



## **DECISION**

**Number 61/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 Petition for the Dispute of the Results of the 2008 General Election of the Regional Head and the Deputy Regional Head of Kerinci Regency, filed by:

**[1.2]** 1. Name : **Ir. H. AMI TAHER;**  
Gender : Male;  
Place/Date of Birth : Kerinci, August 18, 1963;  
Religion : Islam;  
Occupation : Member of the People's Legislative  
Assembly of the Republic of Indonesia;  
Address : Air Tenang Village, Neighborhood  
Ward/Neighborhood Block III, Air Tenang  
Sub-District, Air Hangat District, Kerinci  
Regency, Jambi;

ID Card Number : 474.4/AH/1679/2008;

2. Name : **DIANDA PUTRA, S.STP., M.Si. ;**  
Gender : Male;  
Place/Date of Birth : Pondok Tinggi, June 26, 1978 ;  
Religion : Islam;  
Occupation : Civil Servant;  
Address : Lawang Agung Village, Sungai Penuh  
District, Kerinci Regency, Jambi;  
ID Card Number : 474.4/C/4835/2006;

In this matter granting the power of attorney to **Zainudin Paru, S.H., Ahmar Ihsan, S.H, Aristya Kusuma Dewi, S.H., Faudjan Muslim, S.H., Wajdi, S.H.,** Advocates at the Law Office of Provision Advocates, Legal Consultants & Corporate Law, having its address in Gedung Persaudaraan Haji, 4<sup>th</sup> Floor, Room 403, at Jalan Tegalan Number I C, Matraman, East Jakarta 13140, Telephone Numbers (021) 85902036, (021) 32055921, Fax. Number (021) 8096501, under Special Power of Attorney dated December 16, 2008, in this matter acting for and behalf of the Authorizers.

Hereinafter referred to as **the Petitioner.**

**Against:**

**The General Elections Commission of Kerinci Regency,** domiciled at Jalan Depati Parbo Number 31, Sungai Penuh, Kerinci, Jambi.

In this matter granting the power of attorney to **Abunjani, S.H., Maiful Efendi, S.H., Salma Dahlan, S.H.** under Special Power of Attorney Number 19/SKK/Pdt/A and R/XII/2008 dated December 24, 2008 acting for and on behalf of the Authorizer.

Hereinafter referred to as **the Respondent**.

**[1.3]** Having read the Petitioner's petition;

Having heard the Petitioner's statement;

Having heard and read the Respondent's Response;

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

Having examined evidence presented by the Petitioner and the

Respondent;

Having read the Written Conclusion of the Petitioner and the Respondent;

### **3. LEGAL CONSIDERATIONS**

**[3.1]** Considering whereas the principal issue of the Petitioner's petition is an objection to the Vote Count Results of General Election of the Regional Head and the Deputy Regional Head of Kerinci Regency (hereinafter referred to the General Election of Regional Heads of Kerinci Regency) determined based on the Stipulation of the General Elections Committee of Kerinci Regency (hereinafter referred to as the General Elections Committee of Kerinci Regency) Number 109 Year 2008 dated December 15, 2008 regarding the Stipulation of

the Result of Vote Count Recapitulation of the Second Round of the 2008 General Election of the Regent and the Deputy Regent of Kerinci Regency and the Stipulation of the Elected Candidates of the General Election of the Regent and the Deputy Regent of Kerinci of 2008;

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

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

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

#### **AUTHORITY OF THE COURT**

**[3.3]** Considering whereas based on Article 24C of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to the 1945 Constitution), and Article 10 paragraph (1) sub-paragraph d of 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 referred to as the Constitutional Court Law) *junctis* Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 regarding Judiciary Power, and 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);

**[3.4]** Whereas Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government states, *“The handling of dispute about the vote count results of regional head elections by the Supreme Court shall be assigned to the Constitutional Court by no later than 18 (eighteen) months as of the promulgation hereof”*;

