



DECISION

Number 31/PHPU.D-VI/2008

FOR THE SAKE OF JUSTICE BASED ON 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 the Dispute over the Results of the 2008 General Election of the Regional Head and Deputy Regional Head of Gorontalo Utara Regency, filed by:

- [1.2] 1. Name : Thariq Modanggu, S.Ag. M.Pdi
- Place and date of birth : Sumalata, December 17th, 1970
- Occupation : Lecturer
- Address : Jalan Jakarta, Griya Syaiban State Housing, Neighborhood Ward 03, Neighborhood Block 02, Dulalowo Sub-district, Gorontalo City
2. Name : Djafar Ismail
- Place and date of birth : Gorontalo, November 27th, 1963
- Occupation : Deputy Chairperson of Gorontalo Utara

Regency Regional People's Legislative
Assembly (DPRD)

Address : Jalan Hos Cokro Aminoto Number 303
B, Neighborhood Ward 06,
Neighborhood Block 003, Kayubulan
Sub-district, Limboto District, Gorontalo
Regency

In this matter has granted a power of attorney to Suhardi La Maira, S.H., and Marianus P. Niron, S.H., Advocates at La Maira & Associates Advocate Office, having its address at Komplek Ruko Cempaka Mas, Jalan Letjen Suprpto Block I Level 3 Number 27, Central Jakarta, 10640, based on a Special Power of Attorney dated November 23rd, 2007, acting for and on behalf of, hereinafter referred to as ----- the **Petitioners**;

Against:

Name : **The General Election Commission of Gorontalo Utara
Regency;**

Address : Jalan Trans Sulawesi, Leboto Village, Kwandang District,
Gorontalo Utara Regency, Gorontalo Province,

hereinafter referred to as ----- the **Respondent**.

[1.3] Having read the Petitioner's petition;

Having heard and read the Petitioner's statement;

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

Having read and heard the answers of the Respondent and Related Parties;

Having read the conclusions of the Petitioners, Respondent and Related Parties;

Having examined the evidences;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the main issue of the Petitioners' petition is the objection against the Decision of the General Election Commission of Gorontalo Utara Regency Number 37 Year 2008 on the Stipulation of the Recapitulation of the Results of the 2008 General Election of the Regional Head and Deputy Regional Head of Gorontalo Utara Regency and the Decision of the General Election Commission of Gorontalo Utara Regency Number 38 Year 2008 dated November 2, 2008 on the Stipulation of Elected Candidate Pair of Regional Head and Deputy Regional Head of Gorontalo Utara Regency Year 2008;

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

1. the Court's authority to examine, hear, and decide upon the *a quo* petition;
2. the Petitioners' legal standing to file the *a quo* petition;
3. the time limit for filing the petition;

With respect to the foregoing three matters, the Court is of the following opinion:

Authority of the Court

[3.3] Considering whereas based on the provision of Article 24C

paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), and Article 10 paragraph (1) sub-paragraph d of Law Number 24 Year 2003 on 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, hereinafter referred to as the Constitutional Court Law) *junctis* Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 on Judiciary Power, and Law Number 12 Year 2003 on the Second Amendment to Law Number 32 Year 2004 on Regional Government, one of the constitutional authorities of the Court is to decide upon disputes over general election results;

At first, based on the provisions of Article 106 paragraph (1) and paragraph (2) of Law Number 32 Year 2004 on Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437), objections concerning vote count results affecting the election of a candidate pair should be filed to the Supreme Court. The aforementioned authority of the Supreme Court is restated in Article 94 of Government Regulation Number 6 Year 2005 on Election, Legalization of Appointment, and Dismissal of Regional Heads and Deputy Regional Heads;

In Article 1 sub-article 4 of Law Number 22 Year 2007 on General Election Organizers (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia

Number 4721), it is provided that, ” *General Elections of Regional Heads and Deputy Regional Heads shall be general elections to directly elect the regional heads and deputy regional heads within the Unitary State of the Republic of Indonesia under Pancasila and the 1945 Constitution of the Republic of Indonesia*”;

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

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

[3.4] Considering whereas since the *a quo* petition is a dispute over vote count results of the Election of Regional Head and Deputy Regional Head, *in casu* of Gorontalo Utara Regency, Regent and Deputy Regent of Gorontalo Province, the Court therefore has the authority to examine, hear, and decide upon it.

