JURIDICAL ANALYSIS ON THE ROLE OF THE GENERAL ELECTIONS SUPERVISORY BOARD (BAWASLU) IN IMPLEMENTATION OF THE “LUBER JURDIL” PRINCIPLE TOWARD 2014 GENERAL ELECTIONS BASED ON LAW NO. 15 YEAR 2011 CONCERNING ON THE GENERAL ELECTION ORGANIZER

By

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A Thesis presented to the
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THESIS ADVISOR RECOMMENDATION LETTER

This Thesis entitled JURIDICAL ANALYSIS OF THE ROLE OF THE GENERAL ELECTIONS SUPERVISORY BOARD IN THE PROCESS OF ELECTIONS BASED ON LAW NUMBER 15 OF 2011 ON THE GENERAL ELECTION ORGANIZER IN APPLYING THE PRINCIPLE “LUBER JURDIL” (DIRECT, PUBLIC, FREE, CONFIDENTIAL, HONEST AND FAIR) prepared and submitted by Efi Fauzia in partial fulfillment of requirement of the degree of bachelor of Law in the Faculty of Humanities has been reviewed and found to have satisfied the requirement for a thesis fit to be examined I therefore recommended this thesis for oral defense.

Cikarang, Indonesia, January 30, 2017

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Dr. Edy Santoso

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DECLARATION OF ORIGINALITY

I declare that this thesis, entitled “JURIDICAL ANALYSIS ON THE ROLE OF THE GENERAL ELECTIONS SUPERVISORY BOARD (BAWASLU) IN IMPLEMENTATION OF THE “LUBER JURDIL” PRINCIPLE TOWARD 2014 GENERAL ELECTIONS BASED ON LAW NO. 15 YEAR 2011 CONCERNING ON THE GENERAL ELECTIONS ORGANIZER” is to the best of my knowledge and belief, an original piece of work that has not been submitted, either in whole or in part, to another university to obtain a degree.

Cikarang, Indonesia, January 30, 2017

Efi Fauzia
ABSTRACT

This study aimed to analyze and find answers to two things: first, the application of the principle Luber Jurdil (direct, public, free, confidential, honest and fair) part in the electoral process that lead to other forms of violation of law in implementing the election; second, Bawaslu (supervisory bodies elections) role in electoral administration is associated with legislation regarding more specific electoral laws that election organizers.

Method approach taken is juridical normative in the sense of research and study such objects through legal sources concerning the law of the Constitution of the Republic of Indonesia Year 1945, Election, Legislative Election, President and Vice President, as well as the election of Governors, Regents and Mayor. The reason this method is used is to refine the analysis of data, in order to obtain a certain weight. Another reason, since there are many people who do not understand the problems in applying the principle Luber Jurdil in the electoral process. In this study, specification research is descriptive analysis, which is to reveal the existing legal environment at the moment. Then analyze the juridical by the legislation in force, legal theories are incompatible with the object of discussion.

Results of research is the first to be found, Law No. 15 of 2011 on the election organizer is sufficient to apply the principle Luber Jurdil in the process of elections. Second, the form of election law violations that violates the principle Luber Jurdil with election organizers by law. Third, Bawaslu role in the process of election organizers associated with the election organizer Act. Thus, the next election can be run by continuing to participate in the stage of democracy then this will be able to bring the era of democracy in Indonesia at a better stage later on, of course it would be better anyway when voters can choose intelligently based on the science that has been obtained and supported by good ethics is also based on conscience and integrity without any negative things from those who play with a sense of cheating.

Keywords: Electoral, Legislative elections in 2014, Principles Luber Jurdil, Bawaslu.
ABSTRAK

Penelitian ini bertujuan untuk menganalisis dan menemukan jawaban atas 2 hal: pertama, bagian penerapan asas luber jurdil dalam proses pemilu yang menimbulkan bentuk-bentuk pelanggaran hukum dalam pelaksanakan pemilu; kedua, peran bawaslu dalam penyelenggara pemilu dikaitkan dengan peraturan perundang-undangan mengenai pemilu lebih spesifik yaitu UU penyelenggara Pemilu.


Hasil penelitian yang dapat ditemukan adalah pertama, UU penyelenggara pemilu Tahun 2011 telah memadai untuk menerapkan asas luber jurdil tersebut dalam proses penyelenggaraan pemilu. Kedua, bentuk pelanggaran hukum pemilu yang melanggar asas luber jurdil dengan berdasarkan UU penyelenggara pemilu. Ketiga, peranan bawaslu dalam proses penyelenggara pemilu dikaitkan dengan UU penyelenggara pemilu. Sehingga, pemilu berikutnya dapat dijalankan dengan terus berpartisipasi pada pentas demokrasi maka ini akan dapat membawa era demokrasu Indonesia pada tahap yang lebih baik nantinya, tentunya hal itu akan lebih baik pula ketika pemilih dapat memilih dengan cerdas berdasarkan ilmu-ilmu yang telah didapatkan serta didukung dengan etika yang baik pula berdasarkan hati nurani dan intergritas tanpa adanya hal-hal negative dari pihak-pihak yang bermain dengan rasa kecurangan.

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Praise and gratitude to Allah SWT author who has transferred all his grace so that I can finish the thesis with the title “Juridical Analysis on the Role of the General Elections Supervisory Board (Bawaslu) in Implementation of the “Luber JurdiJ” Principle Toward 2014 General Elections Based on Law no.15 Year 2011 concerning on General Election Organizer” to meet most of the requirements for obtaining a law degree from the Law Department, Faculty of Humanities, President University.

On this occasion, the authors thank the high to all those who have helped in the research and preparation of this research report, either directly or indirectly. In particular the authors are grateful to:

1. My Mamah and Babah always advise, encourage and funds to complete the writing of this study.
2. Bu Fennieka Kristianto, S.H., M.h., M.A., M.Kn. as the Chairman of the Program. Thanks for the support given so that I can finish the course and help the author to correct the value.
3. Mr. Edy Santoso and Mr. Veri Junaidi as lecturers. Thanks for your patience to guide and direct the author during the preparation of research reports although writers often complain because they do not speak English.
4. My Sister Terbawel and best sister in the world. Thanks for sharing that has given mental exercises for writers in completing a research report.
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In conclusion, the authors apologize if there are imperfections in this thesis. Hopefully this paper can be a useful study materials and provide inspiration to the reader.
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CHAPTER I

INTRODUCTION

A. Background

Almost every state in the world, however its principle admitted that the state is a democracy.\(^1\) Democracy is a state organized by the will of the people, or if the terms of organization, it means a state organization that carried out by the people because sovereignty belongs to the people.\(^2\)

Democracy is a state whose government involving people’s participation in governance and ensure the fulfillment of people’s basic rights in the life of nation and state. One of people’s basic rights which must be guaranteed in the freedom to express thoughts, both orally and in writing.\(^3\) Democracy must be grounded on the law and the constitution, democratic state based on law is called a constitutional democracy as a key pillar in a democratic constitutional state.\(^4\)

As a democratic state should be placed within the right law, because if not, then democracy can evolve towards a misnomer, as the law may be

interpreted unilaterally by the authorities on behalf of democracy itself. True democracy is a democracy that is organized and based on the law, which is why between the idea of democracy and nomocracy deemed should be in line and over, then a state that can be called as a democracy and as well the state of law.

State of Law without democracy will be authoritarian state that oppresses human rights and does not have the power restrictions so that deny the real meaning of the State of law itself. Therefore, the state of law should ideally be a democratic state law. With a democratic state based on the above, Indonesia is a democratic state, the general definition that democracy is an ideology and a political system based on the doctrine of “power of the people”, the power of the people, by the people and for the people. So that the people are holders of supreme sovereignty in the government system.

While the definition of democracy can be seen from the review of language (etymological) and from the term (terminological). Etymologically, "democracy" consists of two words derived from Greek as "demos" meaning people or residents somewhere and "cratein" or "cartos" which means power or sovereignty. So, in the language of "demos-cratein" or "demos-cratis" (democracy) is the situation of State in which the system of government is the

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sovereignty belongs to the people, the supreme power is the collective decision of the people, the people in power, the people's government and rule by the people.\(^9\)

Definition of the term democracy as presented by experts as follows, according to Joseph A. Schmeter, democracy is an institutional planning to achieve political decisions in which individuals acquire the power to decide how the competitive struggle on the people's voice; according to Affan Gaffar meaning of democracy in the two forms of meaning are normative and empirical.

