



DECISION

Number 36/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 Deputy Regional Head of Makassar Municipality, filed by:

[1.2] 1. Name : **Drs. H. M. Ilham Alim Bachrie, M.B.A;**
Place/date of birth : Pare-Pare, February 1, 1954;
Religion : Islam.
Occupation : Private Person.
Address : Jalan Onta Lama Number 17, Makassar
Municipality

Name : **Herman Handoko**
Place/date of birth : Pare-Pare, February 25, 1950.
Religion : Islam.
Occupation : Private Person.

Address : Jalan Gunung Bulu Saraung Number
4B, Makassar Municipality.

2. Name : **Firmansyah Mappasawang;**

Place/date of birth : Makassar, May 16, 1973;

Religion : Islam.

Occupation : Private Person.

Address : Jalan Boulevard Kompleks Asoka
Number B.9, Makassar Municipality.

Name : **Kasma F. Amin**

Place/date of birth : Camba, May 29, 1968.

Religion : Islam.

Address : Jalan Racing Centre Perdos UMI 3 Blok
2 Number 8, Makassar Municipality.

3. Name : **Ir. H. Ridwan Syahputra Musa Gani;**

Place/date of birth : Makassar, November 30, 1960.

Religion : Islam.

Occupation : Private Person.

Address : Jalan Anggrek III Number 8, Makassar
Municipality.

Name : **Irwan A. Paturusi;**

Place/date of birth : Makassar, October 7, 1963.

Religion : Islam.

Occupation : Private Entrepreneur.
 Address : Jalan Sungai Saddang Number 5,
 Makassar Municipality.

4. Name : **H. Andi Idris Manggabarani, S.E.**
 Place/date of birth : Ujung Pandang, January 27, 1964;
 Occupation : Private Entrepreneur.
 Address : Jalan Veteran Selatan Number 248,
 Makassar Municipality.

Name : **Ir. H. Muh. Adil Patu, M. Pd;**
 Place/date of birth : Ujung Pandang, February 17, 1961.
 Occupation : Private Entrepreneur.
 Address : Kompleks BLKI Number D/27, Makassar
 Municipality.

In this matter authorizing 1) Dr. Kamri Ahmad, S.H., M.H., 2) Hasman Usman,S. 3) Nuh. Burhanuddin, S.H., 4) Irwan Muin,S.H.,M.Hm.

All of whom being Advocates, having their office address at Jalan Onta Lama Number 71 Makassar Municipality, acting for and on behalf of the Authorizer, either jointly or severally, by virtue of a Special Power of Attorney dated November 5, 2008;

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

Against:

[1.3] Name : The **General Election Commission of Makassar Municipality;**

Address : Jalan Angrek Raya Number 1 Makassar Municipality;

In this matter authorizing: 1) H.Aasmaun Abbas, S.H.,M.H., 2) Muh. Hamka Hamzah, S.H.,M.H., 3) Charles E. Lesnussa, S.H., and 4) H. Sya,suddin Sampara, S.H., all of whom being Advocates domiciled and having their office address at Jalan A.P.Pettarani Number 49, New York Chicken Building Floor 2, Makassar. Acting for and on behalf of Authorizer, either jointly or severally, by virtue of a Special Power of Attorney dated November 5, 2008;

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

[1.4] Having read the Petitioners' Petition;

Having heard the statement of the Petitioners;

Having heard and read the Written Response of the Respondent, the General Election Commission of Makassar Municipality;

Having examined the evidence and witnesses of the Petitioners and the Respondent;

Having read the written conclusions of the Petitioners and the Respondent;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the principal issue of the Petitioners' petition is an objection to the Results of General Election of the Regional Head and Deputy Regional Head (*Pemilukada*) of Makassar Municipality based on the Minutes of Stipulation of the Elected Candidate Mayor and Deputy Mayor of Makassar for the period of 2009-2014 Number 270/62/P.KWK-MKS/2008 dated November 4, 2008 regarding Stipulation of Candidate Pair of Mayor and Deputy Mayor of Makassar for the period of 2009-2014 *juncto* Minutes of the Recapitulation of the Vote Count Results of the General Election of Mayor and Deputy Mayor stipulated by the General Election Commission of Makassar Municipality;

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

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 for the *a quo* petition;
3. the time limit for filing the petition for objection.

With respect to the aforementioned three matters, the Court is of the opinion as follows:

Authority of the Court

[3.3] Considering whereas based on 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 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) *unctis* Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 regarding Judicial Power, and Law Number 12 Year 2003 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government, one of the Constitutional Court's authorities is to decide upon the dispute over the results of general election;

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), objection to the vote count results affecting the elected candidate pair is filed to the Supreme Court. Such authority is subsequently 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;

Article 1 sub-article 4 of Law Number 22 Year 2007 regarding 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) stipulates 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 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government stipulates that, *“the handling of disputes over the vote count results of the election of Regional Heads and Deputy 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 Head 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 Article 236C of Law Number 12 Year 2008 mentioned above.

