



## DECISION

Number 65/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 Differences in General Election for Mayor and Vice Mayor of Subulussalam, Nanggroe Aceh Darussalam Province, filed by:

- [1.2] 1. Name : **H. Asmauddin, S.E.**  
Citizenship : Indonesia  
Place, date of birth : Runding, Aceh April, 4 1958  
Occupation : Civil Servant  
Address : Jalan BB Jalal, Subulussalam Village,  
Simpang Kiri District, Subulussalam  
Municipality;
2. Name : **Drs. Salmaza**  
Citizenship : Indonesia  
Place, date of birth : Aceh Selatan, Desember 21, 1967.  
Occupation : Civil Servant.

Address : Jalan Syech Hamzah Fansuri,  
Subulussalam Selatan Village, Simpang  
Kiri District, Subulussalam Municipality.

In this matter, granting the power of attorney to 1) Drs. Jurnal, S.H., M.H, 2) Parlindungan Sinaga, S.H., 3) Muhari, S.H., 4) Siti Umrah, S.H., 5) Dr. Maqdir Ismail, S.H., L.L.M., 6) Dr. SF. Marbun, S.H., M.Hum., 7) Libertino Nainggolan, S.H., 8) Andi Abdurrahman Nawawi, SH., 9) Masayu Donny Kertopati, S.H., all of whom being Advocates/Legal Consultants, having their office address at Jalan Raya Bogor KM. 25, Number 43B, Neighborhood Ward (RT)/ Neighborhood Block (RW) 008/001, Ciracas District, East Jakarta 13740, and at Jalan Bandung Number 4 Menteng, Central Jakarta, by virtue of a Special Power of Attorney dated Desember 24, 2008 and Desember 31, 2008, either jointly and severally, acting for and on behalf of the authorizer;

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

Against:

**Independent Election Commission (KIP) of Subulussalam Municipality**, domiciled at Jalan Teuku Umar Number 92, Subulussalam;

In this matter, granting the power of attorney to: 1) Zaini Djalil, S.H, 2) Hadiningtyas, S.H, 3) Ikhwaluddin Simatupang, S.H., M.Hum, 4) Adi Mansar, S.H., M.Hum., all of whom being Advocates/Legal Consultants,

associated in ADVOCATES' TEAM of the Regional Heads General Election of Subulussalam Municipality domiciled in Subulussalam Municipality at Jalan Teuku Umar Number 92 Subulussalam, by virtue of a Special Power of Attorney dated January 5, 2009, acting for and on behalf of Independent Election Commission of Subulussalam Municipality;

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

**[1.3]** Having read the Petition of the Petitioners;

Having heard the statement of the Petitioners;

Having heard and read the Written Response of the Respondent, the Independent Election Commission of Subulussalam Municipality;

Having read the written statement of the Related Party, the Elected Candidate Pair of Mayor and Vice Mayor of Subulussalam;

Having examined the evidence of the Petitioners and the Respondent;

Having heard the statements of the witnesses of the Petitioners and the Respondent;

Having read the written conclusions of the Petitioners and the Respondent;

### **3. LEGAL CONSIDERATIONS**

**[3.1]** Considering whereas the main issue of the Petitioners' petition is concerned with objection to the Recapitulation of Results of Second Round Vote Count for Regional Head General Election (*Pemilukada*) of Mayor and Vice Mayor of Subulussalam of Aceh Province for the period of 2008-2013, stipulated by Independent Election Commission (KIP) of Subulussalam Municipality dated December 18, 2008 and Decision of Independent Election Commission (KIP) of Subulussalam Municipality Number 35 Year 2008 dated December 23, 2008, stipulating that Candidate Pair Number 1 (Elected Candidate Pair) acquires 14,992 votes, and Petitioners 14,729 votes, the calculation of which is actually false and it is the Petitioners who should become the winner because there has been a marked-up as to the votes acquired by the Candidate Pair Number 1 (Elected Candidate Pair) along with other violations;

**[3.2]** Considering whereas prior to considering the principal issue of the petition, the Constitutional Court (hereinafter 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 legal standing of the Petitioners to file the *a quo* petition;
3. Deadline for filling the petition.

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

### **AUTHORITY OF THE COURT**

**[3.3]** Considering whereas based on the provisions of Article 24C paragraph (1) of the 1945 Constitution 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 the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to State Gazette of the Republic of Indonesia Number 4316, hereinafter referred to as the Constitutional Court Law) *junctis* Article 12 paragraph (1) sub-paragraph d of Law Number 4 Year 2004 regarding Judicial Power and Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government, one of the Constitutional Court's authorities is to decide upon differences in the results of general election;

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 State Gazette of the Republic of Indonesia Number 4437, hereinafter referred to as the Regional Government Law), objection to the results of vote count affecting the elected candidate pair is filed to the Supreme Court or constitutes the authority of the Supreme Court. Such authority is subsequently included in Government

Regulation Number 6 Year 2005 regarding the Election, Ratification of Appointment, and Dismissal of Regional Head and Deputy Regional Head;

Law Number 22 Year 2007 regarding 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) Article 1 sub-article 4 stipulates that the General Election of Regional Head and Deputy Regional Head shall be the general election held 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;

Article 236C of Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding the Regional Government, stipulates that *"the handling of dispute on the results of vote count in the regional head 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 have jointly signed Minutes of Delegation of Authority to Hear, as the implementation of the aforementioned Article 236C of Law Number 12 Year 2008;

**[3.4]** Considering whereas as the Petitioner's petition is concerned with the dispute on the results of vote count of *Regional Head General Election*, namely *Regional Head General Election* of Subulussalam Municipality in

accordance with the Decision of KIP of Subulussalam Municipality dated December 4, 2008, the Court has the authority to examine, hear, and decide upon the *a quo* petition;

