



DECISION

Number 63/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 the constitutional cases at the first and final level, has passed a decision in the case of Dispute on the General Election Results of the Regional Head and Deputy Regional Head of Kubu Raya Regency Year 2008 filed by:

- [1.2]
1. Name : **Sujiwo**
Age : 34 Years
Religion : Moslem
Occupation : Private Person
Address : Mediterranean Complex Number 3
Sungai Raya Dalam, Pontianak, West
Kalimantan;
 2. Name : **Raja Sapta Oktohari**
Age : 33 Years
Religion : Moslem
Occupation : Entrepreneur

Address : Jl. S. Parman Number 2B Pontianak,
West Kalimantan

In this matter, granting the power of attorney to Rezki, S.H. and Adam Malik, S.H., Advocates/Legal Consultants having their office at Jalan K.H. Abdullah Syafei Number 21B Lapangan Ros, Casablanca, South Jakarta, Telephone (021) 83706466 and at Jalan Alteri Street Supadio/Ahmad Yani II Sungai Raya District, Kubu Raya Regency, West Kalimantan, Telephone (0561) 721805 Kubu Raya Regency, West Kalimantan by virtue of the special power of attorney dated January 12, 2009, acting for and on behalf of the Authorizers, either severally or jointly;

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

Against:

The General Election Commission of Kubu Raya Regency, domiciled at Jalan Adi Sucipto Kilometer 15.2 Sungai Raya, Kubu Raya Regency, West Kalimantan Province;

In this matter granting the power of attorney to 1). Kamarussalam, S.H.; 2). Nazirin, S.H.; 3). Syahri, S.H.; all of whom are advocates, having their office in **KAMARUSSALAM Advocate and Partners** at Jalan Tanjung Sari Number 106A Pontianak, West Kalimantan, Mobilephone Number 0813 4527 1323 by virtue of the special power of attorney dated December 3, 2008, acting for and on behalf of the Authorizer, either severally or jointly;

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

[1.3] Reading the Petitioners' petition;

Hearing the Petitioners' statement;

Hearing the Respondent's statement and reading written response of the General Election Committee (KPU) of Kubu Raya;

Hearing the statement and reading the written statement of the Related Party of the Elected Regent Candidate Pair Muda Mahendrawan, S.H;

Examining thoroughly the evidence and witnesses of the Petitioners and Respondent;

Reading the Petitioners and Respondent's conclusions;

3. LEGAL CONSIDERATION

[3.1] Considering whereas the principal issue of the Petitioners' petition is objection to Minutes of the General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 concerning the Designation of Kubu Raya Regent and Deputy Regent Candidate Pair as the Elected Candidate Pair in the Second Round Regent and Deputy Regent Election of Kubu Raya Year 2008;

[3.2] Considering whereas prior to considering the Principal Issue of the Petition, the Constitutional Court (hereinafter is referred to as the Court) shall first take the following matters into account:

1. the authority of the Court to examine, hear, and decide upon the *a quo* petition;
2. the Petitioners' legal standing to file the *a quo* Petition;
3. the deadline for filling the objection.

With respect to the intended three matters, the Court is of the following opinions:

Authority of the Court

[3.3] Considering whereas based on the provisions of Article 24C paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as 1945 Constitution) and Article 10 paragraph (1) sub-paragraph d of Law Number 24 Year 2003 regarding 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) *unctis* 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 authorities of the Constitutional Court is to decide upon dispute on the general election result;

At first, based on the provision of Article 106 paragraphs (1) and (2) of Law Number 32 Year 2004 regarding Regional Government (State Gazette of the Republic of Indonesia Year 2004 Number 125, Supplement to the State Gazette of the Republic of Indonesia Number 4437), objection related to the results of vote court affecting the election of Candidate Pair was filed to the Supreme Court. The authority of the Supreme Court is re-included in Article 94 of Government Regulation Number 6 Year 2005 regarding Election, Ratification of Appointment, and Dismissal of Regional Head and Deputy Regional Head;

Article 1 sub-article 4 of Law Number 22 Year 2007 regarding the General Election Administrator (State Gazette of the Republic of Indonesia Year 2007 Number 59, Supplement to the State Gazette of the Republic of Indonesia Number 4721) stipulates, "*The General Election of Regional Head and Deputy Regional Head shall be a general election in order to directly elect the regional head and deputy regional head in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia*";

Law Number 12 Year 2008 regarding the Amendment To Law Number 32 Year 2004 regarding Regional Government, Article 236C stipulates, "*The handling of dispute on the results of regional head general election by the*