[3.4] Considering whereas since the Petitioners' petition is concerned with the dispute over the vote count results of General Election of Regional Heads, namely General Election of Regional Heads of Makassar Municipality in accordance with the Minutes of Recapitulation of Vote Count of General Election and Stipulation of the Elected Candidate Mayor and Deputy Mayor of Makassar

for the Period of 2009-2014 dated November 4, 2008, 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 the Constitutional Court Regulation Number 15 Year 2008 regarding Guidelines for the Proceedings on the Dispute over the Results of General Election of Regional Heads (hereinafter referred to as PMK 15/2008) provide for, among other things, the following matters:

- a. The Petitioners are Candidate Pairs for the Regional Head and Deputy Regional Head;
- b. The petition may only be filed against the stipulation of the vote count results of General Election of Regional Heads affecting the stipulation of candidate pair 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;

[3.6] Considering whereas the Court will consider the legal standing of the Petitioners, based on the provisions 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 Candidate Pairs for Mayor and Deputy Mayor of Makassar Municipality with candidacy number 2 (two), 4 (four), 5 (five), and 7 (seven) as stipulated by Respondent;
- whereas the petition filed by Petitioners is concerned with objection to the Decision of the General Election Commission of Makassar Municipality Number 270/62/P.KWK-MKS/Year 2008 regarding the Stipulation of Elected Candidate Pair of Mayor and Deputy Mayor from the General Election of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014 dated November 4, 2008.
- whereas the said objection is caused by the stipulation of vote acquired by the Petitioners, namely 102,241 votes for Candidate Pair Number 2, 11,885 votes for Candidate Pair Number 4, 13,509 votes for Candidate Pair Number 5, and 4,107 votes for Candidate Pair Number 7 under Candidate Pair with Candidacy Number 1 with 370,912 votes;

[3.7] Considering whereas the Minutes of Vote Count and the Stipulation of Elected Candidate Pair of Mayor and Deputy Mayor of Makassar Municipality for the Period of 2009-2014 was drawn up by Respondent on November 4, 2008 under Number 270/62/P.KWK-MKS/ 2008, while petition for objection against the stipulation of the Respondent has been filed on November 7, 2008 and registered with the Registrar's Office of the Court on November 10, 2008;

[3.8] Considering whereas Article 5 of PMK 15/2008 stipulates that, “*The petition may only be filed by no later than 3 (three) business days following the stipulation of vote count results of the General Election of Regional Heads in the area concerned by the Respondent*”, the submission of the Petitioners’ petition is still within the time limit determined;

[3.9] Considering whereas based on assessment of the facts and the law in the aforementioned paragraphs [3.6] and [3.8], the Court is of the opinion that the Petitioners have legal standing to file for the *a quo* petition based on the requirements provided for in Article 106 paragraph (1) of Law Number 32 Year 2004, Articles 3 and 4 of PMK 15/2008, and Petitioners’ petition is still within the time limit as provided for in Article 5 of PMK 15/2008;

[3.10] Considering whereas since the Court has the authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have legal standing to file for petition and the petition is filed within the time limit set, the Court will further consider the principal issue of the petition.

Principal Issue of the Petition

In the Provision

Considering whereas the Petitioners file a Provisional claim the substance of which is to stipulate and order the Respondent *in casu* the General Election Commission to temporarily suspend the phases of the General Election

of Regional Heads of Makassar Municipality for the Period of 2009-2014 prior to pass the final decision;

[3.11] Considering whereas the purposes and objectives of the Petitioners' petition are as described above.

[3.12] Considering whereas there are legal facts and arguments presented in the Petitioners' petition which are not rebutted by the Respondent in the hearing; therefore, such legal facts have become law for the Petitioners and Respondent and it is not necessary any longer to prove them, namely the legal facts as follows:

1. Whereas it is true that there were 7 (seven) Candidate Pairs of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014 in accordance with the Decision of the Respondent Number 270/44/P.KWK-MKS/2008 dated August 15, 2008, each of them is as follows :
 - 1) Ir. H. Ilham Arief Sirajuddin, M.M. and Drs. H. Supomo Guntur, M.M., with candidacy number 1;
 - 2) H. Idris Manggabarani, S.E, and Ir. H. M. Adil Patu, M.Pd with candidacy number 2;
 - 3) H. Halim Abdul Razak, SE., M.Si and Ir. Drs. H. M. Jafar Sodding, with candidacy number 3;

- 4) Ir. Ridwansyah Putra Musagani and Irwan A. Paturusi, with candidacy number 4;
 - 5) Firmansyah Mappasawang and Kasma F. Amin, with candidacy number 5;
 - 6) Ir. H. Iriantasyah Kasim DM, M. Si and Razak Djalle, with candidacy number 6; and
 - 7) H. M. Ilham Alim Bachrie and Herman Handoko with candidacy number 7;
2. Whereas it is true that the voting phase of the *a quo* General Election of Regional Heads was conducted on Wednesday, October 29, 2008;
 3. Whereas it is true that there was Minutes of Recapitulation of the Vote Count Results of General Election of Regional Heads of Makassar Municipality for the period of 2009-2014 *juncto* Plenary Minutes of the General Election Commission of Makassar Municipality Number 270/138/P.KWK-MKS/XI/2008 regarding the Stipulation of Candidate Pair of Regional Head and Deputy Regional Head of Makassar Municipality for the Period of 2009-2014 dated November 4, 2008;
 4. whereas the Respondent has issued Decision Number 270/138/P.KWK-MKS/XI/2008 regarding the Stipulation of Elected Candidate Pair of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014;

5. Considering whereas prior to the Election of Mayor and Deputy Mayor of Makassar, the Petitioners and Respondent have made a gentlemen agreement, a sort of political moral and ethics in upholding democracy before Regional Government, DPRD, KPU of Makassar Municipality, General Election Supervisory Committee (*Panwaslu*) of Makassar Municipality, and public on August 15, 2008.

