



## DECISION

Number 33/PHPU.D-VI/2008

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in the case of Dispute over the Results of General Election of the Regional Head and the Deputy Regional Head of Luwu Regency in South Sulawesi Province, filed by:

[1.2] **Drs. H. Basmin Mattayang, MPd**, place/date of birth: Wara, December 12, 1957, occupation: Regent, address: Jalan Trans Sulawesi, Senga Selatan Village, Belopa District, Luwu Regency, South Sulawesi Province and **Ir. H. Buhari Kahar Muzakkar, MM**, address: Kurusumange Village, Belopa District, Luwu Regency, South Sulawesi Province;

In this matter granting the power of attorney to Nasirudin Pasigai, SH, MH; Syahriri Cakkari, SH and Danial, SH, all of whom are Advocates/Lawyers at the Law Office of Nasiruddin Pasigai, SH, M.H, having their office at Jalan Veteran Selatan II Number 18, Makassar Municipality, South Sulawesi Province, based on a power of attorney dated November 5, 2008 acting for and on behalf of the aforementioned,

hereinafter referred to as ----- **the Petitioner;**

**Against:**

**Name : The General Elections Commission of Luwu Regency of South Sulawesi Province**

**Address : *Komplek Perkantoran Pemda* (Regional Government Office Complex) of Luwu Regency, Senga Sub-district, Belopa District, South Sulawesi Province**

In this matter granting the power of attorney to Mappinawang, SH, Sofyan, SH, Mursali Jalil, SH, MH and Muhammad Ompo Massa, SH, all of whom being Advocates at the Law Office of "Mappinawang & Partners", having their office at Jalan Topaz Raya Ruko Zamrud I Block G/12 Makassar, South Sulawesi, based on a power of attorney dated November 12, 2008 acting for and on behalf of the aforementioned,

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

[1.3] Having read the Petitioners' petition;

Having heard and read the statement of the Petitioner;

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

Having read and heard the response of the Respondent;

Having read the conclusions of the Petitioners and the Respondent;

Having examined the evidence;

### 3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the principal issue of the Petitioners' petition is an objection to the Vote Count Results of General Election of the Regional Head and the Deputy Regional Head of Luwu Regency (hereinafter referred to the General Election of Regional Heads of Luwu Regency) determined based on the Stipulation of the General Elections Commission of Luwu Regency (hereinafter referred to as the General Elections Commission of Luwu Regency) Number 46/P.KWK-LW/XI/2008 dated November 4, 2008;

[3.2] Considering whereas prior to examining the substance or 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 for 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:

[3.3.1] Article 24C of the 1945 Constitution of the Republic of Indonesia

(hereinafter referred to the 1945 Constitution);

**[3.3.2]** Article 10 paragraph (1) sub-paragraph d of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to 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 regarding Judicial Power;

**[3.3.3]** Article 106 paragraphs (1) and (2) of Law Number 32 Year 2004 regarding 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);

**[3.3.4]** Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government which states as follows, *“The handling of disputes over the vote count results of the election or Regional Head and Deputy Regional Head shall be delegated to the Constitutional Court by no later than 18 (eighteen) months following the promulgation of this law”*;

**[3.3.5]** Article 1 paragraph (4) of Law Number 22 Year 2007 regarding the General Election Organizer (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) which states, *“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”;*

**[3.3.6]** Article 4 of Constitutional Court Regulation Number 15 Year 2008 provides that the object of dispute over vote count results of General Election of Regional Heads shall be the vote count results stipulated by the Respondent which:

- a. affect the qualification for Candidate Pairs to participate in the second round of the General Election of Regional Heads; or
- b. result in the election of the Candidate Pair as the regional head and the deputy regional head;

**[3.3.7]** The Minutes of Delegation of Authority to Adjudicate from the Supreme Court to the Constitutional Court on October 29, 2008 which principally state that the handling of dispute over the vote count results of the General Election of Regional Head and the Deputy Regional Head by the Supreme Court shall be delegated to the Constitutional Court;