Supreme Court shall be delegated to the Constitutional Court by no later than 18 (eighteen) months as of the promulgation of this Law”;

On October 29, 2008, the Head of the Supreme Court and the Chairperson of the Constitutional Court 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 because the Petitioners’ petition is concerned with the dispute on the results of vote count in accordance with the Minutes of General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 regarding the Designation of Kubu Raya Regent and Deputy Regent Candidate Pair as the Elected Candidate Pair in the Second Round Kubu Raya Regent and Deputy Regent Election Year 2008, accordingly the Court has the authorities to examine, hear, and decide upon the *a quo* petition;

Legal Standing of the Petitioners

[3.5] Considering whereas Article 106 paragraph (1) of Law Number 32 Year 2004 concerning Regional Government, Articles 3 and 4 of the Constitutional Court Regulation Number 15 Year 2008 regarding Guidelines for Proceedings in Dispute on the Result of Vote Count of Regional Head General Election (hereinafter referred to as PMK 15/2008) stipulates among other things, as follows:

- a. The Petitioners are the Regional Head and Deputy Regional Head Candidate Pair;
- b. The petition may only be filed to the stipulation of results of vote count of Regional Head General Election affecting the designation of Candidate Pair who are qualified to participate in the second round Regional Head General Election or the election of Candidate Pair as Regional Head and Deputy Regional Head;

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

- whereas the Petitioners are Kubu Raya Regent and Deputy Regent Candidate Pair in the Second Round Election, whom by the Respondent are designated as Candidate Pair Number 7 as stipulated in the Decision of General Election Commission of Kubu Raya Regency Number 42 Year 2008 dated October 31, 2008 regarding the Designation of Kubu Raya Regent and Deputy Regent Candidate Pair as Participants in the Second Round Election of Kubu Raya Regent and Deputy Regent Year 2008 (exhibit T-6);
- whereas the petition filed by the Petitioners is concerned with the objection to Minutes of the General Election Commission of Kubu Raya

Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 regarding the Designation of Candidate Pair of Kubu Raya Regent and Deputy Regent as the Elected Candidate Pair in the Second Round Kubu Raya Regent and Deputy Regent Election Year 2008. The intended objection arises because the Petitioners, **Sujiwo and Raja Sapta Oktohari** have been wrongly stipulated as to acquire only 90.338 votes, under the the Elected Candidate Pair **Muda Mahendrawan, S.H. and Drs. Andreas Muhrotien, M.Si** who acquire 124.738 votes (exhibits T-3.1 and T-3.2);

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

Deadline for Filling the Petition

[3.7] Considering whereas the Designation of Elected Candidate Pair of the Kubu Raya Regeny and Deputy Regent Year 2008 conducted by the Respondent was stipulated through the Minutes of General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008, while the petition of objection to the Respondent's stipulation has been submitted to the Registrar's Office of the Court and was received at the Registrar's Office of the Court on Wednesday, December 24, 2008 based on the Deed of Receipt of Petition Dossier Number 133/PAN.MK/XII/2008 which was subsequently registered on December 30, 2008 with Number 63/PHPU.D-VI/2008;

[3.8] Considering whereas Article 15/2008 stipulates, “*The petition may only be filed by no later than 3 (three) working days after the Respondent stipulates the results of vote count of Regional Head General Election in the related region*”, therefore the filling of the Petitioners’ petition is still in the deadline set because December 20, 2008 and December 21, 2008 were Saturday and Sunday which are holidays and not working days;

[3.9] Considering whereas based on the assessment of the facts and the law in paragraph **[3.6]** above, the Court is of the opinion that the Petitioners have legal standing to file for the *a quo* petition in accordance with the requirement specified in Article 106 paragraph (1) of Law Number 32 Year 2004, Articles 3 and 4 of PMK 15/2008, and the filling of Petitioners’ petition is also still within the deadline as set in Article 5 of PMK 15/2008;

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

Principal Issue of the Petition

[3.11] Considering whereas the Petitioners in their petition as completely included in the Posita in principal argue as follows:

[3.11.1] Whereas the Petitioners are Regent and Deputy Regent Candidate Pair in the Second Round Kubu Raya Regent and Deputy Regent Election Year 2008 with Candidacy Number 7 based on the Decision of General Election Commission of Kubu Raya Regency Number 42 Year 2008 dated October 31, 2008 regarding the Designation of the Kubu Raya Regent and Deputy Regent Candidate Pair in Second Round Election Year 2008 (exhibit T-6);

