



DECISION

Number 49/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 a case of Dispute over the Election Result for the Head of Region and Deputy Head of Region of North Tapanuli Regency of 2008 filed by:

- [1.2] 1. Name : **Ir. Roy Mangontang Sinaga;**
Address : Jalan Dr. TD. Pardede Lr. IV B Number 176
Komplek Stadion Tarutung, North Tapanuli;
2. Name : **Ir. Djudjung Pangondian Hutauruk;**
Address : Jalan Karya II Number 55 Medan;

Regent and Deputy Regent Candidate Pair for North Tapanuli Regency,
Serial Number 2;

3. Name : **Samsul Sianturi;**
Address : Unte Mungkur North Tapanuli;
4. Name : **Drs. Frans A. Sihombing, M.M.;**

Address : Jalan Raja Johanes Tarutung North Tapanuli.

Regent and Deputy Regent Candidate Pair for North Tapanuli Regency,
Serial Number 3;

In this matter granting a power of attorney to 1). Roder Nababan, S.H.; 2). N. Horas Maruli Tua Siagian, S.H.; 3). Parulian Simamora, S.H.; 4). Darwis D. Marpaung, S.H., M.H.; 5). Gindo Liberty, S.H.; 6). Patuan Angie Nainggolan, S.H.; 7). Hasan M. Sidabutar, S.H.;

All of them Attorneys, having their office at Roder Nababan, Horas Siagian, and Associates Attorney and Legal Consultant Office at Jalan Taman Bukit Duri Number 1 Tebet, South Jakarta under special proxy dated December 2, 2008, acting for and on behalf of the Principal, both individually and collectively;

Hereinafter referred to as ----- **Petitioner;**

Against:

[1.3] **The General Election Commission of South Tapanuli Regency,**
domiciled at Jalan S.M. Simanjuntak Number 2 Kawasan Pasar Baru Tarutung,
North Tapanuli Regency, North Sumatera Province;

In this matter having granted a power of attorney to 1). Fadillah Hutri Lubis, S.H.;
2). Sedarita Ginting, S.H.; 3). Nur Alamsyah, S.H., M.H.; 4). Irwansyah Putra,
S.H., M.B.A.; 5). Nazrul Ichsan Nasution, S.H.;

All of them Attorneys, having their office at **FADILLAH HUTRI LUBIS and Partners Law Office** at Jalan Tengku Amir Hamzah Number 52B Lantai II Sei Agul, Medan, North Sumatera Province, Telephone 635149/Fax 061 6639170 under special proxy dated November 29, 2008, acting for and on behalf of the Principal, both individually and collectively;

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

[1.4] Having read the petition of Petitioner;

Having heard the testimony of Petitioner;

Having heard the testimony and read the affidavit from the Respondent General Election Commission of North Tapanuli Regency;

Having heard the testimony and read the affidavit from the Related Party Serial Number 4 Candidate Pair Ir. Sanggam Hutapea, M.M. and Ir. Londut Silitonga;

Having heard the testimony from the Related Party Serial Number 6 Candidate Pair Ir. Edward Sihombing and Drs. Alpha Simanjuntak, M.Pd;

Having heard the testimony and read the affidavit from the Related Party Elected Candidate Pair for the Regent and Deputy Regent of North Tapanuli Regency;

Having heard the witness testimony from the General Election Oversight Committee of North Tapanuli Regency;

Having heard the testimony of witness the Head of the Regional People's Representative Council of North Tapanuli Regency;

Having carefully examined the evidence and witnesses presented at the hearing;

Having read the conclusion of Petitioner;

Having read the conclusion of Respondent;

Having read the conclusion of Related Party Serial Number 4 Candidate Pair Ir. Sanggam Hutapea, M.M. and Ir. Londut Silitonga;

Having read the conclusion of Related Party Serial Number 6 Candidate Pair Ir. Edward Sihombing and Drs. Alpha Simanjuntak, M.Pd;

Having read the conclusion of Related Party Elected Candidate Pair for the Regent and Deputy Regent of North Tapanuli Regency;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the main issue of the petition of Petitioner is an objection to the vote count result for the General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency stipulated by the General Election Commission of North Tapanuli Regency Number 25 of 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency North Sumatera Province of 2008, dated November 23, 2008;

[3.2] Considering whereas prior to examining the Principal Issue of the Case, the Constitutional Court (hereinafter referred to as the Court) first took the following matters into account:

1. the authority of the Court to examine, hear and decide upon the petition *a quo*;
2. the legal standing of the Petitioner to file the petition *a quo*;
3. the grace period for objection filing.

In respect of the abovementioned three issues, the Court is of the following opinion:

AUTHORITIES OF THE COURT

[3.3] Considering whereas under the provision 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) letter d of Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316, hereinafter abbreviated into CC Law) in conjunction with Article 12 paragraph (1) letter d of Law Number 4 of 2004 concerning Judicial Power, and Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance, one of the constitutional authorities of the Court is to decide upon a dispute concerning general election results;

Initially, under the provision of Article 106 paragraphs (1) and (2) of Law Number 32 of 2004 concerning Local Governance (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to State Gazette of the Republic of Indonesia Number 4437), any objection related to a vote count result that affected the election of a candidate pair was to be submitted to the Supreme Court. Such authority of the Supreme Court is reiterated in Article 94 of Government Regulation Number 6 of 2005 concerning the Election, Appointment Ratification, and Discharge of Head of Region and Deputy Head of Region;

In Article 1 point 4 of Law Number 22 of 2007 concerning General Election Organizer (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to State Gazette of the Republic of Indonesia Number

4721) it was determined that, "*General Election for Head of Region and Deputy Head of Region is a general election to elect the head of region and deputy head of region directly in the Unitarian State of the Republic of Indonesia under Pancasila and the 1945 Constitution of the Republic of Indonesia*",

Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance stipulates in Article 236C, "*The handling of dispute over vote count result for head of region election by the Supreme Court shall be assigned to the Constitutional Court not later than eighteen (18) months as of the enactment of this law*";

On October 29, 2008, the Chief Justice of the Supreme Court and Chief Justice of the Constitutional Court jointly signed an Official Report of Assignment of Authority to Adjudicate, as an implementation of Article 236C of Law Number 12 of 2008 above;

[3.4] Considering whereas due to the fact that the petition of Petitioner was a dispute over the vote count result of a General Election for Head of Region, namely the General Election for the Head of Region of North Tapanuli Regency pursuant to Decision of the General Election Commission of North Tapanuli Regency Number 25 of 2008 dated November 23, 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency of 2008, the Court therefore has the authority to examine, hear, and decide upon the petition *a quo*;

Legal Standing of the Petitioner

[3.5] Considering whereas Article 106 paragraph (1) of Law Number 32 of 2004 concerning Local Governance, Articles 3 and 4 of Regulation of the Constitutional Court Number 15 of 2008 concerning the Procedural Guideline in Dispute over the General Election Result for Head of Region (hereinafter referred to as PMK 15/2008) determines such things as:

- a. The Petitioner shall be a Candidate Pair for Head of Region and Deputy Head of Region;
- b. The petition may only be filed against the stipulation of a vote count result of a General Election for Head of Region that would affect the determination of the Candidate Pair to be eligible to take part in the second round of the General Election for Head of Region or the election of a Candidate Pair as the Head of Region and Deputy Head of Region;

[3.6] Considering whereas with relation to the legal standing of the Petitioner, the Court shall contemplate under the provision of Article 106 paragraph (1) of Law Number 32 of 2004 concerning Local Governance, Articles 3 and 4 of PMK 15/2008 as referred to in paragraph [3.5] as follows:

- whereas the Petitioner is Candidate Pairs for the Regent and Deputy Regent of North Tapanuli Regency, respectively stipulated by the Respondent to be Serial Number 2 and Serial Number 3 Candidate Pairs

- as per Decision of the General Election Commission of North Tapanuli Regency Number 21 of 2008 dated August 28, 2008 concerning Stipulation of the Serial Number for Candidate Pairs for the Head of Region and Deputy Head of Region Participating in the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency;
- whereas the petition filed by Petitioner was an objection to Decision of the General Election Commission for Head of Region and Deputy Head of Region of North Tapanuli Regency Number 25 of 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency, North Sumatera Province of 2008 dated November 23, 2008 (Evidence P-5). Said objection was due to the fact that Petitioners **Ir. Roy Mangontang Sinaga** and **Ir. Djudjung Pangondian Hutauruk** were stipulated to have received only 20,300 votes, ranking them fourth and Petitioners **Samsul Sianturi** and **Drs. Frans A. Sihombing, M.M.**, who ranked second received 31,800 votes below the Candidate Pair **Torang Lumban Tobing** and **Bangkit Parulian Silaban, S.E.**, who received 46.645 votes;
 - whereas according to the Petitioner, the vote count result recapitulated by the Respondent with the result as mentioned above was due to violations committed by the Respondent in the form of:
 - (1) the discovery of 26,091 duplicate Single Identity Number (NIK);

- (2) 6,000 eligible voters not receiving a voter card;
 - (3) 2,700 voter cards being controlled by the Campaign Team for Serial Number 1 Candidate Pair;
 - (4) the mobilization of 300 voters who did not come from the electorate in question undertaken by **Fernando Simanjuntak** the Campaign Team for Serial Number 1 Candidate Pair;
 - (5) voting by several unknown individuals who were brought in with four Toyota Kijang cars (36 people according to Petitioner Witness Januari Hutaauruk, 61 people according to Petitioner Witness Hotma Hutaauruk) at TPS 3 of Hutaauruk Hasundutan Village, Sipoholon Sub-district who cast their vote without being called, went directly into the voting booths, 10 persons at a time, and casting their vote for the Serial Number 1 Candidate Pair;
- whereas according to Petitioner, the correct vote total for **Ir. Roy Mangontang Sinaga** and **Ir. Djudjung Pangondian Hutaauruk** is 20,300 votes and for Petitioner **Samsul Sianturi** and **Drs. Frans A. Sihombing, M.M.** 31,800 votes, while the vote total for the Elected Candidate Pair **Torang Lumban Tobing** and **Bangkit Parulian Silaban** is only 20,554 votes. Therefore, the Petitioner **Samsul Sianturi** and **Drs. Frans A. Sihombing** should have been stipulated as the Elected Candidate Pair for the Regent and Deputy Regent of North Tapanuli Regency. Therefore, the

Petitioner requests the Court to overturn the vote count carried out by the Respondent;

- Based on the above matters, the Court is of the opinion that the Petitioner has fulfilled the legal standing requirement to file the petition *a quo*.