Normative democracy is a democracy which ideally is going to be done by a State. While empirical democracy is democracy in the practical terms in world of politics. From the above term of democracy is one of the implementation of democracy as the embodiment of sovereignty of people with the holding of the General Election, or commonly abbreviated as ("Election") is an event aspirations of the people as the embodiment of the people's sovereignty.\(^10\)

What's Election? Election is one important tool to measure growth procedural and substantial democracy in a country. When organization of the elections can take place in a fair and democratic, so democracy in the country


\(^10\) Ibid.
has grown to perfection.\textsuperscript{11} Election is a means of implementation of sovereignty of people in which the people can elect political leaders directly. What it is meant by political leaders here are the people's representatives in the House of Representatives (parliament), both at the central and local levels and the leader of executive bodies or the head of government such as president, governor or district head / mayor.\textsuperscript{12}

In the electoral administration in Indonesia consists of three (3) types of elections, namely First, the General Election of Members the House of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional Representatives of People Council (DPRD) with under the general rules in Article 1 of Law No. 8 Year 2012\textsuperscript{13} concerning on General Election of Members of DPR, DPD and DPRD, the meaning of General Election of Members DPR, DPD and DPRD are elections to choose members of the DPR, DPD and DPRD provincial and regency / city in the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia Year 1945; Second, the President and Vice President shall be elected directly by the people. Election of President and Vice President are elections to choose a partner of president and vice-president candidate proposed by a political party or coalition of political parties in accordance with the provisions of the legislation, namely Law Number 42 Year 2008 concerning on General Election

\textsuperscript{13} Law No. 8 year 2012, Article. 1, point (2).
of President and Vice President.\textsuperscript{14} Thirdly, as well as the Regional Head and Deputy Head of Region is the election to choose a pair of candidates of regional head and deputy regional head proposed by political parties or coalition of political parties and Individuals in accordance with the laws and regulations namely Law No. 10 Year 2016 concerning on the Election of Regional Head and Deputy Regional Head.\textsuperscript{15}

There are several policies related to the election on the basis of the Constitution of the Republic of Indonesia in Article 22E paragraph (1), as follows:

\begin{quote}
"Pemilihan umum dilaksanakan secara langsung, umum, bebas, rahasia, jujur dan adil"
\end{quote}

"General Election shall be direct, public, free, confidential, honest and fair"

That election held directly, public, free, confidential, honest and fair ("luber jurdil"), this principle further in this research is referred to as the principle of luber jurdil.\textsuperscript{16} In this article explains that Indonesian citizens can participate in the elections by running luber jurdil principle that has been applied in the above article.

\textsuperscript{15} Hafiz Anshary, \textit{Ibid}, p. 21.
\textsuperscript{16} UUD 1945
Under Law No. 15 Year 2011 concerning on General Election Organizer hereinafter be referred to the Election Law. In this law explains that the elections remain to be implemented under the principles of luber jurdil that has been applied in the legislation. This jurdil luber principle must be upheld by the civil state, security forces in the elections should act neutral and impartial in order execution or electoral administration in Indonesia will still be implemented smoothly and no barriers.

However, the electoral process in Indonesia is still prone to fraud in the vote and to the interests of one faction, and many violations and fraud that can be known either through fraud because voters are given money or warranties and there are also violations and fraud in the form of manipulating data by utilizing the remaining paper election ballots that can be used for fraud. Can be exemplified in the case of legislative elections in 2014 that the level of the violation or the imposture was very high.

Many other cases, such as elections in Bogor found hundreds of ballots had been marked by the people who want to use their voting rights before the election was held. Another example is approximately 40 ballots used by Chairman of Organizer Group Voting (KPPS) before holding elections in Nias (North Sumatra) and Blitar (East Java). Fraud cases above are violations that have violated statutory provisions are applicable.

\[17\] UU General Election Organizer
Existence of institutions that play a role in organizing the elections, in accordance with the provisions of this Election Law, including one of the institutions participating in the election management role namely General Elections Supervisory Board (BAWASLU) hereinafter in this research is called by Bawaslu.

Bawaslu is election management bodies tasked to supervise elections in the entire territory of the Republic of Indonesia. According to this Law, Bawaslu charge of overseeing election administration in the context of prevention and repression of violations to the realization of democratic elections.\(^ {18}\) In the above Law does not explain what is meant by prevention and prosecution, also does not directly specify the types and forms of prevention and prosecution should be done by the election supervision agencies. Duties and authority of supervisor agency limited to providing recommendations to the competent institutions. If the election supervisory agencies find criminal violations, the case was referred to the police and the police are entitled to establish the alleged perpetrators of the infraction.\(^ {19}\)

In the above example case is one in which Bawaslu have a role in the criminal offense. The role of the Bawaslu to follow up cases of criminal offenses occurred. However, here Bawaslu role limited to providing recommendations to the competent institution. Although, legislation is already

\(^{18}\) Article 73 point (2) UUD 1945

exists. However, there are still many violations occurred when the election was held.

Therefore, from the description that has been presented above. The author chose to do research with title JURIDICAL ANALYSIS ON THE ROLE OF THE GENERAL ELECTIONS SUPERVISORY BOARD (BAWASLU) IN IMPLEMENTATION OF THE “LUBER JURDIL” PRINCIPLE TOWARD 2014 ELECTIONS BASED ON LAW NO. 15 YEAR 2011 CONCERNING ON THE GENERAL ELECTION ORGANIZER.

B. Problem Identification

In accordance with the background that has been described above, the Author highlight this legal research on analysis in the following questions:

1. What are forms of violation of law in the application of the principle of luber jurdil in the implementation of legislative elections of 2014 associated with the Election Law?

2. How is the role of the General Elections Supervisory Board in organizing Legislative Elections of 2014?
C. **Research Objectives**

1. **General Objectives**

   To analyze the role of General Elections Supervisory Board in the process of elections based on Election Law in applying the principle of luber jurdil.

2. **Specific Objectives**

   a) To identify forms of violation of law in the application of the principle of luber jurdil in the implementation of legislative elections of 2014 associated with the Election Law.

   b) To identify the role of General Elections Supervisory Board in the process of elections based on Election Law in applying the principle of luber jurdil.

D. **Research Benefits**

   This Research is expected to be beneficial to anyone in various background who reads it. The expected benefits are as follows:

1. Theoretically, this research is expected to be use provide information for readers who are law student of President University and all law student across the nation in general and to develop the knowledge of the readers
particularly in the implementation of application of the principle luber jurdil in the general elections.

2. Practically, this research is expected to become reference of the student, legal practitioners, and society in general concerning on the implementation of application of the principle luber jurdil in the general elections.

E. Framework

The framework applying principles of Luber Jurdil in the process of elections conducted in the legislative elections of 2014. In general, that is very important principle of Luber Jurdil applied in the process of the election, which implies that the elections should be held in a democratic and transparent based on the principles of direct elections, public, free, and fair. In the process of the election has been organized in the election management process, namely Bawaslu. Bawaslu has an important role in the process of the election.

From the above understanding, that the Indonesian elections were to be held in a democratic and transparent means in fact is that the elections in Indonesia organized by the principle that has existed namely the principle Luber Jurdil. Luber Jurdil very important principle applied in the process of election organizers to prevent any fraud or legal violations when the implementation process of the elections. However, in the process of the election was fraud or violation of law. Thus, the need for such election organizing body is Bawaslu.
Bawaslu has an important role in the process of the election. In Act election organizer, Bawaslu has the duties, powers and obligations in carrying out its role. The process of the elections will run smoothly and implemented with the existing procedures in the legislation.

F. **Scope and Limitation**

In order to make this thesis become more directed and focused, Author make the scope and limitation of the problem, there are:

1. The definition of general elections is referred to the general elections against the Law referred to Law No. 15 Year 2011 concerning on General Elections Organizer.

2. Identification of general elections supervisory board in process of the general elections by using approach of the principle Luber Jurdil referred to Law No. 15 Year 2011 concerning on General Elections Organizer.

3. The implementation of application of the principle Luber Jurdil in the general elections referred to Law No. 15 Year 2011 concerning on General Elections Organizer.
G. **Research Methodology**

1. **Type of Research**

   Type of research that use by the Author to understand the research is normative. Normative approach, because in the examining the research problems use the written positive law, with secondary legal materials. The normative approach itself is the legal research that conduct by researching library materials or secondary data.\(^{20}\)

   Therefore the normative approach that used by the Author means combine the library research, legal materials with the primary data that obtained from the field study concerning the implementation of the general election supervisory board in the process general elections by applying the principle luber jurdil.

   a) Statute approach, the research is done by using related regulations, legal principles that is codified or specific laws that relating to the research problems.

   b) Case approach, this study was conducted by a case study relating to the issues and problems of this thesis. The cases being studies cases of violation of law in the application of the principle luber jurdil.

