



DECISION

Number 55/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 Padang Lawas Regency, North Sumatera of 2008 filed by:

- [1.2] 1. Name : **Drs. H. Rahmat Pardamean Hasibuan**
Address : Jalan Al-Falah Nomor 41, Lingkungan II,
Sukamaju *Kelurahan*, Medan Johor Subdistrict,
Medan City;
2. Name : **Drs. H. Aminusin M. Harahap, Amk**
Address : Jalan Melati Nomor 50, Ujung Padang
Kelurahan, Padang Sidempuan Selatan
Subdistrict, Padang Sidempuan City;

Regent and Deputy Regent Candidate pair for Padang Lawas Regency,
Serial Number 2;

In this matter granting a power of attorney to Dr. A. Muhammad Asrun, S.H.,M.H., Edy Purwanto, S.H., Umri Fatha, S.H., and Ilham Prasetya Gultom, S.H., all of them legal counsels united under the RAMAH ADVOCACY TEAM, which elected a legal domicile at “Muhammad Asrun & Partners (MAP) Law Firm” at PGRI Building, Jalan Tanah Abang III Nomor 24, Central Jakarta, Telephone 62-21-70333390 and Facsimile 62-21-3867842 and “POER’S & PARTNERS Law Office” having its address at Jalan Sutoyo S.Miharjo d/h Perdana No. 55 Medan, in this matter under Special Proxy dated December 7, 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** having its domicile at Jalan Willem Iskandar Number 17 Padangsidempuan and/or its address at Jalan Sibuhuan-Gunung Tua Km. 6, Pasar Latong Village, Padang Lawas Regency, North Sumatera Province;

In this matter having granted a power of attorney to Fadillah Hutri Lubis, S.H.; Sedarita Ginting, S.H.; Nur Alamsyah, S.H., M.H.; Irwansyah Putra, S.H., M.B.A.; Nazrul Ichsan Nasution, S.H., all of them Legal Counsels, having their office at **FADILLAH HUTRI LUBIS dan Partners Law Office** at Jalan Tengku Amir Hamzah Nomor 52B Lantai II Sei Agul, Medan, Sumatera Utara Province, Telephone (061) 635149/Facsimile (061) 6639170 under Special Proxy dated

November 29, 2008, acting for and behalf of the Principal, 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 South Tapanuli Regency;

Having carefully examined the evidence from the Petitioner, Respondent, and Related Party the Elected Candidate Pair for Regent and Deputy Regent of Padang Lawas;

Having heard the witness testimony from the Petitioner, Respondent, and Related Party the Elected Candidate Pair for Regent and Deputy Regent of Padang Lawas;

Having read the written conclusions from the Petitioner and Respondent;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the main issue of the petition of Petitioner was an objection to the Decision of the General Election Commission of South Tapanuli Regency Number 084 of 2008 dated December 5, 2008 concerning Stipulation of Recapitulated Vote Count for the Second Round of the 2008 General Election for the Head of Region and Deputy Head of Region of Padang Lawas Regency, which stipulated that the Petitioner received 44,469 votes below the vote received by the Serial Number 7 Candidate Pair who received 51,411 votes;

[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 1934 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, one of the constitutional authorities of the Court is to rule on a dispute concerning general election results;

Initially, under the provision of Article 106 paragraphs (1) and (2) of Law Number 32 of 2004 on 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 on 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 Padang Lawas Regency pursuant to Decision of the General Election Commission of South Tapanuli Regency Number 084 Year 2008 dated December 5, 2008 concerning Stipulation of Recapitulated Vote Count for the Second Round of the 2008 General Election for the Head of Region and Deputy Head of Region of Padang Lawas Regency, 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 on 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 a Candidate Pair of Regent and Deputy Regent of Padang Lawas Regency, who was stipulated by the Respondent as Serial Number 2 Candidate Pair as per Decision of the General Election Commission of South Tapanuli Regency Number 60 of 2008 dated October 24, 2008 concerning Stipulation of the Candidate Pair for General

- Election for Head of Region and Deputy Head of Region of Padang Lawas Regency, Second Round, 2008 (evidence T-1); General Election for Head of Region
- whereas the petition filed by the Petitioner was an objection to the Decision of the General Election Commission for Head of Region and Deputy Head of Region of South Tapanuli Regency Number 084 of 2008 dated December 5, 2008 concerning Stipulation of the Recapitulated Vote Count Result for the General Election for the Head of Region and Deputy Head of Region of Padang Lawas Regency Round II of 2008 (Evidence P-3=T-3). Said objection was due to the fact that the Petitioner had erroneously been stipulated to receive only 44,469 votes, ranking them second below the Serial Number 7 Candidate Pair Basyrah Lubis, SH., and H. Ali Sutan Harahap (STO) who ranked first with 51,411 votes;
 - 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 Padang Lawas Regency, North Sumatera Province of 2008 done by the Respondent was stipulated by Decision of the General Election Commission of South Tapanuli Regency Number 084 of 2008 dated December 5, 2008, while the objection petition was

filed to the Court on December 11, 2008 under Deed of Receipt of Petition Dossier Number 116/PAN.MK/XII/2008, which was later registered on December 12, 2008 with Number 55/PHPU.D-VI/2008;

Considering whereas in the petition *a quo*, the South Tapanuli Regency KPU determined the vote total of each Candidate Pair on Friday, December 5, 2008.

