



## DECISION

Number 62/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 Dispute on the Results of the Second Round Regional Head and Deputy Regional Head General Election of of Belu Regency Year 2008, filed by:

- [1.2] 1. Name : **Drg. Gregorius Mau Bili F., DDPH.;**  
Citizenship : Indonesian;  
Place/Date of Birth : Atambua, May 20, 1953;  
Occupation : Civil Servant;  
Address : Jalan Cut Nya Dien, Neighborhood  
Ward 008, Neighborhood Block 004,  
Bardao Sub-District, Kota-Atambua  
District, Belu Regency;
2. Name : **Drs. Berchmans Mau Bria, M.Sc.;**  
Citizenship : Indonesia;  
Place/Date of Birth : Numbe-Timor, March 23, 1955;

Occupation : Private Person;  
 Address : Jalan Timor Raya Km 9.5,  
 Neighborhood Ward 03, Neighborhood  
 Block 05, Oesapa Sub-District, Kelapa  
 Lima District, Kupang;

In this matter granting the power of attorney to **Gunadi, S.H.**, Advocate and Legal Consultant at **G&R Advocate-Legal Consultant Firm of Gunadi & Partners** having its address at Jalan Pahlawan Number 80 Surabaya, granted with substitution right and retention right, by virtue of a Special Power of Attorney dated December 18, 2008.

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

**Against:**

**The General Elections Commission of Belu Regency**, domiciled at Jalan Eltari Number 3, Atambua;

In this matter granting the power of attorney to **Philipus Fernandez, S.H.**, Advocate/Legal Consultant, having its office at Jalan Eltari II Liliba, Kupang Municipality, East Nusa Tenggara, by virtue of Special Power of Attorney Number 080-FER/Sks/UM/XII/2008 dated December 29, 2008, acting for and on behalf of the General Elections Commission of Belu Regency;

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

**[1.3]** Having read the Petitioners' petition;

Having heard the Petitioners' statement;

Having heard and read the Response of the Respondent namely  
the General Elections Commission of Belu Regency;

Having carefully examined the evidence and witnesses of the  
Petitioners and the Respondent;

Having read written conclusions of the Petitioners and the  
Respondent;

### 3. LEGAL CONSIDERATIONS

**[3.1]** Considering whereas the principal legal issue in the Petitioners' petitioner is an objection to Minutes Number 10/BA/KPU/BL/XII/2008 dated December 18, 2008 regarding the Designation of Elected Candidate Pair of the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency Year 2008;

**[3.2]** Considering whereas prior to further considering the Principal Issue of the Petition, 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 legal standing of the Petitioners in filing for the *a quo* petition;
3. the deadline for filing the petition.

With respect to the three foregoing issues, the Court has the following opinions:

#### **Authority of the Court**

**[3.3]** Considering whereas pursuant to the provisions of Article 24C (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) and Article 10 paragraph (1) sub-paragraph d of Law Number 24 Year 2003 regarding Constitutional Court, Article 12

paragraph (1) sub-paragraph d of Law Number 4 Year 2004 regarding Judicial Power, and Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government, one of the constitutional authorities of the Court is to decide upon disputes on general election results;

At first, based on the provisions of Article 106 paragraph (1) and paragraph (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, hereinafter referred to as Law No. 32/2004), objections concerning the result of vote count affecting the election of a candidate pair should be filed to the Supreme Court. The aforementioned authority of the Supreme Court is restated in Article 94 of Government Regulation Number 6 Year 2005 regarding Elections, Ratification of Appointment, and Dismissal of Regional Head and Deputy Regional Head (hereinafter referred to as PP No. 6/2005);

Article 1 sub-article 4 of Law Number 22 Year 2007 regarding Administrators of General Elections (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) provides, " *Regional Heads and Deputy Regional Heads General Elections shall be general elections held to directly elect a regional head and a deputy regional head in the Unitary State of the Republic*

*Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia”;*

Article 236C of Law Number 12 Year 2008 regarding the Second Amendment to Law Number 32 Year 2004 regarding Regional Government provides that, ” *The handling of dispute on the result of vote count of regional head elections by the Supreme Court shall be delegated to the Constitutional Court by no later than 18 (eighteen) months as of the promulgation hereof*”;

On October 29, 2008, the Chairperson of the Supreme Court and the Chairperson of the Constitutional Court have jointly signed Minutes of Delegation of Authority to Hear, as the implementation of Article 236C of Law Number 12 Year 2008 above;

**[3.4]** Considering whereas since the Petitioners’ petition is concerned with a dispute on the results of vote count in Regional Head General Election, namely the Regional Head General Election of Belu Regency, East Nusa Tenggara in accordance with Minutes Number 10/BA/KPU/BL/XII/2008 dated December 18, 2008 regarding the Designation of Elected Candidate Pair of the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency Year 2008, thus the Court has the authority to examine, hear, and decide upon the *a quo* petition;

### **Legal Standing of the Petitioner**

**[3.5]** Considering whereas Article 106 paragraph (1) of Law No. 32/2004, Articles 3 and 4 of Constitutional Court Regulation Number 15 Year 2008 regarding Guidelines for Proceedings on the Dispute of the Results of Regional Head General Elections (hereinafter referred to as PMK No. 15/2008) provides for, among other things, the following matters:

- a. The Petitioner is Regional Head and Deputy Regional Head Candidate Pair;
- b. The Petition may only be filed against the stipulation of the result of vote count of Regional Head General Election affecting the designation of Candidate Pairs meeting the qualification to participate in the Second Round Regional Head General Election or the election of Candidate Pairs as the Regional Head and the Deputy Regional Head;

**[3.6]** Considering whereas with respect to the Petitioners' legal standing, the Court shall take it into account based on the provisions of Article 106 paragraph (1) of Law No. 32/2004, Articles 3 and 4 of PMK No. 15/2008 as referred to in paragraph **[3.5]** as follows:

**[3.6.1]** Whereas the Petitioners are Regional Head and Deputy Regional Head Candidate Pair of Belu Regency, whom by the Respondent had been designated as Candidacy Number 1 based on Minutes of Plenary Session of the General Elections Commission of Belu Regency Number 07/BA/X/2008 dated October 30, 2008 regarding the Designation of Candidate Pairs Participating in

the Second Round Regional Head and Deputy Regional Head General Election of Belu Residence Year 2008 declared as having the right to participate in the Second Round Regional Head and Deputy Regional Head together with Candidate Pair No. 4 in the names of Drs. Joachim Lopez and Taolin Ludovikus, B.A.;

**[3.6.2]** Whereas the petition filed by the Petitioners is an objection to Minutes Number 10/BA/KPU/BL/XII/2008 dated December 18, 2008 regarding the Designation of Elected Candidate Pair of the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency Year. The aforementioned objection was filed by the Petitioners because they had been mistakenly stipulated to have acquired only 76,695 votes, while Candidate Number 4 had acquired 84,061 votes;

**[3.6.3]** Whereas according to the Petitioners, the result of vote count conducted by the Respondent had resulted in the abovementioned figures because, among other reasons, the Second Round Regional Head General Election of Belu Regency was not conducted democratically based on the principles of a direct, public, free, confidential, honest, and fair election, there had been violations by the supporters of JALIN (Candidate Pair No. 4), such as the use of violence, systematic fraudulence, mark-up of votes justifiable by Voting Stations (TPS), and deduction of votes acquired by the Petitioner;



Based on the abovementioned matters, the Court is of the opinion that the Petitioner has met the requirements for legal standing in filing the *a quo* petition.

