



DECISION

Number: 43/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 the constitutional cases in the first and final level, passing a decision in the case of the Dispute over the Results of General Election of the Regional Head and Deputy Regional Head of Pinrang Regency filed by:

- [1.2] 1. Name : **H. SAMSUDIN MANDJA, S,H.**
Religion : Islam;
Job : Private Entrepreneur;
Domicile : Hati Mulia Street Number 196, Pallameang Village, Mattiro Sompe District, Pinrang Regency;
2. Name : **H.A. RENRENG PALLOLOI;**
Religion : Islam;
Job : Civil Servant Retiree;
Domicile : Kijang Street Number 13 Pinrang Regency;

By virtue of Special Power of Attorney legalized by Asrianti Ridwan, S.H., Notary in Makassar Number 85/2008/AR-XI/L/5 dated 11 November, 2008 authorizing Muhammad Ridwan, S.H., and Syaifulah Hamsa, all of whom Advocates of Guidance and Legal Aid Institution (*Lembaga Penyuluhan dan Bantuan Hukum /LPBH*) of Indonesian Community Consciousness Association (*Ikatan Nurani Masyarakat Indonesia /INMI*) domiciled at 10 Tidung Street Block 10 Number 106 Makassar;

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

Against:

[1.3] **General Election Commission (KPU) of Pinrang Regency**, domiciled at Bintang Street Pinrang Regency Telephone (0421) 923859, Facsimile (0421) 924804 Pinrang 91212. By virtue of Special Power of Attorney dated November 18, 2008 authorizing Mappinawang, S.H., Sofyan, S.H., Bakhtiar, S.H., Mursalin Jalil, S.H., M.H., all of whom being Advocates having their office address and legal domicile in "Mappinawang & Rekan" Law Firm with their address at Topaz Raya Ruko Zamrud I Block G/12 Makassar, South Sulawesi;

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

[1.4] Having read the Petitioners' petition;

Having heard the Petitioners' statements;

Having heard and read the Respondent's response;

Having examined the evidence presented by the Petitioners and Respondent;

Having read the conclusion presented by the Petitioners and Respondent;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the principal issue of the Petitioners' petition is the objection to the Vote Count Results of the General Election of the Regional Head and Deputy Regional Head of Pinrang Regency stipulated by the General Election Commission of Pinrang Regency (hereinafter referred to as Pinrang Regency KPU) in accordance with the Decision of Pinrang Regency KPU Number 55 Year 2008 concerning the Stipulation of the Candidate Pair of Regent and Deputy Regent of the First and Second Winners of the General Election of the Regional Head and Deputy Regional Head of Pinrang Regency Year 2008 dated November 3, 2008;

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

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

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

AUTHORITY OF THE COURT

[3.3] Whereas based on the provisions of:

- Article 24C paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution);
- Article 10 paragraph (1) sub-paragraph d of Law Number 24 Year 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law);
- Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 concerning Judicial Power;
- Law Number 12 Year 2008 concerning the Second Amendment to Law Number 32 Year 2004 concerning Regional Government, one of the constitutional authorities of the Court is to decide upon the dispute over the results of the general election. Initially, based on the provisions of Article 106 paragraphs (1) and (2) of Law Number 32 Year 2004 concerning 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) the objection to the vote count result 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 concerning the Election, Legalization of Appointment and Dismissal of Regional Heads and Deputy

Regional Heads;

- Article 1 sub-article 4 of Law Number 22 Year 2007 concerning General Election Organizer (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) stipulates that, "*General Elections of Regional Heads and Deputy Regional Heads shall be general elections to directly elect the regional heads and deputy regional heads within the Unitary State of the Republic of Indonesia under Pancasila and the 1945 Constitution of the Republic of Indonesia*";
- Article 236C Law Number 12 Year 2008 concerning Second Amendment to Law Number 32 Year 2004 concerning Regional Government, stipulates that, "*The handling of the disputes over the vote count result of the election of Regional Heads and Deputy Regional Heads by the Supreme Court shall be delegated to the Constitutional Court no later than 18 (eighteen) months following the promulgation of this law*";
- On October 29, 2008, the Head of the Supreme Court and the Head of the Constitutional Court jointly signed the Minutes of Delegation of Authority to Adjudicate as the implementation of Article 236C of Law Number 12 Year 2008 above.

