



DECISION

Number 13/PUU-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 on the case of petition of Judicial Review of Law Number 16 Year 2008 regarding Amendments to Law Number 45 Year 2007 regarding State Revenues and Expenditures Budget for Fiscal Year 2008 against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

- [1.2]
1. **Prof. Dr. H. Mohammad Surya**, occupation: General Chairperson of the Central Executive Board of PGRI (the Indonesian Teachers Association), having the address at PGRI Building at Jalan Tanah Abang III Number 24 Central Jakarta;
 2. **H. M. Rusli Yunus**, occupation: Chairperson of the Central Executive Board of PGRI, having the address at PGRI Building at Jalan Tanah Abang III Number 24 Central Jakarta;

3. **Ir. Abdul Azis Hoesein, MEngSc, Dipl.HE**, occupation: Chairperson of the Central Executive Board of PGRI, having the address at PGRI Building at Jalan Tanah Abang III Number 24 Central Jakarta;
4. **Drs. Ramli Rasjid M.Si., M.Pd**, occupation: Chairperson of Nanggroe Aceh Darussalam Province Chapter of PGRI, having the address at Jalan Panglima Nyak Makam Number 4 Nanggroe Aceh Darussalam;
5. **Tamrin, S.Pd**, occupation: Teacher/General Secretary of Bengkulu Province Chapter of PGRI, having the address at Jalan Hibrida 13A Number 51 Bengkulu;
6. **Drs. H. Gusrizal, M.Pd**, occupation: Principal of SMAN 3/Deputy Chairperson of Riau Province Chapter of PGRI, having the address at Jalan Yos Sudarso Number 100A, Pekanbaru, Riau;
7. **Effi Herman, S.Pd**, occupation: School Supervisor of the P&K (Education and Culture) Service Office of Jambi Municipality/General Secretary of Jambi Chapter of PGRI, having the address at Komplek Teluk Indah Number 43 P.Sulur, Neigborhood Ward 21 Jambi;
8. **Zambi Akil, S.Pd**, occupation: General Secretary of West Sumatra Province Chapter of PGRI, having the address at Jalan Jenderal Sudirman Number 1A, Padang;

9. **Drs. Aidil Fitriyah**, occupation: Chairperson of South Sumatra Chapter of PGRI, having the address at the Secretariat of South Sumatra PGRI, Palembang;
10. **Drs. Izhar Matrian, M.M**, occupation: Lecturer of LPMP Lampung/Chairperson of Lampung Province Chapter of PGRI, having the address at Jalan Panglima Polim Gang Melati Number 6 Bandar Lampung;
11. **Drs. Wahyu Pradono, M.M**, occupation: General Secretary of DKI Jakarta Chapter of PGRI, having the address at Guru Building, Jakarta, at Jalan T.B. Simatupang Number 48A Tanjung Barat Jagakarsa, South Jakarta 12530;
12. **Muhammad Sibromulisi**, occupation: General Secretary of Banten Province Chapter of PGRI, having the address at Jalan Komplek Kejaksaan II Number 37 Serang 42117;
13. **Sahiri Hermawan, S.H., M.H**, occupation: Chairperson of West Java Province Chapter of PGRI, having the address at the Secretariat of West Java Chapter of PGRI, Bandung;
14. **Drs. Soedharto, M.A**, occupation: Chairperson of Central Java Province Chapter of PGRI, having the address at the Secretariat of Central Java Chapter of PGRI, Semarang;
15. **Drs. H. Sugito, M.Si**, occupation: Chairperson of D.I. Yogyakarta Province PGRI, having the address at Jalan Babaran Number 48A Yogyakarta;

16. **Drs. H. Matadjit, M.M**, occupation: Chairperson of East Java Province Chapter of PGRI, having the address at Jalan Ahmad Yani Number 6-8 Surabaya;
17. **Drs. Igd Wentan Aryasula, M.Pd**, occupation: Teacher, having the address at Jalan Nangka Utara, Denpasar Bali;
18. **Drs. H.M. Ali H. Arahim**, occupation: Supervisor/General Secretary of West Nusa Tenggara Province Chapter of PGRI, having the address at Jalan Kaktus Number 8 Mataram;
19. **Drs. Ocro Ouwpoly**, occupation: Chairperson of East Nusa Tenggara Province Chapter of PGRI, having the address at Jalan Perintis Kemerdekaan III Number 40 Kota Baru, Kupang, East Nusa Tenggara;
20. **Laspindo, S.Pd**, occupation: General Secretary of Central Kalimantan Province Chapter of PGRI, having the address at the Secretariat of Central Kalimantan Chapter of PGRI, Palangkaraya;
21. **Sutomo Aris Wijayanto, S.Pd**, occupation: Civil Servant/General Secretary of East Kalimantan Province Chapter of PGRI, having the address at Jalan Ratan Sempurut Number 75, Samarinda, East Kalimantan;
22. **M. Ali Daud**, occupation: Chairperson of West Kalimantan Province Chapter of PGRI, having the address at the

