



DECISION

Number 027/SKLN-IV/2006

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA,

Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in the case of petition for Dispute on the Authorities of State Institutions whose Authorities are Granted by the 1945 Constitution of the State of the Republic of Indonesia, filed by:

- 1. Drs. S. Pelima, as the Chairperson of the Regional People's Legislative Assembly (DPRD) of Poso**, with his address at Jalan Jenderal Sudirman Number 85 Tentena, North Pamona District, Poso Regency, Central Sulawesi Province;
- 2. H. Abdul Munim Liputo, as the Deputy of the Regional People's Legislative Assembly (DPRD) of Poso**, with his address at Jalan H. Agus Salim Number 12 Poso;
- 3. Herry M. Sarumpaet, as the Deputy Chairperson of the Regional People's Legislative Assembly (DPRD) of Poso**, with his address at Jalan Jenderal Sudirman Number 17 Poso;

In this respect based on their Special Power of Attorney dated October 12, 2006, authorizing H. Achmad Michdan, S.H., cs., and chose their legal domicile at Michdan & Partners Law Office, having its address at Jalan Pinang I Number 9 Pondok Labu, South Jakarta, Hereinafter referred to as ----- **the Petitioners;**

Against

The Governor/the Head of the Regional Government of Central Sulawesi Province, with his address at Jalan Sam Ratulangi Number 01 Palu Central Sulawesi, in this respect based on the Special Powers of Attorney dated February 12, 2007 authorizing Drs. Rais Lamangkona, M.T., cs. and choosing their legal domicile at the Legal Bureau for the Governor's Office of Central Sulawesi Province, having its address at Jalan Sam Ratulangi Number 101 Palu, hereinafter referred to as ----- **the Respondent;**

The President of the Republic of Indonesia *cq.* the Minister of Home Affairs of the Republic of Indonesia, with his address at Jalan Veteran Number 16 Central Jakarta, hereinafter referred to as ----- **the Related Party;**

Having read the petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard the statement of the Respondent;

Having heard the statement of the Related Party namely the General Elections Commission of Poso Regency, Central Sulawesi Province;

Having heard the statement of the Related Party namely the Regent and Deputy Regent of Poso, Central Sulawesi;

Having heard the statement of the Related Party namely the Head of Poso Customary Council (*Lembaga Adat*);

Having read the written reply of the Respondent;

Having heard the written statement of the Related Party namely the General Elections Commission of Poso Regency, Central Sulawesi Province;

Having read the written statement of the Related Party namely the Head of Poso Customary Institution;

Having examined the evidence of the Petitioners;

Having read the written concluding opinion of the Petitioners;

Having read the written concluding opinion of the Respondent;

LEGAL CONSIDERATIONS

Considering whereas the purpose and objective of the *a quo* Petitioners' petition are as described above;

Considering whereas the Petitioners argued that the *a quo* petition is a petition of dispute on the authorities of state institutions whose authorities are granted by the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);

Considering whereas, despite the fact that based on Article 24C Paragraph (1) of the 1945 Constitution *juncto* Article 10 Paragraph (1) Sub-Paragraph b of Law Number 24 Year 2003 regarding the Constitutional Court (hereinafter referred to as the Constitutional Court Law), the Court has the authority to hear and decide upon disputes on the authorities of state institutions whose authorities are granted by the 1945 Constitution, the question remains whether the *a quo* petition is truly a dispute on the authorities of state institutions whose authorities are granted by the 1945 Constitution, as intended in Article 24C Paragraph (1) of the 1945 Constitution *juncto* Article 10 Paragraph (1) Sub-Paragraph b of the Constitutional Court Law;

Considering whereas the parties filing the petition, namely Drs. S. Pelima, H. Abdul Munim Liputo, and Herry M. Sarumpaet respectively are the Chairperson and the Deputies of Chairperson of the Regional People's Legislative Assembly of Poso Regency. Upon carefully examining the provisions of the applicable laws and regulations, hearing the statement of the Petitioners in the hearing dated January 9 and 25, 2007, as well as examining the evidence presented (Exhibit P-1 through Exhibit P-26), the Court is of the opinion that the related parties have the authority to act for and on behalf of the Regional People's Legislative Assembly of Poso Regency as Petitioners in the *a quo* petition;

Considering whereas in the exercise of the Court's authority in deciding upon disputes on the authorities of state institutions whose authorities are

granted by the 1945 Constitution, Article 61 of the Constitutional Court Law reads,

(1) "Petitioners shall be state institutions whose authorities are granted by the 1945 Constitution of the State of the Republic of Indonesia which have a direct interest in the authorities being disputed".

(2) "Petitioners must clearly describe in their petition regarding their direct interest and elaborate on the authorities being disputed and clearly state the institutions acting as respondents".

Whereas hence, the authority of the Court and the legal standing of the Petitioners cannot be separated, and in relation to the *a quo* petition, the matter can only be determined upon considering the principal case or the principal issue of the petition;

Considering whereas the Petitioners claim themselves to be constitutional institutions whose existence is explicitly regulated in Article 18 Paragraph (3) of the 1945 Constitution which reads, "The provincial, regency, and municipal governments shall have their respective *Dewan Perwakilan Rakyat Daerah* the members of which shall be elected through general elections", and also the Respondent whose existence is explicitly regulated in Article 18 Paragraph (4) of the 1945 Constitution which reads, "Governors, Regents and Mayors as the respective heads of provincial, regency, and municipal governments shall be elected democratically";

Considering whereas the Petitioners also argued that, in addition to the fact that their existence is regulated the 1945 Constitution, the tasks and authorities of the Petitioners are also regulated in the 1945 Constitution, namely Article 18 Paragraphs (5) and (6) which read:

- Paragraph (5), “The regional governments shall exercise autonomy to the broadest possible extent, with the exception of governmental affairs determined by the law as the affairs of the Central Government.”
- Paragraph (6), “The regional governments shall have the right to stipulate regional regulations and other regulations to implement autonomy and duty of assistance.”

