

# The Nature of General Election Supervisory Board (Bawaslu) as the Guardian of the People's Sovereignty

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## Abstract

General election is one manifestation of a democratic system of state administration. The general election administration with different variants/models has been carried out in democracy modern countries in a specific purpose. The basic regulation of it can be seen in the third amendment to the 1945 Constitution Chapter VII B on General Election Article 22E. To guarantee the implementation of democratic elections (the general election) run in accordance with the principles of the election and the electoral law, it is needed on body to supervise the election – called General Election Supervisory Board (hereinafter referred to Bawaslu). Its decision is final and binding. Bawaslu as the guardian of democracy is visible when the democracy is in the form of active democracy. This is consistent with the concept of the supervision of Bawaslu to monitor, review, check, and assess democracy in the active position, or when the democracy is embodied in the election. So, when the election is carried out by KPU, supervision process never stops starting stages of updating the voter list to the polling, counting, and determination of election results.

**Keywords:** Bawaslu; People's Sovereignty Guard.

## 1. Introduction

General election is one manifestation of a democratic system of state administration. The general election administration with different variants/models<sup>1</sup> has been carried out in democracy modern countries in a specific purpose. According to Jimly Asshiddiqie,<sup>2</sup> the aim of the election is: (a). to allow a transition of governmental leadership orderly and peacefully; (b). to allow the change of officials who will represent the interests of the people in the legislative; (c). to implement the principle of people sovereignty; and (d). to implement the principle of rights of citizens.

The implementation of the general election in Indonesia always changes along with the dynamics of the underlying rule of it. The indication of it can be seen in the third amendment to the 1945 Constitution that explicitly regulates the election put on Chapter VII B on General Election. This chapter contains only one article, namely Article 22E. Besides Article 22E of the 1945 Constitution, the word “*general election*” can be found either in Article 6A for the election of president and vice president, Article 19 of the parliamentary election, Article 22C of the regional representative council, or Article 24C of the governing authority of the Court to adjudicate disputed election results.

As affirmed in the above paragraph, the election is constitutionally stipulated in the 1945 Constitution. The constitutional provisions concerning the elections provided for in Article 22E of the 1945 Constitution<sup>3</sup> consisting of 6 (six) paragraph, as following: (1) General elections shall be conducted in a direct, general, free, secret, honest, and fair manner once every five years. (2) General elections shall be conducted to elect the members of the DPR, DPD, the President and Vice-President, and the Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah or DPRD). (3) The participants in the general election for the election of the members of the DPR and the members of the DPRD are political parties. (4) The participants in the general election for the election of the members of the DPD are individuals. (5) The general elections shall be organised by a general election commission of a national, permanent, and independent character. (6) Further provisions regarding general elections shall be regulated by law.

Article 22E basically regulates overall process of election administration,<sup>4</sup> the subject of elections,<sup>5</sup> and

<sup>1</sup>Variants or models of the general election basically can be seen in the form of direct and indirect the general election.

<sup>2</sup>Jimly Asshiddiqie, *An Introduction of Constitution Law*, Vol.II, Sekretariat General of the Constitutional Court of Republic of Indonesia, Jakarta, 2006, p. 175. See also Jimly Asshiddiqie, Political Parties and the General Election as Instrument of Democracy, *Journal Constitution*, Vol.3 No.4, December 2006, p.13.

<sup>3</sup>Regulation of the general election explicitly has been governed only in the Article 22E of the 1945 Constitution, referred to the third amendment of the 1945 of the Constitution. The Constitution basically does not govern clearly concerning the general election, eventhough Article 7 states that “The President and Vice President shall hold office for a term of five years and may subsequently be reelected to the same office for one further term only”. The word “elected” is not stated clearly. Practically, the President and the vice President can beelected more than one times (see the general election conducted in 1971, 1977,1982,1992, and 1997).

<sup>4</sup> See Article 22E (1) of the Constitution.