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2. **Type of Data**

Viewed from obtaining place, there are two types of data, there are:\(^{21}\)

a) Primary data

The data is directly obtained from the society. This data got from the first source from individual.\(^{22}\) Namely materials legally binding.

b) Secondary data

The data is obtained from the literature. The utilities of secondary data are for early data/information using, get the theoretical basis/legal basis and get the definition of the terms.\(^{23}\) Secondary data can be categorized into three types:\(^{24}\)

1) Primary legal data, that is the data which has close ties with research problem and binding, there are:

   
   b. Law No. 15 Year 2011 on General Elections Organizer.
   
   c. Law No. 8 Year 2012 on General Elections Members of the Board of Representatives, Board of Regional Representatives, and Regional Parliaments. (PILEG).
   
   d. Law No. 42 Year 2008 on General Elections of Presidential and Vice-President. (PILPRES).

\(^{21}\) *Ibid*, p. 28.  
e. Law No. 10 Year 2016 on Elections of Governors, Regents and
   Mayors.

2) Secondary legal data, that is the data which related to the definition
   of primary legal data, there are:
   a. Books that related to with constitutional law, the implementation
      of the elections system, the role of regulatory bodies elections
      and books concerning the election.
   b. Journals, papers and other documents relating to the role of
      regulatory bodies elections in applying the principle luber jurdil
      in the process of elections.

3) Tertiary legal data, that is the data to complementary te primary and
   secondary legal data, there are:
   a. Dictionary that use to translate the legal terms in Indonesia to the
      legal terms in English or the other way.
   b. Newspaper that contains the news related to the thesis topic.
H. Systematic Writing

For the understanding toward this research, either for the Author in term of writing and the readers in terms of reading, the author prepares the description into 5 (five) chapters as follows:

Chapter I: Introduction

This chapter will describe the introduction to the arrangement of this research that cover the background, research problem, research objectives, research benefits, scope and limitation, framework, research methodology, and systematic writing.

Chapter II: General Review on Democracy and Elections in Indonesia

The theoretical foundation or common ground of understanding democracy in general, describes the link democracy with elections.

Chapter III: The Role of General Elections Supervisory Board (Bawaslu) in the General Elections Process Based on Law No. 15 Year 2011 concerning on General Elections Organizer

Explains how the role of general elections supervisory board (Bawaslu) in the implementation of the general election. And explain the fraud or violations that occurred during the implementation of the general election with the relevant applicable law.

Chapter IV: Analysis Related to Juridical the Role of General Elections Supervisory Board in the Electoral Process in applying the Principle Luber Jurdil
The role of Bawaslu in monitoring the implementation of the General Election. The implementation of luber jurdil principle, the involvement of voters in election as well the issues in its implementation.

Chapter V: Conclusion and Recommendation

Being closure contains conclusions and suggestions given by the author in relation the implementation of the role of general elections supervisory board in the general elections by applying the principle luber jurdil the development of democracy in accordance with the laws of Indonesia.
CHAPTER II

GENERAL REVIEW ON DEMOCRACY AND ELECTION IN INDONESIA

A. State of Law and Democracy

1. Definition of Democracy

Democracy is an ideology and a political system based on the doctrine of "power of the people", i.e. the power of the people, by the people and for the people. That the people are sovereign supreme in the government system. Democracy either as doctrine or ideology as well as the political system is seen as a better alternative than other political systems found in almost every nation and country. Accordingly strength of the ideology of democracy, to the extent that the concept has become a political belief (political belief) most of the nations, which in turn evolved into isms, and even develop into a myth which is seen to bring blessings for the life of civilized nations.25

Definition of Democracy viewed of review language is etymologically is democracy composed of two Greek words, namely

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demos, meaning people or residents of somewhere and *cratein* or *cratos*, which means power or sovereignty. Combination of two words *cratein-demos* (democracy)²⁶ has the meaning of a system of government of, by and for the people.²⁷ Democracy is essentially a governance model that involves people in conducting and supervising the government.

While understanding as terminology (terms) democracy²⁸ is a government in the hands of the people which implies three (3) things: government of the people (*pemerintahan dari rakyat*), government by the people (*pemerintahan oleh rakyat*) and the government for the people (*pemerintahan untuk rakyat*).²⁹ Therefore, there are some experts express the meaning of the term democracy as follows:³⁰

a) Joseph A. Schmeter, revealed that democracy is an institutional planning to achieve the political decisions in which individuals acquire the power to decide how the competitive struggle on the people's voice;

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²⁸ Istilah demokrasi berasal dari Yunani Kuno yang diutarakn di Athena kuno pada abad ke-5 SM. Negara tersebut biasanya dianggap sebagai contoh awal dari sebuah sistem yang berhubungan dengan hukum demokrasi modern. Namun, arti dari istilah ini telah berubah sejalan dengan waktu, dan definisi modern telah berevolusi sejak abad ke-18, bersama perkembangan system demokrasi di banyak negara.
b) Sidnet Hook, argues that democracy is a form of government where decisions important government directly or indirectly based on the agreement have been shared freely majority of adult people;

c) Philippe C. Schmitter and Terry Lynn Karl, declared that direct democracy is a system of government where the government held responsible for their actions in the region public by citizens, acting indirectly through the competition and cooperation with their elected representatives;

d) While Henry B. Mayo, declared that democracy as a political system is a system that has pointed out that public policy is determined on the basis of a majority of the representatives who monitored effectively by the people in periodic elections based on the principle of political equality and held in a secured atmosphere political freedom.

Based on the description in etymology and terminology of democracy can be concluded definition of democracy is the state to which the system of government sovereignty rests with the people, the highest authority in the decision together with the people, the people in power, the people's government, the power to the people, and for the people. Therefore, the power comes from the people and it is the people who actually sets the direction and the actual organizing of national life. That is, definition of democracy, namely, that the supreme power is in the hands
of the people, organized by the people and for the people themselves, as well as the opening up to involving the widest possible role of the people in the administration of the state in general terms that democracy is a government of, by, and for the people.\textsuperscript{31}

2. Principles and Kinds of Democracy

   a) Principles of Democracy

According J.B.J.M Ten Berge mention democratic principles such as the following.\textsuperscript{32}

1) Political representatives. Supreme political power in a country and in a society determined by representative bodies, chosen through elections.

2) Political accountability. Governmental organizations to exercise their functions more or less politically dependent, ie the representative institutions.

3) Dispersal Authority. The concentration of power in society in an organ of government is arbitrariness. Therefore, the authority of the public bodies were to be distributed to different organs.

4) Supervision and Control (implementation) of government should be controlled.

5) Honesty and openness to the public administration.

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6) People are given the possibility to raise objections.

While the formula that is almost the same, according to H.D. Van Wijk/Wilem Konijn enbelt mention the principles of democracy following:

1) The important decisions that legislation. Taken together with the representatives of the people chosen by elections that are free and confidential.

2) The results of the elections being directed at the legislature and to fill government officials.

3) The openness of government.

4) Everyone has the interest (violated) by the actions of the authorities, (should) be given an opportunity to defend its interests.

5) Every decision must protect the interests of minorities, and should be as minimal as possible to avoid untruth and blunder.\(^{33}\)

The principle of democracy and a prerequisite for the establishment of a democratic state have been incorporated in the Constitution of the Republic Indonesia. The principles of democracy, can be viewed from the opinion Almadudi that became known as "the pillar of democracy". According to, the principles of democracy

are: Sovereignty of the people; Government based on the consent of the governed; Majority rule; Minority rights; Human rights guarantees; Elections are free, fair, and honest; Equality before the law; Due process of law; Government restrictions as constitutional; Pluralism of social, economic, and political; The values of tolerance, pragmatism, cooperation, and consensus.

b) **Kinds of Democracy**

Kinds of democracy based on the principle ideology are as follows:

1) The Pancasila of Democracy: This applies Pancasila Democracy in Indonesia is the source and the socio-cultural values of the nation Indonesia and also along the basis of consultation with emphasis on a balance of interests.

2) Liberal Democracy: Democracy insists on the freedom to Individuals with disregard for the public interest alias selfish.