[3.4] Considering whereas since the *a quo* petition is the Dispute over the Vote Count Result of the General Election of Regional Heads and Deputy

Regional Heads *in casu* Regional Head and Deputy Regional Head of Pinrang Regency South Sulawesi Province, accordingly the Court has authority to examine, hear and decide upon the petition;

LEGAL STANDING OF THE PETITIONERS

[3.5] Considering whereas the Court will consider the legal standing of the Petitioners based on the provisions of Article 106 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government, Articles 3 and 4 of Constitutional Court Regulation Number 15 Year 2008 concerning the Guidelines on the Proceedings in the Dispute Over the Results of the General Election of Regional Heads (Hereinafter referred to as PMK 15/2008) as intended in paragraph [3.3] as follows:

- whereas the Petitioners are the Pair of Candidates of Regional Head and Deputy Regional Head of Pinrang Regency, stipulated by the Respondent with Candidacy Number 4 (four);
- whereas the Petitioners submit the objection to the Decision of Pinrang Regency KPU Number 55 Year 2008 concerning the Stipulation of Candidate Pairs of Regent and Deputy Regent as the First and Second Winners of the General Election of Regent and Deputy Regent of Pinrang Year 2008 dated November 3, 2008. The objection concerned was filed because the Respondent's decision contains manipulation in the form of inclusion of figures which were virtually correct, so that the Petitioners

acquired 25,372 votes and occupied the third rank under the Candidate Pair of H.A. Aslam Patonangi, S.H., M.Si and Drs. H.A. Kaharuddin Machmud who acquired 49,826 votes;

[3.6] Considering whereas Article 106 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government, Articles 3 and 4 of PMK 15/2008 stipulate matters, among other things:

- a. The Petitioners are the Pair of Candidates of Regional Head and Deputy Regional Head;
- b. The petition may only be filed against the Stipulation of Vote Count Results of Pemilukada affecting the stipulation of Candidate Pair qualified to participate in the second round of Pemilukada or the elected Pair of Candidates as the Regional Head and Deputy Regional Head;

[3.7] Considering whereas based on the assessment of facts and laws as described in the aforementioned paragraphs [3.5] and [3.6], the Court is of the opinion that the Petitioners have legal standing to file the *a quo* petition;

PRINCIPAL ISSUE OF THE PETITION

[3.8] Considering whereas the principal issue of the Petitioners' petition is as follows:

- The objection to the Decision of the General Election Commission of

Pinrang Regency Number 55 Year 2008 concerning the Stipulation of Candidate Pair of Regent and Deputy Regent as the First and Second Winners of the General Election of Regent and Deputy Regent of Pinrang Regency Year 2008 dated November 3, 2008;

- The Petitioners state in their petition that they have filed a civil lawsuit in Pinrang District Court related to the *a quo* Pemilukada on November 6, 2008 as having been corroborated by the statement letter from Registrar's Office of Pinrang District Court dated November 14, 2008 that has been sent to the Court;
- Whereas the registration of the *a quo* case as the case of dispute over Pemilukada is within the time limit set;
- Whereas such delegation is the administrative evidence of case registration administration on November 6, 2008, **while the substance (subject matter) of the case is different**, namely the lawsuit in Pinrang District Court related to **money politics, violations during the campaign period, intimidation, and the failure of Panwas (Supervisory Committee) of Pemilukada in performing its duties and authorities as the Supervisory Committee**, while the objection petition filed to the Court is in relation to the **stipulation of the recapitulation of vote count results** in Pemilukada being disputed between the Petitioners and the Respondent;

[3.9] Considering whereas with respect to the Petitioners' arguments, the Respondent presented written response dated 20 November, 2008 the complete statement has been included in the Facts of the Case, basically as follows:

In the Exception

1. Whereas the Stipulation of Candidate Pair of Regent and Deputy Regent as the First and Second Winners of the General Election of Regent and Deputy Regent of Pinrang Regency Year 2008 was stipulated on November 3, 2008, while the Petitioners' petition was registered on Tuesday November 18, 2008, accordingly the submission of the objection petition in the *a quo* case, **has exceeded the time** limit determined by PMK 15/2008;
2. Whereas the objection concerning the vote count filed by the Petitioners to the Court constitutes a new petition and not the continuation of the petition filed to Pinrang District Court, therefore the *a quo* case may not be deemed as the delegation of a case from Pinrang District Court, so that the *a quo* petition must be declared unacceptable;

IN THE PRINCIPAL ISSUE OF THE CASE

1. Whereas the Petitioners in their petition only use irrelevant arguments as the Dispute Over Vote Count Results of *Pemilukada* as regulated in PMK 15/2008;

2. Whereas it has become legal common sense, that the Stipulation of Vote Count Results is only related to the vote count phase of *Pemilukada* the series of activities of which is started with the vote count meeting at KPPS level up to the Plenary (Open) Meeting for the Recapitulation of Vote Count Results of *Pemilukada* in the Regional/Municipal KPU;
3. Whereas the substance of Petitioners' petition only relates to the alleged violations and assumptions/predictions made by the Petitioners which subjectively and a priori are not in accordance with and do not meet the formal judicial requirements of a petition in dispute over *Pemilukada* as provided for in Article 6 paragraph (2) sub-paragraph b point 1 PMK 15/2008, stipulating that the petition shall at least include clear description concerning the erroneous vote count stipulated by the Respondent;
4. Whereas the Petitioners' petition only consists of incorrect assumptions and improperly disputed as to why the voters cast their votes more to certain pair of candidates. Disputing such matter, is similar to sue the voters' right and freedom to determine their choice in the General Election of Regional Head and Deputy Regional Head;
5. Whereas in their petition, the Petitioners also describe money politics, the accuracy of such argument is still doubted, because how could frauds and/or such behaviors described be allowed to occur, while the security personnel of the police, civil agency, military, Panwas, *Pemilukada* observers, and witnesses of the Pairs of Candidates were placed in all

- TPS, all of them performing their respective duties and authorities in the implementation of *Pemilukada* in Pinrang Regency;
6. Whereas the Petitioners do not understand the substance of Law Number 22 Year 2007 concerning the General Election Organizer, in which the law does not categorize the government element as the General Election Organizer, so that it is not related to the provisions of the law;
 7. Whereas the Petitioners' argument claiming the number of voters registered in Permanent Voters' List (DPT) and did not use their voting rights as the result of not receiving the invitation for a total number of 57,000 persons, who were deemed by the Petitioners as their supporters, only constitutes assumptions which do not have substantiation value. The Petitioners' arguments formulating the vote count as, "***the valid votes acquired by the Petitioners plus votes of those registered in the DPT but not cast a vote since they did not receive voting invitation***", are groundless in which such formula causes the Petitioners acquired 82,732 votes. Such argument constitutes a made up argument, that cannot be legally accounted for. The voters registered in the DPT did not use their voting rights not merely because of the lack of voting invitation, but it could be also caused by other factors, such as the voters did not intend to use their voting rights;

OPINION OF THE COURT

[3.10] Considering whereas prior to considering the substance or the principal issue of the petition, the Court will firstly evaluate the Respondent's exception;

Exception Concerning Time Limit

[3.11] Considering whereas with respect to the Petitioners' reason, the Court needs to consider the following matters:

1. Whether or not it is right that the Civil Lawsuit filed by the Petitioners to Pinrang District Court under Registration Number 19/Pdt.G/2008/P.N.Pinrang constitutes dispute over Pemilukada which its *posita* and *petitum* become the authority of the Court to examine, hear, and decide upon the *a quo* case after the authority to hear the dispute over Pemilukada is delegated from the Supreme Court to the Constitutional Court;
2. Whether or not it is right that the case filed by the Petitioners to the Court is a new case, so that it still meets the time limit to be examined, heard, and decided upon by the Court;

[3.12] Whereas with respect to the both aforementioned matters, the Court is of the opinion as follows:

[3.12.1] Whereas it is true that the Petitioners' lawsuit was registered with Pinrang District Court under Registration Number 19/Pdt.G/2008/P.N.Pinrang on

