



DECISION

Number 37/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 Elections for Regional Head and Deputy Regional Head of Biak Numfor Regency filed by:

- [1.2] 1. Name : **Reyneilda M. Kaisiepo, S.Si., MTh;**
Place and Date of Birth/Age: Jayapura, March 3, 1976;
Religion : Christian;
Occupation : Private Employee;
Address : Jalan Majapahit No. 2 Samofa, Biak
Numfor;
2. Name : **Max Richard Funmawi Krey, Amd.,
TS;**
Place and Date of Birth/Age: Jayapura, June 5, 1970;
Religion : Christian;

Occupation : Private Person;
 Address : Jalan Teuku Umar No. 12 Biak
 Numfor;

In this matter, granting the power of attorney to:

1. **Yislam Alwini** and;
2. **Moch. Adam Ruhikmat, S.H.;**

Having their address at Kartika Chandra, Arcade F-08 Ground Floor, Jalan Jenderal Gatot Subroto Kav. 18-20 Jakarta 12060, by virtue of a Special Power of Attorney dated November 2008;

1. **Y. Firman R., S.H.;**
2. **Thomson M. Situngkir, S.H.;**
3. **Rudy Tambunan, S.H.;**
4. **Johannes B.Y.W. Hegemur;**

Advocates and Legal Consultants having their office at Firman Silalahi & Partners Law Office at Jalan Raya Bogor, Datotongara III/03 RT. 04/011 Kramat Jati Jakarta 13510, by virtue of special power of attorney dated November 12, 2008; hereinafter referred to as ----- the **Petitioners;**

Against:

[1.3] Name : the **General Election Commission of Biak Numfor Regency;**

Address : Diponegoro Number 133 Burokub Sub-District Biak
Numfor Tel. 098126958 fax. 098126957;

In this matter granting the power of attorney to **Budi Setyanto, S.H. and Yohanes G. Bonay, S.H.**, both of whom being Advocates, having their office address at Jalan Karang Number 8, Waena, Heram District, Jayapura Municipality, by virtue of special power of attorney dated November 14, 2008, acting for and on behalf of the Regional General Election Commission (KPUD) of Biak Numfor Regency, having its address at Jalan Diponegoro Number 133, Biak Numfor Regency, Papua Province;

Hereinafter referred to as ----- **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 Biak Numfor Regency;

Having heard and read the Written Statement of the Related Party,
the Elected Candidate Pair of Regent and Deputy Regent of Biak Numfor
Regency;

Having heard the statements of the witnesses presented by the
Petitioners;

Having heard the statements of the witnesses of the General Election Supervisory Committee;

Having examined the evidence carefully;

Having read the Written Conclusions of the Petitioners, Respondent, and the Related Party, the Elected Candidate Pair of Regent and Deputy Regent of Biak Numfor Regency;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the principal issue of the Petitioners' petition is an objection to the Vote Count Results of the Regional Head/Deputy Regional Head General Election of Biak Numfor Regency stipulated by the General Election Commission of Biak Numfor Regency in accordance with the Decision of the General Election Commission (KPU) of Biak Numfor Regency Number 22 Year 2008 regarding the Stipulation of Elected Candidate Pair based on the Recapitulation of Vote Count for Regional Head and Deputy Regional Head General Election of Biak Numfor Year 2008 dated November 5, 2008;

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

1. Authority of the Court to examine, hear, and decide upon the *a quo* petition;
2. Legal standing of the Petitioners to file for the *a quo* petition;
3. Time limit for filling the petition.

