



DECISION

Number 57/PHPU.D-VI/2008

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in the case of the Dispute on the Results of General Election of Regional Head and Deputy Regional Head of South Bengkulu Regency filed by:

- [1.2] 1. Name : **H. RESKAN EFFENDI**
Religion : Islam.
Occupation : Civil Servant.
Address : Jalan Kolonel Barlian Number 88, Manna,
South Bengkulu.
2. Name : **Dr. drh. Rohidin Mersyah, MMA,**
Religion : Islam
Occupation : Civil Servant.
Address : Jalan Bachmada Rustam Number 17, Manna,
South Bengkulu.

In this matter authorizing Dr. Andi Muhammad Asrun, S.H., M.H., and Bachtiar Sitanggang, S.H. Both of whom are Advocates having their office at "Muhammad Asrun & Partners (MAP) Law Firm" in PGRI Building, at Jalan Tanah Abang III Number 24, Central Jakarta, acting for and on behalf of the Authorizer, either severally or jointly by virtue of the Special Power of Attorney dated December 15, 2008;

Hereinafter referred to as ----- **Petitioners;**

Against:

[1.3] Name : General Election Commission of South Bengkulu Regency;

Address : Jalan Veteran Padang Kapuk Manna, South Bengkulu;

In this case authorizing Usin Abdisyah Putra Sembiring, S.H. and Nazlian R., S.H., Advocates at Bengkulu Association of Legal Aid Offices (*Perkumpulan Kantor Bantuan Hukum Bengkulu/PKBHB*) having their office at Jalan Kapuas Raya Number 27B, Padang Harapan Village, Gading Cempaka District, Bengkulu Municipality, acting for and on behalf of the Authorizer by virtue of the Special Power of Attorney dated December 16, 2008;

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

[1.4] Reading the Petitioners' petition;

Hearing the Petitioners' statement;

Hearing the statement and reading the Answer and Written Response of the Respondent, the South Bengkulu General Election Commission;

Hearing the statement and reading the Written Statement of the Related Party;

Examining thoroughly the evidence and witnesses of the Petitioners, Respondent and the Related Party;

Reading the written conclusions of the Petitioners, Respondent and Related Party;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the main problem of the Petitioners' petition is the objection to the result of the General Election of Regional Head and Deputy Regional Head (*Pemilukada*) of South Bengkulu Regency, based on the Decision of South Bengkulu General Election Commission Number 59 Year 2008 dated December 10, 2008 regarding the Stipulation of the Elected Candidate Pair of Regional Head and Deputy Regional Head of South Bengkulu Regency in the South Bengkulu Second Round *Pemilukada* Year 2008;

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

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

With respect to the aforementioned three matters, the Court is of the following opinion:

The Court's Authority

[3.3] Considering whereas based on the provision of Article 24C paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as 1945 Constitution), and Article 10 paragraph (1) subparagraph d of the Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316, hereinafter is referred to as the Constitutional Court Law) *unctis* Article 12 paragraph (1) subparagraph d of Law Number 4 Year 2004 regarding Judicial Power and Law Number 12 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, one of the Constitutional Court's authorities is to decide upon disputes on the results of general elections;

At first, based on the provision of Article 106 paragraphs (1) and (2) of Law Number 32 Year 2004 regarding Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437), an objection related to vote count result affecting the election of a pair of candidates shall be filed to the Supreme Court. Such Authority of the Supreme Court's is reaffirmed in Article 94 of Government Regulation Number 6 Year 2005 regarding Election, Appointment Legalization, Dismissal of Regional Head and Deputy Regional Head;

Article 1 sub-article 4 of Law Number 22 Year 2007 regarding the General Election Organizer (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) provides that, *“General Election of Head and Deputy Head of Region shall be the general election to elect Head and Deputy Head of Region directly in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia”*;

Article 236C of Law Number 12 Year regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government provides that *“The handling of disputes on the vote count results of the general election of head and deputy head of regency by the Supreme Court shall be transferred to the Constitutional Court no later than 18 (eighteen) months following the enactment of this Law”*;

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

[3.4] Considering whereas because the Petitioners' petition is concerned with a dispute on the vote count results of *Pemilukada*, namely the South Bengkulu *Pemilukada* under the Decision of South Bengkulu General Election Commission Number 59 Year 2008 regarding the Stipulation of the Elected Pair of Candidates of Head and Deputy Head of South Bengkulu Regency in the Second Round South Bengkulu *Pemilukada*, the Court has authority to examine, hear, and decide upon the *a quo* petition;

Petitioners' Legal Standing

[3.5] Considering whereas Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government, Articles 3 and 4 of Constitutional Court Regulation Number 15 Year 2008 regarding the Guidelines on the Proceedings in the Dispute on *Pemilukada* Results (hereinafter referred to as PMK 15/2008) provides, among other things, as follows:

- a. The Petitioners shall be the Pair of Candidates of Head and Deputy Head of Region
- b. The Petition shall only be filed against the stipulation of vote count results of *Pemilukada* influencing the determination of the pairs of candidates who

shall be able to participate in the second round *Pemilukada* or the election of a pair of candidates as Regional Head and Deputy Head.

[3.6] Considering whereas in relation to the Petitioners' legal standing, the Court shall consider the matter based on the provisions of Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government, Articles 3 and 4 of PMK 15/2008 as intended in paragraph **[3.5]** as follows:

- whereas the Petitioners are the Pair of Candidates of Regent and Deputy Regent of South Bengkulu Regency, in accordance with Decision of South Bengkulu General Election Commission Number 30 Year 2008 dated August 15, 2008 regarding the Stipulation of the Pair of Candidates of Regional Head and Deputy Head of To be Participants in the General Election of Regional Head and Deputy Regional Head of South Bengkulu Regency Year 2008;
- whereas the petition filed by the Petitioners is an objection to the Decision of South Bengkulu General Election Commission Number 59 Year 2008 regarding the Stipulation of the elected Pair of Candidates of Regional Head and Deputy Regional Head of South Bengkulu Regency in the Second Round South Bengkulu *Pemilukada*. The intended objection has been due to the fact that the Petitioners were stipulated to have obtained 36,566 votes only, while the Related Party obtained 39,069 votes;
- whereas according to the Petitioners, the Recapitulation of the Result of Vote Count conducted by the Respondent as mentioned above occurred

because of errors and violations during the *Pemilukada* implementation stages by unfair, unjust ways and which were full of massive, structured, planned fraudulent practices committed by the following ways:

- The Respondent has intentionally and illegally allowed a candidate of Head of South Bengkulu Regency in the name of H. Dirwan Mahmud who once served in prison for about seven years in Cipinang First Class Correctional Institution, East Jakarta (hereinafter referred to as *LP Klas I Cipinang*, East Jakarta);
- Allowing citizens who had voting right but who were not registered in the Temporary Voters Register (DPS) or Permanent Voters' List (DPT);
- Allowing some citizens to use their voting right more than once;
- Allowing practices bribery in the form of goods/money (*money politics*) or certain promises to the voters in order to elect the Pair of Candidates with Candidacy Number 7 ;
- Allowing intimidation to the residents in order to elect the Pair of Candidates with Candidacy Number 7;
- Allowing the use of voting right by unauthorized persons;

Based on the aforementioned matters, the Court is of the opinion that the Petitioners have met the legal standing requirement to file the *a quo* petition.

Time Frame for the Submission of the Petition

[3.7] Considering whereas the Decision of South Bengkulu General Election Commission Number 59 Year 2008 regarding the Stipulation of the Elected Pair of Candidates of Regional Head and Deputy Regional Head of South Bengkulu Regency in the Second Round *Pemilukada* of South Bengkulu Regency Year 2008 was stipulated on December 10, 2008, while the petition of objection against the Respondent's stipulation was filed to the Court by the Petitioners on December 15, 2008 in accordance with Deed of Petition Dossier Receipt Number 120/PAN.MK/XII/2008 dated December 15, 2008, further registered on December 16, 2008 with Case Number 57/PHPU.D-VI/2008;

[3.8] Considering whereas Article 5 of PMK 15/2008 provides that, "*A petition may only be filed within no later than 3 (three) working days after the Respondent stipulates the vote count results of Pemilukada in the related area*", therefore the submission of the Petitioners' petition is still in the specified time frame, because December 13, 2008 and December 14, 2008 were Saturday and Sunday which constituted holidays and not working days;

[3.9] Considering whereas based on the evaluation of facts and laws in paragraph **[3.6]** above, the Court is of the opinion that the Petitioners have legal

standing to file the *a quo* petition in accordance with the requirement specified in Article 106 paragraph (1) of Law Number 32 Year 2004, Articles 3 and 4 of PMK 15/2008, and that the Petitioners' petition is also still within the time frame as specified in Article 5 of PMK 15/2008;

[3.10] Considering whereas because the Court has authority to examine, hear, and decide upon the *a quo* petition and the Petitioners have legal standing to file the petition and the petition has been filed within the specified time frame, the Court shall further consider the principal issue of the petition.

Principal Issue of the Petition

[3.11] Considering whereas the Petitioners, in their petition as completely included in the Facts of the Case, basically argue as follows:

[3.11.1] Whereas the vote count result recapitulation of the Second Round South Bengkulu Regency *Pemilukada* conducted by the Respondent, there were errors and violations in the stages of *Pemilukada* implementation which were unfair, unjust and full of massive, structured, planned fraudulent practices based on the documents which were intentionally made and prepared by the Respondent. Such errors and violations have benefitted the Pair of Candidates in the names of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H., and on the contrary the Petitioners have been harmed by such errors and violations committed by the Respondent;

[3.11.2] Whereas such errors and violations against the laws and regulations related to *Pemilukada* committed by the Respondent were committed based on the following facts:

1. The Respondent intentionally and illegally has allowed a Candidate of Head of South Bengkulu Regency namely H. Dirwan Mahmud, S.H., who once served in prison for about 7 years in Cipinang First Class Correctional Institution, East Jakarta from 1985 until 1992, who became a Candidate of Head of South Bengkulu Regency;
2. The fact that the candidate of Head of South Bengkulu Regency in the name of H. Dirwan Mahmud, S.H. once served in prison for about 7 years in Cipinang First Class Correctional Institution, East Jakarta from 1985 until 1992, has been confirmed by:
 - a. Letter of Statement of M. Zayadi, dated December 17, 2008;
 - b. Letter of Statement of Hasnul Arifin, dated December 17, 2008;
 - c. Letter of Statement of Asranudin Bais, Staff of Maintenance Section of Cipinang First Class Correctional Institution, Jakarta, dated December 17, 2008, recognized by the Head of Cipinang First Class Correctional Institution, East Jakarta;
 - d. Letter of Statement of Achmad Busri, Register Staff of Cipinang First Class Correctional Institution, East Jakarta, dated December 17,

2008 recognized by the Head of Cipinang First Class Correctional Institution, East Jakarta;

- e. Letter of Statement of Tomy Arifin dated December 17, 2008, Register Staff of Cipinang First Class Correctional Institution, East Jakarta;
 - f. Letter of Statement of Haryanto also known as Yan Bin Sulaiman dated December 17, 2008.
3. Even though the facts as described in point 2 items a, b, c, and d had been submitted to South Bengkulu General Election Supervisory Committee (*Panwaslu*), South Bengkulu Regency's *Panwaslu* did not verify such report by finding the information to Cipinang First Class Correctional Institution, East Jakarta;
 4. In relation to the facts as described in point 2 items a, b, c, and d, the HARARI Winning Team also delivered a letter to the Bengkulu Regional Police, but the South Bengkulu Resort Police without making any confirmation to Cipinang First Class Correctional Institution, East Jakarta, gave a response stating that the legal facts were not correct;
 5. Based on the legal facts described in point 2 items a, b, c, and d, then the stipulation of H. Dirwan Mahmud, S.H. as a Candidate of the Head of South Bengkulu Regency in South Bengkulu *Pemilukada* Year 2008 is invalid;

[3.11.3] Errors and violations in the implementation of South Bengkulu *Pemilukada* Year 2008 were reflected in a clear, obvious, massive, structured, and planned manner, but there has been no solution by South Bengkulu Regency's *Panwaslu*. Such errors and violations are as follows:

1. Many citizens having voting right were not registered in DPS or DPT;
2. Many citizens having voting right and registered in DPT did not get invitation to vote;
3. There were voters using their voting right more than once;
4. There was provision of goods or money or other incentives provided that they had to elect the Pair of Candidates in the names of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H.;
5. Existence of the Letter of Statement of H. Dirwan Mahmud concerning the promise to grant the extension of plantation area in Suka Maju Village, Air Nipis District, dated November 2, 2008 recognized and witnessed by Air Nipis District Head;
6. Existence of intimidation by the Success Team of the Pair of Candidates with Candidacy Number 7 to the residents in order to elect the Pair of Candidates with Candidacy Number 7 in the names of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H.;

7. The voters not registered in DPT and who therefore did not get call cards, they in fact voted using the other voters' call cards;

[3.12] Considering whereas in order to support their petition's arguments, the Petitioners have submitted written evidence marked as Exhibit P-1 up to Exhibit P-17 as completely described in the Facts of the Case part, and the Petitioners also presented 10 witnesses who conveyed their statements under oath at the hearings on December 19, 2008 and December 22, 2008, which basically stated as follows:

1. Witness M. Zayadi

- The witness knows the name Dirwan Mahmud after being elected in South Bengkulu *Pemilukada* from a friend of the witness named Hasnul Arifin, who had once served in prison together in Cipinang First Class Correctional Institution, East Jakarta as evidenced by a photo shown by Hasnul Arifin to the Witness;
- In Cipinang First Class Correctional Institution, East Jakarta, the Witness was assigned as the instructor of *Al Qur'an* and Roy Irawan, also known as Dirwan Mahmud, was one of his students in learning the *Al Qur'an*;
- Whereas H. Dirwan Mahmud once served in prison for seven years from 1985 until 1992 in Cipinang First Class Correctional Institution, East Jakarta for a case different from the Witness'; the Witness' was

a case of political criminal act while H. Dirwan Mahmud's case was criminal act of murder in Kalimalang in accordance with his confession to the Witness;

- In Cipinang First Class Correctional Institution, East Jakarta, H. Dirwan Mahmud used the nickname Roy Irawan bin Mahmud Amran, usually called Roy, while out of Cipinang First Class Correctional Institution, East Jakarta he uses the name;

2. Witness Hasnul Arifin

- The Witness knew Roy Irawan when they were together serving in prison in Cipinang First Class Correctional Institution, East Jakarta for, however different cases. Roy Irawan's case was criminal act of murder criminal act, while the witness' case was a political criminal act;
- The Witness was introduced to Roy Irawan by the officer of Cipinang First Class Correctional Institution, East Jakarta and both came from Bengkulu. The Witness was placed in Block F while Roy Irawan was placed in Block G;
- The Witness still remembered meeting and being close to Roy Irawan when the witness was still in Cipinang First Class Correctional Institution because they came from the same village;

