



DECISION

Number 35/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, passing decisions in the case of petition of Dispute over the Results of General Election of Regional Head and Deputy Regional Head of Polewali Mandar Regency, filed by:

- [1.2] 1. Name : **IR. ALADIN S. MENGGA.**
- Nationality : Indonesia
- Age : 55 Years.
- Occupation : Civil Servant.
- Address : Jalan Haji Andi Depu Number 157
Takatidung Sub-District, Polewali District,
Polewali Mandar Regency, West Sulawesi
Province.
2. Name : **IR. H. A. AMIN MANGGABARANI.**
- Nationality : Indonesia

Age : 54 Years.
 Occupation : Civil Servant.
 Address : Jalan H. A. Iskandar Unru Number 01 Coppo
 Sub-District, Barru District, Barru Regency,
 South Sulawesi Province.

In this matter granting the power of attorney to 1) Muhammad Hatta, S.H
 2) Abdul Latif, S.H; all of whom are Advocates/Attorney-at-Law joined in
 the Legal Team for Candidate Pair of Ir. Aladin S. Mangga and Ir. H. Andi
 Muh. Amin Manggabarani (ALADIN-AMIN) having its address at Jalan H.
 Andi Depu Polewali Number 157 Polewali Mandar, West Sulawesi
 Province, by virtue of special power of attorney dated November 5, 2008,
 both jointly and respectively.

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

Against:

Name : **The General Election Commission of Polewali
 Mandar Regency**

Address : Jalan K.H. Wahid Hasyim Polewali, Polewali Mandar
 Regency, West Sulawesi Province, Telephone (0428)
 23151/ Facsimile (0428) 23151;

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

[1.3] Having read the petition of the Petitioners;

Having heard the statement from the Petitioners;

Having heard and read the Written Response presented by Respondent the General Election Commission of Polewali Mandar Regency;

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

Having read the Written Conclusion presented by the Petitioners and Respondent;

3. LEGAL CONSIDERATION

[3.1] Considering whereas the main issue of the Petitioners is concerned with the Legalization of Result of Vote Count of Regional Head and Deputy Regional Head General Election and the Stipulation of Elected Regional Head and Deputy Regional Head Candidates of Polewali Mandar Regency (hereinafter referred to as the Regional Head General Election of Polewali Mandar Regency) which were stipulated based on the Stipulation of General Election Commission of Polewali Mandar Regency Year 2008 (hereinafter referred to as the KPU of Polewali Mandar Regency) Number 22/Kpts.KPU/PM/XI/2008 dated November 15, 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 take into account the following matters:

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

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

AUTHORITY OF THE COURT

[3.3] Considering whereas under the provisions 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 regarding 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, and Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, one of the constitutional authorities of the Court is to decide upon dispute over the result of general election;

Initially, under 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), objection with regard to the result of vote count affecting the election of a candidate pair was to be filed to the Supreme Court. The authority of the Supreme Court was re-included in Article 94 of the Government Regulation Number 6 Year 2005 regarding the Election, Legalization, Appointment and Dismissal of Regional Head and Deputy Regional Head;

Article 1 sub-article 4 of Law Number 22 Year 2007 regarding General Election Administrator (State Gazette of the Republic of Indonesia Year

2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) stipulates, "*General Election of Regional Head and Deputy Regional Head shall be the general election to directly elect regional head and deputy regional head in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia*";

Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, Article 236C stipulates, "*The handling of dispute over the results of vote count of regional head election by the Supreme Court shall be delegated to the Constitutional Court by no later than 18 (eighteen) as of 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 Minutes of Delegation of Authority to Adjudicate as the implementation of the foregoing Article 236C of Law Number 12 Year 2008;

[3.4] Considering whereas since the Petitioners' petition is concerned with dispute over the result of vote count in the Regional Head General Election and stipulation of the elected candidate pair of Polewali Mandar Regency in accordance with the Decision of KPU of Polewali Mandar Regency Number 22/Kpts.KPU/PM/XI/2008 dated November 5, 2008, hence, the Court has the authority to examine, hear, and decide upon the *a quo* petition;

