



## DECISION

Number 60/PHPU.D-VI/2008

FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] Examining, hearing, and deciding upon constitutional cases at the first and final level, has passed a decision in a case of Dispute over the Election Result for the Head of Region and Deputy Head of Region of Dairi Regency, North Sumatera Province filed by:

[1.2] 1. **Drs. Parlemen Sinaga, M.M.**, place/date of birth Sidikalang, September 24, 1955, Civil Servant, address Jalan Mesjid Number 7, Sidikalang *Kelurahan*, Sidikalang Sub-district, Dairi Regency, North Sumatera Province;

2. **Dr. Budiman Simanjuntak, M.Kes**, Tarutung, March 16, 1959, doctor, address Jalan KB Number 1, Sidikalang *Kelurahan*, Sidikalang Sub-district, Dairi Regency, North Sumatera Province;

In this matter having granted a power of attorney to Roder Nababan, S.H.; Horas Maruli Tua Siagian, S.H., and Darwis D. Marpaung, S.H., M.H., all of them Attorneys and Legal Counsel at the Attorney and Legal Counsel Office of Roder

Nababan, Horas Siagian & Associates, having its address at Jalan Taman Bukit Duri Number 1 Tebet, South Jakarta, under special proxy dated December 16, 2008 acting both individually and collectively.

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

**Against:**

**The General Election Commission of Dairi Regency, North Sumatera Province**, having its domicile at Jalan Palapa Number 5 Sidikalang, North Sumatera Province;

In this matter having granted a power of attorney to Victor W. Nadapdap, S.H., M.M., M.B.A. and Refer Harianja, S.H., both of them Attorney, Lawyer, Legal Counsel at Victor Nadapdap and Partners Law Office having its address at Jalan Mangga Besar Raya Number 42D Taman Sari, Jakarta, under special proxy dated December 20, 2008, acting for and behalf of the Principal both individually and collectively.

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

[1.3] Having read the petition of Petitioner;

Having heard and read the testimony of Petitioner;

Having heard the testimony of the Petitioner witnesses and Respondent witnesses;

Having heard and read the Reply of Respondent;

Having read the Conclusion of the Petitioner, Respondent, and  
Related Party;

Having examined the evidence from Petitioner and Respondent;

### 3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the principal issue of the case of Petitioner was an objection to the Vote Count Result for the General Election for the Head of Region and Deputy Head of Region of Dairi Regency, North Sumatera Province (hereinafter referred to as General Election for the Head of Region of Dairi Regency) stipulated under Stipulation of the General Election Commission of Dairi Regency (hereinafter referred to as Dairi Regency KPU) Number 37 of 2008 concerning Stipulation of the Elected Candidate Pair of Head of Region and Deputy Head of Region at the Second Round of the 2008 General Election for the Head of Region and Deputy Head of Region of Dairi Regency, dated December 13, 2008;

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

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

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

#### **AUTHORITIES OF THE COURT**

[3.3] Considering whereas under the provision of Article 24C of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), and Article 10 paragraph (1) letter d of Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316, hereinafter abbreviated into CC Law) in conjunction with Article 12 paragraph (1) letter d of Law Number 4 of 2004 concerning Judicial Power, as well as Article 106 paragraphs (1) and (2) of Law Number 32 of 2004 concerning Local Governance (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to State Gazette of the Republic of Indonesia Number 4437);

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

[3.5] Whereas Article 1 paragraph (4) of Law Number 22 of 2007 concerning General Election Organizer (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to State Gazette of the Republic of Indonesia Number 4721) stated that, *“General Election for Head of Region and Deputy Head of Region is a general election to elect the head of region and*

*deputy head of region directly in the Unitarian State of the Republic of Indonesia under Pancasila and the 1945 Constitution of the Republic of Indonesia”;*

[3.6] Whereas Article 4 of Regulation of the Constitutional Court Number 15 of 2008 determines that the object of dispute of a General Election for Head of Region shall be the vote count result stipulated by the Respondent, which:

- a. affected a Candidate Pair who may take part in the second round of the General Election for Head of Region; or
- b. a Candidate Pair is elected to be the head of region and deputy head of region.