- The Witness once met Roy Irawan about 15 years ago. It is such a long time since they met because the Witness lives in Jakarta while Roy Irawan lives in Bengkulu. Even though the Witness has not met Roy Irawan for long, the Witness believes that he still recognizes Roy Irawan;
- The Witness knew that Roy Irawan would nominate himself to be the regent based on the information from Witness' friend because the Witness's domicile in Pulo Mas is the complex where the residents are mostly from South Bengkulu;
- With respect to the photos shown by the Petitioners' Attorneys in the hearing, the Witness recognizes that among such photos there are the photos of Roy Irawan when he was in Cipinang First Class Correctional Institution, East Jakarta;

3. Witness Asranudin Bais

- The Witness is a paramedic in the Hospital of Cipinang First Class Correctional Institution, East Jakarta who has been working there from 1982 until now;
- The Witness knows the inmate whose name is Roy Irawan bin Mahmud Amran coming from Manna, South Bengkulu. The Witness also comes from Manna;

- The Witness declares that Roy Irawan bin Mahmud Amran's original name is Dirwan Mahmud and is still a relative of the witness' wife;
- The Witness knew when H. Dirwan Mahmud known as Roy Irawan became a member of South Bengkulu Regional People's Representative Assembly (DPRD) and knew that H. Dirwan Mahmud nominated himself to be the Regent of South Bengkulu Regency;
- The Witness does not know for what case H. Dirwan Mahmud alias Roy Irawan was imprisoned, because the relation between the Witness and H. Dirwan Mahmud alias Roy Irawan was only limited in the hospital and the Witness was did not feel comfortable to ask him because they still have family relationship;

4. Witness Achmad Busri

- The Witness is an employee at Cipinang First Class Correctional Institution, East Jakarta who has been working there since March 1, 1976 until now;
- The Witness really knows the inmate whose name is Roy Irawan, who was imprisoned in 1985 for violation of Articles 338/340 of the Indonesian Criminal Code (murder and planned murder), with seven-years' imprisonment imposed by East Jakarta District Court;

- Since 1988, Roy Irawan was assigned as the Hospital “foreman”, while at the time the Witness became the security officer. In 1990 Roy Irawan was moved to kitchen section (Block G) until his release;
- The Witness only knows the name Roy Irawan and does not know any other names;

5. Witness Tomy Arifin

- The Witness is an employee officer at Cipinang First Class Correctional Institution, East Jakarta who has been working there since March 1, 1975 until now. At that time, the Witness was in charge as the security guard commander, and recognized the inmate whose name was Roy Irawan;
- The Witness has never met Roy Irawan after he was released from Cipinang First Class Correctional Institution, East Jakarta;
- The Witness declared that a person not known to the Witness came to Cipinang First Class Correctional Institution, East Jakarta, to meet the Witness’s superior taking with him the photo of Roy Irawan;
- The Witness does not know Dirwan Mahmud. The Witness only recognizes the photo of Roy Irawan;

- Before moving to Block 3G as kitchen foreman, Roy Irawan was assigned as the foreman in the Hospital of Cipinang First Class Correctional Institution, East Jakarta;
- Even though since his release from Cipinang First Class Correctional Institution, East Jakarta, the Witness has never met Roy Irawan, the Witness believes that he can still recognize him.

6. Witness Haryanto alias Yan Bin Sulaiman

- The Witness is from South Bengkulu. In 1989 he was imprisoned in Cipinang First Class Correctional Institution, East Jakarta and was released in 1990;
- The Witness really knows who Roy Irawan is and who Dirwan Mahmud is because both of them come from Manna. Dirwan Mahmud alias Roy Irawan lives on Jalan Jenderal Sudirman while the Witness lives on Jalan Jenderal Ahmad Yani;
- When the Witness met Roy Irawan, the Witness called him “Wan”, which was his nickname in the village, but Roy Irawan reminded that the name he used in Cipinang First Class Correctional Institution, East Jakarta, was Roy Irawan;

- When meeting Dirwan Mahmud also known as Roy Irawan, the Witness was told that Roy Irawan was involved in a murder case but the Witness did not know the crime scene;
- The Witness knew that H. Dirwan Mahmud alias Roy Irawan was the elected Regent, but the Witness did not report it to the Police because he did not have any evidence or interest;
- During his service as a member of South Bengkulu DPRD, the Witness once met H. Dirwan Mahmud alias Roy Irawan several times but they just had a talk and never discussed matters related to Cipinang First Class Correctional Institution, East Jakarta;
- The Witness knows and is sure about H. Dirwan Mahmud alias Roy Irawan and so does Roy Irawan the other way around;

7. Witness Zaitun Nurlaili

- During the voting on December 6, 2008, there was a violation in the Voting Station 1 (TPS1) of Suka Jaya Village, Kedurang Ilir District, where eight persons voted four times;
- Such practice of voting was done because of the permit from the Committee and the Committee gave four cards to each of the voters;
- The Witness protested to the KPPS witnessed by Kedung Ilir District Head but all of them remained silent, even the Witness was

intimidated and threatened by village officers (village head) and the group of H. Dirwan Mahmud's Success Team saying that if the Witness dared to disclose the fact, he would be sent away from the village and would be isolated, and he might not borrow the chairs and tents because such equipment was the aid from H. Dirwan Mahmud;

- Upon his protest, the Witness was examined in the District Office and before the Head of the Sector Police, the Witness was ordered to reconcile with the witnesses of both parties and the eight related voters for the reason that the voting papers that had been accidentally "pierced" would not be counted, but the Witness refused to reconcile with them;
- As no agreement/reconciliation was reached, the Witness was taken to the Voting Station (TPS) together with the Head of the Sector Police, the District Head and South Bengkulu Regency General Election Supervisory Committee (*Panwaslu*), and the Witness was ordered to sign the "reconciliation agreement" and asked not to prolong the problem because the other parties had reconciled with each other, but the Witness kept refusing the reconciliation;
- In TPS1 of Kedurang Ilir, the Candidate Pair of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H. got the majority votes.

8. Witness Maria Yustianti

- The Witness could not use her voting right in the Second Round South Bengkulu Regency *Pemilukada* because her name was not listed in KPU, while in the First Round *Pemilukada* her name was listed in DPT and the Witness used her voting right;
- The Witness has brought this matter to the Committee but she was suggested to process it to the Head of Neighborhood Association (*Ketua RT*) but the Witness could not meet the Head of *RT*. Then the Witness processed it to Regional General Election Committee (KPUD) but it was impossible because it had been late at night as the time was 12:30 West Indonesia Time;
- Even though the Witness showed her Resident's Identity Card to the officers, she was still unable to use her voting right because it was in accordance with a new regulation according to the Committee;
- The witness submitted an objection on such incident but it was not recorded in the minutes;

9. Witness Jusri

- On the voting day, at the house of Padang Burnai Village Head, the Witness was given money in the amount of Rp.50,000,-, just for cigarettes by Jamri, Padang Burnai Village Head who was a

Success Team member for H. Dirwan Mahmud, being asked to remember the number seven and the Witness said, "*I hope so*";

- Actually the Witness would elect the Candidate Pair with Candidacy Number 8 but because he had been given the money, then the choice of the Witness went to the Candidate Pair with Candidacy Number 7;
- The Witness knew that the Padang Burnai Village Head was the Success Team for the Candidate Pair with Candidacy Number 7 because in front of the Village Head's house a banner and photo of the Candidate Pair with Candidacy Number 7 were installed.

10. Witness Devri Sovwan

- The Witness is a security guard in Tresna Wreda Social Center;
- On Thursday, December 4, 2008, the Witness was asked by his superior (Sodik) to distribute sarongs and clothes to the inhabitants of the Social Center;
- When the Witness was distributing the sarongs and clothes to the inhabitants of the Social Center, Sodik told the inhabitants of the Social Center to give their votes to the Candidate Pair Number 7;
- Feeling the presence of an internal conflict, the Witness reported the matter to South Bengkulu Regency *Panwaslu* that night, and on

Friday, December 5, 2008, *Panwaslu* members came to the Social Center and asked the Witness to withdraw his report because the sarongs and clothes divided to the inhabitants of the Social Center were from Social Service Office. However, the Witness refused to withdraw his report.

[3.13] Considering whereas the Respondent has given its oral and written statements which have been completely described in the Facts of the Case part, which are basically as follows:

In the Exception:

The Petitioners' petition does not meet the formal provision as specified in Article 6 paragraph (2) sub-paragraph a of PMK 15/2008 stating that the petition shall be completed with the complete identity of the petitioner(s) attached with the copies of Resident's Identity Card (KTP), the proof as the South Bengkulu Regency *Pemilukada* participant as well as the description of the faults of vote count conducted by the Respondent;

In the Principal Issue of the Case

1. The Respondent has organized the South Bengkulu Regency *Pemilukada* Year 2008 based on the applicable laws and regulations;
2. Based on the facts in the field, actually the Petitioners have directly or indirectly appreciated the service provided by the Respondent in

- organizing the South Bengkulu Regency *Pemilukada* in a just, fair, democratic and transparent manner;
3. The Petitioners' argument stating that the Respondent has organized the South Bengkulu Regency *Pemilukada* the Respondent in unjust, unfair ways which were full of massive, structured, planned fraudulent practices based on the documents intentionally made and influencing vote acquisition of the Candidate Pair is incorrect, inaccurate, groundless, and made up, because:
 - a. The vote count of the Second Round *Pemilukada* was conducted at all TPS witnessed by the witnesses of the Petitioners and the Related Party, and there was no objection or protest up to the vote count at the district level by the District Election Committee (PPK) which was signed by the witnesses of both Candidate Pairs;
 - b. In conducting the selection of prospective candidates, the Respondent performed verification of prospective candidates so that the stipulation of prospective candidates who passed the verification has been in accordance with the procedures and requirements as specified in Law Number 32 Year 2004 *juncto* Law Number 12 Year 2008 in Article 58 sub-articles a through g;
 - c. After the stipulation of prospective candidates who met the requirements, the Respondent also conducted verification of

administrative and factual as well as support requirements as specified in Article 60 of Law Number 32 Year 2004 regarding Regional Government;

- d. The Respondent has given the community members a 14-day period for the submission of protest against the requirements of the Candidate Pairs, and there was no response, information, objection, input or protest from the residents during such 14-day time frame in relation to candidate requirements such as the reason that H. Dirwan Mahmud, S.H. had once served in prison for seven years in Cipinang First Class Correctional Institution;
- e. The Respondent has conducted verification based on the Letter of Statement of Manna District Court Head, Letter of Statement of Criminal Records of South Bengkulu Resort Police and up to the 14-day time frame, the Respondent did not obtain any input, as further confirmed by the fact that H. Dirwan Mahmud, S.H. had been a member of South Bengkulu Regency DPRD for periods namely 1999 to 2004 and 2004 to 2009 terms of service and also the chairman of South Bengkulu Regency DPRD;
- f. Letters of Statement as evidence cannot be accepted because the Letters of Statements have not been made under oath, and more importantly the Petitioners' descriptions and arguments are not

relevant to the dispute over *Pemilukada* results, because the accusation belongs to the administrative domain which has expired;

4. The petition filed by the Petitioners in the *a quo* case is not concerned with the issue of dispute on vote acquisition count of the Second Round South Bengkulu Regency *Pemilukada*;
5. The Petitioners' arguments stating that Harari's Team has submitted an objection in relation to the status of H. Dirwan Mahmud who has once served in prison for about seven years to South Bengkulu Regency *Panwaslu* and that the South Bengkulu Regency *Panwaslu* did not follow it up are not correct and tend to manipulate the real facts for the following reasons:
 - a. the objection was submitted not within the 14-day time frame, but after the first round;
 - b. such objection has been followed up by South Bengkulu Regency *Panwaslu* by holding a Plenary Meeting which concluded that there was an error by the reported subject;
 - c. South Bengkulu Resort Police also has conducted investigation and given a statement that there was insufficient evidence to declare that the report on Roy Irawan is a report on H. Dirwan Mahmud, S.H.;

6. Based on the foregoing description, the Respondent does not have the basis or footing or a legal obligation to immediately annul the Decision of South Bengkulu Regency KPU Number 30 Year 2008 regarding the Stipulation of Candidate Pairs of Regional Head and Deputy Regional Head of South Bengkulu Regency Year 2008;
7. The Petitioners' reason stating that the Candidate Pair of H. Dirwan Mahmud, S.H. who once served in prison for seven years in Cipinang Correctional Institution since 1985 until 1992 is not sufficiently evidenced because they only enclose the photo;
8. The faults and violations in *Pemilukada* stages constitute the domain of duty and function of South Bengkulu Regency *Panwaslu* and South Bengkulu Regency *Panwaslu* has issued a letter on the status of the report coming into the South Bengkulu *Panwaslu* stating that such report could not be followed-up because the evidence was insufficient;
9. Whereas the voters having voting right were registered earlier by South Bengkulu Regional Government and the result was reported to South Bengkulu Regency KPU;
10. Whereas the data obtained later was updated in the form of DPS and announced to the residents at PPS level through announcement board in village offices to obtain inputs from the residents;
11. Whereas citizens who had not been registered in DPS could actively

- register themselves to PPS officers and those who registered themselves after the announcement would be categorized as Additional Voters;
12. DPS and Additional Voters List would be further stipulated as DPT in the Plenary Meeting of PPS. The number of DPT at the District level was stipulated by PPK and DPT at the regency level was stipulated by the Respondent;
 13. The Respondent has to the greatest extent allowed for democratization through Articles 12, 13, 14, 15, and 16 of the Decision of South Bengkulu Regency KPU Number 37 Year 2008 regarding Procedures for the Implementation of Voting and Counting of Votes of South Bengkulu *Pemilukada* Year 2008 in TPS, has clearly, explicitly, accurately, in detail stated that the voters who have not obtained Call Cards (C6-KWK) shall be given the time to actively ask for the Call Cards or they may be obtained through the head of family or other members of the family, and facilities shall also be provided for disabled persons;
 14. The argument stating that there were registered voters using their right twice is not accurate, complete, clear, or detailed concerning TPS where such practice was committed, the number and parties stating their objection or the witnesses. The Petitioners do not describe the influence to the vote acquisition of the Candidate Pairs or vote count dispute either;
 15. The argument stating that there was gift of money or goods, letter of

statement on H. Dirwan Mahmud's promise to grant the extension of plantation area of Suka Maju Village, Air Nipis District, is greatly unclear, inaccurate, not detailed and incomplete. In addition, such description and argument of the Petitioners are within the domain of General Election criminal acts and are under the authority of South Bengkulu Regency that must be further proved in the Court of General Judicature;

16. South Bengkulu Regency *Panwaslu* has conducted observation and plenary stipulation of the reports some of which were stopped because of insufficient evidence and some have been followed up to the Investigator;
17. South Bengkulu Regency *Panwaslu* has worked on and followed up complaint/report on two cases of criminal act of money politics committed by the Candidate Pair of H. Reskan Effendi and H. Rohidin Mersyah (Principal Petitioners) to the Investigator of South Bengkulu Resort Police and presently the case has been turned over to the Public Prosecutor and has been declared complete (Exhibit P-21);

[3.14] Considering whereas in order to support its statement/response, the Respondent has submitted document or written evidence marked as Exhibits T-1 through T-27 which have been completely described in the Facts of the Case part, and has presented eight witnesses and an expert principally stating as follows:

1. **Witness A. Hamid Safran, S.P (Head of South Bengkulu Regency *Panwaslu*)**

- In the implementation process, the South Bengkulu Regency *Pemilukada* took place in a secure, orderly, and uninterrupted manner from the levels of PPS, PPK up to South Bengkulu Regency KPU. All minutes were signed by every witness of the candidate pairs, either the Candidate Pairs with Candidacy Number 7 or the Candidate Pair with Candidacy Number 8, and there was no objection being raised by the witnesses of each Candidate Pair;
- In the Vote Count Plenary Meeting at the level of South Bengkulu Regency KPU, the witnesses of Candidate Pair with Candidacy Number 7 signed the Minutes, while the witnesses of Candidate Pair with Candidacy Number 8 walked out because they believed that some complaints were not followed up by South Bengkulu Regency *Panwaslu* as well as by South Bengkulu Regency KPU;
- According to the Witnesses, there was no problem, and everything was well managed. Until the stipulation of the vote count result, there was not any administrative violation complained about by the Candidate Pairs, and there was only people's complaint about alleged money politics;

- During the process of *Pemilukada* stages, South Bengkulu Regency *Panwaslu* received 13 reports of alleged violation, two reports of alleged violation in the First Round *Pemilukada* and 11 reports of alleged violation in the Second Round *Pemilukada* and all of the reports have been responded to by South Bengkulu Regency *Panwaslu*;
- There were reports from the residents concerning *Pemilukada* violation and education certificate falsification;
- With respect to the reports, either from the Candidate Pairs or from the residents, some of them were followed up and some were not, with the following classifications: some of the reports have been expired, such cases not being General Election violations, reporting element insufficiency, the cases being already settled at the crime scene, and the reporters deemed not to have reported;
- In relation to the criminal act allegation, the Witness (South Bengkulu Regency *Panwaslu*) received a report from one member of the HARARI Success Team (one of the Candidate Pairs eliminated to proceed to the Second Round) after the First Round KPUD Plenary Meeting, to the effect that there were three criminal acts committed by Roy Irawan, and Roy Irawan was Dirwan Mahmud. The Witness made a follow-up to the report by analyzing

all files and conducting clarification to South Bengkulu Regency KPU, South Bengkulu Resort Police, and Manna District Court;

- Having observed the files, there was no name of Roy Irawan, as confirmed by:
 - Stipulation of South Bengkulu Regency KPU based on the Plenary Meeting of South Bengkulu Regency KPU stating that it has been in accordance with Article 38 of Government Regulation Number 6 Year 2005 concerning Election, the Legalization of Appointment and Dismissal of Regency Head and Deputy of Regency Head;
 - Based on the Police Records dated April 10, 2008 and July 21, 2008 stating that the person concerned has never been or is not being imposed implicated in a criminal case or other prohibited movement or organizations;
 - Based on the Letter of Statement from Manna District Court dated June 20, 2008 stating that the relevant person's voting right is not being withdrawn based on a court decision which has had permanent legal force; he is not being imprisoned based on a court decision which has had permanent legal force for committing a criminal act punishable by a maximum imprisonment of five years or more, has never been

examined or detained because of adultery, gambling, drinking alcoholic beverages or consuming drugs, as well as other disgraceful acts;

- The files examined by the Witness is the files of H. Dirwan Mahmud who has been declared eligible to participate in the Second Round *Pemilukada*, while at the time of nomination there was no report or anything about H.Dirwan Mahmud. After that there was time to give input or response from the residents and there was no report to South Bengkulu Regency *Panwaslu*;
- According to the Witness, there is not any relationship between Dirwan Mahmud and Roy Irawan, because Dirwan Mahmud is in Bengkulu while Roy Irawan is in Cipinang, Jakarta;
- The Witness deems that the information from newspapers stating that H. Dirwan Mahmud made program contract/promise with the employees hired on contract basis to be promoted to be Civil Servant candidates does not make any sense because there is not any report on it;

2. Witness Yulian, S.H. (Member of South Bengkulu Regency *Panwaslu*)

- Based on the sequence of every implementation stage of South Bengkulu Regency *Pemilukada* generally it took place in an

uninterrupted manner, under conducive, safe and controlled situation;

- All witnesses have signed the Minutes of Vote Count Result Recapitulation and there was no objection;
- When the vote count was Conducted in South Bengkulu Regency KPU, there was a request from the Petitioners to stop the vote count because of frauds which were not followed up and therefore it was considered not irrelevant;
- There was an incident in TPS 1 Suka Jaya Village, Kedurang Ilir District, namely that somebody voted using the voting right of another person, but it was settled on the spot by KPPS, *Panwaslucam*, that is by not counting the vote of the person using other people's voting right. It was not followed up to the more competent level and there was no revoting;
- The alleged violation related to the gift of sarongs and clothes to the inhabitants of Tresna Wreda Social Center in order to elect the Candidate Pair with Candidacy Number 7, has been followed up by South Bengkulu Regency *Panwaslu*. After having checked with Tresna Werdha Amanah Social Center, *Panwas* found out the fact that the sarongs and clothes given to the inhabitants of the Social Center were not the gift from the Candidate Pair with Candidacy

Number 7 but they were the routine aid of Social Affairs, Manpower, and Transmigration Service Offices of South Bengkulu Regency. Therefore such report could not be followed up;

- The Witness has never intimidated the reporter in order to withdraw his/her report;
- During the vote count by the Respondent, there was an objection raised by the Petitioners' witnesses asking the delay of the elected candidate pair stipulation because according to the stages arranged by the Respondent it should have been conducted on December 10 to December 13, 2008; because it was counted on December 10, the stipulation should be on December 13, 2008. The objection of the witness was rejected by the Respondent;
- The Witness admitted that there was an objection from the Petitioners' witnesses because there was an allegation of money politics which had not been followed up and the request to postpone the vote count result stipulation;

3. Witness Drs. Hermansyah (Witness of Candidate Pair with Candidacy Number 7)

- During the plenary meeting in South Bengkulu Regency KPU, the witness of Candidate Pair with Candidacy Number 8 submitted an objection related to the violations which had not been followed up

and asked to postpone the vote count in order to settle the alleged violation;

- With the objection not being responded to by the Respondent, the Witnesses of the Candidate Pair with Candidacy Number 8 walked out from the plenary meeting before the vote count began;

4. Witness Imjeni (Head of Kedurang Ilir PPK)

- On December 6, 2008, in TPS 1 Suka Jaya Village, Kedurang Ilir District a violation occurred in form of double voting. The Witness as the Head of PPK stated that there should be an immediate correction, so that there would not be any complaint because the Witness as the Head of PPK did not want any irregularity or riot in *Pemilukada*;
- Based on the agreement of KPPS, officers of Panwaslu, the witnesses of the two Candidate Pairs, then the voting right of several persons conducting the double voting was declared not to have been used;
- The way of reducing the eight persons who had voted was by inviting the persons who had been represented to be asked one by one until the persons voting admitted so that it was found four votes for the Candidate with Candidacy Number 7 and four votes for the Candidate Pair with Candidacy Number 8;

- *Panwas* asked the reporter (Zaitun Nurlaili) to sign the statement of reconciliation agreement but the reporter (Zaitun Nurlaili) refused to sign it;
- The report (of Zaitun Nurlaili) had never been taken to the District Office;
- The Witness admitted that the reporter (Zaitun Nurlaili) was processed in the District Office;
- The District Head also witnessed the agreement in TPS1 Suka Jaya;

5. Witness Yunisman (Chairperson of Suka Jaya Village TPS1 KPPS)

- On December 6, 2008, some residents voted more than once to represent their children, husbands, wives, and parents with various excuses;
- Such eight persons inquired the Committee, and the Committee had already told them that it was unacceptable according to laws and regulations, but the Voting Supervisory Group (KPPS), the Voting Committee (PPS), the Supervisory Committee (*Panwas*), and witnesses of the two Candidate Pairs allowed them;

- The Chairperson of the District Supervisory Committee (*Panwascam*) called the Chairperson of the General Elections Supervisory Committee (*Panwaslu*) of South Bengkulu Regency and was instructed that the ballots pierced by the eight persons should not be counted, so the eight ballots were supposed to be considered as invalid ballots;
- Upon receiving the instruction from the General Elections Supervisory Committee of South Bengkulu Regency, Minutes of Agreement were made, signed by the District Supervisory Committee, the witnesses of the two Candidate Pairs, the Field Supervisory Committee and acknowledged by PPS and KPPS;
- The witness admits that the solution adopted by Suka Jaya Village Voting Station 1 (TPS 1) violated the regulation, the witness is also unaware of the punishment which could be imposed for the aforementioned violation;
- The incident in Suka Jaya Village TPS 1 was not recorded in the Statement of Witness' Objection and Special Incidents form relating to the Voting and Vote Count Results (C3-KWK Model) because it was based on an agreement;
- The witness as the Chairperson of KPPS admits that there was a mistake in writing the total number of voters on the Permanent

Voters' List (DPT) and he had forgotten to sign next to the corrected number (*vide* Exhibit T-26a);

6. Witness Helmi Jaya (Chairperson of the District Supervisory Committee of Kedurang Ilir)

- On December 6, 2008 at 11.00 West Indonesia Time, there was a special incident in Suka Jaya Village TPS 1, Kedurang Ilir District, namely double voting by residents having the right to vote on behalf of other people;
- Mrs. Zaitun, accompanied by Witness Ngatimin, who represented her child to vote, came and reported to the District Supervisory Committee of Kedurang Ilir, to be forwarded to the Sub-District Voting Committee (PPK);
- The District Supervisory Committee, together with the Chairperson of PPK visited Suka Jaya TPS 1 and inquired for clarification from the Chairperson of PPS, PPK, witnesses of the two candidate pairs, and field supervisors and they had all confirmed that there had been double voting;
- The witness then reported to the Chairperson of the General Elections Committee of South Bengkulu Regency. It was declared to be a violation, but the Committee of General Election of Regional Heads (*Pemilukada*) in Suka Jaya Village agreed to solve the issue

at the location without any intimidation from external parties. Finally, Minutes of Amicable Settlement were drawn up prior to the vote count;

7. Witness Sarna

- On December 6, 2008 at approximately 11.00 West Indonesia Time, came Mrs. Maria with Guntur, her husband, who wished to exercise their right to vote by presenting their Identification Cards. After the cards were checked, apparently their names were not listed on DPT.
- After she was rejected, Mrs. Maria returned to the TPS carrying a vote invitation belonging to other people (under the names of Ramon and Meta), but the Committee still rejected it. Upon the Committee's second rejection, Mrs. Maria was upset and left;

8. Witness Casim Irawan (Head of Students' Executive Body (BEM) of Sekolah Tinggi Ilmu Tarbiyah Alquraniyah of Manna, South Bengkulu, Independent Observer).

- In the First Round *Pemilukada*, there were many complications, various parties complained to the General Elections Supervisory Committee of South Bengkulu Regency. Therefore, the Independent Monitoring Team wished to give assistance for the success of General Election of Regional Heads of South Bengkulu;

- After the Independent Monitoring Team had been established, the Independent Team was invited by the Team of Redho's Pair which was very enthusiastic in ensuring the success of the *Pemilukada*; as was the Candidate Pair Number 7;
- According to the observation of the Independent Team, ever since it was established up to the point where the case was filed to the Court, there had not been any violations; everything went safely and smoothly because based on the minutes, there were no special incidents and the witnesses of the respective Candidate Pairs had signed the Minutes of Vote Count Recapitulation;
- The witness only heard about the practice of money politics. The Team of Observers inquired such rumors to the General Elections Supervisory Committee of South Bengkulu Regency, but apparently, the case had been assigned to South Bengkulu Resort Police;
- Although they received financial assistance from Candidate Pair Number 7 in the amount of Rp5,000,000.- and Rp200,000.- from Candidate Pair Number 8, the Independent Monitoring Team found it difficult to cover the entire TPS due to limited financial support;

9. Expert Prof. H.A.S. Natabaya, S.H., L.L.M

- There are three types of violations in the *Pemilukada*, namely (1) administrative violation, (2) criminal violation, and (3) vote acquisition violations;
- In the *Pemilukada*, matters relating to administration have been provided for, namely, among other things, the requirements to become the regional head and deputy regional head, as regulated in Article 58 of Law Number 32 Year 2004;
- Article 59 of Law Number 32 Year 2004 states that participants in the *Pemilukada* shall be candidate pairs nominated in pairs by political parties or coalitions of political parties;
- Article 60 sets out that the administrative requirements for candidate pairs as regulated in Article 59 Paragraph (1) shall be examined by clarification with competent government agencies and accepting feedbacks from the community with respect to the requirements for candidate pairs;
- Pursuant to Article 60 Paragraph (4), the Regional General Election Commission (KPUD) shall re-examine the completion and/or correction of requirements for candidate pairs, so that any violation of the requirements shall fall within the scope of KPUD, while with respect to the vote acquisition, it has to return to Article 236C of Law Number 12 Year 2008, stating that the dispute on vote count

results of the election of the regional head and deputy regional head shall be delegated to the Constitutional Court. The meaning of “delegated” here is related to Article 106 of Law Number 32 Year 2004 which reads, “*Any objection to the stipulation of results of election of regional heads and deputy regional heads may only be filed by the candidate pair concerned to the Supreme Court.*” It was the authority delegated to the Constitutional Court, so the methods to settle the dispute on the results of *Pemilukada* must be aligned to provisions on *Pemilukada*;

- In this framework, the Constitutional Court must follow up the authority granted by the law, and not the Constitution;
- The authority granted by the change in law brought about Constitutional Court Regulation No. 15/2008 regarding the Guidelines on the Proceedings in the Dispute on *Pemilukada* Results and clearly, Article 4 of Constitutional Court Regulation No. 15/2008 states that the object of dispute on the results of General Election of Regional Head is the vote count result stipulated by the Respondent affecting the determination of candidate pairs eligible for participating in the second round General Election of Regional Heads or the election of the candidate pair as the regional head and the deputy regional head. As a consequence, in the petition, the Petitioners must describe: (i) the mistake in vote tally stipulated

by the Respondent; (ii) request/*petitum* to cancel the vote tally stipulated by the Respondent;

- The provision in question, namely Article 58 Sub-Article f relating to the requirement of never been punished with imprisonment by virtue of a court decision obtaining permanent legal force due to the commission of a criminal act punishable by a maximum imprisonment of five years, is covered in the administrative domain. Meanwhile, the scope of dispute here is the votes, so if the petition fails to fulfill the provisions of Articles 3, 4, and 5 of Constitutional Court Regulation No. 15/2008, the petition shall therefore become unacceptable;
- Provision of Article 58 of Law Number 32 Year 2004 shall apply to candidate pairs nominated by political parties and the change due to the Constitutional Court's Decision will also apply to individual candidates;
- The authority to determine candidate pairs in the General Election of Regional Heads in accordance with the mandate of the Constitution shall be the Provincial, Regency/Municipal General Election Commissions;
- In the event that a candidate pair had been examined with respect to their administrative requirements by the General Election

Commissions (KPUD) and KPUD had announced the information to the public within the specified period, the candidate pair has been determined as a candidate pair in the Regional Head General election; and even if the candidate pair is then elected as the regional head and the deputy regional head, it may still be questioned but not in the Constitutional Court;

