



DECISION

Number 1/SKLN-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 with respect to the Dispute on the Authorities of State Institutions whose authorities are granted by the 1945 Constitution of the State of the Republic of Indonesia, filed by:

[1.2] **The Supervisory Committee for the Election of Regent and Vice Regent of Morowali Regency**, represented by :

1. **Drs. H. Muhammad Lufti**, Chairman of the Supervisory Committee for the Election of Regent and Vice Regent of Morowali Regency for the Period of 2007-2012, having his address in Kolonodale, Morowali;
2. **Alwi Lahadji**, Vice Chairman of the Supervisory Committee for the Election of Regent and Vice Regent of Morowali Regency for the Period of 2007-2012, having his address in Bungku, Morowali;

3. **Baitul Manaf**, Member of the Supervisory Committee for the Election of Regent and Vice Regent of Morowali Regency for the Period of 2007-2012, having his address in Kolonodale, Morowali;
4. **Fachry Nurmallo, SH**, Member of the Supervisory Committee for the Election of Regent and Vice Regent of Morowali Regency for the Period of 2007-2012, having his address in Kolonodale, Morowali;
5. **Abdul Rahman**, Member of the Supervisory Committee for the Election of Regent and Vice Regent of Morowali Regency for the Period of 2007-2012, having his address in Bungku, Morowali.

By virtue of a special power of attorney dated December 12, 2007, authorizing Dr. Andi Muhammad Asrun, S.H., M.H., Yan Patris Binela, S.H., Huisman Brant Toripalu, S.H., and Bachtiar Sitanggang, S.H.

hereinafter referred to as **the Petitioner**;

Against

The General Election Commission (KPU) of Morowali Regency, with its address in Bungku, Central Sulawesi Province, hereinafter referred to as **the Respondent**;

[1.3] Having read the Petitioner' Petition,

Having heard the Petitioner' Statement;

Having examined the evidence;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the Petitioners' petition are as described above;

[3.2] Considering whereas that there are three legal issues that must be considered in this petition, namely:

- a. Authority of the Constitutional Court (hereinafter referred to as the Court) to examine, hear, and decide upon the *a quo* petition;
- b. Legal standing of the petitioners;
- c. Principal issue of the petition;

THE CONSTITUTIONAL COURT'S AUTHORITY AND THE PETITIONER'S LEGAL STANDING

[3.3] Considering whereas one of the Constitutional Court's authorities based on Article 24C Paragraph (1) of the Constitution of the State of the Republic of Indonesia Year 1945 (hereinafter referred to as the 1945 Constitution) is to decide Disputes on the Authorities of State Institutions (abbreviated to *SKLN*) whose authorities are granted by the 1945 Constitution;

[3.4] Considering whereas Article 61 of Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia

Year 2003 Number 98, Supplement to the State Gazette of the Republic of Indonesia number 4316, hereinafter referred to as the Constitutional Court Law) has stipulated the following matters in relation to SKLN:

- a. That the Petitioner of *SKLN* shall be a state institution whose authority is given by the 1945 Constitution;
- b. That the Petitioner shall have a direct interest with respect to the authority in dispute and shall describe it clearly in the petition;
- c. That the Petitioner must describe the authority in dispute;
- d. That the petitioner must clearly specify which state institution shall become the Respondent;

[3.5] Considering whereas the Petitioner, namely the Supervisory Committee for the Election of Regent and Vice Regent of Regency (hereinafter referred to as the Supervisory Committee of Regional Head Election) argues that the Dispute on the Authorities of State Institutions with the Regional General Election Commission of Morowali Regency (hereinafter referred to as *KPUD*) as the Respondent has occurred with the following arguments:

1. Whereas according to the Petitioner, even though both the supervisory committee for Regional Head Election as the Petitioner and the Regional General Election Commission of Morowali Regency (*KPUD*) as the Respondent are not textually referred to as state institutions in the 1945 Constitution, but only mentioned in Law Number 32 Year 2004 (hereinafter referred to as the Regional Government Law), the authorities of the

