



DECISION

Number 34/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 the Dispute over the Result of General Election of Regional Head and Deputy Regional Head of Wajo Regency filed by:

- [1.2] 1. Name : **H. A. Asmidin;**
Place/Date of birth : Wajo, June 5, 1942;
Religion : Islam;
Address : Jl. Veteran Number 29 Sengkang, Bulu Pabbulu Sub-District, Tempe District, Wajo Regency, South Sulawesi;
2. Name : **Drs. H. Mohammad Ridwan, M.Pd;**
Place/Date of birth : Watampone, December 28, 1958;
Religion : Islam;
Job : Civil Servant;

Address : Jl. Lembu Number 7 A Sengkang, Tempe
Sub-District, Tempe District, Wajo
Regency, South Sulawesi;

In this matter granting the power of attorney to:

1. Sahala Siahaan, S.H.,
2. James Manalu, S.H., M.H.,
3. Liston Y. Silalahi, S.H.;
4. Sahrudin, S.H.;
5. Erikson Hasiholan, S.H;

All of whom being Advocates at Sahala Siahaan Law Office, having their office address in Komplek Sentra Latumenten Blok D3A, Jalan Prof. Latumenten Raya Number 50 Jakarta, acting for and on behalf of the Authorizers, both jointly and severally, by virtue of special power of attorney number 043/SS-SK/XI/2008 dated November 15, 2008;

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

Against:

[1.3] Name : **General Election Commission (KPU) of Wajo
Regency, South Sulawesi;**

Address : Jalan Jenderal Ahmad Yani No. 33, Sengkang, Wajo
Regency, South Sulawesi;

In this matter granting the power of attorney to:

1. Ridwan J Silama, S.H.;
2. Mappinawang, S.H.,
3. H. Tajuddin Rachman, S.H., M.H.;
4. Muhammad Ompo Massa, S.H.,
5. Mursalin Jalil, S.H., M.H.;
6. Muhammad Rusli, S.H.

All of whom being Advocates and Legal Consultants at Ridwan J. Silamma & Partners Law Firm, having their office address at Veteran Selatan Street Number 212, Makassar, acting for and on behalf of the Authorizer, both jointly and severally, by virtue of a special power of attorney dated November 11, 2008;

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

[1.4] Having read the Petitioners' petition;

Having heard the Petitioners' statement;

Having heard the statement and read the written statement of the Respondent, namely KPU of Wajo Regency;

Having carefully examined the evidence and witnesses presented by the Petitioners and the Respondent;

3. LEGAL CONSIDERATION

[3.1] Considering whereas the main issue of the Petitioners' petition is as described above;

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

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

With regard to the foregoing three issues, the Court is of the following opinions:

Authority of the Court

[3.3] Considering whereas based on the provisions of Article 24C paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), Article 10 paragraph (1) subparagraph 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), and Article 12 paragraph (1) subparagraph d of Law Number 4 Year 2004 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2004 Number 8, Supplement to the State Gazette of the Republic of Indonesia Number 4358), one of the constitutional authorities of the Court is to decide upon disputes over the results of general elections;

At first, based on the provisions of 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, hereinafter referred to as Law 32/2004), objections to the vote count results affecting the election of candidate pairs shall be filed to the Supreme Court.

The aforementioned authority of the Supreme Court is also included in Article 94 of Government Regulation Number 6 Year 2005 regarding the Election, Legalization of Appointment, and Dismissal of Regional Heads and Deputy Regional Heads;

In Law Number 22 Year 2007 regarding General Elections Organizer (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) Article 1 sub-article 4 provides, “ *General Elections of Regional Heads and Deputy Regional Heads shall be general elections to directly elect regional heads*

and deputy regional heads within the Unitary State of the Republic of Indonesia under Pancasila and the 1945 Constitution”;

Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government (hereinafter referred to as Law 12/2008), provides, *”The handling of disputes over the vote count results of the general elections of regional heads by the Supreme Court shall be delegated to the Constitutional Court by 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 jointly signed the Official Minutes of Delegation of the Authority to Adjudicate, as the implementation of Article 236C of Law 12/2008 above;