- If the requirements have been met, the first findings are obtained after the first round and the General Elections Supervisory Committee has already clarified and decided not to follow up the complaint, the time of violation should be the issue to address. If the violation occurs during the nomination period and is administrative in nature, it will be the authority of another institution, but if it has been the result of the General Election of Regional Head and there has been an objection, it will be the authority of the Constitutional Court;
- If it concerns the requirements, it is not the authority of the Constitutional Court. However, but then if, based on statements of witnesses at the hearing, it is proven that the elected pair are ex-convicts, it is therefore an administrative violation. If it is likely that the person(s) concerned failed to report true facts about himself/herself, it is a mistake or negligence of the General Election Commission (KPUD), so the stipulations of KPUD must be

evaluated, but the entity evaluating such stipulations is not the Constitutional Court, but the State Administrative Court instead;

- If there is any criminal violation affecting the vote tally, it shall be the authority of the Constitutional Court;

[3.15] Considering whereas the Court has also heard the statement of the Related Party and has provided written statement as completely described in the Facts of the Case, which is essentially as follows:

In the Exception

1. The Object of the Petitioners' Petition for Objection is Wrong (*Error In Objecto*)

The Petitioners have made a material mistake or at least an error and/or a fault by basing the object of petition of objection on a unilateral claim on the implementation of the Second Round *Pemilukada* of South Bengkulu Regency which was unfair, dishonest, non-transparent, and partial, as well as full of fraudulent practices which were massive, structured, and planned based on documents prepared on purpose by the Respondent. The Petitioners have also been wrong and/or mistaken in placing the object of dispute about the General Election for Regional Heads. The object of dispute about the General Election for Regional Heads should have been the stipulated final vote tally of General Election for Regional Heads in South Bengkulu Regency for the 2008-

2013 Period organized by the Respondent, which had affected the election of the Petitioners as the Regent and the Deputy Regent of South Bengkulu Regency for the 2008-2013 Period;

2. The Petitioners' Petition of Objection is Unclear and Obscure (*Obscuur Libel*).

Based on the Petitioners' argument as set out in points 2, 3, and 4, the Petitioners have failed to clearly describe the mistake in the vote count stipulated by the Respondent. In fact, the Petitioners have been wrong or at least mistaken or have forgotten, so they tend to claim that the vote count result announced by the Respondent has been mistaken, without describing clearly and in detail the Respondent's mistake. The Petitioners have also been wrong or at least mistaken or has forgotten, so it seems that the Petitioners are rather rash and imprudent by not making any effort at all to include a clear description on: (a) the mistake in the vote count result stipulated by the Respondent; (b) request/*petitum* to cancel the vote count result stipulated by the Respondent; and (c) request/*petitum* to determine the correct vote count tally according to the Petitioners in their petition, so the Petitioners' petition of objection is unclear and obscure as well as failing to meet formal requirements. As a result, the Petitioners' petition of objection must be declared to be rejected or at least declared unacceptable;

The Petitioners, without first describing the mistake in the vote count by the Respondent in their *posita*, suddenly and groundlessly, requested in their *petitum* that the correct vote count tally for the Petitioners should be 45,100 votes, while the Related Party should only obtain 30,553 votes;

Whereas based on the argument in their petition, the Petitioners repeated the mistake and/or fault by:

- a. Failing to request for cancellation of the Related Party's vote acquisition, which is up to the present time, has been determined to have reached 39,069 votes, making them the Candidate Pair with the most number of votes in the 2008 General Election of Regional Heads of South Bengkulu Regency. The Petitioners also fail to attempt to describe in its *posita*, in relation to their claim on the Related Party's vote acquisition decreasing into only 30,553 votes;
- b. Failing to request for addition as well as to prove that there are not more than 8,534 additional votes for the Petitioner, so the vote acquisition for the Petitioners becomes 45,100 which is more than 39,069 votes, more than the vote acquisition of the Relevant Party, because the Petitioners' total vote acquisition

determined in the Respondent's final vote count plenary session was only 36,566 votes;

- c. There is no petition object of the Petitioners fulfilling the provisions of Constitutional Court Regulation No. 15/2008 regarding the mistake in the vote count by the Respondent, affecting the election of the Candidate Pair, the Petitioners are even unable to describe clearly and in detail the mistake in the vote count announced by the Respondent. The Petitioners are also unable to describe clearly and in detail at what levels there have been mistakes in vote count, so the Petitioners' petition should have been rejected or at least declared unacceptable because it is unclear and obscure;

3. The Petitioners' Petition of Objection is Groundless, Fails to Fulfill Both the Formality and Quality required for the Filing of the Petition of Objection.

The Petitioners' Petition does not in any way describe clearly and in detail the mistake in the vote count announced by the Respondent. In relation to the Petitioners' *petitum* claiming the valid vote acquisition to be 45,100 votes, it was not at all stated in the *posita* of the petition of objection. Moreover, the Petitioners are incapable of explaining, and even never explained the unilateral vote acquisition version according to the Petitioners. In addition, the Petitioners' petition does not concern

the mistake in vote count announced by the Respondent, but it relates to another issue which is not the object of dispute at the Court. Thus, the Petitioners' petition must be declared to be rejected or at least unacceptable;

The Petitioners' argument stating the presence of mistakes and violations of laws and regulations related to the General Election of Regional Heads implemented by the Respondent is noticeably the perfect evidence of the Petitioners' error and lack of understanding in filing and/or proposing the object of filing a petition of dispute about *Pemilukada*, because the arguments and/or reasons presented by the Petitioners are not at all correlated either based on legal facts or legal reasoning. The objection does not concern the vote count result affecting the election of the candidate pair, but it merely concerns technical and administrative issues relating to the implementation of the General Election of Regional Heads;

Based on documents namely Minutes and Recapitulation of Vote Count Results at each level up to the Plenary Session and the stipulation of vote count result at the General Elections Commission of South Bengkulu Regency on December 10, 2008, it is discovered that the process of voting and vote count went smoothly and democratically based on the principles of direct, public, free, confidential, honest, and fair elections;

Therefore, based on the foregoing matters, judicially, the Petitioners' petition for objection has not fulfilled the quality required for filing a petition of objection, being formally flawed and obscure, and must be declared to be rejected or at least unacceptable.

4. The Petitioners' Petition of Objection is Groundless, Failing to Fulfill the Formalities for Filing an Objection

Again, the Petitioners make a mistake and/or fault, not only by presenting unilateral arguments without any support of documentary evidence pursuant to the law, but also by requesting for its vote acquisition to be stipulated at 45,100 votes, without first arguing about the basis for the aforementioned vote acquisition in the *posita* of its petition of objection. The Petitioners' grounds in its petition as declared in point 4 of the Petitioners' *posita* are matters which are not at all relevant to the object of dispute of the General Election of Regional Heads. Thus and therefore, by law, the aforementioned reasons cannot be presented as the grounds for the petition of objection. Even if the Petitioners' unilateral arguments could be forced as evidence, the violations should have been filed to the Respondent or the General Elections Supervisory Committee during the process of determining the Candidate Pair, so it may be considered that the petition of objection is not supported by appropriate grounds, facts, and evidence.

In the implementation of the General Election of Regional Heads, none of the witnesses of the Candidate Pair had any objections proposed by the Candidate Pair and all witnesses have signed the Minutes in the aforementioned Models C, DA and DB, including the witnesses of Candidate Pair of the Petitioners and there was not any petition of objection concerning the mistake in vote count, especially based on such documents namely recapitulation of vote count results and Minutes of Recapitulation of Vote Count Result;

1. Exception on the Authority to Adjudicate

The substance and subject matter of the Petitioners' petition are not the absolute authority (*absolute competentie*) of the Court and pursuant to the provision of Article 4 Sub-Articles (a) and (b) of Constitutional Court Regulation No. 15/2008, which is limited only with respect to vote count result determined by the Respondent affecting: (i) the stipulation of candidate pairs eligible to become participants in the Second Round *Pemilukada*; or (ii) the election of the candidate pair as the Regional Head or the Deputy Regional Head;

Whereas based on the grounds of the Petitioners' objection as described in points 2, 3, and 4, as well as other unilateral arguments which do not correlate, the Petitioners' grounds for objection do not concern the final vote count result determined by the Respondent, but

rather concern other issues which are not the absolute authority of the Court and therefore, the Court has no authority to adjudicate.

6. The Arguments of the Petitioners' Objection Do Not Constitute the Object of Dispute of *Pemilukada*

With respect to the objection arguments as stated by the Petitioners, a form of mistake in the vote count is not a formal requirement for filing an objection to *Pemilukada*. This issue is not the competency of the court examining disputes on vote count results in *Pemilukada*, but the authority of the General Elections Supervisory Committee;

IN THE PRINCIPAL ISSUE OF THE CASE

1. The related party expressly rejects all of the Petitioners' arguments, except for matters the truth of which has been expressly acknowledged;
2. Respondent's Decision Number 59 Year 2008 dated December 10, 2008 regarding the Stipulation of Elected Candidates of the Regional Head and the Deputy Regional Head of South Bengkulu Regency in the Second Round 2008 General Election of Regional Heads of South Bengkulu Regency, which decides the Related Party as the Elected Candidate Pair of the Regional Head and the Deputy Regional Head of South Bengkulu Regency for 2008-2013, has been based on Minutes of Recapitulation of Vote Count Result of the Second Round 2008 General Election of Regional Heads by the General Elections Commissions of

- South Bengkulu Regency drawn up in the forum of the Respondent's Plenary Session, in the presence of all witnesses of the Candidate Pairs;
3. The Petitioners are unable to show at which level the mistake in the vote count is made by the Respondent, so based on the provisions of applicable laws and regulations, the Respondent is only required to prove the mistake in the vote count at one level lower and the General Election of Regional Heads of South Bengkulu Regency has been implemented by the Respondent in a direct, public, free, confidential, honest, fair, safe, orderly, and uninterrupted manner, and there was no mistake in the vote count by the Respondent, neither was there any partiality by the Respondent for the benefit of one of the Candidate Pairs;
 4. The Petitioners have been wrong or at least mistaken in: (i) observing legal facts; (ii) understanding the law; (iii) applying the law; (iv) as well as using the forum of the Constitutional Court in dealing with the *a quo* issue. The arguments presented in the Petitioners' *posita* have no relationship whatsoever with the objection to the vote recapitulation;
 5. The Related Party expressly rejected the Petitioners' arguments as stated in item 4 of the Petitioners' *posita*, and such situation indicates that the Petitioners have been wrong or at least mistaken in basing the proposed objection on issues which are not at all relevant to the object of dispute regarding the General Election of Regional Heads as regulated in the provision of Article 4 of Constitutional Court Regulation No. 15/2008;

- a. With respect to the Petitioners' arguments as stated in points 4 (a), 4 (b), 4 (c), and 4 (d) in the Petitioners' petition.

The Related Party objected to and rejected the Petitioners' argument which states that the Respondent has violated the provision of Article 58 Sub-Article f of Law Number 32 Year 2004, indicating that the Petitioners have been wrong or at least mistaken in understanding and observing the provisions of applicable laws and regulations;

In relation to the aforementioned provision of Article 58, the Related Party has fully understood and submitted itself to as well as based the aforementioned candidacy process on the provision of Articles 60 and 66 of Law Number 32 Year 2004 regarding Regional Government, where the Related Party has been examined and has also fulfilled all terms and conditions as provided for in applicable laws and regulations. It is proven through the examination on the fulfillment of the Relevant Party's administrative requirements by the Respondent. In fact, with respect thereto, the Related Party has been clarified with competent government agencies by referring to the provisions of applicable laws and regulations, and the Respondent has even welcomed feedbacks from the public on the requirements for candidate pairs, including the status of the Related Party in

relation to the implementation of the 2008 General Election of Regional Heads of South Bengkulu Regency;

Both the Respondent and the Related Party have fulfilled their legal obligations, because to date, the Related Party has never been punished with imprisonment by a court decision having permanent legal force for having committed any criminal act punishable with a minimum of five-year imprisonment or more from a district court the jurisdiction of which covers the domicile of the candidate;

The Respondent has also provided 14 days of opportunity for public feedback, but up to the deadline of stipulation of prospective candidates to become Candidate Pair, up to the completion of the First Round General Election of Regional Heads, the Related Party, the General Elections Supervisory Committee of South Bengkulu Regency and the Respondent itself, had never received any feedback in the form of objection, either to the Relevant Party or H. Dirwan Mahmud, S.H., including with respect to the Petitioners' argument as stated in points 4 (a), 4 (b), 4 (c), and 4 (d) of the Petitioners' *posita*, in addition, by observing the facts where, since 1999 to the present time (for two periods), H. Dirwan Mahmud, S.H., has been a member of the Regional People's Legislative Assembly of South Bengkulu Regency (for 2004-2009), namely as

the Chairperson of the People's Legislative Assembly of South Bengkulu Regency;

The application of the provision of Article 58 of Law Number 32 Year 2004 is no longer relevant to the status of the Related Party stipulated as the Candidate Pair; it is not even relevant to the vote acquisition results, or in other words, the status of the Related Party and the vote acquisition will not change. Furthermore, the facts indicate that there had been no objection from any relevant party, in this case the public, including the Petitioners as one of the Candidate Pairs, during the stipulation of the prospective candidates to become the Candidate Pair. Thus and therefore, by law, such argument and evidence as well as relevant witnesses must be set aside because they have no relevance to the *a quo* issue, especially to the dispute about vote acquisition;

- b. With respect to the Petitioners' Argument as stated in Point 4 (e)

The Petitioners have been unilaterally and groundlessly stated that the mistake and violation in the implementation of the 2008 General Election of Regional Heads of South Bengkulu Regency are clear, evident, structured, planned, and massive, by annulling a legal fact that the General Election of Regional Heads of South Bengkulu Regency had been implemented in a direct, public,

free, confidential, honest, and fair manner. Thus and therefore, the unilateral and groundless arguments which tend to be misleading must be rejected or at least set aside;

- c. With respect to the Petitioners' Argument as stated in Points 4 (f), 4 (g), 4 (h), 4 (i), 4 (j), 4 (k), and 4 (l).

With respect to the Petitioners' argument which states that: (i) some residents having the right to vote were registered neither in the Temporary Voters' List (DPS) nor the Permanent Voters' List (DPT); (ii) some voters did not receive voting invitations; (iii) some registered voters voted twice; (iv) some candidates were giving away goods and money; (v) statements of promise fulfillment were distributed; (vi) intimidation by the Success Team; and (vii) some people were not listed in the Permanent Voters' Fixed. The Related Party rejects and at the same time expressly denies the aforementioned argument of the Petitioner, because it is a unilateral, groundless argument by the Petitioners and it tends to be manipulative. It is not even relevant to the object of dispute of the *a quo* General Election for Regional Heads and it cannot be made as a justifying reason because what the Petitioners argued concerns issues related to the implementation process of the General Election of Regional Heads which is not covered under the Petitioners' authority, but

that of the General Elections Supervisory Committee. It does not concern the vote count results affecting the election of the Candidate Pair. Thus, the role and function as well as authority of the Constitutional Court are not as the Election Supervisory Committee, but merely the intermediary in the dispute about the final vote count result affecting the election of the candidate pair determined by the Respondent, so that the *a quo* Petition of Objection lies beyond the competency of the Constitutional Court to examine it, because it is not related to or concerned with the Vote Count Result;

Based on the issues set out above, despite their fulfillment of the mechanism and technical procedures for filing the *a quo* petition of objection Petitioners, the Petitioners do not, however, describe clearly and in detail the vote count result affecting the election of the Candidate Pair. In fact, the Petitioners describe in their statement of objection such matters as violations of the implementation of the General Election of Regional Heads of South Bengkulu Regency which has no relevance to the object of dispute about the General Election of Regional Heads and neither does it fall under the authority of the Constitutional Court to adjudicate.