[3.13] Considering whereas Petitioners state the following matters in the arguments of their petition:

1. Whereas Petitioners are Candidate Pairs of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014 stipulated by the Respondent as Candidate Pair with Candidacy Number 2, Candidate Pair with Candidacy Number 4, Candidate Pair with Candidacy Number 5, and Candidate Pair with Candidacy Number 7 respectively;
2. Whereas the Respondent has organized voting phase of the General Election of Regional Heads of Makassar Municipality on Wednesday, October 29, 2008;
3. Whereas petition for the objection was filed within 3 (three) days following the issuance of the Minutes of Recapitulation of the Vote Count Results of the General Election of Regional Heads of Makassar Municipality for the Period of 2009-2014 *juncto* Plenary Minutes of General Election Commission of Makassar Municipality Number 270/138/P.KWK-

- MKS/XI/2008 regarding the Stipulation of Elected Candidate Pair of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014 dated November 4, 2008 (point 2 of the Petitioners' petition);
4. Whereas based on the provisions of Article 94 paragraph (1) of Government Regulation Number 6 Year 2005 *juncto* Government Regulation Number 17 Year 2005, *juncto* Article 5 paragraph (1) of PMK 15/2008 it is grounded to accept the *a quo* petition (point 3 of the Petitioners' petition);
 5. Whereas there were commitment in the form of political agreement of ready for winning or losing, but on the other side, Respondent as the organizer of the General Election of Regional Heads should have conducted a honest, just, and impartial general election of regional heads rather than demonstrated dishonest, unjust manner and unfairly supported one Candidate Pair (point 4 of Petitioners' petition);
 6. Whereas the Petitioners object to the Minutes of Recapitulation of the Vote Count Results of the General Election of Regional Heads of Makassar Municipality for the Period of 2009-2014 *juncto* Plenary Minutes of the General Election Commission of Makassar Municipality Number 270/138/P.KWK-MKS/XI/2008 regarding Stipulation of the Elected Candidate Pair of Mayor and Deputy Mayor for the Period of 2009-2014 dated November 4, 2008 issued by the Respondent with the following recapitulation results:

NO	NAME OF CANDIDATE PAIR	VOTE ACQUISITION	PERCENTAGE
1	Ir. H. Ilham Arief Sirajuddin, MM & Drs. H. Supomo Guntur, MM.	370,912	67.06 %
2	H. Idris Manggabarani, SE. & Ir. H. M. Adil Patu, M.Pd.	102,241	18.48 %
3	H. Halim Abdul Razak, SE.M.Si. & Drs. H.M. Jafar Sodding	37,507	6.78 %
4	Ir. H. Ridwan Syahputra Musagani & Irwan A. Paturusi SI	11,885	2.15 %
5	Firmansyah Mappasawang & Kasma F. Amin	13,509	2.44 %
6	Ir. H. Iriantasyah Kasim DM., M.Si. & Abd. Razak Djalle	12,950	2.34 %
7	H. M. Ilham Ali Bachrie & Hermanto Handoko	4,107	0.74 %
	TOTAL	553,111	100%

7. Whereas with respect to the *a quo* recapitulation, not all witnesses of candidate pairs approved the results of the *a quo* count and only two candidate pairs signed it. It is considered that there was a violation and obscured recapitulation of the *a quo* count, there was no legal certainty and transparency since there was no explanation about 553,111 votes, there were 6,885 invalid votes, and question whether or not such 6,885 votes were included in the total votes of 553,111 (point 5 of Petitioners' petition);
8. Whereas the Respondent made recapitulation of the vote count results acquired from votes spreading in 14 (fourteen) district areas representing

all Polling Stations (TPS) with the detail of count results as presented in point 6 of the Petitioners' petition as follows:

No	DISTRICT AREAS	Candidate Number1	Candidate Number 2	Candidate Number 3	Candidate Number 4	Candidate Number 5	Candidate Number 6	Candidate Number 7
1	Mariso	17,078	5,061	1,287	688	.542	1,097	152
2	Mamajang	18,766	4,613	1,658	619	583	1,019	306
3	Makassar	27,939	6,216	2,211	649	996	673	278
4	Ujung Pandang	8,807	2,732	649	269	169	132	158
5	Wajo	9,044	2,966	870	190	220	175	507
6	Bontoala	16,454	5,542	1,526	475	1,072	507	258
7	Tallo	3.996	12,861	2,805	1,431	2,031	1,257	577
8	Ujung Tanah	14,783	6,315	767	343	442	342	116
9	Panakkukang	39,671	9.748	3,470	1,768	1.505	1,163	368
10	Tamalate	45,776	10.321	4,639	1,555	2.409	1,665	408
11	Biringkanaya	35,187	11.450	6.210	984	818	1.594	329
12	Manggala	32,393	8,296	3,104	919	725	875	279
13	Rappocini	44,239	9,866	5,029	1,355	1,571	1,620	441
14	Tamalanrea	22,779	6,254	3,282	640	426	831	213
	TOTAL	370,912	102,241	37,507	11,885	13,509	12,950	4,107

9. Whereas Decision of Respondent Number 270/138/P/KWK-MKS/XI/2008 is contradictory to the constitutional right of voters (Article 27 of the 1945 Constitution); as a matter of fact, approximately 50 % (fifty percent) of voters did not use their voting rights (point 7 of Petitioners' petition);