[3.7] Whereas the Official Report on the Assignment of Authority to Adjudicate from the Supreme Court to the Constitutional Court dated October 29, 2008 states in principle that the handling of dispute over vote count result for the Election of Head of Region and Deputy Head of Region by the Supreme Court shall be assigned to the Constitutional Court;

[3.8] Considering whereas due to the fact that the petition of Petitioner was a dispute over the vote count result of the General Election for the Head of Region of Dairi Regency pursuant to Decision of the Dairi Regency KPU Number 37 Year 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region from the Second Round of the 2008 General Election for the Head of Region and Deputy Head of Region of Dairi Regency, the Court therefore has the authority to examine, hear, and decide

upon the petition *a quo*;

### **LEGAL STANDING OF THE PETITIONER**

[3.9] Considering whereas Article 106 paragraph (1) of Law Number 32 of 2004 concerning Local Governance, Articles 3, 4 and 5 of Regulation of the Constitutional Court Number 15 of 2008 concerning Procedural Guideline in the Dispute over the General Election Result for Head of Region (hereinafter referred to as PMK 15/2008) determine such things as:

- a. The Petitioner shall be a Candidate Pair for Head of Region and Deputy Head of Region;
- b. The petition may only be filed against the stipulation of a vote count result of a General Election for Head of Region that would affect the determination of the Candidate Pair to be eligible to take part in the second round of the General Election for Head of Region or the election of a Candidate Pair as the Head of Region and Deputy Head of Region;
- c. The petition may only be filed within three (3) days after the Respondent has stipulated the vote count result for the General Election for Head of Region in the relevant region.

[3.10] Considering whereas the Petitioner is a Candidate Pair of Head of Region in the General Election for the Head of Region of Dairi Regency, North Sumatera Province, under Decision of the General Election Commission of Dairi

Regency Number 24 of 2008 concerning Stipulation of the Serial Numbers of the Candidate Pairs for Head of Region and Deputy Head of Region Participating in the 2008 General Election for the Head of Region and Deputy Head of Region of Dairi Regency, dated August 28, 2008 with Serial Number 4 (Evidence P-3);

Whereas the Candidate Pair for Head of Region whose constitutional rights had been disadvantaged by Decision of the General Election Commission of Dairi Regency Number 37 of 2008 concerning Stipulation of the Serial Numbers of the Candidate Pairs for Head of Region and Deputy Head of Region Participating in the Second Round of the 2008 General Election for the Head of Region and Deputy Head of Region of Dairi Regency, due to an erroneous vote count in the Decision *a quo*;

[3.11] Considering whereas the Respondent issued Decision of the General Election Commission of Dairi Regency Number 37 of 2008 concerning Stipulation of the Elected Candidate Pairs for Head of Region and Deputy Head of Region in the Second Round of the 2008 General Election for the Head of Region and Deputy Head of Region of Dairi Regency, dated December 13, 2008;

[3.12] Whereas due to the fact that the Court has the authority to examine, hear, and adjudicate the petition *a quo*, the Petitioner has the legal standing and the petition being filed falls under the authority of the Court, the Court shall therefore consider the Principal Issue of the Case;

#### **PRINCIPAL ISSUE OF THE CASE**



**In the Exception**

[3.13] Considering whereas at the request of the Petitioner, the Respondent in its reply dated December 24, 2008 expressed its reply as well as filing a demurer, which concluded in principle:

1. Regarding the competence of the Constitutional Court;
2. Regarding *obscuur libel*;
3. Regarding the petitum not being supported by a posit;

**[3.13.1]** Whereas the legal reasons of Respondent who argued that the Constitutional Court had no authority to examine the petition of Petitioner that the material forming the grounds of the petition of Petitioner did not involve a Dispute over Vote Count Result *vide* Article 106 of Law Number 32 of 2004 in conjunction with Law Number 12 of 2008 and Article 94 paragraph (2) of Government Regulation Number 6 of 2005 in conjunction with Government Regulation Number 17 of 2005, as well as Article 4 of Regulation of the Constitutional Court Number 15 of 2008 concerning Procedural Guideline in the Dispute over the General Election Result for Head of Region;

Whereas on the contrary, the Petitioner in his Conclusion dated December 31, 2008 rejected the arguments of Respondent with the legal reason being that the Constitutional Court was not limited to

only examining vote count results but also examining the vote count proceedings;

**[3.13.2]** Whereas the legal reasons of Respondent which claimed that the petition of Petitioner was vague and unclear were:

- a. None of the posits were clear, beginning with Roman numeral (IV); to be precise, on page 3 to page 11, namely the Posit 1 to Posit 31, and Posit 25 and Posit 31 were material duplicates;
- b. Whereas the principal issue of the case in item 9, item 10, item 17, item 18, item 19, item 20, item 21, item 22, item 23, item 24, and item 25 took issue with the academic requirement of Serial Number 2 *in casu* KRA Johny Sitohang Adinagoro and Irwansyah Pasi, S.H.
- c. Whereas point 3 to point 8 concerned the NIK, duplicate names, fabricated NIK, and money politics.