<sup>5</sup> See Article 22E (2), (3), and (5) of the Constitution.

the electoral laws through delegated legislation.<sup>1</sup> The process of the election conducted by the General Election Commission (hereinafter referred to KPU) must be based on the provisions of direct, general, free, confidential, honest and fair in every five years.<sup>2</sup>

The phrase "*direct, general, free, confidential, honest and fair*" listed in paragraph (1) as mentioned above are the basic values of the election which must be upheld in the process of transfer of power from the people to the state in which then becomes the authority to govern. The basis of those values shall be upheld by the organizer of the election and should not be violated by any reason or motive. It is due to as a primary principle in the administration of the election. Similarly, the 1945 Constitution is as the supreme basic law designing a periodicity election in every five years. It is to ensure that power cycle is ordered by law. This order has significance to ensure the functioning of the rule that sincerely serve the interests of all the people. In this context, welfare and justice can be realized with the best.<sup>3</sup>

To ensure the election is conducted democratically, legal certainty of the election as regulated in Article 22E paragraph (6) of the 1945 Constitution must be fulfilled. Therefore, further regulation of the election shall be governed by law both in principle and electoral technique. Through the laws of the general election, all stakeholders or all parties associated with the event of election must submit and refer to provisions in various laws. The law in question is the Law No. 2 of 2011 on the Amendment of the Law No. 2 of 2008 on Political Parties, the Law No. 42 of 2008 on General Election of President and Vice President, the Law Number 15 of 2011 concerning Election, the Law No. 8 of 2012 on General Election of Members of the House of Representatives, Regional Representatives Council, and the Local Representatives Council, and the Law No. 8 of 2015 on the Amendment of the Law No. 1 of 2015 Concerning Determination the governmental Decree in lieu of the Law No. 1 of 2014 Concerning the Election of Governor, Regent, and Mayor.

To guarantee the implementation of democratic elections run in accordance with the principles of the election and the electoral law, it is needed on body to supervise the election – called General Election Supervisory Board (hereinafter referred to Bawaslu). Bawaslu is authorized to supervise KPU, the election's parties, and the voters. The supervisory function shall include: 1). to supervise at all stages undertaken by KPU starting from the early stages (updating the data of voters and the voters list) until the final stage (recapitulation and determination); 2). to accept and act on reports of violations; and 3). to resolve election disputes both of which occurred among the participants of the election and/or disputes between the participants of the election and KPU as a result of the issuance of the KPU, KPU in level of Province, and KPU in level of Regency/City. Its decision is final and binding.<sup>4</sup>

## 2. The Nature of Bawaslu as Guardian of the People's Sovereignty

The general election is a democratic instrument to transfer a power that comes from the people shifted into a state power. The transfer power is then transformed into the government authority to carry out the administration and lead the people. In other words, the election is a place for people to use their constitutional right to elect a leader of the future leaders of the people themselves. The most essential nature of it is that the election is a media to evaluate leadership for the people who carried out periodically to determine again whether the previous leader who can continue or replace them with the new ones who is suitable choice of the people. This is the real significance of the conduct of the election and is not as a "party of the people", but is a process of change of leadership by the people. The election is the implementation of the principle of people's sovereignty to recognize and embody essentially the political rights of the people, as well as a delegation of these rights by the people to their representatives to run the government.<sup>5</sup>

The basic question arises related to democracy in broad sense is what exactly meaning of the government of *the people, by the people and for the people*. Related to it, Hendra Nurtjahjo states that:<sup>6</sup>

*If we reflect on the words "of the people" then, it would point to the existence of free elections or freedom of choice which is owned equally (similarity) by the people as the participation of political life (zoon politicon). So, other political process outside of "free elections" should not be applied unless the process and results of free elections are leaning itself.*

*The idea of "by the people" or "the people" is often considered impossible and confused. How could the people in the same time govern and be governed? The meaning of the Government by the people refers to the best representatives of the people freely elected in equal suffrage judicially processed. So, that is probably the freedom and equality in choosing the best rulers or governments that are considered as the best candidates.*

<sup>1</sup> See Article 22E (6) of the Constitution.

<sup>2</sup> See Article 22E (5) of the Constitution.

<sup>3</sup> Jimly Asshiddiqie, *Political Parties...*, op.cit.p.11.

<sup>4</sup> See Article 73-84 the Law No.15 of 2011 on the Election.

<sup>5</sup> A.S.S. Tambunan, *The General Election in Indonesia and its Hierarchy of MPR, DPR, and DPD*, Bina Cipta, Jakarta, 1986, p.3.

