



## DECISION

Number 41/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 with respect to the Dispute on the Results of General Election of Regional Head of East Java Province, filed by:

[1.2] 1. Name : **Hj. Khofifah Indar Parawansa**  
Place and Date of Birth/Age: Surabaya, May 19, 1965;  
Religion : Islam;  
Occupation : State High-Ranking Official;  
Address : Jemur Wonosari Gg. Lebar 64  
Neighborhood Ward (RT) 007  
Neighborhood Block (RW) 005  
Jemur Wonosari Sub-district,  
Wonocolo District, Surabaya  
Municipality, East Java Province;  
Resident's Identity Card : 12.5604.590565.0002.

2. Name : **Mudjiono**
- Place and Date of Birth/Age : Yogyakarta, April 10, 1951;
- Religion : Islam;
- Occupation : Member of Indonesian National  
Army;
- Address : Perwira 1 Neighborhood Ward (RT)  
02 Neighborhood Block (RW) 011,  
Sawunggaling Sub-district,  
Wonokromo District, Surabaya  
Municipality, East Java Province;
- Resident's Identity Card : 12.5617.00451.004

In this case, granting power to:

1. Dr. A. MUHAMMAD ASRUN, S.H.,M.H.
2. KAMAL FIRDAUS, S.H.
3. M. SHOLEH AMIN, S.H.
4. MOH. MA'RUF, S.H.
5. DWI RIA LATIFA, S.H.
6. ANDY FIRASADI, S.H.
7. ANTHONY L. J. RATAG, S.H.
8. SUDIYATMIKO ARIBOWO, S.H.
9. AMIR BURHANNUDIN, S.H.
10. SUMARTO ADI SANTOSO, S.H.

11. MUSTOFA ABIDIN, S.H.
12. LULUS SUHANTO, S.H.
13. ARTERIA DAHLAN, S.T., S.H.
14. MUHAMMAD SOLIHIN HD, S.H.
15. SYA'RONI AHMAD, S.H.
16. SANTUSO, S.H.
17. MOHAMMAD AQIL ALI, S.H.
18. AIDI JOHAN, S.H., M.H.
19. SUTRA DEWI, S.H.
20. DIARSON LUBIS, S.H.

All of them are Advocates associated in TEAM OF DEFENSE OF EAST JAVA PEOPLE'S DEMOCRACY AND JUSTICE, having their addresses at "Muhammad Asrun & Partners Law Firm," Building of Indonesian Teacher's Association, Jalan Tanah Abang III Number 24, Central Jakarta and Jalan Kertajaya Indah F-108, Surabaya, by virtue of the Special Power of Attorney dated November 12, 2008 and Special Power of Attorney dated November 15, 2008, in this matter acting for and on behalf of the Authorizer;

Hereinafter referred to as ----- **Petitioners;**

Against:

**[1.3] The General Election Commission (KPU) of East Java Province**, domiciled at Jalan Tanggulangin Number 3, Surabaya Municipality, East Java Province;

In this matter granting the power to:

1. FAHMI H. BACHMID, S.H., M.HUM.
2. H. ACHMAD MICH DAN, S.H.
3. IMAM ASMARA HAKIM, S.H.
4. H. ABDUL RAHIM, S.H.
5. MUANNAS, S.H.
6. MUHAMMAD SAHAL, S.H.
7. ASEP FURQON NURZAMAN, S.H.
8. MUHAMMAD RATHO PRIYASA, S.H.
9. ABI SAMBASI, S.H.

All of them are advocates of the Law Office of **Fahmi H. Bachmid and Partners**, having its address in Jalan Gresik 184 Gadukan, North Surabaya, acting for and on behalf of the **General Election Commission of East Java Province**, by virtue of Special Power of Attorney dated November 14, 2008;

Hereinafter referred as ----- **Respondent**;

**[1.4]** Having read the Petitioners' petition;  
 Having heard the Petitioners' statement;  
 Having heard and heard the Respondent's written statement;  
 Having heard and read written statement of the Related Party of the Elected Pair of Candidates of Governor and Deputy Governor of East Java Province;

Having examined the evidence submitted by the Petitioners, Respondent, and the Related Party of the Elected Pair of Candidates of Governor and Deputy Governor of East Java Province;

Having heard the statements of the Petitioners and the Respondent's witnesses;

Having read the Written Conclusions of the Petitioners, the Respondent, and the Elected Pair of Candidates of Governor and Deputy Governor of East Java Province;

### 3. LEGAL CONSIDERATIONS

**[3.1]** Considering whereas the main legal problem of the Petitioners' petition is the objection to the Vote Count Result Recapitulation of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province 2008 based on the Decision of the General Election Commission of East Java Province Number 30 Year 2008 concerning Vote Count Result Recapitulation of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province on November 11, 2008;

**[3.2]** Considering whereas before entering into the principal issue of the petition, the Constitutional Court (hereinafter referred to as the 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. the Petitioners' legal standing to file the *a quo* petition;

3. time limit for the filing of the Petition.

With regard to the intended three matters, the Court is of the following opinion:

### **Court's Authority**

**[3.3]** Considering whereas based on the provision of Article 24C paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) *unctis* Article 10 paragraph (1) sub-paragraph d of Law Number 24 Year 2003 concerning the Constitutional Court, Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 concerning Judicial Power, and the Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government, one of the Court's authorities is to decide upon disputes over general election results;

Initially, based on the provision of Article 106 paragraph (1) and paragraph (2) of the Law Number 32 Year 2004 concerning Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number, hereinafter referred to as Law No. 32/2004), an objection in relation to the vote count result influencing the election of a pair of candidates was to be filed to the Supreme Court. Such authority of the Supreme Court, was included again in Article 94 of Government Regulation Number 6 Year 2005 concerning Election,

Appointment Legalization and Dismissal of Regional Head and Deputy Regional Head (hereinafter referred to as Government Regulation No. 6/2005);

Article 1 sub-article 4 of the Law Number 22 Year 2007 concerning 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) provides that "*General Election of Regional Head and Deputy Regional Head General shall be the general election to elect regional head and deputy regional head directly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia*";

Article 236C of Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government stipulates that "*The handling of disputes over the vote count results of regional head elections by the Supreme Court shall be transferred to the Constitutional Court within no later than 18 (eighteen) months following the enactment of this law*";

On October 29, 2008, the Head of Supreme Court and the Head of the Constitutional Court jointly signed the Official Report of the Transfer of Authority to Adjudicate, as the implementation of Article 236C of the aforementioned Law Number 12 Year 2008.

**[3.4]** Considering whereas because the Petitioners' petition is a dispute

over the vote count results of General Election of Regional Head (Regional Head Elections), namely General Election of Regional Head of East Java Province in accordance with the decision of the General Election Commission of East Java Province Number 30 Year 2008 concerning Recapitulation of Vote Count Results of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province on November 11, 2008, and accordingly the Court has authority to examine, hear and decide upon the *a quo* petition;

### **Petitioners' Legal Standing**

**[3.5]** Considering whereas Article 106 paragraph (1) of Law No. 32/2004, Article 3 and Article 4 of Constitutional Court Regulation Number 15 Year 2008 concerning the Guidelines on the Proceedings for Disputes Over Vote Count Results of Regional Head Election (hereinafter referred to as Constitutional Court Regulation No. 15/2008) stipulates, among other things, the following matters:

- a. The Petitioners shall be a Pair of Candidates of Regional Head and Deputy Regional Head;
- b. The Petition may only be filed with respect to the stipulation of General Election of Regional Head vote count results influencing the determination of the Pairs of Candidates may participate in the Second Round General Election of Regional Head or the election of the Pair of Candidates of Regional Head and Deputy Regional Head;

**[3.6]** Considering whereas in relation to the Petitioners' legal standing,



the Court shall consider the matter based on the provision of Article 106 paragraph (1) of Law No. 32/2004, Article 3 and Article 4 of Constitutional Court Regulation No. 15/2008 as intended in the following paragraph **[3.5]**:

- whereas the Petitioners are a Pair of Candidates of Regional Head and Deputy Regional Head of East Java Province, who have been stipulated by the Respondent to have Candidacy Number one;
- whereas the petition filed by the Petitioners is an objection to the Decision of General Election Commission of East Java Province Number 30 Year 2008 concerning Recapitulation of Vote Count Results of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province 2008 on November 11, 2008. The intended objection has been due to the incorrect stipulation that the Petitioners only obtained 7,669,721 votes, while the Pair of Candidates with Candidacy Number five obtained 7,29,944 votes;
- whereas according to the Petitioners, the vote count recapitulation conducted by the Respondent with the aforementioned result occurred because the count was conducted on an erroneous basis and violation committed by the Respondent, among other things, by not providing the Petitioners with the C-1 form which is the right the Petitioners, miscount in 26 Regencies/Municipalities, and a number of violations influencing the vote count result. Therefore, the Petitioners request the Court to annul the vote count conducted by the Respondent;

- Based on such matters, the Court is of the opinion that the Petitioners have met the legal standing requirement to file the *a quo* petition.