### **Deadline for Filing a Petition**

**[3.7]** Considering whereas Minutes Number 10/BA/KPU/BL/XII/2008 regarding the Designation of Elected Candidate Pair of the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency Year 2008 were stipulated on December 18, 2008, while the petition for objection filed by the Petitioners against the Respondent's stipulation was submitted to the Court on December 22, 2008 based on Minutes of Receipt of Petition Dossier Number 131/PAN.MK/XII/2008 which was then registered on December 23, 2008 under Number 62/PHPU.D-VI/2008;

**[3.8]** Considering whereas Article 5 paragraph (1) of Constitutional Court Regulation No. 15/2008 provides that, "*Petitions may only be filed by no later 3 (three) working days after the Respondent stipulates the results of vote count of the Regional Heads General Election in the region concerned*". Minutes of the General Elections Commissions (KPU) for the *a quo* petition were stipulated on Thursday, December 18, 2008, and afterwards, the petition was filed by the Petitioner at the Registrar's Office of the Court on Monday, December 22, 2008, while December 20 and 21, 2008 were holidays. Therefore, the filling of petition by the Petitioner was still within the deadline set;

**[3.9]** Considering whereas since the Court has the authority to examine, hear, and decide upon the *a quo* petition, and the Petitioner has the legal standing to file the petition, and the petition itself was submitted within the deadline set, the Court shall further consider the Principal Issue of the Petition.

### **Principal Issue of the Petition**

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

**[3.10.1]** Whereas the Second Round Regional Heads General Election of Belu Regency was not conducted in a democratic manner and based on the principles of a direct, public, free, confidential, honest and fair election. There were also violations committed by JALIN's supporters (Candidate Pair No.4), such as the use of violence and systematic fraudulence, vote mark-up at voting stations, and deduction of the Petitioners' votes;

**[3.10.2]** Whereas the Petitioners found violations in the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency Year 2008 in the entire region of Belu Regency, which lead the mistake in the result of vote count conducted by the Respondent, as set out in the object of dispute. However, the Petitioners will only state some of them in order to facilitate substantiation during the hearing, including among other things:

1. Violation in lo Kufeu District

There had been attacks, assault, and intimidation against the Petitioners' witnesses, where 12 witnesses of the Petitioner in Io Kufeu District had been physically abused and suffered injuries immediately after they submitted the Letter of Witness Mandate. In fact, three of the Petitioner's witnesses had to be hospitalized in Atambua Hospital. In Io Kufeu District, GEMAR Pair (Candidate Pair No. 1) did not present any witnesses due to the violent behavior of the supporters of JALIN Pair (Candidate Pair No. 4) who committed anarchic assault by carrying weapons. The Petitioner's witnesses fled in terror abandoning the Voting Stations (TPS), as a result, there was no witness of the Petitioner present in all TPS in this District. This is contradictory to the mandate of the Constitution and prevailing laws and regulations, particularly Article 96 paragraph (10) of Law Number 32 Year 2004 *jis.* Article 84 paragraph (6) of Government Regulation Number 6 Year 2005 and Article 46 paragraph (1) of Regulation of the General Elections Committee Number 9 Year 2007. Therefore, the voting in Io Kufeu District should have been cancelled, and the 4,343 votes acquired by JALIN Pair (Candidate Pair No. 4) in Io Kufeu District should have been rejected/declared as void by law. Thus, the vote acquisition of JALIN Pair (Candidate Pair No. 4) should amount to  $84,061 - 4,343 = 79,718$  votes (Exhibit P-2);

2. Violation in Atambua Barat District

There are 302 residents known as the Petitioners' supporters and followers who did not receive any invitation to vote. After they asked for it, the invitations to vote were given only one day before the Regional Head General Election. Thus, the Petitioner had lost 302 votes in this district, so the Petitioner's vote acquisition should be increased by the 302 votes, namely  $76,695 + 302 = 76,997$  votes;

3. Violation in Tasifeto Barat District

a. Naekasa Village

The delivery of ballot boxes from the district's capital city on December 10, 2008 was not escorted by competent security officers, and there is evidence that there were 412 supporters of the Petitioner who had the right to vote but were not provided with voter's identification cards for the Second Round Regional Head General Election of Belu Regency. Thus, the Petitioner should have acquired  $76,997 + 412 = 77,409$  votes (Exhibit P-3);

b. Tukuneno Village

The Voting Committee had taken a unilateral initiative by way of photocopying C6-KWK form, and there was also evidence that 8 voters cast their vote twice, and therefore, the vote acquisition for JALIN Pair (Candidate Pair No. 4) should have been  $79,718 - 8 = 79,710$  votes (Exhibit P-4);

c. Nusikun Village

In Nusikun Village, there were 28 supporters of the Petitioners who were not provided with the Voter's Identification Cards for the Second Round Regional Head General Election of Belu Regency, while in fact, they had the right to vote. Therefore, the Petitioner's vote acquisition should be added with 28 votes so as to amount to  $77,409 + 28 = 77,437$  votes (Exhibit P-3);

d. Naitimu Village

In Naitimu Village, there were 119 supporters of the Petitioner who were not provided with the Voter's Identification Cards for the Second Round Regional Head General Election of Belu Regency, while in fact, they had the right to vote. Thus, the Petitioner's vote acquisition must be added with 119 votes so as to amount to  $77,437 + 119 = 77,556$  votes (Exhibit P-3, Exhibit P-11);

4. Violation in Sasitamean District

In the entire Sasitamean District, there were 125 double-voters recognized as the supporters of JALIN Pair (Candidate Pair No. 4), so the vote acquired by JALIN (Candidate Pair No. 4) had to be reduced by 125 votes. Therefore, the calculation should be  $79,710 - 125 = 79,585$  votes (Exhibit P-5);

5. Violation in Fohoeka Village, Nanaet Dubesi District

There were many underage children receiving ballots and some people not holding the right to vote were allowed to cast their votes. This indicates the existence of systematic efforts made by the Respondent to mark-up votes which were recorded to be at least 15 votes. Therefore, the total vote acquired by JALIN Pair (Candidate Pair No. 4) should be  $79,585 - 15 = 79,570$  votes (Exhibit P-5a);