Whereas according to the Petitioners, the manifestation of the aforementioned Article 18 Paragraphs (5) and (6) of the 1945 Constitution has been subsequently followed up by various subordinate regulations, among others Law Number 32 Year 2004 regarding the Regional Government (hereinafter referred to as the Regional Government Law) and Law Number 22 Year 2003 regarding the Structures and Positions of the People’s Consultative Assembly (MPR), the People’s Legislative Assembly (DPR), the Regional Representative Council (DPD), and the Regional People’s Legislative Assembly (DPRD) (hereinafter referred to as the Structure and Position Law):

- Article 42 Paragraph (1) Sub-Paragraph d of the Regional Government Law states that the Regional People’s Legislative Assembly (DPRD) shall have

the task and authority to propose for the appointment and the dismissal of the heads of region/the deputy heads of region to the President through the Minister of Home Affairs for the Regional People's Legislative Assembly in provinces and to the Minister of Home Affairs through the Governor for the Regional People's Legislative Assembly in regencies/municipals;

- Article 109 Paragraph (4) of the Regional Government Law states that the pairs of candidates for regents and deputy regents or mayors and deputy mayors shall be proposed by the Regional People's Legislative Assembly in regencies/municipals, within 3 (three) days at the latest, to the Minister of Home Affairs through the Governor based on the official report of the decision on the elected candidate pair from the General Elections Commission of the regency/municipal in order to receive the authorization of their appointment;
- Article 78 Paragraph (1) of the Structure and Position Law states that the Regional People's Legislative Assembly in regencies/municipals shall have the task and authority to propose the appointment and the termination of regents/deputy regents or mayors/deputy mayors to the Minister of Home Affairs through the Governor.

Whereas according to the Petitioners, the phrase, "through the Governor" in the Articles of the aforementioned two laws cannot be interpreted in a sense that the Governor has the authority to propose to the Minister of Home Affairs. The phrase "through the Governor", according to the Petitioners,

is only an administrative process which cannot be interpreted as an authority but instead as the requirement of the legal process execution as an inseparable part of the stages in executing the democratic and quality Elections for the Heads of Region (*Pilkada*) in accordance with the provision of Article 22E Paragraph (1) of the 1945 Constitution.

Considering whereas the Petitioners further argued matters of the following essence:

- In the Election for the Head of Region of Poso Regency (*Pilkada* of the Poso Regency) Year 2005, the Candidate Pair for Regent and Deputy Regent namely Drs. Piet Inkiriwang, M.M. and Abdul Muthalib Rimi, S.H.,M.H. were elected as the Regent and the Deputy Regent of Poso;
- In the aforementioned *Pilkada*, according to the Petitioners, the Governor of Central Sulawesi (the Respondent in the *a quo* petition) has committed a deviation or an action beyond his authority because he proposed, authorized as well as appointed Drs. Piet Inkiriwang, M.M. and Abdul Muthalib Rimi, S.H.,M.H. as the Regent and Deputy Regent of Poso and also inaugurated the Regent and Deputy Regent not in the plenary session of the Regional People's Legislative Assembly of Poso Regency. Whereas in fact, in accordance with the provision of Article 42 Paragraph (1) Sub-Paragraph d and Article 109 Paragraph (4) of the Regional Government Law *juncto* Article 78 Paragraph (1) Sub-Paragraph d of the Structure and Position Law,

the authority to propose, appoint, and dismiss Regents/Deputy Regents is the duty and authority of the Petitioners;

- According to the Petitioners, the Respondent has also ignored the aspiration of the people and disrespected the law, namely the public protests arising from the Poso society to the Head of the Regional General Elections Commission (*KPUD*) of the Poso Regency requesting that the appointment of the Regent and the Deputy Regent be postponed upon the issuance of a court decision which has binding legal force and a demand for the Regional People's Legislative Assembly of Poso Regency to postpone the proposal, authorization, and appointment of the elected candidate pair for Regent/Deputy Regent to the Minister of Home Affairs through the Governor based on the resolution of the coordination meeting between the Head and Members of the Regional People's Legislative Assembly of the Poso Regency;
- According to the Petitioners, the authority to propose candidates for Regents/Deputy Regents, *in casu* candidates for the Regent/Deputy Regent of Poso, is the constitutional authority of the Regional People's Legislative Assembly of Poso Regency which attributively through the law is a mandate given by the 1945 Constitution. The implementation of *Pilkada*, according to the Petitioners, constitutes an inseparable part of the nature of General Elections in accordance with the principles of General Elections provided for in Article 22E Paragraph (1) of the 1945 Constitution;

- In brief, according to the Petitioners, the action of the Respondent who proposed, authorized, and appointed Drs. Piet Inkiriwang, M.M. and Abdul Muthalib Rimi, S.H.,M.H. respectively as the Regent and the Deputy Regent of Poso was an action beyond the authority of the Respondent, because such an authority, according to the Petitioners, is supposedly the authority of the Petitioners. Whereas therefore, the Petitioners are of the opinion that a dispute on authorities has arisen between the Petitioners and the Respondent, and hence the *a quo* petition has fulfilled the provision of Article 61 Paragraph (1) of the Constitutional Court Law;