### **LEGAL STANDING OF THE PETITIONERS**

**[3.5]** Considering whereas the Court will consider the legal standing of the Petitioner based on the provisions of Article 106 paragraph (1) of the Regional Government Law, Article 3 and Article 4 of the Constitutional Court Regulation Number 15 Year 2008 regarding Guidelines for the Proceedings of Disputes on the Results of Regional Head General Election (hereinafter referred to as PMK 15/2008) as intended in paragraph **[3.3]** as follows:

- Whereas the Petitioners are Candidate Pair of Mayor and Deputy Mayor of Subulussalam in the First Round General Election, stipulated by the Respondent with Candidacy Number 5 by virtue of the Decision of KIP of Subulussalam Municipality Number 17 Year 2008 regarding the Stipulation of Candidate Pair of Mayor and Vice Mayor of Subulussalam meeting qualifications as Participants in the 2008 *Regional Head General Election* of Mayor and Vice Mayor of Subulussalam dated September 15, 2008;
- Whereas the Petitioner filed an objection to the Decision of KIP of Subulussalam Municipality Number 35 Year 2008 dated December 23, 2008 regarding the Stipulation of Elected Candidate Pair of Mayor/Vice

Mayor and Minutes of Recapitulation on the Results of Vote Count in the General Election of Mayor and Vice Mayor of Subulussalam on December 18, 2008, which stipulated that Candidate Pair Number 1 acquired 14,922 votes while Candidate Pair Number 5 (the Petitioners) only acquired 14,729 votes, the results of which was rejected by the Petitioner as the Respondent has marked-up 873 votes cast by voters based on the number of voters in the First Round DPT from 36,682 votes to 37,555 voters in the Second Round DPT;

- Whereas the mark-up was conducted by way of registering 305 new voters in five districts under the same name, with same or different address and date of birth, registering underage voters through the falsification of age, inserting names of persons who are not the citizens of Subussalam Municipality, allowing the persons who are not the citizens of Subulussalam Municipality and not registered in DPT to vote. Hence, the Respondent should have reduced the number of votes acquired by Candidate Pair Number 1 by 873 from 14,922 votes to 14,049 votes, or at a minimum by 305 votes to 14,617 votes so that KIP should have designated the Petitioner as the Elected Candidate Pair of Mayor or Vice Mayor in the Second Round *Regional Head General Election*;

**[3.6]** Considering whereas Article 106 paragraph (1) of Law Number 32 Year 2004 regarding Regional Government, Article 3 and Article 4 of PMK 15/2008 stipulates the following issues, among other things:



- a. The Petitioners are Candidate Pair of Regional Head and Deputy Regional Head;
- b. The petition may only be filed against the Stipulation of the Results of Vote Count affecting the designation of Candidate Pair qualified to participate in the Second Round *Regional Head General Election* or the election of Candidate Pair as the Regional Head and Deputy Regional Head;

**[3.7]** Considering whereas based on assessment of the facts and the law in the aforementioned paragraphs **[3.5]** and **[3.6]**, the Court is of the opinion that the Petitioners have legal standing to file the *a quo* petition;

#### **DEADLINE FOR FILLING PETITION**

**[3.8]** Considering whereas the Decision of KIP of Subulussalam Municipality Number 35 Year 2008 regarding the Designation of Elected Candidate Pair of Mayor/Vice Mayor in the 2008 *Regional Head General Election* of Subulussalam Municipality, was stipulated on December 23, 2008, while the petition for the objection to the Respondent's Decision was filed to the Court on December 24, 2008 as recorded in the Deed of Receipt of Petition Dossier Number 137/PAN.MK/MK/2008 subsequently registered on December 30, 2008 with the Number 65/PHPU.D-VI/2008. Based on Article 5 of PMK 15/2008 stipulating that, "*the petition may only be filed by no later than 3 (three) working days following the stipulation of results on vote count of Regional Head General*

*Election in the area concerned by the Respondent*”, the submission of the Petitioners’ petition is still within the deadline set;

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

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

**[3.10]** Considering whereas in the principal issue of their petition as completely set forth in the Principal Case section, the Petitioners state their objection to and reject the results of vote count stipulated by the Respondent by presenting the following arguments:

- Whereas in the first round *Regional Head General Election*, the Respondent stipulates that the voters amount to 36,682, while in the second round, it is 37,555, accordingly, the Respondent has marked-up the voters’ vote in the amount of 873, spread in five districts, namely 517 voters in Simpang Kiri District, 449 voters in Penanggalan District, 112 voters in Rundeng District, while the number of voters in Sultan Daulat and Longkib Districts are respectively reduced to 185 and 5 voters, hence the total number of voters increases to 873;
- Whereas the increase of 873 voters subsequently stipulated in Permanent Voters List (DPT) in the second round *Regional Head General Election*

constitutes a violation of Article 107 [sic] of Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding the Regional Government, which as a matter of fact indicates that the Second Round Election must be conducted in accordance with the number of voters in the first round election, so as to give no opportunity for any potential changes in the number of voters;

- o Whereas the Respondent has marked-up the number of voters by using the following methods, among other things:
  - a. the Respondent registered 305 new voters in Permanent Voters List (DPT) under the same name, with the same address and different date of birth in the same/different Polling Station in five districts, namely 13 voters in Longkib District, 28 voters in Rundeng District, 34 voters in Sultan Daulat District, 119 voters in Penanggalan District, and 111 voters in Simpang Kiri District;
  - b. the Respondent manipulated the number of voters by way of registering underage voters in DPT through falsification of their age in order to have the right to vote, by appointing seven voters in a district as an example;
  - c. the Respondent manipulated the number of voters by way of falsifying names of persons who are not the citizens of

Subulussalam in order to obtain voting right and voters' card in Simpang Kiri and Sultan Daulat Districts;

- d. the Respondent gave an opportunity for people who are not the citizens of Subulussalam Municipality and not registered as voters to cast their vote several times in several Polling Stations by using other persons' names, namely Ita Fitri Yeni who cast her vote in TPS 7 under the name of Elly Sabaria, in TPS 10 under the name Fitri, and in TPS 1 under the name of Elizabeth; Supiyem who voted in TPS 5 under the name of Rini Andriani in Subulussalam Utara Village, Simpang Kiri District, Subulussalam Municipality; Alfredo who carries an invitation under the name of Riska Yusnita given by Ulasi from the Success Team of Merah Sakti, S.H. and Affan Alfian, S.E.; as well as four women came from Bimo Aceh Singkil Regency to vote.
  