6. Violation in Kukuluk Mesak Distinct

a. Kabuna Village

There were 75 supporters of the Petitioner which were not provided with the Voter's Identification Cards for the Second Round Regional Head General Election of Belu Regency, while in fact, they had the right to vote. Thus, the Petitioner's vote acquisition should be added by 75 votes so as to amount to  $77,556 + 75 = 77,631$  votes (Exhibits P-3 and P-13);

b. Dualaus Village

There were 41 supporters of the Petitioner who were not provided with the Voter's Identification Cards for the Second Round Regional Head General Election of Belu Regency, while in fact, they had the right to vote. Thus, the Petitioner's vote acquisition should be

added by 41 votes so as to amount to  $77,631 + 41 = 77,672$  votes  
(Exhibit P-3);

c. Fatuketi Village

There were 68 supporters of the Petitioner who were not provided with the Voter's Identification Cards for the Second Round Regional Head General Election of Belu Regency, while in fact, they had the right to vote. Thus, the Petitioner's vote acquisition should be added by 68 votes so as to amount to  $77,672 + 68 = 77,710$  votes  
(Exhibit P-3);

7. Violation in Malaka Tengah District

a. Kamanasa Village

There were 80 supporters of the Petitioner having the right to vote but not provided with the C6-KWK form, so the Petitioner's vote acquisition should be added by 80 votes so as to amount to  $77,710 + 80 = 77,790$  votes;

b. Harekakae Village

There were 35 supporters of the Petitioner having the right to vote but were not provided with the C6-KWK form, so the Petitioner's vote acquisition should be added by 35 votes so as to amount to  $77,790 + 35 = 77,825$  votes (Exhibit P-17);

c. Kletek Village

There were 18 children who did not have the right to vote and were not registered on the Permanent Voter List allowed to vote for JALIN Pair (Candidate Pair No. 4), so JALIN's vote acquisition should have been deducted by 18 votes. Therefore, the correct calculation should be  $79,570 - 18 = 79,552$  votes (Exhibits P-6 and P-18);

8. Violation in Tasifeto Timur District

a. Manleten Village

There were 36 supporters of the Petitioner having the right to vote but were not provided with the C6-KWK form, so the Petitioner's vote acquisition should be added by 36 votes so as to amount to  $77,825 + 71 = 77,896$  votes [sic] (Exhibit P-12);

b. Slawan Village

There were 30 supporters of the Petitioner having the right to vote but were not provided with the C6-KWK form, so the Petitioner's vote acquisition should be added by 30 votes so as to amount to  $77,896 + 30 = 77,926$  votes (Exhibit P-3);

c. Aitaman Village



There were 25 supporters of the Petitioner having the right to vote but were not provided with the C6-KWK form, so the Petitioner's vote acquisition should be added by 25 votes so as to amount to  $77,926 + 25 = 77,951$  votes (Exhibit P-3);

9. Violation in Fatubenao Sub-District, Kota Atambua District

There were 122 supporters of the Petitioner having the right to vote but were not provided with the C6-KWK form, so the Petitioner's vote acquisition should be added by 122 votes so as to amount to  $77,951 + 122 = 78,073$  votes (Exhibit P-15);

10. Violation in Kobalima District

a. Rainawe Village

There were 68 supporters of the Petitioner having the right to vote but were not provided with the C6-KWK form, so the Petitioner's vote acquisition should be added by 68 votes so as to amount to  $78,073 + 68 = 78,141$  votes (Exhibit P-14);

b. Lakekeun Village

There were 20 supporters of the Petitioner who were not provided with the Voter's Identity Card for the Second Round Regional Head General Election of Belu Regency, while in fact they had the right to

vote. Therefore, the Petitioner's vote acquisition should be added by 20 votes so as to amount to  $78,141 + 20 = 78,161$  votes (Exhibit P-3);

11. Violation in Umanen Sub-District, Kota Barat District

There were seven supporters of the Petitioner who were not provided with the Voter's Identity Card for the Second Round Regional Head General Election of Belu Regency, while in fact they had the right to vote. Therefore, the Petitioner's vote acquisition should be added by seven votes so as to amount to  $78,161 + 7 = 78,168$  votes (Exhibit P-7);

12. Violation in Raimanuk District

a. In the entire Raimanuk District, there were 128 double-voters who were recognized as JALIN Pair's supporters (Candidate Pair No. 4), so the vote acquisition for JALIN (Candidate Pair No. 4) had to be reduced by 128 votes. Therefore, the calculation should be  $79,552 - 128 = 79,424$  votes (Exhibit P-8);

b. Teun Village

There were 98 supporters of the Petitioner who were not provided with the Voter's Identity Card for the Second Round Regional Head General Election of Belu Regency, while in fact they had the right to vote. Therefore, the Petitioner's vote acquisition should be added

with 98 votes so as to amount to  $78,168 + 98 = 78,266$  votes  
(Exhibit P-3);

13. Violation in Fatukbot Sub-District, Atambua Selatan District

There were 45 supporters of the Petitioner who were not provided with the Voter's Identity Card for the Second Round Regional Head General Election of Belu Regency, while in fact they had the right to vote. Therefore, the Petitioner's vote acquisition should be added by 45 votes so as to amount to  $78,266 + 45 = 78,311$  votes (Exhibit P-3);

14. Violation in Rinhat District

a. Naiusu Village

There were 20 supporters of the Petitioner who were not provided with the Voter's Identity Card for the Second Round Regional Head General Election of Belu Regency, while in fact they had the right to vote. Therefore, the Petitioner's vote acquisition should be added by 20 votes so as to amount to  $78,311 + 20 = 78,311$  votes (Exhibit P-3);

b. Naet Village

There were 51 supporters of the Petitioner who were not provided with the Voter's Identity Card for the Second Round Regional Head General Election of Belu Regency, while in fact they had the right to

vote. Therefore, the Petitioner's vote acquisition should be added by 51 votes so as to amount to  $78,311 + 51 = 78,382$  votes (Exhibit P-3);

c. Nabutaek Village

There were 15 supporters of the Petitioner who were not provided with the Voter's Identity Card for the Second Round Regional Head General Election of Belu Regency, while in fact they had the right to vote. Therefore, the Petitioner's vote acquisition should be added by 15 votes so as to amount to  $78,382 + 15 = 78,397$  votes (Exhibit P-3);

15. Violation in Wewiku District

a. Webriatama Village

There was the politically-related distribution of rice, where on December 12, 2008, 63 residents were provided with rice as a compensation for electing JALIN Pair (Candidate Pair No. 4) as promised (Exhibit P-9);

b. Badarai Village

On 5 December 2008, the Head of Agricultural and Plantation Service Office of Belu Regency had used the official car to provide the residents with one unit of water pump, along with the message

to vote for JALIN Pair (Candidate Pair No. 4), where this constitutes a violation of Article 84 paragraph (5) and Law Number 10 Year 2008 (Exhibit P-10);