- Secretariat of West Kalimantan Chapter of PGRI, Pontianak;
23. **Drs. H. Dahri**, occupation: Chairperson of South Kalimantan Province Chapter of PGRI, having the address at Jalan Sultan Adam Komplek Sultan Adam Permai 3 Number 73 Banjarmasin, South Kalimantan;
 24. **Drs. H. Muhammad Asmin, M.Pd**, occupation: Chairperson of South Sulawesi Province Chapter of PGRI, having the address at Jalan Amanagappa Number 34 Makassar, South Sulawesi;
 25. **Drs. H. Muslimin, M.M**, occupation: Principal of SMAN 1 Mamuju and Secretary for the Information and Communication Department of West Sulawesi Chapter of PGRI, having the address at Jalan Mamuju, West Sulawesi;
 26. **Drs. Laode Parisa Syalik**, occupation: Deputy General Chairperson of Southeast Sulawesi Province Chapter of PGRI, having the address at Jalan Bunga Tanjung Number 2A, Kendari;
 27. **Dra. Hj. Z. Mentemas Jusuf**, occupation: Deputy Chairperson of Gorontalo Province Chapter of PGRI, having the address at Jalan Samratulangi Neighborhood Ward 01/Neighborhood Block 01 Limba Sub-District U1 Gorontalo;
 28. **Saparun Sitaniase**, occupation: Teacher, having the

address at Batumerah Neighborhood Ward 001/Neighborhood Block 08 Siriman Sub-District, Ambon Municipality, Maluku Province;

29. **Eliseus Fasak**, occupation: Teacher/Chairperson of Papua Province Chapter of PGRI, having the address at Jalan Sosiri Number 2 Abepura, Jayapura;

By virtue of the Power of Attorney dated April 29, 2008 the aforementioned persons have authorized Dr. Andi Muhammad Asrun, S.H., M.H., and Dewi Triyani S.H., domiciled at PGRI Building at Jalan Tanah Abang III Number 24 Central Jakarta.

Hereinafter referred to as **the Petitioners**;

- [1.3]** Having read the petition of the Petitioners;
- Having heard the statement of the Petitioners;
- Having heard and read the written statement of the Government;
- Having read the written statement from People's Legislative Assembly;
- Having examined the evidence;
- Having heard and read the written statement of the experts presented by the Petitioners;
- Having read conclusion of the Petitioners;

3. LEGAL CONSIDERATIONS

[3.1] Considering whereas the purpose and objective of the *a quo* petition are to review the constitutionality of Law Number 16 Year 2008 regarding Amendments to Law Number 45 Year 2007 regarding the State Revenues and Expenditures Budget for Fiscal Year 2008 (State Gazette of the Republic of Indonesia Year 2008 Number 63, Supplement to the State Gazette of the Republic of Indonesia Number 4848, hereinafter referred to as the Revised 2008 State Revenues and Expenditures Budget Law) against the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution).

[3.2] Considering, whereas prior to further considering the substance of the petition, the Constitutional Court (hereinafter referred to as the Court), shall first take the following matters into account:

1. Whether the Court has the authority to examine, hear, and decide upon the *a quo* petition;
2. Whether the Petitioners have the legal standing in acting as Petitioners in the *a quo* petition;

Authority of the Court

[3.3] Considering whereas based on the provisions of Article 24C Paragraph (1) of the 1945 Constitution *juncto* Article 10 Paragraph (1) 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 CC Law),

the Court has the authority to hear at the first and final level, the decision of which shall be final, among other things to review a law against the 1945 Constitution.

[3.4] Considering whereas the a quo petition is a petition for judicial review of a law, *in casu* the Revised 2008 State Revenues and Expenditures Budget Law against the 1945 Constitution. Therefore, the Court has the authority to examine, hear, and decide upon.

Legal Standing of the Petitioners

[3.5] Considering whereas Article 51 Paragraph (1) of the CC Law states that the Petitioners shall be parties that deem that their constitutional rights and/or authorities are impaired by the coming into effect of a law, namely:

- a. individual Indonesian Citizens;
- b. customary law community units insofar as they are still in existence and in accordance with the development of the community and the principle of the Unitary State of the Republic of Indonesia as regulated in Law;
- c. public or private legal entities; or
- d. state institutions.

Therefore, to qualify that the legal standing of a party can be accepted in the petition for judicial review of law against the 1945 Constitution, a party concerned must first:

- a. explain his/her capacity whether as an individual Indonesian citizens, customary law community, legal entity, or state institution;
- b. explain the constitutional right and/or authority impairment in his/her capacity as referred to in letter a above.