LEGAL STANDING OF THE PETITIONERS

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

- a. Petitioners are Regional Head and Deputy Regional Head Candidate Pair;
- b. Petition may only be filed against the stipulation of result of vote count in the Regional Head General Election affecting the designation of candidate pair qualified to participate in the second round Regional Head General Election or the election of candidate pair as Regional Head and Deputy Regional Head;

[3.6] Considering whereas in relation to the legal standing of the Petitioners, the Court shall consider the matter based on the provision of Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government, Articles 3 and 4 of PMK 15/2008 as intended in paragraph [3.5] as follows:

- whereas the Petitioners are Regent and Deputy Regent Candidate Pair of Regional Head of Polewali Mandar Regency stipulated by the Respondent to have candidacy number 5;

- whereas the Petitioners file an objection to the Decision of the General Election Commission of Polewali Mandar Regency Number 22/Kpts.KPU/PM/ XI/2008 regarding Legalization of the Result of Vote Count in the Regional Head and Deputy Regional Head General Election and the Stipulation of Elected Regional Head and Deputy Regional Head Candidates of Polewali Mandar Regency Year 2008 dated November 5, 2008. The intended objection is filed because the Respondent has mistakenly stipulated the 59,167 votes acquired by the Petitioners which take the second place under Candidate Pair H. Muhammad Ali Baal Masdar, M. Si, and H. Nadjamuddin Ibrahim, S. Mi, M.M. who acquire 78.191 votes;
- whereas according to the Petitioners, the result of recapitulation of vote count conducted by the Respondent as mentioned above is obtained due to a mistake in the process of recapitulation of vote count, calculation and accumulation at the level of TPS, PPK, and KPU of Polewali Mandar Regency, and based on the fact that there has been a vote mark-up benefiting Candidate Pair Number 4, H. Muhammad Ali Baal Masdar, M. Si., and H. Nadjamuddin Ibrahim, S. Mi, M.M., who acquire 3,326 additional votes. According to the Petitioners, the correct votes acquired by the Petitioners are 79,329 votes, so that it is the Petitioners who should be stipulated as the Elected Regent/Deputy Regent Candidate Pair of Polewali Mandar Regency. Therefore, the Petitioners ask for the Court to annul the vote count conducted by the Respondent;

[3.7] Considering whereas based on the assessment of facts and laws on the aforementioned paragraph [3.6], the Court is of the opinion that the Petitioners have the legal standing to file the *a quo* petition;

TIMELIMIT FOR THE SUBMISSION OF PETITION

[3.8] Considering whereas the Respondent issued the Decision of KPU of Polewali Mandar Regency Number 22/Kpts.KPU/PM/XI/2008 regarding Legalization of the Result of Vote Count in Regional Head and Deputy Regional Head General Election and Stipulation of the Elected Regional Head and Deputy Regional Head Candidates of Polewali Mandar Regency Year 2008 dated November 5, 2008 (*vide* Exhibit P-30) and the Petitioners have filed an objection to the Respondent's Decision the petition of which was received in the Registrar Office of the Court on November 7, 2008 on 15.30 WIB with the Minutes of Receipt of Petition Dossier Number 72/PAN.MK/XI/2008, thus under the provision of Article 5 paragraph (1) of PMK 15/2008, the Petitioners' petition still meets the time limit set;

[3.9] Considering whereas since the Court has the authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have the legal standing to file the petition as well as the petition is filed within the time-limit set, the Court shall further consider the Principal Issue of the Petition;

PRINCIPAL ISSUE OF THE PETITION

[3.10] Considering whereas in principal, the Petitioners argue in their petition as follows:

- a. Whereas the KPU of Polewali Mandar Regency has announced that result of vote count in the Regional Head General Election amounts to 186,732 votes, with the detailed vote acquisition, as follows:

Candidacy Number	Name of Candidate Pair of Regional Head and Deputy Regional Head of Polewali Mandar Regency	Vote Acquisition	Percentage %
4.	H.Muhammad Ali Baal Masdar,M,Si and H. Nadjamuddin Ibrahim,S.Mi,M.M	78,191	41.87 %
5.	Ir.Aladin S Mengga and Ir.H.A.Amin Manggabarani	59,167	31.69 %
6.	H. Andi Ibrahim Masdar and H.Tasmin Jalaluddin	26,883	14.40 %
1.	H.M.Yusuf Tuali and Hj. Sri Upiati Rauf	9,586	5.13 %
2.	H. Zainal Abidin and Drs. H. Abd. Wahab Hasan Sulur	8,349	4.47 %
3.	DR. Abd. Rahman Razak,SE,Ms and Drs. Sjuaib Hanan, M.M	4,556	2.44 %
	TOTAL	186,732	100 %

- b. Whereas the calculation conducted by the KPU of Polewali Mandar Regency is incorrect since there is a mistake in the process of recapitulation of vote count, vote calculation as well as vote accumulation at the level of TPS, PPK, and KPU of Polewali Mandar so as to result in the vote mark-up by 3,326 votes for Candidate Pair Number 4, namely H.

Muhammad Ali Baal Masdar, M.Si., and H. Nadjamuddin Ibrahim, S. Mi.,
M.M.;

- c. Whereas there is a fact revealing that there has been a vote mark-up benefiting Candidate Pair Number 4 (H. Muhammad Ali Baal Masdar, M.Si, and H. Nadjamuddin Ibrahim, S. Mi, M.M.) in the amount of 3,326 votes. In addition to that, the Petitioners' witness did not sign the process of recapitulation conducted by the Respondent on November 4, 2008. Therefore, the 78,191 votes acquired by Candidate Pair Number 4 must be deducted by 3,326, so that the total votes acquired by Candidate Pair Number 4 is 74,865 votes;
- d. Whereas there is a negligence and an element of deliberateness indicated by the administrator of Regional Head General Election in which there is a PPS which did not deliver 20.162 C -6 forms to voters supporting the Petitioners. Hence, the Petitioners should acquire 59,167 votes stipulated by the Respondent plus 20,162 votes cast by the Petitioners' supporters who did not receive C-6 Model card. Therefore, the Petitioners should obtain 79,329 votes (59,167 votes plus 20,162 votes);

[3.11] Considering whereas to reaffirm their arguments, the Petitioners have presented written evidence marked with Exhibit P-1 to Exhibit P-33, as well as 6 (six) witnesses delivering statements under oath at the hearing dated November 20, 2008 the complete statement of which is to be described in the Principal Issue of the Case which in essence, states as follows:

[3.11.1] Witness Ichsan Saefudin

- Whereas witness is the Winning Team of Candidate Pair Number 5, who argues that the number of voters listed on DPT is different from that of in the recapitulation of PPK, and that there is a discrepancy between the voting ballots existed and those distributed based on the DPT;
- Whereas on the night of October 25, 2008, witness attended a meeting at the invitation of Polewali Mandar Regent which was also attended by the Chairperson of DPR, the Chief of Resort Police, Supervisory Committee, KPU, the candidates and their teams. The meeting was held to follow-up the complaint received from the community that there were people who were not registered with the DPT and those who were registered with the DPT but did not receive an invitation to vote. Subsequently, Polewali Mandar Regent suggested that the people who were not registered with the DPT may exercise their right to vote under a condition that the concerned holds a Resident's Identification Card or other identifications. However, the Regent's proposal was rejected by Sholikin, a member of KPU of Polewali Mandar Regency for a reason that it would be difficult to realize since the voting ballots were likely insufficient;

Whereas at the end, the meeting resulted in an agreement that the people who were registered with the DPT and did not receive an invitation to vote can exercise their voting right under a condition that they have an identity card, such as Resident's Identification Card or other identification cards, if

the concerned did not have a Resident's Identification Card which was subsequently followed-up by the KPU of Polewali Mandar Regency with the issuance of Circular Letter Number 3. However, there was an obstacle in the field because there were several TPS rejecting identification card other than Resident's Identification Card;

- Whereas with regard to the DPT, prior to the election, the DPT has become an issue and the team has come before the KPU requesting for the soft copy of DPT, although it failed to obtain the soft copy;
- Whereas in Polewali and Sidorejo Districts, there were undistributed voter cards and voter invitations and such matter has been reported to the General Election Supervisory Committee;
- Whereas witness attended the recapitulation of vote count in the Regency KPU and has officially filed several objections to the Regency KPU. The objections were then accepted by the Regency KPU, however witness did not sign the recapitulation;

[3.11.2] Witness Acho Bulu

- Whereas as the District Coordinator, to the best of the witness knowledge, there were two issues arising in the Regional Head General Election of Polewali Mandar Regency which occurred in Pooling Station 6 Darma Sub-district, Polewali District, namely *first*, the KPPS and PPS did not provide the witnesses of the Regent Candidate Pair with the copy of DPT.