6. With Respect to the Argument of Illusionist in the Form of Claim on the Vote Acquisition of the Candidate Pair by the Petitioners

The Related Party rejects and at the same time denies the 4th point in the Petitioners' *petitum*, since the Petitioners could not at all describe clearly and in detail the Petitioners' vote acquisition supported with legally valid evidentiary documents. The Petitioners could neither state at which level of vote count the Petitioners acquired such votes. Additionally, the Petitioners have failed to describe at which level the Respondent made a mistake in the vote count and what the correct vote count the Respondent should have made;

The Respondent entirely acknowledges that the data presented by the Petitioners in the petition of objection where the Petitioners should have obtained 45,100 votes is not supported by facts and legally valid evidentiary documents. It is a different case with the data and/or evidence of the Related Party or the Respondent, where the Respondent conducted the vote count and prepared a recapitulation of the vote count in a gradual steps, and as pointed out above, without any record of objection;

Thus, relating it to the Petitioners' petition for objection, the Petitioners' petition is formally flawed because it violates formal judicial requirements by not describing clearly and in detail the formal mistake, failing to describe clearly and in detail the mistake in the vote count by the

Respondent, and also failing to mention clearly and in detail the grounds for the correct vote count according to the Petitioners which are requested for a stipulation to the Constitutional Court as the valid vote count result.

[3.16] Considering whereas in order to support their statements, the Related Party has submitted document or written evidence marked as Exhibits PT-1 through PT-27 which as completely described in the Facts of the Case part, and presented four witnesses who basically state as follows:

1. Witness Fitri Agustina (Witness of the Pair of Candidates with Candidacy Number 7)

- On December 6, 2008 in TPS 5 in Ibul Village, at around 11.00 O'clock West Indonesia Time, two persons named Maria and Guntur came to vote, showing their Resident Identity Cards to the members of KPPS;
- After being observed by the officials of KPPS, their names were not included in DPT so that they could not use their voting rights in TPS 5. Then they left;
- Around 15 minutes later, they came back taking with them other people's voting invitations, namely the voting invitations belonging to Ramon and Meta, however they were still not allowed to vote;

2. Witness Jamri (Village Head):

- On the voting date, December 6, 2008, at around 12.00 O'clock West Indonesia Time, the Witness was visited by someone whose name was Jusri for the purpose of asking for money to buy cigarettes;
- Because there is a family relationship between the Witness and Jusri namely as the uncle and nephew and between the village head and the villager, then the Witness gave him Rp.50,000,- without any message to elect a certain pair of candidates because Jusri had cast his vote;
- After receiving the money from the Witness, Jusri asked permission to leave for home;
- On December 2008 at around 07.00 West Indonesia Time, Jusri came to meet the Witness and said that the Witness had been irrevocably reported to South Bengkulu Regency *Panwaslu* because of having been coaxed by someone;
- The Witness as the village head believed he had been made a scapegoat and therefore asked Jusri to make a letter of statement on Rp.6.000,- stamp to the effect that he would no longer do such defamatory act against the good name of the village head accused of practicing *money politics*;

3. Witness Minarwan, S.H. (Head of Service Office of Social Affairs, Manpower, and Transmigration)

- The sarongs and clothes distributed at Tresna Wreda Social Center were not from one of the candidate pairs but they were the aid the Service Office of Social Affairs, Manpower and Transmigration of South Bengkulu Regency as a routine based on the proposal of the Head of the Social Center ;
- It was the aid for 25 Social Center inhabitants and there was nothing left for the Social Center personnel;

4. Witness H.M. Ali Nudiha

- Since the First and the Second Rounds, the Witness has known the candidates of head and deputy head of regency, and the candidates of head and deputy head of regency have known him as well;
- The candidates of head and deputy head of regency are persons with good conduct in the eyes of the people in accordance with their respective positions;
- The Witness has never heard that the pairs of candidates of head and deputy head of regency are persons who like doing disgraceful things especially as one of the pairs of candidates is

the Chairman of South Bengkulu Regional People's Legislative Assembly.

The Court's Opinion

Concerning the Exception

[3.17] Considering whereas prior to considering the principal issue of the Petitioners' petition, the Court shall first consider the Respondent and the Related Party's exceptions as follows:

[3.17.1] Whereas the Respondent's exception in respect of the petition does not meet the formal requirements because it is not completed with complete and clear identities, and also it does not describe clearly the errors in the vote count conducted by the Respondent leading to and affecting the number of votes acquired by the Petitioners. According to the Court, the Petitioners' petition has met the minimum formal requirements as specified in Articles 29, 30, and 31 of the Constitutional Court Law *juncto* Article 6 of Constitutional Court Regulation (PMK) No. 15/2008. Accordingly, the Respondent's exception is not sufficiently grounded;

[3.17.2] Considering, furthermore with respect to the Related Party's exception which is basically related to six matters, namely:

- 1) The Petitioners' Petition constitutes *error in objecto*;
- 2) The Petitioners' Petition is unclear and obscure (*obscur libel*);

- 3) The Petitioners' Petition is groundless, does not meet both the formality and quality required for the filing of a petition;
- 4) The Petitioners' Petition is groundless, does not meet the formalities for filing an objection;
- 5) Concerning authority to adjudicate;
- 6) The Petitioners' objection is not the object of *Pemilukada* dispute.

The Court is of the following opinion:

- a. With respect to the Related Party's Exception in point 1) based on Exhibit P-2, the dispute object is the Decision of South Bengkulu Regency KPU Number 59 Year 2008 dated December 10, 2008 concerning the Stipulation of the Elected Pair of Candidates of Head and Deputy Head of South Bengkulu Regency in the Second Round General Election of Head and Deputy Head (hereinafter referred to as *Pemilukada*) of South Bengkulu Regency Year 2008, which constitutes the follow-up to the vote count conducted by the Respondent. Such matter is not denied by the Respondent as the institution issuing the *a quo* decision. Therefore, the dispute object filed by the Petitioners has been in accordance with the provision of Article 4 sub-article b of PMK No. 15/2008 which reads, "*The object of dispute over Pemilukada shall be the vote count result stipulated by the Respondent affecting:*

a....; or

b. *the election of the Pair of Candidates as the head and deputy head of regency.*”

Therefore, such Related Party’s exception is not sufficiently grounded and must be set aside;

- b. The Related Party’s exception in points 2, 3, 4, 5, and 6 are closely related to the principal issue of the petition which constitutes the Court’s authorities to evaluate it, so that the intended exception must be also set aside;

[3.18] Considering whereas because the Respondent and the Related Party’s exceptions are set aside, the Court shall further set out its opinion on the principal issue of the Petitioners’ petition based on the statements and explanations of the parties (Petitioners, Respondent, and Related Party), evidence, as well as the statements of the Petitioners, Respondent, and Related Party;

[3.19] Considering whereas based on the legal facts, either the Petitioners’ statements, the Respondent’s statements, the statements of the Petitioners’ Witnesses, the statements of Respondent’s Witnesses, the statements of the Related Party’s Witnesses, the Petitioners’ Conclusion, the Respondent’s Conclusion or the Related Party’s Conclusion, the Court discovered the legal facts, either admitted by the parties or which become the legal dispute of the parties, as follows:

[3.19.1] Whereas at the hearing there were legal facts and arguments of the Petitioners' petition which were not denied by the Respondent, therefore such legal facts have become the law for the Petitioners and Respondent and are no longer necessary to prove, namely the legal facts in the following forms:

1. Decision of South Bengkulu Regency KPU Number 30 Year 2008 concerning the Stipulation of the Pair of Candidates of Head and Deputy Head of Regency to become Participants in the General Election of Regional Head and Deputy Regional Head Year 2008 (*vide* Exhibit P-1);
2. Letter of Statement stating that H. Dirwan Mahmud, S.H. and H. Hartawan, S.H. promised to extend the plantation area of Suka Maju Village, Air Nipis District if they won the *Pemilukada*, recognized/witnessed by Harjo, Air Nipis District Head, and Henderi, a member of the Regional People's Legislative Assembly (*vide* Exhibit P-17);
3. Photocopy of Minutes of Plenary Meeting Number 15/KPU-BS/VII/2008 concerning the Stipulation of Permanent Voters' List (DPT) for the Election of Head of South Bengkulu Regency Year 2008;
4. Photocopy of Decision of South Bengkulu Regency KPU Number 37 Year 2008 dated August 28, 2008 concerning the Procedures for the Implementation of Voting and Vote Count of South Bengkulu *Pemilukada* Year 2008 in Voting Stations (TPS);

5. Photocopy of Minutes of Joint Agreement dated October 13, 2008 concerning Joint Agreement of the Candidates of Head and Deputy Head of South Bengkulu Regency, Decision of South Bengkulu Regency KPU, South Bengkulu Regency *Panwaslu* regarding South Bengkulu Residents who are Not Listed in DPS and DPT who qualify to vote in the South Bengkulu Regency *Pemilukada*;
6. Photocopy of Minutes of Plenary Meeting of South Bengkulu Regency, KPU Decision Number 56/KPU-BS/XI/2008 concerning the Preparation for the Second Round *Pemilukada* of South Bengkulu Regency Year 2008;
7. Photocopy of Decision of South Bengkulu Regency KPU Number 48 dated October 20, 2008 concerning the Stipulation of the Pair of Candidates of the Head and Deputy Head Obtaining the First and Second Majority of Votes in the *Pemilukada* of South Bengkulu Regency;
8. Photocopy of Decision of South Bengkulu Regency KPU Number 50 concerning Stages, Program and Schedule for the Implementation of the Second Round *Pemilukada* of South Bengkulu Regency Year 2008;
9. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by District Election Committee (PPK) of Pino Raya District (Model DA-KWK);

10. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by PPK of Air Nipis District (Model DA-KWK);
11. Photocopy of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by PPK of Manna District (Model DA-KWK);
12. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Ulu Manna PPK (Model DA-KWK);
13. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Pasar Manna PPK (Model DA-KWK);
14. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Pino PPK (Model DA-KWK);
15. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Kedurang PPK (Model DA-KWK);

16. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Seginim PPK (Model DA-KWK);
17. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Bunga Mas PPK (Model DA-KWK);
18. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Kedurang Ilir PPK (Model DA-KWK);
19. Photocopy of Minutes of the Recapitulation of Vote Count Result of the Second Round *Pemilukada* at the District Level by Kota Manna PPK;
20. Photocopy of Decision Number 01/REDHO/VI/2008 concerning the Formation of Winning Campaign Team for Candidates of Head and Deputy Head of Regency "H.Reskan Effendi and Dr. drh. Rohidin, MMA";
21. Photocopy of Letter Number 12/REDHO/VI/2008 concerning the Letter of Assignment of the Pair of Candidates with Candidacy Number 8;
22. Photocopy of South Bengkulu Regency KPU Decision Number 02/SK/TP/2008 concerning the Formation of the Campaign Team for the Candidate Pair of Dirwan-Hartawan;

23. Photocopy of South Bengkulu Regency KPU Decision Number 02/SK/TP/2008 concerning the formation of Witnesses for the Candidate Pair of Dirwan-Hartawan;

[3.19.2] Whereas in addition to the legal facts or matters admitted by the parties, in the hearing there were also legal facts or matters which become legal dispute of the parties as follows:

1. The Respondent intentionally and illegally has allowed a candidate of head of regency who once served in prison for about seven years in Cipinang First Class Correctional Institution, East Jakarta, from 1985 until 1992, to become the Pair of Candidates of Head and Deputy Head of South Bengkulu Regency;
2. There were people having voting right, but they were not listed in DPS or DPT;
3. There were voters who did not obtain voting invitation;
4. There were listed voters voting more than once;
5. There was gift of goods or money or other incentives to voters provided that they had to elect the Pair of Candidates with Candidacy Number 7 in the names of H. Dirwan Mahmud, S.H. and H. Hartawan,S.H.;
6. There was intimidation by the Success Team of the Pair of Candidates with Candidacy Number 7 to the people to elect the Pair of Candidates

with Candidacy Number 7 in the names of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H.;

7. There were people who were not listed in DPT so that they did not obtain voting invitation, but they voted by using other voters' invitations.

Whereas according to the Petitioners, the Candidate of Head of South Bengkulu Regency in the name of H. Dirwan Mahmud, S.H. had once served in prison for about seven years in Cipinang First Class Correctional Institution, East Jakarta, is the legal fact the truth of which cannot be denied based on:

1. Statement and written statement of Witness M. Zayadi, on December 17, 2008 stating that the Witness had ever been with H. Dirwan Mahmud when both served in prison in Cipinang First Class Correctional Institution, East Jakarta for different cases. H. Dirwan Mahmud was imprisoned for seven years from 1985 until 1992 for a case of murder/violence. H. Dirwan Mahmud used an alias "Roy Irawan bin Mahmud Amran" usually called "Roy" (*vide* Exhibit P-5 and statement of Witness M. Zayadi in the hearing on December 19, 2008);
2. Statement and written statement of Witness Hasnul Arifin, on December 17, 2008 stating that the Witness had once been with H. Dirwan Mahmud, S.H. when both served in prison in Cipinang First Class Correctional Institution, East Jakarta for different cases. H. Dirwan Mahmud bin Mahmud

- Amran used an alias Roy Irawan bin Mahmud Amran, usually called Roy (*vide* statement of Witness Hasnul Arifin in the hearing on December 22, 2008 and Exhibit P-6);
3. Statement and written statement of the Witness Asranudin Bais, the Staff of Cipinang First Class Correctional Institution, Maintenance Section, East Jakarta on December 17 stating that he knew and recognized the inmate in the name of Roy Irawan bin Mahmud Amran whose original name was Dirwan Mahmud coming from Manna, South Bengkulu. Roy Irawan bin Mahmud Amran had once served in prison in Cipinang First Class Correctional Institution, East Jakarta. Since 1989, Roy had been employed as a “foreman” in the Hospital of Cipinang First Class Correctional Institution, East Jakarta (*vide* statement of Witness Asranudin Bais in the hearing on December 19, 2008 and Exhibit P-7);
 4. Statement and written statement of Witness Achmad Busri, the Registry Staff of Cipinang First Class Correctional Institution, East Jakarta on December 17, 2008, acknowledged by the Head of Cipinang First Class Correctional Institution, East Jakarta, stating that he knew and recognized the inmate whose name was Roy Irawan bin Mahmud Amran, who was imprisoned for 10 years for a case of murder, employed as a kitchen “foreman”, placed in Block 3G Room, before he served as the Hospital “foreman” (*vide* Exhibit P-8 and Statement of Witness Achmad Busri in the hearing on December 19, 2008);