3. Whereas Decision of Respondent is contradictory to the principles of Article 2 of the Decision of KPU of Makassar Municipality Number 270/15/P.KWK/MKS/Year 2008 regarding Procedures for the Implementation of Vote Count in the General Election of Regional Heads as an elucidation of Law Number 32 Year 2004, namely: (a) Independent; (b) Honest; (c) Just; (d) Legal Certainty; (e) Rules of Procedure for the General Election Organizer; (f) Public Interest; (g) Transparency; (h) Professionalism; (i) Accountability; (j) Efficiency; and (k) Effectiveness;

11. Whereas the vote count results of the General Election of Regional Heads by Respondent have been based on data and facts regarding mistake in its implementation; there has been vote inflation and vote deflation; Notification Letter on Voting Time and Venue and voting card was just distributed two days before the voting; accordingly, 50% (fifty percent) of voters did not receive the Notification Letter on Voting Time and Venue; Voting cards were spread and piled up in improper places; Notification Letter on Voting Time and Venue as well as Vote Card were traded; there was double voting; and there was money politic all of which are contradictory to Articles 16 and 17 of Decision of General Election Commission of Makassar Municipality Number 270/16/P.KWK-MKS/ 2008 regarding Procedures for the Implementation of the General Election of Regional Head and Deputy Regional (point 10 of Petitioners' petition);
12. Although various violations committed by the Respondent such as vote inflation and deflation, improper distribution of invitations and voting cards have all been reported to General Election Supervisory Commission of Makassar Municipality, the Respondent showed dishonest, unjust, unprofessional, unaccountable manner in *Pemilukada* which impair the Petitioners (Exhibit P-10 and Exhibit P-11);
13. Whereas all legal facts and real facts are specified as follows:

- a. Total number of voters in Makassar Municipality was 958,257, out of such number only less than 50% (fifty percent) exercised their voting right due to the mistake of the Respondent;
- b. two up to seven real facts were found, namely Permanent Voter List (DPT) used in TPS 19 of Tidung Sub-district, Rappocini District, voting cards were scattered in TPS Dusun 3 and TPS 33 of Pabaeng Baeng Sub-district which was corroborated by statement of the community members in Neighboring Ward (RT) 07 Neighboring Block (RW) 13 of Parangtambang Sub-district Tamalate District Makassar Municipality who did not receive Voting Cards and Respondent has lost them (point 10 up to and including point 11 of Petitioners' petition);
3. Whereas the Respondent has printed vote sheets as many as 1,112,988 sheets, while the total number of DPT was 959,814 added by 23,995 to make a total number of vote sheet of 983,809. Therefore, there were over vote sheets in a total number of 119,189 reduced by approximately 79,000 vote sheets burned without calculated transparently, which means that there were unclear 40,189 vote sheets in KPU;

[3.14] Considering whereas to support their arguments, the Petitioners have filed both written evidence (Exhibit P-1 up to Exhibit P-30) and witnesses

whose statements have been heard in the hearing dated November 20, 2008 as follows:

Statements of Petitioners' Witnesses:

1. James Anggrek:

- Witness does not know about any deviation in the General Election of Regional Heads of Makassar Municipality, he only knows about the ballot printing process;
- Ballot printing process was conducted in accordance with tender and specimen, however, in the course of time, there was an impediment in the form of change in ballot background from orange color to yellow color which was made unexpectedly and which was not included in the contract. All printing works have been delivered to KPU, including those in orange color;

2. Haris Baginda:

- The witness is Makassar citizen having voting right. He received voting card a day before the voting day, after he visited the head of Neighboring Ward (RT) and obtained explanation that all voting cards and invitations have been delivered to local KPPS;
- He witnessed that the voting cards were not distributed as they were still kept by Civil Defense Officers;

- DPT was randomized by the tender winner domiciled in Surabaya, it was proven by the relocation of TPS location which resulted in non-utilization of voting rights by many people;

3. Neni:

- She witnessed there was individual member of the army promised to give money in the amount of Rp50,000,- (fifty thousand rupiah) per individual, provided that such person votes one of Candidate Pairs. However, such individual member of the army did not keep his promise;

4. Kaharudin Rumpa:

- Relocation of polling station caused some people not to use their voting rights;
- Total number of citizens in RT 3 RW 2 of Parang Tambung Sub-district, Tamalate District included in the DPT of previously conducted general election was more than 400 people, while in the 2008 Regional Head General Election, total number of citizens included in the DPR was 292 people. However, about 75 people merely used their voting rights.

5. Nurdin Tutu:

- Witness saw that format of recapitulation of vote count at PPK level used the format of recapitulation of vote count of the 2007 General Election of Governor and Deputy Governor of South Sulawesi;
- In Rappucini District, ballots were pierced prior to the implementation of voting for one of candidate pairs, namely Candidate Pair Number 1, in which everyone received 10 voting sheets. However, such voting sheets were cancelled to be used so that, the Witness was reluctant to file a complaint.