Secondly, there were around one hundred similar dates of birth and addresses;

- Whereas at the end of vote count at the level of Polewali District, witness did not sign the results of vote count because during the election, witness saw a fraudulent, namely there were several community members who were listed in the DPT and came to the TPS but they were not allowed to cast their votes by the member of TPS;

[3.11.3] Witness Indra Wijaya

- Whereas witness did not receive an invitation to vote although he was registered with the DPT;

[3.11.4] Witness Muhammd Jufri Ikhlas

- Whereas witness narrated the incident in the field in chronological order, namely on the night of October 27, 2008, there were around two thousand voting cards and invitations undistributed to the people which were found in Pooling Station 1 up to Pooling Station 12 of Darma Sub-district. With regard to such matter, witness has reported it to the District Supervisory Committee, and then the District Supervisory Committee instructed the PPS to withdraw the invitation cards. However, on October 30, 2008, the invitation cards were still available in the KPPS and then collected by the witness;

- Whereas particularly in Pooling Station 4, there were 44 invitations found to be hidden by the relevant KPPS, which according to the KPPS, the foregoing cards have been used by the voters. Subsequently, in Pooling Station 12, there were 100 invitations kept and hidden by the KPPS, which according to the KPPS, the cards have been used by the voters, although according to the witness, the cards should be held by the voters;
- Whereas similarly in Teka Bata, Manding, Madate, Akatidung Sub-districts and its vicinity, there were around one thousand invitations and voting cards that were not distributed to the community. With regard to such matter, witness has reported it to the Regency Supervisory Committee;

[3.11.5] Witness Musa

- Whereas witness was registered with the DPT, however he did not receive an invitation to cast vote;

[3.11.6] Witness Abdul Kadir

- Witness is the witness from the local NGO in West Sulawesi who received a report that one day before the voting, there were people listed in the DPT, precisely the DPT in Pooling Station 6 of Darma Sub-district who did not receive invitations.
- Witness then came to the people, took the DPT and visited the KPPS and submitted the Circular Letter of KPU Number 03 (if not mistaken) which

- stipulated that the people who were registered with the DPT may cast their votes by way of presenting other identifications, such as Resident's Identification Card, Driver's License, Family Card or other identifications although they did not receive voter cards;
- Witness received a response from the Chairperson of KPPS stating his approval to such method as the legal basis has been provided and asked the people who were registered with the DPT to come to the Pooling Station tomorrow to cast vote because the invitations have been used up. However the next day, KPPS still prevented the people listed in the DPT from casting their votes;
 - KPPS gave a reason that a person cannot cast his/her vote because he/she did not have an invitation card;
 - Whereas the individuals who were not allowed to vote were Musa, Fatmawati, and around 20 community members although they have brought an identification card;
 - Musa came to the Pooling Station to cast his vote because he was registered with the DPT. However, he was not allowed to vote;
 - Witness stated that there was an inconsistency in the KPPS and carelessness shown by the KPU;

- Witness stated that there were approximately 100 identifications of the people listed in the DPT with the similar dates and months, namely the 1st date and the 7th month. As a result, it was difficult to be proven and prevented the people from casting vote;

[3.12] Considering whereas with regard to the arguments presented in the Petitioners' petition, the Respondent has presented written response dated November 18, 2008 which is completely included in the Principal Issue of the Case which in essence is as follows:

In the Exception

- Whereas the Petitioners' petition is not within the authority of the Court as set forth in Article 4 of PMK 15/2008, Article 106 paragraphs (1) and (2) of Law Number 32 Year 2004 *juncto* Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government;
- Whereas the object of dispute in the Regional Head General Election filed to the court is limited to only matters related to the vote count stipulated by the General Election Commission. Stipulation of the result of vote count is only related to the "Phases of Vote Count in the General Election Commission" in which the series of activities is began with Vote Count Meeting at the level of KPPS (Voting Administrator Group) up to Plenary (open) Meeting for the purpose of Recapitulation of Vote Count on the

Result of Regional Head General Election in the Regency/City General Election Commission (KPU);

- Whereas the alleged violation as argued by the Petitioners is an assumption made by the Petitioners in a subjective and *a priori* manner and it fails to meet formal judicial requirements of a petition with regard to the dispute in General Election Commission as set forth in Article 6 paragraph (2) sub-paragraph b item 1 of the PMK 15/2008;

In the Principal Issue of the Case

- Whereas the recapitulation of vote count conducted by the Respondent is correct, the data included are collected from the result of recapitulation in the Sub-district Voting Committee (PPK) based on vote count in all Pooling Stations (TPS) throughout Polewali Mandar Regency. The detailed numbers argued by the Petitioners are incorrect since the recapitulation of vote count in the KPU is attended by the witnesses of Candidate Pairs, including those appointed by Candidate Pair Number 5 (five) or the Petitioners, meanwhile with regard to the difference in vote ballot at the level of TPS, PPK, and Regency/City KPU, it is because the vote ballots printed exceed the number of permanent voters as set forth in Article 87 of 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;

- Whereas the argument presented by the Petitioners which states, "*The Respondent fails to take into account the voting right of the people supporting the Petitioners since the Petitioners' supporters did not receive C-Model invitation card so that the Petitioners did not acquire any votes from them.*" is groundless. In order to anticipate issue with regard to people who do not receive Model-C invitation card, the Respondent has issued a circular letter which principally states that voters who do not obtain voter's card nor receive an invitation to come to the TPS, may cast their votes at the TPS with which the concerned is registered insofar as he/she is registered in the DPT by way of presenting an identification card;
- Whereas the argument presented by the Petitioners regarding the total votes acquired by the Petitioners which are based on the formula "The total valid votes acquired by the Petitioners in the Regional Head General Election are added with the number of votes not cast which is registered with the DPT", so that the votes acquired by the Petitioners amount to 59,167 votes plus 20,162 votes which are equal to 79,329 votes exceeding the total votes acquired by Candidate Pair Number 4 (H. Muhammad Ali Baal Masdar and H. Nadjamuddin Ibrahim). Whereas the existence of a number of voters registered with the DPT who do not exercise their voting rights is not resulted from the absence of invitation letter but it may be from other factors, including among others, the voters are in fact unwilling to exercise their voting rights;

- Whereas the method of calculation used by the Petitioners which generates a total of 3,326 votes cannot be accounted for since it is not derived from an official vote count so that the validity of data collected by the Petitioners may be easily fabricated and made according to the Petitioners' desire and version;

[3.13] Considering whereas to substantiate its arguments, the Respondent has also presented written evidence marked with Exhibit T-1 up to Exhibit T-33, as well as 2 (two) witnesses providing statement under an oath at the hearing date November 20, 2008, which in principal state as follows:

[3.13.1] Witness Indar Jaya

- On October 27, 2008 at 20.00–23.30 WIT, witness presided over the vote count plenary meeting attended by six witnesses from the respective Candidate Pairs in the name of witness of Candidate Pair 1, Aslam Muis; witness of Candidate Pair Number 2, Ahmad; witness of Candidate Pair Number 3, M.T. Syahrir; witness of Candidate Pair Number 4, Usman Sanjaya; witness of Candidate Pair Number 5, Acho Bulu; and witness of Candidate Pair Number 6, Abubakar Kadir;
- In the process of recapitulation, all witnesses of the candidate pairs were asked to give their response and none of the witnesses filed a protest;
- Since the administrative process took a relatively long time (up to 23.30 WIT), during recess each witness gave their mobile phone numbers as a

contact at the time the recapitulation was completed. After the recess, some of the witnesses may be contacted and came back to sign the recapitulation while the others did not;

- At the time of finalization of recapitulation, each of the witnesses were asked to make an objection however, none of them filed it;
- Witness was aware that there were several invitations which have not been received based on the result of monitoring of PPS to its PPDP or KPPS because the voters have demised;
- Witness states that the voters registered in Polewali Mandar District who exercised their voting rights amounted to 22,637 voters, while those who did not exercise their voting rights amounted to 8,520 voters.