Considering whereas Saturday, December 6, 2008, Sunday, December 7, 2008, and Monday, December 8, 2008 were not business days, since Saturday and Sunday were not business days, while Monday, December 8, 2008 was a national holiday in the context of the Eid-ul-Adha Holiday of Year 1429 H, therefore December 6, 2008 until December 8, 2008 were not business days;

Considering whereas the three business days after the Respondent determined the vote total of each Candidate Pair were Tuesday, December 9, 2008, Wednesday, December 10, 2008, and Thursday, December 11, 2008, therefore pursuant to the provision of Article 5 of PMK 15/2008 which determined 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 remained within the determined time frame;

[3.8] Considering whereas the Court had the authority to hear the petition *a quo* and the Petitioner had 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, 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, the Court shall consider the Principal Issue of the Case;

Principal Issue of the Case

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

[3.9.1] 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 Padang Lawas Regency with Serial Number 2 under the Decision of the General Election Commission of South Tapanuli Regency Number 15 of 2008 concerning Stipulation of the Candidate Pair for the Head of Region and Deputy Head of Region of Padang Lawas Regency into Nominees for the Head of Region and Deputy Head of Region of Padang Lawas Regency Year 2008;

[3.9.2] Whereas the Petitioner objected to the Stipulation of the General Election Commission of South Tapanuli Regency Number 084 of 2008 concerning Stipulation of the Recapitulated Vote Count for the Second Round of the 2008 General Election for Head of Region and Deputy Head of Region of Padang Lawas Regency, since the result of the count performed by the

Respondent had been erroneous or at least contained an error in recapitulating the vote count result, for reasons that were in principle as follows:

- (1) Did not supply a C-KWK Model to the witnesses, since out of the 428 existing voting booths (TPS) in the General Election for Head of Region of Padang Lawas Regency, a great number of the mandatory witnesses from the Petitioner did not receive a C-KWK Model that constituted the Petitioner's right;
- (2) There was a difference in the Permanent Voter Register (DPT) in Round I of the General Election for Head of Region from that in Round II of the General Election for Head of Region, despite the fact that as per the decision of Respondent, the DPT for Round I of the General Election for Head of Region was to be used without any changes for Round II of the General Election for Head of Region;
- (3) There were fraudulent acts in the form of erroneous notes or completion of the C1-KWK Model and DA1-KWK Model, at several polling locations;
- (4) Some members of the public did not receive a "Notice of the Place and Time for Polls" to vote on the voting day despite being registered as voters in the DPT;
- (5) There were registered voters in the DPT who voted twice;
- (6) There were unmarried minors who also voted;
- (7) There was goods or money given to voters with the promise that they would have to vote for the Serial Number 7 Candidate Pair in the name of Basyrah Lubis, S.H. and H. Ali Sutan Harahap;

- (8) There was intimidation by the Campaign Team of the Serial Number 7 Candidate Pair to members of the public so they would vote for the Serial Number 7 Candidate Pair named Basyrah Lubis, S.H. and H. Ali Sutan Harahap;
- (9) Some people were not registered as permanent voters and thus did not receive an invite to vote, but they were still able to vote, using another voter's name;

[3.9.3] whereas in addition to the matters related to the received votes, the Petitioner also stated that Basyrah Lubis, H.S. (Elected Candidate Pair) had been tried in a criminal case of document falsification which was subject to a penalty of six years of imprisonment, which was adjudicated or convicted with a Ruling of the District Court of Padangsidempuan Number 171/Pid.B/2007/PN.Psp (evidence P.73);

[3.10] Considering whereas with regard to the petition of Petitioner, the Respondent submitted a written reply at the hearing on December 17, 2008, the full content of which was already mentioned in the Principal Issue of the Case, in which in principal the Respondent expressly rejected the entire arguments presented by the Petitioner in the Petition *a quo*, except for those recognized expressly by the Respondent in this reply;

1. The Petitioner argument which claimed that many of the Petitioner witnesses at the voting booths did not receive a C-KWK Model from the KPPS was entirely untrue, since pursuant to the provision of Article 96 paragraph (10) of

- Law Number 32 of 2004 *juncto* Article 83 paragraph 11 of Government Regulation Number 6 Year 2005, the present witnesses from each Round II Candidate Pair for the Head of Region and Deputy Head of Region of Padang Lawas Regency of 2008 received a copy of the official report and the vote count result certificate (C-KWK Model) from the KPSS after the voting at the TPS was completed;
2. It is not true that the Respondent had made changes to the DPT as the Petitioner argued. What the Respondent did was to reassign the number of voters from the DPT at voting booths with a total number of voters that exceeded the quota capacity of 600 voters to the nearest voting booth with a total number of voters that did not reach or was below the quota of 600 voters (*vide* Law Number 8 Year 2006 concerning Stipulation of Government Regulation in lieu of Law Number 3 Year 2005 concerning Amendment to Law Number 32 Year 2004 concerning Local Governance into Law);
 3. Committed a fraud by making notes or completing the DA1-KWK Model erroneously, based on the correction by the Respondent of Model DA1-KWK Form, these were only notes that did not affect the vote total of each Candidate Pair;
 4. The Petitioner argument which said that there were members of the public who did not receive a Notice of the Place and Time for Polls was not true; if any member of the public had not received a notice, he/she could present himself/herself at the voting booth where he/she was registered by bringing and producing an identification to be matched against the DPT;

