



DECISION

Number 45/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 the Dispute on the Results of General Election of Regional Head and Deputy Regional Head of Kupang Regency year 2008 filed by:

- [1.2] 1. Name : **Herson Tanuab, S.H.**
- Age : 47 years;
- Religion : Protestant;
- Occupation : Ex-Head of Registrar's Office/Secretary of Kupang District Court;
- Address : Jalan Kelapa Number 23, RT/RW (Neighborhood Ward/Neighborhood Block) 01/01, Airnona Sub-district, Oebobo District, Kupang City;
2. Name : **Ir. Vivo Henu Ballo**

Age : 44 years;
 Religion : Protestant;
 Occupation : Entrepreneur;
 Address : BI Artha Graha Housing Complex Number 9,
 Tuak Daun Merah Sub-district, Oebobo
 District, Kupang City.

In this matter having granted power of attorney to **Gabriel Suku Kotan, S.H., M.Si** and **Duin Palungkun, S.H.**, both of whom are Advocates/Legal Consultants having their address at Jalan Herewila Number 28 Kupang, East Nusa Tenggara based on Special Power of Attorney Number 09/PILKADA/PT/XI/2008 dated November 5, 2008, acting for and on behalf of the Authorizers.

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

Against:

[1.3] **General Election Commission of Kupang Regency**, domiciled at Jalan Ir. Soekarno Number 17 Fontein Sub-district, Oebobo District, Kupang City.

In this matter granting power of attorney to **Riki Kuson Raka S.H.**, Advocate, domiciled in Kupang, having his address at Jalan Amanuban, Oebufu Sub-district, Oebobo District, Kupang City, East Nusa Tenggara based on Special Power of Attorney dated November 25, 2008, acting for and on behalf of the Authorizer.

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

[1.4] Having read the Petitioners' petition;

Having heard the Petitioners' statement;

Having heard and read the Respondent's Response;

Having heard the statements of Related Parties;

Having heard the statement of the Petitioners' witnesses;

Having examined the evidence presented by the Petitioners and the Respondent;

Having read the Written Conclusions of the Petitioners and the Respondent;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the principal issue of the Petitioner's petition is an objection to the Recapitulation of Vote Count Result of Regional Head General Election of Kupang Regency stipulated by the Decision of Kupang Regency General Election Commission dated November 4, 2008, which was filed to Kupang District Court on November 7, 2008 and subsequently submitted by Kupang Regency High Court to the Constitutional Court on November 17, 2008.

It was received by the Constitutional Court on November 21, 2008 and registered on November 24, 2008;

According to the Petitioners:

- Whereas the vote count result of Kupang Regency General Election Commission (KPU) has been erroneous by stipulating Candidate Pair with Candidacy Number 3 as the second winner with vote acquisition of 27,976 votes, while the Petitioners is the third winner stipulated as having acquired 27,566 votes. The vote count has been erroneous in that the second winner should have been the Petitioners with 29,248 votes;
- Whereas the Petitioners have also requested that, prior to passing the final decision, the Constitutional Court should first pass a **Provisional Injunction** ordering the postponement of the second round *Pemilukada*, since the Respondent has made a mistake in the vote count, and ordering the Respondent to perform vote recount in each District Polling Committee (PPK) in 29 Districts or in PPK where vote count mistakes occurred.

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

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

With respect to the foregoing two matters, the Court is of the following opinion:

AUTHORITY OF THE COURT

[3.3] Considering whereas based on the provision of Article 24C paragraph (1) of the 1945 Constitution of the State 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 on 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) *junctis* Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 on Judicial Power, and Law Number 12 Year 2008 on the Second Amendment to Law Number 32 Year 2004 on Regional Government, one of the constitutional authorities of the Court is to decide upon disputes over general election results;

Previously, based on the provision of Article 106 paragraph (1) and paragraph (2) of Law Number 32 Year 2004 on 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, hereinafter referred to as the Regional Government Law), objections to vote count results affecting the election of Candidate Pairs should be filed to the Supreme Court or became the authority of the Supreme Court. Such authority was further restated in Government Regulation Number 6 Year 2005 on the Elections, Legalization of

Appointment, and Dismissal of Regional Head and Deputy Regional Head;

Article 1 sub-article 4 of Law Number 22 Year 2007 on General Election Organization (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) provides that General Election of Regional Head and Deputy Regional Head shall be a general election to directly elect regional heads and deputy regional heads within the Unitary State of the Republic of Indonesia under *Pancasila* and the 1945 Constitution of the Republic of Indonesia;

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

On October 29, 2008, the Chief Justice of the Supreme Court and the Chief Justice of the Constitutional Court jointly signed Minutes of Delegation of the Authority to Adjudicate, as the implementation of Article 236C of Law Number 12 Year 2008 above.