### **Time Limit for Petition Submission**

**[3.7]** Considering whereas the Decision of the General Election Commission of East Java Province Number 30 Year 2008 concerning Recapitulation of Vote Count Results of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province Year 2008 was stipulated on November 11, 2008, while the Petitioners' petition of objection to the stipulation of the Respondent by was filed on November 14, 2008 based on the Deed of Petition Dossier Receipt Number 85/PAN.MK/XI/2008 which was subsequently registered on November 14, 2008 under Number 41/PHPU.D-VI/2008;

**[3.8]** Considering whereas Article 5 paragraph (1) of the Constitutional Court Regulation No. 15/2008 stipulates, "*A Petition may only be filed no later than 3 (three) working days after Respondent stipulates the results of General Election of Regional Head vote count results in the relevant region*", so that the submission of the Petitioners' petition was made within the stipulated time limit;

**[3.9]** Considering whereas based on the evaluation of facts and laws in the aforementioned paragraph **[3.8]**, the Court is of the opinion that the *a quo* petition meets the requirements and has been made within the time limit as stipulated in Article 5 paragraph (1) of the Constitutional Court Regulation No.

15/2008;

**[3.10]** Considering whereas because the Court has authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have legal standing to file the petition, and that the petition has been filed within the stipulated time frame, then the Court shall further consider the principal issue of the petition.

### **Principal Issue of the Petition**

**[3.11]** Considering whereas the Petitioners present the arguments as included completely in the *Posita* of their petition which are basically as follows:

**[3.11.1]** Whereas the Petitioners are a Pair of Candidates of Governor and Deputy Governor in General Election of Regional Head of East Java Province for the period of 2008-2013 with Candidacy Number One based on the Decision of the General Election Commission of East Java Province Number 26 Year 2008 dated September 27, 2008 concerning the Second Round Determination of the Pair of Candidates of Regional Head and Deputy Regional Head of East Java Province Year 2008;

**[3.11.2]** Whereas the Petitioners object to the Decision of the General Election Commission of East Java Province Number 30 Year 2008 dated November 11, 2008 concerning Recapitulation of Vote Count Results of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province Year 2008, because the count results according to by the Respondent have been incorrect or at least the Respondent has conducted

erroneous recapitulation of vote count results with the following details:

- The Pair of Candidates of Governor and Deputy Governor of East Java Province with Candidacy Number One in the name of **Hj. Khofifah Indar Parawansa and Mudjiono**, obtain **7,669,721** votes;
- The Pair of Candidates of Governor and Deputy Governor of East Java Province with Candidacy Number Five in the name of **Dr. H. Soekarwo M. Hum and Drs. H. Syaifullah Yusuf** obtain **7,729,944** votes;

**[3.11.3]** Whereas the mistake and error have occurred because of several matters, among other things as follows:

1. The Petitioners have never been given C-1 Form by the General Election Commission of East Java Province, even though it has been requested repeatedly as the Petitioners' right and the obligation of the Respondent as the General Election Commission of East Java Province based on the Decision of the General Election Commission of East Java Province Number 18 Year 2008 concerning Guidelines On the Procedures for Voting and Vote Count Implementation in the General Election of Regional Head and Deputy Regional Head of East Java Province Year 2008;
2. Whereas the vote-count results recapitulation conducted by the Respondent is incorrect because it includes an error particularly when observing the legal fact that there have been vote miscounts in 26 regencies/municipalities within the region of East Java Province;

Whereas the correct count results according to the Petitioners are as follows:

- The Pair of Candidates of Governor and Deputy Governor of East Java Province with Candidacy Number One in the name of **Hj. Khofifah Indar Parawansa and Mudjiono** obtain **7, 654,742** votes;
- The Pair of Candidates of Governor and Deputy Governor of East Java Province with Candidacy Number five in the name of **Dr. H. Soekarwo M. Hum and Drs. H. Saifullah Yusuf** obtain **7, 632, 281** votes;

**[3.12]** Considering whereas in order to support the arguments of their petition, the Petitioners have submitted written evidence identified as Exhibits P-1 through P-101 legalized in the hearing on November 19, 2008 and Exhibits P-102 through P-132 submitted to the Court on November 25, 2008, and have presented 26 witnesses who have been heard and who have given their statements under oath in the Constitutional Court hearing on November 19, 2008, whose respective names are: 1) Dahrul Ulum, 2) Muyes Saroh, 3) Suliha, 4) Nurul, 5) Hj. Maryam, 6) Sahidi, 7) Rohmad, 8) Nawer, 9) Zainal, 10) Ishak, S. Ag, 11) Amir Hamzah, 12) Mudhaffar, 13) Abd. Rohman, 14) M. Syafii, 15) H. Fauzan, 16) H. Moch Afif Noer, 17) Abd. Wasik, 18) Muhammadiyah Agus Muslim, SH., 19) Drs. H. F. Masjkur Hasjim, 20) Drs. H. Akhmad Zainur Rakhman, 21) Edy Sucipto, 22) Supriadi, 23) Nahrowi Ahmad, 24) Moh. Zuhriyanto, 25) M. Tohiruddin, and 26) K. Abdul Basith Ghoffar. Six of the 26 witnesses are Drs. H. Akhmad Zainur Rakhman, Edy Sucipto, Supriadi, M. Tohiruddin, and K. Abdul

Basith Ghoffar who gave their testimonies on November 21, 2008;

**[3.13]** Considering whereas the Respondent has conveyed its written statement submitted in the court on November 19, 2008, as completely included in the *Posita*, which is basically as follows:

**[3.13.1]** Whereas the revised petition filed on November 17, 2008, does not constitute a revision but it constitutes a new petition, which is far different from the petition registered under Number 41/PHPU.D-VI/2008, because it has included new *posita* and *petitum*, and accordingly such new Petitioners' petition must be declared unacceptable because it has exceeded the time limit for the submission of an objection as regulated in Article 5 paragraph (1) of the Constitutional Court Regulation No. 15/2008, namely by replacing the disputed vote acquisition number as set out in the following matrix:

	<b>Number of Votes In the First Version</b>	<b>Number of Votes In the Revised Petition Version</b>
The Pair with Candidacy Number 1. Hj. Khofifah Indar Parawansah-Mudjiono	7,595,199	7,654,742
The Pair with Candidacy No. 5. DR. H. Soekarwo M.Hum-Drs. H. Syaifullah	7,573,680	7,632,281

	<b>Number of Votes In the First Version</b>	<b>Number of Votes In the Revised Petition Version</b>
Yusuf		
Difference of votes	21,519	22,461

**[3.13.2]** Whereas the petition filed by the Petitioners does meet the requirements as stipulated in Article 1 sub-article 8 and Article 6 paragraph (2) of the Constitutional Court Regulation No. 15/2008, because it does not show the error of the vote count clearly and in detail. The Petitioners only present the Recapitulation data of Vote Count Result based on the Petitioners' assumption and not on the Minutes of KPPS, PPK, Certificate of Vote Count Result Recapitulation as intended in Article 95 through Article 99 of Law No. 32/2004 *juncto* Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government (hereinafter referred to as Law No. 12/2008);

**[3.13.3]** Whereas the matters related to fraud or violations as argued do not constitute the object of the dispute at the Court, but such matters should be reported to the General Election Supervisory Committee (*Panwaslu*) which shall take an attitude and actions, while in the event that the violations contain elements of criminal acts, such violations shall be reported to Investigators. Therefore, judicially such petition must be rejected or at least it cannot be accepted;

The Petitioners' petition arguing the existence of vote miscount conducted by the Respondent is not based on written evidence as stipulated in Article 10 paragraph (1) of the Constitutional Court Regulation No. 15/2008, and the Petitioners have stipulated their own version of vote count result as included in point seven of the *posita* of their petition;

**[3.13.4]** Whereas based on the Minutes of Vote Count Result Recapitulation of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province, DB-KWK form Model in each regency/municipality, the Petitioners' witnesses have affixed their signatures on the minutes, except that in six regencies the minutes were not signed by the Petitioners' witnesses, so that with it is proper for the Petitioners' petition which argues about the existence of systematic violations and errors conducted by the Respondent in 25 regencies/municipalities to be rejected or at least it cannot be accepted. The standard form namely DB-KWK Model concerning the Minutes of Vote Count Result Recapitulation of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province Year 2008 was provided in each regency and municipality throughout East Java;

**[3.13.5]** Whereas based on the Minutes of DB-KWK Form along with its attachments as many as 38 forms (Exhibits T-3 through T-40), it is proved that the Petitioners' witnesses have affixed their signatures in six regencies, namely Sumenep Regency, Banyuwangi Regency, Sampang Regency, Pasuruan Regency, Pacitan Regency, Ponorogo Regency, and out of the six regencies



there are only two regencies have written the reasons for the objection, namely Sumenep Regency with the recorded objection to the difference between the number of voters who were present and who were not present and the number of List of Permanent Voters (DPT) as many as four voters in Paragalaok village in Sumenep, while in Banyuwangi Regency it is recorded that vote count results in several sub-districts according to the vote count by the Petitioners' witnesses are different from the results of PPK recapitulation, but the difference is not explained in detail;

**[3.13.6]** Whereas in the *posita* of the Petitioners' petition arguing the occurrence of violations, deflation and/or inflation are not the Court's authority to examine and hear;

**[3.14]** Considering whereas in order to support the arguments of their rejoinders, the Respondent has presented evidence, namely written evidence consisting of Exhibits T-1 through T- 83 legalized before the Court in hearing on November 19, 2008, as well as 14 witnesses, whose statements have been heard under oath, namely: 1) Sodiq, 2) Imam Abubakar, 3) Abdul Hakim, 4) Imam Sucahyo, 5) Abdul Hakim, S.E., 6) Indah Catur, 7) H.M. Sentot, P., 8) Anshori, 9) Ahmad Subagyo, 10) Sukono Hadi, 11) Nastain, 12) Sumarno, 13) Jamain, and 14) Imadoeddin;