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

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 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 Second Amendment to Law Number 32 Year 2004 regarding Regional Government, one of the Constitutional Court's authorities is to decide upon disputes over the results of general elections;

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 State Gazette of the Republic of Indonesia Number 4437), objection to the results of vote count affecting the elected candidate pair shall be filed to the Supreme Court. Such authority of the Supreme Court is subsequently included in Article 94 of Government Regulation Number 6 Year 2005 regarding the Election, Ratification of Appointment, and Dismissal of Regional Head and Deputy Regional Head;

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 the General Election of Regional Head and Deputy Regional Head shall be the general election held to directly elect the regional head and deputy regional head in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution;

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

On October 29, 2008, the Head of the Supreme Court and the Chairperson of the Constitutional Court have 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 Petitioner's petition is concerned with the dispute over the vote count results of the General Election of Regional Heads, namely General Election of Regional Heads of Biak Numfor Regency in accordance with the Decision of KPU of Biak Numfor Regency Number 22 Year 2008 regarding the Stipulation of the Elected Candidate Pair based on the Recapitulation of Vote Count of the Regional Head and Deputy Regional Head of Biak Numfor Regency Year 2008 dated November 5, 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 Articles 3 and 4 of the Constitutional Court Regulation Number 15 Year 2008 stipulate the following issues, among other things:

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

[3.6] Considering whereas the Court will consider the legal standing of the Petitioners based on the provisions of Articles 3 and 4 of the Constitutional Court Regulation Number 15 Year 2008 as referred to in paragraph [3.5], as follows:

- whereas the Petitioners are Candidate Pair Regent/Deputy Regent of Biak Numfor in accordance with the Decision of KPU of Biak Numfor Regency Number 21 Year 2008 dated November 5, 2008, candidacy number 3 (three);

- whereas the Petitioner's petition is concerned with the objection to the Decision of KPU of Biak Numfor Regency Number 22 Year 2008 regarding the Stipulation of Elected Candidate Pair based on the Recapitulation of Vote Count in the General Election of Regent and Deputy Regent of Biak Numfor Year 2008 dated November 5, 2008. The aforementioned objection is related to the fact that the Petitioners is stipulated to only acquire 14,623 votes, positioning them at the second rank after Candidate Pair Yusuf Melianus Maryen, S.Sos., MM., and Drs. Alimuddin Sabe, with the voter amount of 18,031;

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

Time Limit for Filling the Petition

[3.8] Considering whereas the Respondent issued the Decision of KPU of Biak Numfor Regency Number 22 Year 2008 regarding the Stipulation of Elected Candidate Pair based on the Recapitulation of Vote Count in the General Election of Regent and Deputy Regent of Biak Numfor Year 2008 dated November 5, 2008 and the Petitioners has filed the objection to the aforementioned Respondent's Decision under the petition received by the Registrar of the Court on November 7, 2008 at 19.40 as recorded in the Deed of Receipt of Petition Dossier Number 6/PAN.MK/XI/2008, therefore based on the

provisions of Article 5 paragraph (1) of the Constitutional Court Regulation Number 15 Year 2008, the Petitioners' petition is still within the time limit set;

[3.9] Considering whereas as the Court has the authority to examine, hear, and decide upon the *a quo* petition, the Petitioners have legal standing and the petition filed is still 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 their petition the Petitioners present the arguments as follows:

- a. Whereas Candidate Pair of Maryen-Alimuddin is stipulated as the elected Regent and Deputy Regent based on the Decision of KPU of Biak Numfor Regency Number 22 Year 2008 regarding the Stipulation of Elected Candidate Pair based on the Recapitulation of Vote Count Results in the General Election of Regent and Deputy Regent of Biak Numfor Year 2008 dated November 5, 2008 as they acquire a highest votes in a total number of 18,031 (34,34%). Meanwhile, pair candidate Reyneilda M. Kaisiepo, S.Si., M.Th., and Max R.F. Krey, Amd., TS., is in the second position of vote acquisition, namely with a total number of votes of 14,623 (27,85%);
- b. Whereas it is evident that there is a mistake in the vote count conducted by KPU of Biak Numfor Regency in relation to the total number of voters

made by the KPU of Biak Numfor Regency as follows:

- Decision of KPU of Biak Numfor Regency Number 31 Year 2008 regarding the Total Number of Permanent Voters and General Election Organizer in 19 Districts of Biak Numfor Regency for Pemilukada of Biak Numfor Regency Year 2008 dated September 3, 2008 stipulates that the total number of Permanent Voters is 73,605, meanwhile the Permanent Voter List (DPT) registered in KPU of Biak Numfor based on the Decision of the Chairperson of KPU of Biak Numfor Regency Number 31 Year 2008 regarding the Total Number of Permanent Voters and General Election Organizer in 19 Districts of Biak Numfor Regency for the General Election of Regent and Deputy Regent of Biak Numfor Regency Year 2008 dated October 13, 2008, indicates that the total number of voters is 74,316, hence there is an obscure vote difference in a total number of $74,316 - 73,605 = 711$;
- The aforementioned unusual decisions, namely the Decision of the Chairperson of KPU of Biak Numfor Regency Number 31 Year 2008 dated September 3, 2008 and the Decision of the Chairperson of KPU of Biak Numfor Regency Number 31 Year 2008 dated October 13, 2008, do not include the population of 9 out of 19 districts, however, it's strange that they include the number of voters. Based on logical and mathematical reasoning, if the

population number is not available or not clear then the voter number should not also be available or clear. It is impossible to determine the total number of voters if the total population is not clear. Districts in which the total number of population is not clarified:

i. Swandiwe District	Total Population	: 0	Total Voters : 2142
ii. Andei District	Total Population	: 0	Total Voters : 640
iii. Yawosi District	Total Population	: 0	Total Voters : 1,398
iv. Bondifuar District	Total Population	: 0	Total Voters : 268
v. Oridek District	Total Population	: 0	Total Voters : 2,902
vi. Aimando District	Total Population	: 0	Total Voters : 1,467
vii. Poiru District	Total Population	: 0	Total Voters : 1,097
viii. Bruyadori District	Total Population	: 0	Total Voters : 926
ix. Orkeri District	Total Population	: 0	Total Voters : 826

Whereas there has been vote mark-up in a number of districts since the Respondent has stipulated total number of voters without being based on detail of accurate data on total population derived from the population/statistical data. This is obviously indicated in the data on total permanent voters issued by KPU of Biak Numfor Regency dated October 13, 2008 in 9 (nine) districts, namely Swandiwe, Andei, Yawosi, Bondifuar, Oridek, Aimando, Poiru, Bruyodari, and Orkeri.

- Whereas based on the evidence of “Data Entry Progress on Population of Biak Numfor Regency” of the Population and

Settlement Service Office of Biak Numfor Regency dated March 12, 2008, the total voters is as follows:

- Biak Kota District: 15,378, with a total number of Family Card 5,727. However, the Respondent states that the total number of Voters in Biak Kota District is 22,709 making the difference of 7,331 voters;
 - Samofa District: 12,599, with a total number of family card 4,716. However, the Respondent states that the total number of Voters in Samofa District is 17,548 making the difference of 4,949 voters;
- Whereas there has been vote mark-up in those 2 (two) districts in a total number of 12,280 voters.

[3.11] Considering whereas in order to corroborate their arguments, the Petitioners have presented written evidence (Exhibit P-1 up to Exhibit P-12) and 2 (two) official witnesses of participants of Pemilukada who respectively has presented their statement under oath, as follows:

Statements of Witnesses presented by the Petitioners

Whereas both witness Abner Rukan Bukopioper and witness Rollis Rays Marselino Ronsumbre provide statement which basically to the effect that

the election in TPS 1 of Swapodibo Village has been conducted properly and the witnesses have also signed Minutes of the vote count results;

[3.12] Considering whereas with respect to arguments presented in the Petitioners' petition, the Petitioners have provided Responses which completely are included in the Facts of the Case above, which basically are as follows:

In the Exception:

Whereas the substance of the Respondent's exception related to the Petitioners' petition is concerned with 3 (three) matters, namely:

- 1) the Attorneys-in-Fact of Petitioners do not have legality as proxies since they are not advocate;
- 2) the object of dispute over the *Pemilukada* and the *petitum* of the petition is unclear and obscure (*obscur libel*);
- 3) Petitioners' petition does not meet formal requirements as required by legal provisions.