- e. There were many unsealed ballot box so as to lead to manipulation during the trip from TPS to PPK and or from PPK to the Respondent, which include among other things: unsealed ballot box (i) in TPS of Kampong Subulussalam, (ii) in TPS of Kampong Subulussalam Utara, (iii) in TPS of Kampong Subulussalam Barat; (iv) a ballot box in TPS of Kampong Subulussalam Barat was not recapitulated and sealed, (v) one ballot box of vote recapitulation in TPS of Pagayo Kampong was not signed, (vi) two ballot boxes in

Sukamakmur Kampong are empty, however hundreds of votes have been declared valid, (vii) there were one unsealed ballot box and one empty ballot box in Pasar Panjang Kampong, whereas hundreds of votes have been declared valid, (viii) there was one ballot box in TPS of Sikalondang Kampong, whereas hundreds of votes have been declared valid, (ix) there was one ballot box in TPS of Makmur Jaya Kampong, whereas hundreds of votes have been declared valid, (x) there were two unsealed ballot boxes in TPS of Mukti Makmur Kampong, whereas hundreds of votes have been declared valid, (xi) one empty ballot box was found in TPS of Tangga Besi Kampong, whereas hundreds of votes have been declared valid;

- f. Whereas when serving as the Chairperson of Commission A of Subulussalam Municipality DPRD, Candidate Pair Number 1 has misused his authority by electing members of KIP of Subulussalam Municipality who in fact cannot act as a fair umpire since members of obviously took Candidate Pair Number 1's side;
- g. whereas on December 23, 2003, the Respondent has hold a closed Plenary Meeting regarding the designation of Elected Candidate Pair of Mayor/Vice Mayor without summoning witness of the Petitioners' Pair, the action of which was obviously contradictory to the provisions of Article 25 paragraph (2) and Article 29 paragraph

(1) of the Regional Regulation (*Qanun*) of Aceh Number 7 Year 2007 regarding the Administration of General Election in Aceh;

h. whereas manipulation conducted to win Candidate Pair Number 1 was seen from the effort hastily made by the Respondent in implementing the phases and schedules of the Second Round *Regional Head General Election* stipulated by the Respondent itself in Decision Number 29 Year 2008 dated October 28, 2008, by ways of:

- Expediting the schedule for Vote Count Recapitulation in PPK of Longkib, Penanggalan, Rundeng and Simpang Kiri Districts which was immediately conducted on December 15, 2008, while in Sultan Daulat District, it was conducted on December 16, 2008;
- Expediting the schedule for Plenary Meeting for the Recapitulation of Results of Vote Count in the Election of Mayor and Vice Mayor of Subulussalam on December 18, 2008, whereas according to Decision of the Respondent it was to be held as from December 20 to 23, 2008;
- Holding Plenary Meeting of Independent Election Commission to designate the Elected Candidate Pair in the Second Round *Regional Head General Election* of

Subulussalam Municipality of 2008 on December 23, 2008 without summoning witness of Candidate Pair of the Petitioners, for the reason that it was a Closed Meeting, whereas it was contradictory to Article 25 paragraph (2) and Article 29 paragraph (10) of the Regional Regulation (*Qanun*) of Aceh Number 7 Year 2007 regarding the Administration of General Election in Aceh;

**[3.11]** Considering whereas to support the arguments presented in their petition, the Petitioners have filed written evidence, marked as P-1 through P-29, as well as 23 witnesses, namely: 1. Ita Fitri Yeni; 2. Irwan; 3. Suhaidi; 4. Sahiya; 5. Eddy Hasyim; 6. Busri;. 7. H. Sudirman Munteh; 8. Zulhelmi; 9. Safri Mamas; 10. Untung Mas; 11. Supiyem; 12. Thamrin; 13. M. Ali Limbong; 14. Jarah Berutu; 15. Misnan Kosasi; 16. Abdul Manaf; 17. Rena Gustari; 18. Rini Ovikayanti; 19. Fajri, S.H.; 20. Ikhsan; 21. Darnis Chaniago; 22. Azhari Tinambunan; and 23. Ir. Fansuri Amin;

**[3.12]** Considering whereas with respect to the Petitioners' arguments, the Respondent has submitted written response dated January 5, 2009, which was read before the Court hearing on January 6, 2009, as completely set forth in the Principal Case section, and although it is not explicitly specified, such response basically relates to exception and substance, which in principal reads as follows:

### **In the Exception**

1. Whereas there is no mutual correlation between the *posita* filed as an application for the nullification of Vote Count Results of the Second Round *Pemilukada* of Candidate Mayor/Vice Mayor of Subulussalam of Aceh Province for the Period of 2008-2013 and *petitum* of the petition requesting for the nullification of Decision of Independent Election Commission of Subulussalam Municipality Number 35 Year 2008 regarding Designation of Elected Candidate Pair of Mayor and Vice Mayor in *Regional Head General Election* of Subulussalam Municipality and Minutes of Designation of Elected Candidate Pair of Mayor and Vice Mayor of Subulussalam for the period of 2008-2013;
  