Whereas, on the contrary, the Petitioner in his conclusion declares his rejection with the reason being that the Constitutional Court not only examined the vote count difference but also examined the vote count proceedings;

**[3.13.3]** a. Whereas the Respondent stated in the reply in his Conclusion that the principal issue of the case was to

declare the nomination of Serial Number 2 Regent as legally flawed, in the secondary claim that the vote count result was incorrect and to void Decision of the Respondent Number 37 of 2008 dated December 13, 2008, and a further secondary claim ordered the Respondent to repeat the voting at 15 sub-districts;

- b. Whereas there was no proof in the *posits* of the petition of Petitioner that the court ruling that was *inkracht van gewijsde* regarding the diploma of the Serial Number 2 Candidate was inappropriate and legally flawed;
- c. Whereas there was no proof in the *posita* of the petition of Petitioner of any incorrect vote count as argued by the Petitioner.

### **PRINCIPAL ISSUE OF THE CASE**

[3.14] Considering whereas the principal issue of the case of Petitioner was to declare as void and having no binding legal power Decision of the General Election Commission of Dairi Regency Number 37 of 2008 dated November 13, 2008 (as written) which should have read December 13, 2008 so the recapitulated vote count result stipulated by the General Election Commission of Dairi Regency Number 37 of 2008 dated December 13, 2008.

[3.15] Considering whereas the Respondent in the reply in its Conclusion rejected the argument of Petitioner, while the Related Party in his Conclusion did not answer *expressis verbis* the material of the Principal Issue of the Case of Petitioner, but the Related Party focused more on the response to the testimony of the Petitioner witnesses;

[3.16] Considering whereas the Court upon reviewing the principal issue of the case, the document evidence, testimony of the Petitioner witnesses, and Conclusion of Respondent and Conclusion of Related Party, the Court found legal facts whether recognized legal facts or legal facts that constituted the principal issue of the legal dispute between Petitioner and Respondent;

Whereas the recognized legal facts between Petitioner and Respondent had become law; therefore, the matter did not need to be proven nor be subjected to a legal review, while the legal facts that constituted the principal issue of the legal dispute between Petitioner and Respondent, and Related Party that would have to be subjected to legal review were as follows:

1. Regarding the academic requirements (education): the diploma of Candidate Pair KRA Johny Sitohang Adinagoro;
2. Regarding the duplicate NIK, duplicate names, NIK-less voters (24,968 persons, evidence P-14), fabricated NIK (6,298 persons), underage voters (14 persons), deceased voters, money politics (Rp.20,000.00 each for 739 persons plus 264 persons, evidence P-15), abusive act, members of the

public who did not accept the Head of Region Election (821 persons), voting by unknown people, voter data addition, intimidation and bribery, identical ballots (50 copies), and multiple voting.

## **OPINION OF THE COURT**

### **In the Exception**

[3.17] Considering whereas insofar as the demurrer concerns the competence or authority to adjudicate, the Court is of the opinion that the authority of the Court in adjudicating the petition of Petitioner is not solely or not limited to the *objectum litis*, i.e. concerning the dispute over the vote count result; rather, the Court also adjudicate the vote count proceeding that would affect the vote totals for the sake of upholding law and justice and the protection of human rights and exercising the mission of the Court as Guardian of the Constitution, and Guardian of Democracy;

Whereas subsequently, insofar as the demurrer concerns the *obscuur libel*, the Court is of the opinion that the demurrer materials that constituted violations or fraudulent acts were not legally appropriate and were related to the material of the principal issue of the case;

Whereas the demurrer concerning the petitum not being supported by posits, the Court is also of the opinion that the material for this demurrer is not legally appropriate and were related to the structure, form, and system or pattern of a petition. Furthermore, the material was related to the material of the principal

issue of the case;

Whereas in addition to the legal value above, the Court is also of the opinion that the form and structure or pattern of a petition of objection shall be at the discretion of the Court to identify the legal value of a petition;