5. The Petitioner argument concerning the existence of registered voters who voted more than once was an admission of a General Election-related criminal offense that should have been reported to the General Election Oversight Committee of Padang Lawas Regency to be processed under the provision of Article 117 paragraphs (2) and (4) of Law Number 32 of 2004 and the offence may not be delegated as a wrongdoing committed by the Respondent;
6. The Petitioner argument which said that there was a member of the public named Rizaluddin in Parannapa Jae, Barumun Tengah Subdistrict who certified that he had never signed an Official Report of the Second Round of General Election for the Head of Region of Padang Lawas Regency is untrue;
7. The Petitioner argument concerning the giving of goods or money to voters to vote for the Serial Number 7 Candidate Pair was beyond the competence of the Respondent to act upon; rather, it fell below the competence of the General Election Oversight Committee of Padang Lawas Regency. Furthermore, to date the criminal offense referred to by the Petitioner *a quo* was never filed to the Respondent, so the Respondent had no knowledge of said criminal offense.
8. The alleged intimidation by the Campaign Team of the Serial Number 7 Candidate Pair to members of the public so they would vote for the Serial Number 7 Candidate Pair named Imran Harahap and Juda Hasibuan at Barumun Subdistrict, as per the Petitioner argument, was

- still being investigated by the General Election Oversight Committee for verification;
9. The existence of unregistered persons in the DPT who nonetheless were able to vote using other voters' names, which according to the Petitioner on the errors committed by the Respondent had been reported to the General Election Oversight Committee for Padang Lawas Regency on December 7, 2008 pursuant to the Proof of Receipt of Report Number 19/PNWS-PALAS/XII/2008. Regarding the Petitioner report *a quo*, the General Election Oversight Committee had the authority and obligation to receive and act upon the Petitioner report *a quo* pursuant to the provisions of Article 78 paragraph (2) and Article 79 letter c of Law Number 22 of 2007; to date, however, the General Election Oversight Committee of Padang Lawas had not acted upon nor forwarded the result of its investigation to the Respondent pursuant to the provisions of Article 78 letters c, d, and e of Law Number 22 of 2007; therefore the Petitioner report *a quo* could not be used as grounds that the Respondent had committed an error or violation of the procedural stages of Round II of the 2008 General Election for the Head of Region of Padang Lawas Regency;
 10. Whereas with regard to the Petitioner argument which positioned the Respondent as favoring the Related Candidate Pair due to the fact that there was Ruling of the District Court of Padangsidempuan Number 171/Pid.B/2007/ PN.Psp on Basyrah Lubis, S.H., had no reasons since

to date the ruling had not received any permanent legal force (*vide* Article 58 letter f of Law Number 12 Year 2008);

Based on the above reasons and elaborations, the Respondent requested the Court hearing and adjudicating the case *a quo* to issue a ruling that would reject the petition of Petitioner in its entirety;

[3.11] Considering whereas to reinforce the arguments of its petition, the Petitioner had submitted both written evidence (evidences P-1 to P-296) and 17 witnesses whose testimonies had been heard under oath at the hearings on December 18, 2008 and December 22, 2008, the full content of which was included in the Principal Issue of the case, in principle as follows:

1. Witness Mahmud Ibrahim Nasution;

§ The Witness was a witness of Serial Number 2 Candidate Pair (Petitioner) from Sosopan Subdistrict, who testified that a Sosopan Subdistrict Civil Servant (PNS) named Zulkarnain Nasution, had told the witness to support Serial Number 7 Candidate Pair (Elected Candidate Pair) and if he failed to support Serial Number 7 Candidate Pair, the witness and his children would not be barred from becoming local honorarium-based employee, national honorarium-based employee, or a Civil Servant, and out of fear, the witness eventually voted for Serial Number 7 Candidate Pair.

2. Witness H. Muhammad Tengku Paruhun Hasibuan

§ The Witness as the Head of Campaign Team for Petitioner from Ujung Batu II Village and acted as a witness for Serial Number 2 Candidate Pair at TPS 3 of Ujung Batu II Village testified that the witness saw many irregularities faced in the General Election for the Head of Region of Padang Lawas Regency, such as:

- There was a change in the Permanent Voter Register (DPT) between the DPT for Round I of the General Election for Head of Region and that for Round II of the General Election for Head of Region, although said DPT may not be changed, added to or reduced;
- At Tanjung Morang Village, there was a discrepancy between the Round I DPT and the Round II DPT, with 176 more people as occurred at Hapung Village, where there were 38 changed names in the DPT;
- A letter of invitation to vote (form C.6) was distributed to voters accompanied by a persuasion to vote for the symbol of the Serial Number 7 Candidate Pair;
- At Siraisan Village, there were voters who still voted in Round II but were not further included in Round II;

- The people permitted to exercise their voting rights should have been those who were named in the DPT and received an invite or form C.6. At TPS 1 to 3 of Ujung Batu II Village, however, only 164 of the Voters who had voted matched the names in the DPT, while 228 did not have a match. Furthermore, there were 28 people who voted twice at the TPS. A similar occurrence happened at TPS 2 of Ujung Batu II village, but the witness had forgotten the numbers;
- Based on the evidence of Form C-6 and DPT at TPS 1 to 3 of Ujung Batu II Village, there were discrepancies, i.e. names who were registered in the DPT did not match the names in the invite or the received Form C-6;

3. Witness Muhamad Syafei Harahap

§ The witness as witness from Serial Number 2 Candidate Pair testified that violations had occurred such as,

- There was a vote exaggeration in Barumon Tengah Subdistrict
- In Sausa Subdistrict, a teacher (Civil Servant) scouted for a number of people to be given Forms C-6 to vote at another TPS and vote for the Serial Number 7

Candidate Pair, with rewards ranging from Rp.25,000.00 to Rp.50,000.00 per person;

- The report received and also relayed by the witness to KPU at the time, that the Regional Secretary of Padangsidempuan City named Sarmada Hasibuan was encountered at large at Tandiat Village, Ulu Barumun Village, to influence the community to vote for the Serial Number 7 Candidate Pair.