5. Letter of Statement of Tomy Arifin dated December 17, 2008, the Registry Staff of Cipinang First Class Correctional Institution, East Jakarta, recognized by the Head of Cipinang First Class Correctional Institution, East Jakarta, stating that he knew and recognized the inmate named of Roy Irawan bin Mahmud Amran in a murder case, placed in Block 3G Room 2, who was employed as the kitchen “foreman”, and released by way of conditional release process (*vide* Exhibit P-9 and statement of Witness Tomy Arifin in the hearing on December 19, 2008);
6. Letter of Statement of Haryanto alias Yan bin Sulaiman dated December 17, 2008 stating that Dirwan Mahmud alias Roy Irawan bin Mahmud Amran once served in prison in Cipinang First Class Correctional Institution, East Jakarta in 1989 until 1990 and that he once met Dirwan Mahmud alias Roy Irawan bin Mahmud Amran usually called Roy who was imprisoned for a criminal act (*vide* Exhibit P-10 and statement of witness Haryanto alias Yan bin Sulaiman in the hearing on December 19, 2008);
7. Such legal fact has been reported to South Bengkulu Regency *Panwaslu* by HARARI’s Campaign Team via letter Number 153/TIM HARARI/XI/2008 dated November 15, 2008 and South Bengkulu Regency *Panwaslu* has taken a stand via the letter Number 082/PANWASLU/ BS/X/2008 deciding not to follow up/to recommend the report to the next level for the following reasons:

- a. The Candidate of Head of Regency in the name of H. Dirwan Mahmud has been declared to pass the administrative requirements and has met Article 38 of Government Regulation Number 6 Year 2005;
- b. based on the Letter of Statement of South Bengkulu Resort Police the person concerned is declared to have not been/or is not being involved in a criminal case or any other prohibited movements/organizations;
- c. based on the Letter of Statement of the Head of Manna District Court, the concerned person is declared:
 - 1) not having his voting right revoked under a court decision having a permanent legal force;
 - 2) currently not serving in prison under a court decision which has had permanent legal force for committing a criminal act punishable with imprisonment of five years or more;
 - 3) never been examined or detained because of adultery, gambling, drinking alcoholic beverages, using Drugs, as well as other disgraceful acts;

8. Photo of Roy Irawan alias Dirwan Mahmud when he was the Football Team Manager in Cipinang First Class Correctional Institution, East Jakarta (*vide* Exhibit P-4);
9. Photo of Roy Irawan alias Dirwan Mahmud in Cipinang First Class Correctional Institution, East Jakarta (*vide* Exhibit P-4B);
10. Photo of Roy Irawan alias Dirwan Mahmud when listening to the directives of Department of Justice in Cipinang First Class Correctional Institution, East Jakarta (*vide* Exhibit P-4C);
11. Photo of Roy Irawan alias Dirwan Mahmud in Cipinang First Class Correctional Institution, East Jakarta (*vide* Exhibit P-4D);

On the contrary, the Respondent argues that in selecting prospective candidates of head of regency, the Respondent has conducted verification of the prospective candidates so that the stipulation of the successful prospective candidates has been in accordance with the procedures and requirements as specified in the laws and regulations. Following the stipulation of the prospective candidates who met the requirements, the Respondent also conducted verification of administrative and factual as well as support requirements as specified in Article 60 of the Number 32 Year 2004 concerning Regional Government. The Respondent has given a time frame of 14 days for objections of the people to the requirements of the candidate pairs, and during the 14-day time frame there was no response, information, objection, input or refutation from

the people in respect of candidate's requirements such as the reason that H. Dirwan Mahmud, S.H. had once served in prison for seven years in Cipinang First Class Correctional Institution, East Jakarta;

The Respondent conducted the verification based on the Recommendation Letter of the Head of Manna District Court, Recommendation Letter of Criminal Records from South Bengkulu Resort Police and up to 14 days of the time frame, the Respondent never received any input, as further confirmed by the fact that H. Dirwan Mahmud, S.H. has been one of the members of South Bengkulu Regency DPRD for two periods, namely the 1999-2004 term of service and the 2004-2009 term of service and concurrently the Chairman of South Bengkulu Regency DPRD;

According to the Respondent, letters of statement as the evidence cannot be accepted because the letters of statement were not made under oath, and the more important matter is that such Petitioners' descriptions and arguments are not relevant to the dispute of *Pemilukada* result, because the matters accused in such statements constitute the administrative domain which has expired;

With respect to the Petitioners' arguments as described above, the Related Party also presented statements stating that the Related Party as the Pair of Candidates as well as H. Dirwan Mahmud, S.H. had fully recognized and subjected themselves to and based the process of the intended nomination on the provisions of Articles 60 and 66 of Law Number 32 Year

2004 concerning Regional Government, where the Related Party has been observed and also have met all requirements and criteria as specified in the applicable laws and regulations. Such matters were proved by the investigation on the fulfillment of administrative requirements of the Related Party by the Respondent. In fact, in relation to the intended matter, clarification towards the Related Party has been conducted with competent government agencies by referring to the applicable laws and regulations, and even the Respondent also has welcomed inputs from the people with respect to the requirements for Candidate Pair;

According to the Related Party, until now H. Dirwan Mahmud has never been imprisoned under a court decision which has had permanent legal force for committing a criminal act punishable by imprisonment of five years or more from the district court in whose jurisdiction the candidate's domicile is located;

Whereas according to the Petitioners, there were people who have voting right but were not listed in DPS or DPT, as described by Witness Maria Yustianti who could not use her voting right in the Second Round Election for the reason that her name was not listed in KPU, while in the First Round Pemilukada the Witness was listed in DPT and used her voting right. The witness submitted it to the Committee and the Committee suggested her to process it to RT Head, then the Witness processed it to KPU. Even though the Witness had shown her Identity Card to the officers, she was still not allowed to use her voting right because there

was a new regulation (*vide* Exhibit P-14 and statement of Witness Maria Yustianti in the hearing on December 19, 2008);

Whereas on the contrary, the Respondent denies the Petitioners' argument by stating that the voters having voting right were firstly recorded by South Bengkulu Regional Government and the result was reported to South Bengkulu Regency KPU. The acquired data was further updated in the form of DPS and was announced to the public at the PPS level through publication board in village office in order to obtain inputs from the people. People listed in DPS could list themselves to PPS officers and those who listed themselves after the announcement were categorized under the Additional Voters' List. DPS and Additional Voters List were furthermore stipulated as DPT in PPS Plenary Meeting. The number of DPT in District Level was determined by PPK and DPT at the regency level was determined by the Respondent. The Respondent has opened a great opportunity for democracy through Articles 12, 13, 14, 15, and 16 of Decision of South Bengkulu Regency Number 37 Year 2008 concerning the Procedures for the Implementation of Voting and Vote Count in the Election of Head and Deputy Head of South Bengkulu Regency Year 2008 in TPS clearly, explicitly, accurately, and with details stating that the voters who have not obtained Voting Invitation (C6-KWK) are given the opportunity to actively request for such invitations and/or obtain them through the Family Head of other members of the family, and that facilities are provided for disabled persons;

Such Respondent's denial is confirmed by the statement of Witness Fitri Agustina in the hearing on December 23, 2008 stating that after being observed by KPPS officers, it was identified that the name Maria Yustianti was not included in DPT, and therefore she could not use her voting right in TPS 5 of Ibul Village. In fact, she came back taking with her other person's voting invitations, namely the voting invitation belonging to Ramon and Meta, and accordingly the Committee consistently did not allow her to vote;

Whereas according to the Petitioners, there were voters who voted more than once in TPS1 of Suka Jaya Village, Kedurang Ilir District, by way of one person voting four ballots. Such violation was committed because there was permit from the Committee by giving four ballots to each person, according to the testimony of Zaitun Nurlaili in the hearing on December 19, 2008;

With respect to the foregoing arguments of the Petitioners', the Respondent stated that the Petitioners' arguments were not accurate, complete, clear, and detailed concerning the TPS of the crime scene, the number, and the parties stating objection or witnesses. The Petitioners also did not explain the impact on vote acquisition of the pair of candidates or the dispute on vote count result;

Whereas according to the Petitioners, there were gifts of goods or money or other incentives to the voters provided that they had to elect the Pair of Candidates with Candidacy Number 7 in the names of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H., as reported in the Daily *Rakyat*

Bengkulu, Sunday, November 2, 2008 informing that hundreds of persons hired on a contract basis on Saturday, November 1, 2008 came to the Official House of the non-active Chairman of South Bengkulu DPRD, H. Dirwan Mahmud, S.H. to enter into an agreement containing four points of commitment. *First*, the persons employed on contract basis would sincerely support the Candidate Pair of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H. as the head and deputy head of regency. *Second*, the persons employed on contract basis and the members of their families would fully develop the network for the Related Party to win. *Third*, if the Related Party with the South Bengkulu *Pemilukada*, the persons employed on contract basis requested that the leadership of both, the head and the deputy head of regency, would accelerate their promotion process as Candidates of Civil Servants (CPNS) in 100 days following their inauguration. *Fourth*, such statement was made to be implemented by respective parties (*vide* Exhibit P-16 and Exhibit P-16A);

On the contrary, according to the Respondent, such arguments of the Petitioners are unclear, inaccurate, not detailed and incomplete. In addition, the Petitioners' arguments are within the criminal domain of *Pemilukada* which constitutes the authority of South Bengkulu Regency *Panwaslu*. Besides, South Bengkulu Regency *Panwaslu* has conducted an investigation and made a Plenary stipulation regarding the reports some of which were stopped because of insufficient evidence while some others were followed up to the investigator (*vide* Respondent's response dated December 19, 2008, point 8, page 5). Such response of the Respondent is supported by the Related Party's statement and

conclusion stating that such matter constitutes the Petitioners' argument made unreasonably and tending to be manipulative, and even not having any relevance at all to the object of *Pemilukada* dispute and cannot be made as a justification (*vide* Related Party's statement in point 6, item c, page 16);

Whereas according to the Petitioners, there was intimidation by the Success Team of the Candidate Pair with Candidacy Number 7 in order to elect the Candidate Pair with Candidacy Number 7 in the names of H. Dirwan Mahmud, S.H. and H. Hartawan, S.H. (*vide* Exhibit P-14).

On the contrary, the Respondent states that such argument is unclear, inaccurate, not detailed, and incomplete. In addition, the Petitioners' argument is within the criminal domain of *Pemilukada* which constitutes the authority of South Bengkulu Regency *Panwaslu*. Besides, South Bengkulu Regency *Panwaslu* has conducted an investigation and made a Plenary stipulation regarding the reports some which were stopped because of insufficient evidence and some others were followed up to the investigator (*vide* Respondent's response dated December 19, 2008, point 8 page 5).

Whereas according to the Petitioners, there were persons who were not listed in DPT so that they did not get voting invitations, but they voted using the others' voting invitations, occurring in TPS 1 of Jeranglah Tinggi Village, conducted by Adi bin Resin (*vide* Exhibit P-14);

On the contrary, the Petitioners states that the Petitioners' argument is unclear, inaccurate, not detailed, and incomplete. In addition, the Petitioners' argument is within the criminal domain of *Pemilukada* which constitutes the authority of South Bengkulu Regency *Panwaslu*. Besides, South Bengkulu Regency *Panwaslu* has conducted an investigation and made a Plenary stipulation regarding the reports some which were stopped because of insufficient evidence and some others were followed up to the investigator (*vide* Respondent's Response dated December 19, 2008, point 8, page 5);

Such response of the Respondent is supported by the Related Party's statement and conclusion stating that such matter constitutes the Petitioners' argument made unreasonably and tending to be manipulative, and even not having any relevance at all to the object of *Pemilukada* dispute and cannot be made as a justification (*vide* the Related Party's Statement point 6, item c, page 16);

[3.20] Considering whereas from the legal dispute of the aforementioned parties, the issue for legal evaluation by the Court in response to the essence of the Petitioners' legal problem is whether or not the Decision of South Bengkulu Regency KPU and the Recapitulation of Vote Court Result of *Pemilukada* of South Bengkulu Regency are valid and/or judicially flawed. The court has given its legal opinion and evaluation, as follows:

Whereas in relation to the Petitioners' argument stating that the Respondent has intentionally and illegally allowed a Candidate of Head of

Regency who once serve in prison for about seven years in Cipinang First Class Correctional Institution, East Jakarta to become the Pair of Candidates of South Bengkulu Head and Deputy Head of Regency which is related to the Respondent's denial stating that in selecting prospective candidates of head of regency, the Respondent has conducted verification of prospective candidates so that the stipulation of the successful prospective candidates has been in accordance with the procedures and requirements as specified in the laws and regulations. According to the Court, the provisions on the requirements to hold a public office are regulated in various laws and regulations all of which requiring someone not to have been imprisoned under a court decision which has had permanent legal force for committing a criminal act punishable by a maximum imprisonment of five years or more;

Whereas every public office or government office in a wide sense of the term which shall be filled either through election or other ways requires people's trust because public office is office based on trust. Therefore, every candidate for public office must meet certain requirements in order to find the official who is really clean, authoritative, honest, and has high moral integrity. Such requirements, except as determined in the 1945 Constitution, are the authority of legislators to determine in accordance with the needs required by the related public office as well as with due observance of the provision of Article 28J paragraph (2) of the 1945 Constitution;

Whereas public offices filled by way of election by the people cannot be fully delegated to the people without any requirement at all and merely for the reason that the people themselves shall bear the risk of their choice. Such offices must be held by persons who have high quality and integrity. The nomination of a person to fill a public office without discriminating the persons as intended in Article 27 paragraph (1) of the 1945 Constitution does not mean that the state may not regulate or determine its requirements, to the extent that the regulation and/or requirements constitute the objective demand required by an office or certain government activity and to the extent that such regulation and/or the requirements are not discriminatory in the sense of discriminating people based on religion, skin color, ethnic group, language, gender, political belief, or other certain social status. Such regulation or determination of requirements is the reasonable mechanism which will allow the election to go on accurately and to result in the choice of credible leaders;

[3.21] Considering whereas furthermore the Court will consider the following arguments and evidence of the Respondent and the Related Party:

Whereas in conducting selection of prospective candidates of regional head, the Respondent has conducted verification of prospective candidates, so the stipulation of the prospective candidates passing the selection has been in accordance with the procedures and requirements, as regulated in laws and regulations. After stipulating qualified prospective candidates, the Respondent also conducted verification of administrative and factual

requirements as well as support requirements as regulated in Article 60 of Law Number 32 Year 2004 regarding Regional Government. The Respondent has provided a period of 14 days for refutations from the community with respect to the requirements for candidate pairs, and during such 14-day period, there was no response, information, objection, input, or refutation from the community with regard to requirements for candidates such as the reason that H. Dirwan Mahmud, S.H. has served seven years in prison in Cipinang First Class Correctional Institution (LP), East Jakarta;

The Respondent conducted verification based on the Statement from the Head of District Court of Manna and Statement of Criminal Records of South Bengkulu Resort Police. During the whole 14-day period, the Respondent never received any input. Such matter is reaffirmed by the fact that H. Dirwan Mahmud, S.H. has been a member of DPRD of South Bengkulu Regency for two periods, namely for the service period of 1999 through 2004 and service period of 2004 through 2009 who also assumed the position of Chairperson of South Bengkulu Regency DPRD;