[3.11.2] Whereas the Petitioners object to the Minutes of General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 regarding the Designation of Candidate Pair of Kubu Raya Regent and Deputy Regent as the Elected Candidate Pair in the Second Round Election of Kubu Raya Regent and Deputy Regent Year 2008, because the vote count conducted by the Respondent is incorrect or at least contains errors;

[3.11.3] Whereas such mistakes or errors occurred because of violations committed by the Respondent, in forms of:

- 1) there were votes cast on the rest of voting papers;
- 2) there were votes calculated to exceed the total voters listed on the Permanent Voters' List (DPT);
- 3) there were illegal voters in Pooling Stations (TPS);
- 4) KPPS officers did not make the Minutes of Records of Voting Implementation and Vote Count;

- 5) there was intimidation not to vote;
- 6) the voting invitations were only distributed to the supporters of Candidate Pair Number 8; and
- 7) there were criminal violations committed by the Campaign Team of Candidate Pair Number 8.

[3.12] Considering whereas in order to substantiate the arguments of their petition, the Petitioners have submitted evidence in the form of letter or in writing (marked with exhibit P-1 up to P-5) and the witnesses whose statements have been heard under oath in the hearing on January 12, 2009, namely: 1) Dedy Kristian; 2) Norman; 3) Agus Siswanto; 4) Toni; 5) Abd. Rahman M. Yasin; 6) Hendra Saputra; 7) Iskandar Dolek; 8) Pian Susandi; 9) Liu Shein Tet; 10) Lim Aliong; 11) M. Bustami; and 12) Mahani bin A. Manap, which have been completely included in the Posita.

Whereas the Court only considers statements presented by the witnesses that are relevant to the principal issue of the petition and whether or not such statements are correlated to one another to support the arguments of the Petitioners' petition, which principally are as follows:

1. Witness Dedy Kristian

- Stated that in TPS 1 of Seruat 1 Village, Teluk Pa'Kedai District voting was conducted in village administration building. After the voting took

place for around one hour, there was a protest from the villagers because the village administration building was used as the polling station, therefore the polling station was relocated to the a villager's house whose name is Hamid Nyilik until the voting was completed;

- At the time of election, there was a member of KPPS accompanied by two members of community protection carrying 13 ballot papers with them to the houses of sick villagers without ballot box;
- According to the witness based on the statement of Gatot Wicaksono (a police officer) stated that the ballot cards were not taken to the sick villagers' houses but a member of KPPS cast his/her vote on the ballot paper outside the Polling Station. The witness also stated that Idris Maheru, the Chairperson of KPU of Kubu Raya Regency voted in TPS 1 Seruat Village, and according to the witness, Idris Maheru only voted once;

2. Witness Agus Siswanto

- The witness explained that in TPS 88 in Sungai Raya Village, Sungai Raya District, the witness was not given the C1-KWK Form although he had asked and protested the KPPS. The reason was that there was only one C1-KWK Form remaining. There are no Minutes made nor witness signed the C1-KWK Form with respect to the incident;

3. Witness Toni

- The witness explained that in TPS 5 Karya Bersama Hamlet, Kubu Village, Kubu District, the witness was not given the C1-KWK Form and he did not ask for it, but the witness signed the C1-KWK Form;

4. Witness Abd. Rahman M. Yasin

- The witness explained that in TPS 14 5 Hamlet, Punggur Kecil Village, Sungai Kakap District, the witness was not given the C1-KWK Form and the witness signed the C1-KWK Form;

5. Witness Hendra Saputra

- The witness explained that in TPS 5 Swadaya Hamlet, Teluk Pa'Kedai District , the witness was not given the C1-KWK Form although he had asked for it to the head of KPPS for the reason that there was no more C1-KWK Form left and the witness signed the C1-KWK Form;

6. Witness M. Bustami

- The witness explained that in TPS 8 Padang Tikar II Village, Batu Ampar District, the witness was not given the C1-KWK Form but signed the C1-KWK Form;

7. Witness Iskandar Dolek

- The witness was the observer in Regional Head Election of Kubu Raya Regeny in TPS 28 Kuala Dua Village, Sungai Raya District, the witness

saw and arrested one voter using other person's name. However, before voting, the witness took the ballot paper and asked whether the person have any Identity Card or other identities, but he/she cannot provide one. With respect to the matter, the witness did not report it to the Supervisory Committee;

8. Witness Pian Susandi

- The witness was the observer in Teluk Kapuas Village and Sungai Raya Village explaining that there were many senior voters who did not received an invitation to vote in the Second Round Regional Head Election of Kubu Raya Regency;