Legal Standing of the Petitioners

[3.5] Considering whereas the Petitioners are Candidate Pair of Regent and Deputy Regent of Gorontalo Utara Regency according to Gorontalo Utara General Election Commission (KPU) Decision Number 29 Year 2008 dated September 20th, 2008, with candidacy number 5 (five) (Exhibit P-2);

Whereas the Petitioners have filed an objection against the Decision of KPU of Gorontalo Utara Regency Number 37 Year 2008 on the Stipulation of the Recapitulation of the Results of the 2008 General Election of the Regional Head and Deputy Regional Head of Gorontalo Utara Regency, as well as KPU of Gorontalo Utara Regency Decision Number 38 on the Stipulation of Elected Candidate Pair of Regional Head and Deputy Regional Head of Gorontalo Utara Regency Year 2008. The said objection is due to the Petitioners being stipulated as acquiring 23,047 (twenty three thousand forty seven) votes, putting them in the second place below the candidate pair of Drs. Hj. Rusli Habibie and Hj. Indra Yasin, S.H., M.H. who acquired 23,108 (twenty three thousand one hundred and eight) votes;

Article 106 paragraph (1) of Law Number 32 Year 2004 on Regional Government, Articles 3 and 4 of Constitutional Court Regulation Number 15 Year 2008 on Guidelines for Proceedings in Dispute Over the Result of General Election of Regional Head (hereinafter referred to as PMK No. 15/2008) provides for, among other things, the following matters:

- a. The Petitioners are Regional Head and Deputy Regional Head Candidate Pair;

- b. The Petition may only be filed against the stipulation of vote count results of General Election of Regional Head (Pemilukada) affecting the designation of Candidate Pairs which can participate in the Second Round of Pemilukada or the election of candidate pairs as Regional Head and Deputy Regional Head;

The petitioners have been proven as Regional Head and Deputy Regional Head Candidate Pair of Gorontalo Utara Regency, Gorontalo Province with Candidacy Number 5 (five), therefore the Petitioners have the legal standing to file the *a quo* petition;

Time limit for Filing a Petition

[3.6] Considering whereas the Respondent has stipulated the following:

- Whereas the Petitioners are Candidate Pair of Regent and Deputy Regent of Gorontalo Utara Regency according to KPU Decision Number 29 Year 2008 dated September 20th, 2008, with Candidacy Number 5 (five) (Exhibit P-2);
- Whereas the Petitioners have filed an objection against the Decision of KPU of Gorontalo Utara Regency Number 37 Year 2008 dated November 2nd, 2008, on the Stipulation of the Recapitulation of the Results of the 2008 General Election of the Regional Head and Deputy Regional Head of Gorontalo Utara Regency and Decision of KPU of Gorontalo Utara Regency Number 38 on the Stipulation of Elected Candidate Pair of

Regional Head and Deputy Regional Head of Gorontalo Utara Regency Year 2008. The aforementioned objection was due to the Petitioners being stipulated as acquiring 23,047 (twenty three thousand forty seven) votes, putting them in the second place below the candidate pair of Drs. Hj. Rusli Habibie and Hj. Indra Yasin, S.H., M.H. who acquired 23,108 (twenty three thousand one hundred and eight) votes;

Considering whereas the Respondent has stipulated the vote acquisition of each Candidate Pair participating in the General Election of Regional Head of Gorontalo Utara Regency by Decision Number 37 Year 2008 dated November 2, 2008 on the Stipulation of the Recapitulation of the Results of the 2008 General Election of the Regional Head and Deputy Regional Head of Gorontalo Utara Regency (Exhibit P-3), as well as the Elected Candidate Pair according to the Letter of the General Election Commission of Gorontalo Utara Regency Number 38 Year 2008 dated November 2, 2008 on the Stipulation and Announcement of Elected Candidate Pair in the 2008 General Election of the Regent and Deputy Regent of Gorontalo Utara (Exhibit P-4);

Whereas the Petitioners have filed the petition to the Court according to the Deed of Receipt of Petition Dossier Number 64/PAN.MK/IX/2008 dated November 5, 2008, therefore the petition filed is still within the time limit set in Article 106 paragraph (1) of Law Number 32 year 2004 on Regional Government (hereinafter referred to as Law 32/2004);

Considering whereas the Court shall further consider the Principal

Issue of the Petition;

[3.7] Considering whereas the Petitioners, in their petition, principally argue as follows:

- Whereas the KPU of Gorontalo Utara Regency has announced the vote count result based on KPU Decision Number 27 Year 2008 dated November 2, 2008, with the following vote acquisition for respective candidate pairs:
 - a. **DRS. H. RUSLI HABIBIE and H. INDRA YASIN, SH. MH**, acquired **23,108** (twenty three thousand one hundred and eight) votes;
 - b. **THARIQ MODANGGU, S.Ag.M.Pd.I and DJAFAR ISMAIL** acquired **23,047** (twenty three thousand and forty seven) votes;
 - c. **H. SAMSU TANAIYO and H. MUCHTAR ADAM** acquired **4,428** (four thousand four hundred and twenty-eight) votes;
 - d. **DRS. H. MOCHTAR DARISE, M.SI and MALIK LALENO, SE** acquired **1,486** (one thousand four hundred and eighty-six) votes;
 - e. **H. SUTARDJO TUI, SE, M.SI and H. MOH. NON PANGO, SE** acquired **1,172** (one thousand one hundred and seventy-two) votes;
- Whereas according to the Petitioners, the aforementioned vote count result of KPU of Gorontalo Utara Regency is inaccurate, with the following reasons:

- Whereas the vote count recapitulation result according to the aforementioned decision of the Respondent has been obtained through inaccurate vote count procedure, which influenced the final vote count result, so that the result of the vote count conducted by the Respondent does not reflect the accurate and proper numbers;
- Whereas the opening of ballot box and/or voting and vote count dossiers has not been conducted according to the procedures stipulated in laws and regulations;
- Whereas it has been discovered that there were more than one unregistered voter who obtained an opportunity to cast their vote in Voting Station I in Beladu Village, Sumalata District; Voting Station I in Tudi Village, Anggrek District; Voting Station I, II and IV in Ponelo Village, Kwandang District; Voting Station II in Tolinggula Tengah Village, Tolinggula District; Voting Station I, II and III in Bulalo Village, Kwandang District; Voting Station II and III in Molvingkapoto Village, Kwandang District;
- Whereas it has been discovered that there was a total of 63 unqualified voters who also cast their votes in 11 Voting Stations, therefore the correct final vote count result according to the Petitioners should be *“Final result of vote count conducted by the Respondent minus the number of invalid voters, including underage voters, voters not registered in the Permanent Voter List and*

voters using other people's Voter Identity Card (KIP), which totals approximately 63 voters."

- Whereas the Petitioners have reported the Pemilukada violation in Gorontalo Utara Regency to General Election Supervisory Committee (Panwaslu), and the Panwaslu of Gorontalo Utara Regency has issued Recommendation Number 94/Panwas-Gorut/X-2008 dated October 31, 2008, but the Respondent has ignored the aforementioned recommendation and continued the vote count, causing the vote count conducted by the Respondent to be materially and formally inaccurate and the vote count result not to reflect the proper result. Therefore, the Petitioners request the Court to pass temporary decision and order the Respondent to repeat voting at the aforementioned 11 problematic Voting Stations;

[3.8] Considering whereas the Court shall further consider the content of the Petitioners' petition;

[3.9] Considering whereas the Respondent, in its written response, has filed an Exception in addition to response to the principal issue of the case:

In the Exception

1. The petition is obscure and unclear, since it does not describe in details the mistakes in the Recapitulation of Vote Count Result of General Election of Regional Head and Deputy Regional Head and Deputy

Regional Head of Gorontalo Utara Regency conducted by the Respondent, therefore the petition is not in accordance with the provision in Article 3 of Regulation of the Supreme Court Number 2 Year 2005 and Article 4 of Regulation of the Constitutional Court Number 15 Year 2008;

2. The Petitioners' petition of objection is misdirected, since the subject matter of the petition is not the result of vote count conducted by the Respondent, but the action of the officers at Voting Stations as well as violations in the administration of Pemilukada which are under the authorities of the Pemilukada Supervisory Committee of Gorontalo Utara Regency (*Panwas*), not the Constitutional Court;

In the Principal Issue of the Case

1. Whereas the Respondent rejects all the arguments of the Petitioners' petition and demands except as expressly acknowledged by the Respondent;
2. Whereas the Recapitulation of Vote Count was conducted by the Respondent on November 2, 2008 in the Plenary Meeting of the General Election Commission of Gorontalo Utara Regency opened for public and attended by witnesses from the 3 (three) candidate pairs, namely Candidate Pairs with Candidacy Numbers 1, 4 and 5, therefore the Petitioners' argument should be ruled out;
3. The arguments that the opening of ballot box and/or voting and vote count