Grace Period of Petition Filing

[3.7] Considering whereas the Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency, North Sumatera Province of 2008 made by the Respondent was stipulated by Decision of the General Election Commission of North Tapanuli Regency Number 25 of 2008 dated November 23, 2008, while the objection petition against the Respondent stipulation was filed at the Court Registry which was received at the Court Registry on Wednesday, November 26, 2008 under Deed of Receipt of Petition Dossier Number 95/PAN.MK/XI/2008, which was later registered on November 27, 2008 with Number 49/PHPU.D-VI/2008;

[3.8] Considering whereas Article 5 of PMK 15/2008 determines that, “*Any petition may only be filed within three (3) business days after the Respondent determined the vote count result for General Election for Head of Region in the region concerned*”, the filing of the Petitioner petition therefore remained within the determined time frame;

[3.9] Considering whereas based on a review of the facts and laws in paragraphs [3.6] and [3.8] mentioned above, the Court is of the opinion that the Petitioner has the legal standing to file the petition *a quo* as per the requirements determined in Article 106 paragraph (1) of Law Number 32 of 2004 and Articles 3 and 4 of PMK 15/2008, and the Petitioner petition was also within the time frame as determined in Article 5 of PMK 15/2008;

[3.10] Considering whereas the Court has the authority to examine, hear, and decide upon the petition *a quo* and the Petitioner has the legal standing to file the petition and the petition was filed within the time frame as determined, the Court shall further consider the principal issue of the case.

Principal Issue of the Case

[3.11] Considering whereas the Petitioner in his petition as contained in full in the Principal Issue of the Case part, in principle argued the following:

[3.11.1] Whereas the Petitioner is a Candidate Pair for Regent and Deputy Regent at the 2008 General Election for Head of Region and Deputy Head of Region of North Tapanuli Regency with Serial Numbers 2 and 3 under Decision of the General Election Commission of North Tapanuli Regency Number 21 of 2008 concerning Stipulation of the Serial Number for Candidate Pairs for the Head of Region and Deputy Head of Region Participating in the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency;

[3.11.2] Whereas the Petitioner objected to the Stipulation of the General Election Commission of North Tapanuli Regency Number 25 of 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency, North Sumatera Province dated November 23, 2008, since the result of the count performed by the Respondent was erroneous or at least contained an error in recapitulating the vote count result, detailed as follows:

No.	Pair Name	Vote Total
1	Torang Lumban Tobing and Bangkit Parulian Silaban, S.E.	46,645
2	Ir. Roy Mangotang Sinaga and Ir. Djudjung Pangondian Hutauruk	20,300
3	Samsul Sianturi and Drs. Frans Anthony Sihombing, M.M.	31,800
4	Ir. Sanggam Hutapea, M.M and Ir. Londut Silitonga	20,465
5	Drs. Wastin Siregar and Ir. N. Soaloon Silitonga	5,067
6	Ir. Edward Sihombing and Drs. Alpha Simanjuntak, M.Pd	12,387
TOTAL		136,664

Whereas the count result of the North Tapanuli Regency KPU is incorrect; the correct one is the count result according to the Petitioner, namely as follows:

No.	Pair Name	Vote Total
1	Torang Lumban Tobing and Bangkit Parulian Silaban, S.E.	20,554
2	Ir. Roy Mangotang Sinaga and Ir. Djudjung Pangondian Hutauruk	20,300
3	Samsul Sianturi and Drs. Frans Anthony Sihombing, M. M	31,800
4	Ir. Sanggam Hutapea, M.M and Ir. Londut Silitonga	20,465

No.	Pair Name	Vote Total
5	Drs. Wastin Siregar and Ir. N. Soaloon Silitonga	5,067
6	Ir. Edward Sihombing and Drs. Alpha Simanjuntak, M.Pd	12,387
TOTAL		110,573

[3.11.3] Whereas the errors or mistakes occurred due to violations committed by the Respondent in the form of: (1) the discovery of 26,091 duplicate Single Identity Number (NIK); (2) 6,000 eligible voters not receiving a voter card; (3) 2,700 voter cards being controlled by the Campaign Team for Serial Number 1 Candidate Pair; (4) the mobilization of 300 voters who did not come from the electorate in question undertaken by **Fernando Simanjuntak** the Campaign Team for Serial Number 1 Candidate Pair; (5) voting by several unknown individuals who were brought in with four Toyota Kijang cars (36 people according to Petitioner Witness Januari Hutauruk, 61 people according to Petitioner Witness Hotma Hutauruk) at TPS 3 of Hutauruk Hasundutan Village, Sipoholon Sub-district who cast their vote without being called, going directly into the voting booths, 10 persons at a time, and casting their vote for the Serial Number 1 Candidate Pair;

[3.12] Considering whereas to corroborate the arguments of his petition, the Petitioner has submitted both written evidence (evidences P-1 to P-28) and witnesses whose testimonies have been heard under oath at the hearings on December 5, 2008 and December 10, 2008, by the respective names of: 1) Januari Hutauruk, 2) Robinhot Sianturi, 3) Sofian Simanjuntak, 4) Samuel BP Hutauruk, M.A. 5) Manaek Sihombing, 6) Hotma Hutauruk, 7) Drs. Paruntungan

Lumban Tobing, 8) Indra Tampubolon, 9) Marhardongan Lumban Tobing, the full content of which was included in the Principal Issue of the case, in principle as follows:

1. Witness Januari Hutaurok

- whereas on October 27, 2008 at 07:00 a.m. West Indonesia Time, the witness saw four Toyota Kijang cars taking an estimated 36 voters to the voting site at TPS 3 of Hutaurok Hasundutan Village, Sipoholon Sub-district and went in carrying a voter card, but the witness did not know them at all;
- whereas the witness was the official witness for Serial Number 2 Candidate Pair at TPS 3 of Hutaurok Hasundutan Village, Sipoholon Sub-district;
- whereas the PPS handed out the voter cards and the voters went in without having their names or serial numbers called. The witness then stated his objection to the PPS Chairman, requesting that the voters' names be called out so that the people who had or had not voted could be identified; however, the PPS Chairman replied that calling them one by one would be time-consuming; upon the explanation of the PPS Chairman, the witness said that it was not an answer since as far as the witness knew, the voters' names should be called out or mentioned;

- whereas on October 27, 2008 at 10:00 a.m. West Indonesia Time, the PPS gave the Official Report to be signed by the witness, but the witness and witnesses from other Candidate Pairs refused to sign it;
- whereas after the vote count, the PPS returned to the witness to have him sign the official report, but the witness refused to do so since his request to have the voters' names called out was disregarded;
- whereas there were three witnesses who signed the official report and three other witnesses who did not;
- whereas the witness reported to the witness team and General Election Oversight Committee of North Tapanuli Regency and the General Election Oversight Committee of North Tapanuli Regency called upon the witness to give a clarification;
- whereas the witness saw that the Speaker of the North Tapanuli DPRD was at TPS 3 and gave money to the committee to buy a meal and said that the Serial Number 1 Candidate Pair would win;

2. Witness Robinhot Sianturi

- whereas the witness was the witness coordinator at Siborong-borong Sub-district for Serial Number 3 Candidate Pair;
- whereas the witness received information from the witnesses at the TPS that the Chairman of PPS of Siborong-borong *Kelurahan* Market on October 27, 2008 distributed 5000 voter cards and voting invite;

- whereas there were 9 TPS located at the Siborong-borong *Kelurahan* Market, and the witness found 2,714 leftover voter cards which the witness later clarified with the PPS Chairman and subsequently the cards were handed over by the witness to the Sectoral Police of Siborong-borong Sub-district, but according to the Sectoral Police, this was a matter for the General Election Oversight Committee, and the witness later reported it to the General Election Oversight Committee accompanied by proof of report, but it was not followed up, so the issue was later brought before the Constitutional Court;
- whereas the witness was present during the recapitulation of the vote count in Siborong-borong Sub-district and expressed protest, since there were voter cards distributed by the PPS Chairman which should not have been issued during the time of voting. On the same day, the witness reported it to the PPK Chairman, to which the PPK Chairman replied that the matter should be brought before the KPU and an official report of it was made, and the witness received a copy of the official report;

3. Witness Sofian Simanjuntak

- whereas the witness was a voter in the Election of the Head of Region and Deputy Head of Region of North Tapanuli Regency;
- whereas the witness voted at TPS 4 of Hutatoruan 7 *Kelurahan*;
- whereas the witness saw that there were erroneous data in the implementation of the election for the Head of Region and Deputy Head of Region of North Tapanuli Regency, namely that the number of DPT and

TPS was close to that of the General Election for Head of Region for the Governor of North Sumatera Province, during which there were 185,948 DPT with a total of 560 TPS, while at the General Election for Head of Region for the Governor of North Tapanuli Regency there were 181,120 DPT, and 583 TPS;

- whereas the witness worked as the Head of the Political Guidance, Ideology, and National Unity Division at the Local Government of North Tapanuli Regency;
- whereas according to the witness, the population of North Tapanuli Regency aged 15-75 years old was 162,240 and the figure also matched the book issued by the Central Bureau of Statistics, that the age 15-75 population in North Tapanuli Regency in 2008 according to the 2007 census data was 162,240;
- whereas when the witness checked the Permanent Voter Register, there were duplicate NIK and problematic NIK, and NIK that were not found at the relevant Sub-district; for example, at Pangaribuan Sub-district one NIK was used for ten different persons; this was identified by the witness upon checking by sorting the list alphabetically in the Excel program; incidentally, the witness's NIK also got used by another person; another NIK was used with different names at ten different TPS; the duplicate NIK resulted in an expanded number of voters;

4. Witness Samuel BP Hutauruk M.A.

- whereas the witness was an outsider whose assistance was sought by Sanggam Hutapea Serial Number 4 Candidate Pair to research whether there were any erroneous data in the DPT. Upon research, there were 1,000 duplicate names included in the DPT with the same identities out of the 2,700 names sorted by the witness;
- whereas the witness reported his result to Serial Number 4 Candidate Pair Sanggam Hutapea on October 24, 2008;