[3.6] Considering also, in its Decision Number 006/PUU-III/2005 pronounced on May 31, 2005 and Decision Number 11/PUU-V/2007 pronounced on September 20, 2007, as well as subsequent decisions, the Court is of the opinion that the constitutional right and/or authority impairment as referred to in Article 51 Paragraph (1) of the CC Law must meet 5 (five) requirements, namely:

- a. the Petitioners have constitutional rights and/or authorities granted by the 1945 Constitution;
- b. the aforementioned constitutional rights and/or authorities are impaired by the coming into effect of the law being petitioned for review;
- c. the aforementioned constitutional right and/or authority impairment is specific (special) and actual in nature, or at least potential in nature which pursuant logical reasoning will take place for sure;
- d. there is a causal relationship (*causal verband*) between the intended impairment and the coming into effect of law being petitioned for review;
- e. if the petition is granted, it is expected that, the constitutional impairment argued will not or does not occur any longer.

[3.7] Considering whereas the Petitioners have explained their capacities as the Central Executive Board of the Indonesian Teachers

Association (PGRI) and a group of teachers as individuals. Furthermore, in explaining their opinion regarding constitutional right impairment suffered by them as a consequence of the coming into effect of the Revised 2008 State Revenues and Expenditures Budget Law, the Petitioners present arguments which principally are as follows:

- a. whereas the provision of Article 31 Paragraph (4) of the 1945 Constitution requiring the state to prioritize the educational budget by allocating at least 20% of the State Revenues and Expenditures Budget and of the Regional Revenues and Expenditures Budget is imperative in nature (*dwingend recht*). The aforementioned provision means that the educational sector must be prioritized without disregarding other sectors which are also important for the sustainability of the state and the nation;
- b. whereas the imperative nature of Article 31 Paragraph (4) of the 1945 Constitution concerned has been evidenced by the Court's decisions passed since 2005 which principally state that the provisions of law regulating educational budget less than 20% of the state revenues and expenditures budget are contradictory to the 1945 Constitution;
- c. whereas the Revised 2008 State Revenues and Expenditures Budget Law stipulates that the ratio of educational budget is projected to achieve 15.6% (fifteen point six percent), which means that this provision is contradictory to the mandate of the 1945 Constitution;
- d. whereas based on the method for the calculation of educational budget applied in the Revised 2008 State Revenues and Expenditures Budget

- Law, the inclusion of civil service education budget in the Revised 2008 State Revenues and Expenditures Budget Law has constituted a substantive violation. Meanwhile, the law (sic!) has complied with the international convention excluding the civil service education expenses from the definition of education fund, while the Government (sic!) does not exclude the same, so that the Revised 2008 State Revenues and Expenditures Budget Law also constitutes a violation. Meanwhile, by disregarding the provisions in the amount of educational budget of 20% of the State Revenues and Expenditures Budget as set forth in Article 31 Paragraph (4) of the 1945 Constitution, the Revised 2008 State Revenues and Expenditures Budget Law also constitutes an intrinsic violation;
- e. whereas, based on the description in letters a up to d above, the funds provided by the Government to implement the education are less than those needed to exercise the constitutional responsibility of the Government to perform national education in accordance with the provisions of Article 31 Paragraphs (1), (2), and (5) of the 1945 Constitution, so that constitutional rights of the Petitioners, as parts of the education components according to both Law Number 20 Year 2003 regarding the National Education System and Law Number 14 Year 2005 regarding Teachers and Lecturers, have been impaired by the coming into effect of The Revised 2008 State Revenues and Expenditures Budget Law;

- f. whereas, as parts of the education components, the Petitioners deem that their constitutional rights to fight for their rights collectively in order to build the community, state, and nation - as stipulated in Article 28C Paragraph (2) of the 1945 Constitution – are impaired by the coming into effect of the Revised 2008 State Revenues and Expenditures Budget Law. In this case, the right impaired is the right to fight for the improvement of education through the implementation of the provisions on educational budget allocation of at least 20% of the State Revenues and Expenditures Budget, as mandated by Article 31 Paragraph (4) of the 1945 Constitution.

[3.8] Considering whereas, since there have been several petitions for judicial review of laws which are substantially identical to the object of the a quo petition, the Court has many times admitted the Petitioners' legal standing which is similar to the legal standing of the Petitioners in the a quo petition, as specified in the Decision Number 012/PUU-III/2005 pronounced on October 19, 2005, Decision Number 026/PUU-III/2005 pronounced on March 22, 2006, Decision Number 026/PUU-IV/2006 pronounced on May 1, 2007, and Decision Number 24/PUU-V/2007 pronounced on February 20, 2008, the Court's considerations in the aforementioned decisions shall be applicable mutatis mutandis to the Petitioners of the a quo petition, so that the Petitioners should be declared as having the legal standing to act as the Petitioners in the a quo petition. However, one Constitutional Justice, namely H.A.S. Natabaya, as in the earlier decisions of the judicial review of State Budget Laws, remain to hold the opinion that the Petitioners do not have legal standing to file the a quo petition;

[3.9] Considering whereas the Court has the authorities to examine, hear, and decide upon the a quo petition filed by the parties having legal standing for acting as the Petitioners, hence furthermore, the Court shall consider the principal issue of the case.