3) Democratic People: Inspired by socialism/communism that put the interests of a State or the public.

The discussion above this is based on the principle of ideology and the next is Kinds of democracy in terms of the distribution will of the people:

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34 Aim Abdulkarim, "Pendidikan Kewarganegaraan: Membangun Warga Negara yang Demokratis", PT Grafindo Media Pratama. 9797584127, 9789797584122.
1) Direct Democracy: Is a democratic system that involves to all the people directly in discussing state affairs. This happened in ancient Greece, because at that time the population is still very small.

2) Indirect democracy: Democracy is a system to channel his will, the people elect representatives to parliament. Aspirations of the people conveyed through the representatives of Parliament. 

3. The Relationship between the State of Law and Democracy

There is a clear correlation between the state of law, which is based on the constitution and legislation with the sovereignty of the people that run through the democratic system. This correlation was evident from the emergence of the term constitutional democracy, as noted above. In a democratic system, the implementation of the country should rely on the participation and interest of the people. The implementation of the law states must be supported by a democratic system. The relationship between the state of law and democracy are inseparable, because democracy without the rule of law will lose their meaning. 

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According to Franz Magnis Suseno, "Democracy is not a state law is not a true state of law, democracy is the safest way to maintain control over the state of law". As such, the law states that rely on the democratic system can be called a democratic state of law (democratische rechtsstaat).\textsuperscript{37}

The state law and democracy are two conceptions of the mechanisms of power in conducting the state government. Both of these conceptions are related to each other and can not be separated, because on one side of democracy provides the foundation and mechanisms of power based on the principles of equality and equality of human beings, on the other hand the state law provides a benchmark that reigns in a country is not a man, but the law.\textsuperscript{38}

**B. The Relationship between Democracy and General Elections in Indonesia**

1. **The relationship between Democracy and General Elections**

In most democratic countries, the election was considered the emblem, as well the benchmark of democracy. The election results were held in an atmosphere transparency with the freedom of opinion and freedom of association, thought to reflect rather accurately participation and aspirations of the people.\textsuperscript{39} With the election expected to produce


representatives of the people were able to understand the aspirations of the people, especially in the public policy formulation process with a system of rotation of power. Representative democracy is a democracy that is made to be practiced in the long term and covers a wide area.\textsuperscript{40}

According to Hans Kelsen as quoted by Janedjri M. Gaffar stated, "that in a representative democracy, government functions transferred from the citizens to the state organs, to fill the state organs is done through the democratic nomination, the general election (election)".\textsuperscript{41} As a key element of the exercise of democracy, of course, the election must be held in a democratic anyway. Elections should reflect the principles and values of democracy, and can be a way for the implementation of democracy itself. The nature of democracy can realize the goals to be achieved. Through elections, people do not just choose the person who will be their representative in the organizing country, but also choose the desired program as a state policy in the next government.\textsuperscript{42}

2. General Elections

General Election is the choosing of a ruler, or other official by way of writing the name selected in a piece of paper or by voting in elections.\textsuperscript{43}

\footnotesize
\begin{itemize}
\item \textsuperscript{40} Sarbaini, \textit{Ibid.}
\item \textsuperscript{41} Janedjri M. Gaffar, \textit{Demokrasi dan Pemilu di Indonesia}, Jakarta: Konpress, 2013, p. 3.
\item \textsuperscript{42} Sarbaini, \textit{Op.cit.}
\item \textsuperscript{43} Abu Nashr Muhammad Al-Iman, \textit{Membongkar Dosa-dosa Pemilu}, Prisma Media, Jakarta, 2004, P. 29.
\end{itemize}
The elections can be considered as a political activity where general elections are the institutions as well as practical politics that enables the formation of a representative government.\textsuperscript{44}

As has been outlined above that in a democracy, the election is a vital element, as one of the parameters to measure whether a country democratic or not is by how the journey of elections held by the state. Democracy is a form of government by the people.\textsuperscript{45} Also their understanding of the election, the following are the opinions of the experts on the definition of the election:

a) M.Rusli Karim\textsuperscript{46}

The essence of the general election is as a sovereign means to establish a state power system which basically born from below according to the will of the people to form a state power that actually radiates down as an authority in accordance with the wishes of the people, by the people according to parley representation system.


b) Marsono

General Election is a democratic means to establish a system of state power that sovereignty of the people and parley representatives outlined by the Constitution of the Republic of Indonesia Year 1945. The state power are born with the general election is a state power born from the bottom according to the will of the people and used in accordance with the wishes of the people, by the people, according to parley representation system. Because only in the such context then countries will actually emit as authority that is capable of maintaining the noble humanitarian character and remained true to people's sublime moral characteristics.

As a form of implementation of democracy, elections serve as a platform that filter candidate representatives or leaders of the country who really has the capacity and capability to be on behalf of the people. Other than as a container that filters the representative of the people or the national leaders, the general election is also associated with the rule of law (rechtstaat), because through the general election the people can elect their representatives are entitled to create laws, and oversight or implementation of the will of the people is outlined by the representatives of the people.

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With the general election, then the people's rights can be distributed, as well as with the right to equal before the law and government.\textsuperscript{48}

3. **System of General Elections**

Due to general election is one way to determine the people's representatives who will sit on the Board of Representatives, naturally there are various electoral system, electoral systems are different from each other, depending on which angle it is viewed. From the point of interest of the people, whether the people seen as individuals who are free to make their choice and also nominate themselves as candidates for representatives of the people or whether people regarded as a member of the group who did not have a right to determine who will be their representatives in the representative body of the people or also not entitled to nominate themselves as representatives of the people.\textsuperscript{49}

Based on this, the electoral system can be divided into two kinds, namely:\textsuperscript{50}

a) Mechanical Electoral Systems

\footnotesize
\textsuperscript{49} Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara*, Jakarta, p. 421.
\textsuperscript{50} Ibid, p. 422-423
Mechanical electoral system reflects the views that are mechanically viewed people as masses of the same individuals. Either idea of liberalism, socialism and communism are bases itself on the mechanical view. Liberalism prefers individual as autonomous entity and look at society as a complex interpersonal relationships, contractual, while the ideas of socialism and communism in particular, prefer the collective totality of society by minimizing the role of the individual. However, in all the above ideas, people still seen as persons with active suffrage and looked corps of voters as a mass of individuals who each have one vote in each election, the voice of each individually.

b) Organic Electoral Systems

Meanwhile, in the organic electoral system, organic idea puts the people as a number of individuals who live together in a wide variety of partnership-based genealogy (household, family), certain functions (economic, industry), the layers of social (labor, peasants, intellectuals), and social institutions (universities). Groups in society is seen as an organism consisting of organs that have a specific position and function in the totality of organisms, such as community or alliances life. With that view, alliances are preferred as the entity and controllers suffrage. In other words, that's alliances have the right to
choose to send their representatives to the representative bodies of society.51

According to the mechanical system, the representative body of the people is the people's representative institution of public interest entirely. Meanwhile, according to the organic system, people's representative body that reflects the representation of special interests alliances respectively. In its extreme form, the mechanical system generates parliament, while organic produce corporate boards (corporative). Both of these systems are often combined in a two-room structure of parliament (bicameral), ie countries that recognize a bicameral parliamentary system.52

In essence, the elections are the ways and means available for the people to determine their representatives who will sit in the Bodies of Representatives in order to run the sovereignty of the people, then naturally there are different electoral system. In political science known various electoral systems with different variations. But in general, there are two fundamental principles, namely:

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52 Ismail Suny, Sistem Pemilihan Umum yang Menjamin Hak-hak Demokrasi Warga Negara, dalam himpunan karangan dan tulisan Ismail Suny mengenai pemilihan umum, dihimpun oleh Harmaily Ibrahim, 1970.
a) District Representation System

District system as well as a system commonly called single member constituencies or usually the winner's take-all.\(^{53}\) Named so, because the territory is divided into electoral districts or constituencies which are equal to the number of members of representative bodies of the people who needed to be selected. For example, the number of members of the House of Representatives, was determined 500 people. Thus, the territory is divided into 500 districts or countituencies. That is, each district or electoral district will be represented by only one representative who will sit in the House of Representatives. Therefore, it is called the district system.\(^{54}\) Another key feature of this district electoral system is that the focus of the election is not a political organization / logo of the party, but rather individuals who represent or be nominated by a political party in a district. The person who nominated the district usually people from other districts, but that is certainly the person recognized by the citizens in respective district.\(^{55}\)


b) Proportional Representation System

The system of proportional representation, the percentage of seats in the representative body of the people is distributed to each political party,\(^\text{56}\) according to the percentage of votes obtained by each political party. For example, the number of eligible voters in a general election, was recorded 1,000,000 (one million) people. The number of seats in the representative body of the people is determined 100 seats, meant for one person required voice and 10,000 representatives. Distribution of seats on the Board of Representatives will depend on how the number of votes obtained every political party participating general election. If the system is used, in its original form no longer need to distribute voter Corps on the number of electoral districts. Corps of voters may be divided into a number of electoral districts with the proviso that each electoral district provided some seats in proportion to population.\(^\text{57}\)

