood that the village was the joint of the state, understood that the village as a joint of the country had to be repaired everything, strengthened and dynamized, so that the country could progress. But for the sake of colonialism, the village is left to remain static (it remains). Gemeente-ordonnantie granting the right to autonomy is meaningless, because the village with that right cannot do anything, because it does not have finance and the *ordonnantie* is bound to custom, which in fact is not in the village live again. In fact, often the customary events that have died are turned on or vice versa, the custom of life is turned off, contrary to the will of the villagers, only because the interests of the colonizers want it. The village remains underdeveloped, the state is powerless, is in accordance with the political objectives of the invaders ".

With the promulgation of Law Number 22 of 1948 Soepomo (Soepomo, 2013: p. 81) responded, "According to the explanation of the Basic Law, the lowest autonomous regions, namely villages, clans, nagari, and so on are considered the joints of the state, and the joints must be repaired, everything strengthened and dynamically so that the country can progress. autonomous as desired by the Basic Law. The purpose of the merger has not yet been implemented, even the legal position of the village in Java is still controlled by Sts. 1906 Number 83 Jo. Stsbl. 1907 Number 212. "

Thus clearly Prof. Dr. Soepomo did not want the village to be sacred and returned as a customary law community unit (*custom rechtsgemeenschap*). Founding fathers expect the system of regional autonomy in Indonesia to prosper the people to the people of the village. The 1945 Constitution has objectives as stated in Article 33 of the 1945 Constitution: the Indonesian people must prosper. To get this prosperity must start from the bottom, from the Village. Therefore the village must be made in a state of always moving forward (dynamic). So for this purpose the village government is included in a government environment that is regulated in a perfect (modern) manner, not even so, but it will also be proposed that guidance on regions that get government according to this main law is preferred in the village. If the village is retained as a legal entity of the indigenous community with the function as *tussenpersoon* / mediator, this goal cannot be achieved.

Mohammad Hatta (Hatta, 2014: p. 31-32) in his article entitled "*People's Sovereignty*" stated as follows.

Population-based government must subtract so many levels. For a while, while we organize and strengthen our country's structure, the existing environment: village, sub-district, district (and city), residency and province, needs to be continued. But not all must have a House of Representatives. The most important environment for the composition of the people and to uphold the structure of the government itself must have a representative body. The rest of the environment becomes a coordination body only.

The most important environment for the composition of the people is the village and district and city. All three have representative bodies whose members are elected by the people in their respective regions.

The environment as a sub-district and residency and province is coordination, and does not have to have a representative body of people. The House of Representatives may be present to it, but not the House of Representatives, but the Regional Representative Council in its environment. The council is a regional transportation council, whose members are sent by regions under its auspices. In the sub-district council, for example, there were delegates from all villages within the sub-district.

Based on the conception of Muhammad Yamin, Soepomo, Muhammad Hatta, and Article 18 of the 1945 Constitution, it is very clear that the desired model of local government is the local government that is decentralized and urban in nature. Local government which is based on decentralization means that government is

organized by autonomous local governments or autonomous regions that have the freedom to regulate and manage their own local affairs. Urban government that is urban is a local government model of modern local government, not a centralized model of traditional conservative local government as practiced in the colonial era which forms mixed government (centralistic and decentralized) in provinces and districts / cities, forming pure centralistic governance at residency), districts, and sub-districts (under district / city), and form a government community legal entity in the Village. Manan (1994) calls this model of government a decentralized government. This government outer arrangement consists of a large area and small area while the inner arrangement consists of heads of regions and local councils (Manan, 1994, p. 57). All regions are autonomous local governments or autonomous regions (local self-government) based on autonomy and co-administration (*medebewind*), not administrative local administrations or regional administrations which are based on deconcentration.

