



## DECISION

Number 026/PUU-IV/2006

**FOR THE SAKE OF JUSTICE UNDER THE ONE AND ALMIGHTY GOD**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA**

Examining, hearing and deciding upon constitutional cases at the first and final level, has passed a Decision in the case of petition for judicial review of the Law of the Republic of Indonesia Number 18 Year 2006 regarding the State Revenues and Expenditures Budget Year 2007 against the 1945 Constitution of the Republic of Indonesia, filed by:

1. **Executive Board (PB) of the Indonesian Teachers Association (PGRI)**, in this respect represented by its General Chief Prof. DR. H. Mohamad Surya and PB PGRI Chief H.M. Rusli Yunus with their address at Jalan Tanah Abang III Number 24 Central Jakarta. Telephone: 021–3841121 and 021–3849856., Fax. 021–3446504;
2. **Santi Suprihatin**, Indonesian citizen, with her occupation as a housewife and her address at Jalan Mundu Dalam Tengah Number 20, Lagoa Sub-district, Koja District, North Jakarta;
3. **Abdul Rosid**, Indonesian citizen, with his occupation as a Koran Recitation Teacher and his address at Jalan Sawah Baru Number 14, RT 007/RW 011, Rawa Badak Subdistrict, Koja District, North Jakarta;

4. **Sumarni**, Indonesian citizen, with her occupation as a housewife and her address at Jalan Sawah Baru Number 14, RT 007/RW 011, Rawa Badak Subdistrict, Koja District, North Jakarta;
5. **Zulkifli**, Indonesian citizen, with his occupation as a private employee and his address at Jalan Pembangunan III, RT 010/RW 003, Rawa Badak Subdistrict, Koja District, North Jakarta;

Based on the Special Powers of Attorney dated December 4, 2006 and December 5, 2006, the aforementioned persons have authorized Dr. A. Muhammad Asrun, S.H., M.H., Abdul Ficar Hadjar, S.H., M.H., and Mohammad Yusuf, S.H., respectively all as Advocates united in the ADVOCATION TEAM FOR EDUCATIONAL BUDGET, acting for and on behalf of the Petitioners, with their address at Muhammad Asrun and Partners (MAP) Law Firm at Jalan Tanah Abang III Number 24 Central Jakarta. Telephone 021– 70333390 and Fax: 021–3867842;

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

Having read the petition of the Petitioners;

Having heard the statement and read the written conclusion of the Petitioners;

Having heard and read the statement and written conclusion of the Government, and additional statement to the written conclusion dated April 27, 2007;

Having heard and read the written statement from People's Legislative Assembly;

Having examined the evidence;

### **LEGAL CONSIDERATIONS**

Considering whereas the purpose and objective of the petition of the Petitioners are as described above;

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 petition filed by the Petitioners;
2. Whether the Petitioners have the legal standing in filing the *a quo* petition;

### **AUTHORITY OF THE COURT**

Considering whereas based on the provision of Article 24C Paragraph (1) of the 1945 Constitution of the State of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), 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. The matter is further elaborated in Article 10 Paragraph (1) of the Law of the Republic of Indonesia 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), *juncto* Article 12 Paragraph (1) of the Law of the Republic of Indonesia Number 4 Year 2004 regarding Judicial Power (State Gazette of the Republic of Indonesia Year 2004 Number 8, Supplement to the State Gazette of the Republic of Indonesia Number 4358);

Considering whereas the Petitioners have filed a petition for the review of the Law of the Republic of Indonesia Number 18 Year 2006 regarding the State Revenues and Expenditures Budget for Fiscal Year 2007 (State Gazette of the Republic of Indonesia Year 2006, Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4662), (hereinafter referred to as the 2007 State Budget Law). In Decision Number 026/PUU- III/2005, the Court is of the opinion that the Law regarding State Revenues and Expenditures Budget is covered by the definition of law as intended in Article 24C of the 1945 Constitution and therefore the Court has the authority in reviewing the State Budget Law. With reference to the opinion of the Court, the Court shall therefore have the authority in reviewing the 2007 State Budget Law.