**[3.4]** Considering whereas since the Petitioners' petition is concerned with the dispute over the vote count results of the General Election of Regional Heads of Luwu Regency in accordance with the Decision of the General Elections Commission of Luwu Regency Number 46/P.KWK-LW/XI/2008 regarding the Stipulation of the Elected Candidate pair of the 2008 General

Election of Regent and Deputy Regent of Luwu dated November 4, 2008, the Court has authority to examine, hear, and decide upon the *a quo* petition;

### **LEGAL STANDING OF THE PETITIONER**

[3.5] Considering whereas Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government, Articles 3, 4, and 5 of Constitutional Court Regulation Number 15 Year 2008 regarding Guidelines for the Proceedings on the Dispute over the Results of General Elections of Regional Heads (hereinafter referred to as PMK 15/2008), provides for, among other things, the following matters:

- a. The Petitioners are a Candidate Pair for the Regional Head and Deputy Regional Head;
- b. The Petition may only be filed against the Stipulation of Vote Count Results of the General Election of Regional Heads affecting the determination of Candidate Pairs qualified to participate in the second round of the General Election of Regional Heads or the election of the Candidate Pair as the regional head and the deputy regional head;
- c. The Petition may only be filed by no later than 3 (three) days after the Respondent determines the vote count results of the General Election of Regional Heads in the region concerned.

[3.6] Whereas the Petitioners are:

**[3.6.1]** A Candidate Pair for Regional Heads in the General Elections of Regional Heads of Luwu Regency of South Sulawesi Province, based on the Decision of the General Elections Commission of Luwu Regency Number 35/P.KWK-LW/XI/2008 regarding the Stipulation of Candidacy Numbers of Candidate Pairs for Regent and Deputy Regent of Luwu Regency Year 2008 dated August 6, 2008 with candidacy number 1 (one) (Exhibit T-2);

**[3.6.2]** A Candidate Pair whose constitutional rights have been impaired by the existence of Decision of the General Elections Commission of Luwu Regency Number 46/P.KWK-LW/XI/2008 dated November 4, 2008 regarding the Stipulation of Elected Candidate Pair from the Participants in the 2008 General Election of Regent and Deputy Regent of Luwu Regency, due to the existence of erroneous vote count in the *a quo* Decision;

#### **TIME LIMIT FOR FILING A PETITION**

**[3.7]** Considering whereas the Respondent issued Decision of the General Elections Commission of Luwu Regency Number 46/P.KWK-LW/XI/2008 dated November 4, 2008 regarding the Stipulation of Elected Candidate Pair from the Participants in the 2008 General Election of Regent and Deputy Regent of Luwu Regency.

Considering whereas the Petitioners filed an objection against the Decision of the Respondent through the petition received at the Registrar's Office of the Court on November 7, 2008, and hence, based on the provision of Article 5

paragraph (1) of PMK 15/2008, the filing of Petitioners' petition has met the stipulated time limit;

[3.8] Considering whereas since the Court has authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have legal standing, and that the petition has been filed within the stipulated time limit, hence subsequently the Court shall consider the principal issue of the petition;

### **PRINCIPAL ISSUE OF THE PETITION**

[3.9] Considering whereas the principle issue of the Petitioners' petition consists of legal facts with regard to the violation affecting the vote acquisition of the Elected Candidate Pair, and the reasons of the mistake in the vote count result stipulated by the Respondent, namely:

#### **[3.9.1] Concerning the Violation Affecting the Vote Acquisition of the Elected Candidate Pair:**

- a. In preparing the List of Permanent Voters (DPT) for the General Election of Regional Heads of Luwu Regency, the Respondent did not use the population data from the Central Bureau of Statistics, but prepared the List of Permanent Voters by itself, so the validity of the data is highly dubious;
- b. Whereas for Voting Station (TPS) 2 of Barangmamase Village, vote count result for each candidate pair was not announced based on the evidence from minutes and copies of voting in the Voting Station;