<sup>6</sup> Hendra Nurtjahjo, *Philosophy of Democracy*, Bumi Aksara, Jakarta, 2006, pp.90-91.

*The idea of "for the people" or for the whole people is the idea to declare the ultimate goal of democracy in governance through the process "of the people and by the people". "For the people" is the purpose or the scale of what can be sized for an elected representative who became the ruler in carrying out the mandate of the people will. When the "for the people" does not materialize, people have the right to replace it with a representative selection of the better and more moral and enough skill to realize the will of the people. Will of the people itself is manifested in the form of government programs. "For the people" is a measure to see the point of success of a regime continuously.*

Based on the point of view HendraNurtjahjo, it is appropriate to stipulate many experts opinions relate to the election as a media evaluation conducting periodically by the people directly to provide an assessment of the mandate that has been given for five (5) years of the people's representatives. It can be said therefore that the election is also a process of supervision by the people.

The quality and integrity of the election including processes, products, and organizers will produce the leaders and representatives of the people in accordance with the will of the people to provide prosperity for the people of Indonesia as the mandate of the 1945 Constitution listed in the fourth paragraph, namely:

“...to form a government of the state of Indonesia which shall protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the people and to participate toward the establishment of a world order based on freedom, perpetual peace and social justice, therefore the independence of Indonesia shall be formulated into a constitution of the Republic of Indonesia which shall be built into a sovereign state based on a belief in the One and Only God, just and civilised humanity, the unity of Indonesia, and democratic life led by wisdom of thoughts in deliberation amongst representatives of the people, and achieving social justice for all the people of Indonesia.”

Achievement of the objectives of the state will be determined by how the election conducted in a democratic and fair ways. It is due to state building will be largely determined by the outcome of the election itself. Basically, a state is only an abstract, intangible and un-move entity. Therefore, man/elected officials through the election will move the state on right path to reach the objective of the state as mandated in the Constitution. In this context, it can be seen the importance of the election as an instrument of democracy (people sovereignty) in achieving the objectives of the state. If the election does not go well at the will of the people as the holder of sovereignty and democracy, it could be condemned to death anyway.

There are 3 (three) basic essence of the election: *first*, the people become the "master" in calling for leadership selection process according to their own will and choice, while the responsibility of the selection process in a democratic state is handed over an authority to the government as an instrument of the state. *Second*, the leadership of the state resulted from the people anyway and then they are given the right to be elected by the people in the electoral mechanism. *Third*, the people who are qualified candidacy as leader will be chosen to occupy the institutional leadership of state either in the parliament, executive, or local leadership.<sup>1</sup>

Those essence of the election as stipulated above are contained in the 1945 Constitution. The Constitution then expressly make the election as a means of implementation of the sovereignty of the people to choose the membership of the state institutions, DPR, DPD and DPRD, as well as the President and Vice President, even the Governor and Vice Governor, Regent and Vice Regent, and Mayor and Deputy Mayor. It can clearly be seen from the construction norms are built into the 1945 Constitution NRI 1945, which has been linked to one another which is between Article 1 (2), Article 2 (1), Article 6A paragraph (1), Article 18 paragraph (3), Article 19 paragraph (1) and Article 22C with Section 22E, as follows:

1. Article 1 (2): Sovereignty is in the hands of the people and is implemented according to this Constitution.
2. Article 2 (1): The MPR shall consist of the members of the DPR and the members of the DPD who have been elected through general elections, and shall be regulated further by law.
3. Article 6A paragraph (1): The President and Vice-President shall be elected as a pair directly by the people.
4. Article 18 paragraph (3): The authorities of the provinces, regencies and municipalities shall include for each a Regional People's House of Representatives (DPRD) whose members shall be elected through general elections.
5. Article 18 paragraph (4): (Governors, Regents (bupati) and Mayors (walikota), respectively as head of regional government of the provinces, regencies and municipalities, shall be elected democratically
6. Article 19 (1): Members of the DPR shall be elected through a general election.
7. Article 22C paragraph (1): The members of the DPD shall be elected from every province through a general election.
8. Article 22E (1) General elections shall be conducted in a direct, general, free, secret, honest, and fair

<sup>1</sup> M.Jufri, et.al., *Implementation of Participative Supervision*, Bawaslu DKI Jakarta, 2015, pp.3-4.

manner once every five years. (2) General elections shall be conducted to elect the members of the DPR, DPD, the President and Vice-President, and the Regional People's Representative Council (Dewan Perwakilan Rakyat Daerah or DPRD). (3) The participants in the general election for the election of the members of the DPR and the members of the DPRD are political parties. (4) The participants in the general election for the election of the members of the DPD are individuals. (5) The general elections shall be organised by a general election commission of a national, permanent, and independent character.