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

Petitioners’ Legal Standing

[3.5] Considering whereas based on Article 106 paragraph (1) of Law 32/2004 *juncto* Article 236C of Law 12/2008, only candidate pairs of the regional head and deputy regional head are allowed to file an objection to the Stipulation

of Results of the General Election of the Regional Head and Deputy Regional Head, and it appears that the Petitioners are a Candidate Pair of the Regional Head and Deputy Regional Head of Wajo Regency, South Sulawesi Province with Candidacy Number 1, in accordance with KPU Decision Number 159/P.KWK-WO/XI/2008 dated November 4, 2008, and therefore, the Petitioners have legal standing to file the *a quo* petition;

Time Limit for Petition Submission

[3.6] Considering whereas the Respondent issued KPU Decision Number 159/P.KWK-WO/XI/2008, dated November 4, 2008, concerning the Stipulation of the Elected Pair of Candidates as the Result of the 2008 General Election of Regional Head/Deputy Regional Head of Wajo Regency.

Considering whereas the Petitioners has filed an objection to the Respondent's aforementioned Decision by means of a petition received by the Court's Registrar Office on November 7, 2008, and accordingly, based on the provision of Article 5 paragraph (1) of the Regulation of the Constitutional Court Number 15 Year 2008, the Petitioners' petition is still within the time limit of 3 (three) working days following the Respondent's stipulation of the *a quo* results of the General Election of the Regional Head and Deputy Regional Head on Tuesday, November 4, 2008;

[3.7] Considering whereas since the Court has the authority to examine, hear, and decide upon the *a quo* petition, the Petitioners have legal standing, and

the petition was filed within the specified time limit, the Court shall further consider the principal issue of the petition;

Principal Issue of the Petition

[3.8] Considering whereas the Petitioners principally argue that KPU of Wajo Regency had announced the vote count results of the General Election of Regional Heads of Wajo Regency on November 4, 2008 based on the Minutes of Plenary Meeting Number 158/P.KWK-WO/XI/2008 as follows:

1. Candidate Pair H.A. Asmidin and Drs. H. Muhammad Ridwan, M.Pd.:
70,232;
2. Candidate Pair H. Andi Yaksan Hamzah, M.S. and Drs. Andi Syafaruddin:
29,802;
3. H. Andi Asriadi Mayang, S.H.,M.H. and H. Andi Ansyari Mangkona, S.E.:
25,544;
4. Drs. H. Andi Burhanuddin Unru, MM. and Amran Mahmud, S.Sos.,M.Si:
73,789;

Therefore, the total number of valid votes was 199,367 votes. According to the Petitioners, the vote count conducted by KPU of Wajo Regency is incorrect. The correct the vote count should have been that of the Petitioners', namely a total of 201,020 valid votes the details of which are described in the following tables:

A. VALID VOTES

NO	NAMES OF CANDIDATE PAIRS OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD	VOTE ACQUISITION FOR CANDIDATE PAIRS OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD								TRANSFERRED VOTES
		TEMPE	TANASI TOLO	MANIANG PAJO	GILIRENG	BELAWA	SABANG PARU	PANMANA	BOLA	
1	2	3	4	5	6	7	8	9	10	11
1	H.A.ASMIDIN And Drs.MOHAMMAS RIDWAN, MPd	13,187	6,995	5,196	3,231	5,209	6,848	6,935	2,721	50,322
2	Drs.H.ANDI YAKSAN HAMZAH, MS And Drs.SYAFARUD DIN	7,170	4,165	866	954	1,306	2,930	2,432	656	20,479
3	H.ANDI ASRIADI MAYANG, SH,MH. And H.ANDI ANSYARI MANGKONA, SE	3,739	1,832	613	512	2,180	865	3,235	2,906	15,882
4	Drs.H.ANDI BURHANUDDIN UNRU, MM. And AMRAN MAHMUD, S.Sos,M.Si	6,497	8,019	1,956	1,230	7,407	3,776	4,044	4,203	37,132
TOTAL		30,593	21,011	8,631	5,927	16,102	14,419	16,646	10,486	123,815
TOTAL OF VALID VOTE ACQUISITION FOR ALL PAIRS OF CANDIDATES OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD OF REGENCY										