**[3.15]** Considering whereas the Related Parties, namely the elected Pair of Candidates of Regional Head/Deputy Regional Head, have also denied the Petitioners' petition, whose statements have been completely included in the

*posita* which basically explains the following matters:

**[3.15.1]** The objection petition filed by the Petitioners is obscure and unclear (*obscuur libel*) because the objection petition states that the vote count result recapitulation conducted by the Respondent has been incorrect as it contains a real error in vote count results in 26 regencies/municipalities within the region of East Java Province, but that the Petitioners' objection in the *posita* and their arguments only describe the errors (and violations) in the vote count results of the General Election of Regional Head of East Java which only cover seven regencies/municipalities, namely: (i) Pamekasan Regency), (ii) Lamongan Regency, (iii) Madiun Regency, (iv) Nganjuk Regency, (v) Sidoarjo Regency, (vi) Probolinggo Regency, and (vii) Banyuwangi Regency;

**[3.15.2]** Whereas point eight of the Petition is not at all concerned with the problem related to the errors in vote count result, but only describes the procedural violations or at least the violations related to the provisions and procedures of regional head election;

**[3.15.3]** Whereas in the *petitum* of their objection petition, the Petitioners only request the Court to declare null and void by law the vote count and request for a re-count only for: (i) Pamekasan Regency, (ii) Madiun Regency, (iii) Nganjuk Regency, (iv) Probolinggo Regency, and (v) Banyuwangi Regency;

**[3.15.4]** Whereas the object of dispute raised by the Petitioners in the objection petition is not at all the object of dispute that can be raised as the basis

to file an objection petition to the Court as stipulated by the applicable laws and regulations, and to the extent that it is known by the Related Parties, the Petitioners have never filed any objection or report at all in relation to the Vote Count process conducted;

**[3.15.5]** Whereas in addition to that, the Petitioners have presented incorrect data related to the Respondent's decision as included in paragraph three of the Objection Petition arguing that the Respondent has been mistaken in conducting vote count result recapitulation by giving details eliminating the details of vote count in Lumajang Regency as seen in the following Table:

**TABLE A**

**(DETAILS BASED ON THE DESCRIPTION AS CONTAINED IN POINT 3 OF  
THE PETITIONERS' OBJECTION PETITION)**

<b>No.</b>	<b>REGENCIES/MUNICIPALITIES</b>	<b>VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 1 Hj. KHOFIFAH INDAR PARAWANSA AND MUDJIONO</b>	<b>VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 5 DR.H. SOEKARWO, M. Hum AND Drs. H. SAIFULLAH YUSUF</b>
1	PACITAN REGENCY	88,082	169,161
2	PONOROGO REGENCY	176,677	198,868
3	TRENGGALEK REGENCY	153,927	122,906
4	TULUNGAGUNG REGENCY	224,656	191,436

No.	REGENCIES/MUNICIPALITIES	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 1 Hj. KHOFIFAH INDAR PARAWANSA AND MUDJIONO	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 5 DR.H. SOEKARWO, M. Hum AND Drs. H. SAIFULLAH YUSUF
5	BLITAR REGENCY	251,997	222,119
6	KEDIRI REGENCY	321,853	276,092
7	MALANG REGENCY	496,722	431,468
8	JEMBER REGENCY	453,631	348,597
9	BANYUWANGI REGENCY	335,334	329,675
10	BONDOWOSO REGENCY	155,496	184,845
11	SITUBONDO REGENCY	150,382	165,365
12	PROBOLINGGO REGENCY	206,563	228,610
13	PASURUAN REGENCY	258,084	308,540
14	SIDOARJO REGENCY	348,070	309,476
15	MOJOKERTO REGENCY	232,896	211,835
16	JOMBANG REGENCY	256,983	268,202
17	NGANJUK REGENCY	211,378	211,488
18	MADIUN REGENCY	97,346	220,592
19	MAGETAN REGENCY	118,385	176,830
20	NGAWI REGENCY	155,671	196,044
21	BOJONEGORO REGENCY	321,500	235,774
22	TUBAN REGENCY	242,213	182,922

No.	REGENCIES/MUNICIPALITIES	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 1 Hj. KHOFIFAH INDAR PARAWANSA AND MUDJIONO	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 5 DR.H. SOEKARWO, M. Hum AND Drs. H. SAIFULLAH YUSUF
23	LAMONGAN REGENCY	334,269	263,005
24	GRESIK REGENCY	253,848	205,271
25	BANGKALAN REGENCY	151,666	291,781
26	SAMPANG REGENCY	181,698	240,552
27	PAMEKASAN REGENCY	195,315	217,076
28	SUMENEP REGENCY	236,095	240,737
29	KEDIRI MUNICIPALITY	51,432	64,116
30	BLITAR MUNICIPALITY	28,017	30,310
31	MALANG MUNICIPALITY	150,814	144,765
32	PROBOLINGGO MUNICIPALITY	42,851	52,854
33	PASURUAN MUNICIPALITY	26,298	42,032
34	MOJOKERTO MUNICIPALITY	25,024	28,085
35	MADIUN MUNICIPALITY	26,480	50,052
36	SURABAYA MUNICIPALITY	456,236	413,065
37	BATU MUNICIPALITY	39,688	37,194
	GRAND TOTAL	<b>7,669,721</b>	<b>7,729,944</b>

TABLE B

(DETAILS BASED ON THE DATA AS CONTAINED IN THE RESPONDENT'S  
DECISION)

No.	REGENCIES/MUNICIPALITIES	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 1 Hj. KHOFIFAH INDAR PARAWANSA AND MUDJIONO	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 5 DR.H. SOEKARWO, M.Hum AND Drs.H.SAIFULLAH YUSUF
1	PACITAN REGENCY	88,082	169,161
2	PONOROGO REGENCY	176,677	198,868
3	TRENGGALEK REGENCY	153,927	122,906
4	TULUNGAGUNG REGENCY	224,656	191,436
5	BLITAR REGENCY	251,997	222,119
6	KEDIRI REGENCY	321,853	276,092
7	MALANG REGENCY	496,722	431,468
<b>8</b>	<b>LUMAJANG REGENCY</b>	<b>212,144</b>	<b>218,204</b>
9	JEMBER REGENCY	453,631	348,597
10	BANYUWANGI REGENCY	335,334	329,675
11	BONDOWOSO REGENCY	155,496	184,845
12	SITUBONDO REGENCY	150,382	165,365

No.	REGENCIES/MUNICIPALITIES	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 1 Hj. KHOFIFAH INDAR PARAWANSA AND MUDJIONO	VOTE ACQUISITION OF THE PAIR OF CANDIDATES NO. 5 DR.H. SOEKARWO, M.Hum AND Drs.H.SAIFULLAH YUSUF
13	PROBOLINGGO REGENCY	206,563	228,610
14	PASURUAN REGENCY	258,084	308,540
15	SIDOARJO REGENCY	348,070	309,476
16	MOJOKERTO REGENCY	232,896	211,835
17	JOMBANG REGENCY	256,983	268,202
18	NGANJUK	211,378	211,488
19	MADIUN REGENCY	97,346	220,592
20	MAGETAN REGENCY	118,385	176,830
21	NGAWI REGENCY	155,671	196,044
22	BOJONEGORO REGENCY	321,500	235,774
23	TUBAN REGENCY	242,213	182,922
24	LAMONGAN REGENCY	334,269	263,005
25	GRESIK REGENCY	253,848	205,271
26	BANGKALAN REGENCY	151,666	291,781
27	SAMPANG REGENCY	181,698	240,552
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29	SUMENEP REGENCY	236,095	240,737
30	KEDIRI MUNICIPALITY	51,432	64,116
31	BLITAR MUNICIPALITY	28,017	30,310
32	MALANG MUNICIPALITY	150,814	144,765
33	PROBOLINGGO MUNICIPALITY	42,851	52,854
34	PASURUAN MUNICIPALITY	26,298	42,032
35	MOJOKERTO MUNICIPALITY	25,024	28,085
36	MADIUN MUNICIPALITY	26,480	50,052
37	SURABAYA MUNICIPALITY	456,236	413,065
38	BATU MUNICIPALITY	39,688	37,194
	GRAND TOTAL	<b>7,669,721</b>	<b>7,729,944</b>

[3.15.6] Whereas if only - *quod non* – the data of the difference of vote count disputed by the Petitioners in the objection petition had been correct, it would not have been very significant and would not have influenced the vote count results of the related parties at all based on the official vote recapitulation



data that has been legalized by the East Java KPU (Respondent);

**[3.15.7]** Whereas in order to support their arguments, the Related Parties have submitted written evidence namely Exhibits PT-1 through PT-16, but did not present witnesses.

## **The Court's Opinion**

### **Concerning the Exception**

**[3.16]** Considering whereas in the statements or answers of the Respondent and the Related Parties respectively, even though they are not explicitly mentioned, there are statements that can be categorized as objection, with respect to which, prior to considering the Principal issue of the Case, the Court shall give considerations which shall be described as follows.