5. Witness Manaek Sihombing

- whereas the witness was the PPK coordinator for Siborong-borong Sub-district from the Serial Number 6 Candidate Pair;
- whereas with regard to the 2,714 invites which according to information were carried off by Hotma Lumban Tobing, the witness had tried to contact Hotma Lumban Tobing by telephone for clarification, with Hotma Lumban Tobing explaining that he had carried 956 votes, but the witness was not satisfied with the reply;
- whereas the witness later requested Hotma Lumban Tobing to meet with the witness with relation to the definite number of invites; upon checking with Hotma Lumban Tobing, it turned out that 2,714 invites had been carried off. With regard to this matter, the witness then reported it to the Sub-district General Election Oversight Committee and the regency General Election Oversight Committee by signing an official report of reporting;

6. Witness Hotma Hutauruk

- whereas the witness was the witness for the Serial Number 3 Candidate Pair;
- whereas at the Election for the Head of Region of North Tapanuli Regency there have been fraudulent acts and intimidations, namely incorrect DPT at TPS 3 of Lumban Rihit Kampong, Hutauruk Hasundutan Village, Sipoholon Sub-district, where the Respondent's version of the DPT recorded 390 voters, but after the witness had checked the names on the DPT, only 269 voters were eligible to vote, because the remaining 121 had either lived in other regions, moved, and some were even deceased.
- whereas the witness expressed his protest to the KPPS Officer, with regard to the 61 unknown people who came out of Toyota Kijang cars, to which the KPPS Chairman replied, "*just take it easy there do not trouble yourself*". According to the KPPS Chairman, the 61 people were people from the DPRD Speaker, and they went into the booth ten at a time and cast their vote for the Serial Number 1 Candidate Pair;
- whereas the witness' protest was included in the official report, but the witness did not sign it because he believed the election to be illegitimate;
- whereas while the witness was expressing protest to the KPPS Chairman with relation to the 61 people who took turns going into the TPS booths without being called, the DPRD Speaker of North Tapanuli Regency and his people came to the TPS to exert intimidation by saying, "*anyone with a big mouth will be thrown into the gutter*". Similarly, a friend of the witness

- by the name of Januari Hutauruk was forbidden from watching the voting by the DPRD Speaker of North Tapanuli Regency;
- whereas after the voting was concluded, the DPRD Speaker of North Tapanuli Regency handed over money to the TPS staff to buy a meal and said *“don’t give any to the witnesses from this kampong”*. The DPRD Speaker of North Tapanuli Regency also said, *“we should all calm down, Teluto has already won”*;
 - whereas the witness did not receive a C1 – KWK form; nor did he ask for it, due to his irritation over the inappropriate election;

7. Witness Drs. Paruntungan Lumban Tobing

- whereas the witness was a voter at the Election for the Head of Region of North Tapanuli Regency and an observer at the Election for the Head of Region of North Tapanuli Regency in which the witness was the Head of Generasi Muda Tapanuli Utara Indonesia (North Tapanuli’s Young Generation Indonesia);
- whereas the witness testified that on October 25, 2008, many of the residents of North Tapanuli Regency from the Tarutung Sub-district came to the Serial Number 4 Candidate Pair post reporting that they had not been registered in the DPT and had not received any voter card at the Election for the Head of Region of October 27, 2008, while they did vote at the election of the Governor of North Sumatera Province;

- whereas on October 26, 2008 the witness returned to the location and saw Samuel BP Hutauruk, M.A who was opening and researching at the computer, and the witness saw duplicate names at Tarutung Sub-district, and the entire North Tapanuli Regency, and the witness did not know the total number of the duplicate names;
- whereas on October 26, 2008 at 7:00 p.m. West Indonesia Time, the witness and Indra Tampubolon saw a bus from Medan to Tarutung carrying 150 college students who were about to cast their votes at the Election for the Head of Region of North Tapanuli Regency, but the witness did not see whether the 150 college students actually cast their votes or not;
- whereas at that evening the witness investigated the site; the college students stayed at Glory Hotel and a short time later the witness saw the campaign team of the Serial Number 1 Candidate Pair enter the hotel;
- whereas on October 27, 2008 some Tarutung residents were getting restless because they did not vote at the TPS due to having no voter cards;
- whereas at the evening of October 27, 2008 the residents gathered in Tarutung and went to the North Tapanuli Regency KPU office to demand accountability on the fraudulent acts in the Election for the Head of Region, the issue of duplicate names, but the KPU Chairman and members were not present, only the security guards. The next day, on October 28, 2008 at 09:00 a.m. West Indonesia Time, the witness and the

residents returned to the KPU and met with KPU members represented by the witness's friends;

- whereas on October 29, 2008 the witness and the residents went to the North Tapanuli Regency KPU office for a peaceful demonstration and were received by six DPRD members. The number of people holding the demonstration was about 3,000. The meeting with the DPRD members resulted in the issuance of a letter addressed to the Governor of North Sumatera Province, stating that the vote count was to be suspended temporarily;
- whereas the witness and residents on October 31, 2008 also went to the General Election Oversight Committee office of North Tapanuli Regency and the General Election Oversight Committee subsequently issued letter Number 226/PANWASLU PILKADA/TAPUT/X/2008;
- whereas on November 23, 2008 a demonstration took place at the North Tapanuli Regency KPU and the situation was chaotic at the time, but the Chairman of the North Tapanuli Regency KPU was away, and no KPU meeting was taking place at the time;

8. Witness Indra Tampubolon

- whereas the witness testified that when the Community Alliance expressed its aspirations to the Village Chief, Head of the District Attorney's Office, the General Election Oversight Committee, the Regency KPU, Police, District Court and DPRD, the latter were unresponsive or were away;

- whereas to date there has been no follow-up to the aspirations of the Community Alliance;

9. Witness Marhardongan Lumban Tobing

- whereas the witness was the campaign team for Serial Number 2 Candidate Pair;
- whereas the witness testified that many residents were disadvantaged at North Tapanuli Regency, since their voting rights were not granted, while they had voted at the election for the Governor of North Sumatera Province, namely in Tarutung Sub-district, Sipahutar Sub-district, Pangaribuan Sub-district and Pagaran Sub-district;
- whereas the witness noticed from the election data that there were, as he remembered, four underage voters, namely in Pahae Julu Sub-district, Pagaran Sub-district,

[3.13] Considering whereas with regard to the petition of Petitioner, the Respondent has given its testimony or reply at the hearings on December 5 and 10, 2008 and has submitted an affidavit received at the Court Registry on December 3, 2008, which in principle denied the arguments of the Petitioner as follows:

1. The objection of Petitioner did not amount to more than a violation against the General Election for Head of Region process, thus it was the duty and authority of the General Election Oversight Committee of North Tapanuli Regency to resolve and/or follow up with the competent agency;

2. The Petition to the Court had missed the stipulated deadline;
3. The Petitioner did not describe clearly the calculation errors made by the Respondent which affected the vote total of Petitioner as a reason for filing the petition to the Court;
4. Stipulation of the Vote Count Result for the 2008 General Election for the Head of Region of North Tapanuli Regency was made by the Respondent based on the result of the Plenary Meeting of the General Election Commission of North Tapanuli Regency as set out in the Official Report of Vote Count Recapitulation for the General Election for the Head of Region and Deputy Head of Region of North Tapanuli dated November 2, 2008 so that the Respondent's act of issuing Decree Number 25 of 2008 was a legal act; as such, the Decision *a quo* is valid and has legal force;

[3.14] Considering whereas to corroborate its argument, the Respondent had submitted affidavits marked as evidence T-1 to T-34, and presented no witnesses;

[3.15] Considering whereas the Court has heard the testimony of the General Election Oversight Committee of North Tapanuli Regency at the hearings on December 5 and 10, 2008 as presented by **Borisman Panggabean, S.T. (Head of the North Tapanuli General Election Oversight Committee)** who testified that there were violations in the stages of the General Election for Head of Region of North Tapanuli, namely regarding: (1) alleged money politics with evidence in the form of envelopes containing Rp.20,000.00 in Rp.5,000.00

bills; (2) DPT number error, with similar totals between the General Election for Head of Region and the Governor Election; (3) duplicate Single Identity Number; (4) Unregistered voters; and (5) Voters not receiving a voter card. Whereas with regard to the received reports of General Election for Head of Region violation, the General Election Oversight Committee has acted upon it partly by sending a letter to the North Tapanuli Regency KPU, to which no reply from the Petitioner has been received up to the filing of the case to the Court;

Whereas the Court also heard the testimony of witness Mantel Siringoringo, S.H, a member of the General Election Oversight Committee of North Tapanuli Regency who testified that the report from the public about the 2,714 problematic invites has been followed up by the General Election Oversight Committee to the North Tapanuli Regency KPU but was not responded to by the Respondent;

[3.16] Whereas considering that the Court has heard Fernando Simanjuntak, S.H., Speaker of the North Tapanuli Regency DPRD, to be heard under oath at the hearing on December 10, 2008, he testifies that in principle, there was a letter from the North Tapanuli Regency DPRD Number 170/1395/DPRD-TU/2008 dated October 30, 2008 which was signed by six council members with regard to the notice to temporarily suspend the vote count at the General Election for the Head of Region of North Tapanuli Regency to maintain a conducive atmosphere in North Tapanuli Regency. The letter did not conform to the procedure as per the Council Procedure since any decision by the

Council must be deliberated first whether by the deliberation committee or special committee if the council decision is fundamental in nature. The letter in question is not a council decision but rather a notice to the Governor of North Sumatera Province of the demonstration at the North Tapanuli Regency DPRD. The council members prepared the letter to fulfill the request of the demonstrators; the letter was never revoked. The witness has never made any intervention or intimidation at the General Election for Head of Region. The testimony of the Petitioner witness who mentioned bringing people to a TPS is untrue and libelous. The witness did not make any verbal threats to anybody; nor had he given any money to the TPS staff to buy some rice;