**[3.5]** Whereas Article 1 paragraph (4) of Law Number 22 Year 2007 regarding the General Elections Administrators (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) states, *“General Elections of Regional Heads and Deputy Regional Heads shall be general elections to directly elect the regional heads and deputy regional heads within the Unitary State of the Republic of Indonesia under Pancasila and the 1945 Constitution of the Republic of Indonesia”*;

**[3.6]** Whereas Article 4 of Constitutional Court Regulation Number 15 Year 2008 provides that the object of dispute in the General Election of Regional Heads is the vote count results stipulated by the Respondent which:

- a. affect the qualification for Candidate Pairs to participate in the second round of the General Election of Regional Heads; or

- b. result in the election of Candidate Pairs as the regional head and the deputy regional head.

**[3.7]** Whereas the Minutes of Assignment of Authority to Hear from the Supreme Court to the Constitutional Court on October 29, 2008 principally state that the handling of dispute about the results of vote count of the General Election of the Regional Head and the Deputy Regional Head by the Supreme Court shall be assigned to the Constitutional Court;

**[3.8]** Considering whereas since the Petitioner's petition concerns with the dispute about the vote count results of the General Election of Regional Heads of Kerinci Regency in accordance with the Decision of the General Elections Committee of Kerinci Regency Number 109 Year 2008 dated December 15, 2008 regarding the Stipulation of the Results of Vote Count Recapitulation of the Second Round of the 2008 General Election of the Regent and the Deputy Regent of Kerinci Regency and the Stipulation of the Elected Candidates of the 2008 General Election of the Regent and Deputy Regent of Kerinci, the Court has the authority to examine, hear, and decide upon the *a quo* petition;

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

**[3.9]** Considering whereas Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government, Articles 3, 4, and 5 of Constitutional Court Regulation Number 15 Year 2008 regarding Guidelines for Opening Proceedings on the Dispute of the Results of General Elections of Regional Heads

(hereinafter referred to as PMK 15/2008), provides for, among other things, the following matters:

- a. the Petitioner is the Candidate Pair for the Regional Head and the Deputy Regional Head;
- b. the Petition may only be filed against the stipulation of the vote count results of the General Election of Regional Heads affecting the determination of Candidate Pairs meeting the qualification for participating in the second round of the General Election of Regional Heads or the nomination of Candidate Pairs as the Regional Head and the Deputy Regional Head;
- c. the Petition may only be filed by no later than 3 (three) days after the Respondent determines the vote count results of the General Election of Regional Heads in the region concerned.

**[3.10]** Considering whereas the Petitioner is the Candidate Pair of the Regent and the Deputy Regent of Kerinci Regency in Jambi Province, as Participants of the General Election of the Regional Head and the Deputy Regional Head of Kerinci Regency, Jambi Province, based on Decision of the General Elections Commission of Kerinci Regency Number 92 Year 2008 regarding the Stipulation of Candidate Pair of the Regent and the Deputy Regent of Kerinci Regency Participating in the Second Round of General Election of the Regent and the Deputy Regent dated October 21, 2008 (Exhibit P-1);

Whereas the Candidate Pair of Regional Heads argue that their constitutional rights have been impaired by the existence of Decision of the

General Elections Committee of Kerinci Regency Number 109 Year 2008 dated December 15, 2008 regarding the Stipulation of the Result of Vote Count Recapitulation of the Second Round of the 2008 General Election of the Regent and the Deputy Regent of Kerinci Regency and the Stipulation of the Elected Candidates of the 2008 General Election of the Regent and Deputy Regent of Kerinci;

[3.11] Considering whereas the Respondent issues Decision of the General Elections Commission of Kerinci Regency Number 92 Year 2008 regarding the Stipulation of the Candidate Pair of the Regent and the Deputy Regent of Kerinci Participating in the Second Round of the General Election of the Regent and the Deputy Regent of Kerinci Regency dated October 21, 2008, to which the Petitioner filed an objection for alleged impairment caused by a mistake in the results of vote count conducted by the General Elections Committee of Kerinci Regency. Therefore, the Court is of the opinion that the Petitioner has the legal standing to file the *a quo* petition;