- dossiers has not been performed according to the procedures stipulated in the laws and regulations, that there were more than one unregistered voter having the opportunity to vote at Voting Stations, and that voting can be repeated cannot be justified, since the procedure of opening the ballot box has been performed according to the mechanism regulated in prevailing laws and regulations and has been approved by the witnesses of respective Regional Head and Deputy Regional Head Candidate Pairs, and such issue is under the authority of the District Polling Committee (PPK) according to Article 92 of Government Regulation Number 6 Year 2005 based on research and examination by the District Supervisory Committee;
4. Whereas the argument that there were one or more unregistered voters casting their votes at Voting Stations is untrue since all community members who cast their votes have been registered in the Permanent Voter List (DPT) stipulated by the Polling Committee (PPS);
 5. Whereas the argument that there were more than one unregistered voter obtaining an opportunity to cast their vote at several Voting Stations, such as Voting Station I in Beladu Village, Sumalata District; Voting Station I in Tudi Village, Anggrek District; Voting Station I, II and IV in Ponelo Village, Kwandang District; Voting Station II in Tolinggula Tengah Village, Tolinggula District; Voting Station I, II and III in Bulalo Village, Kwandang District; Voting Station II and III in Molingkapoto Village, Kwandang District

- is untrue, since the issue or problem in the said Voting Stations has never occurred and is only a fabrication of the Petitioners intending to find faults in the organization of *Pemilukada* by the Respondent in order for the *Pemilukada* to be repeated in the aforementioned Voting Stations;
6. Even if there were problematic Voting Stations, the Petitioners should have reported it to the District Supervisory Committee to be legally processed for decision instead of reporting it to the panel of Constitutional Court Justices;
 7. Whereas the argument that the Petitioner has reported to the *Pemilukada* Supervisory Committee of Gorontalo Utara Regency to repeat the voting at Voting Stations, and the Regency Supervisory Committee has issued its recommendation but was ignored by the Respondent, is untrue since the action of Anggrek District Polling Committee did not contain an element of violation of law as referred to in Article 104 paragraph (2) of Law Number 12 Year 2008 on the Second Amendment to Law Number 32 on Regional Government;
 8. Whereas the *Pemilukada* Supervisory Committee of Gorontalo Utara Regency has never issued any decision to repeat voting at several Voting Stations alleged as being problematic by the Petitioners to the General Election Commission of Gorontalo Utara Regency, therefore the Petitioners' demand to repeat voting is extremely groundless, since it is not in accordance with Article 104 of Law Number 32 year 2004 *juncto*

Article 91 and 92 of Government Regulation Number 6 Year 2005 *juncto* KPU Regulation Number 10 Year 2007 *juncto* Article 45 and 46 of Gorontalo Regency KPU Regulation Number 6 Year 2008;

9. Whereas based on Article 104 of Law Number 32 Year 2004 on Regional Government *juncto* Article 91 and 92 of Government Regulation Number 6 Year 2005 on Regional Head Election, Legalization of Appointment and Dismissal *juncto* KPU Regulation Number 10 Year 2007 on Voting and Vote Count Guidelines *juncto* Article 45 and 46 of Gorontalo Utara KPU Regulation Number 6 Year 2008, Re-voting and Vote Recount can only be conducted by virtue of PPK decision in PPK Plenary Meeting and by no later than 7 (seven) days as of the voting and after research and examination by Pemilukada District Supervisory Committee;
10. Whereas the argument that there were 63 voters not registered in DPT, underage voters, voters using other people's KIP participating in Pemilukada in 10 Voting Stations is untrue;
11. Whereas since the Petitioners' objection is not supported with legal evidences and facts, it is very reasonable to reject or at least not accept the Petitioners' petition.

[3.10] Considering whereas the Respondent, in order to support its counter-argument, has conveyed a response dated November 11, 2008, the details of which are embodied in the Facts of the Case, which principally

describes the following matters:

- Whereas the principal subject matter of the Petitioners' petition is not the Vote Count Recapitulation Result of the General Election of Regional Head and Deputy Regional Head, but merely a presumption of the officers' conduct at Voting Stations or voters that did not comply with Pemilukada organization mechanism. Whereas the processing of the violation of law against Pemilukada is under the authority of the Panwaslu of Gorontalo Utara Regency instead of the Court;
- Whereas the Respondent's Vote Count Recapitulation stipulated on November 2, 2008 has been performed in the Plenary Meeting of the General Election Commission of Gorontalo Utara Regency opened for public and attended by witnesses from the three candidate pairs (Candidate Pairs with Candidacy Numbers 1,4 and 5);
- Whereas in accordance with Article 92 of Government Regulation Number 6 Year 2005, the opening of ballot box is under the authority of PPK and such opening has been performed according to the mechanism regulated in prevailing laws and regulations, which has been approved by the witnesses of respective Regional Head and Deputy Regional Head candidate pairs;
- Whereas the Petitioners' argument about more than one unregistered voter casting their votes at several Voting Stations is merely the