9. Witness Liu Shein Tet

- The witness lives in Sungai Tengkorak, Sungai Raya District, Kubu Raya Regency, in the Second Round Kubu Raya Regional Head General Election he was not given an invitation to vote;

10. Witness Lim Aliong

- The witness lives in Teluk Kapuas Village, Sungai Raya District;
- In the First Round Kubu Raya Regional Head General Election the witness obtained an invitation to vote, but in the second round he did not vote because he did not receive an invitation to vote;

[3.13] Considering whereas with respect to the Petitioners' petition, the Respondent has submitted the written response in the hearing on Tuesday, January 6, 2009 which in essence denied all of the Petitioners' arguments as follows:

In the Exception

1. Whereas in the petition, the Petitioners must be qualified as *obscuur libel* (obscure) because they cannot describe clearly the errors in the results of vote count stipulated by the Respondent, the unclear descriptions presented by the Petitioners in the request or petitum to annul the results of vote count stipulated by the Respondent and to stipulate the correct results of vote count according to the Petitioners;
2. Whereas the Petitioners' petition must be qualified as *error in objecto*, because it is not in accordance with Article 75 of Law Number 24 Year 2003 concerning Constitutional Court *juncto* Article 4 and Article 6 paragraph (2) sub-paragraph b of PMK 15/2008;
3. Whereas the alleged violations described by the Petitioners in their petition is not the object of dispute of Regional Head General Election;

In the Principal Issue of the Case

- The object of the case should be the Minutes of Plenary Meeting of General Election Commission of Kubu Raya Regency Number

37/BA/KPU/KKR/XII/2008 dated December 19, 2008 concerning the Stipulation of the Results of Vote Count Recapitulation of the Second Round Election of Kubu Raya Regent and Deputy Regent Year 2008 (exhibit T-3), and was made in copy of Decision of the General Election Commission of Kubu Raya Regency Number 46 Year 2008 concerning the Stipulation of Vote Count Recapitulation of the Second Round Election of Kubu Raya Regent and Deputy Regent.

Minutes of the Plenary Meeting of General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 concerning the Designation of Kubu Raya Regent and Deputy Regent Candidate Pair as the Elected Candidate Pair in Kubu Raya Regent and Deputy Regent Election Year 2008 and was made in copy of the Decision of General Election Commission of Kubu Raya Regency Number 47 Year 2008 concerning the Designation of Kubu Raya Regent and Deputy Regent Candidate Pair as the Elected Candidate Pair in Kubu Raya Regent and Deputy Regent General Election Year 2008;

- Whereas the First Round Regional Head General Election of Kubu Raya held on October 25, 2008 with eight Candidate Pairs Participating in the Regional Head General Election and the Second Round Election held on December 15, 2008 with two Candidate Pairs Participating in the Second Round Regional Head General Election have provided an opportunity to the widest possible extent to actively become a voter by way of meeting the requirements set forth in law;

- Whereas there were no problem and objection during the process of vote count arisen either from the witnesses of the respective candidates including the Petitioners' witnesses themselves and the people of Kubu Raya Regency with regard to the implementation of the First and the Second Regional Head Election of Kubu Raya;

- Whereas the Petitioners are wrong and groundless in stating that the in designating the Candidate Pair Number 8, Muda Mahendrawan and Andreas Muhrotien, as the Elected Regent and Deputy Regent of Kubu Raya Regency, the Respondent does not only make an unlawful and illegal act but also also highly harms the Petitioners, where the Petitioners' right as the Regent and Deputy Regent of of Kubu Raya Regency cannot be exercised, because the Respondent has conducted all series of events in accordance with the Decision of General Election Commission of Kubu Raya Regency Number 40 Year 2008 concerning Stipulation of the Results of Vote Count Recapitulation of Regent and Deputy Regent Election of Kubu Raya Year 2008 (exhibit T-15), Decision of the General Election Committed of Kubu Raya Regency Number 41 Year 2008 concerning Stipulation of the Implementation of Second Round Regent and Deputy Regent Election of Kubu Raya Regency Year 2008 (exhibit T-16), Decision of General Election Commission of Kubu Raya Regency Number 42 Year 2008 concerning the Designation of Regent and Deputy Regent Candidate of Kubu Raya as the Participants in the Second Round