#### **DEADLINE FOR FILING A PETITION**

[3.12] Considering whereas Decision of the General Elections Committee of Kerinci Regency Kerinci Number 109 Year 2008 regarding the Stipulation of Result of Vote Count Recapitulation of the Second Round of the 2008 General Election of the Regent and the Deputy Regent of Kerinci Regency and the Stipulation of the Elected Candidates of the 2008 General Election of the Regent and Deputy Regent of Kerinci stipulated on December 15, 2008, while the



petition for objection against the Respondent's Stipulation filed by the Petitioner to the Court on December 18, 2008. As provided for in the Deed of Receipt of Petition Document Number 129/PAN.MK/XII/2008 dated December 18, 2008, subsequently registered on December 19, 2008 under Case Number 61/PHPU.D-VI/2008, thus under Article 5 of PMK 15/2008 which provides, "*Petitions may only be filed by no later than 3 (three) working days after the Respondent determines the vote count results of the General Election of Regional Heads in the region concerned*", the filing of Petitioner's petition is still within the deadline set;

**[3.13]** Considering whereas since the Court has the authority to examine, hear, and decide upon the *a quo* petition, the Petitioner has legal standing and the petition is filed within the deadline set, the Court shall further consider the principal issue of the petition;

### **PRINCIPAL ISSUE OF THE PETITION**

**[3.14]** Considering whereas the Petitioner, in the petition, as completely set out in the Principal Issue of the Case, principally argues as follows:

- For the Court to declare the Decision of the General Elections Committee for Kerinci Regency Number 109 Year 2008 dated December 15, 2008 regarding the Stipulation of the Recapitulation of Vote Count Results of the Second Round of the 2008 General Election of the Regent and the Deputy Regent of Kerinci Regency and the Stipulation of the Elected Candidates of the 2008 General Election of the Regent and Deputy

Regent of Kerinci as invalid and void by law, or at least to declare all vote count results in all Districts in Kerinci Regency as invalid and void by law because, there had been irregularities and fraud conducted in a systematic, structured, and extensive manner in various regions within Kerinci Regency;

**[3.15]** Considering whereas in order to support the basis of the petition, at the hearing, the Petitioner presents written evidence marked as Exhibits P-1 through P-36. In addition, the Petitioner also presents witnesses, namely: 1. Tusiran; 2. Sardi; 3. Muhammad Amir; 4. Pirmanudin; 5. Budiman; 6. Khairul Saleh; 7. Suwito Prasojo; 8. Ainul Yakin; 9. Nopial Hadi; 10. Gianto, S.E.; 11. Saipul Ardizal, S.T.P.; 12. Sumingan; 13. Ainul Sutra; 14. Piradisal. On the other hand, in order to support the basis of its rebuttal, the Respondent presents written evidence marked as Exhibits T-1 through T-46, as well as witnesses, namely: 1. Helfi Apriadi; 2. Nornis; 3. Sopyanizar; 4. Harnidar; 5. Yelmi Efendi; 6. Aris Tuna; 7. Syafrizal; 8. Hardidon; 9. Ali Amran; 10. Irfan Etrizal, S.T.P; 11. Joni Efendi; 12. Agusta Adini; 13. Nasfrudin; 14. Syamsir; 15. Safril; 16. Helmi Yusuf; 17. Drs. Selhanudin; 18. Sutan Makmur, S.E.; 19. Drs. Uri Jamin; 20. Pron Elmala; 21. T. Sitefu; 22. Safrial; 23. Herlius, S.Pd.,M.Pd.; 24. Bujang Rahman, S.E.; 25. Gazali Jalil; 26. Fauzan Khairazi, S.H., S.Pd.; 27. Rusdi Hakim, S.Pd.; 28. Sophan Sophian;