- c. Whereas for the Voting Station of Seriti Village, vote count result (tally) for each candidate pair was not announced;
- d. Whereas for Voting Station 4 of Pattedong Village, vote count result (tally) for each candidate pair was not announced;
- e. Whereas there was a difference of 32,354 invalid votes;

**[3.9.2] Concerning the Erroneous Vote Count:**

- a. The invalid vote count of 32,354 votes must be deducted from the vote acquisition of the Candidate Pair with Candidacy Number 2 so that the valid vote acquisition for the Candidate Pair with Registration Number 2 was 50,704 votes or 35.46%, whereas the number of vote acquisition of the Petitioners was 57,977 or 40.54%, which was in conformity with the survey result by *Lembaga Survei Indonesia* (Indonesian Survey Institution/LSI) conducted on September 7-14, 2008;
- b. Hence, according to the Counting by the Petitioner, each of the candidate pairs acquires the votes as follows:
  - 1. Drs. Basmin Mattayang, M.P.D and Ir. Buhari Kahar Muzakkar, M.M. as many as 57,977 votes or 40.54%;
  - 2. Ir. Andi Muzakkar KM and Syukur Bijak as many as 50,704 votes or 35.46%;
  - 3. H. Amir Kaso, S.E., M.M., S.H, M.Si, M.H. and Drs. Syamsul Sabbea as many as 15,396 votes or 10.77%;

4. Ir. H. Rischal A. Pasombo, M.S. and Dr. Ir. Sahardi Mulia, M.S. as many as 18.923 votes or 13.23%.
- c. The Petitioners request to the Court, as described in the *petitum* of its petition, namely to nullify the Decision of the General Elections Commission of Luwu Regency Number 46/P.KWK-LW/XI/2008, and furthermore for the Court to stipulate the Petitioners as Regent and Deputy Regent of Luwu for the 2009-2014 Period;
- d. Whereas all the aforementioned violations which have been concluded in detail by the Petitioners describe the atmosphere of the General Election of Regional Heads of Luwu Regency organized by the Respondent, cutting off the access and freedom to choose in expressing the aspiration and choice, whether before the General Election of Regional Heads up to the stage of voting at the voting stations (TPS). In fact, in certain locations in Walenrang and Lamasi, there was a very tense atmosphere as a result of the operation carried out by “*Pasukan Pascas*” (Pascas Troop) in the form of pressure and intimidation spread all over the area, with the intention of not voting for any other candidate pair but the Candidate Pair with Candidacy Number 2, in the name of Andi Muzakkar and Syukur Bijak. This has been one of the reasons for the occurrence of mistake in vote count of the General Election of Regional Heads of Luwu Regency;
- e. Whereas the witnesses of the Petitioners, namely Akib Sabaran, Bani’, Anita Habibah, Cornelis, Wagimin, Hanafi, Suparyono, Habiba, S.Ag,

Agustinus Palilu, Simon Ruru, Hakim Dengan, Bahar Tajeri, Ashar Mustamin, all of whom supported the fact of the occurrence of violation in the implementation of the General Election of Regional Heads in the Voting Stations;

- f. Whereas the matters conveyed by the Petitioners have been denied by the Respondent, as stated by the witnesses of the Respondent, namely Andi Baso Ilyas, Hasni Hasyim, and Kaimudin, that all of the candidates had a kind of Success Team having attire which is similar to that of the military uniform.

#### **OPINION OF THE COURT**

**[3.10]** Considering whereas after carefully examining the descriptions of petition and arguments conveyed by the Petitioner, evidence presented, as well as statements of the witnesses of the Petitioners and the Respondent, the Court is of the following opinion:

**[3.10.1]** Whereas the object of dispute as referred to in paragraph **[3.9.1]** does not constitute the object of dispute within the authority of the Court, but a duty of another agency to settle the issue and hence such object of dispute shall be set aside, even though it does not close the possibility that in the event that proper settlement of such violations by the competent agency will affect the end result of the vote count;