16. Violation in Malaka Timur District

In the entire Malaka Timur District, there were 97,128 double-voters who were recognized as JALIN Pair's supporters (Candidate Pair No. 4), so the vote acquisition for JALIN (Candidate Pair No. 4) had to be deducted by 97 votes. Thus, the calculation should be  $79,424 - 97 = 79,327$  votes (Exhibit P-8);

17. Violation with regard to Double-Voters

There was evidence with regard to the existence of 707 double-voters at the regency level, in addition to districts as mentioned above and they were recognize as the supporters JALIN (Candidate Pair No. 4), so the vote acquisition for JALIN Pair (Candidate Pair No. 4) had to be deducted by 707 votes. Therefore, the calculation should be  $79,327 - 707 = 78,620$  votes (Exhibit P-8);

18. Violation against Residents whose Right to Vote has been Denied

There were 1,647 supporters of the Petitioners residing in districts other than those mentioned above who were not registered, while in fact, they

had the right to vote. Therefore, the Petitioner's vote acquisition should be added by 1,647 votes so as to amount to  $78,397 + 1.647 = 80,044$  votes;

**[3.11]** Considering whereas in order to support his petition's arguments, the Petitioners have presented written evidence or statements marked as Exhibits P-1 through P-35c authorized in the hearing on January 5, 2009, as well as five witnesses whose statements have been heard and given under an oath during the Court's hearing on January 5, 2009 and January 7, 2009, the complete description of which has been set out in the foregoing Principal Issue of the Case section, which principally explain as follows:

**1. Witness Hendricus CH. Atapala**

- Whereas the Witness is a member of the Success Team of "Gemar" Pair (Candidate Pair No. 1) in charge of data collection and statistics. The witness is aware that there was an addition to the Permanent Voter List (DPT), since there is a difference between the DPTs in the First and Second Rounds. The DPT of the First Round Regional Head General Election of Belu Regency listed 210,473 voters, while the DPT of the Second Round indicated 217,678 registered voters, in which the addition to the DPT had been reported prior to the voting. During the Regional Head General Election in Belu Regency, the Witness questioned the fact that voting invitations were not distributed in 24 districts. The Witness was not aware of the exact number of invitations. If

compared to the Regional Head General Election of Governor on July 14, 2008, the DPT of the Second Round Regional Head General Election of Belu Regency was abnormal, because there was too rapid and significant increase of 7,000 voters within a considerably short period between the First and the Second Rounds;

- The Witness received a report from the witness of *Gemar* Pair (Candidate Pair No. 1) from TPS 3 that in TPS 3, there were five double-voters, among others Maria F. Olin, Yuvenalisasi, and Margaretha Muti, but the Witness never saw the double-voters. Double-voters did not only exist in TPS 3, but also in five other districts, namely Sasitamean District, Tasifeto Timur District, Malaka Timur District, Laen Manen District, and Malaka Tengah District, totaling to 916 voters. The Witness was aware that there were double-voters in those five districts because after being checked on the computer by using the Microsoft Excel program, several voters registered in the DPT had the same names and places/dates of birth. The analysis on double-voters was not verified with the data on the General Elections Committee (KPU). The analysis was a private (data) collection owned by *Gemar* Pair (Candidate Pair No. 1).

## **2. Witness Adrianus Mau Metak**

- The Witness is 13 years of age (born on August 7, 1995), a first-grade student at SMP Negeri I Atambua. During the Regional Head General Election of the Regency, the Witness voted for Candidate Pair No. 4 in the voting booth. The Witness was actually aware that he was not allowed to vote yet, but his father told him to vote and so he did. The officer had given the Witness' father money in the amount of Rp.100,000.-.
- The Witness voted twice in TPS II in Tunamelai Village, namely once during the First Round on October 22, 2008, and once during the Second Round (forgotten the exact date) in December 2008. The Witness, together with 10 of his other friends voted at around 11 a.m. Prior to casting his vote, the Witness first presented the voting invitation to the officers. One of the officers then gave a ballot to the Witness and he voted by puncturing a hole on the ballot with a nail. When the Witness cast his vote, the TPS was already empty (of voters). There were only three to five officers who did not question the Witness' presence;

### **3. Witness Yanti Evering Tiwu**

- In the Regional Head General Election of Belu Regency, the witness was present as the Chairperson of PAC in Oweka District from the Indonesian Democratic Party of Struggle (PDI-P). The



Witness was aware that there were underage voters in TPS I of Oweka Village, based on the information from a relative of the Witness' who, at the time, was a member of one of the Candidate Pair's Team. Upon hearing the news, the Witness visited TPS I of Oweka Village. On her way there, she met 18 students who were in the first, second, and third grades of Junior High School making their way home after casting their votes in TPS I of Oweka Village. The Witness then asked them whether or not they had met the requirement of age to vote. The children explained that they were not aware of the minimum voting age requirement. According to their statement, they were allowed to vote because they were given C6-KWK card by the Chairperson of the Voting Supervisory Group (KPPS) of TPS I of Oweka Village. The Witness knew that those children had not met the voting age requirement and it may be substantiated from their baptismal and birth certificates which stated that they were between 13 to 16 years of age;

- With respect to such incidence, at around 12.30 p.m. (soon after the voting), the Witness verbally raised her objection to the Chairperson of KPPS. The Witness asked the Chairperson of KPPS to present her with the identity cards of the 18 underage children who were allowed to vote, but the Chairperson of KPPS refused to present them. The Chairperson of KPPS admitted that there were underage voters who also cast their ballots, but the

Witness could not object because the objection was raised after the voting. According to the Chairperson of KPPS, objections could only be raised prior to the voting;

- The Witness did not personally see the Junior High School students casting their ballots in the TPS. The Witness was aware that there were underage voters who also cast their ballots based on the information she obtained from the children themselves, who had explained to her that they did vote;
- When the Witness raised her objection, the Petitioners' witness was present in the aforementioned TPS I of Oweka Village, but the Witness did not know for certain whether or not the Witness of *GEMAR* Pair (Candidate Pair No. 1) raised any objection, but it was evident that the Witness of *Gemar* Pair (Candidate Pair No. 1) did not sign the minutes of recapitulation. Based on the vote count conducted in TPS I, *GEMAR* Pair (Candidate Pair No. 1) acquired 96 votes, and *JALIN* Pair (Candidate Pair No. 4) acquired 127 votes.