At the beginning of the 1945 Constitution Reform was amended. Article 18 long becomes new Article 18 and supplemented with Article 18A, and 18B. Based on Articles 18, 18A, and 18B the regulation of local government is as follows. First, local government consists of two types: 1) autonomous local government or regular autonomous regions and 2) autonomous local governments or asymmetric autonomous regions. Local autonomous governments or regular autonomous regions consist of autonomous regions of provinces and autonomous districts / cities while autonomous local governments or asymmetric regional regions consist of special autonomous local governments and special autonomous local governments. Second, the local government is based on autonomy and assistance tasks (*medebewind*). The principle of autonomy refers to the political concept which means the freedom of the local community to regulate and administer the affairs of the government autonomously, without direct interference from the Central Government. (Koesoemahatmadja, 1979, pp. 14-15). Third, local autonomous governments or provincial and district / city autonomous regions have *DPRDs* selected through elections and regional heads who are democratically elected. Fourth, the relationship between the Region and the Center and between provinces and districts / cities is regulated by the Law with regard to the specificity and diversity of the region. Fifth, the government is organized with the widest possible autonomy. Sixth, financial relations, public services, utilization of natural resources and other resources between the Central and Regional are regulated and carried out fairly and in harmony. Seventh, the State recognizes and respects indigenous peoples as long as they are alive, their development is in accordance with civilized society and their implementation is in accordance with the principles of the Republic of Indonesia. u the area of administration (local state) which is based on deconcentration.

Table 3

Model of Local Government According to the 1945 Constitution Before and The 1945 Constitution of The Republic of Indonesia

Category	Local Government Model of the 1945 Constitution	Local Government Model of the 1945 Constitution of The Republic of Indonesia
Local Government Principles	<ul style="list-style-type: none"> • Law Number 22 of 1948: The principle of autonomy and co-administration and eliminating the indirect bestuur gebied government (indigenous/village haminte, nagari, gampong, etc.). • Law Number 5 of 1974: The principles of decentralization, deconcentration and co-administration and reviving the indirect bestuur gebied government (indigenous/village haminte, nagari, gampong, etc.). 	<ul style="list-style-type: none"> • Law Number 22 of 1999: the principle of autonomy, the task of co-administration and strengthening the indirect bestuur gebied government (indigenous/village haminte government, nagari, gampong, etc.). • Law Number 32 of 2004: the principle of decentralization, deconcentration, co-administration, and strengthening the indirect bestuur gebied government (indigenous/village haminte, nagari, gampong, etc.) with Law Number 23 of 2014: the principle of centralization and indirect bestuur gebied. • Law Number 6 of 2014 Article 96-111 regulates Indigenous Villages.
Local Government Structure	<ul style="list-style-type: none"> • Law No 22 of 1948: Regional government institutions consist of KD, DPRD, and Regional Government Councils. • Law Number 1 of 1957: Regional government institutions consist of KD, DPRD, and Regional Government Councils. • Law Number 18 of 1965: The Regional Government Institution consists of KD, DPRD, and the Daily Government Agency (BPH). 	<ul style="list-style-type: none"> • Law Number 5 of 1974: Regional government institutions consist of KD, and DPRD. • Law Number 22 of 1999: Local government institutions consist of KD, and DPRD. • Law Number 32 of 2004: Regional government institutions consist of KD and DPRD. • Law Number 23 of 2014: Regional government institutions consist of KD and DPRD.

Category	Local Government Model of the 1945 Constitution	Local Government Model of the 1945 Constitution of The Republic of Indonesia
Local Government Outward Structure	<ul style="list-style-type: none"> • Law Number 22 of 1948, Law Number 1 of 1957, and Law Number 18 of 1965: The outer structure consists of Level I Regions, Level II Regions, and Level III Regions. 	<ul style="list-style-type: none"> • Law Number 5 of 1974: The outer structure consists of the Provinces of the First Level, Regions of Assistant Governors, Districts/Municipalities of Second Level Regions, Assisting Regions of Regents, Administratip Cities, and Districts. • Law Number 22 of 1999: The outer structure consists of provinces and regencies/cities. • Law Number 32 of 2004: The outer structure consists of provinces and regencies/cities. • Law Number 23 of 2014: The outer structure consists of Provinces and Regencies/Cities.
Appreciation of the Origins and Privileges of the Region	<ul style="list-style-type: none"> • Law Number 22 of 1948 regulates special Regions, namely regions with rights and origins from the time before the Republic of Indonesia was formed in the same level as the provinces, districts or villages. • Law Number 1 of 1957 regulates special regions. • Law Number 18 of 1965 did not regulate special regions. 	<ul style="list-style-type: none"> • Law Number 5 of 1974: Giving appreciation to the Special Region because of its origin (Yogyakarta) and because of its specificity (Aceh). • Law Number 32 of 2004: The State recognizes and respects regional government units that are special or special.
Administrative Region	<ul style="list-style-type: none"> • Law Number 22 of 1948, Law Number 1 of 1957, Law Number 18 of 1965 did not know the administrative area. 	<ul style="list-style-type: none"> • Law Number 5 of 1974: establishes an administrative area in the province, the auxiliary region of the governor, regency / municipality, regent's auxiliary area, administrative city, and sub-district • Law Number 22 of 1999 erased administrative territory • Law Number 32 of 2004 formed an administrative area in the province. • Law Number 23 of 2014 forms an administrative area for provinces and districts / cities.

