



DECISION

Number 39/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 decision in the case of petition on Dispute over the Result of General Election of Regional Head and Deputy Regional Head of Talaud Islands Regency, filed by:

- [1.2] 1. Name : **Dr. RAMON AMIMAN**
- Nationality : Indonesia.
- Age : 47 Years.
- Occupation : Member of Indonesian National Police (POLRI).
- Address : Malalayan I Sub-district X Neighborhood, Malalayang District, Manado City.
2. Name : **Drs. MARTIN L. MAABUAT**
- Nationality : Indonesia.
- Age : 58 Years.

Occupation : Retired Civil Servant.
 Address : Melonguane Timur Sub-district Neighborhood
 II, Talaud Islands Regency.

In this matter granting their power of attorney to 1) Jantje Rumegang, S.H; 2) Olga W. Tatumpil, S.H.; 3) Yulita Dyah Prabudiningrum, S.H., M.H.; 4) Romeo Tumbel, S.H. all of whom are Advocates and Attorney-At-Laws selecting their address in Advocate and Legal Consultant Office of **"JANTJE RUMEGANG, S.H. & PARTNERS"** having their office at Jalan Sungai Musi Singkil Dua Sub-district, Neighborhood II, Singkil District, Manado City, under special power of attorney dated blank November 2008, both jointly and respectively.

Hereinafter referred to as **PETITIONERS;**

Against:

Name : **The General Election Commission (KPU) of Talaud
 Islands Regency**

Address : Office of the General Election Commission (KPU) of Talaud
 Islands Regency, Talaud Islands Regency, North Sulawesi
 Province;

In this matter granting the power of attorney to Semmy Mananoma, S.H., M.H. occupation Advocate, having his address at Dendengan Dalam Sub-district Neighborhood IV Number 70 Tika District, Manado City, North Sulawesi Province, by virtue of Special Power of Attorney dated November 14, 2008.

Hereinafter referred to as **RESPONDENT;**

[1.3] Having read the petition of the Petitioners;

Having heard the statement from the Petitioners;

Having heard the statement and read the Written Response from the Respondent the General Election Commission of Talaud Islands Regency;

Having examined 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 with regard to the Petitioners' petition is concerned with objection to the Result of Vote Count in the General Election of Regent/Deputy Regent of Talaud Islands Regency stipulated by the General Election Commission of Talaud Islands Regency in accordance with the Decision of KPU of Talaud Islands Regency Number 37 Year 2008 regarding the Stipulation of Elected Candidate Pair of the Result of Vote Count Recapitulation in the General Election of Regent and Deputy Regent of Talaud Islands Regency Year 2008 dated November 3, 2008;

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

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

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

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 2003 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;

At first 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 is to be filed to the Supreme Court. The authority of the Supreme Court is re-included in Article 94 of Government Regulation Number 6 Year 2005 regarding the Election, Legalization 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 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, namely the Regional Head General Election of Talaud Islands Regency in accordance with the Decision of KPU of Talaud Islands Regency Number 37 Year 2008 regarding the Stipulation of Elected Candidate Pair of the Result of Vote Count in the General Election of Regent and Deputy Regent of Talaud Islands Year 2008 dated November 3, 2008, hence the Court has the authority to examine, hear and decide upon the *a quo* case;

Legal Standing of the Petitioners

[3.5] Considering whereas Articles 3 and 4 of the Regulation of Constitutional Court Number 15 Year 2008 stipulates matters, including among others as following:

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

[3.6] Considering whereas in relation to the legal standing of the Petitioners, the Court will take the matter into account based on the provisions of Articles 3 and 4 of the Regulation of Constitutional Court Number 15 Year 2008 as intended in the following paragraph **[3.5]**:

- whereas the Petitioners are Regent/Deputy Regent Candidate Pair based on the Stipulation of Candidacy Number of Regent/Deputy Regent Candidate Pair of Talaud Islands Regency Year 2008, the Result of Recapitulation of Vote Count in the General Election of Regent and Deputy Regent of Talaud Islands Regency Year 2008, under Candidacy Number 2 (two);

- whereas the Petitioners' petition is concerned with objection to the Decision of KPU of Talaud Islands Regency Number 37 Year 2008 regarding Stipulation on the Elected Candidate Pair of the Result of Recapitulation of Vote Count in the General Election of Regent and Deputy Regent of Talaud Islands Regency Year 2008, dated November 3, 2008. The objection intended is filed because the Petitioners are stipulated to only acquire 15,458 votes taking the second place under the Candidate Pair Dr. Elly Engelbert Lasut and Drs. Constantine Ganggali acquiring total 31,907 votes;

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

Time limit for the Submission of Petition

[3.8] Considering whereas the Respondent issued the Decision of KPU of Talaud Islands Regency Number 37 Year 2008 regarding the Stipulation of Elected Candidate Pair of the Result of Recapitulation of Vote Count in the General Election of Regent and Deputy Regent of Talaud Islands Year 2008 dated November 3, 2008 and the Petitioners have filed an objection to the Respondent's decision with the petition received in the Registrar Office of the Court on November 10, 2008 on 16.00 WIB with the Deed of Receipt of Petition Dossier Number 81/PAN.MK/XI/2008, by way of filing the petition in the registry

of Yeara District Court in accordance with the SKUM dated November 5, 2008 in which the foregoing petition dossier was assigned to the Constitutional Court by Manado Court of Appeals through its Letter Number W.19.U/261/HT.04.10/XI/2008 dated November 10, 2008 as well as accepted on the same day and date, thus under the provisions of Article 5 paragraph (1) of the Regulation of Constitutional Court Number 15 Year 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, the Petitioners have legal standing, and the petition is filed within the time limit set, hence the Court shall further take into account the principal issue of the petition;

Principal Issue of the Petition

[3.10] Considering whereas in their petition, the Petitioners principally argues the following matters:

1. Whereas on November 3, 2008, the Respondent has conducted Plenary Recapitulation of Vote Count with the result of vote count that may affect the election of Candidate Pair dr. Elly Engelbert Lasut as Regional Head and Drs. Constantine Ganggali as Deputy Regional Head of Talaud Islands Regency for the period of 2008 – 2013;
2. Whereas the results of Plenary Recapitulation of KPU of Talaud Islands Regency dated November 3, 2008 are, as follows:

Candidate Pair dr. Elly Engelbert Lasut as Regional Head and Drs. Constantine Ganggali acquire **31,907** (thirty-one thousand nine hundred and seven) votes;

Candidate Pair Dr. Ramon Amiman and Drs. Martin L. Maabuat with total **15,458** (fifteen thousand four hundred and fifty-eight) votes;

Hence, there is a difference of 16,449 (sixteen thousand four hundred and forty-nine) votes between the Petitioners and Candidate Pair Number 4, namely dr. Elly Engelbert Lasut and Drs. Constantine Ganggali;