4. Witness H. Syamsul Bahri Harahap

§ The witness testified to have received a report from his member, that the Regional Secretary of Padangsidempuan City named Sarmada Hasibuan was in Ulu Baru Village at 01.00 a.m. West Indonesia Time. The witness subsequently met and spoke with Sarmadan Hasibuan at Tandiat Village at the edge of the Suspension Bridge, and when the witness looked into his car, the witness saw a bag containing money. The witness told Sarmadan Hasibuan at the time not to interfere with the Election for the Head of Region of North Padang Lawas, especially given that Sarmadan Hasibuan was a state official;

5. Witness Hajahudin Harahap

§ The witness related that on Monday, November 2, 2008 at 7.00 p.m. West Indonesia Time, Basyrah Lubis, S.H., Serial Number 7 Candidate Pair conducted a socialization at Pasir Lombang Village, Barumon Tengah Subdistrict at the house of the Padang Hasior Lombang Village Chief named Gulmat Harahap, attended by Village Chiefs and community leaders. There Basyrah Lubis, S.H., requested the community of five villages – Padang Hasior Lombang Village, Padang Hasir Dolok Village, Sitadatada Village, Lubuk Goting Village, and Parandolok village – to cast their vote for the Serial Number 7 Candidate Pair on December 3, 2008, promising that if the Serial Number 7 Candidate Pair were to win the 2008-2013 General Election for Head of Region by 75% of the votes, Basyrah Lubis, S.H. would be willing to help incorporate the community in the five villages into the Padang Lawas Utara Regency, and the Sihapas Village area into the Padang Lawas Utara Regency, since the Sihapas area bordered that of North Padang Lawas Utara (Paluta), claiming that he was ready for “*dibottari dan dilomlomi*” (painted white or painted black) with the trade-off being that the Village Chiefs of the five villages would be willing to help Basyrah Lubis, S.H. win the General Election for Head of Region on December 3,

2008 and eventually the Serial Number 7 Candidate Pair (Basyrah Lubis, S.H.) won by 85% at the five villages;

§ The witness also saw a “political contract” between Basyrah Lubis, S.H. and five Village Chiefs and when the witness asked for a photocopy of it, the Padang Hasir Dolok Village Chief Hasayangan Harahap promised to photocopy it the next morning. In the morning of the next day, he said that the letter had gone missing;

§ The witness also related to have personally seen a person named Sukur Siregar, a resident of Gunung Beringin Cluster, Padang Hasir Lombang Village being given Rp.50,000.00 by Tua Harahap, a resident of Baringin Cluster, Padang Hasir Lombang Village, with the message that the former would vote for the Serial Number 7 Candidate Pair on December 3, 2008;

§ Two residents of Padang Hasir Lombang Villages named Anto Siregar and Nurjannah, admitted to the witness, that they had been registered at the Padang Hasir Lombang Village DPT and also registered at Parandolok Village, and admitting that in addition to voting at the Parandolok Village TPS, they voted further at the Padang Hasir Lombang Village TPS;

- § Upon conclusion of the socialization at Selenjeng Village on Sunday at 3.00 p.m. West Indonesia Time, a member of Basyrah Lubis, S.H.'s group gave Rp.50,000.00 to the witness with the message, "*To be remembered on December 3*". (December 3 was the election day for Head of Region and Deputy Head of Region of Padang Lawas Regency). The money was given by a person from the Campaign Team or Basyrah Lubis's group, which the witness knew because the person went out of the Basyrah Lubis group's Strada 4x4 car. The witness did not know the person nor his name, but saw him when the witness was requested to give opening remarks to welcome the Serial Number 7 Candidate Pair at Selenjeng Village. At the socialization, the witness related that if Basyrah Lubis was willing to enter into a political contract, among other things, *Firstly* willing to incorporate the Sihapas area into the North Padang Lawas region. *Secondly* Basyrah Lubis would appoint a native person as a Local Regional Secretary. *Thirdly*, he would speed up the construction of road and bridge facilities and infrastructure, then the witness would vote for him;
- § The witness knew that accepting money was prohibited, but since he was in need of money at the time, the witness

accepted the money even though he went on to vote for the Serial Number 2 Candidate Pair despite not receiving any money from the Serial Number 2 Candidate Pair to date;

6. Witness Basarudin S. Hasibuan

§ The Witness as Secretary of the Campaign Team for Serial Number 2 Candidate Pair testified that on December 5, 2008, the witness received an invitation from KPUD to witness and attend a Vote Counting Plenary Meeting for the 2008 General Election for the Head of Region of Padang Lawas Regency;

§ At the time of its announcement, the total number of voters who exercised their voting right, voters who did not exercise their voting right, voters from other TPS, the total erroneous or damaged votes, and total number of valid votes had all been recorded and matched by the witness against the DA KWK Model form and turned out to have matched; on December 8, 2008, however, the witness received a recapitulated count report from KPUD, Model DB KWK in which some things had changed. One of them was that at Barumun Subdistrict, the total number of voters who exercised their voting right was 22,566 people, while 22,570

people were in attendance, which meant that the figure was supplemented by four people from other TPS;