[3.4] Considering whereas since the Petitioners' petition is the dispute over vote count results of Regional Head General Election (*Pemilukada*), namely Kupang Regency *Pemilukada* according to Kupang Regency KPU Decision dated November 4, 2008, the Constitutional Court thus has the authority to

examine, hear and decide upon the *a quo* petition.

LEGAL STANDING OF THE PETITIONERS

[3.5] Considering whereas in relation to the legal standing of the Petitioners, the Court will consider the issue based on the provision of Article 106 paragraph (1) of the Regional Government Law, Article 3 and 4 of the Constitutional Court Regulation Number 15 Year 2008 on the Guidelines for Proceedings in the Dispute over the Results of Regional Head General Election (hereinafter referred to as PMK 15/2008) as referred to in paragraph [3.3] as follows:

- Whereas the Petitioners are Kupang Regional Head Regent and Deputy Regent Candidate Pair stipulated by the Respondent with Candidacy Number 6 based on Kupang Regency KPU Decision dated September 21, 2008 Number 29/PB Year 2008 on the Stipulation of Kupang Regency Regent and Deputy Regent Candidate Pairs qualifying as participants of the General Election of Regional Head and Deputy Regional Head of Kupang Regency Year 2008;
- Whereas the Petitioners have filed an objection to the Decision of Kupang Regency General Election Commission Number 29/PB Year 2008 dated November 4, 2008 on the Recapitulation of Vote Count Results of the General Election of Regional Head and Deputy Regional Head of Kupang Regency, as well as the Stipulation of Elected Candidate Pair acquiring

the most votes who may proceed to the second round of *Pemilukada*, since the Petitioners should have been stipulated as acquiring 29,248 votes instead of 27,556 votes and therefore they should have been stipulated as the Second Winner and should have advanced to the Second Round *Pemilukada*.

[3.6] Considering whereas Article 106 paragraph (1) of the Regional Government Law, Article 3 and Article 4 of PMK 15/2008 determine, among others, the following matters:

- a. The Petitioners are Regional Head and Deputy Regional Head Candidate Pair;
- b. The Petition can only be filed against the Stipulation of *Pemilukada* Vote Count Results affecting the designation of Candidate Pairs qualifying to participate in the Second Round *Pemilukada* or the election of Candidate Pairs as Regional Head and Deputy Regional Head;

[3.7] Considering whereas based on the evaluation of facts and laws in paragraphs [3.5.] and [3.6] above, 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 main problems filed by the Petitioners to be examined and decided upon by the Court are:

- The objection to the Decision of Kupang Regency General Election Commission Number 29/PB Year 2008 dated November 4, 2008 on the Recapitulation of the Vote Count Results of the General election of Regional Head and Deputy Regional Head of Kupang Regency and Number 29/PB Year 2008 dated November 4, 2008 on Candidate Pairs advancing to the Second Round;
- Whereas the Vote Count Recapitulation Results and the KPU Decision on Candidate Pairs as Winners entitled to advance to the Second Round have been wrong and erroneous, as they counted the votes from voters who voted twice. There were also many voters who did not have voting cards and a violation of legislative provisions in *Pemilukada* by not distributing C1-KWK Model forms to all *Hallo* Package witnesses in every Voting Station, as well as the distribution of nine basic commodities by *Berita* Package Candidate Pair on T-1 day in Teunbaun Sub-district, Amarasi Barat District;
- Whereas due to the aforementioned issues, the Petitioners have been stipulated as acquiring 27,566 votes, while *Berita* Package acquired 27,976 votes and therefore become the second winner, whereas the correct vote count should have been 29,248 votes for the Petitioners who therefore should have been stipulated as the second winner entitled to advance to the Second Round.