Category	Local Government Model of the 1945 Constitution	Local Government Model of the 1945 Constitution of The Republic of Indonesia
Indigenous Community Legal (<i>Legal Indigenous Commune</i>)	<ul style="list-style-type: none"> • Law Number 1 of 1945, Law Number 22 of 1948, Law Number 1 of 1957, Law Number 18 of 1965, and Law Number 1965 converts legal entities of indigenous communities or indigenous hamlet governments into formal autonomous regions with Village or Small City nomenclature (Law Number 22/198), Level III Regions (Law Number 1/1957 jo. Law Number 18/1965), and Desapraja (Law Number 19/1965) 	<ul style="list-style-type: none"> • Law Number 5 of 1974, Law Number 22 of 1999, Law Number 32 of 2004, Law Number 23 of 2014, and Law Number 6 of 2014 revitalizes the legal entities of indigenous communities or indigenous hamlet governments with the nomenclature of village governments.
Customary Law Community Unit (<i>Custom Rechtsgemeenschap</i>)	<ul style="list-style-type: none"> • Law Number 1 of 1945, Law Number 22 of 1948, Law Number 1 of 1957, Law Number 18 of 1965, and Law Number 1965 does not regulate the customary law community (<i>custom rechtsgemeenschap</i>) instead provides guidance so that the custom of <i>rechtsgemeenschap</i> is converted into formal autonomous regions as small autonomous regions. 	<ul style="list-style-type: none"> • Law Number 5 of 1974, Law Number 22 of 1999, Law Number 32 of 2004, Law Number 23 of 2014 does not regulate customary law community units (<i>custom rechtsgemeenschap</i>). • Law Number 6 of 2014 Article 96-111 regulates customary law community units (<i>custom rechtsgemeenschap</i>) with traditional village nomenclature.

The 1945 Constitution of The Republic of Indonesia did not change the conception of founding fathers and the 1945 Constitution. Even the 1945 Constitution of The Republic of Indonesia affirmed that local government was based on autonomy and assistance tasks. The principle of autonomy and co-administration task means that local government is in the form of autonomous local government (local self-government), not administrative local government (local state government). Thus, the 1945 Constitution of The Republic of Indonesia still adheres to the modern and urban style of the local government. The fundamental difference between the 1945 Constitution and the 1945 Constitution of The Republic of Indonesia was on asymmetric local government and State recognition of the customary law community (*custom rechtsgemeenschap*). The 1945 Constitution only recognized one form of asymmetric local government, namely the special region while the 1945 Constitution of The Republic of

Indonesia (Article 18B paragraph (1)) into two forms: 1) special autonomous regions and 2) special autonomous regions. The 1945 did not regulate the customary law community (indigenous *rechtsgemeenschap* or indigenous people) while the 1945 Constitution of The Republic of Indonesia regulated it: The State recognized and respected the customary community unity.

Desentralistic and urban governance models in accordance with the conception of founding fathers and the 1945 Constitution have six characteristics. First is the local government based on autonomy and co-administration (*medebewind*). The government unit formed is an autonomous local government or autonomous region, not a local administrative administration or administrative or mixed region between autonomous regions and administrative regions. The outer structure of local government consists of the autonomous regions of the province, autonomous districts / cities, and special autonomous regions of former indigenous hamlet governments (*inlandsche gemeente* or indigenous commune). Provinces are large autonomous regions, districts / cities are ordinary small autonomous regions, and villages are asymmetric small autonomous regions. Districts are rural autonomous regions, cities are urban autonomous regions, and villages are autonomous rural areas that still uphold customs. The relationship between provinces, regencies / cities, and villages is tiers (coatings), namely the coating between large autonomous regions and small autonomous regions, not hierarchical relations. The government unit that has a hierarchical relationship is a deconcentrated government unit. In local government theory (Stocker, 1991: 90), every public body established by law as an autonomous local government or an autonomous region does not become a subordinate to other autonomous regions. The relationship between large autonomous regions and small autonomous regions is a coordinative relationship among autonomous public bodies based on the Law.