In the Principal Issue of the Case

- a. Whereas the arguments presented by the Petitioners stating that there is a mistake in the vote count conducted by the Respondent in relation to the total number of voters are not included in the substance of the petition as mandated in the provisions of Article 94 paragraph (2) of the Government Regulation of the Republic of Indonesia Number 6 Year 2005, regarding

Election, Ratification of Appointment, and Dismissal of Regional Head and Deputy Regional Head, since dispute over total number of voters is different from the dispute over the vote count results;

- b. Lawsuit/petition/protest with respect of the difference in total number of voters shall be filed prior to the voting and prior the vote count. The institution having authority to settle this dispute shall be *Pemilukada* Supervisory Agency, while the dispute over the vote count results shall be settled following the recapitulation process of vote count by the Respondent and the institution having authority to settle this dispute shall be the Constitutional Court (previously the Supreme Court);

Therefore, it is extremely wrong if the Petitioners argue that the dispute/difference in the Results of Vote Count of *Pemilukada* is connected to the dispute over the total number of voters, since both issues are different with respect to the implementation process, implementation time, and institution handling such disputes;

- c. Whereas the arguments stating that there has been vote mark-up in 2 (two) districts in a total number 12,280 voters indicate the lack of Petitioners' understanding about the substance of the petition for the objection in the *pemilukada* provided for by law. Those are the invented arguments presented only to meet formal requirements for filling this petition;

- d. Total number of voters becoming the Respondent's authority has been stipulated based on the Decision of the General Election Commission of Biak Numfor Regency Number 10 Year 2008 regarding the Amendment to the Decision of the General Election Commission of Biak Numfor Regency Number 31 Year 2008 regarding the Stipulation of the Total Number of Voters in the Election of Regent and Deputy Regent of Biak Numfor Year 2008, namely total number of voters in Biak Numfor Regency is as high as 74,316 voters, which is stipulated by the Respondent based on the provisions of the applicable law and inputs from the government institutions, community, political parties, NGOs, and various elements of the community in Biak Regency.
- e. Total number of voters of 74.316 distributed in 251 TPS, 188 PPS, and 19 PPD/PPK in Biak Numfor Regency and up to the stipulation of Permanent Voter List by the Respondent, there is no objection or protest filed by the Petitioners and Biak people. If the Petitioners are of the opinion that there is a problem with respect to the total number of voters, they must not submit their protest presently or following the voting or following the recapitulation of vote count. Such protest should be filed at the time the Respondent announced the Temporary Voter List and prior to the stipulation of the Permanent Voter List by the Respondent.
- f. Therefore, Petitioners' accusation stating that there is a vote mark-up conducted by the Respondent is not only the Petitioners' naivety but also

a Political Slander. If the Petitioners deem that they have been impaired by such act, they shall file their objection to the Supervisory Committee of *Pemilukada* rather than to the Constitutional Court.

- g. The Respondent has conducted recapitulation of vote count based on the provisions of Article 86, particularly paragraphs (1), (5), and (6), Government Regulation Number 6 Year 2005 regarding Election, Ratification of Appointment, and Dismissal of Regional Head and Deputy Regional Head. Results of the recapitulation of vote count conducted on November 4, 2008 and results of the recapitulation acquisition of vote count by each PPD/PPK being based on the results of recapitulation of vote count of KPPS in each TPS are presented as follows:

Recapitulation Results of each PPD/PPK

NO	NAME OF PPD/PPK	CANDIDACY NUMBER OF CANDIDATE PAIR				
		1	2	3	4	5
1	BIAK KOTA	897	4809	3941	3459	1940
2	SAMOPA	717	3269	3105	2736	1306
3	YENDIDORI	42	960	1079	688	818
4	BIAK TIMUR	43	2249	305	396	362
5	ORIDEK	56	1376	163	326	345
6	PADAIDO	1	797	39	30	24
7	AIMANDO	17	575	44	349	64
8	BIAK BARAT	54	499	1261	210	424
9	SWANDIWE	51	505	774	200	267
10	BIAK UTARA	78	671	1375	454	500
11	ANDEI	7	106	247	83	174
12	YAWOSI	8	352	385	277	173
13	WARSA	14	593	748	309	457
14	BONDIFU,AR	1	98	26	20	17
15	NUMFOR TIMUR	13	274	237	67	82
16	POIRU	18	289	224	107	137
17	BRUYANDORI	3	274	243	21	76
18	NUMFOR BARAT	2	212	353	202	180
19	ORKERI	3	123	75	191	342
JUMLAH SUARA SAH		2025	18031	14623	10125	7688