[3.17] Considering whereas at the hearing on December 10, 2008, the Court has heard the testimony of a Related Party, i.e. Serial Number 4 Candidate Pair **Ir. Sanggam Hutapea, M.M.** and **Ir. Londut Silitonga** who testified that several days prior to the voting proceedings, the Related Party received data from the KPU and there were irregularities namely (1) In the DPT, one NIK was used by multiple people up to over 3,000 voters-to-be; (2) there were identical names at a number of TPS; (3) on October 24 and 25, 2008, hundreds of residents came to complain to the Related Party in Tarutung Sub-district since they had been denied inclusion in the DPT despite being in the DPT at the election of the Governor of North Sumatera Province that had only taken place months earlier. Whereas the Related Party together with the Serial Number 6 Candidate Pair met with the Chairman of the North Tapanuli Regency KPU, Jan Pieter Lumban Toruan, S.H., to report the irregularities in question; and to

request two things: to have the voting postponed and the DPT updated first, but this was not met with a proper response;

[3.18] Considering whereas on December 10, 2008, the Court has also heard the testimony of the Related Party Serial Number 6 Candidate Pair Ir. Edward Sihombing and Drs. Alpha Simanjuntak, M.Pd who testified that:

1. The stipulation of the DPT for the General Election for Head of Region and a number of stages undertaken by the North Tapanuli Regency KPUD has been made prior to the creation of the General Election Oversight Committee, thus when the Candidate Pair was about to make an objection about certain preparatory stages for the General Election for Head of Region, no oversight institution (Panwaslu) had existed. The Related Party deemed that this was a part of the systematic effort and conspiracy to pass 26,091 duplicate NIK out of the 181,120 voters in the DPT for the General Election for Head of Region of North Tapanuli or equivalent to 15% of the vote with voting rights in North Tapanuli Regency;
2. Whereas the Related Party went to the North Tapanuli Regency KPU requesting for the General Election for Head of Region to be postponed on account of the discovery of the duplicate NIK, but was met with no response whatsoever by the Chairman of the North Tapanuli Regency KPU *in casu* Jan Piter Lumban Toruan, S.H.;
3. Whereas the Related Party requested the Court to review letter of the

- Chairman of the North Tapanuli Regency KPU Number 2026/KPU-TU/XI/2008 dated November 5 and Decision of the North Tapanuli Regency KPU Number 25 of 2008 dated November 23, 2008 and Letter of the Chief Judge of the Tarutung District Court Number W2.U6.2360/UM/XI/2008, and a letter from three members of the North Tapanuli Regency KPU since it was full of fabrications and issued on a holiday (Sunday);
4. Whereas Letter of the General Election Oversight Committee Number 278/Panwaslu Pilkada/Taput/XI/2008 dated November 2, 2008 which stated among other things in point 10 that the reason for the fact that the duplicate NIK complaint could not be acted upon since it had missed the deadline set forth by the law was unacceptable since at the DPT Ratification Stage on July 21, 2008, the Chairman of the General Election Oversight Committee of North Tapanuli Regency said before the Candidate Pairs that he could not do anything about it since the General Election Oversight Committee was yet to be created at the time of the DPT ratification and clearly stated that the General Election for Head of Region for North Tapanuli Regency strongly lacked clarity;
 5. Evidence from the Local Government instruments of North Tapanuli Regency specifically to the Head of the Educational Service, Sub-district Chiefs, etc., as well as the Speaker of the North Tapanuli Regency DPRD, who took part in the election openly and demonstratively is believed by the

Related Party to constitute a legal offense as well as a form of intimidation on all Civil Servants in North Tapanuli Regency.

6. The Related Party requested the Court to remove the 26.091 duplicate NIK from the vote total for the Serial Number 1 Candidate Pair since of the six Candidate Pairs, it can be ascertained that only the Serial Number 1 Candidate Pair would have access to make changes, replacements, and utilization of the duplicate NIK and that a Revote for the General Election for the Head of Region of North Tapanuli Regency be held by first updating the DPT and conducting DPT socialization in a transparent manner;

[3.19] Considering whereas at the hearing on December 10, 2008, the Related Party Elected Candidate Pair **Torang Lumban Tobing** and **Bangkit Parulian Silaban** also denied the petition of Petitioner, the testimony of whom was included in full in the Principal Issue of the Case, which in principle rejected the objection petition filed by the Petitioner or at least declare as unacceptable and declare Decision of the General Election Commission of North Tapanuli Regency Number 25 of 2008 dated November 23, 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency of 2008 to be legitimate.

[3.20] Considering whereas to corroborate his arguments, the Related Party Elected Candidate Pair for Regent and Deputy Regent have submitted affidavits marked as evidence PT1-1 to PT1-14, as well as witnesses who have

been heard under oath at the hearing on December 10, 2008, by the respective names of: **1) Kondar Sormin, 2) Hotma Lumban Tobing, 3) Henri Hutasoit,** and **4) Sunggul Hutauruk** as follows:

1. Witness Kondar Sormin

- whereas the witness was the Head of the Demography and Civil Registry Service (*Disduk dan Casil*) of North Tapanuli Regency;
- whereas the Demography and Civil Registry Service supplied the potential voter data to the KPU, numbering 203,000 people and KPU identified data on people that were not registered in the potential voter register and had no Single Identity Number (NIK), but the witness did not remember the total number;
- whereas the DPT delivered to the Demography and Civil Registry Service listed 181,120 people and the witness did not know how many of them had a NIK;
- whereas at the election of the Governor of North Sumatera Province, many Non-Government Organizations and journalists questioned why many people in North Tapanuli Regency opted not to vote (*“golongan putih”*). To act upon the question, socialization was conducted to village and Sub-district chiefs to gather real data of the population according to the demographic information in the form of Form F-1 for demographic information, the result of which revealed that the potential number of

- voters submitted by the witness to KPU in the Regent Election was greater;
- whereas the population data collection team consisted of regency teams, Sub-district teams, village teams, and *kelurahan* teams;
 - whereas during the data entry at the Demography and Civil Registry Service, different programs were used: the submitted data had used the Excel program, while the program from the Department of Home Affairs for processing NIK issuance had used the SIAK program, eventually revealing a number of people with identical birthdates. Since the program from the Department of Home Affairs could not be used, and the converted data would not be obtained until July upon submission of the data to the KPU, the NIK may have turned up at the same time;

2. Witness Hotma Lumban Tobing

- whereas the witness was the PPS Chairman for Pasar Siborong-borong *Kelurahan*, which had eight TPS and one special TPS at the Penitentiary;
- whereas during the General Election for Head of Region in North Tapanuli Regency, especially at Siborong-borong *Kelurahan*, the indications were excellent, with no problems. The entire KPPS and its members never reported anything inappropriate;
- whereas it is not true that the witness as the PPS Chairman for Pasar Siborong-borong *Kelurahan* had distributed 5000 invites and had been caught *in flagrante delicto* with 2,714 invites, much less reported to the

General Election Oversight Committee and the Siborong-orong Sectoral Police (*vide* testimony of Petitioner witness). The Petitioner witness testimony was rebutted by the testimony of the Siborong-orong Sectoral Police in the *Batak Pos* newspaper who testified that there had been no complaints from the *kelurahan* regarding the implementation of the Election for the Head of Region of North Tapanuli Regency;

- whereas there was a telephone call from the PPK to gather all invites that had been undelivered to voters from each KPPS due to a move, death, or absence; from each KPPS, the resulting 986 invites have been handed over to the PPK and equipped with a receipt;

3. Witness Henri Hutasoit

- whereas the witness was the Head of the Sub-district Election Committee (KPPK) of Siborong-borong Sub-district;
- whereas the Siborong-borong Sub-district had 75 TPS;
- whereas the total number of voters in the Siborong-borong Sub-district was 28,455 voters plus 205 voters from the Penitentiary, with 19,909 valid votes, and 210 invalid votes;
- whereas up to its completion, the vote recapitulation was only attended by the witness from the Serial Number 1 Candidate Pair, while the witnesses from the Serial Numbers 3, 4, and 6 Candidate Pairs asked to be excused, but declared that they were ready to sign the official report of the vote

- recapitulation result for the Sub-district, but until the end of the vote count, the witnesses did not come despite being summoned;
- whereas for Siborong-borong Sub-district, the winning pair was the Serial Number 1 Candidate Pair who had a 13-vote difference over the Serial Number 6 Candidate Pair;
 - whereas the witness denied the testimony of other witnesses who said that the witness had been caught red-handed handing out 2,714 voter cards and invites. The truth was that the witness was handing over the 2,714 cards from 21 villages and one *kelurahan* to the North Tapanuli Regency KPU which was set out in an official report;
 - whereas the witness had personally pulled 986 leftover ballots and handed them over to the North Tapanuli Regency KPU, for which an official report was later made;
 - whereas there were 200 damaged ballots, 210 voided ballots, 19,909 valid ballots, 9,295 unused ballots, with a DPT of 28,455 voters.