[3.13.2] Witness M. Akbar

- Witness is the employee of Demography and Vital Records Office of Polewali Mandar Regency preparing the DP4 to be submitted to the KPU on April;
- According to witness, the similar date and month (1st date, 7th month) occurred in the DP4 was resulted from an automatic system which is deployed when a person did not know his/her date of birth and such matter is in accordance with the Regulation of the Minister of Home Affairs Number 28 Year 2005 so that it is applicable at national level;

- The date and month were used because the Population Register Number must be filled out, otherwise it cannot be printed;
- Witness only dropped the F1 01 form to the hamlets and did not gather the data because the demography and vital records office has only been established for one year, issues with regard to demography were previously addressed in secretariat division, administration section at Regional Secretary of Demography;
- Witness has not obtained demography data, unless data on Governor Election Year 2006 which were retrieved from the governor's office;

OPINION OF THE COURT

[3.14] Considering whereas prior to taking into account the Principal Issue of the Petition filed by the Petitioners, the Court shall first consider the Exception of the Respondent which in principal states the following matters:

1. The Petitioners' petition is not included in the Court's authority;
2. The object of dispute (*objectum litis*) is concerned with the stipulation of vote count by the KPU.

[3.14.1] With regard to the Respondent's Exception, the Court is of the opinion that it is incorrect since the object of dispute (*objectum litis*) of the Petitioners' petition is concerned with the Decision of KPU of Polewali Mandar

Regency Number 22/Kpts.KPU/PM/XI/2008 regarding Legalization of the Result of Vote Count in the General Election of Regional Head and Deputy Regional Head and the Stipulation of Elected Regional Head and Deputy Regional Head Candidates of Polewali Mandar Regency Year 2008 dated November 5, 2008. Hence, the Respondent's Exception regarding the authority of the Court to examine, hear, and decide upon dispute over the Regional Head General Election must be declared as cannot be accepted;

[3.14.2] Considering whereas the Respondent in its exception also argues about the object of dispute over the stipulation of vote count issued by the KPU, which according to the Respondent, such stipulation is not within the authority of the Court. The Respondent's exception may also be categorized as an exception with regard to the authority of the Court to examine, hear, and decide upon dispute over the Regional Head Election. Hence, the exception must be deemed as having been considered and must be set aside;

IN THE PRINCIPAL ISSUE OF THE CASE

[3.15] Considering whereas since the Respondent's exception is set aside, the Court shall subsequently express its opinion on the Principal Issue of the Petition presented by the Petitioners based on the statement of the Petitioners and Respondent, evidence of letters as well as statement of witnesses from both of the parties as follows:

- Whereas the Petitioners object to the Decision of KPU of Polewali Mandar Regency Number 22/Kpts.KPU/PM/XI/2008 regarding the Legalization of the Result of Vote Count in Regional Head General Election of Polewali Mandar Regency Year 2008 dated November 5, 2008 which has stipulated that the Petitioners acquire 59,167 votes and take the second place, while Candidate Pair H. Muhammad Ali Baal Masdar and H. Nadjamuddin Ibrahim who acquire 79,191 votes take the first place. According to the Petitioners, if there is no mark-up in the amount of 3,326 votes and the Respondent distributes 20.162 invitations to vote to the Petitioners' supporters, the Petitioners may be confirmed to have won the Regional Head General Election in Polewali Mandar Regency with the following calculation:
 - a. The votes acquired by the Petitioners based on the recapitulation conducted by the Respondent amount to 59,167 votes plus 20,162 votes which are the votes cast by the Petitioners' supporters who do not exercise their voting rights as they do not receive any invitation to vote. Hence, the Petitioners should acquire 79,329 votes;
 - b. The votes acquired by the Elected Candidate Pair Number 4 (H. Muhammad Ali Baal Masdar and H. Nadjamuddin Ibrahim) according to the result of recapitulation made by the Respondent amount to 78,191 votes minus 3,326 votes which are the result of

votes marked-up by the Respondent. Hence, the votes acquired by the Elected Candidate Pair Number 4 become 74,865 votes;