Considering whereas in examining the *a quo* petition, in the hearing on February 14, 2007 the Court, having heard the reply of the Respondent, namely the Governor of Central Sulawesi, who in this respect is represented by his proxy; having heard the statement and having read the written statement of the Related Party namely the General Elections Commission of Poso Regency (hereinafter referred as the General Elections Commission [*KPU*] of the Poso Regency); having heard the statement of the Related Party namely the Pair of Regent and Deputy Regent of Poso, who in this respect is represented by the Deputy Regent of Poso, Abdul Muthalib Rimi, S.H.,M.H; having heard the statement of the Head of Poso Customary Council, the Chairperson of Poso's Islamic Defenders Front, the Chairperson of the Coastal Poso/Islamic Youth Forum, the Chairperson of the Poso Land Christian Community Forum, Poso's Women Figures, the Vice-President of Poso Church Youth, the Vice-President

of Indonesia's Supreme Council of Balinese Hinduism of Poso Regency, who in essence elucidate the following matters:

(1) The Respondent, the Governor of Central Sulawesi, represented by his proxy, Drs. Rais Lamangkona, M.T, Assistant to the Government and Development of the Regional Secretariat of Central Sulawesi Region and partners, elucidates:

- The Respondent in essence rejects the argument of the Petitioners which claim to be state institutions whose authorities are granted by the 1945 Constitution because the Petitioners' authorities are not authorities directly granted by the 1945 Constitution but are instead by the Regional Government Law and Government Regulation Number 6 Year 2005 regarding the Election, Appointment, and Dismissal of Heads of Regions and Deputy Heads of Regions;
- It is not true that the Respondent has acted beyond his authority. In accordance with the Elucidation of the Regional Government Law, the Governor as the Head of Provincial Region also serves the function as the Deputy of the Central Government in the Region in the sense that he serves the function to abridge and shorten the range of control over the duties and the functions of the Government, including in the guiding and monitoring process of the implementation of governmental affairs at the regency and municipal levels;

In particular, the phrase “through the Governor” in Article 42 Paragraph (1) Sub-Paragraph d *juncto* Article 109 Paragraphs (2) and (4) of the Regional Government Law *juncto* Article 78 Paragraph (1) Sub-Paragraph d of the Structure and Position Law must be interpreted in the sense that the Governor/the Respondent has the authority to propose to the Minister of Home Affairs. This is due to the fact that the Governor is responsible for implementing the elections of heads of regions in regencies/municipals. This matter is in line with the intention in the Regulation of the Minister of Home Affairs Number 9 Year 2005 regarding the Guidelines for Regional Government in Implementing the Elections of Heads of Regions and Deputy Heads of Regions, as expressly mentioned in Article 2 Paragraph (2) of the intended ministerial regulation that Governor is responsible for implementing the *Pilkada* at Regency/Municipal and for reporting to the Minister of Home Affairs;

Whereas, in the case of the *Pilkada* of Poso Regency, the Regional People’s Legislative Assembly of Poso Regency has refused to accept the stipulation on the elected candidates for the Regent/the Deputy Regent of Poso resulted from the direct *Pilkada* Year 2005 which was proposed by the General Elections Commission of Poso Regency. Whereas therefore, the Governor of Central Sulawesi/the Respondent through his Letter Number

131.52/246/Ropem.G.ST dated August 2, 2005 made the proposal for the authorization of the appointment of the Head of Region/the Deputy Head of Region for Poso Regency for 2005-2010 Term of Service to the Minister of Home Affairs, by attaching the document submitted by the General Elections Commission of Poso Regency through its letter Number 270/230/KPU.Pso/VII/2005 dated July 26, 2005. The matter is in line with the Circular Letter of the Minister of Home Affairs Number 120/1559/SJ dated June 27, 2005 addressed to the Governors/Regents/Mayors, the Chairpersons of The Regional People's Legislative Assemblies in Provinces/ Regencies/Municipals, the Chairpersons of the General Elections Commissions of Provinces/Regencies/Municipals in the entire territory of Indonesia, regarding the Submission of the Election Results of the Heads of Region and the Deputy Heads of Region, which expressly states that if the Head and Deputy Head of the Regional People's Legislative Assembly are not able to perform their duties, the Governor shall propose for the authorization of the appointment of the Regent/the Deputy Regent or the Mayor/the Deputy Mayor to the Minister of Home Affairs based on the election documents submitted by the General Elections Commission of the Regency/Municipal.

- The Petitioners are not able to perform their duties in accordance with the law.

On July 16, 2005, the General Elections Commission of Poso Regency sent a decision letter regarding the elected candidate pair to the Regional People's Legislative Assembly of Poso Regency Number 270/224 /KPU.Pso/VII/2005 regarding the Decision on the Elected Candidate Pair as the Result of *Pilkada* at the Poso Regency. However, the Regional People's Legislative Assembly of Poso Regency on July 19, 2005 denied receiving such document on the stipulation of the results of *Pilkada* of the Poso Regency through a letter received by the General Elections Commission of Poso Regency on July 25, 2005 due to the following reasons:

- (a) There have been aspirations delivered by the society as a mass coalition of 4 (four) candidates for Regent and Deputy Regent (public objection) to reject the results of the Direct *Pilkada* conducted on June 30, 2005;
- (b) The public objection must be settled first by Poso's Court of First Instance Class IB by means of a decision which has binding legal force;