Regent Election of Kubu Raya Year 2008, Decision of the General Election Commission of Kubu Raya Number Year 2008 concerning the Phases, Programs, and Schedule of Administration of the Second Round Regent and Deputy Regent Election of Kubu Raya Year 2008 (exhibit T-17), Decision of the General Election Commission of Kubu Raya Regency Number 46 Year 2008 concerning the Stipulation of the Result of Vote Count Recapitulation of the Second Round Regent and Deputy Regent Election of Kubu Raya Year 2008 which is then followed by Decision of the General Election Commission of Kubu Raya Regency Number 47 Year 2008 concerning the Designation of Regent and Deputy Regent Candidate Pair of Kubu Raya as the Elected Candidate Pair in the Regent and Deputy Regent Election of Kubu Raya Year 2008;

[3.14] Considering whereas in order to support its arguments, the Respondent has presented evidence of letters marked with exhibits T-1 up to T-20, as well as witnesses who have conveyed their statements under oath in the hearing on Monday, January 12, 2009 namely: 1) Ratmu; 2) Yanto Hasyanah; 3) Bujang Muis; 4) Kasman; 5) Dimyati; 6) Hardiansyah; 7) Wan Adnan, Ma; 8) Binsar Sibarani; 9) Suhud; whose complete statements have been included in the Posita, and in principal state as follows:

Whereas the Court will only take into account the statement of witnesses which are relevant to the principal issue of the response presented by

the Respondent the witnesses' statements which are interrelated to support the Respondent's arguments in essence are as follows:

1. Witness Ratmu

- The witness is the Chairman of KPPS, in TPS 28 Kuala Dua Village, Sungai Raya District. The voting in TPS 28 took place safely. During the voting and vote count there was no protest/objection and all witnesses of the candidate pairs signed the minutes;

2. Witness Hardiansyah

- The witness, the Chairman of PPS in TPS 1, Seruat 1 Village, Teluk Pa' Kedai District, explained that the voting was conducted in the village administration building because on the date of voting, flood hit Seruat 1 Village. After around one hour, there was a protest from the people and upon joint agreement, the voting place was relocated to Hamid Nyilik's house;
- The witness also explained that upon joint agreement, the members of KPPS took ballot papers to be submitted to sick persons and went to their houses so that they could cast their vote on the ballot paper, and the marked ballot papers were brought back. The members of KPPS did not bring any witnesses of the Candidate Pair and ballot box because of the rain;

- When the vote count was completed, all witnesses signed the minutes and there was no protest from any witnesses of the Candidate Pair;
- Idris Maheru, the Chairman of General Election Commission of Kubu Raya Regency, used his voting right in TPS 1 Seruat 1 Village, Teluk Pa' Kedai District because he lives in Seruat Village, Teluk Pa' Kedai District. After voting, Idris Maheru immediately left the TPS;

[3.15] Considering whereas in the hearing on January 6, 2009, the Related Parties of the Elected Pair of Candidates, Muda Mahendrawan, has submitted written statment, which has been completely included in the Posita, which basically denies the objection petition filed by the Petitioners or at least states not to accept and declares that the Minutes of Kubu Raya Regency KPU Number 38/BA/KPU/KKR/XII/2008 dated December19, 2008 concerning the Stipulation of the Pair of Candidates of Head and Deputy Head of Kubu Raya Regency as the Elected Pair of Candidates in the Second Round Election of Head and Deputy Head of Kubu Raya Regency Year 2008 is valid;

The Court's Opinions

Concerning Exception

[3.16] Considering whereas prior to considering the principal issue of the Petitioners' petition, the Court firstly considers the Respondent's exception as follows:

[3.16.1] Whereas the Respondent's exception is basically related to:

- 1) The Petitioners' petition is unclear and obscure (*obscur libels*);
- 2) The Petitioners' Petition is in the wrong object (*error in objecto*);
- 3) The Petitioners' objection does not constitute the object of Regional Head General Election dispute;
- 4) The Petitioners' petition is groundless and does not meet the formality with regard to the filling of objection;

The Court is of the following opinions:

- a. With respect to point 2) of the Respondent's exception, based on exhibit T-3.2, the object of dispute is the Minutes of General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 concerning the Designation of Regent and Deputy Regent Candidate Pair of Kubu Raya as the Elected Candidate Pair in the Second Round Regent and Deputy Regent Election of Kubu Raya Year 2008, which is the follow up to the Minutes of General Election Commission of Kubu Raya Regency Number 37/BA/KPU/KKR/XII/2008 dated December 19, 2008 concerning the Stipulation of the Results of Vote Count Recapitulation of the Second Round Regent and Deputy