**[3.16]** Considering whereas in addition to the abovementioned matters, the Petitioner also presents a Conclusion dated January 6, 2009, while the Respondent presents a Conclusion dated January 5, 2009;

**[3.17]** Considering whereas the legal basis for the principal issue of the petition are as follows:

1. The Petitioner (Candidate Pair Registration Number 1) obtained 80,559 votes, while Candidate Pair Registration Number 6 (H. Murasman, S.Pd., M.M. and Drs. H. Mohd. Rahman, M.M.) obtained 96,768 votes;
2. Violations had occurred in several districts, namely, among other things, in Danau Kerinci District, Siulak District, Gunung Kerinci District, Kayu Aro District, and Gunung Tujuh District [*vide* Exhibits P-3, P-4 and P-5, in accordance with the Table of Petitioner's Petition (on page 4)];
3. Such violations include intimidation, terror, exhortation and persuasion which were conducted in a systematic, structured, and extensive manner, so people were afraid to come to the Voting Booth (TPS). There were also threats made by village officials and intimidation against the Campaign Team;
4. Residents in the electoral district of Kayu Aro District decided not to vote due to the terrors and intimidation (*vide* Exhibit P-15);
5. Such violations occurred prior to, during, and after the General Election of Regional Heads (*vide* Exhibits P-16, P-17, P-18, and P-19);
6. There had been a violation with regard to the use of Voter's Cards and Voting Invitations belonging to other people;

7. Violations occurred in, for example, Harapan Hamlet, Air Teluh Village, and Kumun Dubai District (*vide* Exhibit P-20);
8. Violations in the form of money politics in Gunung Tujuh District (*vide* Exhibit P-21);
9. Other violations (*vide* Exhibits P-22 and P-23);
10. Violations in other forms, such as the fact that there were 1,219 voters in Siulak District and 3,805 in Kayu Aro District who did not vote. Meanwhile, there were 1,106 voters in Gunung Kerinci District who did not use their right to vote. Similar incident occurred in Gunung Tujuh District where 1,843 voters did not vote. In Danau Kerinci District, the number of voters losing their right to vote reached 5,919 voters, while in Sungai Penuh District, there were 5,220 voters holding the right to vote being deprived of their right to vote and failed to give their votes (*vide* Exhibits P-24 and P-25);

**[3.18]** Considering whereas the Respondent, in its Response dated December 30, 2008 and its Conclusion dated January 5, 2009 principally refutes all arguments and legal grounds of the Petitioner by presenting the following legal grounds:

#### **In the Exception**

- The Petitioner's petition is *obscuur libel* (*vide* Article 75 of the Constitutional Court Law *juncto* Article 6 paragraph (2) sub-paragraph b,

points 1, 2, and 3 of PMK 15/2008) because the Petitioner did not clearly specify the following matters in the petition:

1. The mistake in vote count results stipulated by the Respondent;
2. The request/*petitum* conveyed by the Petitioner is obscure and irresolute, since the Petitioner only requests the Panel of Justices of the Constitutional Court to declare all of the vote count results in various districts throughout Kerinci Regency as invalid and void by law, so it is sufficiently grounded if the petition for objection filed by the Petitioner should be rejected or declared as cannot be accepted;
3. Fails to include the request/*petitum* to stipulate the correct vote count results according to the Petitioner.