Principal Issue of the Petition

[3.10] Considering whereas the problem in the a quo petition is the constitutionality of the Revised 2008 State Revenues and Expenditures Budget Law which is deemed contradictory to Article 31 Paragraph (4) of the 1945 Constitution by the Petitioners since it stipulates budget for the educational sector of less than 20% of the state revenues and expenditures budget;

[3.11] Considering whereas in order to prove their arguments, in addition to documentary evidence, as has been included in the part of Legal Standing of this decision, the Petitioners also presented an expert Drs. Ibrahim Musa, M.A., Ph.D. whose statements have been heard before the Court in the hearing on July 15, 2008 which principally stated as follows:

- a. whereas according to the expert, there are some principles for development of the education funding formula, namely the principle of justice, the principle of sufficiency, the principle of sustainability, the principle of efficiency, and the principle of accountability.
 - The Principle of justice includes (i) adequacy of funds for organizing basic learning activities, (ii) even distribution among schools, (iii)

fiscal harmonization efforts in order to overcome differences in the economic capacity of the community members, (iv) special education program, (v) remedial programs, (vi) diseconomies of scale due to the remote geographical location, (vii) heavy burden of the government, (viii) the difference in the cost-of-living level among the regions;

- The Principle of sufficiency includes (i) subjects of study/lecture, (ii) grades, (iii) educational levels, (iv) types of education (general, vocational, religious, professional education);
- The principle of sustainability means that there must be permanent source of funds and education unit empowerment efforts;
- The principle of efficiency means that equal funds will generate higher results;
- The principle of accountability means that there must be transparency in the use of educational expenses in accordance with the rules and the quality of the results;

b. whereas according to the expert, funding for educational units shall follow the formula as follows: basic expenses for organizing education plus the poverty index and quality improvement incentives. Meanwhile, the basic expenses for organizing education include salaries and allowances for teachers' welfare, infrastructure (buildings, books, computers, libraries,

etc.), administrative support for learning-teaching activities/administration, extracurricular, remedial, and enrichment activities;

c. whereas meanwhile, based on the aforementioned education funding formula for education units, an education funding formula at the regency/municipality/provincial and national levels is then acquired.

- For regency/municipality level, the education funding formula includes: the overall expenses at the educational unit level plus the supervision/guidance and management expenses at the regency/municipality level. The overall expenses at the aforementioned educational units are acquired from by adding the overall local fiscal incentives and the total incentives for educational quality improvement activities at the regency/municipality level;
- For the provincial level, the education funding formula includes: teachers upgrading, certification, KKG / MGPP plus coordination of curriculum development, fee for special schools and special services, international schools, local prominent educational units, and provincial management;
- For the national level, the education funding formula includes: educational planning and development plus the control/research/development of national education standards (contents, processes, graduates, teachers, educational personnel, facilities and infrastructure, assessment, management, and

financing), monitoring and education evaluation, compensation for the poor, educational quality compensation, and the management of national education management unit.

- d. whereas therefore the educational budget must take into account all matters specified in letters a up to c above.

[3.12] Considering whereas the Court has also inquire the lawmakers, namely the People's Legislative Assembly (DPR) and the President (Government), which respectively stated as follows:

[3.12.1] Statement of the People's Legislative Assembly

In its written statement received by the Registrar's Office of the Court on August 6, 2008, which are entirely included in the part of the Principal Issue of the Case of this Decision, the People's Legislative Assembly essentially stated as follows:

- a. whereas the State Budget Law Year 2008 has not included the civil service education budget in the calculation of educational budget as stated in Article 1 Sub-Articles 35 and 36. The foregoing matter is also reiterated in the Elucidation of the State Budget Law Year 2008;
- b. whereas the State Budget Law Year 2008 was formulated by taking into account, among other things, its correspondence to the needs for the state governance and ability to raise state revenues, the development and fundamental changes that give significant impacts on various economic

- indicators affecting the basic fiscal and budget policies in the State Revenues and Expenditures for 2008 and on the security of the State Budget implementation;
- c. whereas the allocation of funds for education in accordance with Article 31 Paragraph (4) of the 1945 Constitution, as further implementing rules which are consistent to the laws and regulations, must also be complemented with the ability of the Government to provide the educational budget as well as performing and professional educational staff. In this case, the State Budget Law and Law regarding National Education System must be improved, so that the fulfillment of education fund allocation shall not deviate from the applicable provisions and is able to measure the financial capability of the State Budget;
 - d. whereas the educational budget, which has been endeavored to be increased from year to year, must be considered as the total budget used to implement the national education programs including all programs and activities aimed at improving the intellectual life of the nation, both in the Central and Regional areas and in accordance with the mandate of the 1945 Constitution;
 - e. whereas the fulfillment of the educational budget of at least 20% of the State Budget is not only the obligation of the State Budget but also the Regional Budgets. In the future, it is expected that the mandate of the

constitution can be achieved by using such definition of educational budget;