- Petitioner and the Respondent implicitly constitute the principal authorities mandated by the 1945 Constitution or at least the necessary and proper authorities to implement the aforementioned principal authorities, namely to organize the regional head election democratically as described in Article 18 Paragraph (4) of the 1945 Constitution in conjunction with Article 56 Paragraph (1) of the Regional Government Law;
2. Whereas based on Article 66 Paragraph (4) of the Regional Government law in conjunction with Article 108 Paragraph (1) of Government Regulation Number 6 Year 2005 regarding the Election, Legalization, Appointment, and Dismissal of Regional Heads and the Deputy regional Heads, the authorities of the Petitioner (the Supervisory Committee of Regional Head Election) are as follows:
 - a. To supervise all implementation stages of the election of regional head and deputy regional head;
 - b. To accept the reports on violations of laws and regulations in the election of regional head and deputy regional head;
 - c. To settle disputes arising in the implementation of regional head and deputy regional head election;
 - d. To forward irresolvable findings and reports to the authorized agency; and
 - e. To regulate the coordination relationship among the supervisory committees at every level;

3. Whereas the authorities of the Respondent (KPUD) in accordance with Article 66 Paragraph (1) of the Regional Government are as follows:
- a. To plan the implementation of the regional head and deputy regional head election;
 - b. To stipulate the implementation procedures of the regional head and deputy regional head election in accordance with the stages regulated in laws and regulations;
 - c. To coordinate, organize, and control all the implementation stages of the regional head and deputy regional head election;
 - d. To stipulate the date and procedures for campaigns, and also the voting in the regional head and deputy regional head election;
 - e. To examine the qualification of political parties or coalition of political parties nominating candidates;
 - f. To examine the qualification of the nominated candidates for regional head and deputy regional head;
 - g. To stipulate the candidate pairs that have met the qualification;
 - h. To accept the registration and announce the campaign teams;
 - i. To announce the reports of campaign fund donations;
 - j. To stipulate the recapitulation results of vote counting and announce the results of the regional head and deputy regional head election;
 - k. To conduct evaluation and reporting of the implementation of the regional head and deputy regional head election;

- I. To carry out other tasks and authorities regulated by the laws and regulations;
 - m. To stipulate the public accountant office to audit the campaign fund and announce the audit results;
- 4. Whereas according to the Petitioner, the Respondent has blocked the implementation of the Petitioner's task and authority, and has also reduced and taken over the Petitioner's authority as the Supervisory Committee for the Election of Regent and Vice Regent of Morowali Regency, as follows:
 - a. In the stipulation of regent and vice regent candidate pairs, the Respondent violated the time limit of seven days (Exhibit P-3), improperly applied the legal basis for eliminating the candidate pair (Exhibit P-4), and did not make any clarification as to whether the supporting letter signed by the political parties was true or not (Exhibit P-6);
 - b. In the voter registration process, *KPUD* (the Respondent) ignored the letter of the Election Supervisory Committee (the Petitioner) to the effect that the registration implemented by the Respondent was not in accordance with the laws and regulations (Exhibit P-7);
 - c. In the campaign, the respondent did not follow up the Petitioner's letters regarding the campaign violations committed by candidate pairs (Exhibit P-8, P-9, P-10, and P-11);

- d. In the voting, based on the reason that there were many unregistered compulsory voters, *KPUD* published a circular letter which permitting the unregistered compulsory voters to use Resident's Identity Card or statement of Village Head (Exhibit P-12), so that there were many violations in the form of vote mark up in several polling stations (Exhibits P-13, P-14, P-15, P-16, P-17, P-18, P-19, and P-20);
- e. In the recapitulation of vote counting, *KPUD* ignored the letter of the Election Supervisory Committee (the Petitioner) to postpone the recapitulation of vote counting (Exhibit P-21) and ignored the Petitioner's report regarding many violations occurring in Regional Head Election (Exhibits P-22, P-23, P-24, P-25, P-26, P-27, P-28, and P-29);

[3.6] Considering whereas with respect to the Petitioner's arguments above, the Court is of the following opinion:

1. Whereas it is true that, according Article 18 Paragraph (4) of the 1945 Constitution, Regional Heads should be elected democratically. However, such democratic election way does shall not necessarily be always implemented through a direct election of regional head as described in the Regional Government Law, as it could also be implemented indirectly by the Regional People's legislative Assembly as described in Law Number 22 Year 1999. Both two ways are still constitutional and democratic while