According to the Respondent, the aforementioned decision taken by the Regional People's Legislative Assembly of Poso Regency/the Respondent is contrary to Article 109 Paragraph (4)

of the Regional Government Law which states that the candidate pairs for Regents and Deputy Regents or Mayors and Deputy Mayors shall be proposed by the Regional People's Legislative Assembly in Regencies/Municipals within 3 (three) days at the latest to the Minister of Home Affairs through the Governor based on the minutes of the stipulation on the elected candidate pairs from the Regional People's Legislative Assembly in Regencies/Municipals in order to obtain the authorization of appointment. The provision is affirmed in the Circular Letter of the Minister of Home Affairs Number 120/1559/SJ dated June 27, 2005 regarding the Submission of the Election Results of the Heads of Region and the Deputy Heads of Region, which in its Item Number 2 states, "the Regional People's Legislative Assembly within 3 (three) days at the latest upon the reception of the election documents must have presented the proposal for the authorization of the appointment of the Regent/the Deputy Regent or the Mayor/the Deputy Mayor to the Minister of Home Affairs through the Governor by attaching all documents of the election results from the General Elections Commission of the Regency/Municipal";

Whereas the Head of Poso's Court of First Instance Class IB in his letter number W26.Dd.Um.02.02-503 dated July 16, 2005 addressed to the Chairperson of General Elections Commission of

Poso Regency expressly states, “Until presently, there has not been any candidate pair filing any objection to Poso’s Court of First Instance Class IB in relation to the election results of the Head of Region and the Deputy Head of Region of Poso Regency Year 2005”.

Whereas based on the abovementioned descriptions, the Respondent considers that the rejection by the Regional People’s Legislative Assembly is absurd;

Based on the abovementioned chronology, the Respondent considers that the Regional People’s Legislative Assembly has not performed its duties as provided for by the law, and hence the Respondent – in accordance with the statement in Item Number 4 of the Circular Letter of the Minister of Home Affairs Number 120/1559/SJ dated June 27, 2005 – made the proposal for the authorization of the appointment of the Regent/the Deputy Regent of Poso to the Minister of Home Affairs. Item Number 4 of the intended Circular Letter of the Minister of Home Affairs reads, “In the event that the Head and Deputy Head of the Regional People’s Legislative Assembly are not able to perform their duties, the Governor shall propose for the authorization of the appointment of the Regent/the Deputy Regent or the Mayor/the Deputy Mayor to the Minister of Home Affairs based on the

election documents submitted by the General Elections Commission of the Regency/Municipal”.

- According to the Respondent, the Petitioners are not consistent with their petition. This is because on the one hand, they reject the proposal for the authorization of the appointment of the Regent/the Deputy Regent of Poso, while on the other hand they have acknowledged the legality of the legal action taken by the Regent/the Deputy Regent of Poso by collectively deciding a number of regional regulations (ten regional regulations) Year 2006 as the implementation of Article 136 Paragraph (1) of the Regional Government Law.

(2) The Related Party namely the General Elections Commission of Poso Regency elucidates:

- The election of the Regent/the Deputy Regent of Poso conducted on June 30, 2005 was followed by 5 (five) pairs of candidates for the position of regent/deputy regent, where based on the recapitulation of vote counting results at the level of the General Elections Commission of Poso Regency dated July 9, 2005, the candidate pair for regent/deputy regent namely Drs. Piet Inkiriwang, M.M. and A. Muthalib Rimi, S.H.,M.H. received the most votes in the number of 42.718 votes (42,39%), hence by the General Elections Commissions of Poso Regency in its plenary meeting on July 12, 2005 they were

stipulated as the Head of Region and the Deputy Head of Region based on the Decision Letter of the General Elections Commission of Poso Regency Number 16 Year 2005;

- Up to the elapse of the 3 (three)-day deadline as provided for by the law, which was July 13 to July 15, 2005, no party raised any objection. For further confirmation, the General Elections Commission of Poso Regency submitted a written inquiry to the Head of Poso's Court of First Instance Class IB and by the Head of Poso's Court of First Instance Class IB through his letter Number W26.Dd.Um.02.02-503 dated July 16, 2005 stated that until then, (July 16, 2005) no candidate pair for regent/deputy regent had filed any objection, and hence the General Elections Commission of Poso Regency concluded that the intended Election Results of the Head of Region/the Deputy Head of Region of Poso Regency could be submitted to the Regional People's Legislative Assembly of Poso Regency for further process;

- On July 18, 2005, the General Elections Commission of Poso Regency brought the intended document of the *Pilkada* results to be submitted to the Head of the Regional People's Legislative Assembly of Poso Regency. However, in the aforementioned meeting, the Head of the Regional People's Legislative Assembly of Poso Regency concluded that the submission of the document would be conducted

in the coordination meeting with the Members of the Regional People's Legislative Assembly of Poso Regency on July 19, 2005;

- On July 19, 2005, in the coordination meeting at the Regional People's Legislative Assembly of Poso Regency, after the Head of the Regional People's Legislative Assembly assigned one of the Deputy Heads of the Regional People's Legislative Assembly of Poso Regency to preside over the meeting, the General Elections Commission of Poso Regency was given the opportunity to elucidate and submit the Document of the *Pilkada* Results of Poso Regency Year 2005. At the time, the Members of the Regional People's Legislative Assembly of Poso Regency interrupted the meeting leading to dissension as to accept or to reject the intended document submission. Ultimately, a voting was conducted with the result that 15 Members of the Regional People's Legislative Assembly rejected and 7 Members of the Regional People's Legislative Assembly accepted the *Pilkada* results of Poso Regency, and hence the Regional People's Legislative Assembly of Poso Regency had the following conclusion:

1. To reject the Submission of the *Pilkada* Results of Poso Regency Year 2005 as evident in the Letter of the Regional People's Legislative Assembly of Poso Regency Number 170/445/DPRD dated July 19, 2005, regarding: The

Explanation by the Regional People's Legislative Assembly of Poso Regency;

2. The Head of the Regional People's Legislative Assembly of Poso Regency would visit Palu on the same day after the meeting to consult with the Governor of Central Sulawesi.