4. Witness Sunggul Hutauruk

- whereas the witness was a KPPS member at TPS 3 of Hutauruk Hasundutan Village, Sipoholon Sub-district;
- whereas there were 986 unused voter cards at Siborong-borong *Kelurahan*;
- whereas the witness did not see the Toyota Kijang car carrying the people who were going to cast their vote;

- whereas the witness was present at the TPS from 06:00 a.m. West Indonesia Time to 5:00 p.m. West Indonesia Time;
- whereas the witness was never given any money by the Speaker of the North Tapanuli Regency DPRD to buy some rice, and did not hear the utterance of the Speaker of the North Tapanuli Regency DPRD who said the words, "*anyone with a big mouth will be thrown into the gutter*";
- whereas the witnesses Januari Hutauruk and Hotma Hutauruk were not protesting but rather puzzled to see the arriving people;
- whereas the witnesses told Januari Hutauruk to stay calm, since the arriving voters were registered in the DPT and TPS;
- whereas there was one TPS staff at the entrance who collected the voters' invites ten at a time, with the voters taking turns in twos to cast their vote, and they were not recalled once done;

Opinion of the Court

[3.21] Considering whereas upon careful review of the elaboration of the petition and the arguments expressed by the Petitioner, evidence in the form of Petitioner documents, testimony of the Petitioner's witnesses, the Respondent's Reply, evidence in the form of Respondent documents, testimony from the Related Party Elected Candidate Pair for the Regent and Deputy Regent of North Tapanuli Regency, evidence in the form of documents and testimony of the witnesses of the Related Party Candidate Pair for the Regent and Deputy Regent

of North Tapanuli Regency, and testimony from other Related Parties, the Court is of the following opinion:

In the Exception:

[3.22] Considering whereas prior to the Court considering the principal issue of the case, the Court shall first consider the Respondent demurrer as follows:

[3.22.1] Considering whereas the Respondent demurrer insofar as the deadline for petition filing is concerned, the Court refers to the consideration set out in paragraph **[3.9]** above, which deemed that the Petitioner petition in the case *a quo*, had been submitted within the stipulated deadline. The reason from the Respondent was that a revision to the petition dated December 2, 2008 would be regarded as a new case; since it has changed the entire posits and *petitum*, it must be rejected, since such a revision constitutes a Respondent right set forth in Article 39 of the CC Law and Article 8 paragraph (2) letter a of PMK 15/2008, which gave an opportunity to make revisions as necessary, and so long as the Respondent has not given its reply, such revision of the petition will be possible. For such reason, the Petitioner demurrer must be set aside;

[3.22.2] Considering whereas regarding point 2 of the demurrer on the expiration of the Petitioner petition, according to the Court, Decision of the Respondent Number 24A concerning Stipulation of the Recapitulated Vote Count Result for the 2008 General Election for the Head of Region and Deputy Head of

Region of North Tapanuli Regency at Regency Level by the General Election Commission of North Tapanuli Regency was stipulated on November 2, 2008 (evidence T-3), constituting the Official Report of Recapitulation of the Vote Count Result for the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency at Regency Level by the General Election Commission of North Tapanuli Regency. Said Decision of the Respondent Number 24A dated November 2, 2008 is yet to be stipulated and announced by the Respondent as set forth in Article 21 paragraph (1) letter I of Regulation of the General Election Commission Number 4 of 2007 on Guideline for Drafting the Working Procedure of the Provincial General Election Commission, Regency/City General Election Commission, Sub-district Election Committee, Voting Committee, and Voting Organizer Group in the General Election for Head of Region and Deputy Head of Region, which reads, "*The duties and authorities of the Regency/City KPU in the proceedings of General Election for Head of Region and Deputy Head of Region shall be: 1. to issue a Regency/City KPU decision to ratify the result of the General Election for Head of Region and Deputy Head of Region of the Regency/City and to announce it.*"

This was also admitted by the Respondent in Letter Number 2026/KPU-TU/XI/2008 dated November 5, 2008 addressed to the Speaker of the North Tapanuli Regency DPRD regarding the Notification, the end of the first paragraph of which stated that, "*We will announce the stipulation of the Winner of the 2008 General Election for Head of Region and Deputy Head of Region of North Tapanuli Regency pending a Court that has permanent legal force (inkracht)*".

Therefore, based on the above facts and laws, the Respondent demurrer must be set aside;

[3.22.3] Considering whereas point 3 of the demurrer regarding the Petitioner petition is *obscuur libel*, the Court is of the opinion that, pursuant to the provision of Article 3 paragraph (1) of PMK 15/2008 which reads, “*The parties with a direct interest in the dispute over the General Election for Head of Region result shall be: a. Candidate Pair as Petitioner; b. Provincial KPU/KIP or regency/city KPU/KIP as Respondent*”.

Whereas under Decision of the General Election Commission Number 21 of 2008 dated August 28, 2008 concerning Stipulation of the Serial Number for Candidate Pairs for the Head of Region and Deputy Head of Region Participating in the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency, the two Petitioners in question were Candidate Pairs for the Head of Region and Deputy Head of Region of North Tapanuli Regency with Serial Numbers 2 and 3 respectively. Therefore, the Respondent demurrer must be set aside;

Whereas the rest of the Respondent demurrer is related to the principal issue of the case, therefore shall be considered together with the principal issue of the case;

In the Principal Issue of the Case

[3.23] Considering whereas the principal issue of the case of Petitioner is an objection to Decision of the General Election Commission of North Tapanuli Regency Number 25 of 2008 dated November 23, 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency, North Sumatera Province of 2008;

[3.24] Considering whereas from the legal facts, be they the testimony of Petitioner, testimony of Respondent, testimony of Petitioner witnesses, testimony of the witness for the Related Party Elected Candidate Pair for Regent and Deputy Regent, and the Conclusions of the parties, the Court found the following legal facts, whether admitted by the parties or arising as a legal dispute between the parties:

[3.24.1] Whereas at the hearing there were legal facts and arguments of the Petitioner petition that were not denied by the Respondent, therefore said legal facts became law for the Petitioner and Respondent and did not require any further proof, namely:

1. Decision of the General Election Commission of North Tapanuli Regency Number 20 of 2008 dated August 27, 2008 concerning Stipulation of the Candidate Pairs of Head of Region and Deputy Head of Region Participating in the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency which stipulated the Candidate Pairs for the Regent and Deputy Regent of North Tapanuli Regency;

2. Decision of the General Election Commission of North Tapanuli Regency Number 21 of 2008 dated August 28, 2008 concerning Stipulation of the Serial Number for Candidate Pairs for the Head of Region and Deputy Head of Region Participating in the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency which stated that the Petitioner, Ir. Roy Mangontang Sinaga and Ir. Djudjung Pangondian Hutauruk as Running Candidate for Regent and Deputy Regent with Serial Number 2, and Petitioner Samsul Sianturi and Drs. Frans A. Sihombing, M.M as Running Candidate for Regent and Deputy Regent with Serial Number 3 (*vide* evidence P-3 and evidence T-2);
3. The implementation of General Election for Head of Region on October 27, 2008 (*vide* point 5 of the Petition);
4. Letter from the North Tapanuli Regency DPRD Number 170/1395/DPRD-TU/2008, dated October 30, 2008 addressed to the Governor of North Sumatera Province regarding Notification, which stated in essence that the vote counting at the Election for the Head of Region of North Tapanuli Regency will be suspended pending a court ruling (*vide* evidence P-10);
5. Letter from the General Election Oversight Committee of North Tapanuli Regency Number 226/PANWASLU PILKADA/TAPUT/X/2008 dated October 31, 2008 regarding Notification, which stated in essence that

- due to reports from the public which had been reported to the General Election Oversight Committee of North Tapanuli Regency which were preliminary evidence of suspected violation and fraudulent acts in the implementation of the election of the Regent and Deputy Regent of North Tapanuli Regency, the proceedings will be suspended pending a Court Ruling, due to the discovery of violations and fraudulent acts in the implementation of the Election for the Head of Region (*vide* evidence P-11);
6. Letter of North Tapanuli Regency KPU Number 2026/KPU-TU/IX/2008 dated November 5, 2008 addressed to the Speaker of North Tapanuli Regency DPRD, stating among other things that the Stipulation of the Winner of the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency will be stipulated pending a court ruling with a permanent legal force (*vide* evidence P-9 and letter d of the Respondent Reply);
 7. There were three Members of the North Tapanuli Regency KPU, namely Romauli Sihombing, S.I.P., Tunggul Simorangkir, S.H., M. Hum., and Ir. Lambas Hutasoit who did not endorse the Stipulation of the Candidate Pair (*vide* point 16 of the Petition and letter F of the Respondent Reply);
 8. There were money politics practices evidenced by an envelope containing Rp.20,000.00 in Rp.5,000.00 bills;

9. The suit filed by the Petitioner and other Candidate Pairs to the Tarutung District Court which was received at the Tarutung District Court Registry with Case Number 56/Pdt.G/2008/PN.TRT on November 3, 2008 (*vide* evidence P-8 and letter d of the Respondent Reply);

[3.24.2] Whereas in addition to the legal facts or the matters admitted by the parties, the hearing also revealed legal facts or matters that led to legal dispute between the parties as follows:

1. the discovery of 26,091 duplicate Single Identity Number (NIK);
2. 6,000 eligible voters not receiving a voter card and not being registered as Voters; 3. 2,700 voter cards being controlled by the Campaign Team for Serial Number 1 Candidate Pair;
4. The mobilization of 300 voters who did not come from the electorate in question undertaken by **Fernando Simanjuntak**, Speaker of the North Tapanuli Regency DPRD, the Campaign Team for Serial Number 1 Candidate Pair;
5. Voting by several unknown individuals who were brought in with four Toyota Kijang cars (36 people according to Petitioner Witness Januari Hutaeruk, 61 people according to Petitioner Witness Hotma Hutaeruk) at TPS 3 of Hutaeruk Hasundutan Village, Sipoholon Sub-district who cast their vote without being called, went directly into the voting booths, 10

persons at a time, and casting their vote for the Serial Number 1 Candidate Pair;

Whereas according to the Petitioner, there were 26,091 duplicate Single Identity Numbers (NIK) found in 14 out of the 15 Sub-districts in North Tapanuli Regency, thus it was appropriate to have the vote total received by Serial Number 1 Candidate Pair deducted with the number of duplicate NIK, which would mean 46,645 deducted by 26,091 to make 20,554 votes (*vide* Petition point 7);

Whereas according to the Petitioner, there were 6,000 people who were eligible to vote, but did not receive a voter card, which greatly disadvantaged the Petitioner (*vide* Petition point 9);

Whereas 2,700 voter cards were controlled by the Campaign Team for Serial Number 1 Candidate Pair;

Whereas there was a mobilization of 300 voters who did not come from the electorate in question undertaken by **Fernando Simanjuntak**, Speaker of the North Tapanuli Regency DPRD, the Campaign Team for Serial Number 1 Candidate Pair;

Whereas on the contrary, the Respondent denied the argument of Petitioner, for the following reasons:

1. Deduction of the vote total for the Serial Number 1 Candidate Pair, **Torang Lumban Tobing** and **Bangkit Parulian Silaban, S.E.**, which was made by the Petitioner based on an assumption of duplicate Single Identity Numbers (NIK), had no relevance to the vote count recapitulation conducted by the Respondent. The reason is that, pursuant to the provision of Article 99 paragraph (1) of Law Number 32 of 2004 in conjunction with Article 86 paragraph (1) of Government Regulation Number 6 of 2005, upon receiving the Official Report and Certificate of Vote Count Result from the Sub-district Election Committee (PPK), the Petitioner shall prepare an official report of receipt and perform a recapitulation of the total votes for the regency level (*vide* Respondent Reply letter b, paragraph four, page 11);
2. Said argument made by the Petitioner constitutes a violation of the 2008 General Election for the Head of Region of North Tapanuli Regency process, thus the authorized body to resolve and/or act upon the violation shall be the General Election Oversight Committee of North Tapanuli Regency (*vide* Respondent Reply point 4, paragraph three, page 8);