**[3.16.1]** Considering whereas the Respondent and the Related Parties' objections or statements which are deemed to constitute an exception respectively are as follows: (i) the revised petition filed on November 17, 2008 constitutes a new petition and not a correction because it is far different from the petition registered on November 14, 2008, and as a new petition filed on November 17, 2008, it has exceeded the time limit stipulated in Article 5 of the Constitutional Court Regulation No. 15/2008; (ii) The petition is obscure (*obscur libel*) and there is no correspondence between the *posita* and the *petitum*; (iii) The substance of the Petitioners' objection petition does not constitute the object of dispute which becomes the Court's authority;

**[3.16.2]** Considering whereas the objection, to the extent it is concerned with the time limit for petition submission, the Court refers to the consideration included in the aforementioned paragraph **[3.9]** that the Petitioners' objection petition in the *a quo* case was filed within the stipulated time limit. Whereas the reason of the Respondent concerning the submission of the revised petition dated November 17, 2008 which is deemed as a new case, must be rejected, because such revision is the right of the Petitioners as regulated in Article 39 of the Constitutional Court Law, which offers the opportunity to make necessary revision, and to the extent that the Respondent has not given any response, then such revised petition shall be possible. Because of such reason, the Respondent's Objection must be set aside;

**[3.16.3]** Considering whereas to the extent that it is concerned with the remaining objection submitted by the Related Parties, because the objection is very closely related to the principal issue of the petition, then such objection shall be considered together with the main issue of the petition;

**[3.17]** Considering whereas based on the Petitioners' petition, the Respondent's response, the statements of the Related Parties, written evidence and witnesses of the Petitioners and the Respondent, and written evidence of the Related Parties, then the legal problem that must be considered and decided upon shall be the following matters:

**[3.17.1]** Whether or not it is true that there are mistakes or errors in the Vote

Count Recapitulation of the Second Round General Election of Regional Head of East Java Province with the consequence that the real vote acquisition of the Petitioners is greater than the count results by the Respondent and the Petitioners should have been stipulated as the Winners of the General Election of Regional Head to be the elected as Regional Head and Deputy Regional Head of East Java Province;

**[3.17.2]** Whether or not the violations of the provisions of laws and regulations in the General Election of Regional Head process may influence the vote acquisition and the vote count may be deemed to be a part of the dispute on General Election of Regional Head that also becomes the Court's authority to examine and to decide upon;

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

**[3.18]** Considering whereas the Court considers that the *posita* of the Petitioners' petition which has argued about the occurrence of mistakes and errors in the vote count in 26 regencies/municipalities in East Java Province, while furthermore the petition's *petitum* alternatively requests the Court to declare null and void by law the Decision of East Java Province KPU Number 30 Year 2008 dated November 11, 2008 concerning the Vote Count Result Recapitulation of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province Year 2008, or at least to declare null and void by law the vote count results in Pamekasan Regency, Dagangan Sub-district of Madiun

Regency, Kepel Village of Ngetos Sub-district, Jambi Village of Baron Sub-district, Trayang Village of Nggrogot Sub-district of Nganjuk Regency, and Mojolegi Village, Wangkal Village, Prasi Village, as well as Dandang Village of Probolinggo Regency, and Banyuwangi Sub-district of Banyuwangi Regency;

[3.19] Considering whereas based on the written evidence submitted by the Petitioners and witnesses, it is evidenced that the Petitioners fail to prove the mistakes and errors which are sufficient and valid according to the law in the vote counting in other regencies throughout East Java Province as argued, except in the villages and sub-districts as mentioned in the *petitum* of the petition. Likewise for the places mentioned by the Petitioners, even though it is true that there is primary evidence, however it is not sufficiently significant to be perfect evidence to support the arguments in the petition, as follows:

- a. TPS 8 of Jemundo Village, Taman Sub-district, Sidoarjo Regency, in C-1 Data it is written Kaji 156, Karsa 154, while in DA-1 Data it is written Kaji 0, Karsa 0, even though Exhibit P-22 submitted by the Petitioners is denied by submitting Exhibit T-56, but in Exhibit T-56 submitted by the Respondent it is proved correct;
- b. TPS 2 of Wangkal Village, Gading Sub-district, Probolinggo Regency, with Exhibit P-24, even though it is correct that in C-1 data concerning the number of voters being as many as 233, the voters from other TPS as many as three persons, it should have been written that the voting papers used are as many as 236, but in C-1 document the number written is 233,

however the number of votes acquired and the total number of votes are not different;

- c. TPS 1 of Prasi Village, Gading Sub-district, Probolinggo Regency, C-1 data concerning the number of voters shows the number of 231, from other TPS as many as 1, but it is written that the ballots used are as many as 223, while it should have been 233, and Exhibit P-25 submitted is similar to Exhibit T-59, and in fact the vote acquisition and the total number of votes are not different;
- d. TPS 1 of Dandang Village, Gading Sub-district, Probolinggo Regency, as proved by Exhibit P-26, the vote acquisition of Kaji is 229, and Karsa is 272, but in DA-1 data it is written a number of 129 for Kaji. In Exhibit P-26 there is no data of Dandang Village, and in Exhibit T-60 attachment C-1 KWK it is written that the vote acquisition of Kaji is as many as 129 votes;
- e. TPS 3 of Pakis Village, Banyuwangi Sub-district, Banyuwangi Regency, in the C-1 KWK Data, the ballots used are five ballots, and the grand total of votes for all pairs is written to be as many as 374 (Exhibit P-27), and it is evident that there has been an error in filling out the column where the used ballots should be 384, while it is written five, however it does not influence the vote acquisition of the respective candidates;
- f. According to the Petitioners' arguments, in Banyuwangi Sub-district, Banyuwangi Regency, the number of invalid votes is 2,116, while the

correct number according to the Petitioners is 2,125. It is in fact not correct because based on Exhibit P-28, the correct number shall be 2,116, not 2,125;

**[3.20]** Considering whereas the written evidence and witnesses presented to support the Petitioners' arguments concerning the mistakes and errors in vote count in villages, sub-districts and regencies described by the Petitioners in the *petitum* of their petition, the Court is of the opinion that such evidence may not be deemed sufficient and convincing to support the arguments of the petition. Nevertheless, the occurrence of errors in vote count, either in the process or by increasing or decreasing the votes (vote inflation or deflation) in Sampang Regency, Pamekasan Regency, and particularly in Bangkalan Regency, which is not even specifically mentioned, either in the *posita* or the *petitum* of the petition. The legal fact disclosed in the Court hearing, 26 witnesses presented by the Petitioners; written evidence in form of Exhibit P-44 and Exhibit P-45; records of telephone conversation, namely Exhibit P-130 and Exhibit P-131; as well as additional evidence in the form of written evidence, namely Exhibit P-102 and Exhibit P-106 shall be considered as follows:

**[3.20.1]** **Witness Drs. Masjkur Hasjim** explains that as the Success-Team for Khofifah-Mudjiono Pair of Candidates , he received the report from the witnesses of KAJI Pair in the field, either before or at the time of voting, found a lot of disharmony, among other things the existence of vote inflation cases in Pulung, Selaung, and Ponorogo Sub-districts; the occurrence of money politics in

Wono Village, Kebo Baru Sub-district, Bojonegoro Regency; in Sampang, Omben Village Omben Sub-district, several witnesses of KAJI were threatened to death; in Sumenep one vote of White Group was charged Rp.50,000,- up to Rp.70,000,- in several TPS in Bangkalan the vote acquisition of KAJI is written zero, no voters at all, while for KARSA's it was written in big figures, while in all other villages KAJI still got points even though they lost; in TPS 2, Kedundung Village, Kedundung Sub-district, Sampang Regency, there was vote inflation, so that the correct vote recapitulation was not in accordance with votes in TPS and PPK; almost 80% the minutes dossier of vote count in Sampang Regency was not provided to the Pair of Candidates' witnesses by, neither was the Minutes of vote count in PPK, namely DA-1 KWK;

**[3.20.2] Witness Muhammadiyah Agus Muslim** explains that the KPU procedures from the beginning to the end during the manual vote count recapitulation process have only counted the vote acquisition of the respective pair of Governor candidates and invalid votes. However, the number of voters registered in the DPT, the invalid votes, the unused ballot, the number of the rest, whether or not returned to the provincial KPU, were are not counted;

**[3.20.3] Witness Nawer** explains that in TPS 3 of Alas Kembang Village, Burneh Sub-district, Bangkalan Regency the number of votes was not in accordance with the number of voters, because the voters casting their votes were 150 persons, but the total vote result reached 402 votes;

**[3.20.4] Witness Dahrul Ulum** explains that in TPS 7 Alas Kembang

Village, Burneh Sub-district, Bangkalan Regency, the present voters were 156 persons, then all of the remaining ballots were given to the Pair of Candidates Number 5, and a village official by telephone requested the witnesses not to fill out the minutes because it would be filled out in the place of the aforementioned village official;

**[3.20.5] Witness Supriadi** as the Chairman of KPPS explains that prior to the General Election of Regional Head, the witness was invited by Hafidz, the Head of Karanggayam Village, who asked for his help to win the Pair of Karsa and ordered the witness to vote by himself the rest of the voting ballots for the Pair of Karsa in TPS 3, namely 200 voting papers and got Rp.300,000,- in return. The witness explains that the number of ballots in such TPS was 421 sheets, which were pierced by the witness himself for the Pair of Karsa (the Related Parties) by entering the TPS room for three times for no less than 200 voting papers. The remaining ballots were pierced by the voters, namely no less than 170 persons who came on the voting day. There were three damaged or invalid ballots, and there were 35 remaining ballots. In the hearing, the witness admits to be guilty and feels regretful, and is willing to be punished with the severest possible punishment;