3. Whereas the Petitioners expressly reject the results of Plenary Recapitulation of Vote Count conducted by the Respondent since the basis of vote count is contained with fictive, fabricated data which are not in accordance with the applicable laws and regulations;
4. Whereas the differences of 16,449 (sixteen thousand four hundred and forty-nine) votes and or mark-up are resulted from the following matters:
 - a. voters included in the Permanent Voter List (DPT) but are not granted with the right to vote which occur in, among others Sawang Village Melonguane District and Melonguane;
 - b. voters not registered in the DPT but are granted with the right to vote which occur in, among others Melonguane District Mala Main Village, at Pooling Station in Hospitals, including the provision of

facilities for around 900 (nine hundred) students to come home to Talaud Islands by Ferry free of charge;

- c. distribution of approximately five-kilogram rice for a voter and money in the amount of Rp.50,000,- (five thousand rupiah), for those casting their votes for Candidate Pair dr. Elly Engelbert Lasut and Drs. Constantine Ganggali and this occurs almost in all villages and sub-districts throughout Talaud Islands Regency;
- d. in Dallum Village Salibabu District, there are mentally-ill people named Deny Arramana and Ril Arramatta who are granted with voting right;
- e. underage children are granted voting right, namely three people in Sambuara Village Main TPS 1 and one child in Maririt Village;
- f. there is a demised person included in the Permanent Voter List. However, there is also another person casting his/her vote in the name of the demised person in favor of Candidate Pair dr. Elly Engelbert Lasut and Drs. Constantine Ganggali in Moronge Selatan Village;
- g. whereas there is double voter, namely a voter casting his/her vote in his/her own name and another person's name. This occurs in Batumbalango Village in the name of Alden Laloma;

- h. there are promises made to each village that if 100% of the votes are cast for Regent and Deputy Regent Candidate Pair dr. Elly Engelbert Lasut and Drs. Constantine Ganggali, it will receive money in the amount of Rp.25,000,000,- (twenty-five million rupiah) up to Rp.30,000,000,- (thirty million rupiah);
- i. data on both Permanent and Additional Voters are not collected in appropriate and accurate manner. As a result, Talaud people who have voting rights cannot exercise their rights because they are not registered. This occurs such as in Melonguane Sub-district Melonguane District;
- j. based on the information gathered on the day of Regent and Deputy Regent election, there are few people in several villages who cannot vote due to the following reasons:
- there are voters who are not summoned during the election;
 - there are voters who are not registered again or do not receive a voter's card;
 - there are voters who in the morning prior to the time of election have received rice from the supporters of Candidate Regent dr. Elly Engelbert Lasut and Candidate Deputy Regent Drs. Constantine Ganggali (Candidate Pair Number 4);

- k. distribution of rice and money is acknowledged by the District Supervisory Committee, however it is not prevented. Moreover, it has already known that the reports have actually been received by the KPUD;
5. Whereas the relatively significant difference of votes merely occurs as a result of violation to the provision of laws as set forth in Article 64 paragraph (1) of Government Regulation Number 17 Year 2005 as an Amendment to Government Regulation Number 6 Year 2005 which is committed by Candidate Regent and Deputy Regent dr. Elly Engelbert Lasut and Drs. Constantine Ganggali together with their success team such as the distribution of nine essential commodities in the form of approximately 5 kilogram of rice as well as money in the amount of Rp.50,000,- (fifty thousand rupiah) for every voter casting their votes for Candidate Pair Number 4 dr. Elly Engelbert Lasut and Drs. Constantine Ganggali. The matter of which has been conducted before and during the campaign period and up to the time of election;
6. Whereas the Petitioners have reported and filed an objection to all of the matters related to the violation of Regional Head General Election, including fraud committed by Regent and Deputy Regent Candidate Pair dr. Elly Engelbert Lasut and Drs. Constantine Ganggali as described in the foregoing arguments to the General Election Supervisory Committee on

October 29, 2008, however they are not followed-up as violation to the Regional Head General Election;

[3.11] Considering whereas to substantiate their arguments, the Petitioners not only present evidence of letters (Exhibit P-1 up to P-30), but also eight official witnesses of Regional Head General Election participants who have given their statements under the oat at the hearing on November 17, 2008 which in principal state as follows:

[3.11.1] **Witness Zeth Laira**

- Whereas after the voting, there are around 70 voters who cannot exercise their voting rights since they are not listed in the permanent and additional voter lists;
- Whereas the Pooling Station in Malat Village does not use the facilities prepared by KPU, in this matter voting booth since it uses ordinary room in which there is a table, a foam pad and additional voting tool;
- Whereas in the process of voting every time a voter enters the room, the Village Head of Malat is always inside and urges them to immediately cast their votes for Candidate Pair Number 4;
- Whereas in TPS I Malat Village, the number of permanent voters amounts to 302, while those exercising their right to vote/cast their votes amount to 275 voters, including witness;
- Whereas witness does not report the frauds to the General Election Supervisory Committee;

[3.11.2] Witness Apolos Maradesa

- Whereas witness is assigned in TPS 3 at Public Hospital which has total 44 voters;
- Whereas witness found six people casting their votes at the Hospital, one of whom is Mrs. Yati Pulu, a member of people's legislative assembly of Manado bringing along six people to the hospital /TPS 3 at the Hospital without a card issued by KPU;
- Whereas the winner in the calculation conducted in TPS 3 at the Hospital is Candidate Pair Number 4;

[3.11.3] Witness Yustinus Karel Awalo

- Whereas the people of Pemekaran Village are not aware of the existence of TPS at Regional Public Hospital and ballot boxes are taken out from the private house of Mr. Tinundingan, instead of from that of the Chairperson of KPPS, sub-district or district office.
- Whereas in the voting, there are three underage people. This has been reported to the Chairperson of KPPS and Supervisory Committee by way of filling out the form for filing an objection after the voting is completed which is then submitted to the Supervisory Committee. Three days after the voting, witness along with the Supervisory Committee follow up the issue with regard to underage voters whose according to the data was born on 1992 and 1996. However, after checking the data with the

- evidence, they were actually born on 1993 meaning that they are only 15 years old;
- Whereas in TPS I Sambuara Village, the number of voters listed in the Permanent Voter List amounts to 315 voters, 304 of which exercise their voting rights, including the three underage people;

[3.11.4] Witness Marthin Ontorael

- Whereas witness receives double voter's cards, the first one was received two weeks prior to the voting and the other was received one week before the election/voting. The double card is not only received by the witness himself, but also by the witness' neighbors. To the best of the witness' knowledge, both witness and five of his friends only cast their votes once. As a result of double cards, the data may be manipulated;
- Whereas prior to the election, there was an illegal campaign on Wednesday, October 22 in Torohon Village, Capital City of Beo Selatan District to be precise in which there was a medical examination, including free eye examination held by Candidate Pair Number 4;

[3.11.5] Witness Abdon Ambalau Lalenoh

- Whereas witness cannot use his voting right because he is not listed in the DPT, although he is a native resident of Kampong Sawang. With regard to such matter, witness has asked the village head as to why his name is not listed in the DPT, which the village head subsequently explains that the

population data are collected from those of 2004;