6. Liza:

- Voting cards have not been distributed to citizen until 2 days before the voting day;
- On October 27, 2008, there was a pedicab driver in Jalan Botolempangan who held approximately 14 Voting cards, acquired from unknown person;
- On October 27, 2008 at around 00.00, there was KPPS officer in Tamamaung District at TPS 17 who distributed double voting cards, and at the time such matter was reported to KPU of Makassar Municipality, KPU of Makassar Municipality said that it was impossible to happen. However, after being checked by the Mayor, KPU of Makassar Municipality, General Election Supervisory

Committee, and Large City territorial Police of Makassar, it was evident that double names were found in the DPT;

- On October 27, 2008, a person who refused to used his voting rights offered Witness about 9 or 10 Voting cards at a price of Rp50,000 per sheet. On October 28, 2008, the price of such voting cards was reduced to Rp.5,000,-;

[3.15] Considering whereas the Petitioners have conveyed conclusion of their petition which was received at the Registrar's Office of the Court on Tuesday, November 25, 2008 which basically remains in the arguments of their petition;

[3.16] Considering whereas with respect to the Petitioners' petition, in addition to rebut the arguments of Petitioners, the Respondent also filed an Exception, as follows:

In the Exception:

1. Regarding Legal Standing

Whereas the legal standing of the Petitioners previously consisting of 3 Candidate Pairs, registered with the Registrar's Office of the Court on November 10, 2008 and added by one more pair as Petitioner on November 14, 2008;

Whereas Petitioners' petition is *contra legem* in nature with Article 5 paragraph (1) of PMK 15/2008, Petitioners also added *onderwerp van den eis* which is not in line with Article 8 paragraph (2) of sub-paragraph a of PMK 15/2008;

Whereas with respect to the addition and placement of four pairs, the Petitioners did not also mention explicitly the total number of votes acquired by the respective Petitioner whose legal interests were impaired;

Whereas cumulative number of four candidate pairs is contradictory to Article 1 sub-article 9 and Article 13 paragraph (1) sub-paragraph a of PMK 15/2008;

Whereas the Petitioners' petition must be rejected as Petitioners do not absolutely mention the number of votes being object of dispute. The Petitioners only argue the existence of vote inflation which is contradictory to Article 4 PMK 15/2008 confirming that the object of dispute over the General Election of Regional Heads is the vote count results stipulated by the Respondent affecting:

- a) the stipulation of candidate pair qualified to participate in the second round of the election;
- b) the election of candidate pair as the regional head and deputy regional head.

2. Regarding Competence of the Constitutional Court

Whereas the Petitioners' petition does not meet qualifications (vide Article 6 paragraph (2) sub-paragraph b points, 1, 2 and 3 of PMK 15/2008);

Whereas in their *petitum*, the Petitioners only request for the re-election, especially due to the additional number of Candidate Pairs from three to four, which makes the Petitioners difficult to count the votes.

3. Regarding *Obscure Libel* Petition

Whereas the Petitioners do not describe clearly the erroneous vote count results made by the Respondent but only assumptions that the results are contradictory to Article 6 paragraph 2 sub-paragraph b of PMK 15/2008.

4. Regarding Petition Beyond the Time Limit

Whereas the petition was registered on November 10, 2008 by the Petitioners consisted of three candidate pairs. On November 14, 2008, they presented one additional candidate pair so as to make the total number of Petitioners of four pairs of Petitioners. Therefore, the petition filed violates Article 5 paragraphs (1) and (2) of PMK 15/2008.

5. Petition Beyond the Provisions of Dispute over the General Election of Regional Heads

Whereas the Petitioners' petition is contradictory to Article 13 paragraph (3) sub-paragraphs a, b and c of PMK 15/2008.

Opinion of the Court

In the Provision

Considering whereas the Petitioners first request for interlocutory injunction prior to the passing of final decision stipulating and ordering the Respondent *in casu* the General Election Commission of Makassar Municipality to temporarily suspend phases of the General Election of Regional Heads of Makassar Municipality for the Period of 2009-2014;

Considering whereas with regard to the provisional claim of the *a quo* Petitioners, even though in its response, the Respondent does not give any refutation, the Court is of the opinion that the *a quo* provisional claim is inappropriate by law since a provisional claim is urgent, immediate or instantaneous (*hoogdringend*) in nature, while the General Election of Regional Heads requires a mechanism of certain phases; accordingly, it is very difficult to apply the provisional claim in the petition for the objection to the results of the General Election of Regional Heads. In addition to that, the Constitutional Court Law and PMK 15/2008 do not recognize the existence of the provisional claim, except in a case of dispute over authority of state institutions. Based on the foregoing considerations, the Court is of the opinion that the provisional claim of the Petitioners must be disregarded.

In the Exception

[3.17] Considering whereas prior to considering the principal issue of objection to petition, the Court shall first assess the Exception of the Respondent;

Whereas with respect to the substance of the exception point 1 regarding legal standing of the Petitioners, the Court is of the opinion that the exception of the *a quo* Respondent is inappropriate by law since revision and addition to the number of Petitioners as Candidate Pairs from previously three to four candidate pairs in a similar substance of petition or legal object do not violate the applicable procedural law of the Court, since the Respondent does not lose its legal rights and interests to respond the *a quo* petition;

Whereas the legal subject added without reducing, changing, or adding the substance of petitum can be accepted before the Respondent provides its legal response;

Whereas based on the aforementioned legal considerations and values, point 1 of the Exception of the Respondent must be disregarded;

[3.18] Considering whereas the Exception points 2, 3, and 5 respectively regarding competency of the Court, *obscuur libel* petition, and *petitum* of petition beyond the scope of the authority of dispute over the results of the General Election of Regional Heads, the Court is of the opinion that the aforementioned Exceptions of Respondent are concerned with matters in relation to the principal

issue of the case (*bodem geschil*); therefore, the aforementioned exceptions must be disregarded and will be considered along with principal issue of the case;

[3.19] Considering whereas to the extent of point 4 of the Exception regarding petition beyond the time limit by referring to the opinion of the Court in paragraph [3.10], the Court is of the opinion that the petition is not made beyond the time limit as provided for in Article 5 paragraphs (1) and (2) of PMK 15/ 2008.

