



DECISION

Number 29/PHPU.D-VI/2008

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in the case of petition Dispute over the Results of General Election of Regional Head/Deputy Regional Head of Ogan Komering Ilir Regency, filed by:

- [1.2] 1. Name : **ISKANDAR, SE;**
Religion : Islam;
Occupation : Civil Servant;
Address : Jalan Lintas Timur Km. 35, Inderalaya Raya
Sub-District, Inderalaya District, RT. 04 Number
036, Ogan Komering Ilir Regency;
2. Name : **KUKUH PUDIYARTO;**
Religion : Islam;
Occupation : Retired Indonesian Army;
Address : Tugu Jaya Village, RT 02, Lempuing District,
Ogan Komering Ilir Sub-District;

By virtue of a Special Power of Attorney dated October 31, 2008 granting the power of attorney to Eti Gustina, S.H; Aprili Firdaus, S.H; Taslim, S.H; Partogi Hamonangan, S.H; Yopie Bharata, S.H; Sulyaden, S.H., Yusmarawati, S.H; Herlina, S.H, all of whom being Advocates associated in Advocates' Team of Candidate Regent/Deputy Regent of Ogan Komering Ilir, ISKANDAR, S.E., and KUKUH PUDIYARTO for the period of 2008 – 2013 having their office address at Jalan Bidar Blok B Number 6 Kampus Palembang, acting for and on behalf of the Petitioners, either jointly or severally;

Hereinafter referred to as ----- **PETITIONERS;**

Against:

[1.3] **GENERAL ELECTION COMMISSION OF OGAN KOMERING ILIR REGENCY OF SOUTH SUMATERA PROVINCE**, domiciled at Jalan Letnan Marzuki Jahri Telephone/Fax (0712) 324039. By virtue of Special Power of Attorney dated November 7, 2008 granting the power of attorney to Alamsyah Hanafiah, S.H., Mardiah Bakri, S.H., Muhammad Yearin, S.H., Hendra Heriansyah, S.H., and M. Syafri Noor, S.H., M.Si. all of whom being advocates in Law Office of ALAMSYAH HANAFIAH, S.H., & PARTNERS having their office address at Jalan Letjen Suprpto Ruko Cempaka Mas Boulevard Barat Blok C Number 7 Central Jakarta 10640; Jalan Jenderal

Sudirman Number 1 C Palembang 30128, acting for and on behalf of
Respondent, either jointly or severally;

Hereinafter referred to as ----- **RESPONDENT**;

[1.4] Having read the Petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard and read the Written Responses of the Respondent,
the General Election Commission of Ogan Komering Ilir Regency;

Having heard and read the written statement of the Related Party,
the Candidate Pair of Regent and Deputy Regent of Ogan Komering Ilir, Ir. H.
Ishak Mekki, M.M., and H. Engga Dewata, S.Sos;

Having examined the evidence and witnesses of the Petitioners and
Respondent;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the main issue of the Petitioners' petition is concerned with objection to the Recapitulation of Vote Count Results of the General Election of Regent/Deputy Regent of Ogan Komering Ilir Year 2008 and Decision of General Election Commission of Ogan Komering Ilir Regency (hereinafter referred to as KPU of OKI Regency) Number 39B/KEP/KPU-OKI/X/2008 regarding the Stipulation of Elected Candidate Pair from the 2008 General Election of Regent/Deputy Regent of Ogan Komering Ilir Regency;

[3.2] Considering whereas prior to considering the principal issue of the case, the Constitutional Court (hereinafter referred to as Court) shall first take the following matters into account:

1. authority of the Court to examine, hear, and decide upon the *a quo* petition;
2. legal standing of the Petitioners to file the *a quo* petition.

With respect to the aforementioned two matters, the Court is of the opinion as follows:

AUTHORITY OF THE COURT

[3.3] Considering whereas based on the provisions of Article 24C paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) and Article 10 paragraph (1)

sub-paragraph d of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law) *jis* Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 regarding Judicial Power, and Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government, one of the Constitutional Court's authorities is to decide upon disputes over the results of general elections;

Initially, based on the provisions of Article 106 paragraph (1) and paragraph (2) of Law Number 32 Year 2004 regarding Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to State Gazette of the Republic of Indonesia Number 4437), an objection to the results of vote count affecting the elected candidate pair was to be filed to the Supreme Court. Such authority was subsequently included in Article 94 of Government Regulation Number 6 Year 2005 regarding the Election, Legalization of Appointment, and Dismissal of Regional Head and Deputy Regional Head;

Article 1 sub-article 4 of Law Number 22 Year 2007 regarding General Election Organizer (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) stipulates that, "*the General Election of Regional Head and Deputy Regional Head shall be the general election held to directly elect the*

regional head and deputy regional head in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution”;

Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, stipulates that, *”the handling of disputes on the results of vote count in the regional head election by the Supreme Court shall be delegated to the Constitutional Court by no later than 18 (eighteen months) as of the promulgation of this law”;*

On October 29, 2008, the Head of the Supreme Court and the Chairperson of the Constitutional Court jointly signed the Minutes of Delegation of Authority to Adjudicate, as the implementation of the aforementioned Article 236C of Law Number 12 Year 2008;

[3.4] Considering whereas as the Petitioners’ petition is concerned with the dispute over the results of vote count of Regional Head General Election, namely General Election of Regional Head General of OKI Regency in accordance with the Decision of KPU of OKI Regency Number 39B/KEP/KPU-OKI/X/2008 dated October 30, 2008, the Court has authority to examine, hear, and decide upon the *a quo* petition.

LEGAL STANDING OF THE PETITIONERS

[3.5] Considering whereas Article 3, Article 4, and Article 5 of the Constitutional Court Regulation Number 15 Year 2008 stipulate the following issues, among other things:

- a. The Petitioners shall be a Candidate Pair of Regional Head/Deputy Regional Head;
- b. The petition may only be filed against the stipulation of the vote count results of Regional Head General Election affecting the stipulation of candidate pair qualified to participate in the second round General Election of Regional Head or the election of candidate pair as the Regional Head/Deputy Regional Head;
- c. The petition may only be filed by no later than 3 (three) working days following the stipulation of vote count results of the General Election of Regional Head in the area concerned by the Respondent;

[3.6] Considering whereas the Court will consider the legal standing of the Petitioners based on the provisions of Article 3, Article 4, and Article 5 of the Constitutional Court Regulation Number 15 Year 2008 as intended in paragraph **[3.5]**, as follows:

- Whereas the Petitioners are a Candidate Pair of Regent/Deputy Regent of OKI in accordance with the Decision of KPU of OKI Regency Number

- 39B/KEP/KPU-OKI/X/2008 dated October 30, 2008, with Candidacy Number 2 (two);
- Whereas the Petitioners' petition is concerned with objection to the Decision of KPU of OKI Regency Number 39B/KEP/KPU-OKI/X/2008 dated October 30, 2008 regarding the Stipulation of Elected Candidate Pair from the 2008 General election of Regent/Deputy Regent of Ogan Komering Ilir Regency. The said objection was caused by stipulation that Petitioners only acquired 160,395 votes, which was in the second rank following candidate pair, IR. Ishak Mekki, MM., and H. Engga Dewata Zainal, S.Sos, with vote acquisition of 190,425 votes;
 - Whereas the Petitioners' petition was received in Registrar's Office of the Court on November 3, 2008 at 13.15 with the Deed of Receipt of Petition Dossier Number 60/PAN.MK/XI/2008, while the results of vote count of Regional Head Election of OKI Regency were stipulated by KPU of OKI Regency on October 30, 2008. Based on the provisions of Article 5 paragraph (1) of PMK Number 15 Year 2008, namely that the time limit for filing the petition of objection to the vote count results of regional head general election shall be 3 (three) working days following the stipulation of results of Regional Head General election by the Respondent; for the *a quo* case it was November 4 2008, and hence the *a quo* petition has met the requirement on petition submission time limit. Therefore, the exception of the Respondent regarding the time limit must be rejected, as the

Respondent has based its arguments on November 6, 2008 which constitutes registration date, not on the date of the Deed of Receipt of Petition Dossier;

[3.7] Considering whereas based on the assessment of the facts and laws in the preceding paragraph [3.6], the Court is of the opinion that the Petitioners have legal standing to file the *a quo* petition;

[3.8] Considering whereas since the Court has authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have legal standing to file the petition, the Court shall further consider the Principal Issue of the Petition;

PRINCIPAL ISSUE OF THE PETITION

[3.9] Considering whereas in the principal issue of their petition, the Petitioners argue as follows:

- Whereas KPU of Ogan Komering Ilir regency announced the results of vote count in accordance with Decision of KPU Number 39B/KEP/KPU-OKI/X/2008 on October 30, 2008, with the following details:

NO	NAME OF CANDIDATE PAIR OF REGENT & DEPUTY REGENT	VOTE ACQUISITION
1.	IR. ISKANDAR MALIKI, MM and DRS. H. ISKANDAR AIDI	26,873
2	ISKANDAR, SE. and	160,395

NO	NAME OF CANDIDATE PAIR OF REGENT & DEPUTY REGENT	VOTE ACQUISITION
	KUKUH PUDIYARTO	
3	HENDRI FAIZAL DAMHARI, SE and RAHMA DEWI H.A. KALAUNG, SE	4,796
4	IR. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S.Sos	190,425

- Whereas according to Petitioners, the results of count of KPU of OKI Regency are invalid, with the following arguments:

1. whereas mistakes were found in the Recapitulation of Vote Count Results for Candidate Pair of Regent/Deputy Regent of OKI in 2008, in that the existence of difference in the total votes according to Certificate of Vote Count Results delivered by Chairperson of Voting Committee (KPPS) to the witnesses of the respective Candidate Pairs of Regent/Deputy Regent of OKI;

This can be seen from comparison between the total votes according to Petitioners and Permanent Voters List (DPT) of KPU of OKI Regency in 2008;

NO	DISTRICT	NAME OF CANDIDATE PAIR REGENT & DEPUTY REGENT	TOTAL VOTES ACCORDING TO PETITIONERS
1	MESUJI RAYA	Ir. H ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	1740
		ISKANDAR, SE and KUKUH PUDIYARTO	6007
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	158
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	0
		Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	550

NO	DISTRICT	NAME OF CANDIDATE PAIR REGENT & DEPUTY REGENT	TOTAL VOTES ACCORDING TO PETITIONERS
2	PANGKALAN	ISKANDAR, SE and KUKUH PUDIYARTO	8942
	LAMPAM	HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	178
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	4451
3	LEMPUING	Ir. H ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	3749
		ISKANDAR, SE and KUKUH PUDIYARTO	8939
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	425
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	0
4	PEDAMARAN	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	890
		ISKANDAR, SE and KUKUH PUDIYARTO	7981
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	518
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	9540
5	JEJAWI	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	849
		ISKANDAR, SE and KUKUH PUDIYARTO	11576
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	249
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	6579
6	TELUK GELAM	Ir. H ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	604
		ISKANDAR, SE and KUKUH PUDIYARTO	4354
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	105
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	0
7	LEMPUING JAYA	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	3784
		ISKANDAR, SE and KUKUH PUDIYARTO	11849
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	517

NO	DISTRICT	NAME OF CANDIDATE PAIR REGENT & DEPUTY REGENT	TOTAL VOTES ACCORDING TO PETITIONERS
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	0
8	MESUJI MAKMUR	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	1286
		ISKANDAR, SE and KUKUH PUDIYARTO	9936
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	182
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	0
9	MESUJI	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	1674
		ISKANDAR, SE and KUKUH PUDIYARTO	6375
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	304
		Ir. H. ISHAK MEKKI, MM and H ENNGA DEWATA ZAINAL, S. Sos	0
10	AIR SUGIHAN	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	823
		ISKANDAR, SE and KUKUH PUDIYARTO	6541
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	175
		Ir. H. ISHAK MEKKI, MM and H ENNGA DEWATA ZAINAL, S. Sos	0
11	KAYU AGUNG	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	4475
		ISKANDAR, SE and KUKUH PUDIYARTO	9477
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	272
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	17929
12	PEDAMARAN TIMUR	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	604
		ISKANDAR, SE and KUKUH PUDIYARTO	5416
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	84
		Ir. H. ISHAK MEKKI, MM and H ENNGA DEWATA ZAINAL, S. Sos	3676
		Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	1454

NO	DISTRICT	NAME OF CANDIDATE PAIR REGENT & DEPUTY REGENT	TOTAL VOTES ACCORDING TO PETITIONERS
13	TANJUNG LUBUK	ISKANDAR, SE and KUKUH PUDIYARTO	7402
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	353
		Ir. H. ISHAK MEKKI, MM and H ENGGA DEWATA ZAINAL, S. Sos	10099
14	TULUNG SELAPAN	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	999
		ISKANDAR, SE and KUKUH PUDIYARTO	9341
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	227
		Ir. H. ISHAK MEKKI, MM and H ENGGA DEWATA ZAINAL, S. Sos	10609
15	CENGAL	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	729
		ISKANDAR, SE and KUKUH PUDIYARTO	9138
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	213
		Ir. H. ISHAK MEKKI, MM and H ENGGA DEWATA ZAINAL, S. Sos	9193
16	SUNGAI MENANG	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	1320
		ISKANDAR, SE and KUKUH PUDIYARTO	11364
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	381
		Ir. H. ISHAK MEKKI, MM and H. ENGGA DEWATA ZAINAL, S. Sos	0
17	SP PADANG	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	871
		ISKANDAR, SE and KUKUH PUDIYARTO	12943
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	284
		Ir. H. ISHAK MEKKI, MM and H. ENGGA DEWATA ZAINAL, S. Sos	8481
18	PAMPANGAN	Ir. H. ISKANDAR MALIKI,MM and Drs. H. ISKANDAR AIDI, MM	472
		ISKANDAR, SE and KUKUH PUDIYARTO	7652
		HENDRI FAISHAL DAMHARI, SE and RAHMA DEWI H A KALUNG, SE	171

NO	DISTRICT	NAME OF CANDIDATE PAIR REGENT & DEPUTY REGENT	TOTAL VOTES ACCORDING TO PETITIONERS
		Ir. H. ISHAK MEKKI, MM and H. ENNGA DEWATA ZAINAL, S. Sos	6322