[3.11.6] Witness Felix Amiman

- Whereas witness is the supporter of independent candidate in the Election of Regent and Deputy Regent of Talaud Islands Regency;
- Whereas witness identified a fraud committed by the Success Team for Candidate Pair Number 4 which distributed rice on Saturday, October 25, 2008 on 15.00 WITA. The incident occurred in Pampalu Village, Beo Selatan District, and witness recorded it in a compact disc (CD);
- Whereas witness has recorded all incidents of fraud in a CD;
- Whereas witness who acknowledges that there is an attempt made by Candidate Pair Number 4 by way of bringing two people from Bitung by vessel; and several people from another region aiming to participate in the Regional Head General Election of Talaud Islands Regency;

[3.11.7] Witness Welkinton Tito Tatoda

- Whereas witness is the Success Team for independent candidate Sinta Rama, and to the best of witness' knowledge, prior to the Regional Head Election, there were many violations committed by Candidate Pair Number 4, such as distribution of rice and student scholarship. With regard to student scholarship, it is claimed to belong to Candidate Pair Number 4;
- Whereas violations committed have been reported to the District Supervisory Committee and according to the Regency Supervisory Committee, the foregoing violations have been followed-up;

[3.11.8] Witness Petrus Mangaro (Witness from Supervisory Committee)

- Whereas witness is the General Election Supervisory Committee who on November 3 , 2008, was visited by several people threatening witness and saying that the Supervisory Committee is useless, incapable and not properly functioning because there are several violations to the Regional Head General Election that are not being followed-up;
- Whereas witness has explained that with regard to the violations to Regional Head General Election, such as the existence of names of people whose ages are not qualified to vote, based on the evidence, their names are listed in the permanent voter list. However, the complaint is filed after the Regional Head General Election;
- Whereas with regard to rice distribution, it has been reported to the Regency Supervisory Committee;

[3.12] Considering whereas with regard to the argument presented in the Petitioners' petition, Respondent has submitted a Response the complete description of which has been included in the foregoing Principal Issue of the Case, which principally is as follows:

1. Whereas we humbly ask for the reasons included in the description of arguments which are presented by the Petitioners both in its *posita* and *petitum* to be rejected by the Panel of Constitutional Justice examining the

a quo case since the material of Petition filed by the Petitioners Dr. Ramon Amiman and Drs. Martin Maabuat does not constitute the object of Dispute over Regional Head General Election, namely with regard to the Result of Vote Count affecting the election of Candidate Pair;

2. Whereas not only the reasons given by the Petitioners fail to meet the qualification for the object of dispute over regional head general election, the Petitioners also do not clearly and completely describe the mistakes made in the result of vote count which is stipulated by the Respondent as well as the petition/*petitum* to stipulate the correct result of vote count according to the Petitioners in compliance with the instruction/mandate set forth in the provisions of Article 6 paragraph (2) sub-paragraph b points 1 and 2 of the Regulation of Constitutional Court Number 15 Year 2008;
3. Whereas the Respondent reject the reason given by the Petitioners in point 6 which according to the Petitioners is the result of vote mark-up by the Respondent. The reason given by the Petitioners is extremely groundless and must be rejected since the total 16,449 votes are not votes affecting the Election of Candidate Pair *in casu* the Petitioners, but rather the precise total votes acquired by the Elected Candidate Pair as the Regent of Talaud Islands based on the Respondent's Stipulation, namely dr. Elly Engelbert Lasut and Drs. Constantine Ganggali;
4. Whereas similarly, the reasons included in the point 6 to point 7 of the *posita* of the Petitioners' petition must also be rejected because they are

not only groundless and do not have legal basis, but also they are no longer within the domain of the Respondent as the General Election Commission of regional head election, but rather the authority of the Voting Committee and General Election Supervisory Committee;

5. Whereas it is not true that there are voters listed in the Permanent Voter List (DPT) but not provided with an invitation. The fact is the Voting Committee (PPS) still delivers the invitation to vote for voters who have been listed in the Permanent Voter List assisted by the Head of RT/RW or the Head of Hamlet of Talaud Islands Regency, and in the event of no invitation -*quod non*-, such matter is not a mistake and/or a deliberate act made by the Respondent, but rather the self-intention of the voters because long before the implementation of Regional Head General Election, the Respondent has notified moreover announced that voters are to attend the regional head General Election because although voters have not received any invitation insofar as they are listed in the Permanent Voter List, they are still granted with voting rights;

6. Whereas the reason given by the Petitioners which states that there are voters not listed in the Permanent Voter List but granted the right to vote instead must be rejected because it is incorrect, moreover the reason with regard to the provision of facilities to approximately 900 students are legally groundless and should be rejected and disregarded by the Panel of Justices;

7. Whereas the reason given in point 6.3 of the petition which states that the distribution of rice and money in the amount of Rp.50,000,- (fifty thousand rupiah) by Candidate Pair dr. Elly Engelbert Lasut and Drs. Constantine Ganggali is incorrect since up to now, there is no report submitted by the General Election Supervisory Commission with regard to such matter to the Respondent and if any *-quod non-* although it is not, it constitutes the authority of the Supervisory Committee of Regional Head General Election assigned with the duty to settle the issue in administrative manner, to forward it to the investigator if there is an indication of criminal violation;

8. Whereas the reason given by the Petitioners which states that there are mentally-ill people granted the right to vote and is categorized as violation is incorrect and lacking of understanding on regulation since the law still grants mentally-ill people with voting rights in accordance with the provisions stating that blind, physically handicapped voters or those having other physical disability are allowed to vote (*vide* Article 89 of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government *juncto* Article 76 of Government Regulation Number 6 Year 2005) except for people whose mental condition or memory are not disturbed or voting rights are not revoked under a court decision having permanent legal force, they cannot be granted with their voting rights (*vide* Article 69 of Law Number 12 Year 2008 *juncto* Law Number 32 Year 2004);

9. Whereas the reason given in point 6.5 which states that there are underage children granted the right to vote is also incorrect and if any, although there is none, such matter is an administrative mistake made by the Voting Committee (PPS). However, in the process of Regional Head General Election, there are no children as intended by the Petitioners attending the Voting Station to exercise their voting rights;
10. Whereas the reason given in point 6.6 of the petition which states that there are demised person whose vote is cast by another people is also rejected by the Respondent because it is untrue and if there is an individual casting his/her vote although he/she does not, such matter is not a mistake made by the Respondent, but rather another people as intended by the Petitioners as an individual committing a criminal act of General Election who violates the provisions of Article 117 paragraph (4) and does not constitute the authority of the Respondent, but rather that of the General Election Supervisory Committee to investigate such matter. Similarly, the reason given by the Petitioners in point 6.7 which states that there are double voters casting their votes under their own names is incorrect and if it is true *-quod non-*, the double voters intended by the Petitioners also violate the criminal provisions of Article 117 paragraph (5);
11. Whereas the reason given by the Petitioners in points 6.8 to 6.17 must be rejected since it is legally groundless. Moreover, the Petitioners have drawn a conclusion that the actions mentioned in points 6.1 to 6.17, as

well as point 7.8 of the petition constitute a violation to the criminal provision of General Election set forth in the seventh paragraph of Articles 115 up to 118 of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government. Hence, it is evident that the main issues used by the Petitioners as reasons for filing an objection with regard to the Dispute over the Result of Regional Head General Election are not the objects of Dispute over the Result of Regional Head General Election related to the result of vote count affecting the Candidate Pairs and therefore for the sake of law, the petition filed by the Petitioners must be rejected or at least, cannot be accepted;