The witness's statement has been also supported by the statement of **witness Abdul Basid** hearing from the other KPPS members in TPS 3;

**[3.20.6] Witness Tohiruddin**, KPPS member of TPS 7 in Alas Kembang Village , Burneh Sub-district, Bangkalan Regency explains that the other KPPS



members said that if there was not anyone casting their vote or if there was still many ballots remaining, they might pierce the ballots themselves. The piercing was conducted by village officials under the order of the son of the Village Head, and all of the KPPS members were present when the piercing of remaining ballots was conducted in a different room. The voters in DPT remained 498 persons, but those who were present were around 150 voters. In TPS 7, the Pair of Karsa obtained 414 votes, while the Pair of Kaji obtained 78 votes;

**[3.20.7] Witness Nahrowi** in TPS 2 of Alang-Alang Village, Trake Sub-district, Bangkalan Regency, explains that the number of voters was 580, the remaining ballots were only 70, while 33 families (KK) consisting of not less than 100 voters did not get invitations;

**[3.20.8] Witness Julianto** in TPS 4 of Paliman Village, Bangkalan Regency, explains that PPS officials took 39 ballots and pierced for the Pair of Karsa, and when the witness protested the ballots had been already pierced, and then the witness was given 10 ballots pierced by the witness for the Pair of Kaji;

**[3.21]** Considering whereas with respect to the aforementioned statements of the Petitioners witnesses, the Respondent has also presented the witnesses' statements to the contrary, as follows:

**[3.21.1] Witness Sodik**

- Bahrul, the chairman of the TPS where he was, said that the result in TPS 7 was not in accordance with the minutes. The witness deemed that

Dahrul had given a false statement because the minutes was signed by Dahrul himself;

- The witness stated that with respect to the C-6 forms, namely the invitations, in the voters list there are 498 voters, but only 150 voters were present;
- The witnesses, Sodik and Dahrul, were asked to deliver the invitation letters;
- The witness admitted that he was threatened not to come back home for two months if he gave a statement different from Dahrul's.

**[3.21.2] Witness Abubakar (KPUD)**

- The witness states that the unloading and opening of voting boxes on the sidewalk were not right. There, there is no sidewalk of the road, the one existing is the entrance to TPS;
- There was no problem in the voting process up to the vote count, while the witnesses of the two Pairs were there. Both signed the minutes and did not convey any objection. Furthermore, the minutes was inserted into the box but all of the padlocks were gone;
- At that time the witness did not object to the vote acquisition of DPT with a number of 599 voters; those present were 235 voters. Kaji obtained 73 votes, and Karsa obtained 160 votes, there were two invalid votes;

- In the Witness' TPS, the equipment was the benches borrowed from school. After being used, the benches were directly returned to the school with the assistance of Supriyadi, a PPS member. Supriyadi did not unload the voting box, he only tidied up the minutes which was outside;

**[3.21.3] Witness Abdul Hakim (PPK member of Pakong Sub-district, Pamekasan Regency)**

- The witness explained that in Pakong Sub-district there was no vote manipulation. The implementation of Pakong Sub-district recapitulation was conducted in the presence of the witnesses from the two Pairs of Candidates, Pakong Sub-district Muspika, Pakong Sub-district Panwas, PPS Chairman, and KPPS chairman. The recapitulation was conducted on November 5, 2008. The voting was implemented according to the procedures. Both of the witnesses did not object to the data they had and the data PPK had.
- Both of the witnesses did not dispute the vote acquisition, and there was no difference of vote acquisition in Pakong Sub-district PPK.

**[3.21.4] Witness Imam Suchayo (Chairman of TPS III of Pakong Village, Pakis Village, Banyuwangi Sub-district and Banyuwangi Regency)**

- There was no problem with the Election implementation process up to the

time of vote count. According to the assumption of the Witness and all KPPS Members and both witnesses of the pairs of candidates it was already agreed and legalized that what the witness wrote down was right,

- In the filling out of C1 format KWK Format A Number 2, the number of man was written to be 162 and the number of woman voters was 222, while the truth was that there were 141 man voters, and 180 woman voters, so that the ballots used were 384.

**[3.21.5] Witness Abdul Karim (Chairman of Burneh Sub-district PPK)**

- At the time of recapitulation in Burneh Sub-district PPK, the witness had invited the witnesses of the two pairs of candidates, Panwas, Muspika, all Baroneh Sub-district PPS, Chairman of Burneh Sub-district KPPS, and public figures of Baroneh Sub-district. The witnesses of the pair who present were the witnesses of Kaji's pair;
- There was no problem during the process of recapitulation up to the signing of the minutes.

**[3.21.6] Witness Indah Catur (Banyuwangi Sub-district PPK)**

- Related to the claim of the Pair with Candidacy Number One with respect to the recapitulation at the Sub-district Level, there was no complaint/objection during the process of vote count. The witness rechecked by reopening the C1-KWK dossier. The result was that the

invalid votes in Banyuwangi Sub-district were 2116 votes. There was no objection of witnesses at the time of recapitulation at the PPS level up to the sub-district/municipality level.

**[3.21.7] Witness Sentot (chairman of Taman Sub-district PPK, Sidoarjo)**

- In relation to the violations in Taman Sub-district, Jemundo Village, TPS 8, in the C1 data, the votes for the Petitioners' Pair was written to be 156 votes, and for the Pair of Soekarwo-Syaifullah Yusuf it was written to be 154 votes. Meanwhile, in DA-1 the votes for both the Petitioners and Soekarwo's Pair of were written zero. The witness conveyed that he never made such data because the last data in TPS 8 as attached showed that the Pair of Khofifah-Mujiono obtained 156 votes, and the Pair of Soekarwo-Syaifullah Yusuf obtained 154 votes;
- The Petitioners' attorney confronted the witness by showing the second attachment of DA KWK form signed by the witness;
- The witness explained that the existing data was added by other PPS, but it was not exposed and identified. The witness just knew that the data was not exposed at 02.00 Western Indonesia Time. In the morning, the witness invited the Chief of the Sector Police and the Sub-district Head, as well as Kaji and Karsa's witnesses to meet at Taman PPK.

**[3.21.8] Witness Anshori (Sidoarjo Regency KPU Member and**

**Chairman of the Working Group for Regency/Municipality Vote Count)**

- With respect to the argument stated by the Petitioners that in Taman Sub-district, in form C-1, the Pair of Kaji obtained 156 votes, and Karsa 154 votes. Furthermore it was stated that in fact in Sub-district DA Model, the votes obtained by Kaji and Karsa were written zero.
- The minutes made by Taman PPK and signed by all witnesses did not show the zero data;
- The Petitioners mentioned the comparative data of vote acquisition at the KPU level of all East Java Regencies, according the version of Kaji's Team's, it was mentioned that in Sidoarjo Regency Kaji obtained 337.354 votes, while Karsa obtained 297.904 votes. The total number of valid votes was 635,258 votes. The witness explained that the data was not valid because it was not final.

**[3.21.9] Witness Achmad Subagyo (Takengon Sub-district PPK Member, Madiun Regency)**

- The vote inflation in Takengon Sub-district, Madiun Regency is not true. Since the recapitulation began at 08.00 O'clock, the vote count was made in the presence of witnesses of the two pairs, Muspika, PPS Chairman of Takengon Sub-district, and Panwaslu;

- The Recapitulation in Takengon Sub-district declared that Karsa obtained 12,999 votes. The two witnesses of the Pairs of Candidates stated to have no objection to sign the minutes.

**[3.21.10] Witness Sukono Hadi (Chairman of TPS 3 KPPS of Lohgung Village, Brenggong Sub-district, Lamongan Regency)**

- The vote acquisition for Kaji was 224 votes, and for Karsa was 57 votes; the invalid votes were three. There was no objection at the witness' TPS;
- The witness knew that there was fraud in TPS 7 of Alas Kembang Village, Burneh Sub-district; even Sodik himself informing such fraud in a religious gathering on Wednesday, November 5, 2008 at 19.00. The witness heard Sodik saying that the ballots were pierced by himself.

**[3.21.11] Witness Nastain (Chairman of KPPS, TPS 11 of Jelawas Village, Grondong Sub-district, Lamongan Regency)**

- Khofifah-Mujiono obtained 25 votes, Sukarwo-Syaifullah Yusuf obtained 294 votes, and there were five invalid votes. All witnesses stated to have no objection at all and signed the minutes;
- The recapitulation submitted by the witness, namely KWK proof was originally written by the witness. However, the one in the Court Hearing, was not written by the witness;
- The witness also took with him the KPPS's file showing that the vote

acquisition of Kaji was 224 votes, while the file (submitted to the Court) was 281 votes. Karwo obtained 57 votes, in the existing data here there were also 57 votes. The difference is only in the vote acquisition of Khofifah;

- The witness explained that only Khofifah's witnesses did not sign the minutes.

**[3.21.12] Witness Sumarno (Chairman of KPPS 05 of Nyambi Village, Bereum Sub-district, Nganjuk Regency)**

- At the witness' TPS, the number of voters in DPT was 412, while those using their voting right were 194 voters. The vote acquisition of Kaji at TPS 05 was 115 votes, Karwo obtained 78 votes, one vote was invalid;
- Kaji's claim arguing to have obtained 194 votes is not right.