[3.16] Considering whereas the Petitioners, to support their argument have presented evidence of letters, namely Exhibit P-1 up to Exhibit P-33 which based on the evidence, there is only one evidence, namely Exhibit P-20 regarding the List of Voters not receiving Invitation Card (Model C6-KWK) in the Regional Head General Election of Polewali Mandar Regency dated October 27, 2008. After examining the intended evidence, the Court is of the opinion that the validity of the *a quo* evidence, *in casu* Exhibit P-20 is doubtful since it is not completed with other supporting data, for example Resident's Identification Card from the person concerned. Moreover, the Exhibit P-20 is not signed by the competent authority and does not specify the issuing agency;

[3.17] Considering whereas the Petitioners argue that there has been a mark-up of 3,326 votes, however the Petitioners cannot substantiate the intended mark-up. Hence, it is true the response given by the Respondent stating that the vote mark-up as argued by the Petitioners is only based on the Petitioners' mere assumption, while the vote surplus assumed by the Petitioners is in fact the surplus made by the Respondent as a back-up in the TPS used to replace the vote ballots of voters who mistakenly cast their votes as well as damaged vote ballots. The use of such additional vote ballots may be justified in accordance with the provision of Article 87 of Law Number 32 Year 2004 regarding Regional Government *juncto* Law Number 12 Year 2008 *juncto* Article 75 of Government

Regulation Number 6 Year 2005 regarding the Election, Legalization of Appointment and Dismissal of Regional Head and Deputy Regional Head;

[3.18] Considering whereas in addition, the Petitioners also present six witnesses, whose names respectively are Ichsan Saefudin, Acho Bulu, Indra Wijaya, Muhammad Jufri Ikhlas, Musa, and Abdul Kadir. According to the Court, all statements given by the *a quo* witnesses cannot prove any mistake in the process of Regional Head General Election of Polewali Mandar Regency. In addition, the statement given by each witness is not correlated so that such statement does not obtain legal assessment;

Whereas based on the foregoing facts of laws, the Court considers that the Petitioners' petition is groundless, hence it must be rejected;

4. CONCLUSION

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

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

[4.2] The petition of objection presented by the Petitioners against the Stipulation of KPU of Polewali Mandar Regency Year 2008 Number 22/Kpts.KPU/PM/XI/2008 dated November 5, 2008 is not legally substantiated;

[4.3] The Court considers that the Stipulation of KPU of Polewali Mandar Regency Number 22/Kpts.KPU/PM/XI/2008 dated November 5, 2008 is legally valid.

5. DECISION

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

Passing a Decision,

In the Exception:

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

In the Principal Issue of the Case:

To declare that the Petitioners' petition is rejected.

Hence the decision was passed at the Consultative Meeting of Constitutional Justices attended by 9 (nine) Constitutional Justices on Thursday the twenty-seventh of November two thousand and eight, and was pronounced at the Plenary Meeting open for public on the same day by us Abdul Mukthie Fadjar, as Chairperson of the Hearing and concurrent Member Maria Farida

Indrati, M. Akil Mochtar, M. Arsyad Sanusi, Jimly Asshiddiqie, Maruarar Siahaan, Achmad Sodiki and Muhammad Alim, respectively as Members assisted by Alfius Ngatrin as Substitute Registrar in the presence of the Petitioners /their Attorneys and the Respondent/its Attorney as well as the Related Party.

CHAIRPERSON,

Sgd.

A. Mukhtie Fadjar

MEMBERS,

Sgd.

Maria Farida Indrati

Sgd.

M. Arsyad Sanusi

Sgd.

M. Akil Mochtar

Sgd.

Muhammad Alim

Sgd.

Jimly Asshiddiqie

Sgd.

Maruarar Siahaan

Sgd.

Achmad Sodiki

SUBSTITUTE REGISTRAR,

Sgd.

Alfius Ngatrin