[3.13] Considering whereas to substantiate its arguments, the Respondent not only has presented written evidence (Exhibits T-1 to T-23), but also 19 official witnesses of Regional Head General Election committee who have given their statements under an oath at the hearing held on November 17 , 2008 which in principal state as follows:

[3.13.1] **Witness Herman Bansaga**

- Whereas in TPS 1, there are 470 voters plus one additional voters so as to amount to 471 voters. 440 voters exercise their voting rights. To confirm it, based on recapitulation there are 471 voting ballots, 439 voters exercise their rights and 31 voters do not, and there is an additional voter, namely Candidate Pairs Number 1;

- Whereas with regard to the names of demised people listed in the DPT, the four demised people are not summoned to vote, therefore the total number of voters are 470 voters plus one additional voters so as to amount to 471 voters;
- Whereas all of the people listed in the DPT reside in the region concerned. There are no people or residents coming from outside of the region;
- Whereas based on the result of vote count, the first place is taken by Candidate Pairs Number 1 followed with the second winner, Candidate Pairs Number 2, and the third winner is Candidate Pairs Number 4;

[3.13.2] Witness Johny Larenggam

- Whereas the total voters in Pooling Station 1 Sawang are 269 voters, 230 voters exercise their voting rights and the remaining 39 voters do not;
- Whereas in the Pooling Station where the witness is located, there are no other voters from other Pooling Stations and the election is also attended by the witnesses of Candidate Pairs;
- Whereas to the best of the witness' knowledge, there are no objections filed by the witnesses of Candidate Pairs. The election and vote count are conducted smoothly;

[3.13.3] Witness Herman Malese

- Whereas in Pooling Stations 1 and 2 Melenguane, there are 400 voters, whereas the total voters listed in the DPT are 440 voters. The total voters

present at the pooling station are 440 voters plus 21 additional voters who have not been registered but exercise their voting rights;

[3.13.4] Witness Heppy Maarisit

- Whereas there are 13 Pooling Stations and 1 special Pooling Station located at a Hospital under the PPK led by the witness;
- Whereas at the time of recapitulation conducted in the district out of six witnesses of Candidate Pairs, only three witnesses of Candidate Pairs present The witnesses present are witnesses of Candidate Pairs Number 2, Candidate Pairs Number 3, and Candidate Pairs Number 4;
- Whereas all of the 13 Pooling Stations and one special Pooling Station sign the results as from the Pooling Stations up to recapitulation at district level. None of them file an objection;
- Whereas the 10 voters do not cast their votes because they are absolutely not registered. Subsequently with regard to the six people who are not registered in Mala Village Pooling Station, Molongoane District, such matter is incorrect because special Pooling Station is attended by physicians, nurses, patients and patients' families and also KPPS;
- Whereas in district area, there are 6,645 voters in accordance with the total voters plus the additional voter list;

[3.13.5] Witness Frans Sale

- Whereas witness cannot remember the total voters existing. However, voters casting their voting rights do not exceed 50% (fifty percent);
- Whereas based on the recapitulation in Dalum District area, the winner is Candidate Pairs Number 4. There is no objection recorded in the Pooling Stations;
- Whereas the total permanent voters in the witness' Pooling Station are 380 voters, 339 voters cast their votes plus one voter from the witness so as to amount to 340 voters. The witness himself is registered with another Pooling Station;
- Whereas to the best of witness' knowledge, there are no voters exercising their voting rights twice. The ballot box is not removed;
- Whereas the winner in the witness' Pooling Station is Candidate Pairs Number 4;

[3.13.6] Witness Ferry Tumbal

- Whereas there are nine Pooling Stations in Esang Selatan District with the total registered voters of around 2000 voters;
- Whereas Alden Laloma comes from Batu Balango and is the former Head of Branch of Education Service Office of Talaud Islands Regency registered in Melongwane, but casts his voting right in Batu Balango Village instead. Alden only votes once;

- Whereas at the time of recapitulation in district, all witnesses of Candidate Pairs are present. There are no controversies and special incidents. In the witness' Pooling Station area, all parties sign the minutes of vote count:
- Whereas witness knows Sugianto Lalimbat, Dovi Lentian, and Indar Lalimbat. The three of them reside in Sambuara Village, but are not registered as permanent voters. The permanent voters in Sambuara Village amount to 314 people. 274 voters cast their votes, while 40 voters do not. There are two underage yet married people casting their votes. Both of the foregoing individuals exclude the three persons previously mentioned;
- Whereas Candidate Pair Number 4 win the vote count;

[3.13.7] Witness Yesaya Tande

- Whereas there are eight Pooling Stations in Beo Utara District with the total permanent voters of 2,518 voters. Based on the recapitulation, 2,341 voters cast their valid votes;
- Whereas the parties present at the recapitulation are the Supervisory Committee and witnesses of the 4 Candidate Pairs, meanwhile the witnesses of Candidate Pairs Number 6 and Number 3 are absent;
- Whereas with regard to the foregoing vote count/Recapitulation, there are no special obstacles encountered. There are no objections from the witnesses as from the witness' PPK up to district level;

[3.13.8] Witness Ayub Manganguwi

- Whereas there are six Pooling Stations in Maorange District. Each village has one Pooling Station, namely Moronge Induk, Moronge Dua, Moronge Satu, Morsel Induk, Morsel Satu, and Morsel Dua with the total voters listed in the Permanent Voter List of 2,688 voters;
- Whereas witness cannot recount the total Voters in detail which are approximately only 50%;
- Whereas the time of recapitulation in the district, only three Candidate Pairs present, namely Candidate Pairs Number 2, Candidate Pairs Number 4, and Candidate Pairs Number 5;
- Whereas there are 300 voters who do not cast their votes in total and some of them are located outside the region;

[3.13.9] Witness Setosa Mayore

- Whereas there are 12 Pooling Stations in Salibabu District as well as 4,129 permanent voters. There are around 300 additional voters per Salibabu District region;
- Whereas only one witness present at the recapitulation in the district, namely that of Candidate Pair Number 5 and Supervisory Committee at district level;
- Whereas it is an individual right to exercise or not to exercise their voting rights. Witness cannot force someone to exercise his/her voting right. It depends on the respective individual and witness does not intimidate them into not exercising their voting rights;

- Whereas all process are conducted smoothly and there are no objections filed by any parties;