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

- The Respondent presents legal grounds as set out on pages 6 through 14 of the Respondent's Response;

**[3.19]** Considering whereas upon carefully examining the *posita*, *petitum*, petition, conclusion, written evidence, and witnesses of the Petitioner, the Response and Conclusion of the Respondent, as well as written evidence and the statements of witnesses of the Respondent, the Court finds acknowledged

legal facts and legal facts underlying the legal dispute between the Petitioner and the Respondent;

Whereas insofar as the recognized legal fact is concerned, an acknowledged legal fact needs neither verification nor legal evaluation, while legal facts underlying a legal dispute will be provided with legal evaluation as taken into account in the description of the Legal Opinion of the Court;

### **OPINION OF THE COURT**

**[3.20]** Considering whereas upon the Petitioner's request, the Respondent in its Response dated January 5, 2009, presented the Response in the form of an exception and principal issue of the case, which in principal is as follows:

#### **In the Exception**

**[3.21]** Considering whereas insofar as the Petitioner's exception on the non-authority of the Court as described in paragraph **[3.18]**, the Court is of the opinion that the *a quo* exception is legally inappropriate because in various decisions of the Court, it has been expressly stated that the Court does not only search and find formal truth, but also substantial truth, hence the process of the General Election of Regional Heads affecting the (final) vote count is also included in the authority of the Court. With respect to the exception under points 2, 3, and 4, it is also legally inappropriate because it already concerns with the substance of the petition;

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

**[3.22]** Considering whereas principally, the Principal Issue of the Case in the Petitioner's petition may be divided into two parts:

1. concerning the occurrence of a series of violations, intimidation, terrors, exhortation, persuasion, and money politics conducted in a systematic, structured, and extensive manner in various places;
2. concerning the mistake in the vote count results occurring in all regions of Kerinci Regency, particularly in Danau Kerinci District, Siulak District, Gunung Kerinci District, Kayu Aro District, and Gunung Tujuh District;

Due to the fact that the first part constitutes a series of events which may affect the final vote count results obtained by the Candidate Pairs of the Regent and the Deputy Regent of Kerinci, it shall be considered first.

**[3.23]** Considering whereas the violations take the following forms:

- a. **Intimidation of the Petitioner's Campaign Teams in Kayu Aro and Siulak Districts**

Such allegation is supported by the Petitioner's Witness named Suwito Prasojo who on December 9, 2008 was giving briefings Kayu Aro village and approached by people gathering around the briefings location. Witnesses Gianto, S.E. and Saipul Adrizal were threatened with customary exile should they fail to vote for Murasman (Elected Candidate for Regent). Witness Sumingan from Sungai Tanduk was also intimidated because his sibling summoned Ami Taher (the Petitioner);

- b. **People not having the right to vote**

Based on the statement of Witness Sardi, he saw a truck by which 20 unidentified individuals visited the village head to obtain voting invitations, with the reason that the hamlet head could not distributed them due to the significant distance between houses. Similarly, Witness Mohammad Amir saw 15 underage children and Junior High School students voted twice without any voting invitation. With respect to such incident, some residents had lodged verbal protest;

**a. Abuse of authority**

Witness Nopial explains that he has the knowledge that, after performing his Idul Adha prayers, the Head of Sungai Pegeh Village instructed Sungai Pegeh villagers to vote for the Candidates with Candidate Registration Number 6. About 10 voters refused to have their fingers marked with ink after casting their votes as it would leave a stain;

- d. Other witnesses generally support the existence of intimidation, abuse of authority, as well as fraud in terms of granting the right to vote to people not yet eligible to vote;

**[3.24]** Considering whereas with respect to the argument of violations during the aforementioned General Election of Regional Heads, the Respondent rebuts it by presenting witnesses who principally state that the General Election of Regional Heads of Kerinci Regency was held in an orderly, safe, and uninterrupted manner;



**[3.25]** Considering whereas with respect to the administrative or criminal violations argued by the Petitioner during the process of the General Election of Regional Heads of Kerinci Regency, the Court is of the opinion that such issues should be resolved with the General Elections Supervisory Committee and other relevant institutions, but generally the violations were not officially reported by the Petitioner in compliance with the procedure. Therefore, such violations cannot be legally substantiated;

**[3.26]** Considering whereas insofar as the difference in the number of voters failing to use their right to vote which amounted to 17,513 voters, the Court is of the opinion that their votes might not necessarily be cast in favor of the Petitioner, because if they did exercise their right to vote, there was no guarantee that they would vote for the Petitioner;