#### **4. Witness Edmundus Kabosu Halek**

- The witness was present in the General Election of Regional Heads of Belu Regency as the Witness of *Gemar* Pair at TPS III of Manulea Village, Sasitameang District. According to the Witness,

there had been fraud in Regional Head General Election of Belu Regency, among other things there were four voters, namely Maria S. Olin, Yuvenalisasi, Martamurti, and Theresia Yuninelan who were not registered in the DPT but had voted nonetheless. At around 6 a.m. prior to the voting, the Witness raised his objection to the Chairperson of KPPS regarding the four individuals unregistered in the DPT. The Chairperson of KPPS responded to the Witness' objection by explaining that the four persons' names were listed on the Permanent Voter List of KPU. The Witness understood that the four individuals were not listed in DPT, because during the First Round Regional Head General Election, they were not registered in the DPT. In order to substantiate that they were not listed in the DPT, the Witness acquired the DPT and discovered that the four individuals were indeed registered in the DPT, but their names were handwritten and attached to the original DPT. If the four persons were indeed registered in KPU's DPT as stated by the Chairperson of KPPS, their names should have been printed instead of handwritten. The Witness reported the incidence to *Gemar Center*.

- Another fraud concerns with underage voters, namely Maria Imaculata Umbrea, Novarius Nana, and Febrian Mahok who were averagely 16 years of age. The Witness discovered their age from their baptismal certificate obtained from the Father. The Witness

raised a verbal objection to the Chairperson of KPPS, but he did not respond. When the Witness raised his objection, there were people supporting a particular candidate pair and they mocked him by saying that it was useless for him to act as a Witness, because KPPS was right and had a better knowledge of the law;

- The winner in TPS III of Manulea Village, Sasitameang District was JALIN Pair (Candidate Pair No. 4) with 229 votes, while *Gemar* Pair (Candidate No. 1) acquired 108 votes. After the vote count, the Witness signed an empty minutes of recapitulation, in which the vote acquisition of each candidate pair was not yet included in the recapitulation.

#### **5. Witness Firgilius KV. Fernandez**

- The Witness was present in the General Election of Regional Heads of Belu Regency as a witness of GEMAR Pair (Candidate Pair No. 1) in TPS 1 of lo Kufeu District and also as the coordinator of witnesses of GEMAR Pair (Candidate Pair No. 1) in 13 TPS of lo Kufeu District. The Witness, as the coordinator of witnesses of GEMAR Pair (Candidate Pair No. 1) had never received any report on any abnormality in the administration of Regional Head General Election in Belu Regency. The Regional Head General Election of Belu Regency was safely and smoothly held;

- One day prior to the Regional Head General Election, the Witness came to TPS 1 of Tunabesi to submit the mandate letter from *Gemar* Pair (Candidate Pair No. 1), but the Chairperson of KPPS was not present. Afterwards, the witness headed to TPS 2 to meet the Chairperson of KPPS together with his members and the witness submitted the mandate letter from *Gemar* Pair (Candidate Pair No. 1). The Witness then went to TPS 3 to meet the Chairperson of KPPS together with the village head and submitted the mandate letter from *Gemar* Pair. Afterwards, the Witness went to Tunmad Village to observe the location where the Witness will be assigned. The Witness then returned to TPS 3 and met the village head. At around 7 p.m., the Witness left TPS 3, but on his way, a group of people unknown to the Witness thrown stones to the five members of the Witness' team who were riding motorcycles. The Witness suspected that the stones were thrown by the supporters of JALIN's pair (Candidate Pair No. 4), because the crime scene was the JALIN Pair (Candidate Pair No. 4) base. Afterwards, the Witness and his team went to the church for safety and told the incidence to the Pastor, but apparently the Pastor was also terrorized through telephone and text messages;
- The Witness from GEMAR Pair (Candidate Pair No. 1) did not sign the minutes of recapitulation of vote count at the district level;

**[3.12]** Considering whereas the Respondent has read out its Response and submitted a written Response during the Court's hearing on January 7, 2009, the complete description of which is set out in the Principal Issue of the Case section, which principally explains as follows:

**In the Exception**

1. Whereas the correct Minutes of Plenary Session of the General Elections Committee of Belu Regency are Minutes Number 10/BA/KPU/BL/XII/2008 dated December 18, 2008 regarding the Designation of Elected Candidate of the 2008 Regional Head and Deputy Regional Head General Election, rather than Minutes Number 10/01/KPU/01/XII/2008 dated December 18, 2008 as referred to and written by the Petitioners;
2. Whereas it is evident that the Petitioners had neither objected nor claimed the Decision of the Respondents Number 38 Year 2008 regarding the Stipulation of Recapitulation of Vote Count with respect to the Second Round General Election of the Elected Regional Head and Deputy Regional Head of Belu Regency Year 2008. Moreover, it is evident that the Petitioners had neither objected nor claimed the Decision of the Respondent Number 39 Year 2008 dated December 18, 2008 stipulating Candidate Pair No. 4 under the names of Drs. Joachim Lopez and Taolin Ludovikus, B.A. as the Candidate Pair acquiring the majority votes in the Second Round General Election of the Regional Head and the Deputy Regional Head of Belu Regency Year 2008;

3. Whereas therefore, the object of dispute referred to by the Petitioners in the claim or petition for objection against the *a quo* case is obscure and vague, and therefore, it should be and it deserves to be declared as cannot be accepted [*vide* Article 4 sub-article b, Article 6 paragraph (2) sub-paragraph b point 1, and Article 13 paragraph (3) sub-paragraph a of PMK Number 15 Year 2008];
4. Whereas it is evident that the reason/ground for the objection filed by the Petitioners in this case basically describes the Petitioners' assumption, particularly with respect to the addition and deduction of votes which was made up based on the Petitioners' own interpretation; such as the use of violence and fraud, mark-up of votes cast in TPS, mark-up of the number of voters in TPS, and deduction of votes acquired by the Petitioners. In addition, the Petitioner also describes matters relevant to criminal violations;

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

1. Whereas Minutes Number 10/BA/KPU/BL/XII/2008 dated December 18, 2008 regarding the Designation of Elected Candidates of the 2008 Regional Head and Deputy Regional Head General Election and afterwards stipulated in Decision of the General Elections Committee of Belu Regency Number 39 Year 2008 dated December 18, 2008 designating Candidate Pair No. 4 under the names of Drs. Joachim

- Lopez and Taolin Ludovikus, B.A. as Candidate Pairs acquiring majority votes in the Second Round 2008 General Election of the Regional Head and the Deputy Regional Head of Belu Regency and as the Elected Candidate Pair of the 2008 Regional Head and Deputy Regional Head General Election of Belu Regency are valid;
2. Whereas the Respondent as the administrator of the Regional Head and Deputy Regional Head General Election of Belu Regency hold to the principles of independency, honesty, fairness, legal certainty, order of general election administrations, transparency, proportionality, accountability, efficiency, and effectiveness. Therefore, matters presented by the Petitioners in his objection in this case is false;
  3. Whereas the Petitioners' argument that the Respondent has committed systematic fraudulence, marked up votes in TPS, marked up the number of voters in TPS, and reduced the Petitioner's votes is completely incorrect;
  4. Whereas the distribution of 223,683 ballots in 530 TPS spread throughout Belu Regency is based on the provision of Article 75 of PP 6/2005;
  5. Whereas based on the DPT for TPS in Belu Residence, 162,467 registered voters exercised their right to vote, while 55.473 voters did not exercise their right to vote;



