



## DECISION

Number 40/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 petition regarding Dispute over the Results of General Election of the Regional Head and the Deputy Regional Head of Pinrang Municipality, filed by:

- [1.2] 1. Name : **Drs. H.M. Ali Usman, M.Si;**  
Age : 57 years of age;  
Religion : Islam;  
Occupation : Civil Servant;  
Citizenship : Indonesia;  
Address : Jalan Bau Massepe, Sawitto Sub-District,  
Watang Sawitto District, Pinrang Regency;
2. Name : **A. Fahrur Paturusi, SE;**  
Age : 46 years of age;  
Religion : Islam;  
Occupation : Entrepreneur;

Citizenship : Indonesia;  
Address : Jalan Corawali, Maccorawalie Sub-District,  
Watang Sawitto District, Pinrang Regency;

By virtue of a Special Power of Attorney dated November 07, 2008, granting the power of attorney to Irwan Muin, S.H., M.H., Anwar, S.H., Muhammad Rusydi, S.H., and Murlianto, S.H., all of whom being Advocates, having their office address at Jalan Cendana Number 195 Panukkukang, Makassar;

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

**Against:**

[1.3] **General Election Commission of Pinrang Regency**, having its address at Jalan Bintang, Telephone: (0421) 923859, Facsimile: (0421) 924804, Pinrang 91212;

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

[1.4] Having read the Petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard and read the response of the Respondent, namely the General Election Commission of Pinrang Regency;

Having examined the evidence presented by the Petitioners;

### 3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the main issue of the Petitioners' petition is an objection to the results of General Election of the Regional Head and Deputy Regional Head of Pinrang Regency stipulated by the General Election Commission (KPU) of Pinrang Regency in accordance with KPU Decision Number 55 Year 2008 dated November 3, 2008;

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

1. the authority of the Court to examine, hear, and decide upon the *a quo* petition;
2. the legal standing of the Petitioners to file the *a quo* petition.

With respect to the foregoing two issues, 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 (hereinafter referred to as the Constitutional Court Law) *jis* 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, particularly Article 236C which reads, “*the handling of disputes over the vote count results of the election of regional heads and deputy regional heads by the Supreme Court shall be delegated to the Constitutional Court by no later than 18 (eighteen months) following the promulgation of this law*”, and Minutes of the Delegation of Authority to Adjudicate on October 29, 2008 from the Supreme Court to the Constitutional Court, one of the Court’s authorities is to decide upon disputes on the results of General Elections for Regional Heads and Deputy Regional Heads (hereinafter referred to as the General Election of Regional Heads);

[3.3] Considering whereas since the Petitioners’ petition concerns the dispute over the vote count results of the General Election of Regional Heads, namely the General Election of Regional Heads of Pinrang Regency in accordance with KPU Decision Number 55 Year 2008 dated November 3, 2008, the Court has the authority to examine, hear, and decide upon the *a quo* petition.

### **Legal Standing of the Petitioners**

[3.4] Considering whereas Article 3, Article 4, and Article 5 of the Constitutional Court Regulation Number 15 Year 2008 regarding Guidelines for the Proceedings in Disputes over the Results of the General Election of Regional Heads provide for, among other things, the following matters:

- a. The Petitioners are a Candidate Pair of the Regional Head and the Deputy Regional Head;
- b. The petition may only be filed against the stipulation of the vote count result of the General Election of Regional Heads affecting the designation of candidate pairs qualified to participate in the second round of the General Election of Regional Heads or affecting the election of a candidate pair as the Regional Head and Deputy Regional Head;
- c. The petition may only be filed by no later than 3 (three) working days following the stipulation of vote count result of the General Election of Regional Heads in the area concerned;

**[3.5]** Considering whereas the Court will consider the Petitioners' legal standing, based on the provisions of Article 3, Article 4, and Article 5 of the Constitutional Court Regulation Number 15 Year 2008 as referred to in paragraph **[3.4]**, as follows:

- Whereas, in accordance with KPU Decision Number 42 Year 2008 dated August 10, 2008 regarding Designation of the Candidate Pair of Regent and Vice Regent of Pinrang Regency for the Period of 2009-2014, the Petitioners are a Candidate Pair of Regional Head and Deputy Regional Head of Pinrang Regency in 2008 with Candidacy Number 6 (six);