Due to the abovementioned incident, hence the Document of *Pilkada* Results of Poso Regency Year 2005 could not be submitted despite the provision of the law which states that the intended document had to be submitted to the Regional People's Legislative Assembly within 3 (three) days after the stipulation on the *Pilkada* results;

- o On July 20, 2005 the General Elections Commission of Poso Regency departed to Palu to consult with the Governor of Central Sulawesi in order to find a solution for the abovementioned problem. In the meeting with the Governor, represented by the Secretary of the Central Sulawesi Province, on July 21, 2005, a conclusion was reached that the submission process of the *Pilkada* results of Poso Regency to the Regional People's Legislative Assembly had been in line with Government Regulation Number 6 Year 2005 regarding the Election, Authorization, Appointment and Dismissal of Heads of Region and Deputy Heads of Region; the implementation of the stages of *Pilkada* in Poso Regency must remain on schedule; the

General Elections Commission of Poso Regency was advised to coordinate with the Ministry of Home Affairs;

- The coordination with the Ministry of Home Affairs on July 22, 2005 resulted in a conclusion that in order for the stages of *Pilkada* to continue, the submission process of the results by the General Elections Commission of the Regency must refer to the Letter of the Minister of Home Affairs Number 120/1559/SJ dated June 27, 2005 regarding the Submission of the Election Results of Heads of Region and Deputy Heads of Region.

Whereas subsequently, the General Elections Commission has followed the provision of the abovementioned Letter of the Minister of Home Affairs Number 120/1559/SJ;

- In accordance with the directions of the Governor of Central Sulawesi and the Minister of Home Affairs and by referring to the aforementioned Letter of the Minister of Home Affairs Number 120/1559/SJ, on July 28, 2005, the General Elections Commission of Poso Regency officially submitted the documents of the Stipulation of the *Pilkada* Results of Poso Regency to the Governor of Central Sulawesi with the Letter Number 270/230/KPU.PS/VII/ 2005 dated July 26, 2005 regarding the Presentation of the Authorization Process of the Appointment of the Elected Candidate Pair of the *Pilkada* Results of Poso Regency Year 2005. Whereas subsequently, the

Governor *c.q.* the Bureau of Government assigned the General Elections Commission to complete the documents of Candidate Pairs as the material for the Proposal for the Authorization, Appointment of the Head of Region and the Deputy Head of Region for Poso Regency to the Minister of Home Affairs in 10 (ten) copies;

- Pursuant to the Decree of the Minister of Home Affairs Number 131.52-733 Year 2005 regarding the Dismissal of the Acting Regent and the Authorization of the Appointment of the Regent of Poso, Central Sulawesi Province and the Decree of the Minister of Home Affairs Number 132.52-734 Year 2005 regarding the Authorization of the Appointment of the Deputy Regent of Poso, Central Sulawesi Province, hence on August 30, 2005 the Inauguration of the Head of Region and the Deputy Head of Region for Poso Regency for 2005-2010 Term of Service was conducted, by the Governor of Central Sulawesi at Torulemba Assembly Hall in Poso.

(3) The Related Party namely the Pair of Regent and Deputy Regent of Poso, represented by the Deputy Regent of Poso, has given a statement which in essence confirms both the reply of the Respondent and the statement of the Related Party namely the General Elections Commission of Poso Regency;

(4) The Head of Poso Customary Council, the Chairperson of Poso's Islamic Defenders Front, the Chairperson of the Coastal Poso/Islamic Youth Forum, the Chairperson of the Poso Land Christian Community Forum, Poso's

Women Figures, the Vice-President of Poso Church Youth, the Vice-President of Indonesia's Supreme Council of Balinese Hinduism of Poso Regency, in essence elucidate their request for the Petitioners to withdraw their petition in order to preserve serenity and peace in Poso which are starting to progress well. However, for the reason of legal certainty, several parties mentioned in this item (item number 4), through their letter dated February ____, 2007, request the Court to pass the decision;

Considering whereas, after carefully examining the Petitioners' petition as well as the attached evidence and the statement of the Petitioners in the hearing, the reply and statement of the Respondent, and the statement of the parties as described above, then to address the issue mentioned in the initial part of the considerations of this decision, namely whether the *a quo* petition is truly a dispute on authorities of state institutions whose authorities are granted by the 1945 Constitution as intended in Article 24C Paragraph (1) of the 1945 Constitution *juncto* Article 10 Paragraph (1) Sub-Paragraph b of the Constitutional Court Law, the Court is of the following opinion:

- Whereas regarding the authority of the Court, Article 24C Paragraph (1) of the 1945 Constitution states the following in complete, "The Constitutional Court has the authority to hear cases at the first and final level the decisions of which shall be final in conducting judicial review of laws against the 1945 Constitution, to decide upon disputes on authorities of state institutions whose authorities are granted by the 1945 Constitution, to decide upon

dissolutions of a political party, and to decide disputes concerning the results of general elections”.

Furthermore, Article 10 Paragraph (1) Sub-Paragraph b of the Constitutional Court Law states, “The Constitutional Court has the authority in hearing at the first and final level the decision of which shall be final to:

- a.;
- b. Decide upon disputes on the authorities of state institutions whose authorities are granted by the 1945 Constitution of the State of the Republic of Indonesia;
- c.;
- d. “.

Further, Article 61 Paragraph (1) of the Constitutional Court Law states,

“The Petitioners shall be state institutions whose authorities are granted by the 1945 Constitution of the State of the Republic of Indonesia which have a direct interest in the authorities being disputed.”