2. Whereas processes of regional head general election of OKI Regency have greatly harmed the Petitioners since violations have been largely found, and hence the processes are legally defective, as well as held not in a democratic, Direct, General, Free, Confidential, Honest, and Just manner;
3. Whereas the Petitioners have found many violations such as money politics, involvement of Civil Servant individuals, intimidation, and etc in the processes of general election of regional head of OKI Regency year 2008 which have been reported to the District General Election Supervisory Committee (*Panwaslu*), Regency General Election Supervisory Committee of OKI, and General Election Supervisory Committee of South Sumatra Province, Resort Police of OKI, Sector Police of Lempuing (Exhibits P-02; P-03; P-04; P-05; P-06; P-07; and P-08);
4. Whereas the violations occurring in the processes of regional head general election have caused Candidate Pair of Regent/Deputy Regent of OKI for the Period of 2008-2013, namely Ir. Ishak Mekki, M.M., and H. Engga Dewata Zainal, S.Sos to acquire majority votes

of Candidate Pair of Regent/Deputy Regent of OKI namely Iskandar, S.E. and Kukuh Pudiarto;

[3.10] Considering whereas to support their arguments, the Petitioners have filed written evidence, marked as Exhibits P-1 through P-64, as well as 10 (ten) witnesses giving statements under oath, but there are only 9 (nine) of 10 witnesses who have given their statements at the court hearing on November 17, 2008, which principally state as follows:

[3.10.1] SANG DEWI RUSMIN NURYADIN

- The witness refused to sign the recapitulation of vote count as General Election Supervisory Committee did not follow up and legally process the objection filed by the witness. The witness believed that such votes were acquired by way of money politics committed prior to many occasions of voting in Tulung Selapan Voting Stations, but witness did not observe such acts of money politics directly;
- The vote count was attended by the Chairpersons of District Election Committee (PPK) at each district, and as the witness remembered, there were 18 District PPK publicly announcing the recapitulation to KPU. She had no knowledge and did not see herself the total vote acquisition of candidate pair according to the stipulation of KPU and she had no interest in the numbers announced by KPU, as the process in obtaining such votes was in violation of the law (legally defective);

[3.10.2] ABDUL KADIR

- On October 23, 2008, he got a call from Sofyan saying that members of KPU of OKI Regency brought a ballot box to Kayu Agung Public Hospital. After receiving such information, together with Herian and Ahmad bin Karim, he subsequently went to Kayu Agung Public Hospital and as they arrived at the place, he saw Haison Hower, Chairperson of KPU of OKI Regency and his Secretary bringing a ballot box to obstetrics room. He asked Haison Hower not to circulate such ballot box, but Haison Hower insisted upon circulating such ballot box into the Pavilion room. As the voting in Kayu Agung Public Hospital was not attended by any witness, the witness together with Haison Hower, Bob Tamami, and his partners agreed to tear 18 voting cards from the voting in the hospital and the scraps were put into ballot box and not counted;
- He received information that nine basic commodities (*sembako*) would be distributed to the community and such nine basic commodities would be available at district. After having such information, he came to the district office and it was indeed true that nine basic commodities were available in district head's office room, but they had not been distributed yet to the community. Then the Witness asked the district head what such nine basic commodities were for. The District Head explained that such nine basic commodities were going to be sold in a bazaar, but he could not prove it. After that, the witness reported the incident to the police. With

respect to the report of the witness, Resort Police Head directly inspected the district office to find out the validity of the witness' report. After finding such nine basic commodities in the district by himself, he then recommended the District Head not to distribute them on quiet days as it would be risky. Upon the agreement among the District Head, Sub-regional Police Head, and Witness, such nine basic commodities in the approximate quantity of 787 packages were brought to the Resort Police office and the witness had no further knowledge on the commodities;

[3.10.3] HUSIN BIN HASAN

- On the 23rd day, witness got a call to immediately go to Kayu Agung Public Hospital. After receiving the call, the witness and his three friends went to the said hospital by car and saw Haison Hower, Chairperson of KPU of OKI Regency together with Hepi Herlambang bringing a ballot box. According to the witness, the Voting Station in Kayu Agung Public Hospital was unregistered in the sub-district or village; accordingly, Haison Hower and Hepi Herlambang were frightened upon seeing the witness in Kayu Agung Public Hospital. The witness saw that there were 18 voting sheets in the ballot box and upon the agreement with the witness and Haison Hower, they were torn into pieces and put again into the ballot box. The witness then reported such incident to the District Supervisory Committee, the General Election Supervisory Committee, and the following day he reported it to the Resort Police of OKI, but until now the witness' report

has not been processed by the court;

- In addition to finding the existence of fictitious Voting Stations, he also observed the existence of frauds or other violations such as money politics. Such acts of money politics occurred on the 23rd day at 1.30. He met Paitimin who confessed that he had deposited money from the village secretary to be given to Sutyem for voting candidate number 4. Similarly, Paidi, Success Team member of the Petitioners received seven envelopes each containing Rp20,000,- (twenty thousand rupiah).