- the unconstitutional one shall be when a regional head is elected in an undemocratic way, namely by appointment;
2. Whereas the existence of *KPUD* and the Election Supervisory Committee is only possible if the regional head election is implemented directly in accordance with a law, while if the law determines that the regional head election shall be implemented indirectly, then the existence of *KPUD* and the Election Supervisory Committee in regional head election is not required;
 3. Whereas in accordance with Article 22E paragraph (5) of the 1945 Constitution, the task of General Election Commission which is national, permanent, and independent shall be to implement the general election to choose the members of the People's Legislative Assembly (DPR), the People's Representative Council (DPD), President and Vice-President, and also the Regional People's Legislative Assembly. Meanwhile, the authority of *KPUD* in the Regional Head Election is not mandated by the 1945 Constitution, but by an order of the Regional Government Law in conjunction with Law Number 22 Year 2007 regarding General Election Organizers, so that *KPUD* cannot be qualified as a state institution whose authorities are granted by the 1945 Constitution;
 4. Whereas in accordance with Article 109 of Government Regulation Number 6 Year 2005, the Election Supervisory Committee is an *ad hoc* institution whose task shall end in 30 (thirty) days after the oath taking of

Regional Head and Deputy Regional Head, so that the Election Supervisory Committee cannot be qualified as a state institution, let alone as a state institution whose authorities are granted by the 1945 Constitution;

5. Whereas based on the written evidence presented and also the Petitioner's statement in the hearing, there has not been any dispute concerning the results of regional head election in its implementation in Morowali Regency, so that the issue brought by the Petitioner is concerned more with the cooperation and communication between the Petitioner and the Respondent which are less or not harmonious, without any influence at all to the legitimacy of the Regional Head Election in Morowali Regency;
6. Whereas since it is already definitely obvious (*expressis verbis*), either from the aspect of *objectum litis* or the aspect of *subjectum litis* that the requirements to establish the existence of a dispute on the authorities of State Institutions whose authorities are granted by the 1945 Constitution are not met, then the Court deems it unnecessary to summon the Respondent and other related parties to appear in the hearing;
7. Whereas the Petitioners' petition does not comply with the provision of Article 61 of the Constitutional Court Law, so that the principal issue of the petition does not require any further consideration;

4. CONCLUSION

In accordance with the whole description above, the Court is of the opinion that the Petitioners' petition does not meet the requirement intended in Article 61 of the Constitutional Court Law, so that the Petitioner's petition cannot be accepted (*niet ontvankelijk verklaard*);

5. RULINGS

In view of reminding Article 64 paragraph (1) of the Law Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia Year 2003 Number 98, Supplement to the State Gazette of the republic of Indonesia Number 4316)

Passing the Decision:

Declaring the Petitioner's Petition unacceptable (*niet ontvankelijk verklaard*).

Hence the decision was made in a Consultative Meeting of Justices, by nine Constitutional Court Justices on Thursday dated March 27, 2008, and was pronounced in the Plenary Session of the Constitutional Court open for the public on this day, Friday, March 28, 2008, by us, Jimly Asshiddiqie as the Chairman and concurrent Member, H. Abdul Mukthie Fadjar, H. Harjono, Maruarar Siahaan, H. Achmad Roestandi, H.A.S. Natabaya, I Dewa Gede Palguna, and Soedarsono, respectively as Members accompanied by Fadzlun Budi SN, as the

Substitute Registrar and also in the presence of the Petitioner/its Attorneys and the Respondent/its Attorney.

CHIEF JUSTICE,

signed

Jimly Asshiddiqie

JUSTICES,

signed

H. Abdul Mukthie Fadjar

signed

Maruarar Siahaan

signed

H. Achmad Roestandi

signed

I Dewa Gede Palguna

signed

H. Harjono

signed

H.M. Laica Marzuki

signed

H.A.S. Natabaya

signed

Soedarsono

SUBSTITUTE REGISTRAR,

signed

Fadzlun Budi SN