In respect of the foregoing three provisions, hence in examining the petition filed to the Court which is argued as a petition regarding a dispute on the authorities of state institutions whose authorities are granted by the 1945 Constitution, the Court must cumulatively affirm the following matters:

- (a) Whether the petition is truly related to authorities;
- (b) Whether the aforementioned authorities are granted by the 1945 Constitution;
- (c) Whether the aforementioned dispute on authorities granted by the 1945 Constitution truly arises;
- (d) Whether the parties to the dispute on the authorities granted by the 1945 Constitution are state institutions.

Non-fulfillment of any one of the abovementioned four cumulative requirements shall mean that the Court does not have the authority to hear and decide upon the petition;

- Whereas in exercising its authority to hear and decide upon disputes on the authorities of state institutions whose authorities are granted by the 1945 Constitution, the Court has declared its stand, several of which can be read in the Court Decision Number 004/SKLN-IV/2006. The legal considerations of the aforementioned Court Decision Number 004/SKLN-IV/2006 state, among other things as follows: *“In examining, hearing, and deciding upon a petition on authority dispute of state institutions, the Court must consider the close relationship between authorities and the implementing institutions. Hence, in stipulating whether the Court has the authority to examine the petition of authority dispute of state institutions, the Court must relate directly the disputed principal case (objectum litis) to the position of state institutions*

filing the petition, namely whether the authorities are given to such state institutions. Therefore, the matter of authority concerned is closely related to the legal standing of the Petitioners and determines whether or not the Court has the authority to examine, hear, and decide upon the a quo petition.....

The placement of “authority dispute“ before “state institutions“ has a very important meaning, because basically what is intended by Article 24C Paragraph (1) of the 1945 Constitution is indeed “authority dispute” or concerning “what is disputed” and not “who disputes”. The definition will be different if the formulation of Article 24C Paragraph (1) of the 1945 Constitution reads, “...dispute of state institutions whose authorities are granted by the Constitution”. In the latter formulation, the main problem is the disputing parties, namely state institutions and the object of dispute becomes unimportant. Hence, in such formulation, the Constitutional Court will consequently become a forum for dispute settlement of state institutions without considering the subject matter disputed by the state institutions, and such matter according to the Court is not the purpose of Article 24C Paragraph (1) of the 1945 Constitution. Because, if the formulation is “... dispute state institutions whose authorities are granted by the Constitution”, the Constitutional Court will have the authority to decide upon any disputes that are not relevant at all to the matter of constitutionality of authorities of state institutions, insofar as the disputing parties are state institutions.....

Considering whereas the phrase “state institutions” is found in Article 24C Paragraph (1) of the 1945 Constitution, and hence the Court must stipulate

which institutions are intended by Article 24C Paragraph (1). In deciding what are referred to as state institutions by Article 24C Paragraph (1) of the 1945 Constitution, the Court refers to the aforementioned description that the authority of the Court is to decide upon disputes on authority granted by 1945 Constitution, so that to decide whether an institution is a state institution as intended by Article 24C Paragraph (1) of the 1945 Constitution, the first thing to consider is the existence of certain authorities in the Constitution and then to which institutions those authorities are given. Since authority is limited in nature and is for a certain purpose, the nature of state institution cannot be decided in general, but is related to the authorities given or in other words an institution referred to by any name shall have the status as a state institution according to the definition of Article 24C Paragraph (1) of the 1945 Constitution if such institution questions, or is questioned about, its authorities granted by the 1945 Constitution Considering whereas the formulation of “authority disputes of state institutions whose authorities are granted by the Constitution,” has a purpose that only the authorities granted by the Constitution shall become the objectum litis of the dispute and the Court has the authority to decide upon such dispute. The provision that becomes the basis for such authority of the Court also limits the authority of the Court, which means that if there is an authority dispute without the objectum litis “being the authorities granted by the Constitution”, the Court shall not have the authority to examine, hear, and decide. The Court is of the opinion that it is what is intended by the 1945 Constitution. Authority dispute, with the

authority being granted by Law, is not under the authority of the Court.”

- Whereas the principal case of the *a quo* petition is regarding the authority to propose for the appointment of the Heads of Region and the Deputy Heads of Region for Regencies/Municipals, *in casu* the Regent and the Deputy Regent of Poso. Hence, based on the considerations of the aforementioned standing of the Court, the question remains whether such authorities are granted by the 1945 Constitution and therefore, in the case of disputes, the Court has the authority to hear and decide upon them. In other words, the issue is whether the *objectum litis* in the *a quo* petition takes the form of a “dispute on the authority to propose the appointment of the Heads of Region and the Deputy Heads of Region for Regencies/Municipals” is the authority granted by the 1945 Constitution;

Article 18 of the 1945 Constitution – which has been made as the basis by the Petitioners to argue for the occurrence of “dispute on the authorities of state institutions whose authorities are granted by the 1945 Constitution” – states the following in complete:

- (1) “The Unitary State of the Republic of Indonesia shall be divided into provincial regions and these provincial regions shall be divided into regencies (*kabupaten*) and municipalities (*kota*), whereby each province, regency and municipality shall have a regional government regulated by law;

- (2) The provincial, regency, and municipal governments shall regulate and administer their own governmental affairs in accordance with the principle of autonomy and duty of assistance;
- (3) The provincial, regency, and municipal governments shall have their respective *Dewan Perwakilan Rakyat Daerah* the members of which shall be elected through general elections;
- (4) Governors, Regents and Mayors as the respective heads of provincial, regency, and municipal governments shall be elected democratically;
- (5) The regional governments shall exercise autonomy to the broadest possible extent, with the exception of governmental affairs determined by law as affairs of the Central Government;
- (6) The regional governments shall have the right to stipulate regional regulations and other regulations to implement autonomy and duty of assistance;
- (7) The structure of and procedures for the administration of regional government shall be regulated in law.”