Second, the structure of the autonomous region consists of the head of the region (District Head) and the local council (council or *raad*). At present the local council nomenclature is the *DPRD*. The use of this nomenclature is incorrect. The use of Parliament for local councils is inappropriate because it can be misunderstood. In the unitary state there are no legislative or parliamentary institutions in autonomous regions. Only federal / union states have it in their state (state). *DPRD* nomenclature creates the connotation that in autonomous regions there are local legislative / parliamentary (*DPR*) institutions. Even though the *DPRD* is not the *DPR* (legislative / parliamentary body) at the local level. In the local government theory the local council (council or *raad*) is an autonomous regional organ, not a parliamentary body/local legislative (Stocker, 1991: p. 101). The local council with *KD* only organizes the state administrative field (*administratiefrechtelijk*) precisely decentralized government affairs. Therefore, the proper nomenclature is the Provincial Council for provincial

local councils, the District Council for local district councils, the City Council for local district councils, and the Village Councils for village local councils.

Third, the model for submitting government affairs to autonomous regions using the ultra vires model does not need to be accompanied by concurrent models so as not to create overlapping intergovernmental authority. Fourth, the foot or base government units are districts / cities / villages as autonomous regions. Villages are no longer placed outside the system of autonomous local government as *inheems rechtsgemeenschap* (*indigenous communities* given legal status) as in the days of the Netherlands and Japan until now but incorporated into the system of local government / modern autonomous regions, parallel to the district / city autonomous regions.

Fifth, in the autonomous regions of regencies / cities / villages there are no organizational units that constitute government areas, namely sub-districts, villages / neighborhoods, Neighborhood and Hamlet. Norton (Norton, 1997: p. 70) explained that local governments were formed under the central government for unitary states and under states for federal states. The form of local government varies but generally consists of county, municipal, town / township, and special district. The relationship between a large local government and a small government is tiers, not hierarchy. Under county, municipal, town / township, and special district there are no governmental organization units but formed committees that directly provide public services to the community according to their needs.

One example of modern local government is local government of the Netherlands. Local Dutch government is governed by the 1815 Constitution, Provinces Act, and Municipalities Act. The decentralization policy that began in 2007 has transferred the responsibility of regulating and managing local affairs to the provincial government and city government (*gemeente*) (OECD, <https://www.oecd.org/regional/regional-policy/profile-Netherlands.pdf>, accessed on August 2018). In the province the policy is made by the Provincial Council. The executor is the Provincial Executive, who is responsible for preparing and implementing decisions and orders from the Provincial Council. Provincial Executive is also responsible for implementing the decisions of the central government, so far included in provincial tasks. The central government appoints a Queen Commissioner in each province in charge of leading the Provincial Council and the Provincial Executive. Queen Commission has a role in the mayor's election process. The provincial government carries out tasks that lie between the tasks of the central government and local governments. This usually stems from central government policies, related to traffic and transportation, environmental and natural protection policies, regional economic development, spatial planning, recreation, culture and heritage and welfare. In addition, they are responsible for the supervision of municipal administration and finance and play a key role in vertical coordination (Edward Figue et. al, 2008). In addition to the Provincial Council there

are also Municipal Councils which are elected every four years. The Municipal Council forms the Municipal Executive. The Municipal Council makes a policy on matters that are in contact with its local affairs. The executor is the Municipal Executive. The Municipal Council supervises. The municipal government has a mayor. The mayor is appointed by the central government. The mayor represented the central government with the function of supervising the administration of the municipal government.

Sixth, a model of supervision and guidance to autonomous regions uses a functional model, not a hierarchy because provinces and districts / cities / villages are only autonomous regions, not mixtures between autonomous regions and administrative regions. Functional oversight is carried out by the interior ministry and sectoral ministries. The Minister of Home Affairs and the sectoral Minister are the Council of Ministers who oversee the implementation of regional governance both in the provinces and in the districts/cities/villages. The Council of Ministers is led by the Minister of Home Affairs. The Council of Ministers conduct preventive and repressive supervision. Technical operations are carried out by the heads of vertical agencies from sectoral ministries that are placed in the province / district / city / village region / jurisdiction.