Therefore, the proportional system is known rather complicated in the calculation. In fact, the proportional system can be implemented with hundreds of different variations. However, generally, there are two main methods are commonly known as variation, namely the method of single transferable vote system is choosing the chance to

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choose the top choice and methods of list-system, namely onwards from the relevant electoral district.\textsuperscript{58}

4. \textbf{The Functions of General Elections}

As the political activity, the general election has the integrated or interdependence functions. The functions are:\textsuperscript{59}

a) As a Means of Political Legitimacy

The primary function of this legitimacy is the needs of government and the political system. Through elections, the legitimacy of the government in power can be enforced, as well as program and policy outcomes. By doing so, the rule of law agreed together not only has the authority to rule, but also to impose sanctions in the form of punishment and reward for those who violate them.

According to Ginsberg, political legitimation function is a logical consequence of the general election. There are at least three reasons why the elections could become a political legitimacy for the ruling government. First, through the general election, the government can actually convince or at least renew the political agreements with the people. Secondly, through the general election

\textsuperscript{58} Ibid.
government can also affect the behavior of people or citizens. And third, in the modern world the authorities are required to conclude a deal from the people rather than coercion to maintain its legitimacy.

b) Political Representation Function

This function primarily the needs of the people, both to evaluate and control the behavior of the government and the resulting policies and programs. The election in this connection is a democratic mechanism for the people to determine trustworthy representatives who will sit in the government.

c) General Elections As Mechanism for Replacement or Circulation of Elite Ruler

The linkage of general election with a circulation of elites is based on the assumption that the elite come from and to represent the community at large or the people. Theoretically, the relationship elections and elite circulation can be explained by looking at the process of mobility of the elite or non-elite who use the path of political institutions, and community organizations to become members of the elite national level, ie, as a member of the cabinet and equivalent positions. In that regard, the general election is a suggestion and a direct path to reach the position of the ruling elite. Thus, then through the general election expected to take place the
transfer or circulation of the ruling elite in a competitive and democratic.

d) As a Means of Political Education for People

The general election is one form of political education for the people who are direct, open and mass, which is expected to educate political understanding and increasing public awareness about democracy.

5. Types of Elections

Indonesia has one of the adherents of the democratic system that has a sense of democracy that are important for all Indonesian citizens is to carry out elections.\(^\text{60}\)

The types of elections in Indonesia, as follows:

1) Elections of President and Vice President

This election was conducted in order to select a person capable of leading the country, namely the president and vice president in accordance with the will of the people who have the duties, functions and authority of the president and vice president.

2) Elections of Members Legislative

\(^{60}\) No name, Jenis-jenis Pemilihan Umum di Indonesia, [http://guruppkn.com/jenis-jenis-pemilu](http://guruppkn.com/jenis-jenis-pemilu), Posted on 2 November 2015
According to Law No. 8 of 2012 on General Election of DPR, DPD and DPRD stated that the elections that lawmakers are elections held to elect members of the House of Representatives (DPR), the Regional Representatives Council (DPD), and the Regional Representatives Council (DPRD) both at the provincial and district or city level in the Republic of Indonesia under Pancasila and the Constitution of 1945.

3) Elections of Head of Regional and Deputy Regional Head

Indonesia to implement the election of Regional Head and Deputy Regional Head Election or known directly incorporated in the elections as the organization structure of the District and the organization structure of the village. As applicable in Law Number 10 Year 2016 regarding the General Election of Regional Head and Deputy Head of Region, the selection is done directly by the people is through elections.

C. General Elections Organizer

Under the Act organizing elections, electoral administration is an agency that organizes elections consisting of KPU (General Election Commission) and the Election Supervisory Body (Supervisory Board Elections) as an integral function of holding elections to choose members of Dwan Representatives,
Regional Representatives Council, and Dewah Representatives regions, the President and the Vice President directly by the people, as well as to elect governors, regents and mayors democratically. Election organizer is an institution that organizes elections have an enormous influence on the constitutional rights of the people in choosing the House of Representatives, Parliament, the President and Vice President, as well as elect the governor, regent, mayor democratically. Organizers of the election must be direct, public, free, confidential, honest and fair can only be achieved if the election management bodies have very high integrity and also should respect and protect the constitutional rights of citizens according to the law emphasized in election management.61

Organizers elections in Indonesia in the Act that the election organizers, KPU, Bawaslu and DKPP. KPU (General Election Commission), Bawaslu (Badang Election Supervisor), and DKPP (Honorary Board of Elections), which would then be referred to the KPU, Bawaslu and DKPP, described as follows:

1. **General Elections Commissions**

KPU (General Election Commission) is the election management bodies which is national, permanent and independent charge of implementing the election. According to the definition Jimly Asshidiqie

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Commission is a state institution holding elections in Indonesia, which includes the election of members of DPR, DPD and DPRD, the election of President and Vice President, as well as the election of Regional Head and Deputy Regional Head. The Commission can not be equated his position with the institutions of other state whose authorities are determined and granted by the Constitution 1945. Even the name of the Commission has not called for sure or not specified in the 1945 Constitution, but authority as election organizer has been confirmed in Article 22E paragraph (5) Constitution 1945 namely "general election organized by a general election commission which is national, permanent and erect." that is, that the commission is organizing the elections, and as an organizer of a national, permanent and independent (independent).  

2. **General Elections Supervisory Board (Bawaslu)**

Supervisory Board elections according to the electoral law is part of an institution that has the authority to hold elections in resolving electoral disputes. National as well as the center is called the General Elections Supervisory Board of the Republic of Indonesia (Bawaslu RI), while at the provincial level called Elections Supervisory Board of the Province (Bawaslu Province), in the Regency / City called the Supervisory Committee of the General Elections (Panwaslu) Regency / City level called the District Election Supervisory Committee (Panwaslu) the District, at the

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village called Election Supervisor (PPL). According to the Election Law, the election supervisor is an agency set up to oversee the implementation stage of the election, receiving the complaint, as well as dealing with cases of administrative violations, criminal offenses elections and election disputes.63

3. Honorary Board of Elections

DKPP is an institution that was classified as state auxiliary organs, or auxiliary institutions are state institutions that are supporting. Because among the many institutions are those that are referred to as self-regulatory agencies, independent supervisory bodies, or institutions that perform the mix functions (mix-function) between functions regulative, administrative and function of punishment is usually separated, but rather do simultaneously by the new institutions.64

The status and function of the people's representatives in the constitutional cycle which is so important and that representatives of the people really act on behalf of the people, then the people's representatives must proficiency level determined by the people, namely through elections. The importance of holding the elections on a regular basis due to several reasons including the following:

63 Musfialdy, Mekanisme Pengawasan Pemilu di Indonesia, Jurnal Sosial Budaya, Volume. 9 No. 1 Januari-Juli 2012
64 Jimly Assiddiqie, Menegakkan Etika Penyelenggara Pemilu, PT Raja Grafindo Persada, Jakarta 2013, pl.7
a) Opinions or aspirations of the people tend to change over time;

b) The living conditions of society which can also be changed;

c) Population growth and mature people who can use their voting rights;

d) In order to ensure better regulation of leadership in the executive branch and the legislative.\textsuperscript{65}

Based on the above revelation that some important because such elections are likely to change people's aspirations, the living conditions of the people change, population growth and regulatory leadership. Election is a means to channel the aspirations of the people. The living conditions of the people who are likely to change requires the existence of mechanisms that facilitate and arrange that through the electoral process. Every resident and the people of Indonesia who have an adult has the right to vote in the election. Regulation leadership of both executive and legislative branches will be done on a regular basis with their election.

In organizing the election was held democratically and transparently with the elections based on the principle that luberjurdil principles, as follows:\textsuperscript{66}

a) Directly, meaning voters have the right to direct voting in accordance with the will of his conscience.