By carefully examining the provision of the abovementioned Article 18 of the 1945 Constitution, it is evident that the principle issue being the *in casu* of the *a quo* petition, namely the authority to propose for the appointment of the head of region for regencies, is the principal issue the regulation of which is delegated

to the law by the 1945 Constitution. The 1945 Constitution only provides guidance and affirmation to legislators that in drafting laws which regulate the regional government, the legislators must focus their attention to the following matters:

- i. Whereas the provincial, regency, and municipal governments shall regulate and administer their own governmental affairs in accordance with the principle of autonomy and duty of assistance [Article 18 Paragraph (2)];
- ii. Whereas the regional governments shall exercise autonomy to the broadest possible extent, with the exception of governmental affairs determined by law as affairs of the Central Government [Article 18 Paragraph (5)]
- iii. Whereas Governors, Regents and Mayors as the respective heads of provincial, regency, and municipal governments shall be elected democratically [Article 18 Paragraph (4)];
- iv. Whereas in order to exercise autonomy and conduct duty of assistance, the regional government has the right to make regional regulations and other regulations;
- v. Whereas meanwhile, the phrase “in law” in Article 18 Paragraph (7) of the 1945 Constitution shall refer to the law regulating the regional government as intended by the provision in Paragraph (1) of Article 18 of the 1945 Constitution;

Whereas hence, it is evident that the *objectum litis* of the *a quo* petition – namely the issue of the authority to propose for the appointment of the heads of region, both in provincial areas and regencies/municipals – constitute a part of the substance of the law regulating the regional government, *in casu* the Regional Government Law. Therefore, in accordance with the provision of Article 24C Paragraph (1) of the 1945 Constitution *juncto* Article 10 Paragraph (1) Sub-Paragraph b of the Constitutional Court Law, even if there was indeed a dispute between the Petitioners and the Respondent, hence such dispute is not under the authority of the Court to examine, hear, and decide upon;

Considering whereas based on all the above, it is evident to the Court that the object of dispute (*in casu*) in the *a quo* petition is not an authority granted by the 1945 Constitution, and hence in line with the provision of Article 24C Paragraph (1) of the 1945 Constitution *juncto* Article 10 Paragraph (1) Sub-Paragraph b of the Constitutional Court Law, the Court does not have the authority to hear and decide upon it. Whereas therefore, it must be declared that the *a quo* petition can not be accepted (*niet ontvankelijk verklaard*).

In view of Article 64 Paragraph (1) of the Law of the Republic of Indonesia Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316);

PASSING THE DECISION

To declare that the petition of the Petitioners can not be accepted
(*niet ontvankelijk verklaard*).

Hence the Decision was passed in the Consultative Meeting attended by 9 (nine) Constitutional Court Justices on Friday, March 9, 2007 and pronounced in the Plenary Meeting of the Constitutional Court open for public on this day, Monday, March 12, 2007 by us Jimly Asshiddiqie as the Chairperson and concurrent Member, Abdul Mukthie Fadjar, I Dewa Gede Palguna, H. Achmad Roestandi, H.M. Laica Marzuki, H.A.S. Natabaya, Harjono, Maruarar Siahaan, and Soedarsono, respectively as Members, and assisted by Wiryanto, as the Substitute Registrar, as well as in the presence of the Petitioners/their Attorney-in-Fact, the Respondent/his Proxy, and the Related Parties;

CHIEF JUSTICE,

Sgd.

Jimly Asshiddiqie

JUSTICES,

Sgd.

**Abdul Mukthie Fadjar
Sgd.**

**H.Achmad Roestandi
Sgd.**

**Harjono
Sgd.**

Maruarar Siahaan

Sgd.

**I Dewa Gede Palguna
Sgd.**

**H.M. Laica Marzuki
Sgd.**

**H.A.S. Natabaya
Sgd.**

Soedarsono

DISSENTING OPINION

With respect to the abovementioned decision of the Court which states that the petition of the Petitioners can not be accepted (*niet ontvankelijk verklaard*), **the Constitutional Justice Maruarar Siahaan**, has a dissenting opinion, as follows:

By referring to our dissenting stands in case number 04/SKLN-IV/2006, hence we are consistent with our opinion that the Court has the authority to examine, hear, and decide upon the dispute filed by the Petitioners *in casu* the Regional People's Legislative Assembly of Poso Regency against the Governor of the Central Sulawesi Province, who is argued to have committed deviations or actions which are beyond his authority, by **simultaneously proposing and inaugurating** Drs. Piet Inkirwang, M.M. and Abdul Muthalib Rimi, S.H.,M.H. respectively as the Regent and the Deputy Regent of Poso, not in the plenary session of the Regional People's Legislative Assembly of Poso Regency, whereas in fact in accordance with Article 42 Paragraph (1) Sub-Paragraph d and Article 109 Paragraph (4) of the Regional Government Law *juncto* Article 78 Paragraph (1) Sub-Paragraph d of the Structure and Position Law, which the Petitioners consider to be their authority;

I

The disputes on the authorities of state institutions whose authorities are granted by the 1945 Constitution, which are included in the jurisdiction or the

authority of the Court, shall be determined using the criteria expressly provided for in the 1945 Constitution and the Constitutional Court Law, in addressing the following issues:

1. Whether the Petitioners and the Respondent are state institutions;
2. Whether the authorities being the object of dispute are granted by the 1945 Constitution;
3. Whether the authorities have usurped, disrupted or impaired by another state institution.