[3.25] Considering whereas from the legal dispute between the parties above, the legal review of the Court in responding to the principal legal issue of the case of Petitioner shall be whether Decision of the General Election Commission of North Tapanuli Regency Number 25 of 2008 dated November 23, 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and

Deputy Head of Region of North Tapanuli Regency, North Sumatera Province of 2008 dated November 23, 2008 (*vide* evidence P-5 and evidence T-4) is valid or has any judicial defect, the Court is of the following opinion and legal review:

[3.25.1] Whereas the legal facts indicate there were 26,091 duplicate Single Identity Numbers (NIK) in 14 out of the 15 Sub-districts of North Tapanuli Regency (evidence P-6.1a to evidence P-6.5d), while with regard to the legal facts, the Respondent was unable to present any evidence to the contrary (*tegen bewijs*); what is more, in its reply related to the duplicate NIK, the Petitioner stated that the duplicate NK had no relevance to the vote count recapitulation performed by the Respondent. Therefore, on one hand the Respondent materially admits the violation but on the other hand the Respondent declared that the violation was not under the authority of the Court to resolve and act upon, but rather the authority of the General Election organizing agency, *in casu* the North Tapanuli Regency KPU and the General Election Oversight Committee of North Tapanuli Regency;

Whereas the legal facts regarding the duplicate NIK have contradicted Letter of the North Tapanuli Regency KPU Number Istimewa dated November 21, 2008 concerning the Process of Election for the Head of Region of North Tapanuli Regency (evidence P-7), which states in point 2 that the North Tapanuli Regency KPU has updated the election data in the form of a DPT ratified on July 25, 2008 covering 181,120 voters. In the gradual process, the North Tapanuli Regency KPU submitted a soft copy of the ratified DPT to the

Government of North Tapanuli Regency, in this case the Demography and Civil Registry Service Office, for completion of the Single Identity Numbers. This was also admitted by witness testimony from the Related Party Elected Candidate Pair, i.e. witness Kondar Sormin who verified the delivery of a DPT in soft copy from the KPU to the party in question with the intention of assigning the NIK to the names in the DPT that had not had a NIK. This was also admitted by the Head of the General Election Oversight Committee of North Tapanuli Regency, Borisman Panggabean, S.T., at the hearing on December 5, 2008;

Whereas regarding the DPT soft copy with its NIK filled by the Demography and Civil Registry Service Office of North Tapanuli Regency, the register was returned to the North Tapanuli Regency KPU in soft copy, and by the North Tapanuli Regency KPU (Romauli Sihombing, S.I.P., Tunggul Simorangkir, S.H., M.Hum., and Ir. Lambas T.H. Hutasoit) (*vide* evidence P-7) suspected data tampering, whether in the form of addition, deduction, duplication, or deletion. Later, despite the suspicion of data tampering, the Petitioner proceeded to print out the voter cards through the Secretary of the North Tapanuli Regency KPU without rechecking;

Whereas the fact of the duplicate NIK was also testified to by the witness from the Respondent, namely Sofian Simanjuntak, that there were duplicate NIK, identical NIK, problematic NIK, and NIK of residents from outside the Sub-district, and the area with the most number of problematic NIK was Siborong-borong Sub-district . The testimony of Sofian Simanjuntak also

matched the testimony of witnesses Samuel BP Hutauruk, M.A and Drs. Paruntungan Lumban Tobing who testified that upon investigation, there were 1,000 names of duplicate voters that were included in the DPT. The Court is of the opinion that the duplicate NIK has been proven in a valid and convincing manner;

Whereas the 26,091 duplicate NIK, as argued by the Petitioner, should only be deducted from the vote total of the Elected Candidate Pair for Head of Region and Deputy Head of Region of North Tapanuli Regency (Serial Number 1 Candidate Pair), according to the Court, the deduction would not be fair since it should also be applied to all candidate pairs;

Whereas based on the legal facts in the form of witness testimony and affidavits as described above, a grave violation of the principles of a direct, public, free, confidential, honest, and fair general election has occurred, as well as an offence against the mechanism and stages of the proceedings of General Election for Head of Region as set forth in Article 22E paragraph (1) of the 1945 Constitution, Article 56 paragraph (1) of Law Number 32 of 2004 concerning Local Governance as amended most recently with Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance, Article 2 of Law Number 22 of 2007 concerning General Election Organizer, and Article 2 of Regulation of the General Election Commission Number 10 of 2008 concerning Procedural Guideline for the Implementation of Vote Count Result Recapitulation in the General Election for Head of Region and

Deputy Head of Region by a Sub-district Election Committee, Regency/City General Election Commission, and Provincial General Election Commission;

[3.25.2] Whereas with regard to the 6,000 people who were eligible to vote but did not receive a voter card in the General Election for Head of Region of North Tapanuli Regency (*vide* Petition revision point 9), despite receiving voter cards during the General Election for Head of Region for the Governor and Deputy Governor of North Maluku, according to the Court, the matter is an act that violates the principles of General Election for Head of Region implementation as set forth in Article 2 of Law Number 22 of 2007 concerning General Election Organizer and Article 2 of Regulation of the General Election Commission Number 10 of 2008, that was committed by the Respondent. However, the 6,000 eligible voters cannot be automatically assumed to cast their vote for the Petitioner;

[3.25.3] Whereas regarding the *in flagrante delicto* arrest involving 2,700 Notice of the Time and Place of Voting and/or voter cards controlled by the Campaign Team of the Serial Number 1 Candidate Pair by distributing the Notice to vote for the Serial Number 1 Candidate Pair, as elaborated by the testimony of the Petitioner witnesses, i.e. Robinhot Sianturi and Manaek Sihombing. The two witnesses testified that 2,714 voter cards were found to have been carried by the Chairman of Pasar Kelurahan PPS, Siborong-borong Sub-district, Hotma Lumban Tobing. This has been reported to the Sub-district General Election Oversight Committee and Regency General Election Oversight Committee as set

out in an Official Report, and the Official Report was also given to a Member of the North Tapanuli Regency KPU, Ir. Lambas T.H. Hutasoit, who was in Siborong-borong Sub-district at the time, but the objection was not acted upon by the General Election Oversight Committee, as also admitted by Member of the General Election Oversight Committee of North Tapanuli Regency, Mantel Siringoringo, S.H. While the witness testimony was denied by witness Hotma Lumban Tobing, the Court believes that the fact has been proven in a valid and convincing manner;

[3.25.4] Whereas with relation to the Petitioner argument on the mobilization of 300 voters who did not come from the electorate in question undertaken by **Fernando Simanjuntak**, Speaker of the North Tapanuli Regency DPRD, the argument was corroborated by the testimony of Petitioner witnesses, namely Januari Hutauruk and Hotma Hutauruk who testified that they had seen four Toyota Kijang cars carrying voters who were not registered in TPS 3 of Hutauruk Hasundutan Village, Sipoholon Sub-district to cast their vote for the Serial Number 1 Candidate Pair, and the witness had stated his objection as set out in the Official Report. However, the testimony of the Petitioner witness was denied by witness Fernando Simanjuntak, Speaker of the North Tapanuli Regency DPRD, who testified that he had never made any intervention or intimidation in the General Election for Head of Region and that the testimony was untrue and libelous. According to the Court, the testimony of the Petitioner witness was not denied by the testimony of witness Fernando Simanjuntak;

Whereas the mass mobilization in the General Election for Head of Region of North Tapanuli Regency especially at TPS 3 of Hutauruk Hasundutan Village, Sipoholon Sub-district to give victory to a candidate pair constitutes an intolerable violation, more so because it was committed by the Speaker of the North Tapanuli Regency DPRD who should have assumed a neutral attitude;

Whereas the report from witness Januari Hutauruk to the Oversight Committee regarding the intimidation made by Fernando Simanjuntak, Speaker of the North Tapanuli Regency DPR (evidence P-27), was connected with the indicative evidence in the form of pictures on the implementation of campaign activities showing the involvement of a Civil Servant, in this case the Head of the Demography and Civil Registry Service of North Tapanuli Regency, Dra. Mariani Simorangkir M.Pd (evidence P-12), which was also admitted by the testimony of witness Borisman Panggabean, S.T. at the hearing on December 10, 2008, has convinced the Court about the lack of neutrality by government officers in the General Election for the Head of Region of North Tapanuli Regency;

[3.26] Considering whereas, in addition to the facts that led to the legal dispute above, the Court also found facts in the form of the absence of three of the five members of the North Tapanuli Regency KPU in the Plenary Meeting to Stipulate the Result of the General Election for Head of Region. While the absence of the three KPU members does not diminish the validity of the result of the General Election for the Head of Region of North Tapanuli Regency as per the provision of Article 38 paragraphs (1) and (3) of Law Number 22 of 2007

concerning General Election Organizer, the absence of the three members of the North Tapanuli Regency KPU indicates a rejection of the process and result of the General Election for the Head of Region of North Tapanuli Regency due to the violation of the organization mechanism and procedure for General Election for Head of Region in North Tapanuli Regency that was in fact endorsed by the other two members of the North Tapanuli Regency KPU;

Whereas the absence of the three members of the North Tapanuli Regency KPU was regarded by the Respondent as an insubordination against Law Number 22 of 2007, the Court believes that it was not an insubordination against the law, but rather a rejection by the three members of the North Tapanuli Regency KPU of the process and result of the General Election for the Head of Region of North Tapanuli Regency which violated the laws and regulations. What is more, the attitude was shown by the three members of the North Tapanuli Regency KPU by sending two letters to the General Election Commission, namely Number Istimewa.1 concerning the Election Process for the Head of Region of North Tapanuli dated November 21, 2004 (attached) and Number Istimewa.2 concerning the Election Process for the Head of Region of North Tapanuli dated November 24, 2004 (attached);