Results of the recapitulation of vote count conducted by the Regional General Election Commission of Biak Numfor Regency (Respondent) based on the results of recapitulation of each PPK/PPD are as follows:

Results of the Recapitulation of KPU of Biak Numfor Regency

NUMBER	NAME OF CANDIDATE PAIR OF REGIONAL HEAD AND DEPUTY REGIONAL HEAD	VOTE ACQUISITION RESULTS
1	OBED ALBERT SROYER DAN DRS.HAMDAN.M.SI	2,025
2	YUSUF MELIANUS MARYEN, S.Sos, MM DAN DRS ALIMUDDIN SABE	1,8031
3	REYNEILDA MAGDALENA KAISIEPO, S.Si, M.Th DAN MAX RICHARD FUNMAWI KREY,Amd,Ts.	1,4623
4	ANDRIANUS KAFIAR, SE DAN IR. JOKO WAHYUDI —	1,0125
5	IR. HANOCH ELIEZER MACKBON, M.Si DAN ANDI FIRMAN MADJADI, SE	7,688
TOTAL NUMBER OF VALID VOTES		52,492

[3.13] Considering whereas in order to corroborate its arguments, the Respondent has presented written evidence (Exhibit T-1 up to Exhibit T-29) and the Respondent does not present witnesses;

[3.14] Considering whereas with respect to the arguments presented in the Petitioners' petition, the Related Party, Elected Candidate Pair of Regent and Deputy Regent of Biak Numfor have provided Written Statements which completely are included in the Facts of the Case above, which basically include as follows:

- a. The substance of the Petitioners' lawsuit is not the Dispute over the Mistake in the Results of Vote Count stipulated by the Respondent as intended in Article 4 of the Constitutional Court Regulation Number 15

Year 2008 regarding Guidelines for the Proceedings on the Dispute over the Results of the Regional Head General Election *juncto* Article 75 of Law Number 24 Year 2003 regarding the Constitutional Court, so that the Petitioners' petition must be declared unacceptable (*niet ontvankelijk verklaard*)

- b. The entire substance of the Petitioners' lawsuit is related to the Permanent Voter List stipulated by the General Election Commission, so that it is clear that this is not the Object of Dispute over *Pemilukada* under the authority of the Constitutional Court as intended in the Article 4 of the Constitutional Court Regulation Number 15 Year 2008, since it is explicitly and clearly stated that those becoming the object of Dispute over *Pemilukada* is the **Results of Vote Count Stipulated by the Respondent;**
- c. All arguments presented by the Petitioners in their Lawsuit, namely:
 - Point 5 regarding Total Number of Permanent Voters stipulated by the Respondent;
 - Point 6 regarding Total Number of Voters which is different from the Total Number of Family Card;
 - Point 7 regarding fraud deemed as the Petitioners' weaknesses, namely:
 - a. There were underage voters who participate in the election;

- b. Some voters have double vote card;
- c. Some voters have passed away, but their card are distributed to the other persons;
- d. There were Petitioners' witnesses being intimidated;
- e. There was a report that 26 persons were not registered but participated in the election;
- f. There were Petitioners' witnesses being evicted from the TPS;
- g. A number of ballots in the ballot box were replaced with ballots
- h. There have been people replacing the ballots with ballots already pierced in number 2.