§ The total attendance was 22,570 people, but the number of valid (used) ballots was 22,577, so there was an exaggeration of seven votes;

§ At Barumun Tengah Subdistrict, a total of 210 voters were present or 210 votes, but there were more valid votes than voters who attended;

§ Many DPTs were changed, such as at Hapung Village, with the two last pages of the DPT missing, and some names having changed;

§ Furthermore, witness also testified that on D-day at about 3.00 a.m. West Indonesia Time, the witness encountered Sarmadan Hasibuan, the interim Secretary of Padangsidempuan City having coffee at Paringonan Village, and asked the latter why he was on duty at 3 a.m. While the witness was sitting at the same table as Sarmadan Hasibuan, he did not know the full content of the latter's discussion;

§ At Kutaraja Tinggi Subdistrict, the witness found a DA form that was blank but already signed by the PPK and already sent to KPU;

§ Everything that the witness reported to KPUD had also been reported to the Oversight Committee, but there had been no follow-up from the Oversight Committee to date;

7. Witness Marwan Harahap

§ The witness testified that at TPS 10 of Barumun Subdistrict, there were voters who had summons but were not registered in the DPT. Furthermore, there was a voter named Andi Latifah, still a minor and in the third year of junior high school, who also voted and was escorted by government officials. Such was also the case with a voter named Rita Sikumbang, who had not voted in Round I but came to vote at TPS 10 using an invite under the name of Zuraidah Nasution;

8. Witness Mukmin Sentosa

§ The witness testified that he had been instructed by Jufri Hasibuan to cast his vote for the Serial Number 7 Candidate Pair at TPS 3 in Pasar Ujung Batu. While the witness said that he had cast his vote and his hand had been marked with ink, the witness was still persuaded with a reward of Rp.50,000.00 nonetheless. Jufri Hasibuan then said that it would not be an issue and the officers would not notice.

Then Jufri Hasibuan took a blade to scrape the ink off the witness's hand. The witness also did not know Jufri's relationship with the related party as Elected Regent Candidate;

9. Witness Miskan Dianto

§ The witness who came from Trans Aliaga Ujung Batu II Village, Kuta Raja Tinggi Subdistrict testified that at TPS 3 of Ujung Batu II Village, there was an individual named Syahril Nasution who despite being unregistered in the DPT for TPS 3 of Ujung Batu II Village was listed in the DPT at unit I of Ujung Batu I Village and Syahril Nasution had cast his vote at TPS 3 of Ujung Batu II Village. He should have done so at Unit I of Ujung Batu I Village;

10. Witness Girin

§ The witness was a community leader from Trans Aliaga Ujung Batu II Village, Hutaraja Tinggi Subdistrict. He testified as elaborated by witness Miskan Dianto, that Syahril Nasution was a resident of Ujung Batu I Village, but cast his vote at TPS 3 of Ujung Batu II Village.

§ Furthermore, there was a woman named Mrs. Suyanto who insisted on voting twice, but the witness's friend, Miskan

Dianto kept her from doing so and reported her to the PPS officer so it did not come to happen;

§ The witness examined the DPT and attendance list at TPS 3 of the witness's village. On the lists, there were 200 people whose names were not listed in the DPT who voted at TPS 3;

11. Witness Rahmad D. Hasibuan

§ The witness as a supporter of Serial Number 2 Candidate Pair who came from Pasar Binanga Village, Barumun Tengah Subdistrict, testified on the fraudulent acts that occurred including on the witness's wife named Purnama Harahap who did not receive any voting invite (form C-6). This also occurred at TPS 2 of Pasar Binanga Village: an individual was given a Form C-6 that was not in his name but rather another person's, i.e. Purnama Daulay;

12. Witness Rosidin Pulungan

§ The witness was a resident of Siresan Village, Ulu Barumun Subdistrict, the Village Coordinator for Serial Number 2 Candidate Pair, who testified that he had found irregularities in the proceedings of the General Election for the Head of

Region of Padang Lawas, namely that many Siresan Village residents voted in Round I but did not vote in Round II;

§ Members of PPS and KPS were stalling for time by leafing through the DPT; eventually at 1.00 p.m. West Indonesia Time, the TPS was closed and the residents could no longer vote, even though there were still many voters who were going to vote;

13. Witness Rizaluddin

§ The witness who was the witness for Serial Number 2 Candidate Pair testified that at the proceedings of the General Election for Head of Region in TPS 1 of Pranapajae Village, Barumon Tengah Subdistrict there were a number of occurrences, such as:

- 172 people were in attendance and registered in the attendance list, while there were 174 ballots in the ballot box, so there were two extra votes;
- There were minors among the voters;
- There was a voter at Pranapajae Village who was registered in the DPT at two locations: Pranapajae Village and Hutabargot Village, Barumon Tengah Subdistrict;

- All witnesses for Serial Number 2 Candidate Pair at Round II of the General Election for the Head of Region in Pranapajae Village were not willing to sign the Form C.1 official report, because they did not endorse the vote count result;

14. Witness Samsir Harahap

- § The witness testified to having received Rp.60,000.00 from Juman Harahap who threatened that if the witness would not vote for the Serial Number 7 Candidate Pair, the witness would be laid off from his job;