[3.9] Considering whereas with regards to the Petitioners' argument, the Respondent has filed a written response dated December 1, 2008, which was read before the Court hearing on December 1, 2008 as completely included in the Facts of the Case section, which principally reads as follows:

IN THE EXCEPTION

- Whereas the Petitioners' petition has surpassed the time limit determined in Article 5 of PMK 15/2008, which provides that the filing of the Petition for the Cancellation of *Pemilukada* Vote Count Result Stipulation shall be filed to the Constitutional Court in no later than 3 (three) working days after the stipulation of vote count results in the related region;
- Whereas the Petitioners' petition is extremely obscure and unclear, as it does not specify the mistakes of the vote count results made by the Respondent clearly and in detail in order to find out in which Voting Station, village, sub-district or district the mistakes in Kupang Regency *Pemilukada* vote count have occurred.

IN THE PRINCIPAL ISSUE OF THE CASE

1. Whereas the Petitioners' objection to the Decision of Vote Count Recapitulation Result stipulated by the Respondent (Kupang Regency KPU) on November 4, 2008 which concerns the incorrect number of votes acquired by the Petitioners is greatly erroneous, since the decision of vote

count recapitulation result made by the Respondent has been accurate and correct according to the prevailing procedure or mechanism;

2. Whereas the Petitioners' objection is greatly erroneous in stipulating the number of votes acquired by the Petitioners, in which the Petitioners' claim that they should have acquired 29,248 votes instead of 27,556 votes as stipulated by the Respondent is a highly subjective assessment, since the Petitioners obtained such data from sources that are unclear and extremely misleading even to the Petitioners themselves. As a matter of fact, the Petitioners has acquired 27,556 votes, which is the number acquired in 582 Voting Stations based on Vote Count Result Certificate for Regional Head and Deputy Regional Head Candidate Pair in Voting Stations (C1-KWK Model Attachment), therefore the number of votes acquired by the Petitioners in the 2008 Kupang Regency *Pemilukada* is valid;
3. Whereas the Petitioners' objection concerning the 1,692 votes deemed to be the Petitioners' missing votes that should have been counted as the Petitioners' vote acquisition is unclear.

[3.10] Considering whereas in order to support the arguments of their petition, the Petitioners have presented written evidence in the form of Exhibits P-1 through P-53 and seven witnesses who, have given statements under oath, which have been entirely included in the Facts of the Case section, which principally read as follows:

1. Witness ALBERT Z. NOMPETUS

- Whereas the witness is an observer from the *Hallo* Package;
- Whereas the previous vote counts for *Hallo* Package were 579 votes in Amfoang Utara District, Kupang Regency, and 580 votes in Amfoang Barat Laut District, Kupang Regency;
- Whereas after being discussed in the plenary meeting by KPU, the vote count result for *Hallo* Package changed into 476 votes in Amfoang Utara District and 167 votes in Amfoang Barat Laut District;
- Whereas the witness obtained the information from Amfoang District;
- Whereas when the witness requested C1-KWK Model form in the district, the form was not given to the witness;

2. Witness WILLI BRODUS SEKO OBEHETNA

- Whereas based on the witness' observation in Amarasi Barat District, there has been double-voting;
- Whereas such double-voting occurred in Voting Station 2 in Teanbaun Village, Amarasi Barat District;
- Whereas one of the Candidate Pairs, namely *Berita* Package Candidate Pair, has distributed nine basic commodities to the community in Teanbaun Village;
- Whereas *Berita* Package committed another violation during voting in Amarasi Barat District, Teanbaun Village, namely that *Berita* Package

Candidate Pairs along with their wives and children also voted in Voting Station 1 in Tumbau village, although they are domiciled in Kupang City;

3. Witness YOKSAN A.A. NAU, SH

- Whereas the witness conducted observation in Amfuang Barat Laut District.
- Whereas based on the data found by the witness on the information board in the district, *Hallo* Package (the Petitioners) acquired 580 votes;
- Whereas after brought into the plenary meeting by KPU, *Hallo* Package's vote acquisition of 580 votes changed into 167 votes, thus losing 413 votes;
- Whereas when the witness requested C1-KWK Model form in the district, the form was not given to the witness.