E. CLOSING

Local government in Indonesia regulated by Law Number 23 of 2014 juncto Law Number 6 2014 has deviated from the conception of founding fathers and the 1945 Constitution. Local governments formed based on these two laws are traditionally conservative centralistic models of the *bestuur binnenlands and colonial era inlandsche gemeente* as regulated in the *Bestuurhervormingswet* 1922 juncto *Indische Staatsregeling* 1925 juncto IGO 1906 and IGOB 1938. The traditional conservative centralistic governance model has five main characteristics: 1) the government units under the Central Government are local administrative administrations (local state-government) as well as autonomous local government (local autonomy government or local self-government); 2) has a long hierarchy, namely the Central Government, Provincial Government, District/City Government, Sub-District, Village/Urban Village, Neighborhood, and Hamlet; 3) not having public service agencies at the community level because the community (village) level of government is only a quasi-fake government unit; 4) establish a legal entity for the rural community as a state instrument to carry out governmental affairs and make it an intermediary office (*tussenpersoon/mediator*) between the Government and the people; and 5) mobilize the people to succeed the Government's superior project through the socio-political corporation in the village formed by the state (Hamlet, Neighborhood, Family Welfare Movement, Integrated Service Post, *BPD*, *KPD*, Water User Farmers Association,

Youth Organization, Community Protector). The local government based on the conception of founding fathers and the 1945 Constitution is a modern, decentralized urban administration. A decentralized government is a government organized by a local autonomous government (local self-government) to provide basic local services to the community. Autonomous, community-based local government, not jurisdictional and geographical boundaries of officials, and established on the basis of autonomy and co-administration duties. Therefore, autonomous local governments only take care of community affairs: basic administration, basic health, basic education, electricity, waste, drainage, tertiary irrigation, rural transportation, microfinance for farmers and/ or communities, basic agricultural production facilities, production and marketing agriculture, and information to the community. Urban governance means urban governance which is formed based on the theory and practice of modern Western government-style local, not local government based on the colonial administration practices of the Dutch East Indies, namely the governance model of *Pangreh Praja (binnenlands bestuur)* and indigenous *haminte* governments (*inlandsche gemeente or indigenous commune*).

The model of local government needs to be returned to the conception of founding fathers and the 1945 Constitution. Founding fathers never initiated the formation of local administrative administrations (administrative regions). Founding fathers only initiated the formation of autonomous local government (local self-government). The founding fathers also did not want to maintain the model of the pangreh praja government (*binnenlands bestuur*) and the indigenous hamlet government (*inlandsche gemeente or indigenous commune*). The 1945 Constitution only regulates the principle of decentralization and assistance tasks, does not regulate the principle of deconcentration to form local governments. Explanation of the 1945 Constitution (before the Amendment) gave guidance, all former self-governing *zelfbestuurde landschappen* kingdoms were converted into large, special / asymmetrical autonomous regions and all former indigenous hamlet governments or indigenous community legal entities (*volksgemeenschappen or inheems rechtsgemeenschap or dorpgemeenschappen*: village, nagari, clan, gampong, etc.) converted into small autonomous regions that are special / asymmetrical because they have an original arrangement. In accordance with the 1945 Constitution (before Amendment) the outer structure of local government consists of autonomous local governments or large autonomous regions and autonomous local governments or small autonomous regions while the 1945 constitution is amended by external structures of local governments consisting of provinces and districts / cities. Autonomous local government consists of special autonomous regions and special autonomous regions. In addition, the State must also recognize the surviving customary law community, in accordance with the principles of civilized society and the Republic of Indonesia.

BIBLIOGRAPHY:

Books:

- Aziz. M.A, 1955, *Japans Colonialism and Indonesia*, Holland. Martinus Nijhoft, The Haugue.
- Surianingrat, Bayu, 1981, *History of Government in Indonesia Volume 1 of the Dutch East Indies and Japan*, Dewarutji Press: Jakarta
- Daniel S. Lev, 1990, *Law and Politics in Indonesia, Sustainability and Change*, Cet I, Jakarta: LP3S.
- Statistical data of Kaart Melvill van Carnbee
- Edward Figuee et. Al, 2008, *Local Government in The Netherlands*, VNG Netherland & VNG International, Hague
- Hatta, Muhammad, 2014, *Our Democracy Thoughts on Democracy and People's Sovereignty*. Sega Arsy: Bandung.
- Kemp, Roger L. ed, 2007, *Forms of Local Government A Handbook on City, County and Regional Options*, McFarland: London
- Maryanov, Geald, 1995, *Decentralization In Indonesia as A Political Problem*, Equinox: New York.
- Nurcholis, Hanif, 2007, *Theory and Practice of Government and Regional Autonomy. Revised Edition*. Grasindo: Jakarta.
- _____, 2016, *Modern Regional Governments Will Be Able to Increase Regional Power Capacity in the Era of the ASEAN Economic Community*, DeePublish: Yogyakarta.
- Norton, Alan, 1997, *Internatonal Handbook of Local and Regional Government. A Comparative Analysis of Advanced Democracies*, Edward Elgar: UK.
- Hoessein, Bhenyamin, 1995, *Decentralization and Regional Autonomy in the Unitary State of the Republic of Indonesia. Will Rotate the Wheel of Decentralization from Efficiency to Democracy. Inaugural Speech of Professor of the University of Indonesia*. Depok: Not Published
- Soejito, Irawan, 1984, *History of Local Government in Indonesia Volume I. First printing*. P.T Pradnya Paramita: Jakarta.
- Koesoemahatmadja, RDH, 1979, *Towards Regional Government Systems in Indonesia*, Binacipta: Bandung.
- Manan, Bagir, 1994, *Relations Between Central and Regional According to the 1945 Constitution*, Library of Sinar Harapan: Jakarta.
- Moh Kusnardi and Hermaily Ibrahim, 1985, *Introduction to Indonesian Constitutional*