\textsuperscript{66} Dwi Purnamasari, \textit{Op.cit.}
b) General, means that basically all citizens who meet the minimum requirements at the age of 17 years old and had been married eligible to vote. While citizens are entitled to elect 21-year-old. Thus, holistic elections for all citizens who have met certain requirements without discrimination (exception) by reference eg ethnicity, religion, race, class, gender, regional and social status.

c) Free, meaning every citizen the right to choose freely make their choice without pressure and coercion from anyone. Inside execute every citizen secured so that they can choose according to their conscience and the will of its interests.

d) Secret, means in voting, voters are guaranteed that their constituents will not be known by any party and in any way. Voters cast their votes on the ballot with unknown people to his voice gradually given.

e) Honestly, means in holding elections, the organizers, the implementation of the government, political parties participating in the election, observers and election monitors, including the voters and all parties involved indirectly, to behave and act honestly in accordance with the legislation in force.

f) Fair, meaning in an election, each voter and political party election participants receive equal treatment, and free of fraud of any party.
BAB III

GENERAL ELECTIONS SUPERVISORY BOARD ROLE IN THE ELECTORAL PROCESS BASED ON LAW NO. 15 YEAR 2011 ON GENERAL ELECTIONS ORGANIZER

A. Law No. 15 Year 2011 on General Elections Organizer

Law No. 15 of 2011 on the Organizer of the general election is a law that explains the election organizer that is the parts of the election. From this Act there are various institutions that carry out their duties and authorities during the election. There are 3 institutions in this Law namely: KPU, Bawaslu and DKPP. KPU and Bawaslu are included from election organizers, these institutions are separate and each of them is independent. Whereas, DKPP is not an election organizer, its duties and authority are related to the election organizer of the KPU and Bawaslu. However, the three institutions have the duty and authority in running the election. From his duties and authorities observing and supervising every election due to the implementation of the election can lead to both administrative and criminal violations.
The General Election Organizer
Law No. 15 Year 2011

Election management bodies are separate and each is independent.

Not the election management bodies.
Duties and responsibilities related to the officials and organizers of the elections (KPU and Bawaslu)

Violations
B. Duties and Authorities the General Election Supervisory Board

1. Duties and Authorities of the General Elections Supervisory Board

In many countries in the world, actually the implementation of democratic elections do not require the institutions as we know today as the General Elections Supervisory Board (Bawaslu) on the national level and the Election Supervisory Committee on the provincial and district / city to ensure the elections are free and fair. Even in the practice of elections in countries which have experience carrying out democratic elections, the existence of institutions such as the Bawaslu is not required. However, Indonesia is considered as a state that needs such a institution like Bawaslu. It can be found in the general explanation of Law No. 15 Year 2011 concerning on General Election Organizer which states that:

“Dalam penyelenggara pemilihan umum, diperlukan adanya suatu pengawasan untuk menjamin agar pemilihan umum tersebut benar-

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In the general elections, needed a supervision to ensure that the elections were actually held based on the principle of elections and the laws and regulations.

In the Election Law mentioned and explained that the election supervisory function described in duties, powers and obligations of the supervisor of elections. Supervisory duties relating to the election, there is division of electoral supervision that can be explained as follows:  

a) Implementation of the election;  
b) Provincial Election Supervisory Committee (Panwaslu) supervises the stages of the administration of elections in the province;  
c) District Election Supervisory Committee (Panwaslu) supervises the administration of elections in the district / city;  
d) Sub-District Election Supervisory Committee (Panwaslu) supervises the administration of elections in the districts;  
e) Fields Election Supervisory supervises the administration of elections at the village;  
f) Foreign Election Supervisory supervises the administration of elections abroad.

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68 Undang-undang Nomor 15 Tahu 2011 tentang Penyelenggara Pemilihan Umum.
The duties, authorities and obligations of election supervisors mandated by the Election Law are as follows: 69

a) The Duties of Bawaslu

Bawaslu has the duties of supervision in every process of the election. Referred to in Article 72 paragraph 2 of the Election Law states that:

“Bawaslu bertugas mengawasi penyelenggaraan pemilu dalam rangka pencegahan dan penindakan pelanggaran untuk terwujudnya pemilu yang demokratis.”

"Bawaslu charge of supervising the implementation of the elections in the context of prevention and repression of violations to the realization of democratic elections."

The duties of Bawaslu are as follows:

1) Supervise the preparation of the elections which consists of:

a. The planning and establishment stages of elections schedule.

b. Logistic procurement planning by Election Commission.

c. Implementation of the determination of the constituency and the number of seats in each constituency for the House of Representatives, the Provincial House, and the Regency / City House elections by Election Commission in accordance with the provisions of the legislation.

d. Socialization of election organizer.

e. Another implementation of supervisory duties stipulated in the legislation.

2) Supervise the implementation stages of election administration consisting of:

a. Updating the data of voters and the establishment of the temporary voters list and the final voters list.

b. Determination of election participants.

c. The nomination process until the determination of members of the House of Representatives, Parliament, candidates for President and Vice President and Governors, Regents, Mayors accordance with the provisions of the legislation.

d. Implementation of the campaign.

e. Procurement of elections logistics and distribution.

f. Implementation of voting and counting the election results at the polling stations.
g. The movement of the ballot, the minutes of vote counting results of the certificate of vote counting results of the polling station level to the PPK.

3) Manage, maintain and care records/documents and to conduct depreciation based on the archive retention schedules prepared by Bawaslu and NKRI.

4) Monitor the follow-up implementation of election criminal offense by the authorities.

5) Supervise on the implementation of decisions of election violations.

6) Evaluation of elections supervision.

7) Prepare reports on the results of supervision election administration.

b) The Authorities of Bawaslu

Bawaslu have authorities of supervision in every process of the election. Referred to Article 73 paragraph (4) of the Election Law states that the authorities are as follows:

1) Receive reports of alleged violations of the implementation of the provisions of the legislation concerning elections;
2) Receive reports of alleged violations of election administration and reviewing reports and findings, and recommend to the authorities;

3) Complete the election disputes;

4) Form, appoint and dismiss election supervisors at lower levels;

5) Implement other authorities stipulated in the provisions of the legislation.

c) The Obligation of Bawaslu

Bawaslu have the obligations of supervision in every process of the election. In the Article 73 of Election Law are as follows:

1) Be not discriminatory in carrying out its duties and authorities;

2) Conducting guidance and supervision of the implementation of the election supervisory duties at all levels;

3) Receive and act on reports relating to the alleged infringement of the laws and regulations regarding the implementation of the elections;

4) Delivering monitoring reports in accordance with the stages of elections periodically and / or based on need; and

5) Implement other obligations provided by the legislation.

2. The Violations of General Election
a) The Violations of General Election

Election violations can be done by individuals and Political Parties (As participants of elections), Election Commission (as the organizer of elections) and the Bawaslu (as an elections supervisor). To resolve the problem as mentioned above we need a rule of law in order to provide a deterrent effect on the perpetrators of election violations, the application of criminal sanctions are meant to uphold the rule of law in the society, nation and state.\(^7\)

The number of cases of electoral violations that occurred and the lack of law enforcement to the application of criminal sanctions should be a deterrent effect so that the electoral violations do not occur repeatedly. The absence of law enforcement expressed the loss of people rights in the election and the ineffectiveness of the luber jurdil principle, the ineffectiveness of democracy that the ideals of reform. On the other hand the absence of law enforcement resulted in the ineffectiveness of the rule of law.

b) The Forms of Violation

In the general election in Indonesia, there are still many violations can be done by many people even can be done by everyone to be the perpetrators of violations of the election, so it is necessary

imposing of sanctions for election violations either violations of the Code of Conduct for the organizers of elections, violations of Electoral Administration, and Election Criminal Act. Reports of election violations can be delivered by an Indonesian citizen who has the right to vote; election monitors; or participants in the elections.\textsuperscript{71}

Laws have guaranteed the law enforcement system in election administration to election violations and follow up the handling of alleged violations of which forward recommendations based on the study by the election supervisors to the competent authority, there are types of offenses are as follows:

1) Violation of Election Code

The provision of Article 251 of Law No. 8 Year 2012 concerning on Legislative Election stated that the organizers of elections code violations is a violation of the ethics of the election organizer with reference to the oath and/or appointment before perform duties as the election organizer.\textsuperscript{72} Based on such understanding, prior to the election organizer perform their official duty, must first take an oath and / or an appointment to carry out the duties and authorities and obligations as well as

\textsuperscript{71} Ramlan Surbakti dkk, Serial Buku 15, \textit{Penanganan Pelanggaran Pemilu}, Kemitraan bagi Pembaruan tata Pemerintahan, Jakarta, Cetakan 1, 2011, p. 18.