**[3.21.13] Witness Jamian (Chairman of Baron Sub-district PPK, Nganjuk Regency)**

- The recapitulation in PPK was conducted on November 5, 2008. The witness invited all KPPS Chairmen and members of TPS, Panwaslucam, the witnesses of the two Pairs of Candidates, and Muspika officials were also present;
- The vote acquisition of Kaji is in accordance with what conveyed by the Chairman of KPPS 05 of Njambi Village, namely 115 votes, the vote



acquisition of Karsa is 78 votes, and one vote is invalid.

**[3.21.14] Witness Imadoedin (Chairman of Pamekasan Regency KPU)**

- In relation to the report in Pamekasan Regency, there is creation data made by Pakong Sub-district PPK;
- There is no creation data made by Pakong Sub-district PPK. Such Data is actually *entry data* at the time of recapitulation in Pakong Sub-district;
- All PPK conducted the same pattern; when the recapitulation began manually. the operators in PPK also made entry at the same time in the computer to back up the data for PPK;
- The witness was present during the Vote Count Recapitulation at Grand Mercure Hotel Surabaya on November 11, 2008;
- Imam Syafei read the recapitulation of Pamekasan KPUD. When reading it, the witness was in the toilet, so that the witness did not hear directly the reading of the recapitulation by Imam Syafei.
- That there is no difference in the vote count. The witness requested the witnesses of the Pairs of Candidates to observe the recapitulation data, then the Petitioners' witnesses signed the data.

**[3.22]** Considering whereas furthermore, the Court shall consider the arguments and evidence of the Respondent and the Related Parties, as follows:

- whereas the Respondent and the Related Parties argue that the Court has authority to hear, as stipulated in Article 106 paragraph (2) of Law Number 32 Year 2004 concerning Regional Government *juncto* Article 236C of Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government, only in relation to the vote count influencing the election of the Pair of Candidates;
- whereas the matters beyond the aforementioned authority have been stipulated by the legislators to be the authority of other institutions or agencies;
- whereas based on the provision of Article 108 paragraph (1) of Government Regulation Number 6 Year 2005 concerning Election, Legalization, Appointment, and Dismissal of Regional Head and Deputy Regional Head has stipulated obligations and authorities of the Supervisory Committee of the Election of Regional Head [*Panwaspilkada*, which has now become the Supervisory Committee of the General Election (*Panwaslu*) based on Law Number 22 Year 2007 concerning General Election Organizer], among other things, are:
  - a. supervising all phases of election implementation;
  - b. receiving the reports of violations of laws and regulations;
  - c. settling disputes arising in the election implementation;

- d. following up findings and reports that cannot be settled to the competent agencies;
  - e. regulating coordination relationship among supervisors at all levels.
- whereas with regard to the supervision of all election phases, for instance when there are people who have voting right but they are not registered in DPS or DPT; those who do not get invitation to vote on the voting day even though they have been registered as voters in DPT; those who vote twice; those who have not reached the age for voting and are not married but join the voting; the existence of gifts in the form of things or money to the voters with the agreement that they have to elect a certain Pair of Candidates; existence of intimidation to elect a certain Pair of Candidates; lack of correspondence between the number of ballots in general and the number of valid ballots, the damaged or invalid, and the rest; those who are not registered as permanent voters so that they do not get invitation but vote using the name of other invited voters; all these matters the election phases that become the authority of *Panwaslu*;
- whereas at all levels, namely provincial, Regency/municipal, and Sub-district levels, *Panwaslu* shall supervise all phases of the election implementation. This is restated in Article 76 paragraph (1), Article 78 paragraph (1), and Article 80 paragraph (1) of Law Number 22 Year 2007 concerning General Election Organizer;

- whereas a dispute or objection submitted by anyone to *Panwaslu* not containing any criminal element, in accordance with the provision of Article 111 paragraph (4) *juncto* Article 112 PP 6/2005 shall be settled by the mechanism with the following phases:
  - a. bringing together the disputing parties to conduct deliberations to reach a consensus;
  - b. in the event that such consensus in sub-paragraph a is not reached, *Panwaslu* shall make the decision;
  - c. the decision in sub-paragraph b shall be final and binding.

The aforementioned dispute shall be settled no later than 14 (fourteen) days after the disputing parties were brought together [*Vide* Article 112 paragraph (2) of Government Regulation No. 6/2005].

- whereas in the event that the reports received or *Panwaslu*'s findings contain criminal elements, then the process shall be conducted in accordance with the Indonesian Criminal Procedure Code (KUHAP), and in the event that the case furthermore continued to the court of law, it shall be the authority of the court of the general judicature, in accordance with the provision of Article 113 and Article 114 of Government Regulation No. 6/2005;

- whereas Article 103 of Law No. 32/2004 stipulates, "*The recount of ballots in TPS shall be conducted in the event of one or more violations as follows: (a) the vote count is conducted in camera; (b) the vote count is conducted in an poorly lighted place; (c) the witnesses of the pairs of candidates, supervisory committee, observers, and the community cannot witness the vote count process clearly; (d) the vote count is conducted in a different place beyond the determined place and time; and/or (e) there is inconsistency in determining the valid votes and the invalid votes*";
- whereas based on the provision of Article 104 of Law No. 32/2004, the voting in TPS may be repeated in the event of riots which prevent the voting results from being used or when the vote count cannot be conducted;

The repeated voting in TPS also may be conducted in the event that based on the result of Sub-district *Panwaslu's* observation it is evident that there is one or more of the following conditions:

- a. the opening of voting box and/or the dossier of voting and vote count is not conducted in accordance with the procedures stipulated in the laws and regulations;
- b. KPPS officials request the voters to make special signs, sign, or write their names or addresses in the used ballots;

- c. more than one voter use his/her voting right more than once at the same or different TPS;
  - d. KPPS officials damage more than one ballot that have been used by voters so that the ballots become invalid; and/or
  - e. more than one voters who are not registered as voters get the opportunity to vote in TPS;
- whereas in accordance with the provision of Article 105 of Law No. 32/2004, the decision concerning the execution of re-voting in TPS shall be the authority of PPK;

**[3.23]** Considering whereas based on the foregoing matters, *prima facie* on a formal basis, by referring to the legal certainty, the Respondent and the Related Parties' arguments has also been proved to be true;

**[3.24]** Considering whereas however, apart from the aforementioned facts, according to the Court's evaluation, written evidence and the statements of the witnesses presented by the Petitioners the truth of which the truth cannot be denied by the statements of the witnesses presented by the Respondent to the extent that they are concerned with the following violations:

**[3.24.1]** Whereas Exhibit P-44 and Exhibit P-45 entitled Program Contract dated Surabaya, June 15, 2008 shall be the contract between Dr. H. Sukarwo, S.H., M. Hum as the Candidate Governor and Moch. Moezamil S.Sos, General

Secretary of East Java Village Heads Association with the following agreement:

Number of Present Voters	Pakde Vote Acquisition			
	51 – 60%	61 – 70%	71 – 80%	81 – 100%
- 2500	50, 000,000	60,000,000	70,000,000	80,000,000
2501 – 5000	60,000,000	70,000,000	80,000,000	100,000,000
5001 – above	70,000,000	80,000,000	100,000,000	150,000,000

**[3.24.2]** Whereas the Candidate Governor shall provide aid to Village Governments starting from Rp.50,000,000. up to Rp.150,000,000. based on the number of voters voting for the Pair of Karsa. The Candidate Governor Sukarwo also promised to provide aid for Village Empowerment, stimulant fund, and development of Regional Government Owned-Enterprise (BUMD), as well as fund allocation item in the Regional Revenues and Expenditures Budget (APBD) for the improvement of welfare of Village Heads and Village Officials in the form of Village Officials Allowance (TPAPD). Even though the program contract was made on June 15, 2008, it continued to have an implication in the Second Round General Election of Regional Head of East Java Province;

**[3.24.3]** Whereas Exhibit P-106 in form of letters of statements from 23 Village Heads in Klampis Sub-district concerning the Preparedness to Support and Win the Pair of Karsa in the Second Round General Election of Regional Head of East Java Province, which constitute the result of approach conducted by Haji Ali, in accordance with his statements before Indrayani, Notary in Sidoarjo, on November 23, 2008, as well as the statements of Abd. Hamid and

Baidhowi respectively concerning the fraud occurring because KPPS members conducted the piercing of the unused ballots by themselves;

**[3.24.4]** Whereas the aforementioned statements of the Petitioners' witnesses as described in paragraph **[3.20]**, when connected with Exhibit P-44 and Exhibit P-45 concerning program contract conducted by Candidate Governor Dr. Soekarwo S.H., M. Hum and Moch. Moezamil S. Sos, Secretary General of East Java Village Heads Association dated June 15, 2008, as well as Exhibit P-106 in the form of statements of 23 Village Heads who were ready to support and win the Pair of Karsa in the Second Round General Election of Regional Head of East Java Province, in relation to the recorded telephone conversation (Exhibit P-107) along with its transcript, recorded telephone conversation (Exhibit P-130), and its transcript of conversation in Indonesian language (Exhibit P-132) deemed as clue evidence and without considering the other evidence, have served as perfect evidence of violations occurring in certain regencies in Madura of the provisions of laws and regulations in the Second Round General Election of Regional Head of East Java Province. Such violations occurred in a systematic, structured, and massive manner which automatically have influenced the final vote acquisition for the respective Pairs of Candidates, which can explain the causal relationship occurring with the partiality of Village officials and General Election of Regional Head organizer;