Whereas the stipulation/announcement of the Respondent was made on November 4, 2008, while the petition was filed on November 7, 2008 in accordance with the Deed of Receipt of Petition Dossier Number 74/PAN.MK/XI/2008 dated November 7, 2008, which means it was still within the time limit of 3 (three) working days following the stipulation/announcement date of the results of the General Election of Regional Heads. According to the Court, time limit for filing the petition for objection and revision thereof was effective from the submission date (November 7, 2008) though the registration was made on November 10, 2008;

Whereas based on the aforementioned legal consideration or assessment, point 4 of the Exception of the *a quo* Respondent must also be disregarded.

In Principal Issue of the Case

[3.20] Considering whereas as described above, Petitioners' petition is concerned with Decision of the Respondent regarding the Stipulation of Candidate Pair of Regional Head and Deputy Regional Head of Makassar Municipality for the Period of 2009-2014 issuing Minutes of Recapitulation of the Vote Count Results of the General Election of Regional Heads of Makassar Municipality *juncto* Plenary Minutes of General Election Commission of Makassar Municipality Number 270/138/P.KWK-MKS/XI/2008 regarding the Stipulation of Elected Candidate Pair of Regional Head and Deputy Regional Head of Makassar Municipality for the Period of 2009-2014 dated November 4, 2008;

[3.21] Considering whereas the essence of the Respondents' response requiring legal assessment of the Court are as follows:

1. Decision of the Respondent regarding detail results of Decision of KPU of Makassar Municipality Number 270/62/P.KWK-MKS/Year 2008 dated November 4, as follows:

NO	NAME OF CANDIDATE PAIR	VOTE ACQUISITION	PERCENTAGE
1	Ir. H. Ilham Arief Sirajuddin, MM and Drs. H. Supomo Guntur, MM.	370,912	67.06 %
2	H. Idris Manggabarani, SE. and Ir. H.M. Adil Patu, M.Pd.	102,241	18.48 %
3	H. Halim Abdul Razak, SE.M.Si. and Drs. H.M. Jafar Sodding	37,507	6.78 %
4	Ir. H. Ridwan Syahputra Musagani and Irwan A.Paturusi Si	11,885	2.15 %
5	Firmansyah Mappasawang and Kasma F. Amin	13,509	2.44 %

6	Ir. H. Iriantasyah Kasim DM., M.Si. and Razak Djalle	12,950	2.34 %
7	H.M. Ilham Ali Bachrie and Hermanto Handoko	4,107	0.74 %
	TOTAL	553,111	100%

2. Whereas according to the results of Decision of KPU of Makassar Municipality, Candidate Pair Number 1, Ir. H. Ilham Arief Sirajuddin, M.M. and Drs. H. Supomo Guntur, M.M. acquired 370,912 votes with a percentage of 67.06 % of total votes of 553,111 in all districts in Makassar Municipality. It means that the Respondent's Decision has been in accordance with the provisions of Article 107 paragraph (1) of Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government;
3. Whereas the Respondent's Decision has been in accordance with the provisions of Article 2 of Decision of KPU of Makassar Municipality Number 279.15/P.KWK/MKS/Year 2008, while the Petitioners did not describe in detail mistakes and facts as well as forms of violation committed by the Respondent using valid evidence;
4. Whereas object of dispute over the results of the Regional Head General Election was concerned with vote count results. The count was highly affected by the existence of vote acquisition inflation. It was evident that the Petitioners were unable to mention the number of vote acquisition

inflation and distribution of vote sheets, while the buyer and seller of voting cards argued to have been traded were also unclear;

5. Whereas the Petitioners' argument presented in point 11 is invalid since based on the evidence presented by the Petitioners, the implementation of the General Election of Regional Heads of Makassar Municipality has been in accordance with the applicable procedures for its distribution, specification of votes, the wearing of official uniform of officers in the voting day. The use of blank form for the Election of South Sulawesi Governor was a misperception and technical mistake of printing merely.
6. Whereas the Petitioners' argument presented in point 12 is only a discourse and assumption, there is no indication of deviation from mechanism in the implementation of the Regional Head General Election. Whereas the Petitioners have attempted fake authentication and calculations in order to deviate from the substance. Requirements of petition submission are inconsistent with PMK 15/2008;
7. Whereas the argument presented in point 13 regarding deviation and manipulation is a made up argument since it does not mention the form of deviation and manipulation committed by the Petitioners;
8. Whereas the Petitioners' argument presented in point 14 is the Petitioners' assumption since the number of vote inflation is unclear and no objection

is found, except for emotional objection, to vote count process in Polling Station;

Statement of Witnesses of the Respondent:

1. Mukhtar Jaya:

- Witness was the Chairperson of PPK in Mariso District. At the time of vote count in the General Election of Regional Heads of Makassar Municipality, no objection was filed by witnesses of Candidate Pair of Mayor and Deputy Mayor;

2. Andi Megawati:

- Witness was the Chairperson of TPS 4 in Mahadikarya Sub-District Makassar District. Witness received invitations from PPK in accordance with the number of DPT;
- Following the completion of vote count, in accordance with the Minutes, no witness of candidate pairs filed an objection to vote count results.