All of them are not the dispute over the mistake in the vote count, being the authority of the Constitutional Court to hear, but the authority of the General Election Supervisory Committee (*Panwaslu*) and/or General Judiciary to exercise further legal proceedings, accordingly the lawsuit filed by the Petitioners must be declared as unacceptable;

- d. Whereas the Petitioners' Lawsuit is obscure (*obscur libel*), since it does not mention the following:
 - Final decision stipulated by the Respondent (KPU of Biak Numfor Regency) entirely;
 - There is no legal ground presented by the Petitioners as the basis for determining the mistake in the calculation conducted by the

Respondent, which affects the Stipulation regarding the Elected Candidate as provided for in the Laws and Regulations;

- e. Whereas since this issue is related to the competency and authority of the Constitutional Court whether to hear or not to hear the Case/Dispute over this *Pemilukada*, therefore it is requested that prior to enter into the Main Substance of the Case, the Panel of Justices of the Constitutional Court issues an Interlocutory Injunction in this case regarding the lack of authority of the Constitutional Court to hear, examine the object of the lawsuit filed by the Petitioners and declares that the Petitioners' lawsuit is unacceptable.

[3.15] Considering whereas the Related Party, the Elected Candidate Pair of Regent and Deputy Regent do not present both written evidence and witnesses;

[3.16] Considering whereas the Court has also heard the statement of the witness namely the Chairperson of *Panwaslu* of Biak Numfor Regency, namely Alfius Rumbrafuk, which basically states that so far, the *Pemilukada* of Biak Numfor Regency is conducted properly and the Supervisory Committee has never received any complaints or objections from any party whatsoever;

Opinion of the Court

[3.17] Considering whereas prior to take into account the main issue of the petition presented by the Petitioners, the Court will first consider the Exception of the Respondent which basically is related to three issues, namely:

- 1) whereas the Attorneys-in-Fact of Petitioners do not have legality as proxies since they are not advocate;
- 2) whereas the object of dispute over the Pemilukada and petitem of the petition is not clear and obscure (*obscur libel*); and'
- 3) whereas the Petitioners' petition does not meet formal requirements as required by legal provisions.

With respect to the aforementioned Respondent's Exception, the Court is of the opinion as follows:

- a. With respect to the Exception point 1), based on the evidence of Power of Attorney presented by the Petitioners it is proved that the attorneys-in-fact of the Petitioners are advocates and legal consultants of Firman Silalahi & Partners Law Office and some of attorneys-in-fact have been furnished with copy of identity as advocate. Moreover, the procedures of the Court does not require the attorney-in-fact to have status as advocate, however, they can be from legal bureau offices, universities, institutions, etc. Therefore, the exception presented with respect to this issue is groundless and must be disregarded;

- b. The Exception points 2) and 3) are highly related to the principal issue of the petition constituting the authority of the Court to assess thereof, accordingly the intended exception must also be disregarded;

[3.18] Considering whereas since the Respondent's Exceptions are disregarded, subsequently the Court presents its opinion regarding the principal issue of the Petitioners' petition based on the statements and explanations of the parties (Petitioners, Respondent, and Related Party), documentary evidence presented by the Petitioners and Respondent, and statement of witnesses presented by the Petitioners, as follows:

1. Whereas, the Petitioners have an objection to the results of vote count of *Pemilukada* held in Biak Numfor Regency stipulated by the Respondent on November 5, 2008, stipulating the Respondent as acquiring 14,623 votes, while the Related Party, namely a Pair of Number 2, Yusuf Melianus Maryen, S.Sos., M.M. and Drs. Alimuddin Sabe acquires 18,031 votes. The Petitioners are of the opinion that the vote acquisition of Candidate Pair Number 2, namely Yusuf Melianus Maryen, S.Sos., M.M. and Drs. Alimuddin must be deducted by 12,280 votes, making a total number of 5,751 votes, while the vote acquisition of the Petitioners remains unchanged, namely 14,623 votes, so that the contestant becoming the winner of *Pemilukada* in Biak Numfor Regency is the Petitioners, instead of the Related Party (Candidate Pair Number 2). Total number of votes of 12,280 which must be deducted from the

abovementioned vote acquisition of the Candidate Pair Number 2 is based on the data that total number of voters in Biak Kota District is 15,378 persons merely, rather than 22,709 persons according to the data of the Respondent and total number of voters in Samofa District is only 12,599 persons, instead of 17,548 persons pursuant to the Respondent's data (Exhibit P-5). The Court is of the opinion that the Exhibit P-5 is illegal since there is no signature and stamp of the institutions issuing such document. In addition, the document was issued in March 2008 while data on voters presented by the Respondent was issued in September 2008, therefore, it is not sufficiently grounded to use such document a legal evidence. In addition, if the substance of Exhibit P-5 concerned is correct, the difference in the number of voters as high as 12,599 cannot be automatically deducted from the votes acquired by Number 2 Pair. However, based on the logical reasoning and just principle, such deduction to the results of vote acquisition must be applicable to all candidate pairs and such deduction may only be applied for Biak Kota and Samofa Districts, instead of all Regencies in Biak Numfor. Therefore, the Petitioners' arguments are groundless;