It can be seen from those articles as stated above that there are some differences in the phrase used of "elected through general elections" for members of DPR, DPD (which automatically happens charging member of MPR), and DPRD. The difference also can be found in the phrase of "elected directly" to the president and vice president, as well as the "democratically elected" for governors, regents, and mayors. Those phrase in practice are no difference because they are done by involving the people directly to elect them who will fill DPR and the executive both in the central and the local government. If so, can be said that the election of members of DPR, DPD, DPRD, the president and vice president, the governor and deputy governor are part of the implementation of the election?

The answer can be traced in the concept of election in the election laws. The concept basically is segregated in 3 (three) ways.

*Firstly*, in the General Provisions of the Election Law, as followings:

1. The General Election is the means of implementation of the sovereignty of the people held a direct, general, free, confidential, honest, and fair in the Republic of Indonesia under Pancasila and the 1945 Constitution.
2. The election of Members of DPR, DPD, and DPRD is the election to elect members of DPR, DPD, and DPRD either in provincial and regency/city level based on Pancasila and and the 1945 Constitution.
3. The Election of President and Vice President are election for President and Vice President of the Republic of Indonesia under Pancasila and and the 1945 Constitution.
4. The Election of Governors, Regents and Mayors are the election to elect governors, regents and mayors democratically under Pancasila and the 1945 Constitution.

*Secondly*, the considering of the The Election of President and Vice President states:

"that the direct election by the people is a tool of implementing the people's sovereignty in order to produce democratic governments based on".

"that the general election of the president and vice-president held in a democratic and civilized through the widest possible participation of the people based on the principles of direct, general, free, confidential, honest and fair to elect the president and vice president.

The part is then reinforced in the concept of the presidential elections set out in the general provision, as followings:

"The election of President and Vice President, hereinafter called the election of the President and Vice President, is a general election to elect the President and Vice-President of the Republic of Indonesia based on Pancasila and the 1945 Constitution".

*Thirdly*, the considering of the The Law on the Legislative General Election states:

"that in order to elect members of DPR, DPD, and DPRD, the general election as a tool of embodiment of the sovereignty of the people to produce members representatives who has aspiration, quality, and responsible based on Pancasila and the 1945 Constitution".;

"that the election shall ensure that the voice of the people is conveyed directly, general, free, confidential, honest, and fair.

It is further states that the General Provisions reinforce the concept of election of members of the DPR, DPD and DPRD, namely:

"the election is a tool of implementation of the people's sovereignty implemented in a direct, general, free, confidential, honest, and fair in the Republic of Indonesia under Pancasila and the 1945 Constitution".

"the election of the members of DPR, DPD, and DPRD is the election to elect members of DPR, DPD, and DPRD either in provincial and regency/city level based on Pancasila and and the 1945 Constitution".

When referring to the concept of the articles mentioned above, there is clearly a distinction between the concept of election for the election of members of DPR, DPD and DPRD and the elections for president and vice president with the concept to elect governors, regents and mayors. So it can be distinguished between the election and the election by the people (the public). This is in line with the thought conveyed by Hamdan Zoelva. He states that the entire election may not be conducted simultaneously for all the elections. The general election is highly related to the tenure of the officials who will be selected.<sup>1</sup> He also stipulates that the need to distinguish

<sup>1</sup> See the draft comprehensively of the Amendment of the 1945 Constitution. See also, Secretariat General of the Constitutional Court of Republic of Indonesia, *Book V on The General Election*, Jakarta, 2010, p. 523.

between general elections for representative bodies (DPR, DPD and DPRD) and the election in which common positions of the executive (president and vice president, governors, regents and mayors). So, election-related legislative branches is actually more a part of its own rather than talk of elections and related to which the election of president or the head of the region is in its own place."<sup>1</sup>