2. Whereas application for the nullification of Vote Count Results in the Second Round *Regional Head General Election* of Mayor and Vice Mayor Candidate of Subulussalam of Aceh Province for the period of 2008-2013 is not based on error in the vote count and the Respondent is of the opinion that the application is only based on the dissatisfaction of the Petitioners unwilling to accept their defeat, so it is necessary to first examine whether it is true that the *a quo* dispute meeting qualification as dispute on the results of vote count of the general election of regional head and deputy regional head as provided for in Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government;



3. Whereas the 1945 Constitution acknowledges and respects the existence of a specific or special government unit provided for in Law of Nanggroe Aceh Darussalam Province having distinctively specific and special characteristics if compared to other regions, which has been further provided for in Law Number 11 Year 2006 regarding Aceh Administration;
4. Whereas the *a quo* petition filed to the Constitutional Court is not in accordance with special provisions for the settlement of dispute on the results of regional head and deputy regional head election in Nanggroe Aceh Darusssalam Province, as stipulated in Article 74 of Law Number 11 Year 2006 which principally sets forth that objection to the election results stipulated by KIP may only be filed by Candidate Pair to the Supreme Court within three days following the stipulation of election results, which until now the provisions of the foregoing article has not been revoked so that arrangement with regard to the settlement of dispute on the results of regional head and deputy regional head election must be applied in a specific manner. Therefore, it is necessary and appropriate for the Respondent to present the legal principle of *lex specialis derogat legi generali*. The inclusion of Law Number 32 Year 2004 in point 8 of In View section of Law Number 11 Year 2006 does not mean that an amendment to Law Number 32 Year 2004 results in the invalidity or annulment of the provisions in Law Number 11 Year 2006;

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

1. Whereas there is an increase in the number of voters included in Permanent Voters List of the second election as it is evident that there are citizens of Subulussalam Municipality still unregistered in the first round *Regional Head General Election* of Subulussalam Municipality, which is conducted in accordance with the provisions of Article 32 paragraph (2) of Regional Regulation (*Qanun*) of Aceh Darussalam Province Number 2 Year 2004 regarding the Election of Governor/Vice Governor, Regent/Vice Regent, and Mayor/Vice Mayor in Nanggroe Aceh Darussalam Province and Decision of KIP Number 03 Year 2007 regarding Registration of Voters with regard to the Second Round Election of Regent/Vice Regent and Mayor/Vice Mayor in Aceh Province which orders the Respondent to update the voters' data, namely by inserting or reducing the number of voters that should be included or removed from Permanent Voters List in the administration of *Regional Head General Election* of Subulussalam Municipality, hence the Respondent must re-register the voters who have met the qualifications as voters but not registered in the First Round DPT. As a result, the number of voters registered in the Second Round election is different from that of in the First Round; accordingly, increase in the number of voters in the Second Round election is valid in accordance with the applicable provisions of law;
2. The voters were registered based on population data submitted by the Government of Subulussalam Municipality, in this matter by the Petitioners

themselves, namely H. Asmauddin, S.E. and Drs. Salmaza acting as the Interim Official of Mayor of Subulussalam and Head of Population and Vital Records Service Office of Subulussalam Municipality, hence if there are double voters, it is very likely that it is committed by the Petitioners in their respective capacities. The update was made by way of preparing and announcing Temporary Voters List (DPS), Additional Voters List and Permanent Voters List (DPT). This announcement was intended to receive input or responses from the community with respect to unregistered voters and citizens not holding the right to vote but registered as voters;

The result of revision to the voters' registration is based their respective identity cards, so double voter may exists if a person has double identity cards (KTP), while KTP is issued by the Government of Subulussalam Municipality chaired by the Petitioners as Subulussalam Mayor Official. Although there is a voter registered in more than one station, he or she cannot vote more than once as the finger of every voter will be marked by ink following the voting. Voters casting more than one vote will be deemed as committing criminal act that may be reported to General Election Supervisory Committee of Subulussalam Municipality for legal process;

3. Manipulation of vote has never occurred as the result of vote count conducted by KPPS is similar to the result of recapitulation of PPK. All recapitulations of vote count result are signed by KPPS while the witness can sign it in accordance with the provisions of KIP of Aceh;

4. The Petitioners' arguments stating that Mayor Candidate of Candidate Pair Number 1 has misused his authority when serving as the Chairperson of Commission A of DPRD in the election of members of KIP of Subulussalam Municipality are groundless as the authority of the Respondent is executed not in an individual but a collegial manner and 15 candidates are selected based on the results of independent and transparent collection and selection by independent team;
5. The Petitioners' arguments regarding closed Plenary Meeting on the Designation of Elected Mayor/Vice Mayor Candidate Pair which was held without summoning the witness are the efforts made by the Petitioner to find the Respondent's mistake without trying to understand rules of law, as the Plenary Meetings on the Recapitulation of Vote Count Result and Stipulation of General Election Results were open for public, however it is not necessary to do the same with the Plenary Meeting on the Designation of Elected Candidate Pair considering it is only an administrative provision rather than an obligatory;
6. Whereas other allegations, namely regarding money politic, voters casting votes twice, and departure and accommodation of the Respondent in Medan allegedly financed by the Elected Candidate Pair, the Respondent's partiality, etc. are invalid;

**[3.13]** Considering whereas to support the argument of its rebuttal, the Respondent has presented written evidence comprising T-1 through T-27, as

well as 14 witnesses, namely: 1. Emir Hamdi; 2. Arbi. 3. Raja Abdi Suhada; 4. Ahmad Siden; 5. Budi H; 6. Muslimam Ayub; 7. Sahmudin; 8. Sahfudin; 9. Tikeh Brutu; 10. Bahagia Maha; 11. Musjoko Isnaenil; 12. Adeni Baku; 13. Ubaidillah; and 14. Syarifuddin;