Petitioners' fabrication, since it seems that the Petitioners are trying to find faults in Pemilukada organization by the Respondent in order to be able to repeat Pemilukada of Gorontalo Utara Regency at the Voting Stations disputed by the Petitioners. Even if the Petitioners' suspicion is proven to be true, the Petitioners should have reported it to District Supervisory Committee to be legally processed instead of filing an objection to the Constitutional Court;

- Whereas the Panwaslu of Gorontalo Utara Regency has never issued any decision to repeat voting at several Voting Stations alleged as being problematic by the Petitioners, therefore the Petitioners' demand to repeat voting is extremely groundless, as it is not in accordance with Article 104 of Law Number 32 year 2004 *juncto* Article 91 and 92 of Government Regulation Number 6 Year 2005 *juncto* KPU Regulation Number 10 Year 2007 *juncto* Article 45 and 46 of Gorontalo Regency KPU Regulation Number 6 Year 2008;
- Whereas the Petitioners claim that there are 63 invalid votes, since there are 63 voters not registered in DPT, underage voters and voters voting with other people's KIP. Such argument is extremely groundless, since it is already known that there were 5 (five) candidate pairs running for Pemilukada in Gorontalo Utara Regency, therefore it is very difficult to determine that the 63 votes claimed by the Petitioners have been counted as votes for Candidate Pair Number 1. Therefore, the presumption of

mistake in the Recapitulation of Vote Count Result by the Respondent as argued by the Petitioners is extremely groundless, as it does not explain in detail the correct vote acquisition result that should have been acquired by the Petitioners in their petition;

[3.11] Considering whereas to support their aforementioned argument, the Petitioners present written evidences marked as Exhibit P-1 to Exhibit P – 9.2, as well as 11 (eleven) witnesses who provided statements under oath in the hearing on November 12, 2008 and November 17, 2008, which principally gave the following testimonies:

[3.11.1] **AMIR HADULI**

- Whereas the witness participated in the 2008 Gorontalo Pemilukada as voter and officer at Voting Station 1 in Popalo Village, Anggrek District. The witness assisted KPU officers in distributing 19 calling cards to community members not registered in the Permanent Voter List (DPT). The witness distributed calling cards obtained from village head directly visiting the houses. When the village head came to the witness' house, he instructed the witness to vote for package number one with a compensation of Rp.50.000,- (fifty thousand rupiah) per person. However, the promised amount was not paid after the voting;

[3.11.2] **RIAN S. PAKAYA**

- Whereas the witness obtained voting card from the hamlet head, but since the witness was not at home at the time, the hamlet head gave the election card to the witness' parents. On voting day on October 27, 2008, the witness came to Voting Station III in Lapa Ulata Hamlet to vote for Candidate Pair Number 1, namely H. Rusli Habibie's candidate pair;

[3.11.3] **HI PION TALIKI**

- Whereas the witness refused to sign the minutes of the Plenary Meeting of Vote Count Result Recapitulation at Regional General Election Commission (KPUD) of Gorontalo Utara since it was found out that more than one voter were not registered in DPT and such incident was reported to the Supervisory Committee, but there was no follow-up. In addition, the reason the witness did not want to sign the minutes of Vote Count Result Recapitulation at KPU of Gorontalo Utara Regency was the existence of the Recommendation Letter of the Panwaslu of Gorontalo Utara Regency Number 94;

[3.11.4] **HENDRIK GILINGGO**

- Whereas during Pemilukada in Gorontalo Utara Regency, the witness voted twice, namely at Voting Station I and Voting Station II in Tulinggula Village, Tulinggula District. At the time, the witness selected pair number one, namely candidate pair of Drs. Hj. Rusli Habibie and Hj. Indra Yasin, SH, MH;

[3.11.5] HITLER DATAU

- Whereas the witness was Biau Village secretary voting at Voting Station in I Biau village, Tulinggula District. Whereas the witness and 13 other voters helped package number one to win. The witness did this due to his loyalty to his superior (the district secretary), by means of carrying out his mission to find 51 voters who would select package number one with compensation of Rp.100,000 per person. However, the money promised has not been paid until now. The witness and hamlet head (Arifin) received Rp.50,000 (fifty thousand rupiah) respectively from the village head;

[3.11.6] DJUNI SAFII

- Whereas the witness was a hamlet head and was ordered by the village secretary to help Candidate Pair Number 1 to win with the promise of Rp.100,000 (one hundred thousand rupiah) compensation per person. Therefore, the witness was asked by the village secretary to find voters, but the witness only found 13 people registered in DPT and they were all present at Voting Station II in Biau Village, Telinggula District during the voting;