In terms of norms setting as stipulated in the Law on the election administration, the overall activity of the implementation of the election to elect members of the DPR, DPD and DPRD, it is to elect the President and Vice President and the election of governors, regents and mayors held by KPU and Bawaslu. Thus, in the Election Law does not distinguish between the general election and the general election to elect governors, regents and mayors.<sup>2</sup>

The election is an important instrument of the embodiment of democracy and the sovereignty of the people so that the regulation of election as stipulated in Article 22E of the 1945 Constitution gives the strengthening of democracy constitutionally based on law. Related to it, Yusuf Muhammad states that "putting the election in the Constitution is an essential requirement for the election as a gateway to the sovereignty of the people and democracy. It only needs to agree on whether the election would only be an "umbrella" or the reason "alas".<sup>3</sup> He states further that if the term must be used as the chapter "umbrella", it must be then laid after the chapter of "sovereignty". If the term "alas" is used, it is placed after the chapter of "institutions" and closed with the chapter of "election".

This illustrates that the electoral instrument is something very important and it covers a lot of the parts that are in the Constitution.<sup>4</sup> At the end of laying down the election as a "alas", it is to assert that the Indonesian constitution recognizes that all three of the above election which held with the general election and the general election involving people. Therefore, the laying down of the elections as a chapter after the other parts are arranged on filling the positions of representative council and the chief executive becomes the assertion that there is no other way that can be used for filling positions of those, except through the general election. Thus, it is proper to say, if the election is not held, the sovereignty of the people will die. People do not longer sovereign to determine itself and its leader it wants to move the state as an organisation towards achieving the objectives of the state desired by the people.

As an important instrument of democracy, the general election has an important role to build a state-house with the opponent's pole strongly and to provide justice for the citizen. It has to be put in the Constitution in order to be moved right correctly to achieve its purpose as a tool embodiment of people sovereignty.

The affirmation of the importance of democracy based on law has been envisaged in the discussion of the formulation of the election chapter as expressed by Anthonius Rahail from F-KKI. He states that one of the main characteristics of a democratic state must be the general election. Therefore, the formulation of the election should be explicitly included in the articles of the Constitution.<sup>5</sup> His opinion is based on the implementation of the election that had been conducted since 1955 (which is the first milestone of the election in Indonesia) and 1997 (during the last election of the era New Order ) without setting a firm in the Constitution. It is presented by Pataniari Siahaan of F-PDIP, namely:

*"... never existed in the Constitution is a matter of the election. People suddenly interpret that there is the election. Actually, if referring to the definition as a legal basis, actually there should be no activity without governing in the Constitution in fact. However, it is to happen ... "*<sup>6</sup>

According to Hobbes Sinaga of F-PDIP, it is very unique due to the Constitution of 1945 affirms that the Republic of Indonesia is a democratic state whose recognizes the sovereignty of the people and the people's representative institutions, but it does not regulate the election".<sup>7</sup> The exclusion of the election in the Constitution in the past have serious consequences in which the implementation of the election is held under the legislation more favorable to the government as the ruler. Basically, as a toll of the implementation the people's sovereignty, the election is conducted honestly and fairly.<sup>8</sup>

This is confirmed by Harjono that the formulation "*conducted according to the provisions of the Constitution*" has meant that the system of the Constitution has been automatically embrace the ideology of constitutionalism. The ideology of constitutionalism is the ideology that limits the authority this is implied in the sense of the people's sovereignty and is carried out pursuant to the provisions of the Constitution. So in this way, we actually found that there will be no mention of that on the highest state institutions, but it is distributed in functions and in the configuration for the functions that will be talked about at the same distribution of checks

<sup>1</sup> See the draft comprehensively of the Amandement of the 1945 Constitution.

<sup>2</sup> See the Law No. 8 of 2015 Concerning the Amandement of the Law No. 1 of 2015 Concerning Enactment of the Presidential Regulation in Lieu No. 1 of 2014 Concerning the Election of Governor, Regent, and Mayor.

<sup>3</sup> Secretariat General of the Constitutional Court of Republic of Indonesia, op.cit., p. 521.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.p. 511.

<sup>7</sup> Ibid. p. 516.