- Whereas the petition filed by the Petitioners is an objection to KPU Decision Number 55 Year 2008 regarding Designation of the Elected Candidate Pair based on the Results of the 2008 General Election of Regent and Vice Regent of Pinrang Regency dated November 3, 2008. The said objection was raised because it was stipulated that the Petitioners only acquired 31,430 votes and ranked 3<sup>rd</sup>(third);
- Whereas the Petitioners' petition was received in the Registrar's Office of the Court on November 13, 2008 and in the petition's *posita*, the Petitioners stated that the stipulation of KPU of Pinrang Regency was dated November 7, 2008. However, the evidence presented was the attachment of a stipulation signed on November 7, 2008 to the stipulation of KPU of Pinrang Regency dated November 3, 2008;
- Whereas in its response dated November 19, 2008, the Respondent presented an exception principally stating that the Petitioners' petition filed had missed the deadline provided for in Law Number 32 Year 2004 regarding Regional Government as recently amended with Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government *juncto* Article 5 paragraph (1) of the Constitutional Court Regulation Number 15 Year 2008;
- Whereas with respect to the evidence presented by the Respondent, it appeared that the said stipulation was dated November 3, 2008. At the

hearing on November 19, 2008, the validity of such evidence had been acknowledged by the Petitioners;

- Whereas in accordance with the provisions of Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government *juncto* Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government which reads, "*Objections to the stipulation of results of the elections of regional heads and deputy regional heads may only be filed by candidate pairs to the Supreme Court by no later than 3 (three) days following the stipulation of results of the elections of regional heads and deputy regional heads,*" as well as Article 5 paragraph (1) of the Constitutional Court Regulation Number 15 Year 2008 which reads, "*Petition for the nullification of stipulations of the vote count results of the General Election of Regional Heads shall be filed by the Respondent to the Court by no later than 3 (three) working days following the stipulation of vote count results of the General Election of Regional Heads in the area concerned.*" Hence, between the date of submission and the deadline of 3 (three) working days following the stipulation of results of the General Election of Regional Heads by the Respondent, the Petitioners' petition for objection had missed the deadline provided for in Article 5 paragraph (1) of the Constitutional Court Regulation Number 15 Year 2008. The issue was also conveyed by the Respondent at the hearing on November 19, 2008;

[3.6] Considering, based on evaluation of facts and legal grounds in the foregoing paragraph [3.5], the Court is of the opinion that although the Petitioners are a candidate pair in the General Election of Regional Heads of Pinrang Regency with candidacy number 3 (three) and the object in question constitutes the object in the dispute over the General Election of Regional Heads, the petition filed had missed the deadline provided for in Article 5 paragraph (1) of the Constitutional Court Regulation Number 15 Year 2008. Therefore, in accordance with the provisions of Article 13 paragraph (3) sub-paragraph a of the Constitutional Court Regulation Number 15 Year 2008, the Petitioners' petition is unacceptable;

[3.7] Considering whereas since the Petitioners' petition is unacceptable, insofar as it concerns the principal issue of the petition, it is irrelevant to further consideration;

#### **4. DECISION**

In view of the 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, Law Number 32 Year 2004 regarding Regional Government as recently amended with Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, and Minutes of the Delegation of Authority to Adjudicate on October 29, 2008 from the Supreme Court to the Constitutional Court.



**Passing the Decision,****In the Exception:**

To declare that the exception of the Respondent is granted.

**In the Principal Issue of the Case:**

To declare that the Petitioners' petition is unacceptable.

Hence the decision was made at the Consultative Meeting of Constitutional Court Justices on Wednesday, the nineteenth of November two thousand and eight and was pronounced in the Plenary Session open for public on this day, Thursday, the twentieth of November two thousand and eight, by us, H. Abdul Mukthie Fadjar as the Chairperson and Concurrent Member, Achmad Sodiki, Maria Farida Indrati, Maruarar Siahaan, H.M. Arsyad Sanusi, Muhammad Alim, and H.M. Akil Mochtar respectively as Members, assisted by Sunardi as the Substitute Registrar, in the presence of the Petitioners/their Attorneys and the Respondent/its Attorney.

**CHIEF JUSTICE,**

**Sgd.**

**H. Abdul Mukthie Fadjar**

**JUSTICES,**

**Sgd.**

**Achmad Sodiki**

**Sgd.**

**Maria Farida Indrati**

**Sgd.**

**Maruarar Siahaan**

**Sgd.**

**H.M. Arsyad Sanusi**

**Sgd.**

**Muhammad Alim**

**Sgd.**

**H.M. Akil Mochtar**

**SUBSTITUTE REGISTRAR,**

**Sgd.**

**Sunardi**