[3.10.4] HASYIM ANSHORI

- On Thursday, October 23, 2008 at 11.45, the witness went to the Voting Station to vote, but arriving at the Voting Station, he was rejected by the Chairperson of Voting Station and was disallowed to vote as the voting cards had run out. As he could not vote, he went home and at around 15.00, the witness was informed that around 36 people could not vote as the vote cards had run out. The Voting Station officers also asked them to return their invitation cards and he also heard an information that there were underage voters participating in the voting namely, among others, Novi, Dewi, Rahayu, Budi, Sumi, Joko, Diah, and Soka. The witness knew that they were underage voters based on the information obtained from the community and they were actually still attending school or Elementary School students or Junior High School Students in the first and second grade;

[3.10.5] SUJONO

- According to witness, the government apparatuses at the district and village levels have been often dishonest in regional head election of Oki Regency. He himself experienced that when intending to display a picture of the Petitioners. At that time, the district apparatuses asked him to lower the said picture; they were told that they were only allowed to display pictures of Candidate Pair of Ishak Mekki and Engga Dewata;
- In the Election of Regent of Ogan Komering Ilir, witness could not use his voting right as he did not receive the invitation card to vote. It was intentionally conducted since they had known that the witness was a Success Team member of the Petitioners. In addition to the witness, there were two other persons who could not vote. According to the report of Success Team of the Petitioners, many people could not vote as the village head had known that they were the supporters of the Petitioners. The witness did not know the exact number of people who could not vote;

[3.10.6] SAIDUN

- On Wednesday, the fifteenth day at 17.00 afternoon, the witness received an information from Sailin bin Sori who was invited by Yadi bin Pas and Budin bin Sebujiang to visit Pampangan District Head's Office, Ogan Komering Ilir Regency. According to the information from Sailin bin Sori, he was asked to come into the district head's office and given an envelope

containing Rp250,000.- (two hundred and fifty thousand rupiah) comprising 5 Rp50.000,- (fifty thousand rupiah) notes. According to what Sailin bin Sori said, the District Head told him to vote for candidate number 4 namely Candidate Pair of ISMED (Ishak Mekki and Engga Dewata) on the twenty third day of October. The witness subsequently reported such incident to the Head of Resort Police of Ogan Komering Ilir Regency on the nineteenth day of October;

- The witness also received money, but he did not receive directly from the District Head, but instead from Sailin bin Sori;

[3.10.7] MUHAMMAD KASIH

- In Tepuk Village, there were 4 Voting Stations, namely 2 official Voting Stations and 2 illegal Voting Stations. In addition, in Sungai Ceper Village Sungai Menang District, a voter could pierce 9 (nine) vote sheets. The witness reported such incident to the General Election Supervisory Committee and the Legal Aid Foundation (LBH) of the Petitioners existing in South Sumatra Province;

[3.10.8] SUMARNO

- Many government apparatuses such as District Heads and Village Heads used state facilities to do winning campaign for one of the Candidate pairs of Regional Head Election of OKI Regency. In addition, the Village Head of Lubuk Siberuk also threatened one of his citizens named Sulaiman that

in the event that they insisted in campaigning for the pair of KANDAKU (the Petitioners), they were going to be evicted from such village. The community and witness' family had also been threatened that if they did not vote for Ishak Mekki and Engga Dewata, they would never receive gas cooker and Cash Direct Transfer (BLT);

[2.10.9] BUDIMAN

- Regional Head Election in Ogan Komering Ilir Regency was laden of money politics. Such money politics had been largely conducted by the Candidate pair of ISMED, but such money politics could not be proven as it was neatly hidden;

[3.11] Considering whereas with regard to the Petitioners' petition, the Respondent has given its response, as completely set forth in the above Facts of the Case part, wherein principally the Respondent rebuts the Petitioners' arguments, by presenting the following arguments;

- Whereas based on legal facts, after being carefully studied, the description/*posita* of petition of objection filed by Petitioners is legally groundless and not in accordance with the applicable laws and regulations (Constitutional Court Regulation Number 15 Year 2008, and Law Number 32 Year 2004 regarding Regional Government as amended by Law Number 12 Year 2008) and juridical the Petitioners' petition of objection does not meet the requirements for the right to file an objection to the

Court, namely objection which is “only” related to results of vote count affecting the election of a candidate pair. Because, based on legal facts, it is evident that the description in the *posita* of objection letter of Petitioners in Roman Numeral III regarding the Principal Issue of the Case, namely points 1, 2, 3, 4, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and point 22 of the *Posita* is not concerned with the objection to the results of vote count which can affect the election of a Candidate pair of Regent/Deputy Regent of OKI for the Period of 2008-2013, but with the process of regional head general election phases and not regarding the vote court results of regional head general election;