<sup>8</sup> Ibid.pp.516-517.

and balances.<sup>1</sup>

Indeed, democracy is not only the most perfect model to regulate human life, but it also shows historically that the democracy has the smallest chance in debasing humanity. The fall of the regime of communism in Eastern Europe added to the long list of advantages of democracy over other political regimes. So that democracy is now adopted by most countries in the world. The question is why democracy has the advantage with political regimes else? To answer the question, Robert Dahl<sup>2</sup> notes several advantages of democracy compared to other political regimes - namely:

*First*, democracy assists to prevent the growth of autocratic government;

*Second*, democracy guarantees citizens to a number of rights that are not given and cannot be provided by systems that are not democratic;

*Third*, democracy guarantees privacy broadly as citizens rather than other possible alternative;

*Fourth*, democracy helps people to protect their basic interests;

*Fifth*, only a democratic government can provide the maximum opportunity for people to use the freedom of self-determination to live under laws of their own choosing;

*Sixth*, only a democratic government can give maximum opportunity to run the moral responsibility;

*Seventh*, democracy helps more total human development than other possible alternative;

*Eighth*, only a democratic government can foster highly political equality levels;

*Ninth*, the state of modern representative democracies never fights each other; and

*Tenth*, countries with democratic governments tend to be more affluent than countries with undemocratic government.

Democracy as an idea or the idea of thinking is to build a better civilization by making the people as the main actors in determining the future life of the state. It is then embodied through a method called election. The election becomes a tools of embodiment of its own people's sovereignty, as well as the most equitable tools to compete for candidates parties. As a way to embody democracy, the election should be interpreted as a mechanism that upholds the values of the people's sovereignty. The election is not only transferring power to the people's elected representatives and heads of state, but the word "elected" listed in the norm of the 1945 Constitution also should be interpreted as a moral responsibility of citizens to exercise their voting rights properly in order to enforce their own sovereignty. Therefore, the principles of direct, general, free, confidential, honest and fair can be fulfilled.

The election also is one tools of distribution rights of citizens in principal. Therefore, in the framework of the implementation of the rights of citizens, it is imperative for the government to guarantee the implementation of the election in accordance with constitutional predetermined schedule. In accordance with the principle of people's sovereignty, then all aspects of the general election itself must also be returned to the people to decide. It is a violation of human rights if the government does not guarantee the implementation of the election or slowing to deliver the election without the consent of the representatives of the people or do not anything regarding the election properly.<sup>3</sup>

As an important instrument of democracy is based on the law, then the election is driven in accordance with the mechanism of election administration are set out in legislation and the principles of the election previousl, as well as organized by the authorized organ. KPU is the only organ of state who is authorized to hold election starting from determining the schedule at the start of the stage of the elections, the administration of the voters list, the determination of candidates participating in the election, and until the determination of the elected candidates. With the enormous power then the quality of the election will be determined by how KPU carrying out the duties and authority given by law.

In terms of controlling and supervising KPU, Bawaslu is monitoring KPU to conduct the election fairly. The conducted monitoring by Bawaslu is a form of control mechanism established by legislation to ensure that there is no abuse of authority by KPU which can be either the removal of voting rights of citizens and or acts that harm the political rights of election participants. This is in line with the philosophy of the Bawaslu is formed as set forth in the considering of the election law that states that Bawaslu can embody the qualified election as a tools to realize the people's sovereignty in the domecratic Government based on Pancasila and the 1945 Constitution, as well as improving the quality of election administration to ensure the implementation Political rights of the community. If looking at the philosophical framework described above, it can be seen that Bawaslu holds a very vital role in guarding the establishment of democratic rule of law in Indonesia. Bawaslu is required to embody the democratic election of qualified and dignified to deliver a quality leader as well. This is certainly consistent with the purpose of the election itself. Its purpose covers the possibility change of government in a

<sup>1</sup> Ibid. p. 316.

<sup>2</sup> Robert Dahl in Didik Supriyanto, *Seeing the Election in Some Perspective*, [www.panwaslulampung.blogspot.com/2008/11/berita-pemilu-nasionaldaerah-kpu\\_03.html](http://www.panwaslulampung.blogspot.com/2008/11/berita-pemilu-nasionaldaerah-kpu_03.html).

<sup>3</sup> Jimly Asshiddiqie, op.cit, p. 172.

peaceful and orderly; carrying out the people's sovereignty; and implementing the rights of citizens.