**[3.25]** Considering whereas the question to be answered by the Court shall be whether or not the violations that have been perfectly proved are



included in the scope of dispute of General Election of Regional Head which is within the authority of the Court based on the provision of the applicable laws and regulations. It must be acknowledged that the authority regulated in Law Number 32 Year 2004 concerning Regional Government as most recently amended with Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government, which is very limited and strict in nature, so that when viewed textually, the indistinctness and obscurity of such regulations will appear. Conflicts or disputes in the General Election of Regional Head process that can be said to be quite a lot, occurring either because of the social political development of the community and officials or because the general election organizer cannot be deemed to have separated themselves from the bureaucratic culture of the past, or because of the weakness of the provisions of laws and regulations concerning the authority of the institution in charge of settling disputes occurring in the process of General Election of Regional Head, have played a role in the failure to settle disputes through the process and the phases of General Election of Regional Head satisfactorily and to be able to become a thorough problem solution before the vote acquisition dispute shall be brought to the Court. It is undeniable that all violations occurring in the process and the phases of General Election of Regional Head shall have a fundamentally great influence to the final result, and by the absence of effective dispute settlement in General Election of Regional Head process, the Court becomes obliged not to leave such matters occurring in the event that the evidence submitted meet the validity requirements of the law and the weight of the incident

is sufficiently significant. Such matter is not intended to take over the authority to decide upon the violations and deviations in the General Election of Regional Head process, but to evaluate and consider the implication arising in vote acquisition counted in the Vote Count Recapitulation conducted by KPU;

**[3.26]** Considering whereas the transfer of authority to hear and decide upon disputes over Vote Acquisition Results in General Elections of Regional Heads from the Supreme Court to the Constitutional Court, based on Article 236C of Law Number 12 Year 2008, may not be deemed merely as the transfer of institutional authority; however such transfer has a wide implication in relation to the functions and obligations of the Court as a constitutional court granted with the mandate as the guardian of the constitution, in the context of keeping the constitution to be implemented with responsibility in accordance with the people's aspiration and the ideals of democracy, and simultaneously to keep a stable state administration based on the constitution. By such transfer, the intended implication shall give different behavior and character in the settlement conducted by the Court, which means that the provisions of the applicable laws shall be viewed and interpreted in the frame of principles and spirit contained in the 1945 Constitution in such a way that it provides the freedom to evaluate the weight of violations and deviations occurring in the whole phases of General Election of Regional Head process and its relation to the vote acquisition of the pairs of candidates;

**[3.27]** Considering whereas based on the legal facts deemed to have

been proved legally as considered in the aforementioned paragraph [3.24], in the form of violations and deviations which are very influential to the vote acquisition and the Vote Count Recapitulation for the respective Pairs of Candidates, it has now been evident before the Court, even though it is not described in *posita* and in the *petitum* it is only generally requested for the Vote Count Results conducted by the Respondent in the Second Round General Election of Regional Head of East Java Province to be declared null and void, and the Court is requested to pass a decision ***ex aequo et bono defined as the request to the Court to pass a just decision in the event that the Court has a different opinion instead of the decision requested in the petitum.*** As it has been written, “*Preference should be given to the rule of positive law, supported as it is by due enactment and state power, even when the rule is unjust and contrary to the general welfare, unless, the violation of justice reaches so intolerable a degree that the rule becomes in effect “lawlesslaw” and must therefore yield to justice.*” [G. Radbruch, *Rechtsphilosophie* (4<sup>th</sup> ed. page 353. Fuller’s translation of formula in *Journal of Legal Education* (page 181)]. Because of its nature is as a constitutional court, the Court may not let the *procedural justice* suppress and set aside the *substantive justice*, because the legal facts as described in paragraph [3.20] up to paragraph [3.24] have evidently constituted constitutional violations, particularly of Article 18 paragraph (4) of the 1945 Constitution which obligates the Regional Head Election to be conducted democratically, and not to violate the principles of direct, general, free, confidential, and fair general elections as stipulated in Article 22E paragraph (1) of the 1945 Constitution. A

law and justice principle adhered universally states that “No one can obtain an advantage by his own deviation and violation and no one shall be harmed by other people’s deviation and violation” (*nullus/nemo commodum capere potest de injuria sua propria*). Therefore, there is no Pair of Candidates that may be benefited in the vote acquisition as a result of violations of the constitution and justice principle in the general election implementation. Apart from the handling of the law enforcement officials who will process all criminal acts in the General Election of Regional Head in a quick and fair manner to become evidence in the dispute of regional head election before the Court in its experience of General Election of Regional Head seems to be insufficiently effective, and accordingly the Court deems it necessary to make a breakthrough in order to advance democracy and escape from the common practices of systematic, structured, and massive violations as reflected in the *a quo* case;

**[3.28]** Considering whereas in deciding upon the dispute over the results of General Election of Regional Head, the Court shall recount not only the real vote count of the voting but shall also find out justice by evaluating and hearing the disputed vote count, because if the Court only conducted the counting in the technical and mathematic meaning of the term, the recount can be actually conducted by KPUD itself under the supervision of *Panwaslu* and/or police officers, or sufficiently by the district court. Therefore, the Court understands that even though according to the law, what that can be heard by the Court is the vote count, the violations causing the occurrence of vote count results further disputed shall, however, be also evaluated in the context of enforcing the justice. This is in

accordance with the provision of Article 24 paragraph (1) of the 1945 Constitution which reads, " *Judicial power shall be independent power **to conduct judiciary in order to enforce law and justice***" and Article 28D paragraph (1) of the 1945 Constitution which reads, " *Every person shall be entitled to the recognition, guarantee, protection, and just legal certainty as well as equal treatment before the law.*" Furthermore the two provisions of the 1945 Constitution are included in Article 45 paragraph (1) of the Constitutional Court Law which reads, " *The Constitutional Court shall decide upon cases based on the 1945 Constitution of the State of the Republic of Indonesia **in accordance with the evidence and the belief of the judge***";

The prohibition for the Court to handle cases of violations and criminal acts in the General Election of Regional Head must be defined in such a way that the Court may not function as a criminal court or administrative court but still may question and hear any violation having a consequence to vote count results;

**[3.29]** Considering whereas naturally, the intended functions and roles of the Court are, among others, to guard the constitution enforcement with all principles attached thereto. Democracy is one of the most fundamental principles in the 1945 Constitution as included in Article 1 paragraph (2) that sovereignty is in the hands of people and shall be implemented according to the constitution. Therefore, the Court has authority to guard the enforcement of democracy as regulated in the constitution which, in the context of guarding the enforcement of

democracy, must also evaluate and grant justice with respect to violations occurring in the implementation of democracy, including the implementation of the General Election of Regional Head (*vide* General Elucidation of the Constitutional Court Law);

**[3.30]** Considering whereas in the 1945 Constitution, the sovereignty principle (democracy) is always related to the principle of constitutional state (nomocracy) as regulated in Article 1 paragraph (3) of the 1945 Constitution. The logical consequence is that democracy may not be implemented based on the battle among political powers *an sich*, but also must be implemented in accordance with the laws and regulations. Therefore, every decision merely obtained democratically (the will of majority vote), may be annulled by the court in the event of violations of monocracy (legal principles) that can be legally proved in the court;

**[3.31]** Considering whereas the judicature, according to the 1945 Constitution, must adhere proportionally to the principles of justice, legal certainty, and usefulness, so that the Court cannot be limited by the wording of a law only but also must find out the sense of justice by consistently refer to the substantive meaning of the law itself. In order to find out this sense of justice, then the Court shall have several alternatives to choose from to decide upon the *a quo* case;

1. The Court may stipulate that the whole vote acquisition of KARSA Pair of Candidates in Sampang, Pamekasan, and Bangkalan Regencies, is

- declared to have not been counted in the Recapitulation of Vote Count Results of the General Election of Regional Head of East Java Province;
2. The Court may stipulate that the whole vote acquisition of KARSA Pair in Bangkalan Regency, shall be deemed to have been obtained illegally, being counted for the vote acquisition of KAJI Pair in the Recapitulation of the Vote Count Results of the General Election of Regional Head of East Java Province;
  3. The Court may declare that the stipulation of East Java Province KPU concerning the Vote Count Recapitulation of the Second Round General Election of Regional Head shall be null and void and does not have any binding legal force to the extent that it is concerned with to the voting areas of Sampang, Pamekasan and Bangkalan regencies, as well as order the vote recount or re-voting in the three regencies;
  4. The Court may declare the Stipulation of East Java Province KPU concerning the Vote Count Recapitulation of the Second Round General Election of Regional Head null and void to the extent that it is concerned with the Vote Count Recapitulation of the Second Round General Election of Regional Head and Deputy Regional Head in Sampang, Pamekasan, and Bangkalan regencies, as well as order the vote recount in the regions most intensively affected by the implication of structural violations occurring in the field, and vote recount for regions or regencies deemed to be less affected by the impact of such structural violations

**[3.32]** Considering whereas the option to disqualify the vote acquisition of the Pair of KARSA Candidates in regencies affected by the impact of structural violations as described above, either by or without counting it for the Pair of KAJI's vote acquisition to further conduct the vote count based on the voting condition occurring that way, may be deemed to injure the democratic rights of the Pair of KARSA's voters who have goodwill, because their votes have not been counted in a proper democratic process. On the other hand, the Court deems it improper to recount the results that have been stipulated by East Java Province KPU only, because the process has been full of quite serious violations, so that it is necessary to conduct re-voting. This is because the violations proved in the court hearing have been systematic, structured, and massive in nature which in general were conducted before, during, and after the voting. This means that such violations occurred not only during voting, so that the problem occurring must be traced back to the incidents occurring prior to the voting;