[3.13.10] Witness Son Panaha

- Whereas there are nine Pooling Stations in Esang District with the total permanent voters of 2,528 voters. There are 2,237 voters exercising their voting rights;
- Whereas the parties present at the time of recapitulation at district level, namely the District Head, Witnesses of Candidate Pair Number 1, Candidate Pair Number 2, and Candidate Pair Number 4;
- Whereas there are no objections filed or extraordinary incident occurred in the nine Pooling Stations in the area where the witness is assigned;
- Whereas Candidate Pairs Number 4 win the vote count;

[3.13.11] Witness Raymon Manangkabo

- Whereas there are 11 Pooling Stations in Beo District with the total voters listed in the DPT of 3,818 voters. There are 3,393 valid votes, 24 invalid votes and there are 401 voters not casting their votes;
- Whereas the vote count is won by Candidate Pairs Number 4, while the second place is taken by Candidate Pairs Number 2;
- Whereas in the recapitulation, there are no witnesses raising an objection. The witnesses present sign the minutes of recapitulation;

- Whereas the parties present are, namely Candidate Pair Number 2, witnesses of Candidate Pairs Number 4, and Candidate Pair Number 5, the District Head and Military Regional Commander;

[3.13.12] Witness Samuel Andasia

- Whereas there are seven Pooling Stations in Beo Selatan District with the total permanent voters of 2,757 voters and 2,346 valid votes;
- Whereas at the time of recapitulation, only Candidate Pairs Number 1, Candidate Pairs Number 2, Candidate Pairs Number 3, and Candidate Pairs Number 4 providing recommendation, while Candidate Pairs Number 5 and Candidate Pairs Number 6 do not provide any recommendation. The parties present are witness of Candidate Pair Number 1, Candidate Pairs Number 3, Candidate Pairs Number 4, District Head, and Supervisory Committee;
- Whereas Candidate Pairs Number 4 win the vote count by only 253 voters from Candidate Pairs Number 2;

[3.13.13] Witness Brury Mamahet

- Whereas there are five Pooling Stations in Pulutan District with the total voters of 1,545 voters listed on the DPT, 7 damaged voting ballots and the remaining 118 voters do not cast their votes;
- Whereas the parties present at the time of recapitulation in the district include 1 member of Police Force, Supervisory Committee at district level,

witness of Candidate Pairs Number 4, District Head, and Chairpersons of PPS throughout Pulutan District regions;

- Whereas there are no reports regarding any incident/violation filed by Pooling Stations in Pulutan District area. The regional head general election in Pulutan District undergoes a smooth, safe and orderly process as from the registration of voters up to the implementation.

[3.13.14] Witness Platein Puansalaing

- Whereas there are 13 Pooling Stations in Rainis District region with the total permanent voters of 4,529 voters. There are 3,842 voters not casting their votes and 21 invalid votes due to damaged ballots;
- Whereas in Rainis District region, there are two witnesses from Candidate Pairs Number 2 and Candidate Pairs Number 4, all Voting Committees, District Head, representatives from the Police Force, Military Regional Command, and Supervisory Committee, while witnesses of other Candidate Pairs are absent;
- Whereas Candidate Pairs Number 4 win the vote count;
- Whereas during the process of election, there are no special incidents occurred and no objections filed by the witness at the time of recapitulation in the district;

[3.13.15] Witness Jemmy Sasauw

- Whereas there are five Pooling Stations and six KPPS in Kalongan area because there is a Pooling Station in which has 863 voters in total, therefore it is divided into two KPPS. From the five Pooling Stations, there are 2,357 voters listed in the DPT with 2,004 valid votes, 323 voters not casting their votes because they are located outside the area and 30 damaged ballots;
- Whereas the parties present at the recapitulation in the district include witnesses of all Candidate Pairs, namely witness of Candidate Pairs Number 1 up to Candidate Pairs Number 6 and also representative from the district, Supervisory Committee and Police officer;
- Whereas the count lasts for five hours as from 4 PM to 10 PM and there is no objection filed by any parties nor reports from all of the pooling Stations in the vote count;
- Whereas Candidate Pairs Number 4 win the vote count;

[3.13.16] Witness Deker Lasut

- Whereas there are 15 Pooling Stations in Geme region with 4,230 voters. There are 3,659 valid votes, 567 voters not casting their votes which approximately 14% of the voters are not available in the area, four damaged/invalid ballots as they cast their votes mistakenly;
- Whereas the parties present at the recapitulation include witnesses from all Candidate Pairs, district officers and Supervisory Committee;

- Whereas there are no objections filed by any parties in the vote count (the format prepared is still blank, without any note of objection). Candidate Pairs Number 4 win the vote count.

[3.13.17] Witness Novalina Buida

- Whereas there are 13 Pooling Stations in the PPK of Kabaruan District with 4,031 permanent voters. There are 3,591 valid votes, 1,000 voters not exercising their voting rights because they are outside the region and 14 damaged ballots;
- Whereas the parties present at the time of recapitulation include witnesses of Candidate Pair Number 1, Candidate Pair Number 2 and Candidate Pair Number 4, whereas witnesses of Candidate Pairs Number 3, Candidate Pairs Number 5, and Candidate Pairs Number 6 are absent;
- Whereas Candidate Pairs Number 4 win the vote count.

[3.13.18] Witness Yantje Mahagamsa

- Whereas in Lirung District, there are 12 Pooling Stations, 4,648 voters listed in the Permanent Voter List (DPT) and 3,908 valid votes. There are several causal factors in which voters do not to exercise their voting rights, namely because the voters are outside the region and with regard to the others, witness does not know the reason why they do not exercise their voting rights. There are about 15 people who do not exercise their voting right in the Pooling Station where the witness resides;

- Whereas the recapitulation of vote count in the district is conducted in District Public Hall as from 10.00 up to 14.00 attended by Supervisory Committee, Chief of Sector Police, Military Region Command, District Head, public figures, customary figures, religious figures and two representatives from Candidate Pairs Number 2 and Candidate Pairs Number 4, as well as witnesses. Vote count is conducted smoothly and there are no objections filed by the respective Pooling Stations;

[3.13.19] **Witness George Aunsi**

- Whereas witness is the Member of Supervisory Committee of Talaud Regency in the *ex officio* division of the Chairperson of Regional Head Election Work Group. In addition to serving as the member of Supervisory Committee, witness also works as Civil Servant and non-permanent lecturer. Since witness was inaugurated as member of Supervisory Committee on August 20 by the Central General Election Supervisory Agency, 40% of the phases of Regional Head Election have been completed and there are about 15 reports from the community and the Success Team for Candidate Pairs with the detail of 11 administrative violations and four violations of criminal act of General Election with regard to money politics, namely:
 - a. distribution of nine essential commodities by Candidate Pairs Number 2 (RAMA) 1 Day before the election around 4 AM;

- b. distribution of coupon by the Success Team for Candidate Pairs Number 2 in the nominal value of Rp.500,000,- (five hundred rupiah) per coupon to voters;
- c. threat made by Village Head individual against the members of district Supervisory Committee in Kabaruan District;
- d. one of secretariat staff of member of Regency Supervisory Committee registered in Nanusa is granted with voting right, however when performing his/her duty in the field, the officer serving in the KPPS does not grant him/her with any voting right;