Answers to the foregoing questions are described as follows:

1. Article 18 Paragraph (1) through Paragraph (6) regulates the Regional Government to exercise autonomy to the broadest possible extent except for affairs determined as the affairs of the Central Government and in order to exercise the aforementioned autonomy to the broadest possible extent; the Regional Government shall have the right to stipulate Regional Regulations and other Regulations. The authority to exercise autonomy to the broadest possible extent is granted by Article 18 Paragraph (6) to the Regional Government consisting of Governors, Regents or Mayors as the Heads of Regional Government, and the Regional People's Legislative Assembly. The position of the Governors, Regents and Mayors as the Heads of Regional Government and the Regional People's Legislative Assembly, who received their authority from the 1945 Constitution as institutions which administrate the Regional Government, respectively are state institutions, having

distinguishable and severable authorities from each other. One shall not be subordinate to another.

2. Governors, Regents, and Mayors as the Heads of Regional Government, have the mandate to exercise the aforementioned constitutional authority which in accordance with Article 18 Paragraph (4) shall be conducted through a democratic election, conducted by the Regional People's Legislative Assembly prior to the enactment of Law Number 32 Year 2004, and further conducted through direct elections by the people upon the enactment of the aforementioned Regional Government Law. The authority to appoint an individual to become the Head of Region, is a source of another authority embedded in or attached to the aforementioned authority to appoint an individual to become the Head of Region, namely the authority to complete the process of the election of an individual in a state administrative manner to fill his post, to obtain a relevant decision letter for the aforementioned purpose. Whereas due to the people at large being unable to conduct the aforementioned action, namely to propose an individual who has been democratically elected to obtain the Decision Letter required prior to the commencement of his duties, hence the matter is embedded in or implied in the constitutional authority of the Regional People's Legislative Assembly, as the representative of the people to exercise the authority and democratic rights to elect the candidate Regent and with the Regional Government to administer Governance;

3. The definition of the authority of a state institution which is granted by the 1945 Constitution, shall not be interpreted in such a way that the aforementioned authority has to be written in an *expressis verbis* manner, because the development and dynamics of problems which cannot be perfectly anticipated by the makers of the law (and the 1945 Constitution) lead to the need for an interpretation which provides extensions to view the authority originally embedded in and implied in the aforementioned authority in express terms, which can be viewed as a principle authority. *Implied powers are powers not granted in express terms, but existing because they are necessary and proper to carry into effect some expressly granted powers.* Implied powers not expressly referred to in the Constitution are necessary and proper to carry out expressly granted constitutional authority, and constitute and are also embedded as the authority granted by the Constitution, regardless the fact that the authorities are expressly elaborated in the law as the implementation of the mandate of the 1945 Constitution. The regulating of an authority substance in a certain law does not automatically cause the authority to be a non-constitutional authority. On the contrary, the mentioning of an authority in the law does not always imply that it is the aforementioned authority which becomes the source of the intended authority. The issue is whether or not the aforementioned authority is embedded, and whether or not it is indispensable in order to execute the aforementioned authorities expressly granted by the 1945 Constitution. By using the logic of the hierarchy of the Regional Government, it will also be easier to notice that

the authority to **propose for the appointment and the inauguration** of an elected Regent is the authority of the related Regional People's Legislative Assembly, including to witness and hear the pronouncing of Official Oath of the Officer that they themselves have elected, and not to be conducted by any other officers or before any other forums;

4. With such description, both the *subjectum* and the *objectum litis* of the *a quo* petition fulfill the requirements stated in Article 24C Paragraph (1) of the 1945 Constitution and Article 61 Paragraph (1) of the Constitutional Court Law, most importantly in accordance with Article 2 of the Regulation of the Constitutional Court Number 8 Year 2006 which provides as follows:

- (1) State Institutions which can become Petitioners or Respondents in cases of dispute on constitutional authorities of state institutions shall be:
 - a. The Regional People's Legislative Assembly (*DPR*);
 - b. The Regional Representatives Council (*DPD*);
 - c. The People's Consultative Assembly (*MPR*);
 - d. The President;
 - e. The State Audit Board (*BPK*);
 - f. The Regional Government (*Pemda*); or
 - g. Other state institutions whose authorities are granted by the 1945 Constitution.

(2) The disputed authorities as intended in Article (1) are the authorities granted or stipulated by the 1945 Constitution;

From the formulation of Paragraph (1) Sub-Paragraph g of the abovementioned Article 2, we may be assured that the aforementioned state institutions are not limitative or exhaustive in nature, and therefore the provision still allows broader interpretations;

II

Based on such considerations, the Court should have declared itself as having the authority to examine, hear and decide upon the *a quo* petition because both the Petitioners and the Respondent fulfill the requirements of both the *subjectum* and *objectum litis* which form the basis of the Court's jurisdiction as stipulated by the 1945 Constitution of the State of the Republic of Indonesia and the Constitutional Court Law, by further considering the substance of the *a quo* dispute;

Whereas however, despite the fact that we are of the opinion that the Court has the authority to examine, hear, and decide upon the principal issue of the case, it is evident from the presented data and evidence that the Petitioners have based their institutional stand both in relation to the objection of the *Pilkada* results and the process of deciding the elected candidate pair and its proposal does not refer to the governing Law, and therefore there is no ground to

grant the petition of the Petitioners, and hence the aforementioned petition of the Petitioners should be rejected as well;

SUBSTITUTE REGISTRAR,

Sgd.

Wiryanto