**[3.27]** Considering whereas the difference in the number of votes acquired by the Candidate Pair with Registration Number 1 under the name of Ir. H. Ami Taher and Dianda Putra, S. STP, M.Si (80,559 votes) and those by the Candidate Pair with Registration Number 6 under the name of H. Murasman, S. Pd., M.M. and H. Moh. Rahman, M.M. (96,768 votes) is 16,209 votes;

**[3.28]** Considering whereas with respect to the Petitioner's opinion stating that the voters failing to exercise their right to vote (because they did not receive any invitation/right to vote) were the Petitioner's loyal supporters who would certainly vote for the Petitioner, the Court is of the opinion that it cannot be accepted because it is only based on the Petitioner's personal assumption;

**[3.29]** Considering whereas due to the fact that the difference in votes acquired by the Candidate Pair with Registration Number 1 and the Candidate Pair with Registration Number 6 is 16,209 votes, if it was to be deducted with the number of votes lost due to the aforementioned violations, the total number of votes acquired by the Petitioner and Relevant Parties would remain unaffected;

**[3.30]** Considering whereas based on the Court's interrelated considerations and opinions described above, the Petitioner's petition is deemed as having insufficient legal grounds.

#### **4. CONCLUSION**

Based on the abovementioned evaluation of facts and legal grounds, the Court concludes as follows:

**[4.1]** The Respondent's Exception is inappropriate and legally groundless:

**[4.2]** The violations, whether administrative or criminal in nature, or other violations as argued by the Petitioner cannot be substantiated and are legally groundless;

**[4.3]** The vote count results argued by the Petitioner are not legally substantiated, so the results of vote count recapitulation stipulated by the Respondent is legally valid.

#### **5. DECISION**

In view of Articles of the 1945 Constitution of the Republic of Indonesia, Law Number 24 Year 2003 regarding the Constitutional Court, Law Number 4 Year 2004 regarding Judiciary Power, and Law Number 32 Year 2004 regarding Regional Government as most recently amended with Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government;

### **Passing the Decision,**

#### **In the Exception:**

To declare that the Respondent's exception cannot be accepted.

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

- To reject the Petitioner's petition in its entirety;
- To declare the Decision of the General Elections Committee of Kerinci Regency Number 109 Year 2008 regarding the Stipulation of the Results of Vote Count Recapitulation of the Second Round of the 2008 General Election of the Regent and the Deputy Regent of Kerinci Regency and the Stipulation of the Elected Candidates of the 2008 General Election of the Regent and the Deputy Regent of Kerinci Regency dated December 15, 2008 as valid.

Hence the decision was made in the Plenary Consultative Meeting of eight Constitutional Court Justices on Tuesday, the thirteenth of January two thousand

and nine and was pronounced in a Plenary Session open for the public on Wednesday, the fourteenth of January two thousand and nine by us: Moh. Mahfud MD, as the Chairperson and concurrent Member, Achmad Sodiki, Maruarar Siahaan, Muhammad Alim, M. Arsyad Sanusi, M. Akil Mochtar, Abdul Mukthie Fadjar, and Maria Farida Indrati respectively as Members and assisted by Ina Zuchriyah Tjando as Substitute Registrar and in the presence of the Petitioner and/or their Attorneys, the Respondent and/or its Attorneys, and Relevant Parties.

**CHIEF JUSTICE,**

**sgd.**

**Moh. Mahfud MD**

**MEMBERS,**

**sgd.**

**Achmad Sodiki**

**sgd.**

**Maruarar Siahaan**

**sgd.**

**Muhammad Alim**

**sgd.**

**M. Arsyad Sanusi**

**sgd.**

**M. Akil Mochtar**

**sgd.**

**Abdul Mukthie Fadjar**

**sgd.**

**Maria Farida Indrati**

**SUBSTITUTE REGISTRAR,**

**sgd.**

**Ina Zuchriyah Tjando**