- Whereas, accordingly, the Respondent explicitly rejects the arguments of the Petitioners' *posita* in point 23 of their amended/revised objection dated November 10, 2008 in table column on pages 2, 3, and 4, particularly in relation to the change in vote acquisition according to the Petitioners' calculation concluding on page 5 of the revised letter of objection dated November 10, 2008, that vote acquisition according to the Petitioners' calculation version shall be as follows:
 1. Candidate Pair of Regent and Deputy Regent:
Ir. H. Iskandar Maliki, M.M. and Drs. H. Iskandar Aidi, M.M.
acquired 37,600 votes;
 2. Candidate Pair of Regent and Deputy Regent:
Iskandar, SE and Kukuh Pudiarto acquired 155,233 votes;

3. Candidate Pair of Regent and Deputy Regent:
Hendri Faisal Damhari, S.E. and Rahma Dewi H.A. Kalung, S.E.
acquired 4,796 votes;
4. Candidate Pair of Regent and Deputy Regent:
Ir. H. Ishak Mekki, M.M. and H. Engga Dewata Zainal, S.Sos
acquired 86,879 votes;

Accordingly, according to Petitioners' count, the total valid votes acquired shall be 284,508 votes;

- Whereas vote counting according to the Petitioners' version has been solely based on the Petitioners' assumption without legal certainty and legal ground as well as not supported by legally valid evidence while according to the Recapitulation of Vote Count Results conducted by the Respondent as per the Minutes of Plenary Meeting of KPU of OKI Regency Number 433/BA/KPU-OKI/X/2008 dated October 30, 2008 and Decision of the General Election Commission of OKI Regency Number 39B/KEP/KPU-OKI/X/2008 dated October 30, 2008, the fact has been found that the total valid vote acquisition received for all Candidate Pairs of Regent/Deputy Regent of OKI Regency has been 382.489 (three hundred eighty two thousand four hundred and eighty nine) votes, with the following details:

1. Candidate Pair of Regent and Deputy Regent:

Ir. H. ISKANDAR MALIKI, M.M. (Candidate for Regent) and Drs. H. ISKANDAR AIDI, M.M. (Candidate for Deputy Regent) acquired 26,873 votes (7.03%);

2. Candidate Pair of Regent and Deputy Regent:

ISKANDAR, S.E. (Candidate Regent) and KUKUH PUDIYARTO (Candidate Deputy Regent) acquired 160,395 votes (41.93%);

3. Candidate Pair of Regent and Deputy Regent:

HENDRI FAISAL DAMHARI, S.E. (Candidate Regent) and RAHMA DEWI H.A. KALUNG, S.E. (Candidate Deputy Regent) acquired 4,796 votes (1.25%);

4. Candidate Pair of Regent and Deputy Regent:

Ir. H. ISHAK MEKKI, M.M. (Candidate Regent) and H. ENNGA DEWATA ZAINAL, S.Sos. (Candidate Deputy Regent) Acquired 190,425 votes (49.79%);

Total valid vote is 382,489 (100%)

- Whereas vote counting according to the Petitioners' opinion/version constituted irrational counting since if vote counting according to Petitioners' version was added, namely $37,600 + 155,233 + 4,796 + 86,879$, the Total votes shall be 284,508 votes, while valid votes (piercing the ballot validly) according to the Recapitulation of Vote Count Results of the 2008 General Election of Regent/Deputy Regent of OKI Regency stipulated by KPU of OKI Regency for all Candidate Pairs of

Regent/Deputy Regent of OKI Regency shall be 382,489 votes. Accordingly, voters' votes removed or reduced by the Petitioners from the number of community of OKI Regency voting (piercing the ballot paper), namely 382,489 votes reduced by vote count results according to the opinion/version of the Petitioners namely 284,508 votes to 97,981 votes deleted or removed by the Petitioners from the recapitulation of vote count held by the Voting Committee (PPS) in every village, and continued by vote count recapitulation at 18 districts (District Election Committee/PPK);

- Whereas it is evident based on the legal fact, their amended/revise petition of objection on page 5 clearly mentions the Petitioners have filed petition for the Court to:

Remove or delete voters' valid votes of 97,981 of the community having voted in 8 (eight) districts, namely:

1. Lempuing Jaya District;
2. Lempuing District;
3. Mesuji Raya District;
4. Teluk Gelam District;
5. Mesuji District;
6. Mesuji Makmur District;
7. Air Sugihan District; and
8. Sungai Menang District.