[3.12.2] Statement of the Government

In its written statements which were respectively received by the Registrar's Office of the Court on July 15, 28, and 29 July 2008, the complete version of which are included in the part of Principal Issue of the Case of this Decision and based on its direct statements given before the Court in the hearing dated July 15, 2008, the Government principally states as follows:

- a. whereas the Revised 2008 State Revenues and Expenditures Budget Law was formulated based on recent global and domestic economic developments and by considering external factors, such as crude oil prices and world food prices, which affected the development of various macro-economic indicators so that in turn affected the national income units, state expenditure, and budget financing;
- b. whereas the educational budget as a percentage of the State Revenues and Expenditures Budget is calculated as a ratio (in percent) of the budget allocation in the education sector in the state expenditure to the total expenditures of the state, which is projected in the Revised 2008 State Revenues and Expenditures Budget Law to achieve 15.6%. Although the percentage of total nominal value of educational budget seems to decrease, it is increased from Rp.142.2 trillion (the Revised 2007 State

Revenues and Expenditures Budget) to Rp.154.2 trillion (the Revised 2008 State Revenues and Expenditures Budget). Such decrease in the percentage of the spending is caused by the high increase in the state expenditures from Rp.752.4 trillion (the 2007 Revised State Revenues and Expenditures Budget) to Rp.989.5 trillion (the Revised 2008 State Revenues and Expenditures Budget) due to external factors (sharp increase in the international crude oil prices), which is out of the Government's control (*force majeure*);

- c. whereas based on the budget structure (the organization, functions, and the type of expenditure) as stipulated in Law No. 17 Year 2003 regarding the State Finance, the realization of the Central Government expenditure budget in the last three years has been concentrated on the function of public services with the proportion of 65.5% of the total expenditure of the Central Government. This means that the dominant function of the government has been concentrated on the public services for the community, which in this case includes the subsidy programs, loan interest payment programs, and other public service programs conducted by the state ministries/agencies;
- d. whereas based on the types of expenditure, the realization of subsidies and loan interest repayments, which are both non-discretionary (mandatory) Expenditures, their use has been specific and can not be avoided, and dominated the central government expenditure, namely 29%

and 17%. As a result of sharp increase in the prices of crude oil in the international markets, from the assumption of USD 60/barrel in the 2008 State Budget to USD 95/barrel in the Revised 2008 State Revenues and Expenditures Budget, the burden of energy subsidies soared from Rp. 75.6 trillion (in the 2008 State Revenues and Expenditures Budget) to Rp. 187, 1 trillion (in the Revised 2008 State Revenues and Expenditures Budget). Even at the oil price of USD 145/barrel, energy subsidies is estimated to achieve Rp. 293 trillion. This means, without the Government's control, the ratio of educational budget will automatically decrease each time there is an increase in the world oil prices - although nominally it continues to increase;

- e. whereas therefore, the Government is of the opinion that the subsidy expenditure and debt interest repayment should not be made as a component or part of the state expenditures in calculating the ratio of the educational budget. In fact, the expenditure for energy subsidies and debt interest is not something intended by the Government, but spent because of force majeure. Insofar as the subsidies and debt interest repayment are not excluded from the state expenditure component, a distortive picture of State Revenues and Expenditures Budget structure will be produced;
- f. whereas with the burden of energy subsidies and debt interest payments, which resulted in abnormal and improper structure of the Revised 2008 State Revenues and Expenditures Budget, it is reasonable that the

- percentage of the educational budget was calculated based on the ratio of educational function budget to the total “pure” expenditure budget, namely that did not include the burden of energy subsidies and debt interest payments;
- g. whereas based on the educational budget percentage calculation approach as described in letter f, the Government is of the opinion that the provisions of the Constitution have been complied with. By such calculation method, the total expenditure budget minus energy subsidies and debt interest payments was Rp 707.6 trillion. The total educational budget is Rp 154.2 trillion, so that the percentage of the educational budget is Rp 154.2 trillion divided by Rp707.6 trillion, namely in the amount of 21.8% (twenty-one point eight percent);
- h. whereas according to the Government, by considering the circumstances as described in letters a to d as well as the method of the educational budget calculation as described in letter e to g above, the educational budget in the Revised 2008 State Revenues and Expenditures Budget Law is conditionally constitutional

Opinion of the Court

[3.13] Considering whereas before passing of this decision, since 2005 the Court has had examined, heard, and decided upon petitions for judicial review of State Revenues and Expenditures Budget Laws (APBN) as intended in

Decisions Number 012/PUU-III/2005, Number 026/PUU-III/2005, Number 026/PUU-IV/2006, and Number 24/PUU-V/2007. Therefore, before considering further the principal issue of the a quo petition, the Court considers the importance to remind again the lawmakers, in casu the People's Legislative Assembly and the President, with respect to the Court's considerations in those four decisions as follows:

- a. Decision Number 012/PUU-III/2005 pronounced on October 19, 2005, namely decision on the judicial review of Law Number 36 Year 2004 regarding the 2005 State Budget. Although this decision declares the petition cannot be accepted (*niet ontvankelijk verklaard*), but the reason is solely because if the petition is granted the Petitioners will be further impaired, as affirmed in the legal considerations of the intended decision declaring among other things as follows, "The Court is of the opinion that the petition of the Petitioners is grounded, but if the Court declares to grant the petition, based on Article 23 Paragraph (3) of the 1945 Constitution, the State Revenues and Expenditures Budget of previous year will be applied. It is impossible to apply this on the *a quo* petition, because it will cause *governmental disaster* in the state financial administration, which can cause legal uncertainty (*rechtsonzekerheid*) and the impact will be even worse if the amount of the educational budget of the previous State Revenues and Expenditures Budget is smaller." The other part of the decision also states as follows, "If the value or nominal

amount of educational budget in the previous year is evidently smaller than the current budget, and that if the petition is granted, the Petitioners and all citizens who share a common interest with the Petitioners will be even more harmed." (*vide* Decision Number 012/PUU-III/ 2005, p. 62).

However, it is important to note that in this regard, although the Court stated the petition cannot be accepted, its legal considerations in the decision affirmed, "The allocation of education budget in the State Budget Law which is less than 20 percent is contradictory to the provisions of Article 31 Paragraph (4) of the 1945 Constitution ... "(*vide* Decision Number 012/PUU-III/2005 p. 61). In other words, the Court has reminded the lawmakers that the fulfillment of the requirements of the educational budget of at least 20% of the State Revenues and Expenditures Budget is mandatory and, as a consequence, violation of such obligation constitutes a violation of the 1945 Constitution;

- b. In its Decision Number 026/PUU-III/2005 pronounced on March 22, 2006, namely decision on judicial review of Law Number 13 Year 2005 regarding the 2006 State Revenues and Expenditures Budget, the decision of which declares to grant the petition partly, the Court reaffirms its standpoint as follows, "... insofar as the educational budget has not reached the percentage of 20% (twenty percent) as provided for in Article 31 Paragraph (4) of the 1945 Constitution, such State Revenues and Expenditures Budget will always be contradictory to the 1945 Constitution.

- However, in the implementation, the Court will consider the legal effects separately through a careful assessment of the whole national and global economic condition or the basis of choice of policy taken by the Government and the People's Legislative Assembly in the related Budget Year"; (vide Decision Number 026/PUU-III/2005, p. 86). In other part of legal consideration of the aforementioned decision, the Court confirms as follows: "To avoid governmental obstruction and disaster, this Court Decision only provides legal effects towards the unconstitutionality of the educational budget to a limited extent, namely concerning the highest limit, and not to the whole State Budget Law. It means that the State Budget Law is still legally binding and can be implemented as the legal basis for the implementation of the State Revenues and Expenditures Budget pursuant to the *a quo* Law with the obligation of the Government and the People's Legislative Assembly to allocate the excess of funds obtained from the results of saving of state expenditures and/or results of revenues increase in the educational budget in the Revised 2006 State Revenues and Expenditures Budget",
- c. In its Decision Number 026/PUU-IV/2006 pronounced on May 1, 2007, namely decision on judicial review of Law Number 18 Year 2006 regarding the 2007 State Revenues and Expenditures Budget, the decision of which grants the petition in its entirety (*in casu*, insofar as it relates to the educational budget as much as 11.8% as the top threshold), the Court affirms in its considerations as follows, "Considering whereas in its relation

to the review of the State Budget Law, due to the lower percentage than that which is mandated in Article 31 Paragraph (4) of the 1945 Constitution, the Court is of the opinion that the percentage value of the educational budget relative to the State Revenues and Expenditures Budget is a fact that requires no substantiation, however a matter which remains necessary to be decided upon by the Court is the consequences of such existing facts. The 1945 Constitution and the Constitutional Court Law grant the authority for the Court to declare a law contrary to the 1945 Constitution as not having any binding legal effect. Despite the applicability of such authority in the previous two cases in relation to the percentage of the educational budget, in passing its decision, the Court considers various aspects that may result from the decision. The Decision of the Court in Case Number 026/PUU-III/2005 was a proportional alternative considering the legal consequences that will occur. The existence of such decision still opens up the opportunity for the authorities preparing the State Revenues and Expenditures Budget to increase the percentage of the educational budget through the mechanism of the Amended State Revenues and Expenditures Budget by means of legislative review". (*vide* Decision umber 026/PUU-IV/2006, p. 94). At the other part of the legal consideration of such decision, the Court reminds as follows: "Considering whereas it is an undisputed fact that the amount of the educational budget set forth in the annual State Revenues and Expenditures Budget from the 2004 State Budget to the 2007 State