NO	NAMES OF CANDIDATE PAIRS OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD	TRANSFERRED VOTES	VOTE ACQUISITION FOR CANDIDATE PAIRS OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD							FINAL VOTE COUNT
			TAKKALALLA	PENRANG	SAJOANGING	MAJAULENG	KEERA	PITUMPANUA	*)	
1	2	3	4	5	6	7	8	9	10	11
1	H.A.ASMIDIN And Drs.MOHAMMAS RIDWAN, MPd	50,322	4,149	3,436	2,862	5,596	3,512	7,217		77,094
2	Drs.H.ANDI YAKSAN HAMZAH, MS And Drs.SYAFARUDDIN	20,479	751	1,012	850	3,404	1,492	1,814		29,802
3	H.ANDI ASRIADI MAYANG, SH,MH. And H.ANDI ANSYARI MANGKONA, SE	15,882	1,468	1,467	1,304	1,806	1,455	2,162		25,544
4	Drs.H.ANDI BURHANUDDIN UNRU, MM. And AMRAN MAHMUD, S.Sos,M.Si	37,132	4,945	2,784	4,748	6,420	4,277	8,274		68,580
TOTAL		123,815	11,313	8,699	9,764	17,226	10,736	19,467		201,020
TOTAL OF VALID VOTE ACQUISITION FOR ALL CANDIDATE PAIRS OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD										201,020

B. INVALID VOTES

NO	DESCRIPTION	VOTE ACQUISITION FOR CANDIDATE PAIRS OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD								TRANSFERRED VOTES
		TEMPE	TANASITOLO	MANIANGPAJO	GILIRENG	BELAWA	SABBANGPARU	PAMMANA	BOLA	
1	2	3	4	5	6	7	8	9	10	11

1	INVALID VOTES	116	241	157	89	208	207	212	249	1.479
TOTAL OF INVALID VOTES										1.479

NO	DESCRIPTION	TRANSFERRERED VOTES	VOTE ACQUISITION FOR CANDIDATE PAIRS OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD							FINAL VOTE COUNT
			TAKKALALLA	PENRANG	SAJOANGING	MAJAULENG	KEERA	PITUMPANUA	*)	
1	2	12	13	14	15	16	17	18	19	20
1	INVALID VOTES	1,479	262	139	137	262	219	212		2,710
TOTAL INVALID VOTE ACQUISITION										

The final vote count positioned the Petitioners as the Candidate Pair of with Candidacy Number 1 (one), namely H. A. Asdimin and Drs. H. Mohammad Ridwan, M.Pd, in the First Rank, with 77,094 (seventy-seven thousand and ninety-four) votes acquired, automatically becoming the winner, the Candidate Pair with Candidacy Number 4 (four), namely Drs. H. Andi Burhanuddin Unru, M.M. and Amran Mahmud, S.Sos, M.Si, in the second rank with 68,580 (sixty-eight thousand five hundred and eighty) votes acquired, the Candidate Pair with Candidacy Number 2 (two), namely H. Andi Asriadi Mayang, S.H, M.H. in the third rank with 29,802 (twenty-nine thousand eight hundred and two) votes acquired, and the Candidate Pair with Candidacy Number (three)

Drs. H. Andi Yaksan Hamzah, M.S. and Drs. Syafaruddin in the fourth rank with 25,544 (twenty-five thousand five hundred and forty-four) votes.

[3.9] Considering whereas to support their argument, the Petitioners have submitted written evidence (Exhibit P-1 to Exhibit P-16) as well as witnesses whose statements have been heard at the hearing on 17 November 17, 2008, as follows:

1. Ali Rusli, as the Election Observer of Nepo and Ujung Baru Villages, Tanah Sitoro District, Wajo Regency, with respect to the question of the Chairperson of the Justices stated that the witness questioned about residents who obtained more than one voting cards; and in KPU's list of permanent voters, there were underage voters where, on the voting day, their right to vote was exercised by other persons; there were also functionaries of parties, supporters of the candidate pairs who concurrently served as members of the District Election Committee (PPK). However such questions were not proposed by the witness to KPU;