15. Witness Jefri Saputra

- § The witness testified that there was an individual named Jufri Hasibuan who invited the witness along to cast his vote for the Serial Number 7 Candidate Pair at TPS 3 of Pasar Ujung Batu Village, for a reward of Rp.50,000.00 to be shared with Mukmin Santosa. Although the witness had explained that he had voted and there was ink on his hand, Jufri Hasibuan persisted and said that it would not be an issue. Then Jufri Hasibuan took a blade and scraped the ink off the witness's hand;

§ The witness did not know of Jufri Hasibuan's relationship with Basyrah Lubis as the Elected Regent Candidate;

16. Witness Fitri Linawati

§ The witness as a member of the KPU of South Tapanuli Regency testified that in addition to acting as the organizer of the General Election for the Head of Region of Padang Lawas Regency, at the same time the institution also had to organize a General Election for Head of Region in South Tapanuli Regency and Padang Lawas Utara Regency;

§ The term of office as KPU member should have ended in June 2008. of the five KPU members, one did not have his/her term renewed, so four people remained including the witness. Due to the creation of two new regencies and no KPU existing at the two regencies, the General Election for Head of Region should continue to be organized by the KPU of South Tapanuli Regency by forming a KPU secretariat in Padang Lawas Regency and North Padang Lawas Regency;

§ There was an issue of lack of funds, until the commencement of the stages of the General Election for Head of Region, resulting in inadequate socialization. What could not be carried out was socialization to voters, especially socialization that they had the right to register at

the PPS. The formation of the PPK General Election for Head of Region organizer and voter data updating were performed before the commission received any honorarium, so there were administrative errors at PPS level and leaving many community members unregistered. This was not a fraud, but rather an administrative error;

§ The work meetings that should have been held twice for PPK, PPS, and KPPS, were not optimized due to lack of funds, so the lacking human resource quality could not be improved;

§ The fund was late in being delivered, and despite its disbursement, some was still outstanding to date; up to the stage of Provisional Voter Register (DPS), the fund was still unavailable;

§ During the distribution, the first phase of fund disbursement had taken place, but it was not sufficient to cover the needs; nevertheless, the distribution had been equitable;

§ The witness also prepared a statement (evidence P-26.2), which stated that many of the processes were not conducted properly, such as the decision making mechanism at KPU which should have gone through a plenary meeting; yet some decisions had been made without going through a

plenary meeting but rather made by the KPU Chairperson by himself, such as:

- Stipulation of the Third Revision of the phase-based program and the schedule for General Election for Head of Region rounds;
- Stipulation of total number of ballots;
- Stipulation of total number of voter cards;
- Fund disbursement and distribution process;
- Stipulation of completion procedure for Form DB KWK attachment 1 according to the DA KWK Model;

§ The Round I DPT was a DPT that was also used in Round II. No changes were allowed since it had been stipulated that Round I DPT would be the same as Round II DPT;

§ At some sub-districts, the number of voters who were in attendance at the TPS was different from the total number of ballots used, including the invalid ballots. The difference was 206 ballots, one of them in Barumon Tengah Subdistrict. A recapitulation of the vote count at PPK level resulted in a difference. To the witness's knowledge, this had not been amended by the PPK, but was already ratified by KPU;

§ The witness stated that evidence P-7 and evidence P-7A were different; the correct one was evidence P-7A;

- § The witness was present at the stipulation of the vote count recapitulation by KPU. At the time, no official report was signed, since some errors in the DB model still remained;
- § Despite the fact that no one signed the recapitulation, it remained valid;
- § There was an error that caused a delay to the stipulation of the stipulated result; namely, because there were five districts including Barumun Tengah Subdistrict experienced a difference between the DB model and the DA 1 KWK model;

17. Witness Ansor Harahap

- § The witness as a witness for Serial Number 2 Candidate Pair who had been appointed as the Head of the Administration and Secretariat Division of the Petitioner's Campaign testified that he had received a report from the witness and the Campaign Team, that there was a violation in TPS I, II and III of Kuta Raja Tinggi Subdistrict, with many C6 forms not matching the names in the DPT. At TPS I, there were 315 people who voted but were not registered in the DPT; there were 323 at TPS II; 282 at TPS III;
- § In the distribution of Form C6 at the aforesaid TPS, only one form was considered authentic, since there was a difference

with the other sheets. A comparison to the C1-KWK model had previously been made;

§ Slamet as a member of the Petitioner's campaign team reported the violations to the Oversight Committee, but no follow-up had been done;

§ There was a report in Hapung Village, Sosa Subdistrict, of a similar Issue: only at Ujung Batu II Village did the witness examine the C6 carefully;

§ There was a vote exaggeration at Siparaung village, with the C1 KWK model being different from the DPT;

§ The witness did not know of any voter reassigning from TPS I to TPS 6;

§ After vote counting was completed, the C6 Form was held by KPPS; the witness received the C6 form from the witnesses at the TPS;

§ The witnesses received evidence from Slamet in the form of the C6 form after the vote count;

[3.12] Considering whereas to corroborate its argument, the Respondent had submitted affidavits marked as evidence T-1 to T-45, and four witnesses whose testimony had been heard under oath at the hearing on December 22, 2008, the full content of which was included in the Principal Issue of the Case in principal testifying the following:

1. Witness Raja Mahmud Lubis

§ The witness as the Chairman of PPK for Sosa Subdistrict testified that there were no issues in the proceedings of the General Election for Head of Region, and all of the witnesses had signed the official report up to its delivery to KPU, with no objections. The winning candidate in Sosa Subdistrict was the Serial Number 7 Candidate Pair;