The aforementioned Petitioners' petition is irrational or irrelevant as the Court has no authority to delete the votes of people having voted in the abovementioned 8 (eight) districts;

- Whereas based on the legal facts, it is evident that the Petitioners' objection is not a petition on error in the vote count results stipulated by the Respondent, as intended in the provisions of Article 6 paragraph (2) sub-paragraph b point 1 of the Constitutional Court Regulation Number 15 Year 2008. However, the Petitioners have filed the petition for removal or deletion of votes of the people having voted in General Election of Regional Head of Regent and Deputy Regent of OKI in 8 (eight) districts in OKI Regency of South Sumatra Province;

Based on the foregoing description, the Respondent explicitly objects to the Petition of Petitioners who intend to remove 97,981 valid votes of the community in Ogan Komering Ilir Regency having voted in Regional Head General Election of Regent and Deputy Regent of OKI in the aforementioned 8 (eight) districts. Therefore, the Respondent states that the recapitulation of vote count results stipulated on October 30, 2008 has been fixed, based on the results of vote recapitulation starting from District Election Committee (PPK) level and subsequently Minutes of Plenary Meeting Number 443/BA/KPU-OKI/X/2008 dated October 30, 2008, and Recapitulation of Vote Count Results for the 2008 General Election of Regent and Deputy Regent of OKI Regency;

[3.12] Considering whereas to support its arguments, the Respondent has filed written evidence marked as Exhibits T-1 through T-22;

[3.13] Considering whereas at the hearing on November 17, 2008, the Related Party, the Elected Candidate Pair of Regent/Deputy Regent of OKI Regency provided a statement, as completely set forth in the aforementioned Facts of the Case part, which principally reads as follows:

- Whereas it is evident that reasons for objection filed by Petitioners in the petition of objection as well as in the revised petition (arguments in points 1 through 24 of the *posita*), there is no argument found questioning the vote count results stipulated by KPU of Ogan Komering Ilir Regency (Respondent), in the 2008 General Election of Regent and Deputy Regent of Ogan Komering Ilir Regency, or in other words, there is no clear description found in the Petitioners' arguments regarding "Error in the vote count results stipulated by the Respondent" as intended in Article 6 paragraph (2) sub-paragraph b point 1 of the Court Regulation Number 15 Year 2008, but instead the Petitioners question the existence of violations during the Regional Head Election phases, while it shall be obviously the authority of the Supervisory Committee of Regional Head Election of Ogan Komering Ilir Regency to examine and settle the matter;
- Whereas such arguments in Petitioners' petition have proven that the substance of objection filed by Petitioners is not substance of dispute over

the vote count results stipulated by the Respondent, and therefore, the arguments of objection filed by such Petitioners are legally groundless and do not meet the qualifications as intended in Article 4 and Article 6 of the Constitutional Court Regulation Number 15 Year 2008, as well as not included in scope of authority of Court. Whereas the Minutes and Recapitulation of Vote Count Results as well as Stipulation of the Elected Candidate Pair of Regional Head Election of Regent and Deputy Regent of Ogan Komering Ilir which are in accordance with Decision of KPU of Ogan Komering Ilir Regency Number 39B/KEP/KPU-OKI/X12008, have been legally valid;

- Whereas during the final count at the Regency level or at the time of Recapitulation of Vote Count for Regent/Deputy Regent Election of OKI Regency by the Respondent on October 30, 2008, the witnesses of the Petitioners were also present to witness the process of vote count, and the witnesses could accept the vote count results conducted by the Respondent as witnesses representing the Petitioners, and absolutely they did not file any objection to the results of the final vote count held by the Respondent;
- Whereas the Respondent acting as the organizer of the 2008 General Election of Regional Head of Regent and Deputy Regent of Ogan Komering Ilir, has made its maximum efforts to create materialize the implementation of Regional Head General Election which is independent,

professional, Direct, General, Free, Confidential, Honest, and Just as intended in the applicable provisions of the law. Therefore, the Petitioners are expected to willingly accept the results of the democratic process in a good and sincere manner, with an attitude of ready for winning or losing, for the advancement and welfare of the community, particularly the community of OKI Regency of South Sumatra Province;

Opinion of the Court

[3.14] Considering whereas after carefully examining descriptions of the petition and arguments and evidence presented by the Petitioners, statements of the Respondent and the Related Party, the Elected Regent/Deputy Regent of OKI, as well as the statements of witnesses, the Court is of the following opinion:

[3.14.1] Whereas with respect to the written evidence submitted by the Petitioners (Exhibits P-1 through P- 64), none of them shows the validity of the Petitioners' argument that the Petitioners acquired 155,233 votes and the Related Party (the Elected Candidate Pair) acquired 86,879 votes, not as stipulated by Respondent namely that the Petitioners acquired 160,395 votes, as follows:

- a. Exhibit P-1 only shows that the Petitioners are a Candidate Pair participating in the General Election of Regional Head of OKI Regency;
- b. Exhibits P-2 through P-14 only show the existence of Report on Violations in the General Election of Regional Head submitted to the General