[3.11.7] SONI H. PATAMANI

- Whereas the witness was a village head who solicited other village heads to

support the pair number one for a compensation of Rp.50,000 (fifty thousand rupiah) per person;

[3.11.8] **HARDI RAHMOLA**

- Whereas the witness worked as a farmer and Village Representative Board (BPD) member in Biau Village, Tullinggula District. The witness was influenced by two Inspectorate officers, namely candidate pair Rafiq Romula and Arifin Sogar and Tullinggula District Secretary - Imran Talimas, to choose pair number 1 with a promise Rp.100,000 (one hundred thousand rupiah) compensation per person, but the promised money has not been paid until now;

[3.11.9] **ANTON TUNA**

- Whereas the witness worked as a farmer in Telinggula Hulu Village, Telinggula District. The witness was given a ballot by Sofian Niu who persuaded him to choose Candidate Pair Number 1 for Rp.100,000 (one hundred thousand rupiah), but the witness has not received the promised money until now;

[3.11.10] **NUNE DJAKARIA**

- Whereas the witness was not registered in DPT but voted at Voting Station II, Bulantadu Village, Kwandang District. In addition to the witness, there

were fifteen other people who were not registered in DPT but were able to vote. The witness and the fifteen people were promised to receive Rp.50,000 per person if they chose Candidate Pair Number 1, but until now the money promised was not paid;

[3.11.11] **ARSIT LATIF**

- Whereas the witness was not registered in DPT, but received a voting notice from Polling Administrator Group (KPPS) with number 126. In addition to the witness, there were fifteen people at Voting Station I who were not registered in DPT, but were able to vote, and out of the fifteen people, there was one underage person;

[3.12] Considering whereas to support its arguments, the Respondent has presented written evidences (Exhibit T-1 to T-22), as well as 6 (six) witnesses giving statements under oath in the hearing on November 17, 2008, which principally gave the following testimonies:

[3.12.1] **MOCHTAR MAHMUD**

- Whereas the witness was the head of KPPS at Voting Station I in Bulalo Village, Kwandang District. During the vote count at Voting Station I Bulalo, none of the witnesses of the five candidate pairs filed an objection;

[3.12.2] **MEIKE HUSAIN**

- Whereas the witness was the head of KPPS at Voting Station III in Malingkapoto Village, where none of the witnesses of the candidate pairs filed an objection during the vote count. Whereas Voting Station III in Malingkapoto Village was only attended by 3 witnesses, respectively representing Candidate Pair Numbers 1,3 and 5;

[3.12.3] MUSPAR MANTULANGI

- Whereas the witness was the Head of Kwandang District PPK. During vote count at KPU of Gorontalo Utara Regency, there was no objection from the witnesses on the result of vote count recapitulation and there was no vote count difference based on the calculation of the witnesses of the candidate pairs;

[3.12.4] SUDIRMAN KOMALINGGO

- Whereas the witness was a village head and knew Amir Haduli as an assistant to hamlet head;

[3.12.5] TOPAN AGUS KOPING

- Whereas the witness was the Head of the Panwaslu of Gorontalo Utara Regency. During the organization of Pemilukada in Gorontalo Utara Regency, there were reports from Pemilukada participants on administration issues and reports on criminal issue handled by the Members of Dispute Resolution Coordinator in the Working Group Team;

- Whereas according to the witness, the General Election Supervisory Committee in Gorontalo Regency was valid, since it had gone through the mechanism of the Plenary Meeting of Supervisory Committee Members and the result was signed by all Supervisory Committee Members;
- The witness admits that he has issued Recommendation Number 94, but the recommendation became invalid after the issuance of Recommendation Number 95 and the witness admits that Panwas' decision is basically issued in the form of Decision;

[3.12.6] SAFIE BAGUS SANTOSO

- Whereas the witness was a member of the Supervisory Committee for Pilkada Dispute Coordinator. In the organization of Gorontalo Utara Regency *pilkada*, there were fifteen administration and criminal reports of similar types, only prepared by different people. Panwaslu accepted all reports and subsequently reported such reports to Gorontalo Utara Regency Panwas. Whereas out of the fifteen reports, there was one report on the administration in Angrek and there were five Criminal reports, while the remainder were reported by people with unclear identity and some did not even provide any evidences. Despite not meeting the criteria, the reports were still received, since they were about money politics. In pilkada dispute resolution, the witness was assisted by the Working Group as well as local Resort Police, and the dispute was further reported to the Head and

Members of *Panwas* for the formation of the Plenary Board;

[3.13] Considering whereas in the hearing on November 11, 2008, Related Parties of Gorontalo Utara Regency Regent and Deputy Regent Candidate Pair conveyed a response, the details of which are embodied in the Facts of the Case, which principally states the following:

- Whereas the Petitioners' petition is a dispute over *Pemilukada* process, and not a dispute over vote count result, therefore based on Article 108 sub-article c and d of Government Regulation Number 6 Year 2005, *Pemilukada* dispute process is under the authority of *Panwas* to resolve it. As such, there needs to be a differentiation between the dispute over *Pemilukada* that is under the authority of *Panwas* or Criminal Investigator and the dispute over vote count result that is under the authority of the Constitutional Court. Therefore, the Petitioners should have filed an objection against voting process to *Panwas* or Criminal Investigator instead of filing an objection on the dispute of such *Pemilukada* process to the Constitutional Court;
- Whereas in their petition, the Petitioners did not clearly specify the number of inaccurate votes in each Voting Station but claimed outright that there are 63 invalid votes. In addition, the Petitioners also did not clearly describe the accurate total count according to their version. This comparison between the Petitioners' and the Respondent's versions of vote count should be the principal issue of the dispute in this court.

Furthermore, it is uncertain as to where the 63 votes claimed by the Petitioners as invalid votes actually belong, since the votes could in fact be for the Petitioners themselves, or they could be abstain, empty or even damaged votes;

- whereas *petitum* number 3 of the Petitioners' petition requesting the Panel of Constitutional Court Justices to pass a decision to repeat the voting at a number of Voting Stations is *ultra petita*, since based on PMK Number 15 Year 2008 on Guidelines for Proceedings in Dispute Over the Result of General Election of Regional Head, the Constitutional Court Justices only have an authority to stipulate the correct vote count result according to the Court and not to order re-voting;
- Whereas the Petitioners' argument stating that there were more than one unregistered voter found who obtained an opportunity to vote at Voting Stations is untrue. The fact can be read in the Minutes of respective Voting Stations, where there is no record of voters not registered in DPT participating in voting and of underage voters and voters using other people's identity cards. Similarly, the Minutes and copies of certificates issued by Polling Committees, Minutes, PPK Recapitulation, Panwas Decision and Minutes of respective Voting Stations have been signed by KPPS, and none of them recorded the aforementioned violations;

The Opinion of the Court

[3.14] Considering whereas after the Court examines in details the Petitioners' argument, the Respondent's answer, the statements of Related Parties, and evidences, whether in the form of letters or witnesses presented by the parties, the Court considers as follows:

In Exception

[3.15] Considering whereas on the two points of the Respondent's exception, the Court considers that the petition is not obscure and misdirected, since the essence of the Petitioners' petition is the final result of the vote count which, according to the Petitioners, have been conducted by violating the laws and regulations in the process before the vote count, and therefore the Respondent's exception must be ruled out;

Whereas since the Respondent's exceptions are ruled out, the Court will further considers the principal issue of the case;

In the Principal Issue of the Case

[3.16] Considering whereas principally, the Petitioners argue that there were many residents who did not qualify as voters, but the Petitioners can prove that at certain Voting Stations, there were up to 63 unqualified voters and therefore invalid votes, namely unregistered voters who were able to vote nevertheless, voters who were not old enough to vote, and voters who used other people's voting notice, whose votes were counted as valid votes by the

Respondent, which have greatly damaged the Petitioners. Therefore, the Petitioners ask for re-voting at such Voting Stations and for the Court to stipulate the vote count result after the re-voting in such Voting Stations;

With respect to the Petitioners' argument, the Respondent rejects the entire argument, so that the Petitioners has the burden of proof ;

[3.17] Considering whereas in the substation, both Petitioners and Respondents have presented witnesses in addition to written evidences;

[3.18] Considering whereas the Petitioners presented Exhibit P-7, comprising Exhibit P-7.1 to P-7.22, which are privately drawn up letters registered to Sri Murti, Notary in Gorontalo City, in the form of statements from several people which appear to be testimonies. The Court is of the opinion that the aforementioned letters cannot be categorized as witness testimonies, since witness testimonies are basically testimonies directly witnessed, heard and/or experienced by the witnesses themselves and made under oath in a hearing or before a Court;

[3.19] Considering whereas written evidences such as Vote Count Recapitulation, which was later embodied in the decision of province or regency/city KPU on the Stipulation of the Recapitulation of the Result of General Election of Regional Head and Deputy Regional Head, province or regency/city KPU Decision on the Stipulation and Announcement of Elected Candidate Pair of Regent and Deputy Regent are authentic deeds which, according to the law,

must be accepted as truth until proven otherwise based on valid evidences;

[3.20] Considering whereas with regards to the statements of the 11 (eleven) witnesses of the Petitioners above, the Court is of the opinion that:

- Statements from witnesses Amir Haduli, H. Pion Taliki, Hitler Datau, Djuni Safii, Soni H. Patamani, Hardi Rohmala, and Nune Djakaria on the voters' selection are merely based on other people's statements and inconsistent with one another, therefore such testimonies must be ruled out;
- Witnesses Rian S. Pakaya, Hendrik Gilinggo, Anton Tuna, and Arsif Latif are witnesses who have exercised their election rights illegally.