[3.22] Considering whereas the Respondent has conveyed conclusions of their petition which have been received in the Registrar's Office of the Court on Friday, November 21, 2008 which in principal remains in the refutation of their petition;

[3.23] Considering whereas the legal facts included in the statement of witnesses of both parties generally elucidate the implementing processes of the Regional Head General Election started from voters' registration, data updating, campaign, voting, intimidation they experienced, and observation of violations during the implementation of the General Election of the Regional Heads of Makassar Municipality;

[3.24] Considering whereas the documentary evidence filed by the Petitioners, as described above, principally explains the violations committed during the process of the Regional Head General Election. For instance, samples of ballot printed were not in accordance with the specification (Exhibit P-10); lists of names in the voting invitation card were scattered; there were five problematic invitations (Exhibit P-12); double number was found in DPT (Exhibit P-18); data on double voters (Exhibit P-19); scattered voting cards (Exhibit P-25); storage of undistributed voting cards; the existence of mistreatment; money politic; many people did not receive invitations and voting cards; and relocation of citizen to other places in different TPS location (objection to election procedures). In addition to that, there were statements of witnesses regarding the format of recapitulation using the format of the General Election of Regional Heads of Governors; earlier voting; reports on violation to General Election Supervisory Committee that were not followed-up; voting card trading at a price of Rp.5,000; and the evidence does not show mistake in final count of total votes or represents the correct number according to the Petitioners;

[3.25] Considering also, whereas in principal, the documentary evidence filed by the Respondent explicitly confirms the facts of violation during the implementation of the Regional Head General Election, and does not concretely represent any incorrect count in the vote acquisition of the respective Candidate Pair leading to an incorrect recapitulation. Whereas the Petitioners could not file evidence of vote count in an authentic and hierarchical manner as a counter-argumentation (*tegen bewijs*) against the count made by the Respondent;

[3.26] Considering whereas on the contrary, evidence of rebuttal of the Respondent as presented in Exhibit T-1 up to and including Exhibit T-25 is generally related to the Minutes of Recapitulation of Vote Count at the district level, evidence of KPU Decision regarding Stipulation of Number of Voters and Polling Stations, evidence of Minutes of destruction of invalid ballots conducted on October, 28 2008 and other documentary evidence explaining phases of the Regional Head General Election;

[3.27] Considering whereas based on the documentary evidence of the Petitioners and Respondents, there are legal facts acknowledged by both parties. Therefore, there was no legal dispute and the *a quo* legal facts have become law for both the Petitioners and the Respondent;

Whereas the *a quo* legal facts are as follows:

1. Photo of Peaceful General Election Oath of Candidate Pair of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014 signed by seven Candidate Pairs of Mayor and Deputy Mayor;
2. Plenary Minutes on the Stipulation of Elected Candidate pair of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014 Number 270/138/P.KWK-MKS/XI/2008;

[3.28] Considering whereas on the contrary, there are legal facts being legal dispute of both parties, namely:

1. Decision of KPU of Makassar Municipality Number 270/62/P.KWK-MKS/2008 regarding the Stipulation of Elected Candidate Pair of Mayor and Deputy Mayor of Makassar for the Period of 2009-2014 dated November 4, 2008;
2. Statement of witnesses' objection and specific incidents related to recapitulation of the vote count results of General Election of the Regional Heads of Mayor and Deputy Mayor of Makassar in Makassar Municipality KPU;
3. Minutes of Recapitulation of the Vote Count Results of the General Election of Mayor and Deputy Mayor of Makassar at Mamajang District level (Exhibit T-3) and four districts in Makassar Municipality;

4. Sample of ballot printed not in accordance with the specification (Exhibit P-10);
5. 33 Notification of the Voting Time and Venue were scattered and five Notification of the Voting Time and Venue with problems (Exhibit P-25);
6. Letter of Objection to the Replacement of the Chairperson of KPPS in TPS 34, TPS 35, TPS 36, and TPS 37 in Sudiang Raya Sub-District, Biringkanaya District, Makassar Municipality (Exhibit P-14);
7. Statement of citizens who did not receive Voting cards so as they could not use their voting rights (Exhibit P-15);
8. Receipt of Violation Report Number STTL/009/PanwasKota Makassar/XI/2008 dated October 29, 2008 regarding violation of the use of voting right;
9. Clipping of newspaper on finding of eight violation cases by the Supervisory Committee of the Regional Head General Election;
10. Data on double voter in TPS 19 of Tidung Sub-District, Rappocini District (Exhibit P-19);

[3.29] Whereas based on the statement of the parties (the Petitioners and the Respondent), documentary evidence of the Petitioners and the Respondent as well as statement of the witnesses presented by the Petitioners and the Respondent as follows:

1. Whereas the Petitioners objected to Vote Count Results of the General Election of the Regional Heads of Makassar Municipality stipulated by the Respondent on November 4, 2008, stipulating Candidate Pair Number 2, **H. Andi Idris Manggabarani, S.E.** and **Ir. H. A. M. Adil Patu, M.Pd** to acquire **102,241** votes, Candidate Pair Number 4 **Ir. H. Ridwan Syahputra Musa Gani** and **Irwan A. Paturusi** to acquire **11.885** votes, Candidate Pair Number 5, **Firmansyah Mappasawang** and **Kasma F. Amin** to acquire **13,509** votes, **H. Ilham Alim Bachrie** and **Herman Handoko** to acquire **4,107** votes, while **Ir. H. Ilham Arief Sirajuddin, MM** and **Drs. H. Supomo Guntur, MM** to acquire **370,912** votes. According to the Petitioners, vote count results held by the Respondent were vote count results based on the incorrect data and facts in the implementation of the General Election of the Regional Heads of Makassar Municipality, hence certain Candidate Pairs in several Polling Stations acquired majority votes.
2. Whereas according to the Petitioners, certain Candidate Pairs acquire majority votes in several Polling Stations because of violation and fraud committed by the Respondent during the implementation phase of the General Election of the Regional Heads of Makassar Municipality as described above. The Court is of the opinion that the Petitioners are unable to show the existence of violations and frauds either in the voting or vote count in several TPS in 14 district areas in Makassar Municipality. It means that the Petitioners cannot provide appropriate detail about which

TPS used in 14 districts and how many vote count deemed as incorrect. Likewise, there is unclear and no detailed description on deflation of vote acquired by four Candidate Pairs being Petitioners as well as detailed description of the fraud;

3. Whereas the Petitioners' argument on the occurrence of many violations in the General Election of the Regional Heads of Makassar Municipality, as indicated in Exhibit P-10, namely sample of ballots printed not in accordance with the specification, was in fact rebutted by the Respondent by stating that the misprinted ballots have been destructed on October 28, 2008 as Exhibit T-18 regarding Minutes of Ballot Destruction. In fact, Exhibit P-12 regarding the scattered Voting Invitation Cards only include the list of the finding of Notification of the Voting Time and Venue in Jalan Bonto Duri RT 7/RW 13 Parang Tambung Sub-District Tamalate District and the remaining data include 33 people who did not receive Voting cards and Notification of Voting Time and Venue. Meanwhile five invitation letters with problems are not relevant to the vote count results, as they are only concerned with non-inclusion of three names in the DPT, one of whom has passed away but still received a Voting card, and one name which according to the reporter should have not been included in the DPT. As it is also the case with the Exhibit P-16, there are only two reports submitted by two persons, namely Kaharudin and Liza reporting the existence of alleged violation in attempting to use others' voting rights and individual person giving Voting cards to be used by several people in order

- to vote for one of Candidate Pair as well as alleged violation for non-inclusion of certain names in the DPT;
4. Whereas as a counter-evidence, the Respondent has presented Exhibit T-3, Exhibit T-6 up to and including Exhibit T-8, Exhibit T-10 up to and including Exhibit T-13 and Exhibit T-15 after being compared to the original document, namely Minutes of Recapitulation of the Vote Count Results at PPK Level in which Statement of Witnesses' Objection and Specific Incidents in Relation to the Recapitulation of Vote Count (Model DA2-KWK) is attached and after being compared to the original thereof and examined carefully, it is evident that there was no objection of witnesses of Candidate Pair, supported by statement of Witnesses of the Respondent Muchtar Jaya and Andi Megawati in the hearing held on Thursday, November 20, 2008. According to the Court, evidence as well as statements of 6 Witnesses presented by the Petitioners has insufficiently been convincing as they had no significant impact on vote count results.
 5. Whereas accordingly, the Court is of the opinion that all arguments and evidence presented by the Petitioners are groundless.

4. CONCLUSION

Following the assessment of all facts and laws, the Court concludes as follows:

[4.1] whereas documentary evidence and statements of witnesses presented by the Petitioners have not been sufficient to prove the existence of mistake and error in the vote count of the respective Candidate Pair based on the voting results in the General Election of the Regional Heads of Makassar Municipality;

[4.2] whereas since the Petitioners cannot prove the arguments and reasons of their petition, the Stipulation of Recapitulation of the Vote Count Results of the 2008 General Election of the Regional Heads of Makassar Municipality Number 270/138/P.KWK-MKS/XI/2008 is valid by law;

5. DECISION

In view of Articles of the 1945 Constitution of the Republic of Indonesia, Law Number 24 Year 2003 and Law Number 12 Year 2008, Law Number 4 Year 2004 regarding Judicial Power, and Law Number 32 Year 2004 regarding Regional Government as recently amended by Law Number 12 Year 2008 regarding 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 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 nine Constitutional Court Justices on Wednesday, the twenty-sixth of November 2008 and was pronounced in the Plenary Session open for public on Thursday, the twenty-seventh of November 2008, by us, Abdul Mukthie Fadjar as Chairperson and Concurrent Member and M. Arsyad Sanusi, Maruarar Siahaan, M. Akil Mochtar, Achmad Sodiki, Jimly Asshiddiqie, Maria Farida Indrati, and Muhammad Alim respectively as Members, assisted by Makhfud as Substitute Registrar, not in the presence of Petitioners/their Attorneys, but in the presence of the respondent/its Attorney as well as the Related Party/its Attorney.

CHIEF JUSTICE

Sgd.

Abdul Mukthie Fadjar

JUSTICES,

Sgd.

M. Arsyad Sanusi

Sgd.

M. Akil Mochtar

Sgd.

Maruarar Siahaan

Sgd.

Achmad Sodiki

Sgd.

Jimly Asshiddiqie

Sgd.

Maria Farida Indrati

Sgd.

Muhammad Alim

SUBSTITUTE REGISTRAR,

Sgd.

Makhfud