**[3.14]** Considering whereas in addition to presenting witnesses, the Respondent has also presented two experts, namely (i) M. Jafar, S.H. M.Hum and (ii) Zainal Abidin, who respectively provides a statement, as completely set forth in the Principal Issue of the Case section, principally as follows:

**Expert of the Respondent M. Jafar S.H., M.Hum**

- Whereas Law Number 11 Year 2006 regarding the Government of Aceh providing for the election of Governor/Vice Governor, Regent/Vice Regent and Mayor/Vice Mayor in Aceh Province. The provisions of Law on the Government of Aceh are subsequently elucidated in *Qanun* (the regional regulation), based on Article 73 of Law on the Government of Aceh.
- Whereas the Government of Aceh has issued the Regional Regulation (*Qanun*) of NAD Province Number 2 Year 2004 regarding the Election of Governor/Vice Governor, Regent/Vice Regent and Mayor/Vice Mayor in NAD Province as has been amended, first by the Regional Regulation (*Qanun*) of NAD Province Number 3 Year 2005 and second by Regional Regulation (*Qanun*) Number 7 Year 2006. Matters insufficiently provided for in the Regional Regulation (*Qanun*) regarding election technicalities

are to be further provided for in the Decision of KIP. Provincial KIP issued technical regulation in each election phase and activity. In addition, Regional Head Election is also set forth in Law Number 32 Year 2004 regarding Regional Government as first amended by law Number 8 Year 2005 and second by Law Number 12 Year 2008. The provision of Regional Head Election therein is to be further provided for in Government Regulation Number 6 Year 2005 regarding the Election, Ratification, Appointment, and Dismissal of Regional Head and Vice Regional Head as amended by Regional Regulation Number 17 Year 2005.

- Whereas, therefore, there are two provisions regarding the implementation of Regional Head Election in NAD Province, namely special regulation included in Law on the Government of Aceh along with its implementing regulation and general regulation included in the Regional Government Law along with its implementing regulation. The provisions on Regional Head Election in the Regional Government Law are applicable to the implementation of Regional Head Election in NAD Province insofar as they are not provided for in Law on the Government of Aceh [Article 269 paragraph (1)]. On the contrary, the provisions of Regional Government Law which is contradictory to Law on the Government of Aceh are not applicable to the implementation of Regional Head Election in NAD Province, in accordance with the principle of *lex specialis derogat legi generali*;

- Whereas time difference between the First and Second Round Regional Head General Election may cause a change in the population data and status, thus factually the registration of voters in the Second Round election is absolutely necessary. This is required by the Regional Regulation (*Qanun*) Number 2 Year 2004 stipulating that any changes and/or increases in the voters' list are made in every election [Article 32 paragraph (2)] and procedures for voters registration are to be further provided for in the Decision of KIP of NAD Province Number 3 Year 2007 regarding the Registration of Voters for the Second Round Regent/Vice Regent Election;
- Whereas the procedures for the voters' registration in the Second Round are implemented by using the First Round DPT as the Second Round DPS, and the next phases and processes are same with those in the First Round; accordingly, the number of voters in the Second Round may differ from that in the First Round;

**Expert of the Respondent Zainal Abidin**

- Whereas in the implementation of *Regional Head General Election* in Aceh, KIP is subject to Regional Regulation (*Qanun*) Number 7 Year 2006 regarding Second Amendment to Regional Regulation (*Qanun*) Number 2 Year 2004 regarding the Election of Governor/Vice Governor, Regent/Vice Regent, and Mayor/Vice Mayor in Aceh Province;

- KIP is different from KPU, in which the membership of KPU consists of five persons while KIP consists of 7 members. KIP is not an autonomy body as it is responsible to DPRD;

**[3.15]** Considering whereas the Related Party, namely the Elected Candidate Pair represented by power of attorney also gives response, as completely set forth in the Principal Issue of the Case section, which principally reads as follows:

#### **In the Exception**

**[3.15.1]** Whereas the Petitioners' petition is not related to the object of dispute on *Regional Head General Election*, namely the stipulation of results of last phase vote count by the Respondent, but rather to the violations allegedly committed in administration phase, either administrative or criminal in nature, therefore it does not constitute the authority of the Court;

**[3.15.2]** Whereas the petition is obscure (*obscur libel*), since descriptions in points A and B of the *posita* are unclear and not based on law, and not correlated with the dispute on the Regional Head General Election, as well as there is no correlation found between the *posita* and *petitum*;

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

**[3.15.3]** Whereas the Petitioners' arguments are invalid and groundless for the following reasons:



1. No witness including those presented by the Petitioners state his/her objection and all witnesses present have signed Minutes of Recapitulation of Vote Count Results in the Polling Stations intended;
2. Allegations made by the Petitioners to the Relevant Party in points f, j, and l of the petition are fabricated, slander, as well as groundless, and the Relevant Party will consider to take remedies for the allegation and despicable slander committed;

**[3.16]** Considering whereas the Relevant Party has not presented evidence, either in the form of written evidence or witness;

### **Opinion of the Court**

**[3.17]** Considering whereas prior to considering the principal issue of the case, the Court shall first take into account the exception presented both by the Respondent and the Relevant Party, which can be categorized as follows:

### **Dispute on the Results of Vote Count**

**[3.17.1]** Considering whereas although Article 106 paragraph (2) of Law Number 32 Year 2004 and Article 4 of PMK 15/2008 stipulate that the object of dispute being the authority of the Court is the result of vote count affecting the election of candidate Pair in *Regional Head General Election*, the Court is of the opinion, among other things, that as included in Decision number 41/PHPU.D-VI/2008 regarding *Regional Head General Election* of the Governor/Vice