### **In the Principal Issue of the Case**

[3.18] Considering whereas the legal dispute concerns administrative violation, i.e. the education of Serial Number 2 Candidate Pair (Mr. KRA Johny Sitohang Adinagoro), the Court is of the opinion that the legal reasons of the Petitioner regarding supplying false information on the academic requirements of Mr. Johny Sitohang that neither matched nor conformed with Article 8 paragraph (2) letter d with Regulation of the General Election Commission Number 15 of 2008, a Substitute Certificate shall be issued and certified by the school in question and corroborated by the National Education Service Office with letter of the General Election Oversight Committee dated November 10, 2008. The Court is of the opinion that the clarification result of the legal requirements for Candidate Regent and Deputy Regent was based on Article 58 letter c of Law Number 32 of 2004 concerning Local Governance as amended most recently with Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance in conjunction with Law Number 12 of 2008 and Government Regulation Number 6 of 2005 and Government Regulation Number 17 of 2005;

- Article 58 letter c of Law Number 32 of 2004 reads, *“having a minimum education of upper secondary school and/or its equivalent”*;

The elucidation reads, *“Referred to by ‘upper secondary school and/or its equivalent’ in this provision shall be proven with a study completion certificate issued by the competent agency”*;

- Article 8 paragraph (2) letter d of Regulation of the General Election Commission Number 15 of 2008 concerning Technical Guideline for the Procedure for General Election Candidacy for Head of Region and Head of Region (hereinafter referred to as KPU Regulation 15/2008) reads, *“in the event that the diploma of the candidate pair-to-be was missing or lost for any reason, the candidate may enclose a diploma substitute certificate from the school in question certified by the National Education Service Office or the Provincial/Regency/Municipal Office of the Department of Religion in which the school is established”*;

- Article 8 paragraph (2) letter e of KPU Regulation 15/2008 reads, *“in the event that the diploma of the candidate pair-to-be was missing or lost for any reason, while the school at which the candidate-to-be had studied is no longer in operation, the candidate-to-be may enclose a diploma substitute certificate issued by the National Education Service Office or the Provincial/Regency /Municipal Office of the Department of Religion in which the school was established.”*

Whereas the academic requirement for a Regent and Deputy

Regent candidate can be proven not only with a diploma, but also with a Study Completion Certificate (STTB), in reality even including a Package C (informal study group) Diploma. The academic requirement *a quo* may also enclose a Diploma Substitute Certificate from the school in question (*vide* KPU Regulation 15/2008);

[3.19] Considering whereas it is evident from the legal facts that the education of the Related Party (Elected Candidate-to-Be) included Elementary School (SD) pursuant to Certificate Number 104/SD-YYP/II/2004, Lower Secondary School (SMP) pursuant to Certificate Number 385/A.47/SMP-YYP/1984, and Upper Secondary School (SMA) pursuant to a Certificate valued as the equivalent of a Study Completion Certificate (STTB);

Whereas based on the above legal view and review, the Court is of the opinion that, the academic requirement *in casu* the diploma of the Related Party (Elected Candidate for Regent and Deputy Regent) is legally valid; therefore, the Petitioner may not prove the invalidity of the academic diploma of the Related Party;

Whereas furthermore, the Related Party *in casu* Johny Sitohang Adinagoro stated in his Conclusion that the legal requirement on diplomas, whether in the candidacy for Local Parliament (DPRD) member, DPRD Deputy Speaker, Deputy Regent, or in the candidacy for the Regent of Dairi Regency, all of the Diploma Substitute Certificate has been subjected to a process or stages and has been clarified by each pertinent agency with the school from which the



Diploma Substitute Certificate was obtained (*vide* Conclusion of Related Party, page 4);

Whereas the reply in the Conclusion of Related Party *a quo* had reinforced the confidence of the Court that the academic requirements/diploma of Mr. Johny Sitohang Adinagoro (Serial Number 2 Candidate) were correct and valid therefore the candidate requirements procedure carried out by the Dairi Regency KPU has fulfilled the mechanism and procedure according to the laws and regulations;

[3.20] Considering whereas insofar as the matters related to the legal dispute as referred to in paragraph **[3.16]** above, the Court deems it necessary to categorize the points of Respondent violation according to the Petitioner as follows:

1. Concerning the Single Identification Number (NIK), there were duplicate NIK, fabricated NIK, nameless voters, underage voters, deceased voters whose vote were used by others, voting by unknown people, voter data addition, identical ballots, and multiple voting;
2. There were money politics in place (on 739 persons plus 264 persons who each received Rp.20,000.00);
3. There was an earlier implementation of the General Election for Head of Region, abusive acts, and mass rally;