2. Whereas with respect to the Petitioners' arguments regarding the occurrence of various violations in the *Pemilukada* of Biak Numfor Regency, as presented in Exhibits P-6 , P-7, and P-8, the Court is of the opinion that the evidence presented has not sufficiently supported the arguments to convince the Court. Moreover, if it is true that there are

- intended violations, such violations do not significantly affect the results of vote count of *Pemilukada* in Biak Numfor Regency;
3. Whereas two witnesses presented by the Petitioners, namely Abner Rukan Bukopioper and Rollis Rays Marselino Ronsumbre are official witnesses of Candidate Pair Number 3 (Petitioners) in TPS 1 of Biak Kota District stating that basically there is no problem with the vote count in the TPS where the related persons becoming witnesses. In addition, both witnesses also jointly signed the results of vote count concerned. The Court is of the opinion that the testimony of both witnesses concerned does not affect the entire results of the vote count of *Pemilukada* in Biak Numfor Regency stipulated by the Respondent;
 4. Whereas based on the testimony of the Chairperson of the Supervisory Committee of *Pemilukada* of Biak Numfor Regency, Alfius Rumbiapuk, S.Th., there is no report regarding violation in the process of *Pemilukada* in Biak Numfor Regency, so that the Court is of the opinion that the testimony of the Chairperson of the Supervisory Committee of *Pemilukada* concerned does not also affect the results of vote count of *Pemilukada* in Biak Numfor Regency that has been stipulated by the Respondent;
 5. Whereas therefore, the Court is of the opinion that all argument and evidence presented by the Petitioners are groundless.

4. CONCLUSION

Based on the aforementioned assessment of the facts and law, the Court concludes, as follows:

- [4.1] The Exception of the Respondent is legally inappropriate;
- [4.2] Arguments presented in the Petitioners' objection against the results of vote count of *Pemilukada* stipulated by the Respondent is not proven.

5. DECISION

In view of articles of the 1945 Constitution of the Republic of Indonesia, Law Number 24 Year 2003 regarding the Constitutional Court, Law Number 4 Year 2004 regarding Judicial Power, and Law Number 32 Year 2004 regarding Regional Government, as recently amended the most recently 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 cannot be accepted.

In the Principal Issue of the Case:

To reject the Petitioners' petition in its entirety.

Hence, this decision was made in the Consultative Meeting of Constitutional Judges on Tuesday, the twenty-fifth of November two thousand and eight by nine Constitutional Judges, and was pronounced in a Plenary Session opened for public that is held of Wednesday, the twenty-sixth of November two thousand and eight by us, Moh. Mahfud MD as the Chairperson acting also as a Member, and accompanied by H. Abdul Mukthie Fadjar, H.M. Arsyad Sanusi, H. Achmad Sodiki, Maruarar Siahaan, Muhammad Alim, Maria Farida Indrati, and H.M. Akil Mochtar respectively as Members, accompanied by Cholidin Nasir as the Substitute Clerk and in the presence of the Petitioners/their Attorneys-in-Fact and the Respondent/its Attorneys-in-Fact, as well as the Related Party/its Attorney-in-Fact.

CHIEF JUSTICES

Sgd.

Moh. Mahfud MD

JUSTICES,

sgd.

H. Abdul Mukthie Fadjar

sgd.

H.M. Arsyad Sanusi

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H. Achmad Sodiki

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Maruarar Siahaan

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Maria Farida Indrati

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Muhammad Alim

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H.M. Akil Mochtar

SUBSTITUTE CLERK,

sgd.

Cholidin Nasir