6. Whereas all of the description on violations resulting in the addition and deduction of vote acquisition as set out by the Petitioners on page 3 through page 13 of the objection is the Petitioners' own version which is not supported with valid and accurate legal facts. This is affirmed in Letter of the General Election Supervisory Committee (*Panwaslu*) of the Regional Head and the Deputy Regional Head of Belu Regency Number 30/PANWASLU-BELU/XII/2008 addressed to the General Elections Committee of Belu Regency (Respondent) dated December 24, 2008 regarding the Submission of Results of Review with regard to the Report on Violations in General Elections which in essence explains that *Panwaslu* has studied, examined, and concluded all reports through 13 of the petition/objection with the following results:
  - 1) The violations occurred are not violations against the General Elections;
  - 2) The violations occurred were not followed up because they were obscure or lacked of evidence or constituted criminal violations which had been followed up by the Police Force;
  - 3) The violations had been overruled because they could not be accounted for by law.
7. Whereas the objection and protest filed by the Campaign Team of the Candidate Pair or the Petitioners' witnesses had been responded. The

Respondents explain that the recapitulation of vote count should have been included in the objection column provided, but the Petitioners failed to do so, so the objection column remained empty. There was never any violation or the violation was not a violation against the General Elections;

8. Whereas Minutes and Certificate of Vote Count Result (C-KWK Model and Attachment to C1-KWK Model) are only provided for witnesses who are present, submitted the Mandate Letter to the Chairperson of KPPS, and are obligated to attend the voting until the vote count has been completed in every TPS, since the Minutes and Certificate of Vote Count (C-KWK Model and Attachment to C1-KWK Model) are state documents provided only to witnesses having obtained the mandate;
9. Whereas if the Petitioner's witness did not receive Minutes and Certificate of Vote Count (C-KWK Model and Attachment to C1-KWK Model), it was because the foregoing Petitioners' witness was absent or did not attend the voting until it had been completed in most of the TPS available.

**[3.13]** Considering whereas in order to support his counter argument, the Respondent has presented evidence of letter or written evidence marked as Exhibits T-1 through T-53 legalized in the hearing, and presented two witnesses, the complete description of which has been set out in the abovementioned Principal Issue of the Case, principally as follows:

1. **Witness Valentinus Parera**

- The Witness who is the Chairperson of the Supervisory Committee for General Elections in Belu Regency explains that prior to the voting, the Supervisory Committee did not receive any report on violations. If any, it was rather a letter explaining the chronology of mistreatment suffered by the witnesses of GEMAR Pair (Candidate Pair No. 1). The letter was received by the Supervisory Committee on December 11, 2008 at around 1.00 p.m. The letter reports the chronology of mistreatment suffered by witnesses of GEMAR Pair in lo Kufeu District. The letter explains that at first, 27 witnesses of GEMAR Pair headed for lo Kufeu District to submit the mandate letter from GEMAR Candidate Pair to the Chairperson of KKPS. Upon the mandate letter was received by the Chairperson of KPPS, the witnesses of GEMAR Pair were returning home when a group of people blocked their way, resulting in the assault. The Witnesses of GEMAR Pair then reported the incidence to Gemar Center and on the same night, the candidate regent from GEMAR Pair called the Chief of Resort Police. The case was promptly followed up by Belu Resort Police;
- In addition to the assault, there was also a report on money politics, but there was not enough evidence to be followed up. Another report submitted to the Supervisory Committee was the existence of underage voters. The underage voters in the Regional General

Election of Governor and the First Round Regional Head General Election of Regent were never raised as an issue and only surfaced in the Second Round Regional Head General Election of Regent. However, there was another report submitted to the Supervisory Committee concerning the falsification of baptismal certificate, namely that the person concerned was actually born in 1991, but on the certificate, it was changed into 1992. If the year written on the certificate was not changed, the person concerned would still meet the requirement of age to vote;

**2. Witness AKBP Sugeng Kurniaji**

- Whereas the witness is the Chief of Resort Police of Belu Regency. His was present in the Regional Head General Election of Belu Regency as the person in charge of security and according to the witness, the Regional Head General Election in Belu Regency had been safe, orderly, and held in accordance with applicable regulations;
- Whereas the Witness did not receive any report from the General Elections Supervisory Committee concerning any violations of the Regional Head General Election;
- Whereas the Witness admitted that there were incidences deviated from the administration of the General Election of Regional Heads,

but they had been followed up as ordinary crimes, where such cases are still being investigated in order to find the suspects;

- Whereas prior to the implementation of Regional Head General Election in Belu Regency, there were demonstrations held by all candidate pairs demanding for an increase in the number of voters. With regard to such demonstrations, the Witness was the facilitator and the parties (demonstrators and the General Elections Committee) had made an agreement set out in an agreement stating that all parties shall agree for an increase in the number of voters, namely from the initial number of 210,473 voters to 217,394 voters;

## **Opinion of the Court**

### **In respect of the Exception**

**[3.14]** Considering whereas prior to considering the principal issue of petition of the Petitioners, the Court shall first consider the Respondent's exception, as follows:

**[3.14.1]** Whereas the Respondent's exception in essence is concerned with three issues, namely:

1. the object of petition is obscure or unclear;

2. the reasons/grounds for the Petitioner's objection only constitute the Petitioners' own assumption, particularly with respect to the addition and deduction of votes which were made based on the Petitioners' own interpretation;
3. the violations described by the Petitioners are concerned with criminal violations;

**[3.14.2]** Whereas with respect to the aforementioned exception of the Respondent, the Court is of the following opinions:

1. With respect to Item One of the Exception

Whereas pursuant to Article 1 sub-Article 8 *juncto* Article 4 of PMK No. 15/2008, the object of the petition is an objection to the stipulation of the vote count determined by the Respondent. In accordance with Exhibit P-1, the objects of dispute are Minutes of Plenary Session of the General Elections Committee of Belu Regency Number 10/BA/KPU/BL/XII/2008 dated December 18, 2008 regarding the Designation of Elected Candidates of the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency, rather than Minutes of Plenary Session of the General Elections Committee of Belu Regency Number 10/01/Kpu/01/XII/2008 dated December 18, 2008 regarding the Stipulation of Elected Candidate Pair of the Regional Head and Deputy Regional General Election of Belu Regency issued by the Respondent.