§ The witness did not know that there were voters who voted but had not been registered in the DPT and what occurred at the TPS;

§ The recapitulated result for Sosa Subdistrict revealed that the Serial Number 2 Candidate Pair (Petitioner) received 6,152 votes, the Serial Number 7 Candidate Pair 7,027 votes;

§ Furthermore, the witness also testified that there was no change in the number of DPT at Sosa Subdistrict, nor did he know that there were 107 voters from TPS 4 who moved to another TPS;

2. Witness Parlagutan Lubis

§ The witness testified that there was no change to the DPT in Barumon Subdistrict, and the election stage went smoothly, with no objections. The witness for Serial Number 2 Candidate Pair did not sign the official report, because by 00:00 West Indonesia Time, the Candidate Pair witness had left the plenary meeting;

- § All of the forms were fully completed at KPPS level. Some errors were indeed encountered, but they had been corrected after submission to KPU;
- § What changed was that the incoming ballots and the voter register did not match, hence the recount, and duly corrected; but the vote result for each Candidate Pair was not changed, and the change was performed without the presence of the Chairman of KPPS. Furthermore, the witness also testified that no changes were made to the DPT in Round II. The data conveyed to the PPS were compliant with Round I. The registered voters according to DPT II were 28,166 people;
- § Vote count at PPK was performed on December 3, 2008, while a recapitulation of the voting was received from TPS by December 3, 2008 at 3:00 p.m. West Indonesia Time;
- § The count at KPU was carried out on December 5, 2008 to correct the previously corrected DPT count. The corrections were made after counting at KPU improved on the previously corrected DPT count;

3. Witness Rahmat Fauzan

- § The witness as Chairman of PPS at Pasarsibuhuan *Kelurahan* testified that the proceedings of the General Election for Head of Region at the Pasarsibuhuan *Kelurahan* TPS went successfully.

There were no changes in Round I and Round II DPTs at the TPS covered by the witness and no objections expressed by the witness of the candidate pairs;

4. Witness Armezy Zakfar

§ The witness as *Lurah* of Pasarsibuhuan and PPS and PPK Facilitator testified that the proceedings of Round II of the General Election for Head of Region in Pasarsibuhuan *Kelurahan*, Padang Lawas Regency were carried on in a safe, orderly, and conducive manner. There were no money politics of any kind at the *kelurahan* led by the witness. The *kelurahan* only wrote to the neighborhood chief to update data. No fraudulent acts occurred, be they reported or known by the witness;

[3.13] Considering whereas with regard to the petition of Petitioner the Elected Related Party Candidate Regent and Deputy Regent Head of Region and Local Representative of Padang Lawas regency, written evidence had been submitted marked as evidence PT-1 to PT-231, and nine witnesses had been heard under oath at the hearing dated December 22, 2008, the full content of which was set out in the Principal Issue of the Case.

Opinion of the Court

[3.14] Considering whereas upon reviewing the elaboration of the petition and the arguments expressed by the Petitioner, evidence in the form of the

Petitioner's documents, testimony of the Petitioner's witnesses, the Respondent's Reply, evidence in the form of the Respondent's documents, and evidence in the form of documents and testimony of the witnesses of the Related Party Elected Regent and Deputy Regent Candidate Pair of Padang Lawas Regency, the Court is of the following opinion:

1. Regarding the argument that the Respondent did not give the C-KWK Model to the witnesses including the Petitioner witnesses, the content of the form remained valid unless it could be proven otherwise, and this would not significantly cause the Serial Number 2 Candidate Pair (Petitioner) to receive more votes than the Elected Candidate Pair;
2. Regarding the argument that there was a reduction of the total voters by 41, with the Round I DPT listing 641 people, but the Round II DPT listing 600 [Evidence P-14], the reduced voter total was in line with the testimony of the Respondent and the provision of Article 78 paragraph (1) of Government Regulation Number 17 of 2005 concerning Amendment to Government Regulation Number 6 of 2005 concerning the Election, Appointment Ratification, and Discharge of Head of Region and Deputy Head of Region, "*The total number of voters at TPS shall be up to six hundred (600) persons*", therefore if the 41 persons were reassigned to another TPS, according to the Court, it would not be a mistake. Even if the reassignment was erroneous, it was not significant enough to affect the election of a candidate pair as head of region and deputy head of region.

Furthermore, it could not be automatically assumed that these 41 persons would have voted for the Petitioner;

3. Regarding the argument that the Respondent had committed a fraud by making notes or completing the C1-KWK Model and DA1-KWK Model erroneously, according to the Court, the argument was not supported by sufficient evidence. The Petitioner argument had been denied by the Respondent and supported by witness testimony from the Respondent, Fitri Linawati, who testified that the error was an administrative error that did not constitute a fraud. Therefore, the argument had no sufficient grounds;
4. With regard to the argument that there were members of the public who did not receive a Notice of the Place and Time for Polls despite being registered in the DPT, the Court is of the opinion that in the event that members of the public did not receive an invitation to vote, the members of the public in question should have proactively visited the TPS since even if they did not receive the invitation to vote, if they were registered in the DPT, according to the regulation, they would be able to vote at the TPS where they were registered in the DPT by producing their Identity Card (KTP) or other identification. Furthermore, the number of the members of the public who did not vote did not significantly affect the vote totals of either Candidate Pairs, and would not be automatically assumed to have voted for the Petitioner. Therefore, the argument had no grounds;