**[3.20.1]** Insofar as concerning point 1 above, the Court is of the opinion:

- That NIK is a product issued by the Government of Dairi Regency *in casu* the Head of the Demographic and Family Planning Agency;
- That the legal fact indicated that the Head of the Demographic and Family Planning Agency position was assumed by Drs. Parlemen Sinaga, M.M. (Petitioner);
- That NIK was not the sole requirement for determining voter candidates;
- That under Government Regulation Number 37 of 2007 concerning the Implementation of Law Number 23 of 2006 concerning Demographic Administration, NIK is a resident identity number that is unique or special, single, and inherent in a person who is registered as an Indonesian resident, while the NIK arrangement includes NIK Digit Stipulation, NIK Issuance, and NIK Inclusion (*vide* Articles 1 and 36 of Government Regulation Number 37 of 2007);
- That the 24,968 NIK and 6,298 fabricated NIK were corroborated by the testimony of the Petitioner witness who stated that the NIK data *a quo* resulted from the witness comparison performed by the witness himself against the data from the Dairi Regency KPU;
- That by law, the NIK inclusion in the DPT was not the task and authority of the Respondent, but rather of the Demographic and Family Planning Agency;

- That in the General Election for Head of Region the Respondent *in casu* the Dairi Regency KPU should not determine the voter candidates based on the NIK but rather determined and adjusted to the legal requirements as provided for in Articles 68, 69, and 70 of Law Number 32 of 2004 which reads:

Article 68: *“Citizens of the Republic of Indonesia who on the day of the polls of the election for head of region and deputy of region has turned seventeen (17) years old or is/has been married shall have the right to vote”.*

Article 69:

Paragraph (1) *“To be able to exercise the right to vote, a citizen of the Republic of Indonesia must be registered as a voter”;*

Paragraph (2) *“To be able to be registered as a voter, a citizen of the Republic of Indonesia as referred to in paragraph (1) must meet the following requirements:*

*a. clearly not having any mental/memory problems;*

*b. not having his right to vote currently revoked under a court ruling which has obtained permanent legal force.”*

Paragraph (3) *“A citizen of the Republic of Indonesia already*

*registered in the voter register who no longer meets the requirements as referred to in paragraph (2) may not exercise his right to vote”.*

Article 70

Paragraph (1) *“The voter register as of the implementation of the latest general election in the region shall be used as the voter register for the election of head of region and deputy head of region”;*

Paragraph (2) *“The voter register as referred to in paragraph (1) plus the supplementary register of voters who have met the requirements as voters shall be stipulated as the provisional voter register”.*

- Whereas in addition thereto, Article 16 paragraph (1) of the law *a quo* states that, *“To be able to exercise his right to vote in an election, a Citizen of the Republic of Indonesia must be registered as a voter”.* Article 16 paragraph (2) of the law *a quo* states that, *“The voter as referred to in paragraph (1) shall meet evidence requirement c, have been domiciled at the electorate for at least six (6) months before the ratification of the provisional voter register as evidenced with an Identity Card”.* Further, the Elucidation of Article 16 paragraph (2) of the law *a quo* states that, *“In the event that an individual does not possess an Identity Card, he may use a demographic identification and/or Certificate of Proof of Domicile*

*issued by the competent official”;*

Whereas based on the above legal view and review, the Court is of the opinion that, the objection of Petitioner on the various NIK violations as referred to above is not appropriate and has no legal grounds, since the voter requirement for voting at each TPS is not based on the NIK of an individual. The Court is of the opinion that NIK is not a legal requirement for a voter in determining the validity or otherwise of an individual as a voter in a General Election for Head of Region and it should not necessarily match the number of registered voters since the demographic administration in Indonesia is not yet fully organized and some residents are yet to possess an NIK. Furthermore, the data expressed by the Petitioner were not official data but rather the result of a processing made by the Petitioner himself; for that reason, the truth of the argument and reason of Petitioner has not been proven in a valid and convincing manner;

Whereas the reference for DPT determination in the Second Round of election of the Regent and Deputy Regent of Dairi Regency was based on the first round DPT and the DPT for the Election of the Governor of North Sumatera;

Insofar as other violations, such as nameless voters, underage voters, voter data addition, multiple voting as explained regarding the points of violation as referred to in paragraph **[3.20]**, the Court is of the opinion that of the two version and legal reasons of the Petitioner and Respondent, as well as other evidence submitted by the Respondent, it is evident that it can be generally said

that no problem has occurred at the 650 TPS. In terms of the legal fact as well, it is evident that at the TPS, the C1-KWK forms for the entire Dairi Regency, and the witnesses from the Petitioner generally co-signed the official report of vote count recapitulation. While there were Petitioner witnesses at a number of TPS who did not sign it, they expressed no objection to the recapitulation result at the TPS. Thus, the issue is not a factor that can affect the validity of the vote count result that took place at each TPS;