Governor of East Java and Decision Number 49/PHPU.D-VI/2008 regarding *Regional Head General Election* of Tapanuli Utara Regency stating that processes of *Regional Head General Election* which evidently violate the principles of general election as set forth in the 1945 Constitution which may affect the results of vote acquisition count of the participants of General Election are subject to jurisdiction of the Court. The Court does not only consider formal rules by ignoring justice substantively. Therefore, administrative and criminal violations not resolved in the phase prior to the designation of Candidate Pair and those which are proportionally and principally violated the direct, general, free, confidential, honest, and just principles, will be assessed by the Court to the extent it is relevant with the votes acquired by the respective Candidate Pairs. Therefore, the exception of the Respondent and the Relevant Party must be disregarded;

### **Exception regarding the Authority of the Court**

**[3.17.2]** Considering, referring to the consideration of the Court in the aforementioned paragraph **[3.1]** which generally states that the *a quo* dispute becomes the authority of the Court to examine, hear, and decide upon the *a quo* petition, the Court must also decide upon the Respondent's exception stating that Article 74 of Law Number 11 Year 2006 regarding the Government of Aceh as *lex specialis* remains applicable, hence the *a quo* dispute becomes the authority of the Supreme Court rather than that of the Constitutional Court, as follows:

- Article 18B paragraph (1) of the 1945 Constitution which reads, "*State shall acknowledge and respect regional government units of specific and special in nature provided for in law*", providing an opportunity for certain regions holding specific or special autonomy due to historical and socio-politics factors to exist, hence Law Number 11 Year 2006 regarding the Government of Aceh was legislated as the description thereof. However, such features still exist in the framework of the Unitary State of the Republic of Indonesia based on one national law with institutional apparatus provided for in the 1945 Constitution. According to the Court, the Respondent's opinion stating that Article 74 of Law Number 11 Year 2006 regarding the Government of Aceh referred to as *lex specialis* is inappropriate because although the Government of Aceh recognizes and includes specific issues with special characteristic, but the *a quo* provision is not one of the special characteristics. Substance of the foregoing article is similar to Article 106 of Law Number 32 Year 2004 prior to amendment;
- Article 74 paragraph (2) of Law Number 11 Year 2006 regarding the Government of Aceh which reads: "*The objection as intended in paragraph (1) may only be filed by Candidate Pair to the Supreme Court by no later than 3 (three) working days following the stipulation of election results*", the substance of which is principally similar to Article 106 of paragraph (1) of Law Number 32 Year 2004. Article 1 of sub-article 4 of Law Number 22 Year 2007 regarding General Election Administrator also explicitly stipulates that "*the General Election of Regional Head and Deputy*

*Regional Head shall be the general election to directly vote the Regional Head and Deputy Regional Head in the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution.*” Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government has delegated the authority of the Supreme Court to handle dispute on the results of vote count of the regional head election to the Constitutional Court. Furthermore, the foregoing authority was delegated on October 29, 2008 with the signing of Minutes of Delegation, so it is clear that the Supreme Court no longer holds the authority to examine, hear, and decide upon cases of dispute on the results of Regional Head General Elections throughout Indonesia, including in Aceh Province. *Regional Head General Election* has become a part of the general election, and Article 106 paragraph (1) of Law Number 32 Year 2004 has been amended by Article 236C of Law Number 12 Year 2008. Although the change of authority provided in Article 236C of Law Number 12 Year 2008 absolutely does not mention Article 74 paragraph (2) of Law Number 11 Year 2006, based on Article 24C paragraph (1) of the 1945 Constitution and Law Number 22 Year 2007, the Constitutional Court has authority to examine, hear, and decide upon cases of dispute on the results of *Regional Head General Election*, the Respondent’s exception must therefore be disregarded;

**[3.17.3]** Considering whereas the remaining of exceptions will also be disregarded since the substance has principally related to substance of case, to be taken into account together with Principal Issue of the Case;

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

**[3.18]** Considering whereas principal issues being legal dispute between the parties to be taken into account and decided upon by the Court are as follows:

- Whether it is true that the Respondent has committed violations to Law Number 32 Year 2004 regarding Regional Government as most recently amended by Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government by taking the following actions:
  1. Increase the total voters in the Second Round DPT to 873 voters so that the number of voters was higher than that of included in the First Round DPT;
  2. Mark-up the total voters listed in DPT to 305 voters by using the same names, with same/different address in five districts, namely: Longkib, Rundeng, Sultan Daulat, Penanggalan, and Simpang Kiri Districts;

3. Falsify the age of underage voters in order to be included in the voters' list;
4. Include names of persons who are not citizens of Subulussalam in DPT in order to obtain voting right and voters' card in Simpang Kiri and Sultan Daulat Districts;
5. There are non-citizens of Subulussalam cast vote several times in a number of TPS;
6. Unsealed ballot box which can be manipulated;
7. Misuse of authority in the election of Members of KIP which is biased and partial to one of Candidate Pairs;
8. Closed Plenary Meeting regarding the Designation of Candidate Pair of Mayor and Vice Mayor without summoning witness of the Candidate Pair;
9. Vote Count Recapitulation Meeting was conducted in haste not in accordance with the stipulated schedule;
10. Give no response to the Petitioners' objection letter dated December 16, 2008;

**[3.19]** Considering whereas with respect to all objections, the Court provides its opinion and legal assessment as follows:

**[3.19.1]** Increase in the number of voters from those listed in the First Round DPT and the Second Round DPT does not immediately constitute a violation to the applicable provisions of laws and regulations in the administration of *Regional Head General Election*, either those provided for in Law 32 Year 2004 regarding the Regional Government as recently amended by Law Number 12 Year 2008, or Law Number 11 Year 2006 regarding the Government of Aceh, setting forth the administration of *Regional Head General Election* in Aceh Province. Article 70 through Article 74 of Law Number 32 Year 2004 provides for the increase of additional voters qualified as voters. Particularly in Aceh Province, such matter is in fact, required by Article 32 paragraph (2) of the Regional Regulation (*Qanun*) of Aceh Province Number 2 Year 2004, by which KIP updates the data and makes the First Round Permanent Voter List (DPT) to become Temporary Voter List (DPS). Based on the increase or decrease made, new DPT will subsequently be stipulated in order to implement the Second Round Regional Head and Deputy Regional Head Election. To the extent that data are updated transparently and all parties have the opportunity to examine and give input for Correction to the DPS to be made as the Second Round Permanent Voter List (DPT), the Court opines that there are no reasons to consider that increase or decrease in the number of voters listed in the First Round DPT for the purpose of updating the voters' data for the Second Round DPT violates the applicable provisions of laws and regulations. Moreover according to the Court, as the Petitioners assume the position as Executive Official of Mayor and Head of Population Service Office of Subulussalam

Municipality, being the source of data in the preparation of DPS, their access to DPT to avoid any potential errors in updating the data of voters registered in the Second Round *Regional Head General Election* is relatively higher than other participants of *Regional Head General Election*. The opportunity to provide inputs during the announcement of DPS is aimed at obtaining responses in order avoid any intentional or unintentional mistakes. Meanwhile, the petition, rebuttal and statements of witnesses never argue that the DPT used is not prepared by following the procedures stipulated in the applicable laws and regulations. Therefore, the Court is of the opinion that there is no sufficient legal ground to question the addition to the number of voters listed in the Second Round DPT, hence it must be disregarded;

**[3.19.2]** The Petitioners' arguments stating that the number of voters has been marked up to 305 new voters by using the same or different names, date of birth, address, and TPS, as based on Evidence P-6 through Evidence P-10 and several witnesses, thus the Court provides its assessment as follows:

- a. The format of DPT document submitted by one TPS is different from that submitted by others with respect to status, marriage status, Population Registration Number, age, address (including RT/RW), thus: (i) as the document issued by KIP of Subulussalam Municipality, the format should be similar; (ii) almost all documents are not completed with letter head; (iii) the document is not signed by the party whose name is appeared at the end of each document; and (iv) the pages are not in order, so there is an



indication that some pages are intentionally not included. According to the Court, evidence P-6 through evidence P-10 must be disregarded;

- b. Relevant statements presented by the witnesses of the Petitioners regarding the mark-up of 305 voters in five districts, namely Longkib, Rundeng, Sultan Daulat, Penanggalan, and Simpang Kiri Districts, which is confirmed by:
- (i) Witness Ita Fitri Yeni who stated that she cast her vote in three TPS, namely TPS 10 by using her own name, in TPS 7 by using an invitation in the name of Elly Sabariah, and in TPS 1 by using an invitation in the name of Elizabeth, the matter of which is possible as after casting her vote in one TPS, she first removed the ink from her finger first by using an ink remover. She received Rp.30,000,-;
  - (ii) Witness Irwan stated that he could not vote since he has not been registered. However, he voted in TPS 1 of Simpang Kiri District of Subulussalam Municipality by using an invitation card in the name Alvian Niangga, and received Rp. 50,000,-;
  - (iii) Witness Sahiya, as a Monitoring Team stated that a person named Gini, residing in Cane Municipality and not a voter and a person named Jimmy from Aceh Utara, are not registered in DPT, but they participated in the voting. Meanwhile, Yusmina and Nurhayati whose names are listed double in DPT only had one invitation to

vote. Two sick persons having an invitation to vote and intending to vote for Candidate Pair Number 5 were not accompanied by the Committee while a sick person intending to vote Candidate Pair Number 1 was accompanied by the Committee;

- (iv) Witness Eddy Hasyim stated that a person named Alfredo who was unregistered in DPT carrying an invitation to vote in the name of Haji Ulasih, has been handed over to Police;
- (v) Witness Busri has identified that there were three persons who were not citizens of Subulussalam Municipality but they participated in the election. However, he did not protest;
- (vi) Untung S has not been registered in DPT but he was holding a Subulussalam Identity Card, witness had an invitation not in his own name from Success Team for Candidate Pair Number 1, and voted for the aforementioned pair;
- (vii) Witness Supiyem acknowledged that she had an invitation in the name of Rini Indriyani, and voted for Candidate Pair Number 1.
- (viii) Witness Thamrin S. stated that he found 7 underage voters participated in the voting in TPS 6 of Jambi, two voters in TPS 9, and it was identified that some of these voters were born on 1992, 1993 and 1994;

- (ix) Witness Abdul Manaf and Rena Gustari (husband and wife) stated that they met Rita Susanti, a citizen of Banda Aceh who was taking a CPNS exam in Subulussalam, who confessed that she voted Candidate Pair Number 1 in the Regional Head General Election of Subulussalam;
- (x) Witness Untung S. as a member of KPPS in TPS 1 of Simpang Kiri District, when assigned to receive an invitation in the name of Putri Fajar Oktavia, it was evident that it was another person who came to vote, rather than Putri Fajami Oktavia, known to him;
- (xi) Witness Ikhsan stated that in TPS 5 of Subulussalam Utara, during the election, invitations received were registered from Number 1 through 156 and checked with the existing data, but after that, there were 97 invitations not called and adjusted with DPT. The difference of 135 votes has never been questioned to the Head of KPPS;
- (xii) Witness found a person named Hari who has voted in TPS 9 but also intends to vote in TPS 7, he was subsequently detained and handed over to Police;
- (xiii) Witness Suhaidi stated that during the flood in Tualang Village, Rundeng Kota District, The Success Team for Candidate Pair Number 1 donated instant noodles to 78 Households, including the

witness, and the witness was recommended to vote the Candidate Pair Number 1;