2. Andi Pallawaruka, as a witness with an official mandate from the Petitioners in Bola District, and with respect to the question of the Chief Justice, stated that according to his observation in several TPS (Voting Stations), a number of witnesses was absent due to intimidations/threats. Out of 10 villages and 1 sub-district, there were only 3 villages whose witnesses were present. For instance, there were 4 TPS in Bali Elok Village , but only 3 witnesses of the Petitioners were present, while in fact, it is stipulated in KPU's regulation that every TPS should have at least 2 witnesses present. Likewise, in Raja Mawalan Village, the witness neither participated in the vote counting nor signed its minutes due to intimidation. In addition, the witness also conveyed that in Sandresengade Village, namely in TPS 3 and TPS 4, he found a ballot perforated more than once and was nullified by KPPS, even though according to KPU's regulation. a

vote should be invalid if the ballot is perforated more than once or missed the designated box;

3. Mustafa Trijen, as a witness with an official mandate from the Petitioners in Pitung Panoa District, with respect to the question of the Chief Justice, conveyed that many residents did not receive voting cards, including the witness himself, and accordingly, the witness could not vote. On the other hand, some people had up to 4 voting cards, so they could vote in 4 different TPS and there was no evidence of voting given to him, such as ink on his finger. Such issues have been conveyed to KPPS, but up to the voting day, there was no solution.

4. Sallama, as a witness with an official mandate from the Petitioners' in Sabang Baru District, particularly in Talatanreng Sub-District, and with respect to the question of the Chief Justice, conveyed that the witness had been summoned by the success team of the candidate pair with candidacy number 4 and was intimidated and coerced into removing the billboard bearing the picture of the candidate pair with candidacy number 1. He would be beaten if he refused to comply. A day before the voting day, the success team of the candidate pair with candidacy number 4 paid a visit to the community, also to teachers in 286 Elementary Schools Talatanreng and threatened them to vote for the candidate pair with candidacy number 4. Otherwise, they would be driven out of the village. Finally, the success team continued to intimidate people on the voting day

- by visiting TPS, assembling in front of TPS and displaying their cars having the picture of the candidate pair with candidacy number 4;
5. Rusman, a voluntary observer, with respect to the question of the Chief Justice, conveyed that he was scolded and intimidated as well as beaten by Hajj Jumarding during observation, so he could not participate in the vote count;
 6. Amir, as a witness with an official mandate from the Petitioners in Tempe District, with respect to the question of the Chief Justice, conveyed that he had been registered in the List of Permanent Voters (DPT), but up to the voting day, he did not receive any voting invitation from KPU. Despite the fact that he had processed the invitation, he was not summoned up to the voting day, so he could not vote;
 7. Mapeati Hamzah, a witness present in TPS 3 of Sarasa Sub-village, Pammana Sub-district, with respect to the question of the Chief Justice, conveyed that some residents came up to him and asked about the absence of voting cards which prevented many residents from exercising their voting right. The witness did not have any official mandate from the candidate pair with candidacy number 1, so he was not authorized to sign the minutes of vote count;
 8. Sudirman, a resident of Tansiloto District, only asked why certain candidate pairs held campaigns before the designated date. He also

conveyed that some witnesses of the candidate pair with candidacy number 1 did not obtain C1 model forms.

9. H. Syamsuddin, a resident of Bandarangeh Village, Pitung Panua District and a former Village Head, with respect to the question of the Chief Justice, conveyed that many residents did not have any voting card, and accordingly, they did not vote and up to the voting day, some cars belonging the success team of one of the candidate pairs still displayed the pair's poster.

[3.13] Considering whereas with regard to the Petitioners' petition, the Respondent has conveyed its response, principally stating that the Respondent denies the Petitioners' arguments on the following grounds:

A. IN THE EXCEPTIONS

1. Error in object (*error in objectum*), namely that the Petitioners' argument in point 4 (four) is *error in objecto*.

In reference to the aforementioned provision, the dispute over the General Election of Regional Heads is the vote count results affecting the election of a candidate pair. Accordingly, the Petitioners' petition has completely missed the formal requirements and therefore, it is legally reasonable and it deserves to be declared as unacceptable.

2. Obscure Libel

2.1. Whereas with respect to the Petitioners' argument stating that there were 1,653 invalid ballots in 13 districts which should have been the votes cast for the Petitioners is a seriously mistaken argument and has no legal grounds. It should be questioned namely on what grounds the Petitioners based their reason to state or claim that the invalid votes were the votes which should have been cast for the Petitioners.

2.2. Whereas the Petitioners' argument on the occurrence of vote inflation in 13 districts by 5,209 votes as mentioned in point 6, is unclear, obscure, made-up, has no legal grounds. Since the Petitioners only mentioned the number (13 districts) without mentioning at what level the vote inflation occurred, namely whether it occurred in TPS, PPK or at the level of Regency KPU.