4. Witness OKTAVIANUS TASI

- Whereas during the voting, the witness was a member of the Monitoring Team in Kupang Tengah District;
- Whereas the witness monitored voting in each Voting Station. In Voting Stations, the witness requested C1-KWK forms but the forms were not given by Voting Station officers. Only two Voting Stations gave the forms, namely one Voting Station in Welpua Village and one Voting Station in Welbaki Village;
- Whereas when the witness checked to the district, PPK suggested him to

attend the Plenary meeting on the following day, but on the following day KPU cancelled the Plenary meeting;

- Whereas the witness did not obtain any explanations from Kupang Tengah District and had not been able to obtain Vote Count Recapitulation form in Kupang Tengah District;

5. Witness LINDEN O. SANAM

- Whereas the witness was assigned as observer in Fatuleu District;
- Whereas according to the vote result specified on the announcement board in the District, *Hallo* Package acquired a total of 3,641 votes;
- Whereas when the witness went to the field to request C1-KWK Model form, KPU did not give it;
- Whereas there were several officers trying to request the form, but according to the Polling Committee, KPU did not give any directions to give the forms, therefore all forms had been returned to the boxes;
- Whereas after being brought into the Plenary meeting by KPU, the vote acquisition of *Hallo* Package declined to 2,857 votes, therefore causing a difference of 784 votes from what was previously written in the district;
- Whereas the total number of voters in Permanent Voters' List (DPT) in Fataleu District is 12,300 voters;

6. Witness THOMAS DURAN

- Whereas the witness is a reporter of Pos Kupang Daily;

- Whereas the witness knew that on October 30, 2008, *Hallo* Package acquired 29,248 votes;
- Whereas the witness obtained the number of votes from Kupang Regency Public Relations Division, since it was the only division that could provide quick information at the time;
- Whereas KPU could not provide quick information;
- Whereas on October 31, 2008, the vote acquisition of 29,248 votes for *Hallo* Package was a temporary vote acquisition issued by the Public Relations division, while the data on vote acquisition of 27,566 votes was issued at the final Plenary Session and it was from KPU;
- Whereas the witness did not reconfirm the news since the vote acquisition of 29,248 votes obtained by the witness on October 31, 2008 from Kupang Regency Public Relations Division had not been processed in the plenary meeting at district level, and it was a temporary data according to the news the witness wrote in *Pos Kupang* daily;

7. Witness RETNO IRAWATI

- Whereas the witness is a reporter of *Kursor* daily;
- Whereas the witness obtained vote acquisition data of respective Candidate Pairs from Kupang Regency Public Relations Division;
- Whereas on October 29, 2008, KPU did not provide the results of Vote Acquisition Count Recapitulation, even temporary ones;

- Whereas from October 29 to October 30, 2008, the *Hallo* Package (the Petitioners) acquired 29,284 votes;
- Whereas on October 30, 2008, the witness together with fellow reporters obtained information from Public Relations Division of Kupang Regency Regional Government on the aforementioned vote acquisition of *Hallo* Package (the Petitioners);
- Whereas later on October 31, 2008, the witness returned to the Public Relations Division of Kupang Regency to obtain vote acquisition data of respective Candidate Pairs and the vote acquisition of *Hallo* Package (the Petitioners) had declined to 27, 566 votes;
- Whereas the witness further requested the latest Recapitulation data from KPU;
- Whereas on October 30, 2008, the witness obtained information from the Public Relations Division of Kupang Regency Regional Government that the Petitioners acquired 29,284 votes and at the time the witness did not request KPU's confirmation;
- Whereas it was not until the differences in vote acquisition on October 31, 2008 were found out that the witness requested confirmation from KPU and KPU provided the data for five districts;

[3.11] Considering whereas to prove the arguments of its rebuttal, the Respondent has presented written evidence marked as Exhibits T-1 through T-41 and did not present any witnesses, and Related Parties of Candidate Pair

stipulated by KPU as the Second Winner of the 2008 Kupang Regency *Pemilukada* did not presented evidence, whether in the form of written evidence or witnesses.