5. With regard to the argument that there were registered voters in the DPT who voted twice, the Court is of the opinion that the number of voters who voted twice did not significantly affect the vote totals of either Candidate Pairs; furthermore, it was not known which candidate pair they would have voted for. Therefore, the argument had no grounds;
6. With regard to the argument that there were unmarried minors who also voted, the Court is of the opinion that the matter fell under the competence of the General Election Oversight Committee to follow up. Furthermore, the number of underage voters did not significantly affect the vote totals of either Candidate Pairs, thus the argument would have to be set aside;
7. With regard to the argument that goods or money had been given to voters with the promise that they would have to vote for the Serial Number 7 Candidate Pair (Elected Candidate Pair), the Court is of the opinion that the act should have been reported to the General Election Oversight Committee since it constituted a criminal act, and the General Election Oversight Committee would refer it to the investigator for an investigation that would conclude with a court ruling within the general jurisprudence. Furthermore, even if this had been true, the act was not significant enough to change the elected candidate pair;
8. With regard to the argument that there was intimidation by the Campaign Team of the Serial Number 7 Candidate Pair to members of the public

so they would vote for the Serial Number 7 Candidate Pair (Elected Candidate Pair), the Court is of the opinion that the act fell under the competence of the General Election Oversight Committee to follow up and refer to the investigator and subsequently be subjected to proceedings up to the court;

9. With regard to the argument that some people were not registered as permanent voters and thus did not receive an invite to vote, but were still able to vote using another voter's name, the Court is of the opinion that the matter fell under the competence of the General Election Oversight Committee to follow up and refer to the investigator and subsequently be subjected to proceedings up to the court. Even if the votes of the ineligible voters had been calculated and granted to the Petitioner, it would not have changed the vote totals in any significant manner;

[3.15] Considering whereas based on the evidence revealed before the hearing, the Court is of the judgment that despite any proof of violations against the procedure of General Election for the Head of Region of Padang Lawas Regency, the violations were not massive, structured, and planned. Of the violations argued by the Petitioner, the Court turns out to be of the opinion that the total number of invalid votes that had been counted into the vote total of the Elected Candidate, only 3,327 votes should not have been counted;

[3.16] Considering whereas even if the vote totals of the Elected Candidate Pair of 51,411 votes had been deducted by 3,327 votes which according to the petitioner had been gained by the Elected Candidate Pair in an illegitimate manner as elaborated in the Petitioner petition which by the Court's count above amounted to 3,327, thus bringing down the total to 48,084 votes; and conversely, if the illegitimate votes had been added to the vote total of the petitioner, namely 44,469 votes added by 3,327 votes, the petitioner would have only received 47,796 votes, thus the vote totals of the Petitioner would have remained below that for the Serial Number 7 Candidate Pair (Elected Candidate Pair);

[3.17] Considering whereas with regard to the criminal ruling issued by the court against the Related Party (Basyrah Lubis, S.H.), namely Ruling Number 171/Pid.B/2007/PN.Psp (evidence P-73), according to the Court, the ruling had not received any permanent legal force as noted by the Registrar/Secretary of the District Court of Padang Sidempuan on page 66 of the photocopy of the ruling, thus it could not be used as evidence of the violation of one of the terms provided for by Article 58 letter f of Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance. Even if the criminal ruling in question had received permanent legal force, then pursuant to Article 30 paragraph (2) of Law Number 32 of 2004 concerning Local Governance, it would have been the competence of the President to discharge the individual in question from his post;

[3.18] Considering whereas based on the above considerations, the Court is of the judgment that the Petitioner has been unable to prove the argument and legal grounds for his petition;

4. **CONCLUSION**

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

[4.1] Whereas while a violation did occur in the proceedings of General Election for the Head of Region of Padang Lawas Regency, the violation was not massive, structured, and planned, thus not affecting the vote totals for the Elected Candidate Pair;

[4.2] Whereas the arguments of the Petitioner have not been proven in a legitimate and convincing manner;

5. **JUDICIAL VERDICT**

In view of the articles of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court, Law Number 4 of 2004 concerning Judicial Power, Law Number 32 of 2004 regarding Local Governance as amended most recently with Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance;

To adjudicate,

Rejecting the petition of Petitioner in its entirety.

Hence the decision was made in the Plenary Consultative Meeting of eight Constitutional Court Justices on Monday the fifth day of January two thousand and nine and was read out in a Plenary Session of the Constitutional Court open for the public on this Wednesday the seventh day of January two thousand and nine by us, the eight Constitutional Court Justices, namely Moh. Mahfud MD, as the Chairman and concurrent member, Muhammad Alim, Maruarar Siahaan, Achmad Sodiki, Abdul Mukthie Fadjar, M. Arsyad Sanusi, Maria Farida Indrati, and M. Akil Mochtar, respectively as Members and assisted by Fadzlun Budi SN as Substitute Registrar, and attended by the Petitioner and/or his Power of Attorney, Respondent and/or his Power of Attorney, and Related Party/his Power of Attorney.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD

MEMBERS,

Sgd.

Muhammad Alim

Sgd.

Maruarar Siahaan

Sgd.

Achmad Sodiki

Sgd.

A. Mukthie Fadjar

Sgd.

M. Arsyad Sanusi

Sgd.

Maria Farida Indrati

Sgd.

M. Akil Mochtar

SUBSTITUTE REGISTRAR,

Sgd.

Fadzlun Budi SN