November 6, 2008, while the Decision of KPU of Pinrang Regency Number 55 Year 2008 concerning the Stipulation of Candidate Pairs of Regent and Deputy Regent as the First and Second Winners of the General Election of Regent and Deputy Regent of Pinrang Regency Year 2008 was stipulated on November 3, 2008. Accordingly, the petition for dispute over *Pemilukada* is still within the determined time limit;

Whereas while the petition for dispute over *Pemilukada* was filed to the Court on November 13, 2008, the Pinrang District Court has stipulated the first hearing held on November 25, 2008 in accordance with the notice release from Pinrang District Court dated November 12, 2008;

Whereas the *petitum* described in the Petitioners' petition basically states: (i) that KPU of Pinrang Regency (Defendant 1) shall not stipulate the Pair of Candidates who acquires the first and second greatest number of votes until the decision of the case obtains permanent legal force; (ii) that KPU of Pinrang Regency (Defendant 1) shall conduct re-election of Regional Head; (iii) to order Panwas (Defendant 2) to report all people, either the community members or Civil Servants involving in the criminal acts of *Pemilukada* to the competent agency; and (iv) to punish the Defendants (Pinrang Regency KPU and Panwas) to pay the case fee jointly;

From the subject matter of the Petitioners' petition, the aforementioned matter is not the object of dispute over *Pemilukada* so that is not the authority of the Court to examine, hear, and decide upon the *a quo* case if it

is delegated to the Court. Therefore, the Court **cannot accept the delegation of the *a quo* petition to be examined, heard, and decided upon;**

[3.12.2] In the hearing held on November 25, 2008 the Petitioners has admitted that the case filed and registered with the Court **constitutes a new case (Case Number 43/PHPU.D-VI/2008)** which is different from the case filed by the Petitioners to Pinrang District Court under Registration Number 19/Pdt.G/2008/PN.Pinrang as described above, while the Case Number 43/PHPU.D-VI/2008 was filed to the Court by the Petitioners on November 13, 2008 and was registered on November 18, 2008. Based on the facts and the Petitioners' admission above, the filing for the petition to the Court should have been conducted not later than November 6, 2008, accordingly the filing for the Petitioners' case on November 18, 2008 **has exceeded the frame limit** permitted by Law Number 32 Year 2004 concerning Regional Government and PMK 15/2008.

4. CONCLUSION

Considering whereas based on the entire assessment of the aforementioned facts and law, the Court concludes as follows:

[4.1] The *a quo* case is a new case, not the follow-up of the case filed with the Pinrang District Court;

[4.2] The Submission to the Court has exceeded the time limit stipulated

by the laws and regulations;

[4.3] The Respondent's Exception concerning the expiry date of the submission of the Petitioners' petition is reasonably granted; accordingly the principal issue of the case is *irrelevant* to be considered.

5. DECISION

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

Passing the Decision,

In the Exception:

To grant the Respondent's exception.

In the Principal Issue of the Case

To declare that the Petitioners' petition cannot be accepted.

Hence this decision was made in the Consultative Meeting of Justices by eight Constitutional Court Justices on Monday, the first of December

year two thousand and eight and was pronounced in the Plenary Meeting open for public on this day, Tuesday, the second of December year two thousand and eight by us Moh. Mahfud MD, as the Chairperson and Concurrent Member, Achmad Sodiki, Maria Farida Indrati, Maruarar Siahaan, Abdul Mukthie Fadjar, M. Arsyad Sanusi, M. Akil Mochtar, and Muhammad Alim, respectively as Members accompanied by Sunardi as the Substitute Registrar, in the presence of the Petitioners/their Attorneys, and the Respondent/its Attorneys;

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD

JUSTICES,

Sgd.

Achmad Sodiki

Sgd.

Maruarar Siahaan

Sgd.

M. Arsyad Sanusi

Sgd.

Maria Farida Indrati

Sgd.

Abdul Mukthie Fadjar

Sgd.

M. Akil Mochtar

Muhammad Alim

SUBSTITUTE REGISTRAR,

Sgd.

Sunardi