- Law (sixth printing)*, Center for Constitutional Law Studies FH UI and CV.
Sinar Bakti: Jakarta
- Moh. Mahfud MD, 2011, *Building Law Enforcement of the Constitution*, PT. Rajagrafindo Persada: Jakarta
- Mahfud MD, 2001, *Political Law in Indonesia*, 2nd, LP3S: Jakarta.
- Soehi, 2008, *State Science (eighth printing)*, Liberti Yogyakarta: Yogyakarta.
- Tubagus Ronny Rahman Nitibaskara.,2002, *Paradox of Conflict and Regional Autonomy, Sketch of the Shadow of Conflict in the Future Prospects of Regional Autonomy*. Civilization: Jakarta.
- Soepomo, R, 2013, *Chapters on Customary Law*, Balai Pustaka: Jakarta.
- Wouter Vermeulen, 2015, *Decentralization of Social Policy in the Netherlands*, CPB Netherlands Bureau for Economic Policy Analysis: Copenhagen.
- Yamin, Hadji Muhammad, 1959, *Manuscript for Preparation of the 1945 Constitution*, Siguntang: Jakarta..

Journals or Scientific Works:

- Effendi WahyoNumber, 2009, *Decentralization and Regional Autonomy in Java during the Dutch East Indies Administration: Changes in Regional Government Based on Besstuurshervorming wet 1922*. Dissertation of the University of Indonesia.
- Marcel Boogers, Gerrot Voerman, 2010, *Independent Local Political Parties in the Netherlands*, Taylor & Francis Group Rootledge, Local Government Studies, Vol. 36, Number 1.

Regulations:

- Reglement op het beleid der Regering Nederlands Indie 1854 (RR 1854)
- Decentralisatie Wet 1903
- Besstuurshervorming wet 1922
- Indische Staatsregeling 1925
- Osamu Sairei Number 1 in 1942
- The 1945 Constitution (Original 1945 Constitution before the amendment)
- The 1945 Constitution of the Republic of Indonesia (Post-Amendment 1, 2, 3, 4)
- Law Number 22 of 1948 on The Determination of The Core Rules on The Own Government In Regions

- Law Number 1 of 1957 on The Principles of The Local Government (State Gazette Number 6 of 1957)
- Law Number 18 of 1965 on The Local Government (State Gazette of The Republic of Indonesia Number 83 of 1965)
- Law Number 19 of 1965 on The Desa Praja (State Gazette of The Republic of Indonesia Number 34 of 1965)
- Law Number 5 of 1974 on The Principles of The Local Government (State Gazette of The Republic of Indonesia Number 38 of 1974)
- Law Number 5 of 1979 on The Village Government (State Gazette of The Republic of Indonesia Number 56 of 1979)
- Law Number 22 of 1999 on The Local Government (State Gazette of The Republic of Indonesia Number 3839 of 1999)
- Law Number 32 of 2004 on The Local Government (State Gazette of The Republic of Indonesia Number 125 of 2004)
- Law Number 23 of 2014 on The Local Government (State Gazette of The Republic of Indonesia Number 244 of 2014)
- Law Number 6 of 2014 on The Village (State Gazette of The Republic of Indonesia Number 7 of 2014)

Internet:

OECD, Netherland Unitary Country, <https://www.oecd.org/regional/regional-policy/profile-Netherlands.pdf> accessed August 2018