Therefore, the object of dispute in the petition has fulfilled the provision of Article 1 sub-Article 8 *juncto* Article 4 of PMK No. 15/2008. Thus, according to the Court, the Respondent's exception is not sufficiently grounded;

2. With respect to the item two and three of the Respondent's exception, the Court opines that they are closely related to the principal issue of the petition which constitute the authority of the Court to evaluate, so the aforementioned exception must be disregarded;

**[3.15]** Considering whereas since the Respondent's exception is disregarded, the Court shall then provide an opinion on the principal issue of the Petitioners' petition based on the statements and explanations of the parties (Petitioners/Respondent), evidence of letters as well as statements of the witnesses presented by the Petitioners and the Respondent, as follows:

**[3.15.1]** With respect to the Petitioners' argument that the Second Round Regional Head General Election of Belu Regency was neither democratic nor based on the principles of a direct, public, free, confidential, honest, and fair election, the Court is of the opinion that the argument is not legally appropriate because it is based on the facts revealed during the hearing and since the Petitioners cannot prove his argument, hence the argument must be disregarded;

**[3.15.2]** With respect to the Petitioners' petition that there had been a mistake deliberately made by the Respondent or the existence of several

“ignored” violations, namely the use of violence, systematic fraudulence, mark-up of votes in TPS, mark-up of the number of voters in TPS, and deduction of votes acquired by the Petitioners’, the Court is of the opinion that the alleged violations should have been reported to the Supervisory Committee, and the Supervisory Committee would forward the report to the investigators for follow-up. The aforementioned Petitioners’ argument is not supported with valid and convincing evidence. Moreover, the Petitioners’ argument is rebutted by the statement of the Respondent’s Witness, AKBP Sugeng Kurniaji, the Chief of Resort Police of Belu Regency, as the person-in-charge for the security of the Regional Head General Election of Belu Regency, stating that the criminal violations referred to are ordinary (common) crimes and the case is still in the process of finding the suspects. It is further supported with the letter of the General Election Supervisory Committee (*Panwaslu*) of the Regional Head and the Deputy Regional Head of Belu Regency Number 30/PANWASLU BELU/XII/2008 dated December 24, 2008 addressed to the Respondent regarding the Submission of Results of Review with regard to the Report on Violations in General Elections (Exhibit T-30), which in principal states that the Committee has studied, examined, and concluded all reports presented by the Petitioner, namely:

1. The violations occurred are not violations against the General Elections;
2. The violations occurred were not followed up because they were obscure or lacked of evidence or constituted criminal violations which had been followed up by the Police Force;



3. The violations had been disregarded because they could not be accounted for by law.

Thus, the foregoing Petitioners' argument must be disregarded.

**[3.15.3]** With respect to the Petitioner's argument stating that there were violations in the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency Year 2008 in the entire region of Belu Regency, which have caused the mistake in the result of vote count by the Respondent as described in the object of dispute, the Court is of the opinion that because there were only a few violations mentioned in order to facilitate evidence in the hearing, the argument in fact indicates the Petitioners' inconsistency, where on one hand, the Petitioners argue that there was a mistake in vote count in the entire region of Belu Regency, but on the other hand, the data presented only cover mistakes occurring in 16 districts and 26 villages/sub-districts, namely:

1. Io Kufeu District;
2. Atambua Barat District;
3. Tasifeto Barat District;
  - a. Naekasa Village;
  - b. Tukuneno Village;
  - c. Nusikun Village;
  - d. Naitimu Village;
4. Sasitamean District;

5. Nanaet Dubesi District, Fohoeka Village;
6. Kukuluk Mesak District;
  - a. Kabuna Village;
  - b. Dualaus Village;
  - c. Fatuketi Village;
7. Malaka Tengah District;
  - a. Kamanasa Village;
  - b. Harekaka Village;
  - c. Kletek Village;
8. Tasifeto Timur District;
  - a. Manleten Village;
  - b. Slawan Village;
  - c. Aitaman Village;
9. Kota Atambua District, Fatubenao Sub-District;
10. Kobalima District;
  - a. Rainawe Village;
  - b. Lakekeun Village;
11. Kota Barat District, Umanen Sub-District;
12. Raimanuk District, Teun Village;
13. Atambua Selatan District, Fatukbot Sub-District;
14. Rinhat District;
  - a. Naiusu Village;
  - b. Naet Village;

- c. Nabutaek Village;
15. Wewiku District;
    - a. Webriatama Village;
    - b. Badarai Village;
  16. Malaka Timur District.

Inconsistency in the petition indicates that the Petitioners cannot substantiate the existence of mistake in the entire Belu Residence. In fact, the alleged violations which are argued to have occurred in the 16 districts cannot be substantiated. Not only as it cannot be substantiated, the Petitioners' petition is also obscure (*obscuur*), so the Petitioners' petition must be disregarded;

**[3.15.4]** With respect to the Petitioners' argument stating that there had been attacks, assault, and intimidation against all of the Petitioners' witnesses, the Court is of the opinion that it does not have any direct relationship with the annulment of vote acquisition by JALIN Pair (Elected Candidate Pair), namely 4,343 votes. Moreover, the argument is not supported with solid and convincing evidence. Attacks, assault, and intimidation against the all of the Petitioners' witnesses are within the domain of the Supervisory Committee to follow up. Thus, the Petitioners' petition must be disregarded;

**[3.15.5]** With respect to the Petitioners' argument stating that there are 302 residents of Atambua Barat District recognized as the supporters and followers of the Petitioners were not provided with the voting invitation, so that the votes cast by the 302 persons must have been added to the Petitioners' votes, the Court

opines that, in addition to the fact that the argument is not supported by solid evidence, it cannot be immediately assumed that the 302 persons would have cast their votes for the Petitioners. If the Petitioners' claim is justified, the Court opines that it is contradictory to the principles of a General Election which is direct, public, free, confidential, honest, and fair, as set forth in Article 22E paragraph (1) of the 1945 Constitution;

**[3.15.6]** With respect to the Petitioners' argument that in Kabuna Village, Kakuluk Mesak District, there were 75 supporters of the Petitioner who were not provided with Voter's Identity Cards, while in fact they had the right to vote so that the votes acquired by the Petitioners must be added by 75 votes; similarly, in Dualaus Village, Kakuluk Mesak District, there were 41 persons, and in Fatuketi Village, Kakuluk Mesak District, there were 68 persons, the Court is of the opinion that based on the evidence presented by the Petitioners, none of them supported the aforementioned argument. On the other hand, the Respondent, pursuant to Exhibit T-9, denies the Petitioners' argument because it appears that the Petitioners' and the Respondent's witnesses have signed Minutes in DA-KWK Model and attachments thereto. Furthermore, even if the Petitioners' argument was true, it could not be immediately assumed that the 75 persons in Kabuna Village, 41 persons in Dualaus Village, and 68 persons in Fatuketi Village, Kakuluk Mesak District would certainly cast their votes for the Petitioners. Therefore, the Petitioners' argument must be disregarded;