Election Supervisory Committee and the receipt of report from the police which was not followed up to the court;

- c. Exhibit P-15 only shows evidence of the vote count results in a Voting Station, which the witnesses of the Petitioners also signed without any objection;
- d. Exhibits P-16 through P-52 in the form of evidence showing that there were a number of voters [32 (thirty two) people] having invitation letters to vote but they did not use their voting rights, while in case that they could use their voting right, the number would be insignificant and there was no guarantee that they would vote for the Petitioners;
- e. Exhibit P-53 only shows the results of vote count by KPU of OKI Regency, namely stipulation of the elected candidate;
- f. Exhibit P-54 only shows the change in Regional Head General Election phases in OKI Regency;
- g. Exhibit P-55 only shows the results of vote count recapitulation by the Respondent;
- h. Exhibit P-56 only shows the minutes of recapitulation on the vote count results in the regional head election by KPU of OKI Regency;
- i. Exhibits P-57 through P. 63 are only in the form of statement letters of the members of the Success Team for Petitioners stating that several frauds were found in the implementation of regional head general election in OKI Regency;

- j. Exhibit P-64 is in the form of 3 (three) records in compact disc format showing various incidents of fraud and deviation in the regional head general election in OKI Regency.

[3.14.2] Whereas with respect to witnesses presented by the Petitioners, it is identified that the said witnesses are not those who have witnessed, heard or experienced by themselves the process of vote count at each level from TPS, PPS, PPK, to KPU of OKI Regency, as their testimonies are only related to many assumed violations in regional head general election phases in OKI Regency. Therefore, their testimonies cannot prove the existence of error in vote count by the Respondent;

[3.14.3] Whereas in fact, valid results of vote count according to the Petitioners' version which are really different from those of the Respondent's version showed an oddity, namely that the 97,981 missing valid votes were unclear and not in accordance with data of KPU of OKI Regency;

[3.14.4] Whereas irrespective of whether or not it has significant impact on the vote count results of the General Election of Regional Head of OKI Regency; however, based on the written evidence and statements of witnesses of the Petitioners showing distortion and deviations in the implementation of regional head general election in OKI Regency, it should be a concern for KPU as general election organizer and the General Election Supervisory Board/General Election Supervisory Committee to prevent recurrence of such distortion and deviations in

the future. Otherwise, it would impair political democratization process developed by way of direct, general, free, confidential, honest, and just general elections;

[3.14.5] Whereas, accordingly, with respect to written evidence and witnesses examined in the hearing, it is evident that Petitioners' petition is not legally grounded, so that it must be rejected;

4. CONCLUSION

Based on the foregoing considerations of the facts and laws, the Court concludes as follows:

[4.1] The Exception of Respondent is groundless, so it must be rejected;

[4.2] The petition of objection of the Petitioners to the vote count results of the General Election of Regional Head of Ogan Komering Ilir Regency stipulated by the Respondent is groundless, so the petition must be rejected;

5. DECISION

In view of Articles of the 1945 Constitution of the State of the Republic of Indonesia, Law Number 24 Year 2003 regarding the Constitutional Court, Law Number 4 Year 2004 regarding Judicial Power, Law Number 32 Year 2004 regarding Regional Government as most recently amended with Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government;

Passing the Decision,

In the Exception:

To declare that the exception of the Respondent is rejected.

In the Principal Issue of the Case:

To reject the Petitioners' petition in its entirety.

Hence the decision was made at the Consultative Meeting of 9 (nine) Constitutional Court Justices on Monday, the twenty-fourth of November two thousand and eight, and was pronounced in the Plenary Session open for public on this day, Monday, the twenty-fourth of November two thousand and eight, by us, Moh. Mahfud MD, as Chairperson and Concurrent Member, H. Abdul Mukthie Fadjar, H.M. Akil Mochtar, Maria Farida Indrati, Jimly Asshiddiqie, Maruarar Siahaan, H.M. Arsyad Sanusi, H. Achmad Sodiki, and Muhammad Alim, respectively as members, assisted by Sunardi as Substitute Registrar in the presence of the Petitioners and/or their Attorneys, the Respondent and/or its Attorney, as well as the Related Party and/or its Attorney.

CHIEF JUSTICE

Sgd.

Moh. Mahfud MD

JUSTICES,

Sgd.

H.A. Mukthie Fadjar

Sgd.

H. M. Akil Mochtar

Sgd.

Maria Farida Indrati

Sgd.

Jimly Asshiddiqie

Sgd.

H.M. Arsyad Sanusi

Sgd.

Maruarar Siahaan

Sgd.

H. Achmad Sodiki

Sgd.

Muhammad Alim

SUBSTITUTE REGISTRAR,

Sgd.

Sunardi