- Regent Election of Kubu Raya Year 2008. Such matter is not denied by the Respondent as the institution issuing the *a quo* decision. The Court is of the opinion that both of the foregoing Minutes are a series of documents or an inseparable parts as a result of Regional Head General Election. Accordingly, the object of dispute, filed by the Petitioners has been in accordance with the provision of Article 4 sub-article b of PMK 15/2008 which reads, "*The object of dispute on the Regent and Deputy Regent Election shall be the vote count stipulated by the Respondent affecting: a.....; or b. the election of Candidate Pair as regent and deputy regent of regency*". Therefore, the Respondent's exception is not sufficiently grounded and must be disregarded;
- b. With respect to points 1), 3), and 4) of the Respondent's exception they are closely related to the principal issue of the petition requiring further substantiation, therefore, it will be considered along with the principal issue of the case, so that the intended exception must also be also disregarded;

In the Principal Issue of the Case

[3.17] Considering whereas the principal issue of the Petitioners' petition is the objection to the Minutes of General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 concerning the Designation of Regent and Deputy Regent Candidate Pair of

Kubu Raya as the Elected Candidate Pair in the Second Round Regent and Deputy Regent Election of Kubu Raya Year 2008;

[3.18] Considering whereas based on the legal facts, either the statements of the Petitioners, the statements of the Petitioners' witnesses, the evidence of letters of the Petitioners, the statements of the Respondent, the statements of Respondent's witnesses, the evidence of letters of the Respondent and the statements of the Related Party as well as the conclusion of the Related Party, the Court identifies legal facts, **which are acknowledged by the related party or those become the legal dispute between the parties**, as follows:

[3.18.1] Whereas in the hearing there are legal facts and arguments presented in the Petitioners' petition which are not denied by the Respondent, accordingly **such legal facts have become the law for the Petitioners and Respondent and no longer requires a substantiation**, namely:

1. Decision of General Election Commission of Kubu Raya Regency Number 28 Year 2008 concerning the Stipulation of Candidacy Number of Kubu Raya Regent and Deputy Regent Candidate Pairs as the Participants in the Election of Kubu Raya Regent and Deputy Regent Year 2008 dated August 28, 2008;
2. Decision of General Election Commission of Kubu Raya Regency Number 42 Year 2008 concerning the Designation of Kubu Raya Regent and Deputy Regent Candidate Pair as Participants in the Second Round

Election of Kubu Raya Regent and Deputy Regent Year 2008 dated October 31, 2008 determining Regent and Deputy Regent Candidate Pair in the names of Sujiwo, S.E. and Raja Sapta Oktohari and Regent and Deputy Regent Candidate Pair in the names of Muda Mahendrawan, S.H. and Drs. Andreas Muhrotien, M.Si.

3. The Second Round Regional Head General Election was held on December 15, 2008;

[3.8.2] Whereas in addition to the legal facts or matters acknowledged by the related party, in the hearing there are also **legal facts or other matters becoming legal dispute between the parties which require substantiation**, namely:

- 1a. There were votes cast on the remaining ballot papers in TPS 1 Seruat 1 Village, Teluk Pa' Kedai District conducted by the Chairman of General Election Commission of Kubu Raya Regency and the officers of KPPS;
- 1b. There were votes cast on the remaining ballot papers in TPS 4 Kampung Baru Village conducted in front of public by Muid;
2. Total votes exceeded the amount of voters listed in the Permanent Voters' List (DPT) in TPS 21 Teluk Kapuas Village, Sungai Raya District;

3. Illegal voter in TPS 28 Kuala Dua Village, Sungai Raya District, who is the resident of Siantan, Pontianak Municipality rather than the resident of Kuala Dua Village in the name of Reni Pariani;
4. The officers of KPPS intentionally did not give the Minutes of Voting and Vote Count, Records of the Implementation of Voting and Vote Count and C1-KWK Form;
5. 150 voters of senior citizens were intimidated not to cast their votes, manipulation of voters' card, and the distribution of voters' cards only to citizens electing Candidate Pair Number 8;
6. In TPS 07 Teluk Kapuas Village, Sungai Raya District, invitation to vote was only distributed to the supporters of Candidate Pair Number 8;
7. There were criminal violations committed by the Campaign Team of Candidate Pair Number 8;

[3.18.3] Whereas in the hearing, the Respondent denied all of the Petitioners' arguments as described in paragraph **[3.13]**, therefore it becomes the obligation of the Petitioners to substantiate their petition;

[3.18.4] Whereas after examining thoroughly the descriptions of petition and the arguments presented by the Petitioners, evidence of letters of the Petitioners, the statements of Petitioners' witnesses, the Respondent's response, the evidence of letters of the Respondent, and the statements of