- Budget has not yet reached a minimum of 20% as intended by Article 31 Paragraph (4) of the 1945 Constitution. The Court is of the opinion that this is due to the fact that the Government and the People's Legislative Assembly have not yet made an optimal effort to increase the educational budget in the interest of fulfilling the mandate of the constitution. Hence, in view of the imperative nature of Article 31 Paragraph (4) of the 1945 Constitution, the Court as the guardian of the constitution has to remind that the minimum 20% portion for educational budget in the State Revenues and Expenditures Budget must be prioritized and seriously realized to keep the Court from declaring the entire State Revenues and Expenditures Budget set forth in the State Budget Law as not having any binding legal effect due to the fact that a portion in the Law of the State Revenues and Expenditures Budget namely the educational budget is contradictory to the 1945 Constitution;
- d. In its Decision Number 026/PUU-IV/2006 pronounced on May 1, 2007, namely decision on the judicial review of Law Number 20 Year 2003 regarding the National Education System and Law Number 18 Year 2006 regarding the 2007 State Budget, the decision of which grants the petition in its part, the Court declares in its legal considerations among other things as follows, "Whereas the inclusion of the element of salaries for educational staff in the calculation of educational budget facilitates the Government and the People's Legislative Assembly to exercise their obligation to fulfill the educational budget of at least 20% (twenty percent)

in the State Budget. Therefore, this Decision of the Court provide no reasons for the Government and the People's Legislative Assembly to fulfill the provisions regarding educational budget of at least 20%, either in the State Revenues and Expenditures Budget or the Regional Revenues and Expenditures Budgets for all provinces, regencies and municipalities in Indonesia in accordance with the provisions of Article 31 Paragraph (4) of the 1945 Constitution..." (*vide* Decision Number 026/PUU-IV/2006, p. 95).

[3.14] Considering whereas, with four decisions of the Court, as described in paragraph **[3.13]** letters a up to d above, there are sufficient reasons for the Court to assess that there is intention of the regulator to violate the 1945 Constitution. On one hand, this situation will affect the development of attitudes to neglect the obligation to obey and respect the Constitution as the highest legal norm in the state of law and, on the other hand, the attitude is also a stimulus or encouragement for regions (province, regency/municipality) not to prioritize educational budget of at least 20% in their Regional Revenues and Expenditures Budgets as ordered by the Constitution. Therefore, the negligence to obey and respect the Constitution, shall automatically a reduction of meaning that Indonesia is a constitutional state, as affirmed by Article 1, Paragraph (3) of the 1945 Constitution, and even without being aware or not, is delegitimation of the constitution as the highest law;

[3.15] Considering whereas the Court can understand the method for the calculation of the percentage of educational budget, as explained by the Government as described in Sub-Paragraph **[3.12.2]**. However, even such calculation appears fair and reasonable, it was not the method used to calculate the percentage of educational budget in the Revised 2008 State Revenues and Expenditures Budget, so that it has theoretical value which can still be debated in relation to the academic aspect. Moreover, if such method is only applied to the calculation of the percentage of educational budget., the Court cannot accept it as a method for the calculation of the percentage of educational budget having legal value in the a quo petition, so that it should be disregarded in the assessment to consider the constitutionality of educational budget in the Revised 2008 State Revenues and Expenditures Budget. The calculation in the Revised 2008 State Revenues and Expenditures Budget, as well as previous State Budgets, does not use the method as described by the Government above. If the law maker intends to use such method as a method having legal value in proving the constitutionality of the calculation of the percentage of the educational budget in the State Budget Law, the law maker should declare it clearly in the law and apply it to all state expenses or expenditures items in the State Budget. However, it is not necessarily eliminate the rights of the parties who deem that their constitutional rights are impaired, due to the coming into effect of legal norms which adopt such calculation method, to file judicial review of the constitutionality of the legal norms to the Court;

[3.16] Considering whereas insofar as Constitution still requires to give priority to the educational budget by 20% of the State Revenues and Expenditures Budget and the Regional Revenues and Expenditures Budget, regardless the calculation method thereof, then the Court - as the guardian of the 1945 Constitution – must state a norm of law is contradictory to the 1945 Constitution if the norm of such law ignores the intended obligation. By careful examination of the legal considerations of four Court's decisions in the judicial law of the previous State Revenues and Expenditures Budget, as described in paragraph **[3.13]** above, the Court is of the opinion that it has provided sufficient opportunity for the rule maker to formulate law that guarantee the compliance with the provisions of the 1945 Constitution concerning the educational budget. Therefore, to enforce the authority of the Constitution as the highest law in accordance with the principles of constitutionality in the constitutional state, as referred to in Article 1, Paragraph (3) of the 1945 Constitution, the Court must declare all provisions of the Law on the Revised 2008 State Revenues and Expenditures Budget regarding the educational budget are contradictory to the 1945 Constitution. As a result of non-fulfillment of the calculation of educational budget by at least 20% of the State Budget, the calculation of the entire budget in Law on the Revised 2008 State Revenues and Expenditures Budget becomes unconstitutional. However, the obligation to consider all aspects of the state interests, causes the Court to remain consider the risk of disruption in the state financial administration, so that the legal consequences of the contradiction of the provisions of the Law on the Revised 2008 State Revenues and Expenditures