Based on the various electoral purposes above, they have one goal to keep establishment of democracy in Indonesia. As an institution, Bawaslu is required to guard the sovereignty of the people by ensuring that the election conducted properly and correctly. Properly means that procedurally it has been carried out based on the law, while correctly means that its implementation uphold the values of honesty and justice that is the nature of the supervision. So, the presence of Bawaslu is not intended only to make sure that the procedural stages have been carried out by the KPU, but Bawaslu must be able also to ensure that KPU and its staffs are subject to the principle of free and fair. To more specifically explain why Bawaslu present as guardian of democratic institutions, it is important see the position of Bawaslu to guard democracy. The author tries to draw some elements of the object of democracy itself, as outlining:

| Object         | Democracy         |                    |                     |
|----------------|-------------------|--------------------|---------------------|
| Elements       | Democracy in idea | Democracy in book  | Democracy in action |
| Characteristis | Conceptual only   | Normative only     | Active              |
| Nature         | Abstract          | Generally abstract | Clear               |

Based on the concept of thought as mentioned above, it is affirmed that the position of Bawaslu in guarding democracy is under active democracy (democracy in action). Bawaslu as the guardian of democracy is visible when the democracy is in the form of active democracy. This is consistent with the concept of the supervision of Bawaslu to monitor, review, check, and assess democracy in the active position, or when the democracy is embodied in the election. So, when the election is carried out by KPU, supervision process never stops starting stages of updating the voter list to the polling, counting, and determination of election results.

The democracy in action is meant as a procedural process carried out by the authorized organ to carry out the elections. The executive organ referred to in the election Law such as KPU, Provincial KPU, Regency / City KPU, PPK, PPS, KPPS and PPDP. Supervision of Bawaslu is conducted in phases also by Bawaslu, Bawaslu Province, Panwaslu Regency / City Election Supervisory Committee and the District of PPL. This supervision is conducted to make sure none of the stages of election held KPU detrimental or beneficial participant or harm a particular election and voters.

The election is conceptualized as the "elect" candidate of legislative and/or candidates for President and Vice President by the people directly in the polls. TPS becomes the only place authorized by the regulation to carry out activities "elect" which technically is done in the form of voting on a ballot in a certain way as set out in the regulation. Voting in a manner that is inconsistent with the regulation will be invalid (zero). KPPS as an organizer at the polling station level is given the authority to carry out the voting and vote counting at polling stations. KPPS authority in question covers an important part of the implementation of the sovereignty of the people which include the interests of the people as voters and candidates interest as participants in the elections.

However, the great KPPS authority is not accompanied by mechanisms of it conducted by Bawaslu. Although the Election Law either on the legislative election or the presidential election has built mechanisms at every stage of voting and vote counting at polling stations, but the Election Law does not establish an organizational structure of Bawaslu at each polling station. In this situation, of course, the implementation of voting and vote counting at polling stations during the elections cannot be monitored optimal. The regulation of it can be seen in article 148, 169 (5), 174 (5), and 176 (4) of the Legislative Election Law and article 114 (5), 128 (95), and 133 (4) of the presidential election.

The regulation either in the Legislative Election Law or the Presidential Election Law above are intended for building mechanisms for supervising at every stage of voting and vote counting by KPPS at polling stations. However, it is not in line with the norms of the regulation in the Election Law as contained in Article 72 paragraph (3) that: " number of PPL members in each village or other name / village at least 1 (one) person and at most 5 (five) people who adapted to the geographical conditions and the distribution of polling stations.

### 3. Conclusion

The establishment of the general election in Indonesia is governed into the Legislative Election Law or the Presidential Election Law. KPU is authorized organ that obligation to do overall process of election including administration of the subject of elections and the electoral laws through delegated legislation. The process of the election conducted by KPU must be based on the provisions of direct, general, free, confidential, honest and fair in every five years.

In term of to supervise KPU, Bawaslu has an obligation to do it. The position of Bawaslu in this context can be said as a guardian democracy. This is consistent with the concept of the supervision of Bawaslu to monitor, review, check, and assess democracy in the active position. However, the Election Law does not establish an organizational structure of Bawaslu at each polling station. Therefore, it is difficult to supervise KPU as organ in the implementation of voting and vote counting at polling stations during the elections.

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