Respondent's witnesses, as well as the written statements of the Related Party of the Elected Regent Candidate of Kubu Raya Regency, the Conclusions of the Petitioners and Respondent, the Court is of the following opinions:

- 1a. With respect to the Petitioners' argument concerning the votes cast on the rest of ballot papers in TPS 1 Seruat 1 Village, Teluk Pa' Kedai District which is conducted by the Chairman of KPU and members of KPPS, it is evidently in accordance with the statement of Dedy Kristian who only explained the relocation of TPS from village administration building to Hamid Nyilik's house and also in line with the statement of witness Hardiansyah (Chairman of KPPS, TPS 1 Seruat 1 Village), while concerning the votes cast on 13 ballot papers which are provided for sick persons is not supported by evidence confirming such statement. On the other hand, witness Hardiansyah explained that Idris Maheru, the Chairman of General Election Commission of Kubu Raya Regency was present at TPS 1 Seruat 1 Village in the context of exercising his voting right, because he lives in Seruat 1 Village. This statement is also justified by by witness Dedy Kristian Therefore, according to the Court, the foregoing argument is legally groundless and must be disregarded;
- 1b. With respect to the Petitioners' argument concerning the votes cast on the rest of ballot papers in front of public by Muid in TPS 4 Kampung Baru Village, cannot be substantiated at all and are not supported by valid

evidence nor proven in the hearing. Therefore, the argument is legally groundless and must be disregarded;

2. With respect to the Petitioners' argument concerning the total ballot papers that exceeds the number of voters listed in the Permanent Voters' List (DPT) in TPS 21 Teluk Kapuas Village, Sungai Raya Districe, the foregoing argument cannot be substantiated at all and is not supported by valid evidence. Therefore, such argument is not proven and legally groundless so that it must be disregarded;
3. With respect to the Petitioners' argument stating, Reni Pariani, who is not the resident of Kuala Dua Village, but is actually the resident of Siantan, Pontianak Municipality, voted in TPS 28 Kuala Dua Village, according to witness Iskandar Dolek, the witness arrested one voter using other person's name by asking the Identification Card or other Identities. However, the statement of Iskandar Dolek was denied by the statement of witness Ratmu explaining that there was not any problem in TPS 28 Kuala Dua Village, and there was not any protest from the Petitioners' witnesses or other witnesses, as a matter of fact, the Petitioners' witnesses also signed the Minutes of C-KWK Model (*vide* exhibit T-11), and hence, there was not any other evidence confirming the argument of the Petitioners' petition. If there was any illegal voter, the Petitioners' witness should protest and included the protest in the Statement of Objection and Special Incident (C3-KWK Model). Therefore, the Petitioners' argument is

- merely a description but it cannot be substantiated in the hearing and accordingly, it is groundless and must be disregarded;
4. With respect to the Petitioners' argument stating that the members of KPPS intentionally did not give C-KWK Form, witnesses Agus Siswanto, Toni, Abd. Rahman M. Yasin, Hendra Saputra, and M. Bustami explained that it was true but there was no protest included in C3-KWK Model, and the witnesses acknowledged that they have signed the Minutes (C-KWK Model). According to the Court, without providing C-KWK Model to the witnesses, the content of the form remains valid, unless it can be proven on the contrary. Therefore, such argument is not sufficiently grounded and must be disregarded;
 5. Concerning the Petitioners' argument about an intimidation to 150 old age voters, manipulation of voters' card manipulation, as well as criminal violations committed by the Campaign Team of Candidate Pair Number 8, the Court is of the opinion that matters were not proven in the hearing and if such matters really occurred, they constitute the authority of General Election Supervisory Committee to take follow up measures and forwarded it to the investigator for further process in the court. Therefore, the Petitioners' argument is not proven and groundless and accordingly must be disregarded;
 6. Whereas the Petitioners' argument that voters' cards and invitation to vote were only distributed to voters intending to elect Candidate Pair

Number 8, the witnesses, namely: Pian Susandi, Liu Shien Tet, and Lim Along explained that it was true that they did not receive any invitation to vote in the Second Round election. The Court is of the opinion, in case that the people do not receive any invitation to vote but they are listed in DPT, they should proactively come to TPS, by way of presenting their Identification Card (KTP) or other identity cards, because in accordance with the applicable laws and regulations, they can vote in TPS in which they are listed in DPT. Therefore, the Petitioners' argument is groundless and must be disregarded;