Whereas similarly, the Petitioner argument regarding the 14 underage voters at TPS II of Tanjung Beringin Village, Sumbul Sub-district, the Petitioner witness turned out to have co-signed the C1-KWK form *a quo*;

Whereas insofar as the Petitioner argument regarding the three deceased voters taking part in the voting, legal facts have proven that voter Lauri Sianturi turned out to be alive and have voted;

**[3.20.2]** Whereas insofar as the Petitioner argument regarding money politics and abuse, the issue fell under the competence of the General Election Oversight Committee to handle; what is more, it could not be ascertained to which candidate the vote was given on with regard to the money politics practice. In this context, the suspected money politics practice on 1,003 persons did not significantly affect the vote total of the Elected Candidate Pair;

**[3.20.3]** Whereas insofar as the legal dispute regarding the time of the General Election for Head of Region being moved forward by the Respondent

without notifying the Petitioner, with the original date being December 22, 2008 in accordance with the agreement and announcement by the Respondent, but later moved forward to December 9, 2008, according to the Court, it was not a principal matter that could invalidate the General Election for Head of Region proceedings, since the day and date of the General Election for Head of Region proceedings had been coordinated/discussed in a meeting with the Provincial KPU. Legal facts indicated that the voting day took place on the day determined by the Respondent;

[3.21] Considering whereas based on the above legal view and review, the Court is of the opinion that the argument of Petitioner and the legal reasons corroborated by the testimony of the Petitioner's witnesses were not appropriate and have not been proven by law. The Respondent may submit evidence to the contrary and may defeat the arguments and legal reasons of the Petitioner;

[3.22] Considering whereas insofar as the mass rally and Declaration of the Dairi Regency Election Monitoring Forum (FP3D) dated December 30, 2008 (Tumbun Simorangkir) as attachment to the Petitioner evidence, the Court is of the opinion that the mass rally and FP3D declaration dated December 30, 2008 on the Dairi Regency KPU in which the Regent Candidate Johny Sitohang Adinagoro was riddled with problems, the Dairi Regency KPU had not worked in a professional and proportional manner, contravening with KPU Regulation Number 15 of 2008 could not serve as evidence by law to void the General Election for the Head of Region of Dairi Regency.

#### 4. CONCLUSION

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

- [4.1] That the Respondent Demurrer is not appropriate by law and therefore must be set aside;
- [4.2] That the academic requirement for Related Party *in casu* Johny Sitohang Adinagoro did not contravene with the provision of Article 58 letter f of Law Number 32 of 2004;
- [4.3] That the Single Identification Number (NIK) is not the sole requirement to be used as a voter candidate;
- [4.4] That the other points of violation committed by the Respondent has not been proven by law;
- [4.5] That the entire petition of Petitioner has no grounds and has not been proven by law;

#### 5. JUDICIAL VERDICT

In view of the articles of the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court, Law Number 4 of 2004 concerning Judicial Power, Law Number 32 of 2004 regarding



Local Governance as amended most recently with Law Number 12 of 2008 concerning Second Amendment to Law Number 32 of 2004 concerning Local Governance;

**Has adjudicated,**

**In the Exception:**

To declare the Demurrer of Respondent as unacceptable.

**In Principal Issue of the Case:**

To reject the petition of Petitioner in its entirety;

To declare as valid Decision of the General Election Commission of Dairi Regency Number 37 of 2008 dated December 13, 2008 concerning Stipulation of the Elected Candidate Pair for the Head of Region and Deputy Head of Region of Dairi Regency in the 2008 Second Round.

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

Attorney, Respondent/its Power of Attorney, and Related Party.

**CHIEF JUSTICE,**

**Sgd.**

**Moh. Mahfud MD**

**MEMBERS,**

**Sgd.**

**M. Arsyad Sanusi**

**Sgd.**

**M. Akil Mochtar**

**Sgd.**

**Maria Farida Indrati**

**Sgd.**

**Abdul Mukhtie Fadjar**

**Sgd.**

**Maruarar Siahaan**

**Sgd.**

**Achmad Sodiki**

**Sgd.**

**Muhammad Alim**

**SUBSTITUTE REGISTRAR,**

**Sgd.**

**Eddy Purwanto**