OPINION OF THE COURT

[3.12] Considering whereas prior to considering the principal issue of the Petition, the Court must first consider the Petitioners' provisional petition and the Respondent's exception, with respect to which the Court is of the following opinion:

IN THE PROVISION

[3.12.1] Considering whereas the petition for provisional claim concerns temporary actions that does not concern the principal issue of the dispute and it is required before the final decision on the principal dispute (*bodem geschil*) is passed by the Court. However, the petition for provisional claim filed by the Petitioners is very closely related to the principal issue of the dispute and other parts of the provisional petition are even parts of the principal issue of the dispute filed in the *a quo* case;

[3.12.2] Considering whereas since there are no urgent issues for the issuance of provisional injunction as petitioned in the *petitum* of the Petitioners' petition, and since the dispute on *Pemilukada* vote count result is a case with a relatively quick process namely that it must be decided upon within no later than 14 working days since the petition is registered in Constitutional Case

Registration Book (BRPK), the Petitioners' provisional petition must be set aside;

IN THE EXCEPTION

[3.12.3] Considering whereas the Stipulation of Kupang Regency KPU on the Recapitulation of Vote Count Results of Kupang Regency Pemilukada was issued on November 4, 2008, against which the Petitioners have filed an objection since the result of the vote count conducted by the Respondent is deemed wrong or incorrect. The Petitioners' petition was filed with Kupang District Court Registrar's Office on November 7, 2008 and was delegated to the Court by Kupang High Court on November 17, 2008;

[3.12.4] Considering whereas even though the dossier was received by the Court on November 21, 2008 and was registered on November 24, 2008, since the Petitioners filed their petition with Kupang District Court on November 7, 2008, based on the provision of Article 106 paragraph (3) of the Regional Government Law, the aforementioned filing of petition was still within the time limit determined by the laws and regulations, including PMK 15/2008. The other reason is the existence of transitional period needed in the delegation of authority from the Supreme Court to the Constitutional Court, therefore the date of objection receipt in Kupang District Court shall be the date used as the basis for determining the time limit provided in the laws and PMK 15/2008;

[3.12.5] Considering whereas since the Petitioners' petition was filed within the time limit provided and determined in the laws and PMK 15/2008, the

Respondent's exception is deemed groundless and must be set aside;

[3.12.6] Considering whereas the exception on obscure petition (*obscuur libel*) is inappropriate according to the law, since the substance of the exception is closely related to the principal issue of the case, and therefore the *a quo* exception must also be set aside;

PRINCIPAL ISSUE OF THE CASE

[3.13] Considering whereas from the questions and answers, written evidence, and the witnesses of the Petitioners and the Respondent, as well as the statements of Kupang Regency *Panwaslu* and Related Parties of the Second Place Candidate Pair of the First Round *Pemilukada*, the legal problems that must be considered by the Court are as follows:

1. Whether or not is it true that there were 1,692 votes that should be the title of the Petitioners that have been counted as the vote acquisition of *Berita* Package (Candidate Pair Number 3), which caused the Respondent to erroneously count the Petitioners' vote acquisition as 27,556 votes instead of 29,248 votes, which would have stipulated the Petitioners as Candidate Pair eligible to advance to the Second Round;
2. Whether or not it is true that there has been a distribution of nine basic commodities in Teunbaun Sub-district by Candidate Pair Number 3 (*Berita* Package) which violated *Pemilukada* provisions, therefore excluding the vote acquisition of Candidate Pair Number 3 in the region from the

counting in the Recapitulation of Vote Count Results of Candidate Pair Number 3.

3. Whether or not the failure of the witnesses of Candidate Pairs to obtain C1-KWK forms influenced the validity of vote count conducted by the Respondent.