Whereas the absence of the three members of the North Tapanuli Regency KPU was associated with letter of the North Tapanuli Regency DPRD Number 170/1395/DPRD-TU/2008 dated October 30, 2008 (evidence P-10) concerning a notification to the Governor of North Sumatera requesting the

temporary suspension of the vote count of the General Election for Head of Region result pending a court ruling due to a suspected violation in the General Election for Head of Region stages and Letter of the General Election Oversight Committee of North Tapanuli Regency Number 226/PANWASLU PILKADA/TAPUT/X/2008 dated October 31, 2008 (evidence P-11) addressed to the Respondent concerning the notification of various reports on suspected violations requesting the temporary suspension of the vote count pending a court ruling with a permanent legal force. The legal fact as described in this paragraph further convinces the Court of the occurrence of violations in the General Election for Head of Region stages. With the lack of sufficiently convincing evidence to counter evidences P-6.1a to P-6.5d, the Court is of the opinion that the Respondent has violated its oath/vow as stated in Article 28 paragraph (2) of Law Number 22 of 2007;

Whereas with regard to the suspected money politics practice as evidenced by an envelope containing Rp.20,000.00 in Rp.5,000.00 bills which was not denied by the Respondent and the voting by unknown individuals who were brought in with four Toyota Kijang cars (36 people according to Petitioner Witness Januari Hutauruk, 61 people according to Petitioner Witness Hotma Hutauruk) at TPS 3 of Hutauruk Hasundutan Village, Sipoholon Sub-district who cast their votes as a group by being called straight into the voting booths, 10 persons at a time, according to the Court, this legal fact is a clear violation in the General Election for Head of Region;

[3.27] Considering whereas in deciding upon a dispute over the result of a General Election for Head of Region, the Court not only recounts the actual vote count result from the voting but must also explore to find legal facts and justice by reviewing and adjudicating the disputed count result, since mere counting in a mathematical sense could have been done by the Provincial/Regency/City KPU on its own under the supervision of the General Election Oversight Committee and/or the police. Therefore, the Court understands that while under the law only the vote count result can be adjudicated by the Court, the violations that led to the eventually disputed vote count result should also be reviewed in order to uphold law and justice. This is in line with the provision of Article 24 paragraph (1) of the 1945 Constitution which reads, *“The judicial power shall be independent and shall possess the power to **organize the judiciary in order to enforce law and justice**”* and Article 28D paragraph (1) of the 1945 Constitution which reads, *“Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law”*. Further, the two provisions of the 1945 Constitution are reiterated into Article 45 paragraph (1) of the CC Law which reads, *“the Constitutional Court shall decide upon cases under the 1945 Constitution of the State of the Republic of Indonesia in accordance with the evidence and the conviction of the justice”*. What is more, court ruling, including by the Court, is made with the header, *“For the Sake of Justice under the One Almighty God”*;

[3.28] Considering whereas after the Court has examined the documentary evidence, submitted by either the Petitioner or the Respondent, the following facts were found:

- Pursuant to Letter of the Respondent Number 999/KPU-TU/X/08 dated October 31, 2008 addressed to the five Candidate Pairs for the Head of Region and Deputy Head of Region of North Tapanuli Regency regarding the Reply to the Request to Announce the Result of the 2008 Election for the Head of Region of North Tapanuli Regency, which in essence “consents” to not immediately stipulate the Elected Regent and Deputy Regent after the Respondent has completed the official report and recapitulation (evidence P-25=T-30);
- Pursuant to Letter of the Respondent Number 2026/KPU-TU/XI/2008 dated November 5, 2008 addressed to the Speaker of the North Tapanuli Regency DPRD regarding Notification, which stated in essence that the Stipulation of the Winner of the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency will be announced following a Court ruling that has permanent legal force (*inkracht van gewijsde*) (evidence P-9);
- Pursuant to Letter of the Respondent Number 2029/KPU-TU/XI/2008 dated November 10, 2008 addressed to the Chief Judge of the Tarutung District Court regarding a Inquiry, which in essence inquired whether there was any dispute lawsuit over the Vote Count Result of the Election of the

Head of Region and Deputy Head of Region of North Tapanuli Regency (evidence T-22);

- Pursuant to Letter of the Chief Judge of the Tarutung District Court Number W2.U6.2360/ UM/XI/2008 dated November 10, 2008 addressed to the Head of the General Election Commission of North Tapanuli Regency concerning the Explanation, which stated that there was a lawsuit filed by Samsul Sianturi, one of the Candidate Pairs for the Head of Region and Deputy Head of Region of North Tapanuli Regency to the Minister of Home Affairs, but the lawsuit was a tort lawsuit rather than a lawsuit on Dispute over the Vote Count Result of the Election of the Head of Region and Deputy Head of Region of North Tapanuli Regency (evidence T-26);
- Pursuant to Letter of the Respondent Number 2061/KPU-TU/XI/2008 dated November 20, 2008 addressed to the Speaker of the North Tapanuli Regency DPRD regarding Notification, which stated in essence, among other things, that the lawsuit filed to the Tarutung District Court was a tort lawsuit, thus the North Tapanuli Regency KPU was to proceed with the stages of the Election for the Head of Region of North Tapanuli Regency by holding a Plenary Meeting to stipulate the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli (evidence T-31);

Whereas pursuant to Article 100 paragraph (1) of Law Number 32 of 2004 concerning Local Governance in conjunction with Article 87 paragraph (1) of Government Regulation Number 6 of 2005 concerning the Election, Appointment Ratification, and Discharge of Head of Region and Deputy Head of Region, and Article 17 paragraph (1) of Regulation of the General Election Commission Number 10 of 2007 concerning the Procedural Guideline for the Implementation of Vote Count Result Recapitulation in the General Election for Head of Region and Deputy Head of Region by a Sub-district Election Committee, Regency/City, General Election Commission, and Provincial General Election Commission, the following has been determined:

- Article 100 paragraph (1) of Law Number 32 of 2004, which reads, *“In the case of the election of a regency/city head of region and deputy head of region, the official report and vote count result recapitulation shall subsequently be decided upon in a plenary meeting of the regency/city KPU to stipulate the elected candidate pair”*;
- Article 87 paragraph (1) of Government Regulation Number 6 of 2005, which reads, *“In the case of the election for a Regent/Deputy Regent and Mayor/Deputy Mayor, upon preparing the official report and vote count result recapitulation as referred to in Article 86 paragraph (5), not later than one (1) day shall be decided at a plenary meeting of the regency/city KPUD to stipulate the elected candidate pair”*;

- Article 17 paragraph (1) of KPU Regulation Number 10 of 2007, which reads, *“In the case of General Election for a Regent/Deputy Regent and Mayor/Deputy Mayor, upon preparing the official report and vote count result recapitulation as referred to in Article 11 paragraph (2), not later than one (1) day shall be decided at a plenary meeting of the regency/city KPUD to stipulate the elected candidate pair.”*

Based on the entire facts and laws as mentioned above, according to the Court, the action of the Respondent as per evidence T-30, evidence P-9, evidence T-22, evidence T-26, and evidence T-31 mentioned above, has indicated an inconsistency on the part of the Respondent, and the occurrence of violations against various the prevailing laws and regulations, not only causing legal uncertainty but also potentially causing various conflicts that are not merely administrative in nature, but also may create a horizontal conflict among the people of North Tapanuli Regency. The legal facts also disregarded and betrayed the principles and bases of the organization of a General Election for Head of Region, namely independence, honesty, fairness, legal certainty, rules for the organization of a General Election, public interest, openness, proportionality, professionalism, accountability, efficiency, and effectiveness (*vide* Article 2 of Law Number 22 of 2007 in conjunction with Article 2 of KPU Regulation Number 10 of 2007).

[3.29] Considering whereas the action of the Respondent as mentioned in paragraph [3.28] above, has clearly overstepped its duties and authorities, as

evidenced from the letters of the Respondent (*vide* evidence P-25=T-30, evidence P-9, evidence T-22, evidence T-26, and evidence T-31) while by law, the action may only be taken by the Respondent after the Respondent has stipulated the Elected Candidate Pair, and yet the stipulation of the Elected Candidate as an obligation of the Respondent has not been implemented (*vide* evidence P-5=T-4);

[3.30] Considering whereas in addition to the above violations, the Court also performed a meticulous count on the DA1-KWK Model (evidence T-8 to T-21), and found counting errors committed by the Respondent, as follows:

**VOTE COUNT TABLE
BY SUB-DISTRICT IN NORTH TAPANULI REGENCY
ACCORDING TO THE COURT**

NO	SUB-DISTRICT	SERIAL NUMBER 1	SERIAL NUMBER 2	SERIAL NUMBER 3	SERIAL NUMBER 4	SERIAL NUMBER 5	SERIAL NUMBER 6
1	Siborong-borong	5466	2778	4141	1503	569	5452
2	Sipahutar	4230	1866	2266	1607	450	1496
3	Garoga	3856	707	2058	469	269	117
4	Pangaribuan	4517	2361	3899	1203	698	373
5	Adian Koting	2647	1507	1057	1353	113	217
6	Muara	750	391	3475	97	1616	435
7	Sipoholon	3449	2216	3052	1431	223	364
8	Pahae Julu	2053	1307	873	1453	225	122
9	Tarutung	6092	3034	3788	6090	230	306
10	Siatas Barita	1827	1304	1510	1801	144	137
11	Simangumban	1587	454	910	379	67	137
12	Purba Tua	1050	493	778	987	69	231
13	Pahae Jae	1928	745	1563	1210	54	172
14	Pagaran	2953	658	1090	345	221	2613
15	Parmonangan	4240	470	1340	408	69	115
Total		46645	20291	31800	20336	5017	12287

- Garoga Sub-district for the Serial Number 5 Candidate Pair: Attachment 2 of DB1-KWK stated 272; meticulous counting resulted in only 269;

- Adian Koting Sub-district for the Serial Number 4 Candidate Pair: Attachment 2 of DB1-KWK stated 1,461; meticulous counting resulted in only 1,353;
- Tarutung Sub-district for the Serial Number 4 Candidate Pair: Attachment 2 of DB1-KWK stated 6,093 ; meticulous counting resulted in only 6,090;
- Siatas Barita Sub-district for the Serial Number 4 Candidate Pair: Attachment 2 of DB1-KWK stated 1,819; meticulous counting resulted in only 1,801;
- Pahae Jae Sub-district in Attachment 2 of the DA1-KWK Model Form: only the first sheet states the number per TPS, but the next pages do not; rather, the subtotals are carried over directly to the Final Number in the Attachment;