3. Absolute Competence

The Petitioners' argument did not fit in the object of disputes over the General Election of Regional Heads, since it is related to the violations in the process or the stage of the General Election of Regional Heads which is not included the Constitutional Court's authority to hear, but to the public judicature instead.

Based on the aforementioned provision, it is evident that the Constitutional Court does not have the authority to hear the object of dispute argued by the Petitioners. Therefore, the Petitioners' petition must be declared as unacceptable.

B. IN THE PRINCIPAL ISSUE OF THE CASE

1. Whereas all matters described in the abovementioned exceptions constitute an integral and inseparable part of the response to the principal issue of this case;
2. Whereas the Respondent expressly denies all arguments brought forward by the Petitioners, except with respect to the matters expressly admitted by the Respondent and do not impair the Respondent;
3. Whereas the Respondent acknowledges the argument in point 4 part A of the Petitioners' Objection to the valid votes of the four Candidate Pairs of the Regional Head and Deputy Regional Head;
4. Whereas the petition to nullify Decision Number 159/P.KWK-WO/XI/2008 dated November 4, 2008 is groundless and seriously mistaken;
5. Whereas with respect to Invalid Votes, the Petitioners' argument stating that they were impaired due to the existence of 1,653 valid

votes in 13 districts which should have acquired by the Petitioners but were declared as invalid by the Respondent instead, is false. The reason is that the ballots declared as invalid by the Respondent had complied with the vote count results obtained from TPS which were recapitulated by PPK and also by the Respondent afterwards, as set forth in Minutes Number 158/P.KWK-WO/XI/2008, without adding and deducting the vote acquisition of the candidate pairs of in the General Election of Regional Heads, including the Petitioners' vote acquisition. Accordingly, the result of the recapitulation conducted by the Respondent is correct;

6. Vote Inflation. Whereas the Petitioners' argument in point 6 which states that the recapitulation of vote count results conducted by the Respondent had contained vote inflation in the favor of the candidate pair with Candidacy Number 4 in 13 districts and thus impairing the Petitioners, is not correct;
7. With respect to the re-election and recount. Whereas with regard to the Petitioners' argument requesting the Constitutional Court Justices to conduct re-election and recount in 14 districts of Wajo Regency, is a seriously mistaken argument because it is not regulated in Law Number 32 Year 2004;
8. With regard to fraudulency. Whereas the Petitioners' argument stating that the Respondent has been fraudulent in organizing the

General Election of Regional Heads in Wajo Regency as argued in point 9 letters a, b, c, d, and e on page 11, is incorrect.

- 8.1. With regard to Voting Invitations. Whereas the Respondent had distributed voting invitations (C-6 model form) to all voters registered in DPT as required by the procedure;
- 8.2. With regard to Voting Cards. Whereas the Petitioners' argument stating that the Petitioners have suffered a loss of 401 votes because some of their supporters were never given the voting cards by the Respondent is incorrect;
- 8.3. With regard to the Intimidated Voters. Whereas with respect to the Petitioners' argument stating that there were voters in Sabbang Paru District who were coerced into voting for the Candidate Pair with Candidacy Number 4, is incorrect;
- 8.4. With regard to the Distribution of Free Sugar. It was not described by the Petitioners, so the claim about the existence of free sugar distribution is merely an illusion and product of fictitious imagination;
- 8.5. With regard to Underage Voters. Whereas with regard to the Petitioners' claim on the existence of underage voters casting their votes is groundless and incorrect, since it is not included in the object of the dispute.