\textsuperscript{72} Undang-undang Nomor 8 Tahun 2012 tentang Pemilihan Umum Anggota DPR, DPD, dan DPRD.
possible in accordance with the laws and regulations based on the Pancasila and the Constitution of 1945 by giving priority the interests of the Republic of Indonesia (NKRI) rather than personal or group interests. Therefore, the establishment of the Honorary Board of Election Organizers (DKPP) to hear and determine complaints and / or reporting the alleged violation of the code of conduct.73

2) **Violation of Election Administrative**

Violation of Election Administrative is a violation that includes procedures and mechanisms relating to the administration of elections in each phase of elections organizers, such terms are defined in Article 253 of Law No. 8 Year 2012 concerning on Legislative Elections.74

3) **Crime of Election**

Scour some formulations criminal offense of election has been in several laws and regulations in Indonesia, there are some formulations offenses referred to in Chapter IV of Book II of the Criminal Code, as encountered formulated in:

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74 Undang-undang Nomor 8 Tahun 2012 tentang Pemilihan Umum Anggota DPR, DPD, dan DPRD.
a) Article 148, to convict someone if purposely and with violence or the threat of violence hinder someone who would do right to vote to be disturbed.

b) Article 149 which at the time of the general election give or promise or bribe someone to abstain from voting, or follow what the giver wants, even against bribe recipients may also be subject to criminal.

c) Article 150, which acts ruse that led to the sounds of a voter becomes worthless.

d) Article 151 which formulates the act intentionally admitted herself to others, and

e) Article 152 formulate the act intentionally thwart voting has committed or is committing a ruse that led to the results of voting into another.

Listening to the formulation of crime and the pattern formulation of criminal threats in the articles of the Criminal Code above, it is said that the formulation is still very simple, because the average criminal sanction ranging between nine (9) months to
two (2) years of imprisonment, not subject to criminal sanctions and fines.\textsuperscript{75}

Violations can occur because of the element of intent or through negligence. Election violations can be done by many people even can be said everyone has the potential to become perpetrators of election violations. Additionally, to anticipate the 2014 legislative elections, Law No. 8 Year 2012 concerning on Legislative Election set it at every stage in the form of obligations and prohibitions with additional threats or sanctions. Globally in 2014 legislative elections can be said to be running smoothly and democratically, however there are still some things that need to be addressed for the improvement of the implementation of the next election. Indications related to the smooth implementation of the legislative elections in 2014 can be seen from the quantity of existing violations. The graph below illustrates the quantity of administrative and criminal violations in the 2014 legislative elections.

\textsuperscript{75} John Dirk Pasalbessy, \textit{Aspek Hukum Pidana di dalam Pelanggaran Pemilihan Umum}, \url{http://fhukum.unpatti.ac.id/hkm-pidana/350-aspek-hukum-pidana-di-dalam-pelanggaran-pemilihan-umum-kajian-dari-perspektif-kebijakan-hukum-pidana}
Type of Violations in 2014 Legislative Election

The above graph shows that the implementation of legislative election in 2014 was characterized by several administrative violations which is occurred as many as 7,720 violations. While the criminal offense as much as 660. The data shows that the violations related to the technical and administrative requirements are more prevalent, the number of administrative violations quantity also show related to technical issue and requirements of the election is still relatively low.\textsuperscript{76}

\textit{Source: Bawaslu}

\textsuperscript{76} Sekretariat Jenderal Badan Pengawas Pemilihan Umum, “Sistem kepartaian, Sistem Pemilu dan Sistem Presidensil, 2015, hal 60.
3. Settlement Mechanism of General Election Violations

a) The Settlement of Crime of Election

Criminal election can be seen as something serious prohibited acts. Therefore, criminal acts that must be resolved in a short time for the purpose of holding elections penal provisions that can be achieved, which is to protect the democratic process through elections.

Completion of criminal offenses carried out through the court in general courts. Law enforcement officers who have role in the settlement of criminal election are the police, prosecutors and courts. In the elections, the police assigned and authorized to investigate such reports or findings accepted criminal election from the election supervisors and submit the case file to the public prosecutor at the time determined. The public prosecutor assigned and authorized to delegate the case file of criminal election submitted by the investigator to the court at the time determined.77

Elections criminal case resolved by general court, the first level by the district court, appeals and final level by hearing and deciding the case using the book of the Law of Criminal Law, plus the special rules in the Election Law.

77 Ramlan Surbakti dkk, Op.cit, hal. 16.
b) **The Settlement of Election Administrative**

In the handling of administrative violations, the election law states that an administrative violation report submitted to the General Election Commission (KPU). Therefore, the Commission is completing the administrative violation. Completion of violations of the election administrative is intended to maintain the independence, integrity, accountability and credibility of elections organizers. Completion of violations of the electoral administration is to ensure the implementation of direct, general, free, confidential, honest and fair elections. This settlement resolved by the Election Commission (Province, District / City) on the basis of a report from the Bawaslu (Province, District / City) in accordance with the levels. Reports of violations of the election administrative can be delivered by an Indonesian citizen who has the right to vote; election monitors; or participants in the elections.78

Electoral dispute resolution mechanism, there are three main types consisting of two mechanisms that are corrective and punitive as well as an informal mechanism. The three types of such mechanism is as follows:79

a. Formal or corrective mechanisms such lawsuit filed and the election process. This mechanism resulted in the decision to cancel, modify or acknowledge the existence of irregularities in the electoral process.

b. Punishment or punitive mechanisms, such as the case of criminal offenses. This mechanism will result in sanctions both entities and individuals responsible for these irregularities, including criminal liability or administrative elections.

c. Informal mechanisms / alternative, which is a mechanism that can been parties to the dispute.

To design and implement the electoral justice system that is comprehensive and effective, must pay attention to the third period in the election cycle, namely prapemilu, election and post-election. This should be done considering almost all activities within the electoral potential disputes. If the electoral justice system was not authorized, the tools and resources sufficient to handle disputes efficiently and effectively throughout the election cycle the election process may be disrupted. Hence the electoral justice system to ensure that all actions and decisions taken must be in accordance with the mandate of the law.\textsuperscript{80}

\textsuperscript{80} Veri Junaidi, \textit{Prientasi Penegakan Hukum Pemilu dan Posisi Kelembagaan Bawaslu}, hal. 10-11.
CHAPTER IV

JURIDICAL ANALYSIS RELATED TO APPLICATION OF THE
PRINCIPLE LUBER JURDIL AND THE ROLE OF GENERAL
ELECTION SUPERVISORY BOARD IN THE ELECTORAL
PROCESS

A. The Forms of Violations of Law in Applying the Principles Luber
Jurdil of Law Related to Election Organizer

In an election that has been done based on the Law on election organizers. However, the elections in Indonesia are still many problems that occur. Those problems are violations of law that occurred when the implementation process of the elections. There are several forms of legal violations in the elections is a violation of election administration, election criminal offense, and violation of the code of ethics, as follows:

1. Violation of Electoral Administration

Violation is a violation of election administration that includes ordinances, procedures, and mechanisms related to the administration of elections in each phase of the election organizers. According to the authors of the violations indicate that these violations associated with the technical requirements of administrative more going on. In accordance with the provisions of the legislation that the elections should be held in a
democratic and transparent with Luber Jurdil based on the principle set out in the Act election organizer. With examples of cases obtained, violations of election administration, as follows:

a) Data Collection and Updating Data Selector

1) Voters Not Enough Age

This fraud occurs by entering the data of voters who have aged 17 years and above with the aim to increase the acquisition of certain participants of the election ballots. Cheating is due to the personal interest that comes from participating in the election to win the election. In this case it has been known that this fraud violated one of the principles Luber Jurdil. The principle is being violated, namely the principle of honest, honest attitude of all the other parties are not applied so that the fraud occurred. Therefore, in anticipation of supervision needs to be done is to check the data age group.

2) Voters Dies

Cheating the voters who had died was intentionally removed so that ballots can be used by others to commit fraud. In this case also, according to the author that this fraud has violated the principle of honest that is one of the principles Luber Jurdil. Honest attitude is not applied so that the fraud
occurred. Anticipation that do not recur supervision needs to be done is to follow the development of mortality data.