Whereas the action of the Respondent was manipulative, full of intimidation, dishonest, and arbitrary, which has directly or indirectly affected the result of the General Election for Head of Region in North Tapanuli Regency. In truth, the matter has betrayed democracy and the principles of general election which essentially are used to provide a foundation for the entire General Election proceedings as expressly set out in Article 22E paragraph (1) of the 1945 Constitution;

[3.31] Considering whereas based on the legal facts at the hearing, in certain district, grave and significant violations have clearly occurred to affect the vote totals in the form of:

1. allowing duplicate NIK without updating the data as determined in Article 10 paragraph (3) letter f of Law Number 22 of 2007 concerning the General Election Organizer;
2. allowing the distribution of 2,714 Notices of the Time and Place of Voting or invitation to vote (Model C6-KWK); allowing the practice of money politics;
3. allowing voting by a number of unknown individuals brought in by four Toyota Kijang cars (36 people according to Petitioner Witness Januari Hutauruk, 61 people according to Petitioner Witness Hotma Hutauruk) at TPS 3 of Hutauruk Hasundutan Village, Sipoholon Sub-district who cast their vote without being called, going directly into the voting booths, 10 persons at a time;
4. failing to perform its obligation to stipulate the Elected Candidate Pair one day after the vote total count recapitulation has been conducted by the Respondent, despite the Respondent's reason that the case filed to the Tarutung District Court concerning a tort was yet to receive a court ruling with a permanent legal force; and

5. failing to act concerning the mobilization of 300 voters who did not come from the electorate in question.

[3.32] Considering whereas based on the series of legal facts in paragraphs **[3.25]** to **[3.31]**, the Court believes that the series of legal facts have constituted the perfect evidence of the occurring violations of the provisions of General Election for Head of Region in 14 Sub-districts in North Tapanuli Regency. The violations were grave and significant violations that affected the final vote total for each candidate pair. Therefore, according to the Court, a corrective effort will be required through a Court decision, namely a revote in 14 of the 15 Sub-districts in North Tapanuli Regency to be determined below and to remove them from the total count result. If the Court were to remove the vote count result in the certain Sub-districts (not include them) from the final count, an injustice would have resulted, since it would mean that the votes of the people from the Sub-districts as part of the sovereign holders would be discarded/lost. Therefore, to uphold a just democracy based on law, the Court is of the opinion that a revote must be carried out at the 14 Sub-districts in North Tapanuli Regency;

[3.33] Considering whereas the 14 Sub-districts in North Tapanuli Regency that must hold a revote, according to the Court, are:

1. Pahae Julu Sub-district;
2. Garoga Sub-district;
3. Pagaran Sub-district;
4. Siborong-borong Sub-district;

5. Simangumban Sub-district;
6. Parmonangan Sub-district;
7. Pahae Jae Sub-district;
8. Pangaribuan Sub-district;
9. Sipahutar Sub-district;
10. Sipoholon Sub-district;
11. Adian Koting Sub-district;
12. Siatas Barita Sub-district;
13. Purba Tua Sub-district; and
14. Tarutung Sub-district.

due to the occurrence of grave and significant violations that affected the vote totals of Candidate Pairs;

[3.34] Considering whereas the instruction to hold a revote, as to be mentioned in the judicial verdict below, should also consider the level of difficulty and time frame related to the stages of the Legislative and Presidential Elections in 2009. With calculation of such national activity agenda, the Court shall order a revote within the shortest possible time, with due regard to the capacity of the North Tapanuli Regency KPU and the entire organizing instrument of the General Election for Head of Region to hold the revote in a direct, public, free, confidential, honest, and fair manner, and far removed from any possible violation that would harm the democratization process in Indonesia;

[3.35] Considering whereas although according to Article 233 paragraph (2) and (3) Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance, the General Election for Head of Region must be completed by the end of 2008, the Court affirms that the revote *a quo* is not a new General Election for Head of Region, but rather a continuation of a previously held Election for the Head of Region, thus the implementation of revote in early 2009 cannot be judged as contradicting the provisions of the above law, especially given that this is an order stated in the judicial verdict of the Court.

4. CONCLUSION

Based on the entire review of the facts and laws as elaborated above, the Court has the following conclusion:

[4.1] The Demurrer of Respondent is not appropriate by law;

[4.2] The grave and significant violations that affected the vote totals have been proven in a valid and convincing manner; therefore, Decision of the General Election Commission of North Tapanuli Regency concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency and Recapitulation of the Vote Count Result of the 2008 General Election for Head of Region and Deputy Head of Region of

North Tapanuli Regency dated November 23, 2008 shall be declared as void and having no binding legal force insofar as concerning the voting results in: 1) Pahae Julu Sub-district, 2) Garoga Sub-district, 3) Pagaran Sub-district, 4) Siborong-borong Sub-district, 5) Simangumban Sub-district, 6) Parmonangan Sub-district, 7) Pahae Jae Sub-district, 8) Pangaribuan Sub-district, 9) Sipahutar Sub-district, 10) Sipoholon Sub-district, 11) Adian Koting Sub-district, 12) Siatas Barita Sub-district, 13) Purba Tua Sub-district, and 14) Tarutung Sub-district. Only one of the 15 Sub-districts in the entire North Tapanuli Regency is not obligated to hold a revote, **namely Muara Sub-district**;

[4.3] Grave and significant violations have occurred, affecting the vote totals, thus betraying the constitution, democracy, and citizen's rights [*vide* Article 18 paragraph (4) and Article 22E paragraph (1) of the 1945 Constitution], and other laws and regulations, which are unjustifiable in the lawful state of the Republic of Indonesia;

[4.4] The Court in adjudicating General Election for Head of Region cases in general, *in casu* the General Election for Head of Region in North Tapanuli Regency, refers not only to the formal object of the dispute in the General Election for Head of Region *an sich* as stated in Article 4 of PMK 15/2008, but also has to explore and find

the legal truth and justice according to the evidence and the conviction of the justices;

[4.5] In the effort to create procedural justice and substantive justice, and the principle of utility for the supremacy of the constitution, law, and democracy, the Court has reviewed the entire testimony of the parties, documentary evidence, and witnesses at the hearing according to the duties and functions of the Court as the guardian of the constitution and democracy, and the protector of human rights;

[4.6] Based on points [4.1] to [4.5], the Court orders a revote at the 14 Sub-districts to be named in this judicial verdict **for the six Candidate Pairs**;

[4.7] The Court orders the General Election Commission of North Sumatera Province and the Oversight Committee for the General Election for the Head of Region of North Sumatera Province to oversee the revote according to their authority to ensure that the principle and spirit of the General Election for Head of Region that is direct, public, free, confidential, honest, and fair can be upheld;

5. DECISION

In view of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 and Law Number 12 of 2008 in conjunction with Law Number 4 of 2004 concerning Judicial Power, Law Number 32 of 2004 concerning Local Governance as amended most recently with Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance,

Passing the Decision,

In the Exception:

- To declare the Demurrer of Respondent as unacceptable.

In Principal Issue of the Case:

- To grant the petition of Petitioner in part;
- To void and declare as non-legally binding the Decision of the General Election Commission of North Tapanuli Regency Number 25 of 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of North Tapanuli Regency and Recapitulation of the Vote Count Result of the 2008 General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency dated November 23, 2008 insofar as concerning the vote count recapitulation results in: 1) Pahae Julu Sub-district, 2) Garoga Sub-district, 3) Pagaran Sub-district, 4) Siborong-borong Sub-district, 5) Simangumban Sub-district, 6) Parmonangan Sub-district, 7) Pahae Jae Sub-district, 8)

Pangaribuan Sub-district, 9) Sipahutar Sub-district, 10) Sipoholon Sub-district, 11) Adian Koting Sub-district, 12) Siatas Barita Sub-district, 13) Purba Tua Sub-district, and 14) Tarutung Sub-district;

- To order the General Election Commission of North Tapanuli Regency to hold a **revote** of the General Election for the Head of Region and Deputy Head of Region of North Tapanuli Regency **for the six Candidate Pairs** in:

1. **Pahae Julu Sub-district;**
2. **Garoga Sub-district;**
3. **Pagaran Sub-district;**
4. **Siborong-borong Sub-district;**
5. **Simangumban Sub-district;**
6. **Parmonangan Sub-district;**
7. **Pahae Jae Sub-district;**
8. **Pangaribuan Sub-district;**
9. **Sipahutar Sub-district;**
10. **Sipoholon Sub-district;**
11. **Adian Koting Sub-district;**
12. **Siatas Barita Sub-district;**
13. **Purba Tua Sub-district, and**
14. **Tarutung Sub-district**

Within sixty (60) days effective from the pronouncement of this decisions;

- To reject the other and remaining part of the petition of Petitioner.

Hence the decision was made in the Plenary Consultative Meeting of eight Constitutional Court Justices, namely Moh. Mahfud MD, M. Akil Mochtar, M. Arsyad Sanusi, Maria Farida Indrati, Abdul Mukthie Fadjar, Maruarar Siahaan, Achmad Sodiki, and Muhammad Alim, on Monday the fifteenth day of December two thousand and eight and was read out in a Plenary Session open for the public on Tuesday the sixteenth day of December two thousand and eight by us, seven Constitutional Court Justices, namely M. Akil Mochtar, M. Arsyad Sanusi, Maria Farida Indrati, Maruarar Siahaan, Achmad Sodiki, and Muhammad Alim, respectively as Members and assisted by Ida Ria Tambunan as Substitute Registrar, attended by the Petitioner/his Power of Attorney, Respondent/its Power of Attorney, and Related Party/his Power of Attorney.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD

MEMBERS,

Sgd.

M. Akil Mochtar

Sgd.

M. Arsyad Sanusi

Sgd.

Maria Farida Indrati

Sgd.

Muhammad Alim

Sgd.

Maruarar Siahaan

Sgd.

Achmad Sodiki

SUBSTITUTE REGISTRAR,

Sgd.

Ida Ria Tambunan