

ELECTION PETITION NO. BKI-26PP-5/6-2018 ⁵

KARIM BIN BUJANG

(NRIC No. 530603-12-5039) ... PETITIONER

AND

ANIFAH BIN AMAN @ HANIFF AMMAN

(NRIC No. 531116-12-5271 / H0668099) ...1ST RESPONDENT

**THE RETURNING OFFICER FOR THE
ELECTION FOR THE PARLIAMENTARY
CONSTITUENCY OF KIMANIS**

(P. 176) IN THE STATE OF SABAH ...2ND RESPONDENT

**THE ELECTION COMMISSION OF
MALAYSIA** ... 3RD RESPONDENT ²⁰

IN OPEN COURT

16th August 2019 @ 2.30pm

CORAM: Lee Heng Cheong J.

Lessons learned:

1. Case 1: In order to challenge the election results under the election Offences Act 1954, the petitioner needs to prove the case against the respondents **beyond reasonable doubt** .
2. Case 2: Non-compliance with the provisions of any written law relating to the conduct of election affects the result of the election provided that the petitioner can prove to the satisfaction of the election judge.
3. It is very important for Counting Agent to be vigilant from the commencement of the counting process till the completion of the counting process.
4. The election agent also needs to be vigilant when receiving Form 13 and 14 from the Counting Agent.

Findings:

1. SK Kg Brunei Saluran 1: 284 additional ballot papers were improperly introduced into ballot box by comparing Form 13 and Form 14 of the stream.
2. Part E of the Form 13 where the column "Jumlah kertas undi yang patut berada di dalam peti undi" =580 and Part A of Form 14 where the column "Jumlah kertas undi yang patut berada di dalam peti undi (seperti di E dalam Borang 13) = 296 i.e. amended from 580 to 296.
3. The Returning Officer unilaterally made amendment from 580 to 296 without making any reference to Form 13 even though he was legally bound to do so. This is against the Regulation 25D(4A) of the Election (Conduct of Elections) Regulations 1981 and constitutes a serious breach of Section 5(1)(a) of the Elections Act 1981.
4. It is also discovers that the number of ballot papers in the ballot box exceeded the number stated in column E of the Form 13.
5. The Presiding Officer did not invoke the Third Schedule pursuant to Subregulation 25 of the Election (Conduct of elections) Regulations 1981 to eliminate the unwanted ballot papers in the ballot box.
6. The number of eligible voters = 350 voters.
7. There is credible evidence that there were 284 additional ballot papers improperly introduced in the ballot box for SK Kg Brunei Saluran 1. This constitutes a serious breach of Section 5(1)(a) of the Elections Act 1958 which affected the results.
8. The conduct of the election for SK Kg Brunei Saluran 1 was highly irregular in view of the empty Sampul No. 3. Without the Sampul No. 3 which consisted of the "voter registration book, unused and spoiled ballot papers, counterfoils to the ballot papers", it is impossible for the Returning Officer (2nd Respondent) and the Election Commission to verify the amendments from 580 ballot papers stated in Form 13 to 296 ballot papers as amended by the Returning Officer.
9. SJK (C) Cheng Ming Saluran 1: 57 additional ballot papers were improperly introduced into the ballot box by comparing the Form 13, Form 14 and the Score Sheet of the stream.

10. Part E of Form 13 "Jumlah kertas undi yang patut berada di dalam peti undi" = 293. Part A of Form 14 "Jumlah kertas undi yang patut berada di dalam peti undi seperti di E dalam Borang 13" = 350.

11. The Court finds that the Presiding Officer has failed to verify that the number of ballot papers in the ballot box did not exceed the number of ballot papers issued to the electors. This is in contravention of Regulations 25(3)(b) of the Elections (Conduct of Elections) Regulations 1981 and this has directly affected the result of the Election.

12. SK Kg Bambangan Saluran 1: The Presiding Officer failed to prepare the ballot paper statements in Form 13. This contravenes Regulation 24(1)(c) of the Elections (Conduct of Elections) Regulations 1981.

13. SK Mandahan Saluran 3: The Presiding Officer did not prepare Form 13 for the voting stream.

14. SK Sinoko Saluran 1: The Presiding Officer did not prepare Form 13 for the voting stream.

15. Based on Court Orders for Discovery, it was discovered that all the Form 13 in respect of all the 58 streams for the election were kept in white hard cover file instead of a special envelope and affixed with security tape. This is a non-compliance on numerous and widespread basis in relation to the election laws.