Witness has followed-up the foregoing criminal violations according the existing mechanism by way of providing recommendation and forwarding such issues to the Investigator. Based on the information gathered from the investigator, the criminal violations have only reached the level of investigator while with regard to administrative violations, the Supervisory Committee gives a warning and witness has issued warning to the General Election organizer twice, namely with regard to the stipulation of DPT;

- Nine days before the election, witness together with KPU and all PPK began a plenary hearing to stipulate the number of voters listed in the DPT and additional voters which was also attended by the Success Team for all of Candidate Pairs. Minutes of agreement with regard to the stipulation

- was subsequently made and it has also been followed-up by KPU. Whereas with regard to additional voting ballots, witness warned KPU for not distributing 2.5% of the voting ballots to the Pooling Stations as stipulated by law due to the limited voting ballot;
- On the 27 after the voting, there was no complaint lodged by the public or the Team Success for respective Candidate Pair. However, witness, in structural manner submitted reports of objection with regard to the implementation of voting that was not in accordance with the mechanism;
 - The recapitulation of vote count in regency is attended by witness, KPU, witnesses of the respective Candidate Pairs and as a matter of fact, Candidate Pairs Number 2, Candidate Pairs Number 3, Candidate Pairs Number 5, and Candidate Pairs Number 6 are also present in the intended recapitulation;

Opinion of the Court

In the Exception

[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 Respondent's Exception which in principal states that the Petitioners' petition has passed the time limit of three days as stipulated in Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government *juncto* Article 94 paragraph (1) of Government Regulation Number 6 Year 2005 regarding the

Election, Legalization, Appointment, and Dismissal of Regional Head and Deputy Regional Head *juncto* Article 5 paragraph (1) of the Regulation of Constitutional Court Number 15 Year 2008 regarding Guidelines for Proceedings in the Dispute over the Results of General Election of Regional Head. Respondent issued the Stipulation on the Results of Vote Count in the General Election of Regional Head and Deputy Regional Head of Talaud Islands Regency on November 3, 2008, whereas the Petitioners filed an objection to the results of vote count in the General Election of Regional Head to the Court on November 12, 2008 under Registration Number 39/PHPU.D-VI/2008. Respondent asks the Panel of Constitutional Justices to declare the Petitioners' petition as cannot be accepted;

[3.15] Considering with regard to the Respondent's Exception, the Court is of the following opinion:

[3.15.1] Whereas the Petitioners' petition was registered with Yeara District Court in accordance with the receipt of Power of Attorney to Pay (SKUM) on November 5, 2008. Subsequently, the Court of Appeal of Manado delegated the intended petition to the Court in accordance with the letter Number W.19.U/261/HT.04.10/XI/2008 with an attachment of one file regarding the delivery of dossier of petition for the case of General Election of Regional Head of Talaud dated November 10, 2008 (attached both of the letters) addressed to the Chairperson of Constitutional Court in Jakarta and received by the Registrar Office of the Court on November 10 , 2008 under the Number 81/PAN.MK/XI/2008 on 16.00 WIB;

[3.15.2] Whereas the Petitioners' petition was filed to the Court during the transition condition since the authority to examine, hear, and decide upon dispute over the results of vote count in the General Election of Regional Head which previously constituted the authority of the Supreme Court as set forth in Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government. However after the promulgation of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, the intended authority shifted to become the authority of the Constitutional Court (*vide* Article 236C of Law 12/2008) which came into effect as of November 1, 2008, namely after the signing of Minutes of Delegation of Authority to Adjudicate by the Supreme Court and the Constitutional Court on October 29, 2008;

[3.15.3] Whereas Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government provides a time limit for the delegation of authority from the Supreme Court to the Constitutional Court by no later than 18 (eighteen) months as of the promulgation of the *a quo* law on April 28, 2008. The *a quo* Article means that insofar as it has not exceeded the intended time limit and the Supreme Court does not delegate the foregoing authority to the Constitutional Court, the dispute over the results of General Election of Regional Head is still within the authority of the Supreme Court (*vide* Decision Number 25/PHPU.D-VI/2008 dated September 24, 2008);

[3.15.4] Whereas the Petitioners filed an objection with regard to dispute over the results of vote count stipulated by the Respondent to the Court of Appeals of Manado through Yeara District Court with the application dated November 5, 2008. Whereas since the authority to adjudicate dispute over the results of vote count in the General Election of Regional Head was delegated by the Supreme Court to the Constitutional Court on October 29, 2008, and the delegation of intended authority came into effect on November 1, 2008, the Court of Appeals of Manado on November 10, 2008 delegated the dossier of petition for the General Election of Regional Head of Talaud Islands Regency filed by the Petitioners to the Constitutional Court;

[3.15.5] Whereas the Petitioners registered the dispute over the revocation of Stipulation of Vote Count in the General Election of Regional Head to the Court by no later than 3 (three) working days after the Respondent stipulated the Result of Vote Count in the General Election of Regional Head. The time limit of 3 (three)-working days is calculated at the time when the petition was received at the Registrar's Office of the Court, rather than when the petition was registered as argued by the Respondent. Therefore, since the Petitioners' petition is a case delegated from the Court of Appeals of Manado, the time limit of 3 (three) business days was calculated at the time when the petition was registered at the court concerned. With regard to the *a quo* petition, it was registered at Yeara District Court dated November 5, 2008 based on the receipt for the advanced payment of case fee. Whereas the Respondent issued the Stipulation of Result

of Vote Count in the General Election of Regional Head of Talaud Islands Regency on November 3 [Exhibit T-1, *vide* Article 106 paragraph (3) of Law Number 32 Year 2004 regarding Regional Government], hence if the Petitioners filed the petition of objection to Yeara District Court on November 5, 2008, such petition was still within the time limit as stipulated in Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government *juncto* Article 94 paragraph (1) of Government Regulation Number 6 Year 2005 regarding the Election, Legalization, Appointment and Dismissal of Regional Head and Deputy Regional Head *juncto* Article 5 paragraph (1) of Regulation of the Constitutional Court Number 15 Year 2008 regarding Guidelines for Proceedings in the Dispute over the Results of General Election of Regional Head. Whereas since the petition filed by the Petitioners is still within the time limit stipulated in laws and regulation, the Exception presented by the Respondent regarding the time limit for the submission of petition is inappropriate and hence, must be declared as cannot be accepted;

In the Principal Issue of the Case

[3.16] Considering whereas the Petitioners, in their petition dated November, 4 2008 principally argue as follows:

- a. Whereas the Petitioners expressly reject the Plenary Meeting on the Recapitulation of Vote Count held by the Respondent because the vote count is based on fictive and fabricated data which are not in accordance with the applicable laws and regulations. The Recapitulation of Vote Count

conducted by the Respondent generates the following vote acquisition:

- Candidate Pairs Dr. Elly Engelbert Lasut and Drs. Constantine Ganggali acquire 31,907 votes;
- Candidate Pairs Dr. Ramon Amiman and Drs. Martin L. Maabuat acquire 15,458 votes;
- Candidate Pairs Ir. Petrus J. Tuwongkesong, M.M., and Irene Bernetje Riuang, S.Sos acquire 3,151 votes;
- Candidate Pairs Jim Jacob Bee and Herman Tatareda acquire 1,258 votes;
- Candidate Pairs Drs. Frits T. Tumimbang and Hendrikus Sumapode, S.H. acquire 1,126 votes;
- Candidate Pairs Tamanihe Pontolumiu, S.E., M.M. and John Essing, S.H, acquire 368 votes;

Based the Recapitulation of Vote Count conducted by the Respondent, the Petitioners acquire 15,458 votes taking the second place under the Candidate Pairs Dr. Elly Engelbert Lasut and Drs. Constantine Ganggali who acquire 31,907 taking the first place, thus the difference of votes acquired by the Petitioners and Elected Candidate Pairs (Dr. Elly Engelbert Lasut and Drs. Constantine Ganggali) is 16,449 votes;

- b. Whereas according to the Petitioners, the difference by 16,499 votes is resulted from the mark-up which is caused by the following matters:
1. Voters listed in the DPT are not provided with invitation to vote, namely in Sawangan Village, Melonguane District and Hospital Pooling Station in Mala Village, Melonguane Induk District;
 2. Provision of travel fee for about 900 students to return to their hometown;
 3. Distribution of around five kilogram of rice and money in the amount of Rp.50,000,- per voter holding voter card in the name of Candidate Pairs Dr. Elly Engelbert Lasut and Drs. Constantine Ganggali;
 4. The data on permanent and additional voters are not collected accurately, thus people holding voting rights cannot exercise them;
 5. There are mentally-ill voters under the name of Denny Arramana and Ril Arramatta who should not have the right to vote;
 6. There are voters not listed in the DPT, however they are able to cast their votes;
 7. There are underage voters who should not hold the right to vote;
 8. There are demised people listed in the DPT whose voting rights are exercised by other people;
 9. There are double voters casting their votes on behalf of themselves and other;

- c. The violations intended by the Petitioners have been reported to the General Election Supervisory Committee. However they are not followed-up as violations to the General Election of Regional Head to be processed as intended in Article 108 of Government Regulation Number 6 Year 2005;
- d. Whereas based on the aforementioned facts, the Petitioners ask the Court to revoke the Stipulation issued by the Respondent dated November 3, 2008, especially with regard to the Elected Candidate Pairs (Dr. Elly Engelbert Lasut and Drs. Constantine Ganggali) who acquire 31,907 votes since the Elected Candidate Pairs acquired the votes by way of influencing voters. The Petitioners also ask the Court to punish the Respondent so as to designate the Petitioners as the Regent and Deputy Regent of Talaud Islands Regency Period 2009 – 2014;

[3.17] Considering whereas with regard to the arguments presented by the Petitioners, the Court is of the opinion that the Petitioners fail to expressly state the Stipulation issued by the Respondent which serves as the object of dispute. Although the Petitioners, at the hearing on November 17, 2008 have been given the opportunity to revise their petition, the Petitioners did not use the intended right;

[3.18] Considering whereas the object of dispute over the General Election of Regional Head is concerned with the result of vote count stipulated by the Respondent, rather than the dispute over administrative and criminal

violations as also argued by the Respondent. Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government (hereinafter referred to as Law 32/2004) *juncto* Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government (hereinafter referred to as Law 12/2008) and Article 94 paragraph (1) of Government Regulation Number 6 Year 2005 regarding the Election, Legalization, Appointment and Dismissal of Regional Head and Deputy Regional Head (hereinafter referred to as PP 6/2005), and Article 4 of Regulation of the Constitutional Court Number 15 Year 2008 regarding Guidelines for Proceedings in the Dispute over the Results of General Election of Regional Head (hereinafter referred to as PMK 15/2008) which in principal state that dispute over General Election of Regional Head shall be the dispute over the results of vote count stipulated by the General Election Commission;

[3.19] Considering whereas in the *a quo* petition, the Petitioners emphasize more on the violations occurred before and during the voting. Such matter may be read in points 6.1 to 6.17, and 7 of the *posita* in the *a quo* petition. The legislators have stipulated the time limit of 14 days to settle dispute over the result of vote count in the General Election of Regional Head [*vide* Article 106 paragraph (4) of Law 32/2004 and Article 13 paragraph (1) of PMK 15/2008]. The designation of time limit is based on the fact that dispute over General Election of Regional Head only relates to the dispute over the result of vote count. If all violations to the General Election of Regional Head must be settled by the Court,

the Court must be given a sufficient time limit to substantiate the intended violations;

[3.20] Considering whereas notwithstanding the matters presented in the aforementioned paragraph **[3.19]**, in order to provide a fair treatment for all the parties, the Court needs to assess whether or not it is true that there have been violations to the General Election of Regional Head in Talaud Regency which may affect the election of regional head and deputy regional head candidate pairs;

[3.21] Considering whereas to substantiate the arguments of their petition, the Petitioners have presented evidence of letters (exhibits P-1 to P- 30) as well as eight witnesses, while the Respondent presents evidence of letters (exhibits T-1 to T-23) and 19 witnesses. The evidence and statement given by the witnesses have been completely described in the Principal Issue of the Case and the main statements have also been specified in the Legal Consideration, hence the Court is of the following opinions:

- Whereas in point 6.1 of the posita, the Petitioners state, “*Voters are not registered with the DPT, but granted with the right to vote*” (exhibit P-7). The argument presented by the Petitioners is different and in contradictory to the statement of witness presented by the Petitioners, Zeth Laira, stating, “*There are about 70 voters who cannot exercise their voting rights because they are not registered with the DPT*”. The statement given by

the witness is contradictory to the argument presented by the Petitioners. Moreover, the foregoing argument is not supported with evidence of letter in the form of invitation to vote issued by KPPS;

- Whereas in point 6.2 of the posita, the Petitioners state, “*Voters are not registered with the DPT, but granted the right to vote in the Pooling Station located at the hospital*”. The argument presented by the Petitioners is reaffirmed with the statement given by the Petitioners’ witness, Apolos Maradesa who states, “*Witness identifies six people, one of them is Yati Pulu, a Member of People’s Legislative Assembly of Manado, who does not have an invitation but is able to cast vote*”. However, the statement given by the Petitioners’ witness is rebutted by the Respondent’s witness, Heppy Maarit who state that the Pooling Station at the Hospital in Mala Village, Molongoane District is a special Pooling Station to be used by physicians, nurses, patients and patients’ families and KPPS, hence it is not true that there are six voters from outside the hospital using their voting rights in the Pooling Station of the hospital. Although the argument presented by the Petitioners has been supported with the statement of the Petitioners’ witness, Apolos Maradesa, the validity of statement given by the witness is doubtful. To substantiate their argument, the Petitioners should present witness who experience it by him/herself *in casu* voter casting his/her vote in the Hospital Pooling Station of Mala Village, Molongoane District as argued by the Petitioners;