[3.14] Considering whereas in order to support its arguments, the Respondent has presented written evidence (Exhibits T-1 up to T-18) and 9 (nine) witnesses whose statements have been heard under oath at the hearing on November 17, 2008, principally stating as follows:

1. Drs. Ahmad Muktamar, the Chairperson of the General Election Supervisory Committee (*Panwaslu*) of Wajo Regency, with respect to the question of the Chief Justice stated that his personnel had supervised 716 TPS from the vote count to the vote recapitulation involving 42 supervisors at district level and 3 supervisors at regency level and none of them reported any vote inflation or other fraudulency;
2. Andi Bau Malarangeng, an independent General Election observer from Lamadukelleng University. With regard to the question of the Chief Justice, stated that during his observation, he did not find anything in contrary to the general election principles, namely the principles of a direct, public, free, confidential, honest and fair election in 128 villages and 716 TPS of Wajo Regency. The witness also stated that he only attended TPS 5 in Bolopabolo Village, Tempe District while the condition of other TPS was reported by his fellow college students dispersed in other villages;
3. Amiruddin, a member of the Supervisory Committee in Keera District, stated that the Keera District had 10 villages with 10 supervisors, and

- there was no report on any violation or vote inflation. The witness also stated that during the vote count in the district, nobody raised any objection; neither did the Petitioners as a candidate pair;
4. Haedar Busa, the Chairperson of the Supervisory Committee in Sabangparu District, stated that from the voting day up to the vote recapitulation, no violation was reported.
 5. Asruddin, a member of the Supervisory Committee in Bola District, stated that during the vote recapitulation, there were 4 witnesses of the candidates from 50 TPS, and none of the Petitioners' witnesses. Only the success team of the Petitioners as a candidate pair was present.
 6. Drs. Aras Baco, a district witness, stated that none of the votes was deemed invalid.
 7. Haryanto, a voluntary TPS observer, stated that he did not see or receive any report on unusual events occurring in TPS and TPK.
 8. Andi Supri, the Leader of the success team of the candidate pair with candidacy number 3, stated that he did not witness any vote inflation.
 9. Drs. Kariamang, the Leader of the success team of the candidate pair candidacy number 2, stated that he was present in the plenary vote recapitulation which was conducted transparently. The success team of

candidate number 1 was present but did not sign the minutes of vote recapitulation.

The Opinion of the court

[3.15] Considering whereas prior to entering into the Principal Issue of the Petition, the Court shall first consider the Respondent's exception;

1. Whereas the Respondent declares that the Petitioners' petition as *Error in objectum*, since the issue questioned by the Petitioners is Minutes of Plenary Meeting Number 159/P.KWK-WO/XI/2008 drawn up by KPU of Wajo Regency dated November 4, 2008 with the agenda of the Stipulation of the Elected Candidate Pair of the Regional Head and Deputy Regional Head in the 2008 Election of the Regional Head and Deputy Regional Head of Wajo Regency which resulted in the election of Drs. H. Andi Burhanuddin Unru, M.M. as the Regional Head and Amran Mahmud, S. Sos., M.Si. as the Deputy of Regional Head (Exhibit P-4 and Exhibit T-2), while the object of the petition should have been Minutes of Plenary Meeting Number 158/P.KWK-WO/XI/2008 dated November 4, 2008 with the agenda of the Recapitulation of Vote Count Results in Wajo Regency at KPU Level in the 2008 General Election of the Regional Head and Deputy Regional Head of Wajo Regency together with attachments thereto containing the vote acquisition of candidates stipulated by the Respondent (Exhibit T-1). With respect to the aforementioned Respondent's Exception, the Court is of the opinion that the Respondent's

- exception has not been entirely correct, because the Respondent also presents the evidence (Exhibit P-3) of the Recapitulation of Vote Count Results of the 2008 General Election of the Regional Head and Deputy Regional Head of Wajo Regency attached with Minutes of Plenary Meeting Number 158/P.KWK-W0/XI/2008 dated November 4, 2008 as stipulated by the Respondent, which in fact, should have been the substance of the petition's object as referred to in Article 106 of Law 32/2004 *junctis* Article 94 of Government Regulation Number 6 Year 2005 and Article 4 of the Constitutional Court Regulation Number 15 Year 2008. Therefore, the Respondent's Exception on this matter is groundless and should be overruled;
2. Whereas the Respondent also states that the Petitioners' petition is obscure because the Petitioners argued that 1,653 invalid votes should have been the votes cast for the Petitioners, while in fact, such matter cannot be ascertained. Since it is related to the principal issue of the petition, its inclusion in the exception is too early and must therefore be overruled;
 3. With regard to violations during the election stage of which a competent institution has been appointed to address, the Court is of the opinion that despite the fact that it is considered by the Respondent as being beyond the Court's authority, the Court evaluates that the exception concerns the

principal issue of the petition, so as the case is with the second exception above, it must also be overruled.