[3.19] Considering whereas in the *a quo* case, the statement of witness Dedy Kristian states that the officers of KPPS cast their votes on 13 ballot papers provided for sick in TPS 1 Seruat 1 Village, Teluk Pa' Kedai District and such matter was confirmed by the written statement of Gatot Wicaksono (*vide* exhibit P-5) and not denied by the Respondent. In accordance with the statement of witness Hardiansyah, there had been an agreement that 13 ballot papers provided for sick voters were to be delivered to their respective houses by members of KPPS, while the witnesses of both of the candidate pairs did not file any objection. According to the Court, if the 13 sick voters elected the Petitioners, the 13 votes did not significantly change the Petitioners' vote acquisition because the Petitioners will only acquire 90,338 + 13 votes which makes the Petitioners to acquire 90,351 votes, while the Related Party (the Elected Candidate Pair Number 8) acquires 124,738 votes which if reduced by 13 votes, the vote acquisition of the Related Party (the Elected Candidate Pair Number 8) would be

124,725 votes, far exceeding the Petitioners' vote acquisition, and because such matter does not significantly cause the Petitioners' vote acquisition to exceed the vote acquisition of the Elected Candidate Pair. Accordingly, the Petitioners' argument must be disregarded;

[3.20] Considering whereas the valid votes acquired by the Petitioners is 90,351 votes, and the votes acquired by the Elected Candidate Pair Number 8 is 124,725 votes, while other violations occurred does not significantly change the vote acquisition based on the Minutes of General Election Commission of Kubu Raya Regency Number 38/BA/KPU/KKR/XII/2008 dated December 19, 2008 concerning the Designation of Regent and Deputy Regent Candidate Pair of Kubu Raya As the Elected Candidate Pair in the Second Round Regent and Deputy Regent Election of Kubu Raya Year 2008. Therefore, according to the Court the Petitioners' petition must be rejected;

[3.21] Considering whereas according to the Court, the remaining Petitioners' arguments do not require further consideration because they are not supported by relatively strong and convincing evidence;

4. CONCLUSION

Based on the entire assessment of facts and law as described above, the Court concludes as follows:

[4.1] The Respondent's exception is legally inappropriate;

[4.2] Despite of administrative violations in the administration of Regional Head General Election of Kubu Raya Regency, such violations do not significantly affect the vote acquisition of the Elected Candidate Pair.

5. DECISION

In view of the Articles of the 1945 Constitution of the State of the Republic of Indonesia, Law Number 24 Year 2003 concerning Constitutional Court, Law Number 4 Year 2004 concerning Judicial Power, Law Number 32 Year 2004 concerning Regional Government as recently amended to Law Number 12 Year 2008 concerning the Second Amendment To Law Number 32 Year 2004 concerning Regional Government;

Passing a Decision,

In the Exception:

To declare the Respondent's exception cannot be accepted.

In the Principal Issue of the Case:

- To reject the Petitioners' petition in its entirety.
- To declare the Minutes of General Election Commission of Kubu Raya Regency Number 37/BA/KPU/KKR/XII/2008 and Number 38/BA/KPU/KKR/XII/2008 both dated December 19, 2008 as valid.

Hence it was decided in the Consultative Meeting of Justices by eight Constitutional Court Justices namely Moh. Mahfud, MD. M. Akil Mochtar, M. Arsyad Sanusi, Maria Farida Indrati, Abdul Mukthie Fadjar, Maruarar Siahaan, Muhammad Alim, and Achmad Sodiki on Thursday, the fifteenth of January two thousand and nine, and was pronounced in the Plenary Hearing open for public on Monday, the nineteenth of January two thousand and nine by us, Moh. Mahfud MD, as the Chairperson and concurrent Member and accompanied by M. Akil Mochtar, M. Arsyad Sanusi, Maria Farida Indrati, Abdul Mukthie Fadjar, Maruarar Siahaan, Muhammad Alim, and Achmad Sodiki respectively as Members assisted by Ida Ria Tambunan as Substitute Registrar, in the presence of the Petitioners/their Attorneys and the Respondent/its Attorneys, and the Related Party/his Attorneys.

CHAIRPERSON

sgn.

Moh. Mahfud MD

MEMBERS,

sgn.

M. Akil Mochtar

sgn.

Maria Farida Indrati

sgn.

M. Arsyad Sanusi

sgn.

Abdul Mukthie Fadjar

sgn.

Maruarar Siahaan

sgn.

Muhammad Alim

sgn.

Achmad Sodiki

SUBSTITUTE REGISTRAR,

sgn.

Ida Ria Tambunan