[3.14] Considering whereas with regards to the aforementioned three problems, the Court considers the following:

- Whereas the 1,692 votes argued as the votes that should belong to the Petitioners and which must be counted as the Petitioners' vote acquisition have not been supported by convincing evidence and witnesses. Although witnesses Thomas Duran and Retno Irawati, S. Sos state that they obtained temporary data of the Petitioners' vote acquisition of 29,248 votes from the Head of the Public Relations Division of Kupang Regency Regional Government and published the data on October 31, 2008 in *Pos Kupang Daily* and *Kursor Daily*, the temporary data did not come from a competent source and it was not a final vote count result which was subject to change, whether due to mistakes in calculation or other reasons. Although it is logically understandable that temporary vote acquisitions would not decline in final vote count level, such issue might happen if the data source did not come from the party authorized to make the announcement. In addition, in accordance with the statement of the two witnesses who later realized that the data they acquired were invalid,

the witnesses no longer made the data from the Public Relations Division of Kupang Regency Regional Government as news source for the vote acquisition of the respective Candidate Pairs;

- Whereas the argument on the distribution of nine basic commodities in Teunbaun Village, Amarasi Barat District by Candidate Pair Number 3 (*Berita* Package) has been supported by statements given under oath by witness Willibrodus Seko Obehetna and a Nine Basic Commodities Distribution coupon with sequence number 142 (Exhibit P-22), as well as five stamped statements stating that Candidate Pair Number 3 (*Berita* Package) has distributed nine basic commodities in Teunbaun Sub-district, Amarasi Barat District prior to the voting day, which were respectively made by (i) Filmon Langmau; (ii) Mrs. Meti Falukas; (iii) Yohannes Maure; (iv) Sem Langata; and (v) Yohanes Bais (Exhibit P-25 through Exhibit P-29). The evidences are in conformity with each other, and therefore they are considered to be valid evidence to prove the Petitioners' argument insofar as it concerns the distribution of nine essential commodities in Teunbaun Sub-district, Amarasi Barat District prior to *Pemilukada* day. The Respondent and Related Parties have not been able to prove otherwise. *Panwaslu*, in its written statement dated December 4, 2008, also admits to have received reports from the Petitioners (*Hallo* Package) on the distribution of nine basic commodities by Candidate Pair Number 3 (*Berita* Package), but the report could not be followed-up by *Panwaslu* for the reason that it has surpassed the time limit

and was incomplete. Although the Court is of the opinion that the evidence is a valid evidence stating the distribution of nine basic commodities by Candidate Pair Number 3 (*Berita* Package), the voters receiving the commodities do not represent such significant and influential number with regards to the vote acquisition of Candidate Pair Number 3 (*Berita* Package) so as to change their vote acquisition to be less than the vote acquisition of the Petitioners (*Hallo* Package) and therefore replace the vote acquisition rank that would change the Candidate Pair participating in the Second Round *Pemilukada*. Similarly, the Petitioners' argument that there have been voters who voted more than once, despite the Petitioners' ability to prove it, is not significant enough to change the rank of winners in Kupang Regency *Pemilukada*;

- Whereas the Petitioners' argument on the failure of the Petitioners' witnesses to obtain C1-KWK model forms which could track the accuracy of Vote Acquisition Recapitulation in a transparent manner is indeed a general problem which is national, evenly-distributed and uniform in nature. The answers given by *Pemilukada* organizers at the lowest level is that the witnesses of Candidate Pairs were often impatient to wait until the completion of the counting and administration process and would immediately leave the location;
- Whereas the provisions on the distribution of C1-KWK model forms to the witnesses of Candidate Pairs have not been regulated consistently in laws

and regulations, as respectively provided in:

- Article 96 paragraph (10) of Law Number 32 Year 2004 on the Regional Government which reads, "*KPPS shall give 1 (one) copy of minutes and vote count result certificate to the present witnesses of candidate pairs and post 1 (one) copy of vote count result certificate in a public place*";
- Article 84 paragraph (6) of Government Regulation Number 6 Year 2005 on the Election, Legalization of Appointment, and Dismissal of Regional Head and Deputy Regional Head which reads, "*PPS **must** give 1 (one) copy of the minutes and certificate of vote count result in PPS as referred to in paragraph (5) to the present witnesses of candidate pairs and post 1 (one) copy of vote count result certificate in a public place*";
- Article 46 paragraph (1) of General Election Commission Regulation Number 09 Year 2007 on the Procedural Guidelines for Voting and Vote Count of the General Election of Regional Head and Deputy Regional Head in Voting Stations which reads, "*KPPS shall give 1 (one) copy of Minutes (C KWK Model), Vote Count Result Notes (C-1 KWK Model), and Vote Count Result Certificate (Attachment of C-1 KWK Model) to the present witnesses of respective candidate pairs, Field General Election Supervisory Committee, and PPK through their respective PPS and post 1 (one)*

copy of C-1 KWK Model Attachment in a public place”;