[3.21] Whereas therefore, with respect to the evidence documents and witnesses examined in the hearing, the Court has no confidence therein since the statements of the Petitioners' witnesses are inconsistent and dishonest, as they admit receiving the money but not electing the person giving the money;

[3.22] Considering whereas from the testimonies of the witnesses considered above, the vote acquisition of candidate pair number 1 must be deducted by 1 (one) vote based on the statement of Rian S. Pakaya; by 1 (one) vote based on the statement of Hendrik Gilingo; by 1 (one) vote based on the statement of witness Anton Tuna; by 1 (one) vote based on the statement of Arsif Latif, so that the vote acquisition of Candidate Pair Number 1 is 23,108 - 4 votes = 23,104 (twenty three thousand one hundred and four) votes. Therefore, the

Respondent's Decision Number 37 Year 2008 on the Recapitulation of the Results of the 2008 General Election of the Regional Head and Deputy Regional Head of Gorontalo Utara Regency dated November 2, 2008 must be corrected insofar as it concerns the number of vote acquisition of Candidate Pair Number 1, from the initial number of 23,108 (twenty three thousand one hundred and eight) votes to 23,104 (twenty three thousand one hundred and four) votes;

[3.23] Considering whereas based on the aforementioned considerations, the number of votes for Candidate Pair Number 1 which totals 23,104 votes is still greater than the number of votes for Candidate Pair Number 5 (the Petitioners) which totals 23,047 (twenty three thousand forty seven) votes, therefore it doesn't have significant impact on the Respondent's Decision Number 38 Year 2008 on the Stipulation and Announcement of Elected Candidate Pairs in the 2008 General Election of Regent and Deputy Regent of Gorontalo Utara Regency dated November 2, 2008, therefore the Petitioners' petition must be rejected;

4. CONCLUSION

Based on the aforementioned fact and legal considerations, the Court concludes that:

[4.1] There are invalid votes that must be deducted by the Respondent from the vote acquisition for Candidate Pair Number 1;

[4.2] The deduction of votes as referred to in [4.1] does not significantly affect the election of Candidate Pair Number 1;

[4.3] The Petitioners' objection to the result of the vote count of Gorontalo Utara Regency Pemilukada stipulated by the Respondent is unsubstantiated and groundless, and therefore must be rejected;

5. DECISION

In view of Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, and Law Number 24 Year 2003 on the Constitutional Court *unctis* Law Number 32 Year 2004 on Regional Government, Law Number 22 Year 2007 on the Organization of General Election, Law Number 12 Year 2008 on the Second Amendment on Law Number 32 Year 2004 on Regional Government;

Passing the Decision,

In Exception:

To declare the Exception of the Respondent and Related Parties not acceptable.

In the Principal Issue of the Case:

To declare the Petitioners' petition rejected.

Hence this decision was made in the Consultative Meeting of Constitutional Court Justices on Tuesday, the twenty-fifth of November two thousand and eight and was pronounced in the Plenary Session open for the public on the same day by us, Moh. Mahfud MD, as the Chairperson and concurrent Member, H.M. Akil Mochtar, Muhammad Alim, H. Achmad Sodiki, H. Abdul Mukthie Fadjar, Jimly Asshiddiqie, H.M. Arsyad Sanusi, Maria Farida Indrati, and Maruarar Siahaan respectively as members, assisted by Eddy Purwanto as Substitute Clerk, and in the presence of the Petitioners/their Attorney-in-Fact, The Respondent/its Attorney-in-Fact and Related Parties/their Attorney-in-Fact.

CHAIRPERSON

Sgd.

Moh. Mahfud MD

MEMBERS,

Sgd.

H. M. Akil Mochtar

Sgd.

H. Achmad Sodiki

Sgd.

Jimly Asshiddiqie

Sgd.

Muhammad Alim

Sgd.

H. A. Mukthie Fadjar

Sgd.

H.M. Arsyad Sanusi

Sgd.

Maria Farida Indrati

Sgd.

Maruarar Siahaan

SUBSTITUTE REGISTRAR,

Sgd.

Eddy Purwanto