**[3.33]** Considering whereas if the Court only decides the recount of the results of vote count stipulated by East Java Province KPU, the Court deems it shall not be much useful because it is almost certain that the existing vote count will be equal to the composition of results from the pierced ballots. Such matter has been caused by the occurrence of violations just prior to the voting through various actions which were systematic, structured, and massive in nature so that the existing vote count in certain regions can be deemed as the vote count resulting from violations, so that if the vote recount is conducted, it is very likely



that the results will remain equal. If the court only limits itself to the vote recount results that have been stipulated by East Java Province KPU, it is very likely that there will be no justice for the dispute settlement with respect to the results of the General Election of Regional Head being heard because it is very likely that the result of KPU Stipulation will be created through a process violating legal procedures and justice;

Whereas based on the legal facts in the hearing, in certain regencies there were serious violations obviously occurring on a systematic, structured, and massive basis, so that the correction effort shall be necessary through the Court's decision, namely the annulment of the voting results in general in the regions to be stipulated below and by excluding it from the total vote count. If the Court decides the voting results in such regions to be excluded (not counted) from the final count, the result will be injustice, because it means that the votes of the people in such regions as the part of sovereignty holders will be discarded/lost. Therefore, for the enforcement of democracy which is just and based on law, the Court is of the opinion that re-voting must be conducted for regions or the parts of certain regions and conducting vote recount for the other certain regions;

Such an attitude of the Court cannot be deemed inconsistent because in the previous cases of General Election of Regional Head in the past violations were not questioned. It is true that the Court's attitude towards such previous cases never decided for re-voting because generally, in cases that have been

examined and decided upon, the petitioners only based their petitions on assumptions and did not submit concrete, significant, or valid legal evidence according to the law. In the previous cases, in addition to the fact that the violation evidence influencing the vote count was not extremely significant, the violations committed were also mostly personal;

**[3.34]** Considering whereas in determining which regions shall conduct re-voting and which regions shall only conduct vote recount, the Court shall base its decision on the intensity and weight of the violations occurring in such voting areas as follows:

1. **Bangkalan Regency:** the level of violations occurring in this regency is proved to be the most systematic, structured. and massive, and based on the evidence disclosed in the hearing, it is stipulated that re-voting shall be conducted;
2. **Sampang Regency:** the level of violations occurring in this regency, based on the written statements and declarations of the members and Chairman of KPPS, partly made before Indriani Yasmin, Notary in Sidoarjo, concerning the vote inflation for the pair of Karsa by the piercing of ballots by KPPS officials themselves, in relation to the valid evidence, it is also stipulated that re-voting shall be conducted;
3. **Pamekasan Regency:** the type of violations occurring in this regency is the use of non-standard forms for vote count recapitulation without

itemizing the vote acquisition per TPS and the vote count was not conducted per TPS, but per Village, even though the Respondent denied it for the reason that it was already agreed by the witnesses of the Pairs of Candidates and the other Related Parties by affixing their signatures on the minutes. According to the Court, such violations have violated the procedures of Regional Head Election as stipulated by laws and regulations, so that the truth of the results of the General Election of Regional Head of this regency cannot be accounted for. Accordingly, the Court needs to stipulate that vote recount shall be conducted using the method and recording based on the forms determined by KPU and open for the respective Pairs of Candidates;

**[3.35]** Considering whereas the order to conduct re-voting and vote recount to be mentioned in the decisions below, shall also consider the level of difficulty, and the time limit related to the phases of Legislative and Presidential General Election Year 2009. By taking into account such national agenda, the Court shall order the re-voting and the vote recount to be conducted in a very short time with due observance of the capability of East Java Province KPU and all of officials of organizers of the General Elections of Regional Head to implement it in a direct, public, free, confidential, and just manner, as well as far from all possibilities of violations which harm the democratization process in Indonesia;

#### **4. CONCLUSION**

Considering whereas based on all the foregoing considerations of facts and laws, the Court shall conclude that:

- [4.1]** Even though the Petitioners' arguments based on the petition's *posita* and *petitum* are not consistent and not formally proved, however materially there have been violations of the provisions on General Elections of Regional Head which have influenced the vote acquisition of the two Pairs of Candidates of Regional Head and Deputy Regional Head in the Second Round General Election of Regional Head of East Java Province;
- [4.2]** The systematic, structured and massive violations occurring in the electoral districts of Sampang Regency, Bangkalan Regency, and Pamekasan Regency which are contradictory to the constitution particularly the implementation of a democratic General Election of Regional Head is proved legally and convincingly, so that the Pair of Candidates proved to have committed the violations cannot obtain an advantage by their violations, and on the contrary the other Pair of Candidates must not be harmed;
- [4.3]** The decision of East Java Province KPU concerning the Vote Count Recapitulation of the Second Round General Election of Regional Head of East Java Province must be declared null and void and it shall not have any binding legal force to the extent that it is concerned with to the Vote Count Results in the Regencies affected by the implication of the influence

of the intended violations;

- [4.4]** In hearing this case, the Court may not be suppressed only by the narrowly interpreted provisions of law, namely that the Court may only evaluate the results of General Election of Regional Head and conduct vote recount from the minutes or recapitulation officially made by East Java Province KPU, because if the Court only follows the guideline of the formal vote count by the Respondent, the material truth will not be realized so as to make it difficult to find justice;
- [4.5]** To enforce substantive justice and to provide benefit in the enforcement of democracy and constitution that must be guarded by the Court, by considering all the evidence presented in the hearing, then the Court may order the re-voting and/or vote recount in regencies and/or in other certain regions in the voting areas in the *a quo* case;
- [4.6]** The benefit that may be obtained from such decision is that in the future the general election in general and the General Election of Regional Head in particular, may be conducted based on the principles of direct, public, free, confidential, fair and just election without being injured by serious violations, especially those which are systematic, structured, and massive in nature. Such Court's option is still within the corridor of settlement of disputes over the results of General Election of Regional Head and not the settlement of the process of violations so that the violations of the process itself may be further settled through the available legal procedures;

- [4.7] To order the Respondent (East Java Province KPU) to conduct re-voting and vote recount in Regencies mentioned in the decision;
- [4.8] To order KPU and *Bawaslu* to supervise the re-voting and vote recount in accordance with their authorities and in accordance with the spirit to conduct a direct, public, free, confidential, fair, and just General Election of Regional Head.

## 5. DECISION

In view of the Articles of the 1945 Constitution of the State of the Republic of Indonesia, Law 24 Year 2003 concerning the Constitutional Court *junctis* Law Number 4 Year 2004 concerning Judicial Power, Law Number 32 Year 2004 concerning Regional Government, Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government;

### Passing a decision,

#### In the Exception:

To declare that the Respondent's Exception cannot be accepted.

#### In the Principal Issue of the Case:

To grant the Petitioners' Petition in part.

To annul and declare not legally binding the Decision of East Java

Province KPU Number 30 Year 2008 concerning the Recapitulation of Vote Count Results of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province Year 2008 dated November 11, 2008 to the extent that it is concerned with the Vote Count Recapitulation in Bangkalan Regency, Sampang Regency, and Pamekasan Regency;

To order East Java Province KPU to conduct:

1. **Re-voting** of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province in Bangkalan Regency and Sampang Regency within no later than **60 (sixty) days** following the pronouncement of this decision;
2. **Vote Recount** of the Second Round General Election of Regional Head and Deputy Regional Head of East Java Province in Pamekasan Regency by recounting by stages the ballots that have been pierced within no later than **30 (thirty) days** following the pronouncement of this Decision;

To reject the remaining parts of the Petitioners' petition.

Hence the decision was passed in the Consultative meeting of Constitutional Court Justices in the presence of nine Constitutional Court Justices namely Moh. Mahfud MD, Maruarar Siahaan, M. Arsyad Sanusi, Muhammad Alim, Abdul Mukthie Fadjar, Achmad Sodiki, Maria Farida Indrati, M. Akil Mochtar, and Jimly Asshiddiqie, on Friday the twenty eighth of November two thousand and eight, and was pronounced in the Plenary Meeting of the

Constitutional Court open for public on this day, Tuesday, the second of December two thousand and eight by eight Constitutional Court Justices, Moh. Mahfud MD, as Chairperson and concurrent Member, Maruarar Siahaan, M. Arsyad Sanusi, Muhammad Alim, Abdul Mukthie Fadjar, Maria Farida Indrati, M. Akil Mochtar, and Achmad Sodiki, respectively as Members, assisted by Cholidin Nasir as the Substitute Registrar, in the presence of the Petitioners and/or their Attorneys, the Respondent and/or its Attorneys, as well as the Related Parties and/or their Attorneys.

**CHIEF JUSTICE**

**sgd.**

**Moh. Mahfud MD**

**MEMBERS,**

**sgd.**

**Maruarar Siahaan**

**sgd**

**M. Arsyad Sanusi**

**sgd.**

**Muhammad Alim**

**sgd.**

**Abdul Mukthie Fadjar**

**sgd.**

**Maria Farida Indrati**

**sgd.**

**M. Akil Mochtar**

**sgd.**

**Achmad Sodiki**



**PANITERA PENGGANTI,**

**sgd.**

**Cholidin Nasir**