Budget to the 1945 Constitution, namely the lack of legally binding of legal provisions concerned, shall not automatically be declared as coming into force as of its pronouncement but until the formulation of new State Budget Law for fiscal year 2009. If the educational budget in the new State Budget Law does not reach a minimum amount of 20% of the State Revenues and Expenditures Budget and Regional Revenues and Expenditures Budget, the Court shall sufficiently refer to this decision to prove the unconstitutionality of the provisions of the intended law. To encourage all regions (provinces, regencies/municipalities) to prioritize the educational budget of at least 20% in its Regional Revenues and Expenditures Budget, and prevent the reduction of the meaning of Indonesia as a constitutional state, as well as avoid the occurrence of delegitimation against the constitution as the supreme law, the Court should again remind the law maker to meet its constitutional obligations to provide at least 20% educational budget at the latest in the State Budget Law for Fiscal Year 2009.

4. CONCLUSION

Based on all aforementioned considerations of the facts and law, it can be concluded:

[4.1] Whereas the method for the calculation of the percentage of the educational budget explained by the Government, namely the ratio of educational budget to total state budget (which has been reduced by the budget for the energy subsidy expenses and loan interest payment) is not the calculation method adopted by the

Revised 2008 State Revenues and Expenditures Budget Law, so it does not have legal value as evidence to consider the constitutionality of the educational budget in the Revised 2008 State Revenues and Expenditures Budget Law and therefore it must be disregarded;

[4.2] Whereas it is evident that the educational budget in the Revised 2008 State Revenues and Expenditures Budget Law is only 15.6%, so it is not in compliance with the constitutional provisions of at least 20% of the state revenues and expenditures budget. Thus, the Revised 2008 State Revenues and Expenditures Budget Law is contradictory to the 1945 Constitution, therefore Petitioners' petition is grounded;

[4.3] Whereas despite the fact that Revised 2008 State Revenues and Expenditures Budget Law is contradictory to the 1945 Constitution, to avoid the risk of disruption in the state financial administration, the Revised 2008 State Revenues and Expenditures Budget Law shall be declared to remain applicable up to the enactment of the State Revenues and Expenditures Budget Law for Fiscal Year 2009.

5. DECISION

In view of Article 56 Paragraphs (2) and (3), Article 57 Paragraphs (1) and (3) 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), therefore based on the 1945 Constitution of the State of the Republic of Indonesia,

Passing the Decision,

To declare that the Petitioners' petition is granted;

To declare that Law Number 16 Year 2008 regarding the Amendments to Law Number 45 Year 2007 regarding the State Revenues and Expenditures Budget for Fiscal Year 2008 (State Gazette of the Republic of Indonesia Year 2008 Number 63, Supplement to the State Gazette of the Republic of Indonesia Number 4848) is contradictory to the 1945 Constitution of the State of the Republic of Indonesia;

To declare that Law Number 16 Year 2008 regarding the Amendments to Law Number 45 Year 2007 regarding the State Revenues and Expenditures Budget for Fiscal Year 2008 (State Gazette of the Republic of Indonesia Year 2008 Number 63, Supplement to the State Gazette of the Republic of Indonesia Number 4848) shall remain applicable up to the enactment of Law on the State Revenues and Expenditures Budget for Fiscal Year 2009.

To order the proper promulgation of this Decision in the Official Gazette of the Republic of Indonesia;

Hence this decision was passed in the Consultative Meeting of Constitutional Court Justices attended by nine Constitutional Court Justices on Monday, the eleventh of August two thousand and eight, and pronounced in the Plenary Meeting of the Constitutional Court open for public held today, Wednesday, the thirtieth of August two thousand and eight, by us Jimly Asshiddiqie, as the Chairperson and concurrent Member, I Dewa Gede Palguna, H. Harjono, Moh. Mahfud MD, H.A.S. Natabaya, H. Abdul Mukthie Fadjar, Maruarar Siahaan, HM. Arsyad Sanusi, and Muhammad Alim, respectively as Members, assisted by Ida Ria Tambunan as the Substitute Registrar, as well as in the presence of the Petitioners and their Attorney-in-Fact, the People's Legislative Assembly or its representative, and the Government or its representative.

CHIEF JUSTICE,

sgd.

Jimly Asshiddiqie

JUSTICES,

sgd.

I Dewa Gede Palguna

sgd.

sgd.

H. Harjono

sgd.

Moh. Mahfud MD

H. Abdul Mukthie Fadjar

sgd.

sgd.

H.A.S. Natabaya

Maruarar Siahaan

sgd.

sgd.

Muhammad Alim

HM. Arsyad Sanusi

SUBSTITUTE REGISTRAR,

sgd.

Ida Ria Tambunan