[3.16] Considering whereas because the Respondent's Exception has been overruled, the Court shall thus present its opinions as follows:

1. Whereas based on the written evidence presented by the Petitioners (Exhibits P-1 to P-16), there is no legal and convincing evidence showing any errors in the vote count conducted by the Respondent which should have otherwise confirmed the vote count proposed by the Petitioners, since Exhibits P-8 to P-16 in which the Petitioners argued for vote inflation is unsupported with evidence, but it is only an indication based on the Petitioners' suspicion upon observing the strikeouts. If the Petitioners' and the Respondent's evidence are compared, it appears that the figures of the candidate pairs' vote acquisition are precisely identical, so the vote inflation is unproved;
2. Whereas the Petitioners' argument stating that a number of the invalid votes in 14 districts should have been the votes cast for the Petitioners, could be legally substantiated based on written evidence and witnesses presented by the Petitioners, so it must be rejected;
3. Whereas witnesses from the Supervisory Committee of the General Election of Regional Heads, both at regency and district levels, as well as witnesses from the group of observers of the General Election of Regional

- Heads associated in the Network of Voters' Education for the People (*Jaringan Pendidikan Pemilih untuk Rakyat*), all stated that there was no violation in the General Election of Regional Heads in Wajo Regency affecting the vote count stipulated by the Respondent;
4. Whereas some of the witnesses presented by the Petitioners were not the official witnesses of the candidate pairs witnessing the vote count of the General Election of Regional Heads in Wajo Regency and only stated that there had been a number of fraudulence and violations in various stages of the General Election of Regional Heads which should have been addressed by the authorized Supervisory Committee of the General Election of Regional Heads;
 5. Whereas therefore, whether or not the indications of various violations during the implementation of the General Election of Regional Heads in Wajo Regency are true, the Court is of the opinion that it does not serve as a sufficient legal ground and evidence to grant the Petitioners' petition in order to conduct a recount of votes acquired in the General Election of Regional Heads in Wajo Regency;
 6. Whereas all arguments of the Petitioners' objection to the vote count results of the General Election of Regional Heads in Wajo Regency stipulated by the Respondent are insufficiently grounded, so they must be rejected.

4. CONCLUSION

Considering whereas based on the entire consideration on facts and legal grounds above, the Court concludes that:

[4.1] The Respondent's exception is legally inappropriate;

[4.2] The Petitioners' objection to the vote count results of the General Election of Regional Head stipulated by the Respondent is not proved.

5. DESICION

In view of articles of the 1945 Constitution of the State of the Republic of Indonesia, Law Number 24 Year 2003 regarding the Constitutional Court, Law Number 4 Year 2004 regarding Judicial Power, and Law Number 32 Year 2004 regarding Regional Government *juncto* Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, as well as other laws and regulations applicable to this petition;

Passing the Decision,

In the Exception:

To declare that the Respondent's Exception is unacceptable.

In the Principal Issue of the Case:

To reject the Petitioners' petition in its entirety.

Hence the decision was made at the Consultative Meeting of Justices by nine Constitutional Court Justices on Tuesday, the twenty-fifth of November two thousand and eight, and was pronounced in the Plenary Session open for public on Wednesday, the twenty-sixth of November two thousand and eight by us, Moh. Mahfud MD as the Chairperson and concurrent member, with Muhammad Alim, H. Abdul Mukthie Fadjar, Maria Farida Indrati, Maruarar Siahaan, H.M. Arsyad Sanusi, H.M. Akil Mochtar, H. Achmad Sodiki, and Jimly Asshiddiqie respectively as Members and assisted by Fadzlun Budi SN as the Substitute Registrar, in the presence of the Petitioners/their Attorneys and the Respondent/its Attorneys.

CHIEF JUSTICE

Sgd.

Moh. Mahfud MD

JUSTICES,

Sgd.

Muhammad Alim

Sgd.

Maria Farida Indrati

Sgd.

H.M. Arsyad Sanusi

Sgd.

H. Abdul Mukthie Fadjar

Sgd.

Maruarar Siahaan

Sgd.

H.M. Akil Mochtar

Sgd.

H. Achmad Sodiki

Sgd.

Jimly Asshiddiqie

SUBSTITUTE REGISTRAR,

Sgd.

Fadzlun Budi SN