3) Double Voting

Voter fraud by writing the name in a double or a way to change his identity to enlarge ballots obtained. This is done so that the invitation letter can be harnessed and used by others to acts of fraud. Cheating happens because of all of the parties does not apply the principles Luber Jurdil, namely one of which is the principle of honest, does not act and behave honestly. Therefore, the anticipation that needs to be done is to look at the data that is not used by all the parties will act cheating.

2. Crime Election Violations

Criminal offense elections is an act of crime against the provisions of criminal election as stipulated in article 260 of Law legislative elections, namely:

"The criminal act is a felony offense Election and / or crimes against the provisions of the Election criminal act as stipulated in this Law."
Criminal offense of the problems above, the following is an example of the violation / fraud often occurs in the course of the election.

a) Campaign Period

1) Black campaign

Black campaign is a campaign carried out outside the schedule by distributing statements to attract the sympathy of voters to elect certain participants. In this case, to prove that the maker of the smear campaign was successful teams with the aim that the people felt sorry for potential participants have been persecuted or whatever the reason was to attract the sympathy of voters. This case, including violate of the principles Luber Jurdil that one of them is the principle of the free. That principle is one of the causes of loss of voting rights. For their smear campaign to convince voters to vote who are not participating in the election the voters choose. Therefore, the anticipation that needs to be done is immediately attracted black campaign leaflets prior to the issue spread everywhere, if necessary, immediately arrested the party campaigned for black.
b) In the Process of Election

1) Letter of invitation

By not distributed during the delivery of election or the election committee is not neutral then there is the letter of invitation for voters who are clearly at odds with the choice tends to not be shared. Cheating is the case, because the dishonest attitude of the election committee so that the fraud occurred. Anticipation by checking into homes, or max 1 day before polling day, the invitation letter already exists, if not to immediately report and asked the local KPPS so that no cheating.

2) Money politic

Cheating by providing something in the form of money or goods to be concerned selecting a particular election participants. Political money is one way in which a person or group of people to bring down political opponents in a way that is not true, it is not appropriate conduct, lying and misleading. Fraud includes offenses violate the principles that already exist in the legislation that is Luber Jurdil principle. With insincere, lying, so that voters lost their right to vote. Therefore, the anticipation that must be done is to oversee
every successful team posts carefully and immediately arrest the perpetrators and any evidence.

3) Ballot Illegal

Cheating is done by doubling the ballots before polling day or KPPS deliberate provide more than one ballot paper to the voter. Cheating is one of the criminal acts that can lead to invalid voting, because the ballots more than that should be removed. Therefore, in anticipation of oversight on areas prone to this reporting if there is a person who does that.

4) Manipulating Ballot

Manipulation of votes carefully situations usually occurs due to lack of witnesses and supervisors. Moreover, witnesses are certificate usually asked to first come sheet s minutes and counting. Cheating is a violation that can be detrimental to the people of Indonesia because of this fraud. Anticipation to do is witness / supervisors do not immediately sign on the voting results before the vote counting process is completed.
3. **Election Code violations**

   This violation is a violation of the ethics of election organizers are guided by the oath and / or appointment before stints as election organizers. The organizers of the election code of conduct be resolved by the House of Representatives, Parliament and Council. With the completion of the ordinances performed in accordance with the provisions of the Act concerning the election organizer. Ethical violation here is that the organizers of the election has a code of conduct for holding elections in Indonesia. However, if the election organizers to commit fraud in the process of the election then it is behavior that violates the code of conduct which is in conformity with the organizers of the election law.

   In this chapter, according to the authors there are many forms of legal violations in the electoral process. Forms of violations that have been obtained in the study of criminal election violations and violations of electoral administration in the organization of legislative elections in 2014 are still not implementing existing regulations as apply the principles of Luber Jurdil set out in the Act election organizer. Still lack in applying the principles of Luber Jurdil, so there are still many violations occurred when the process of the election. While the principles of Luber Jurdil is one of the most important to realize the sovereignty of the people to make Indonesia better.

   In the above problems concerning the election violations is one of the impacts for the citizens of Indonesia itself, if society is constantly cheating to win
the election with the people of Indonesia chose the wrong leader to Indonesia in the future. Therefore, tackling these problems from happening in the next election is to anticipate fraud in the next election. Actually not too difficult to anticipate the electoral fraud that is derived from election monitors capable of monitoring and mapping point of vulnerability that will happen at this stage of the election and other parties to help and work together to run the elections with the appropriate regulatory mechanisms that already exist. And public morality or public participation is still poor in applying the principles of Luber Jurdil. The right solution to prevent fraud happening is coming from the community itself.

B. Bawaslu role in organizing the legislative elections of 2014

With the election organizer under the Act, has determined some Bawaslu role in the administration of elections. Role Bawaslu author means is duties, powers and obligations Bawaslu in organizing the elections. Thus, the election organizer described in the Act which supervise the elections in order prevention and repression of violations to the realization of democratic elections. The following duties, powers, and obligations Bawaslu in the administration of the election:

1. Task Bawaslu
   a) Oversee preparation of the elections;
   b) Oversee the implementation stages decision court;
c) Manage, maintain and care records / documents;
d) Oversee the implementation of the decision of election violations;
e) Evaluation of supervision of elections;
f) Prepare reports on the results of monitoring the implementation of the election;
g) To perform other tasks stipulated in the provisions of law.

2. **Privileges Bawaslu**
   a) Receive reports of alleged violations of the implementation of the provisions of the legislation concerning the elections;
b) Receiving reports of alleged violations of election administration and reviewing reports and findings, and recommend to the authorities;
c) Resolve election disputes;
d) Forming, appoint and dismiss the election supervisory bottom level;
e) Implement other authorities stipulated in statutory provisions.

3. **Liabilities Bawaslu**
   a) Being non-discriminatory in carrying out its duties and authorities;
b) Guidance and supervision of the implementation of the election supervisory duties at all levels;
c) Accept and act on reports relating to alleged violations of the implementation of the legislation on elections;
d) Submit the report in accordance with the supervision of election stages periodically and / or based on need; and

e) Carry out other obligations provided by the legislation.

The above explanation Bawaslu role is set out in the legislation that exists is the organizer of the election law, which means that the KPU and Bawaslu have an important role in the implementation of the election. The core of the Election Supervisory Body's role here is to carry out the duties, powers and responsibilities in the organization of elections / voting to prevent and crack down on fraud or violations that always occurs at the time of the election or voting. Bawaslu role in the implementation of this election duties, powers and obligations to realize the sovereignty of the people democratically so that Indonesia better in the future.

Thus the role of Bawaslu above there are many people who participate less in holding elections. However, the role Bawaslu which has been set in the Law on election organizers not only duties, powers and obligations that Bawaslu run but also provide education or educate the public on the meanings and values in the elections by explaining that the election was held with the principles of overflow Jurdil it and if there is violating it must be explained the impact that would arise for the offense, not just sanctions for violators but a penalty in accordance with applicable regulations.

According to the authors, that Bawaslu role in the legislative elections in 2014 are already performing their duties, powers and obligations under the Act with election organizers. However, violation / fraud is still vulnerable in the
elections. Where the community is still difficult to apply the principles of the Jurdil overflow in the election, namely because of the community in participating in the process of the election. And the need for understanding to the community in applying the principles of Luber Jurdil. In order, the public understand the importance of this principle and can be applied to either the aim to realize the people's sovereignty Indonesia became better in the future.
BAB V

CONCLUSION AND RECOMMENDATION

A. Conclusion

1. The form of violation of the law on the application of the principles of Luber Jurdil their third violation of the law, namely: first, the Electoral Administration Violation is a violation related to the procedure. Procedures and mechanisms relating to the administration of elections in each phase of the election organizers. Second, the Election Violation Crime is a violation of criminal action felony offense and / or fraud crime that occurred in the process of organizing elections. Third, the election Code of Conduct Violation is a violation of the ethics of the election management with reference to the oath and / or appointment before stints as an organizer of the elections in accordance with the laws and regulations based on the Pancasila and the 1945 Constitution with the interests of the Homeland than interest individuals and groups.

2. In the election organizer, Bawaslu has an important role in carrying out the process of the election in accordance with the Law on election organizers. However, there are still many forms of violations that occur in the process of the election.
B. Recommendation

1. In Act election organizers further explain the specifics of the Luber Jurdil principle that the citizen better understand the meaning of the principles of overflow honest and fair in the electoral process.

2. According to the authors, the importance of education and knowledge by means of socialization to the citizen to understand the meaning of the principles of Luber Jurdil.
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