- Whereas with respect to all the aforementioned provisions, the Court is of the opinion that KPPS is obliged to give C1-KWK Model form to the witnesses of respective Candidate Pairs, otherwise the issue may implicate and cause deviations in vote count process;

[3.15] Considering whereas the *a quo* implication greatly influences Vote Recapitulation Result at the next level in a gradual manner, and the failure to fulfill the obligation to give C1-KWK model forms to the witnesses of Candidate Pairs may cause invalidity of the results of vote count recapitulation conducted by *Pemilukada* Organizers;

[3.16] Considering whereas notwithstanding the Court's standpoint above, based on legal facts revealed in the hearing which constitute the statements of the Petitioners' witnesses, there was in fact only one witness of the Petitioners in Amfoang Utara District who states that he has not been given C1-KWK form, namely witness Albert Z. Nompetus who was also an observer in Amfoang Barat Laut District. Other witnesses only acted as monitoring witnesses;

On the other hand, the Respondent explains that all the witnesses of the Candidate Pairs, including the Petitioners' witnesses, have signed C1-KWK forms without any objections. In order to support such statement, the Respondent presents Exhibits T-38 through T-41, namely the mandate letter and the assignment of the Petitioners' witnesses in related Voting Stations.

Therefore, the Petitioners' argument is not validly and convincingly proven, and therefore the Petitioners' petition must be rejected.

4. CONCLUSION

Based on all the foregoing assessment on facts and laws, the Court concludes:

[4.1] Whereas the Petitioners' Provisional Claim is inappropriate according to the law;

[4.2] Whereas the Respondent's Exception is inappropriate according to the law;

[4.3] Whereas the Petitioners' petition is not validly and convincingly proven.

5. DECISION

In view of the Articles of the 1945 Constitution of the Republic of Indonesia, Law Number 24 Year 2003 on the Constitutional Court *unctis* Law Number 4 Year 2004 on Judicial Power, Law Number 32 Year 2004 on Regional Government, Law Number 12 Year 2008 on the Second Amendment to Law Number 32 Year 2004 on Regional Government;

Passing the Decision,

In the Provision:

To declare that the Provisional Claim of the Petitioners cannot be accepted.

In the Exception:

To declare that the Respondent's Exception cannot be accepted

In the Principal Issue of the Case:

To declare that the Petitioners' petition is entirely rejected

Hence the decision was made in the Plenary Consultative Meeting by eight Constitutional Court Justices, namely Moh. Mahfud MD, Maruarar Siahaan, Muhammad Alim, Achmad Sodiki, Abdul Mukthie Fadjar, M. Arsyad Sanusi, M. Akil Mochtar, and Maria Farida Indrati on Tuesday the ninth of January year two thousand and eight, which was pronounced in the Constitutional Court Plenary Session open for public on Wednesday, tenth of December year two thousand and eight, by us eight Constitutional Court justices, namely Moh. Mahfud MD, as Chairperson and concurrent Member, Maruarar Siahaan, Muhammad Alim, Achmad Sodiki, Abdul Mukthie Fadjar, M. Arsyad Sanusi, M. Akil Mochtar, and Maria Farida Indrati respectively as members and assisted by Ina Zuchriyah as the Substitute Registrar, and in the presence of the Petitioners and/or their Attorneys, the Respondent and/or its Attorney.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD

JUSTICES,

Sgd.

Maruarar Siahaan

Sgd.

Muhammad Alim

Sgd.

Achmad Sodiki

Sgd.

Abdul Mukthie Fadjar

Sgd.

M. Arsyad Sanusi

Sgd.

M. Akil Mochtar

Sgd.

Maria Farida Indrati

SUBSTITUTE REGISTRAR,

Sgd.

Ina Zuchriyah