**[3.15.7]** With respect to the Petitioners' argument that there were 80 people

in Kamanasa Village and 35 people in Kamanasa Village supported the Petitioners who have the right to vote but were not provided with C6-KWK forms, the Court opines that such fact cannot be immediately added to the total votes acquired by the Petitioners. In fact, such action would lead to injustice because it is still unknown which Candidate Pair the 80 persons in Kamanasa Village and 35 persons in Harekaka Village would cast their votes for. Therefore, the argument must be disregarded;

**[3.15.8]** With respect to the Petitioner's argument that in Kletek Village, there were 18 children who did not have the right to vote and were not registered in DPT but nevertheless allowed to vote for JALIN Pair (Candidate Pair No. 4), which was supported by the Petitioners' witness, namely Yanti Evering Tiwu, the Court opines that the argument was not supported by valid evidence, because the Petitioners' witness, Yanti Evering Tiwu, did not see for herself that the 18 underage children cast their votes in TPS 1 of Oweka Village. Therefore, the Petitioners' argument must be disregarded;

**[3.15.9]** With respect to the Petitioner's argument that there were people having the right to vote but were not provided with C6-KWK forms, namely in the following areas:

- 36 persons in Manleten Village, Tasifeto Timur District;
- 30 persons in Slawan Village;
- 25 persons in Aitaman Village;
- 122 persons in Fatubenao Sub-District, Kota Atambua District;

- 68 persons in Rainawe Village, Kobalima District;
- 20 persons in Lakekeun Village;
- 7 persons in Umanen Sub-District, Kota Barat District;
- 98 persons in Teun Village, Raimanuk District;
- 45 persons in Fatukbot Village, Atambua Selatan District;
- 20 persons in Naiusu Village, Rinhat District;
- 51 persons in Naet Village;
- 15 persons in Nabutaek Village;

The Court refers to the abovementioned considerations points 5, 6, and 7, namely that the aforementioned arguments are not proven and if they were, they could not be immediately added to the total votes acquired by the Petitioners. Therefore, the argument presented by the Petitioners must also be disregarded;

**[3.15.10]** With respect to the Petitioners' argument that in Raimanuk District, there were 128 double-voters and they were recognized as JALIN's (Elected Candidate Pair) supporters, so the vote acquisition for JALIN (Elected Candidate Pair) should have been reduced by 128 votes, the Court opines that the argument should fall under the authority of the Supervisory Committee for follow-up. For whom the votes were cast by the 128 double-voters was also unknown, so it would be unfair to deduct the votes cast by the 128 double-voters only from JALIN Pair (Elected Candidate Pair). Moreover, the Petitioner did not provide sufficient evidence to support the argument. On the other hand, the Respondent, in accordance with Exhibit T-20 in DA2-KWK Model and the statements of witnesses

of both the Petitioners and JALIN Pair (Elected Candidate Pair), states that there was no objection filed, so the Petitioners' argument must be disregarded;

**[3.15.11]** With respect to the Petitioner's argument that in Webriatama Village, there had been a politically-related distribution of rice, where on December 12, 2008, 63 residents were given rice as a compensation for electing JALIN Pair (Elected Candidate Pair), the Court opines that the argument has not been supported with sufficient evidence. The Petitioner's argument has been denied by the Respondent, in accordance with Exhibit T-30 of KWK-3 A Model regarding the Review of Report Number 19/PANWASLU-BELU/XII/2008 dated December 24, 2008, stating that the distribution of rice had no relevance to JALIN Pair (Elected Candidate Pair), so it can be categorized as a violation of the General Elections. Therefore, the argument is not sufficiently grounded;

**[3.15.12]** With respect to the Petitioner's argument stating that there were 1,647 supporters of the Petitioner outside the abovementioned districts who were not registered despite the fact that they had the right to vote, the Court opines that the argument is not supported with solid and convincing evidence. In fact, even if the argument was true, it cannot be immediately considered that the 1,647 persons would have cast their votes for the Petitioner. Therefore, the argument should have been disregarded;

**[3.15.13]** Whereas with respect to Witness Adrianus as an underage voter having cast his vote in TPS II of Tunai Melai Village, the Court is of the opinion that, provided that it was true, it would not have made a significant contribution to

the vote acquisition of the candidate pair;

**[3.16]** Considering whereas based on the abovementioned considerations, the Court evaluates that the Petitioners cannot substantiate the arguments and legal grounds of their Petition;

#### **4. CONCLUSION**

Based on the aforementioned assessment of facts and law, the Court draws the following conclusions:

**[4.1]** The Respondent's Exception is not legally appropriate;

**[4.2]** The violations argued by the Petitioners have not been validly and convincingly substantiated, so they would not affect the vote acquisition stipulated by the Respondent;

**[4.3]** Even if there was a criminal violation, the violation would not be a violation of the Regional Head General Election;

#### **5. DECISION**

In view of the 1945 Constitution of the State of the Republic of Indonesia, Law Number 24 Year 2003 and Law Number 12 Year 2008 *junctis* Law Number 4 Year 2004 regarding Judicial Power, 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 Case:**

- To reject the entire petition of the Petitioners;
- To declare Minutes Number 10/BA/KPU/BL/XII/2008 dated December 18, 2008 regarding the Stipulation of Elected Candidate Pair of the Second Round Regional Head and Deputy Regional Head General Election of Belu Regency Year 2008 as valid.

Hence the decision was made in the Plenary Consultative Meeting on Wednesday, the fourteenth of January two thousand and nine by us, eight Constitutional Court Justices and was pronounced in a Plenary Session open for the public on Thursday, the fifteenth of January two thousand and nine by us, Moh. Mahfud MD, as the Chairperson and concurrent Member, M. Akil Mochtar, M. Arsyad Sanusi, Maria Farida Indrati, Abdul Mukthie Fadjar, Maruarar Siahaan, Achmad Sodiki, and Muhammad Alim respectively as Members and assisted by

Alfius Ngatrin as the Substitute Registrar, in the presence of the Petitioners and/or their Attorneys, the Respondent and/or its Attorney.

**CHIEF JUSTICE**

**Sgd.**

**Moh. Mahfud MD**

**MEMBERS,**

**Sgd.**

**M. Akil Mochtar**

**Sgd.**

**M. Arsyad Sanusi**

**Sgd.**

**Maria Farida Indrati**

**Sgd.**

**Abdul Mukthie Fadjar**

**Sgd.**

**Maruarar Siahaan**

**Sgd.**

**Achmad Sodiki**

**Sgd.**

**Muhammad Alim**

**SUBSTITUTE REGISTRAR,**

**Sgd.**

**Alfius Ngatrin**