**[3.10.2]** Whereas from the 38 tables listed in the Petitioners' petition (Table

1 through Table 38), even though those figures were argued as being obtained from official sources, all of the foregoing was not always indicate similarity between the numbers mentioned in the tables made by the Petitioners and those in the List of Permanent Voters issued by the Respondent. For instance, on Table 1 in the Petitioners' petition, it is true that the Minutes of Voting in Baramamase Village was not properly filled out (Exhibit P-3.4);

**[3.10.3]** Whereas hence, the validity of the figures mentioned by Petitioners is dubious;

**[3.10.4]** Whereas the difference of 32,354 votes which in the opinion of the Petitioners must deduct for the votes acquired by the second candidate so that the 83,058 votes obtained would become 50,704 votes or 40.54%, must be proven with valid evidence by the Petitioners;

**[3.10.5]** Whereas from Table 1 through Table 38 summed up in Table 39 (Petitioners' Petition) concerning the Difference of **Number of Valid and Invalid Votes** deducted with the **List of Permanent Voters** as much as **32,354 votes**, but the vote difference did not indicate the vote acquisition for the respective candidates, even though such difference is proven to be correct;

**[3.10.6]** Whereas according to the Petitioner, the difference of 32,354 votes was imposed (deducted) on the votes for Candidate Pair Number 2 only and not on the votes for all candidates without conveying the reason and the supporting evidence, whereas it is possible that the excess (difference) of the votes also fell

on other candidates beside Candidate Pair Number 2, including the Petitioner;

**[3.10.7]** Whereas in the event that the difference of 32,354 votes was true, such number would consist of votes which did not exist in the List of Permanent Voters, and also votes which existed in the List of Permanent Voters, but which were deemed invalid due to various reasons, such as damaged ballots;

**[3.10.8]** Whereas the aforementioned arguments of the Petitioners have been refuted by the Respondent by presenting the witness, Andi Baso Ilyas, stating that the List of Permanent Voters has been put in a compact disc (CD) and there has been no change in the CD;

Whereas based on the aforementioned legal facts, the Court is of the opinion that the Petitioners' petition is not legally grounded, hence the Petitioners' petition must be rejected;

#### **4. CONCLUSION**

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

**[4.1]** The Respondent's Exception is groundless;

**[4.2]** The petition for objection of the Petitioners against the Vote Count Result of the General Election of Regional Heads of Luwu Regency was not proven;

## 5. DECISION

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

### **Passing the Decision,**

#### **In the Exception:**

To declare that the Exception of the Respondent and Relevant Parties cannot be accepted.

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

To reject the Petitioners' petition in its entirety.

Hence the decision was made in the Plenary Consultative Meeting of eight Constitutional Court Justices on Tuesday, the twenty fifth of November two thousand and eight and was pronounced in a Plenary Session open for the public on Wednesday, the twenty sixth of November two thousand and eight by us: Moh. Mahfud MD, as the Chairperson and concurrent Member, Achmad Sodiki, M. Akil Mochtar, Maruarar Siahaan, Abdul Mukthie Fadjar, Maria Farida

Indrati, M. Arsyad Sanusi, Jimly Asshiddiqie, and Muhammad Alim, respectively as Members and assisted by Eddy Purwanto as Substitute Registrar, in the presence of the Petitioners and/or their Attorneys, the Respondent and/or its Attorneys, and the Relevant Parties

**CHIEF JUSTICE,**

**sgd.**

**Moh. Mahfud MD**

**JUSTICES,**

**sgd.**

**Achmad Sodiki**

**sgd.**

**M. Akil Mochtar**

**sgd.**

**Maruarar Siahaan**

**sgd.**

**Abdul Mukthie Fadjar**

**sgd.**

**Maria Farida Indrati**

**sgd.**

**M. Arsyad Sanusi**

**sgd.**

**Jimly Asshiddiqie**

**sgd.**

**Muhammad Alim**

**SUBSTITUTE REGISTRAR,**

**sgd.**

**Eddy Purwanto**