Statement letters as evidence cannot be accepted since statement letters are not made under oath, and most importantly, the description and arguments of the Petitioners concerned are not relevant to the dispute on the results of General Election of Regional Heads, since what is alleged in such statement constitutes administrative domain that has expired;

Whereas the Related Party as Candidate Pair as well as H. Dirwan Mahmud, S.H. have fully acknowledged and submitted themselves as well as based the nomination process concerned on the provisions of Article 60 and Article 66 of Law Number 32 Year 2004 regarding Regional Government, in which the Related Party has been examined and has also fulfilled all requirements and provisions as regulated in the applicable laws and regulation. Such matters of which has been proven by the investigation on the fulfillment of administrative requirements for the Related Party by the Respondent. With regard to such matter, clarification has also been conducted to competent government agencies with respect to the Related Party by referring to the provisions of the applicable laws and regulation, in fact, the Respondent has also opened itself for input from the community with regard to requirements for Candidate Pair;

Until present, H. Dirwan Mahmud, S.H. has never been imposed with a criminal sanction of imprisonment based on a court decision having binding legal force for committing a criminal act punishable with imprisonment of five years or more from the district court in whose jurisdiction cover the domicile of the candidate is located;

[3.22] Considering whereas based on the aforementioned matters, *prima facie* formally, by referring to legal certainty, the validity of arguments of the Respondent and the Related Party have been proven;

[3.23] Considering whereas aside from the aforementioned fact, according to the Court, the validity of the written evidence and statements of the witnesses presented by the Petitioners is undeniable by the statements of witnesses presented by the Respondent, insofar as the following matters are concerned:

[3.23.1] Statement and written statement of Witness M. Zayadi, dated December 17, 2008, stating that the Witness together with H. Dirwan Mahmud had once served in prison in Cipinang First Class Correctional Institution, East Jakarta for different cases, H. Dirwan Mahmud served seven years in prison from 1985 to 1992 for a case of murder and H. Dirwan Mahmud used an alias “Roy Irawan bin Mahmud Amran”, usually called as “Roy” (*vide* Exhibit P-5 and statement of Witness M. Zayadi in the hearing on December 19, 2008);

[3.23.2] Statement and written statement of Witness Hasnul Arifin dated December 17, 2008, explaining that the Witness together with H. Dirwan Mahmud, S.H. had once has served in prison in Cipinang First Class Correctional Institution, East Jakarta for different cases and H. Dirwan Mahmud bin Mahmud Amran used an alias “Roy Irawan bin Mahmud Amran”, usually called as “Roy” (*vide* statement of Witness Hasnul Arifin in the hearing on December 22, 2008 and Exhibit P-6);

[3.22.3] Statement and written statement of Witness Asranudin Bais, Maintenance Section Staff of Cipinang First Class Correctional Institution, East Jakarta, dated December 17, 2008, as acknowledged by the Head of Cipinang First Class Correctional Institution, East Jakarta, explaining that the Witness knew and recognized an inmate by the name of Roy Irawan bin Mahmud Amran, whose

real name was Dirwan Mahmud, coming from Manna, South Bengkulu, and who had once served in prison in Cipinang First Class Correctional Institution, East Jakarta. Since 1989, the aforementioned person had been employed as Hospital foreman of Cipinang First Class Correctional Institution, East Jakarta (*vide* statement of Witness Asranudin Bais in the hearing on December 19, 2008 and Exhibit P-7);

[3.23.4] Statement and written statement of Witness Achmad Busri, Registration Staff of Cipinang First Class Correctional Institution, East Jakarta, dated December 17, 2008, as acknowledged by the Head of Cipinang First Class Correctional Institution, East Jakarta, explaining that the Witness knew and recognized an inmate by the name of Roy Irawan bin Mahmud Amran, imposed with criminal sanction of ten-year imprisonment in a case of murder. Roy was employed as kitchen foreman, placed in Block 3G Room 2, previously as Hospital “*paste*” (*vide* Exhibit P-8 and statement of Witness Achmad Busri in the hearing on December 19, 2008);

[3.23.5] Letter of Statement of Tomy Arifin dated December 17, 2008, Registry Staff of Cipinang First Class Correctional Institution, East Jakarta, as acknowledged by the Head of Cipinang First Class Correctional Institution, East Jakarta, stating that the Witness knew and recognized an inmate by the name of Roy Irawan bin Mahmud Amran in the case of murder, placed in Block 3G Room 2, employed as kitchen foreman and released through conditional release process

(*vide* Exhibit P-9 and statement of Witness Tomy Arifin in the hearing on December 19, 2008);

[3.23.6] Letter of Statement from Haryanto alias Yan Bin Sulaiman dated December 17, 2008, stating that Dirwan Mahmud also known as Roy Irawan bin Mahmud Amran once served in prison in Cipinang First Class Correctional Institution East Jakarta in 1989-1990, and that he once met Dirwan Mahmud alias Roy Irawan bin Mahmud Amran, usually called as Roy, who served a sentence due to case of criminal act (*vide* Exhibit P-10 and statement of Witness Haryanto alias Yan bin Sulaiman in the hearing on December 19, 2008);

Whereas even though Witnesses M. Zayadi and Hasnul Arifin have made statement letters to the effect that they withdraw and revoke the statements/testimonies in the hearing as the letters were sent to the Court dated December 27, 2008, received in Registrar's Office of the Court on Tuesday, December 30, 2008, according to the Court, do not undermine the Court's conviction on the validity of statements from both witnesses provided in the hearing and in fact they have supported the Court's conviction that the Related Party cannot provide counter-evidence to support its refutation arguments. Such matter was proven during the examination that the witnesses, Petitioners, Respondent, or the Related Party principally never confronted the statements of the Petitioners' witnesses. In addition, the Attorney-in-Fact of the Respondent repeatedly raised his objections with regard to the presence of the Petitioners'

witnesses as revealed in the hearing on December 19, 2008 and December 22, 2008;

Whereas the Court also obtained evidence namely a letter sent to the Head of Cipinang First Class Correctional Institution Number W7.Ea.PK.01.01.02-Reg 809 dated January 6, 2009 stating the incapability of fulfilling the request for the copy of decision in the name of Roy Irawan bin Mahmud Amran, since there was a fire disaster due to riot in Cipinang First Class Correctional Institution, East Jakarta on March 11, 2001 that caused all archives and data of inmates of the Correctional Institution to be burned up, yet providing an information that the name of Roy Irawan bin Mahmud Amran was imposed with Article 338 *juncto* Article 340 of the Indonesian Civil Code, and a criminal sanction of ten-year imprisonment by the District Court of East Jakarta and went into Cipinang First Class Correctional Institution, East Jakarta in 1985 with expiry in 1993;

Whereas the Head of Cipinang First Class Correctional Institution also provided information that Roy Irawan bin Mahmud Amran had committed murder of an official of the Department of Agriculture at the back of District Attorney's Office of East Jakarta, precisely in Gang Mayong, Cipinang Besar Utara;

Whereas to support the statement of the Head of Cipinang First Class Correctional Institution, enclosed was the statement dated December 17, 2008 from officials knowing the inmate Roy Irawan bin Mahmud Amran when he

served his criminal sanction in Cipinang First Class Correctional Institution, respectively Chaerudin, Yusuf Mawarjoko, Sutrisno, Wilson Silalahi, Abdul Hadi, and Surani, all confirming that Roy Irawan bin Mahmud Amran was an inmate in case of murder and that he was assigned in kitchen section for about three years in Block 3G together with other 33 inmates;

[3.23.7] Whereas the name of Roy Irawan as intended in the letter of Head of Cipinang First Class Correctional Institution and statement letter from the officials knowing the inmate Roy Irawan bin Mahmud Amran when serving his criminal sanction in Cipinang First Class Correctional Institution, when related to the statements of the witnesses and other written evidence, it is clear and perfectly evidenced that Roy Irawan bin Mahmud Amran is none other than Dirwan Mahmud bin Mahmud Amran;

[3.23.8] Whereas with the proof of administrative violation conducted by Candidate Pair with Candidacy Number 7, particularly H. Dirwan Mahmud, S.H., then the General Election for Regional Heads of South Bengkulu Regency has been judicially defective since the beginning, since it has conflicted with General Elections principles which must be highly upheld not only by the General Elections Organizers, but also by the participants in the General Elections. One of the General Elections principles violated by H. Dirwan Mahmud, S.H., was the General Elections principle of “hones” general election;

Whereas the Candidate Pair with Candidacy Number 7, particularly H. Dirwan Mahmud, has covered up the criminal act he has committed, since H.

Dirwan Mahmud knows that in order to become regional head, he has to comply with the requirements stipulated in Law Number 32 Year 2004 regarding Regional Government, particularly Article 58 sub-article f. As a participant in General Election for Regional Heads of South Bengkulu Regency, H. Dirwan Mahmud, S.H., has deliberately and intentionally covered up the criminal act he has committed. Such matter has clearly violated the General Elections principles set forth in Article 22E paragraph (1) of the 1945 Constitution *juncto* Article 56 paragraph (1) of Law Number 32 Year 2004;

[3.24] Considering whereas the Respondent in its Written Answer in page 4, basically indicated an indirect acknowledgement of the existence of administrative violation, yet the Respondent does not have ground and a footing to immediately or legal obligation to nullify Decision Number 30 Year 2008 dated August 15, 2008 regarding the Stipulation of Candidate Pair of Regional Head and Deputy Regional Head of South Bengkulu Regency Year 2008;

[3.25] Considering whereas the Court is not of the same opinion with Expert Prof. H.A.S. Natabaya, S.H., L.L.M who questions the authority of the Court in the *a quo* legal dispute, for the reason that the issue of violation of General Election of Regional Heads process is the authority of another judicature. The expert only questions the authority but does not answer or prove otherwise that the Related Party, H. Dirwan Mahmud, has once served a criminal sanction, so he has not fulfilled the requirements since the beginning to become candidate pair of regional head in the *a quo* case;

Whereas with regard to authority, several times the Court has decided that based on the constitution and the Constitutional Court Law designating the Court as the guardian of the constitution, the Court has authority to decide upon cases of violations of the principles of General Elections and General Election of Regional Heads as regulated in the 1945 Constitution and Law Number 32 Year 2004. As the guardian of the constitution, the main reference of legal enforcement in the Court is the enforcement of state life principle based on Constitution. In addition, the Court has also once decided that in guarding the constitution, the Court cannot let itself be suppressed by procedural justice only, but also by substantial justice. One of the important grounds of this matter is the provision of Article 45 paragraph (1) of the Constitutional Court Law, stating that the Court shall decide upon cases based on the 1945 Constitution in accordance with evidence and judge's conviction. The meaning of judge's conviction is the judge's conviction based on evidence (*vide* Elucidation of Article 45 paragraph (1) of the Constitutional Court Law);

[3.26] Considering whereas the reports from several Candidate Pairs, namely *Harari* Team and *Redho* Team, with regard to the unfulfilled legal requirements for candidates of regent and vice regent *in casu* the Related Party, have been submitted to the Respondent or General Elections Supervisory Committee (*Panwaslu*) of South Bengkulu Regency before the Second Round General Election of Regional Heads, but both institutions did not follow them up seriously so that the Related Party *in casu* H. Dirwan Mahmud passed as

candidate pair. The Court is of the opinion that the available legal process has been intentionally stepped over so that the Related Party passed without prior settlement of the reported legal issues. By ignoring the *a quo* reports, both the Respondent, General Elections Supervisory Committee of South Bengkulu Regency, and Related Party have stepped over the available legal process, so that by the end of the Second Round General Election of Regional Heads there is no other legal process that can be pursued to assess the validity and justice. Can such matter be justified and accepted and/or will the Court ignore or justify violations which are serious and which have injured the constitution and democracy? The Court is of the opinion that such process has lasted in a legally defective since the beginning;

[3.27] Considering whereas the Court must address the issue whether such violation has been perfectly proven, including the scope of dispute of General Election of Regional Heads which becomes the authority of the Court based on the provisions of laws and regulations regulated in Law Number 32 Year 2004 regarding Regional Government as most recently amended by Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government; Whether the Court has authority up to the settlement of the problem that the Related Party is proven to have evidently violated the requirement for eligibility to become a candidate, shall be analyzed as follows:

1. Violation of the requirement being committed constitutes a type of serious violation, namely criminal act of (planned) murder;

2. Authority on candidate selection based on the stipulated requirements becomes the authority of the General Elections Commission/ General Elections Supervisory Committee;
3. There has been negligence or intention that such requirement was ignored so that the Related Party could pass, while he was supposedly unqualified from the beginning and thus since the beginning, the legal actions related to General Election for Regional Heads shall be void by law (*void ab initio*);
4. The Related Party in bad faith has covered up his condition by using another name rather than his actual name when he had the inmate status;
5. Acquisition of voters' number resulted from misrepresentation, so had they known the truth, they would not have chosen the Selected Candidate;

With regard to the whole series of mistakes, the Court is confronted with a question of whether it is justified to let such matter not reviewed by all norms of the applicable positive law.

[3.28] Considering whereas even though in formal-legal respect the Court has no authority, as the guardian of the constitution, the Court is confronted with two levels of rules against each other, *in casu* a law and the Constitution, then according to its role, function and position, the Court must choose the constitution and set aside the norms of law, so the jurisdiction of the Court is to

prevent any violation of the provisions of constitution when all institutions and authority holders let the condition lead to failure to achieve ongoing democratic consolidation. In the event that the negligence becomes intolerable so it requires the authority of the Court as the guardian of the constitution, then the authority of the Court based on the proportionality principle must align the condition so that General Election of Regional Heads is in accordance with the whole principles of democracy in the constitution;

[3.29] Considering whereas according to the 1945 Constitution, the judicature must adhere in a balanced manner to the principle of justice, the principle of legal certainty, and principle of benefit, so that the Court is not suppressed only by law, but must also discover the sense of justice by consistently relying on the substantive meaning of the law itself. To discover this sense of justice, the Court has several alternatives to choose from in deciding upon the *a quo* case;

1. The Court may declare that the General Election of Regional Heads of South Bengkulu Regency has been void by law since the beginning (*void ab initio*);
2. The Court may declare that the Decision of KPU of South Bengkulu Regency regarding Recapitulation of Vote Count Result and Stipulation of Selected Candidate are null, and declare at the same time that the entitled Candidate shall be the Petitioner;

3. The Court may declare that the Decision of KPU of South Bengkulu Regency regarding Vote Count Result of Round II is null, and state that the Respondent shall not be entitled to join Round II, so the counted result shall be from Round I voting without the participation of the Related Party;
4. The Court may declare that General Election of Regional Heads of South Bengkulu Regency is defective in judicial respect, so there must be another voting throughout South Bengkulu Regency.

[3.30] Considering whereas all options as described above have weaknesses and risks, but the Court must choose to hold on to the morality of the constitution in the 1945 Constitution so as to avoid cynicism as a result of indefinite direction of democracy with a series of negligence or intention occurring before the Court.