With respect to all of the legal facts as elaborated by witnesses and the written evidence relevant to them, the Court is of the opinion that administrative and criminal violations have indeed occurred. Although Candidate Pair Number 1 deems that the total votes resulting from the violations as an invalid acquisition, the Court considers that the votes are not validly and convincingly proven to have contributed to the argued vote mark-up. Meanwhile, with regard to the criminal violations, such matters are within the scope of General Election Supervisory Committee to take follow-up actions;

**[3.19.3]** With respect to the Petitioners' arguments stating that there are unsealed and empty ballot box found, and no recapitulation of vote count results was made at the time of delivery from district to KIP Office, in accordance with statements of the witnesses, namely: H. Sudirman Munthe, Zulhelmi, and Safri Mamas, the Court is of the opinion that, such actions prove that there is a violation to the provisions of laws and regulations regarding the administration of *Regional Head General Election*. However, the Petitioners cannot prove the correlation between such matter and vote count results. Moreover, the witnesses of Candidate Pair do not state their objection to the aforementioned vote count results. On the contrary, the witness of Respondent Emir Hamdi who is a Member of General Election Supervisory Committee of Subulussalam Municipality states that it is true that there is a letter from the Petitioner

requesting for violations reported to be checked. Following the clarification, it is evident that there are cases of *Regional Head General Election* which have been processed by the Police;

**[3.19.4]** With respect to the argument stating that there is misuse of authority by Candidate Mayor Number 1 when serving as the Chairperson of Commission A of Subulussalam Municipality DPRD in selecting candidate members of KIP who are partial to him (not neutral), the Court is of the opinion that, it must be proven in criminal process. Moreover, the authority to select the members of KIP is a collective, rather than an individual authority, so the *a quo* argument must be disregarded;

**[3.19.5]** With respect to argument on schedule of Vote Count Meeting schedule which was expedited from the schedule previously set, as well as the holding of Closed Plenary Meeting regarding the Designation of Candidate Mayor and Vice Mayor without summoning witness of Candidate Pair, the Court is of the opinion that the Vote Count Meeting has been officially notified and attended by the respective Candidate Pairs, and the vote count is open for public and the results are also announced transparently while the Plenary Meeting on the Designation of Mayor and Vice mayor Candidate Pair is a follow-up to the Open Plenary Meeting on the Recapitulation of Vote Count Result; therefore, the arguments stated by the Petitioners are insufficiently grounded and must also be disregarded.

#### **4. CONCLUSION**

Based on the aforementioned assessment of the facts and law, the Court concludes, as follows:

- [4.1] The Exception of the Respondent and the Relevant Party is legally inappropriate;
- [4.2] Article 74 of Law Number 11 Year 2006 regarding the Government of Aceh, is not *Lex Specialis* in the settlement of dispute on Regional Head General Election in Aceh Province;
- [4.3] Although administrative and criminal violations have occurred, such violations are proven to be structural and massive in nature. The foregoing violations have contributed to the vote acquisition, but it is insufficient to change the position of vote acquisition as stipulated by the KIP of Subulussalam Municipality.

## 5. DECISION

In view of articles of the 1945 Constitution of the Republic of Indonesia, Law Number 24 Year 2003 regarding the Constitutional Court, *junctis* Law Number 4 Year 2004 regarding Judicial Power, Law Number 32 Year 2004 as recently amended by Law Number 12 Year 2008 regarding Second Amendment to Law Number 32 Year 2004 regarding Regional Government, Law Number 11 Year 2006 regarding the Government of Aceh, as well as Law Number 22 Year 2007 regarding General Election Administrator;

## **Passing the Decision,**

### **In the Exception**

To declare that the exception of the Respondent and the Relevant Party is unacceptable.

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

- To declare that the Petitioners' petition is rejected in its entirety;
- To declare that Decision of Independent Election Commission (KIP) of Subulussalam Municipality Number 35 Year 2008 regarding the Designation of Elected Mayor/Vice Mayor Candidate Pairs in the 2008 Regional Head Election of Subulussalam Municipality dated December 23, 2008 is valid.

Hence the decision was made at the Plenary Consultative Meeting of nine Constitutional Court Justices on Friday, sixteenth of January 2009, and was pronounced in the Plenary Session open for public on Tuesday, twentieth of January 2009, by us, Moh. Mahfud MD as Chairperson and Concurrent Member, assisted by Maruarar Siahaan, Muhammad Alim, Achmad Sodiki, Abdul Mukthie Fadjar, M. Arsyad Sanusi, Maria Farida Indrati, and M. Akil Mochtar, respectively as Members, assisted by Alfius Ngatrin as Substitute Registrar in the presence of the Petitioners and their Attorneys, the Respondent and/or its Attorney, as well as the Relevant Party and/or its Attorney.

**CHIEF JUSTICE**

**Sgd.**

**Moh. Mahfud MD**

**JUSTICES,**

**Sgd.**

**Maruarar Siahaan**

**Sgd.**

**Achmad Sodiki**

**Sgd.**

**M. Arsyad Sanusi**

**Sgd.**

**Muhammad Alim**

**Sgd.**

**Abdul Mukthie Fadjar**

**Sgd.**

**Maria Farida Indrati**

**Sgd.**

**M. Akil Mochtar**

**SUBSTITUTE REGISTRAR,**

**Sgd.**

**Alfius Ngatrin**