- Whereas in point 6.2 of the posita, the Petitioners also argue that there are 900 students given the facilities to return to Talaud Islands by Ferry free of charge (Exhibit P-11). The argument presented by the Petitioners is contradictory to the statement given by the Petitioners' witness, Felik Amiman, who states that Candidate Pairs Number 4 bring in two people from Bitung by boat and several people from other regions. Witness does not mention about the 900 students paid by Candidate Pairs Number 4 at all as argued by the Petitioners. If it is true that Candidate Pairs Number 4 pay the fee for the 900 students to return home, it cannot be justified and the validity that the students will vote for Candidate Pairs Number 4 cannot be substantiated. The argument presented by the Petitioners is still an assumption since it is not supported with other evidence sufficient to substantiate their argument;
- Whereas in points 6.3 and 6.12 of the posita, the Petitioners argue that Candidate Pairs Number 4 distribute coupon to the people of Talaud Regency which contains 5 kilogram of rice assistance from Bulog and money in the amount of Rp.50,000 per voter (exhibits P-3, P-4, P-5 and P-6). The Petitioners' argument is reaffirmed with the statement given by the Petitioners' witness, Welkinton Tito Totoda, who states that before the Regional Head Election, there are many violations committed by Candidate Pairs Number 4, such as distribution of rice and provision of scholarship for students. However, the statement given by the Petitioners' witness is different from that the Respondent's witness, George Aunsi,

who gives a contradictory statement, namely that witness as the Chairperson of Supervisory Committee has received 11 administrative violations and four criminal violations. The criminal violation is concerned with *money politics*, which includes among other in the form of distribution of nine essential commodities and money coupon in the amount Rp.500,000,- to voters one day before the voting (T-1 Day) by the Team Success for Candidate Pairs Number 2 RAMA (the Petitioners). Although to support their argument, the Petitioners have presented witness and evidence in the form of five kilogram of rice, it does not necessarily mean that the Petitioners' argument is true because the Respondent's witness has given a contradictory statement which states that it is in fact the Petitioners' Success Team who has committed the criminal violation of money politic;

- Whereas in point 6.4 of the *posita*, the Petitioners argue that there are mentally-ill voters named Deny Arramana and Riel Arramana in Dallung Village Salibabu District who have been granted with voting rights (exhibit P-10). The Petitioners' argument has been rebutted by the Respondent's witness named Frans Salle, stating that Denny Arramana and Riel Arramana are not mentally ill as argued by the Petitioners, but rather they are physically handicapped. The Court is of the opinion that such matter has been in accordance with Article 89 of Law 32/2004 and Article 76 of PP 6/2005;

- Whereas in point 6.5 of the *posita*, the Petitioners argue that there are underage voters granted with voting rights (exhibits P-9, P-22B, P-23B, P-23C, P-24B, and P-24C). The Petitioners' argument has been substantiated with the statement given by the Petitioners' witness, Yustinus Karel Awalo who states that there are underage, 15 years old voters found in Pooling Station of Sambuara Village. The statement given by the Petitioners' witness has been rebutted by the Respondent's witness, Ferry Tumbal stating that it is true that there are two underage voters, however both of them are married. Whereas in order to stipulate whether or not a person has been entitled to vote, it is not merely determined by age, but also by taking into account whether or not such person has been married. Although the voters are not 17 years old yet, but if the concerned have been married, it has been in accordance and in compliance with Article 19 sub-article 3 point b of PP 6/2005;
- Whereas in point 6.6 of the *posita*, the Petitioners argue that there are demised person listed in the DPT, however the vote on behalf of the demised person is cast by another individual (exhibit P-8). The Petitioners' statement has also been rebutted by the Respondent's witness, Herman Bansaga stating that it is true that there four demised people listed on the DPT in Pooling Station 1 of Maruange Village, Maruange District before the voting, however the four people are not provided with invitation to vote and there are minutes made for such purpose;

- Whereas in point 6.7 of the posita, the Petitioners argue that there are double voters casting their votes on behalf of themselves and other people. The Petitioners' argument has been substantiated by the Petitioners' witness, Marthin Ontorael stating that witness receives double invitation, namely one which was received one week before the voting and another card which was received two weeks after his return from Manado. Witness's neighbors also receive double invitation and to the best of witness' knowledge, five of his friends also receive double invitations. However the witness' double invitations are only used to vote once. The Petitioners' argument is rebutted by the Petitioners' witness himself stating that he only exercise his voting right once, while with regard to the invitation distributed to witness' neighbors and friends, the Petitioners' witness does not know for sure whether or not the concerned uses the intended invitation;

[3.22] Considering whereas it is not necessary to take into account the rest of the Petitioners' argument because it is not the authority of the Court to assess it;

[3.23] Considering after the Court assess the evidence presented by the Petitioners, statement of witnesses, evidence of letter, as well as facts of laws revealed at the hearing, it is evident that the Petitioners have failed to substantiate the arguments of their petition;

4. CONCLUSION

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

- [4.1] Whereas the Respondent's Exception is groundless;
- [4.2] Whereas the Petition of objection filed by the Petitioners is groundless;
- [4.3] Whereas the Decision of Respondent (KPU of Talaud Islands Regency) Number 37 Year 2008 dated November 3, 2008 regarding the Stipulation of Regent and Deputy Regent Candidates in the General Election of Regent and Deputy Regent of Talaud Island Year 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 reject the Petitioners' petition in its entirety.

Hence the decision was passed at the Consultative Meeting of Constitutional Justices attended by 9 (nine) Constitutional Justices, namely Moh. Mahfud MD, M. Akil Mochtar, Achmad Sodiki, Muhammad Alim, Abdul Mukthie Fadjar, Jimly Asshiddiqie, Maruarar Siahaan, M. Arsyad Sanusi, and Maria Farida Indrati on Friday the twenty-eighth of November two thousand and eight and pronounced at the Plenary Hearing open for public on this day, Monday the first of December two thousand and eight by eight Constitutional Justices, namely Moh. Mahfud MD, as the Chairperson and concurrent member, M. Akil Mochtar, Achmad Sodiki, Muhammad Alim, Abdul Mukthie Fadjar, Maruarar Siahaan, M. Arsyad Sanusi, and Maria Farida Indrati, respectively as Members assisted by Alfius Ngatrin as Substitute Registrar in the presence of the Petitioners/their Attorney and the Respondent/its Attorney.

CHAIRPERSON,

Sgd.

Moh. Mahfud MD

MEMBERS,

Sgd.

M. Akil Mochtar

Sgd.

Achmad Sodiki

Sgd.

Muhammad Alim

Sgd.

Abdul Mukthie Fadjar

Sgd.

M. Arsyad Sanusi

Sgd.

Maruarar Siahaan

Sgd.

Maria Farida Indrati

SUBSTITUTE REGISTRAR,

Sgd.

Alfius Ngatrin