Whereas the formulation of authority and exercise of authority in implementing democracy must be guarded with relatively effective sanctions so as to prevent the decadency in the democratization phase in order to be able to reach the end phase of political transition in Indonesia in a fair, peaceful, honest, and clean manner. Through the application of proportionality principle, the negligence causing such intolerable condition can be evaluated and assessed by the Court as well as decided upon with the alternative which is in accordance with the duty and function of the Court;

[3.31] Considering whereas the dishonesty of H. Dirwan Mahmud, S.H. as considered above, at least has injured the 1945 Constitution in the following manner:

[3.31.1] The Government of the State of the Republic of Indonesia, including the Regional Government of South Bengkulu Regency must protect the entire Indonesian nation and the entire Indonesian native land, in accordance with the fourth paragraph of the Preamble to the 1945 Constitution. The Selected Candidate Regent of South Bengkulu is someone who has been imposed with a criminal sanction based on a court decision having binding legal force, has been executed, but made a public lie by declaring that he has never been imposed with a criminal sanction based on a court decision with binding legal force as he has committed a criminal act punishable with imprisonment of five years or more;

[3.31.2] With regard to the public lie he committed above, the Selected Regent has also violated the honesty principle as one of General Elections principles, including in the General Election of Regional Heads, namely the principle of honesty, as set forth in Article 22E paragraph (1) of the 1945 Constitution *juncto* Article 56 paragraph (1) of Law Number 32 Year 2004;

[3.31.3] The act of the Selected Regent has also violated the provision of Article 27 paragraph (1) of the 1945 Constitution, namely the obligation to uphold the law and government, due to the lie of declaring that he has never been imposed with a criminal sanction based on a court decision with binding legal force, meaning that the Selected Regent did not uphold the law stipulating the

requirement of having never been imposed with a criminal sanction, which is expressly set forth in Article 58 sub-article f of Law Number 32 Year 2004 regarding Regional Government, as most recently amended by Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government;

[3.32] Considering whereas the legal fact of administrative violation (Article 58 sub-article f of Law Number 32 Year 2004) by H. Dirwan Mahmud, S.H., has caused the General Election for Regional Heads of South Bengkulu Regency to be defective in judicial respect. Hence, the Court is of the opinion that in order that justice is established based on the constitution in the General Election of Regional Heads of South Bengkulu Regency, a re-voting must be held for throughout South Bengkulu Regency which is considered to be more fair;

[3.33] Considering whereas it is true that the person concerned, H. Dirwan Mahmud, has once become a member and has led DPRD, but his background has never been questioned. With regard to such matter, the Court is of the opinion that such fact cannot be corresponded with the *a quo* case, since indeed the Law regarding the General Election of Members of the People's Legislative Assembly, the Regional Representative Council and the Regional People's Legislative Assembly at that time did not require the members to have never served a certain criminal sentence, so the person concerned could become a member and/or chairperson of DPRD (*vide* Article 60 sub-article i of Law Number 12 Year 2003), but in order to be Regional Head/Deputy regional Head, the Law regarding

Regional Government has clearly required that the candidates must never have served a certain criminal sentence (*vide* Article 58 sub-article f of Law Number 32 Year 2004);

[3.34] Considering whereas the instruction to conduct re-voting, which will be mentioned in the Decisions below, must consider the level of difficulty and period with regard to the stages of Legislative and Presidential General Elections in 2009. By taking account such agenda of national activities, the Court orders re-voting to be held in sufficient time by taking into account the ability of KPU of South Bengkulu Regency and all apparatuses organizing the General Election of Regional Heads to conduct it in a direct, public, free, secret, honest and fair manner, as well as far from the possibility of violation detrimental to the democratization process in Indonesia;

[3.35] Considering whereas apart from the aforementioned legal considerations, the Court does not ignore the legal opinion and viewpoint that the purpose of (penal) law is to humanize human beings, meaning that the people who have served a criminal sentence shall be given equal rights. Likewise, the purpose of correctional institution is the process to return the status of ex-inmates as common community members. People who have served a criminal sentence shall be given equal rights to assume public position, since individual rights must not be seized arbitrarily by anyone, including by the state through state law (positive law), so a “defective” person according to the community’s viewpoint due to the commission of a criminal act no longer has a future to

become *insan kamil* (whole person). However, such viewpoint becomes the domain of law-makers (legislative) to accommodate through various amendments to laws and regulations;

[3.36] Considering whereas although according to Article 233 paragraph (2) and paragraph (3) of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, the implementation of General Election of Regional Heads must be completed by the end of year 2008. However, the Court affirms that re-voting is not a new General Election of Regional Heads, but the continuation of the General Election of Regional Heads that has been organized previously, so that the implementation of re-voting after year 2008 cannot be deemed contradictory to the provision of the aforementioned law, especially since this is an order set forth in the Court's decision;

[3.37] Considering whereas with regard to the rest of the Petitioners' arguments, in the Court's opinion, such arguments of the Petitioners' arguments are not supported by strong and convincing witnesses. Besides, had the existence of the violations concerned been true, such matter would not have significantly affected the vote count result of General Election of Regional Heads of South Bengkulu Regency;

4. CONCLUSION

Based on all assessments on facts and laws described above, the Court has come to the following conclusion:

- [4.1]** Exceptions of the Respondent and the Related Party are not appropriate according to the law;
- [4.2]** The Related Party H. Dirwan Mahmud is proven unqualified since the beginning to be a Candidate Pair in General Election of Regional Heads of South Bengkulu Regency since he is evidently proven to have served his sentence for a criminal act of murder which is punishable with imprisonment of more than 5 (five) years;
- [4.3]** The organizers of General Election of Regional Heads *in casu* the General Elections Commission (KPU) of South Bengkulu Regency and General Elections Supervisory Committee of South Bengkulu Regency have neglected their duties, since they did not seriously processed the reports received with regard to the background and the unfulfilled requirements for the Related Party *in casu* H. Dirwan Mahmud, so General Election of Regional Heads has proceeded in a judicially defective manner since the beginning. Such negligence has allowed the participation of the Related Party who actually was not entitled to join the election, and hence his participation since the beginning shall be void by law (*void ab initio*);

[4.4] To guard the constitution and guard General Election of Regional Heads in a direct, public, free, secret, honest and fair manner as the implementation of democracy as mandated by Article 18 paragraph (4) and Article 22E paragraph (1) of the 1945 Constitution, the Court considers that the *a quo* case is a dispute on the result of General Election of Regional Heads which becomes the authority of and may be heard by the Court, because had since the beginning the Related Party H. Dirwan Mahmud not become a participant in the General Election of Regional Heads, certainly the configuration of vote acquisition for each Candidate Party would have been different from what was acquired in the First and Second Round General Elections of for Regional Heads;

[4.5] Some parts of the Petitioners' petition are grounded to be granted and hence, the Court cancels the result of the General Election of Regional Heads of South Bengkulu Regency in its entirety, so that it must be repeated by involving all candidates except for the Related Party (H. Dirwan Mahmud);

5. DECISIONS

In view of the Constitution of the State of the Republic of Indonesia Year 1945, Law Number 24 Year 2003 *junctis* Law Number 4 Year 2004 regarding Judicial Power, Law Number 32 Year 2004 regarding Regional Government as most recently amended by Law Number 12 Year 2008 regarding

the Second Amendment to Law Number 32 Year 2004 regarding Regional Government,

Passing the Decision,

In the Exception:

Declaring that the Exception of the Respondent and Exception of the Related Party cannot be accepted.

In the Principal Issue of the Case:

- To grant the Petitioners' petition in part;
- To declare void by law (*void ab initio*) the General Election of Regional Head of South Bengkulu regency for the period of 2008-2013;
- To order the General Elections Commission of South Bengkulu Regency to hold Re-voting with the participation of **all candidate pairs of regional head and vice regional head except the Candidate Pair with Candidacy Number 7 (H. Dirwan Mahmud and H. Hartawan, S.H.)** by no later than one year as of the pronouncement of this decision;
- To reject the other and the remaining parts of the Petitioners' petition.

Hence this decision was passed in the Consultative Meeting of Justices by eight Constitutional Court Justices on Wednesday, the seventh of January two thousand and nine and was pronounced in the Plenary Meeting of the Constitutional Court open for public held on Thursday eighth of January two thousand and nine by us eight Constitutional Court justices, namely Moh. Mahfud MD, as Chairperson and concurrent Member, Maria Farida Indrati, M. Arsyad Sanusi, M. Akil Mochtar, Abdul Mukthie Fadjar, Maruarar Siahaan, Achmad Sodiki, and Muhammad Alim, respectively as Members, assisted by Makhfud as the Substitute Registrar, in the presence of the Petitioners/their Attorney-in-Fact, the Respondent/its Attorney-in-Fact, and the Related Party/his Attorney-in-Fact.

CHIEF JUSTICE,

Sgd.

Moh. Mahfud MD

MEMBERS,

Sgd.

Maria Farida Indrati

Sgd.

M. Arsyad Sanusi

Sgd.

M. Akil Mochtar

Sgd.

td Abdul Mukthie Fadjar

Sgd.
Maruarar Siahaan

Sgd.
Achmad Sodiki

Sgd.
Muhammad Alim

DISSENTING OPINION

With regard to the aforementioned Court's Decision, **Constitutional Court Justice Achmad Sodiki** has a dissenting opinion as follows:

Article 58 sub-article f of Law Number 32 Year 2004 regarding Regional Government: *Has never been imposed with a criminal sentence by virtue of a court decision having binding legal force for committing a criminal act punishable with imprisonment of 5 (five) years or more;*

The principle of presumption of innocence, namely that someone cannot be declared guilty except by a court decision having binding legal force. On the basis of such substantiation, the nomination of a person as Regional Head can be cancelled because the person concerned does not meet the requirements;

However, in my opinion, the question is whether our knowledge with regard to the validity of facts is adequately relevant and appropriate for the offhanded application of Article 58 sub-article f of Law Number 32 year 2004

regarding Regional Government (hereinafter referred to as Article 58 sub-article f) without considering other matters which are not only fulfilling the elements stated in Article 58 sub-article f, but considering other aspects which are more beneficial and also as the effort for a more appropriate new interpretation for such article on the basis of situational sense, with the purpose of displaying that a situation is nothing but to act wisely, so as to result in another conclusion which is better;

Whereas the purpose of law, among other things, is to humanize human beings for the sake of human nobility and dignity, since a human being is as good as God's creation;

Hence, such purpose of law from the viewpoint of utilitarianism means that the law must be able to bring or draw human beings close to happiness/pleasure and set him/her apart from unpleasant conditions (pain), whether for individuals or the community. Thus in line with such purpose of law, the law must be able to harmonize the interests and needs of various individuals in the community (Rudolf Stammler);

Individual rights must not be seized arbitrarily by anyone, including by the state through state law (positive law), so a "defective" person according to the community's viewpoint for committing a criminal act no longer has a future to become *insan kamil* (a whole person);

Law has two orientations, namely towards the past and the future. Hence, the dark past of the inmate must enable him to have a clear future, since clear, bright and happy future is the right of every human being;

From such viewpoint, the interpretation of Article 58 sub-article f should not be made in a *letterlijk* manner (literally), so that with such interpretation people are considered “defective” for a lifetime and there is no opportunity for them to assume public offices such as Regional Head;

Whereas criminal sanction of imprisonment is not only seen as a product, but is also seen as a process, namely correctional process. The main purpose is to return the inmates to become better human beings who can be accepted by the community as it is proper for normal human beings;

If after serving imprisonment/correction an inmate still cannot be equalized with those who have never been imprisoned, then such matter is an obvious, direct or indirect statement, as well as constituting acknowledgement that all this time the correctional process conducted by the state has not succeeded in returning the status of ex-inmates as normal community members, and also has been unsuccessful in creating legal equality and legal opportunity before the law;

Whereas an ex-inmate who has succeeded in leading the Regional People’s Legislative Assembly for two periods without defect, has proven that he

has had an achievement for the community and is able to act for the benefits of the community;

Do people still have the opinion that it is proper that the ex-inmate of murder concerned is still considered as someone carrying a cleaver and walking here and there to harm other people?

Probably it is sufficiently wise not to rigidly apply an article of Law, but there should be wisdom by interpreting Article 58 sub-article f, whereas because for more than 15 years the ex-inmate has flawlessly shown his achievement and devotion to the state, then it is sufficiently wise if Article 58 sub-article f is not applied in the *a quo* case. Hence, a period of 15 years is sufficient as a rehabilitation process for his good name, so he is qualified to meet the requirements to assume the position of regional head;

Karl Llewellyn only sees such viewpoint as "situational sense", an awareness with regard to situation that has changed, or also called as "novel situation" not only with respect to the time aspect but also other considerations (resources) that can be considered so as to reach the best decision, or the existence of new things, for example *in casu* someone who has been free from imprisonment sentence for more than 15 years and has spent a long time in social life and showing his achievement and good conduct as well as devotion to the state. This means that in order to evaluate a man, we must attempt to evaluate the whole person. The success of a Regional Head certainly is not only based on the requirement that he is not an ex-inmate, but also on his quality,

integrity, as well as capability as a leader to motivate the community towards regional prosperity;

What creates more concern is when such article is always interpreted in an *letterlijk* manner (literally). It can be imagined, at this time in the euphoria of democratic freedom, many young students conducting demonstrations are trapped in violence, which may lead to possible imprisonment of five years or more. What will it be like if later after they have finished their study and obtain a graduate degree, their rights to assume public position are seized in the name of law because they cannot be free from the trap of Article 58 sub-article f, a matter that many of them have not realized;

Whereas there is such stigmatization in the culture of Indonesian people (collectively) which causes ex inmates to be second class citizens, as well as to be a burden for their innocent descendants and offspring, as seen in the burden that was once suffered by the descendants of the victims of political crime in the past. Pope John said, "*If any government does not acknowledge the rights of man or violates them, it not only fails in its duty, but its orders completely lack juridical force*" (*Encyclica Pacem in Terris of Pope John XXIII*) (Bodenheimer: 187);

How wise it is if a decision can reach the future (futuristic) as well as reflecting wisdom. A person of Justice Must be A Person of Wisdom. Even though knowledge is important, it is not enough. The judge must have wisdom, he must have wisdom/prudence which is defined as the ability to utilize all

resources towards the universal goal of all human beings, namely happiness.
(Hari Chand: 309);

A decision which can see the future means a decision facilitating human life to enable them to become better human beings, and not otherwise to entrap them by an article that does not provide hope for humanity. It must enrich the life of just law, but must be civilized at the same time, as a reflection of the Principles of Pancasila. This is a message of morality that must be upheld by anyone;

Even a murderer who has not been arrested and thus has never suffered imprisonment cannot be charged before the court after the elapse of a certain period (18 years); how can the fault of someone who *has completed or has been free* from serving a sentence of imprisonment and has been leading a good social life for 15 years is recalled? What an irony;

It is the duty and authority of law-makers someday to eliminate or at least reformulate the provision of Article 58 sub-article f so that the imposition of such article is made in more educative boundaries, so that ex-inmates can really reach again the legal equality and legal opportunity before the law;

Conclusion: Article 58 sub-article f of Law No. 32/2004 should be reviewed again with regard to its usefulness or interpreted in a way that reflects wisdom to provide a brighter and more humane future for ex-inmates.

SUBSTITUTE REGISTRAR,

Sgd.

Makhfud