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

Considering whereas in the Decision Number 026/PUU-III/2005 the Court has granted a legal standing to the Indonesian Teachers Association (PGRI) with its qualification as an individual or a group of individuals as intended in Article 51

of the Constitutional Court Law to file a petition for judicial review of Law Number 13 Year 2005 concerning the State Revenues and Expenditures Budget for Fiscal Year 2006 as considered contrary to Article 31 of the 1945 Constitution, and therefore in the *a quo* petition, the Court is of the opinion that PGRI still has a legal standing to file the petition for judicial review of the 2007 State Budget Law.

Considering whereas towards the remaining Petitioners, namely: Santi Suprihatin, Abdul Rosid, Sumarni, Zulkifli, the Court is of the opinion that the Petitioners qualify as individuals or a group of individuals as intended in Article 51 of the Constitutional Court Law that have constitutional rights in the area of education as intended in Article 31 of the 1945 Constitution; therefore, a legal standing must be granted for the Petitioners.

Considering whereas one Constitutional Justice is of the opinion that the Petitioners do not suffer from any direct losses in accordance with Article 51 of the Constitutional Court Law. The 2007 State Budget Law is exclusive of the understanding of the Law in its material sense (*wet in materiele zin*) but rather in the understanding of the Law in its formal sense (*wet in formele zin*) and therefore is not publicly binding. Therefore the Petitioners do not have a legal standing, meanwhile another Constitutional Justice is of the opinion that the element of teachers' salary should have been included in the calculation method of the educational budget since it is related to the legal standing of a teacher or educator in the petition for judicial review of the *a quo* law;

## **PRINCIPAL ISSUE OF THE PETITION**

Considering whereas in their petition, the Petitioners request the Court to decide that the 2007 State Budget Law insofar as it is related to the educational budget of 11.8% (eleven point eight percent) as the top threshold is contrary to Article 31 Paragraph (4) of the 1945 Constitution and therefore must be declared as not having any binding legal effect.

Considering whereas the Court has previously decided upon a judicial review case of a law against the 1945 Constitution in relation to the percentage of educational budget in the Law of the Republic of Indonesia Number 13 Year 2005 regarding State Revenues and Expenditures Budget for Fiscal Year 2006 (hereinafter referred to as the 2006 State Budget Law) against Article 31 Paragraph (4) of the 1945 Constitution, namely in Case Number 012/PUU-III/2005 and Case Number 026/PUU-III/2005. In the aforementioned two cases, the Court has applied the formula approved by the People's Legislative Assembly and the President to decide upon the element of educational budget intended in Article 31 Paragraph (4) of the 1945 Constitution as stated in Article 49 of the Law of the Republic of Indonesia Number 20 Year 2003 regarding National Education System (hereinafter referred to as the National Education Law) consisting of the fund for education aside from educators' salary and service education expenses. The formula was backgrounded by a desire for the constitutional provision to be implemented well because if the formula is then included with the elements of educators' salary and service education expenses,

it will result in a considerably large amount of educational budget up to nearly a total of 20%, however such calculation does not significantly and directly contribute to improve the national education sector.

Considering whereas the Court has also decided upon Case Number 011/PUU-III/2005 which ruled that the Elucidation of Article 49 Paragraph (1) of the National Education Law as not having any binding legal effect because it contains a new norm which is different from that of Article 49 Paragraph (1). The decision of the Court upon the Elucidation of Article 49 Paragraph (1) of the National Education Law was subsequently be made as a basis by the Court to decide upon the petition of Case Number 012/PUU-III/2005 and Case Number 026/PUU-III/2005 in relation to the matter of the percentage of the education budget in the 2005 State Budget Law and the 2006 State Budget Law. With such decisions, the 20% allocation for the national education budget cannot be implemented in stages but must be fulfilled instead for every fiscal year;

Considering whereas in the decision of the previous case, the Court in its legal considerations declared that to be said as in contrary to the 1945 Constitution, a matter does not have to be in conflict with or diametrically opposite to the 1945 Constitution; it can be that the matter is inconsistent or not in conformity with the 1945 Constitution. The allocated fund for education budget less than 20% is contrary to the 1945 Constitution, but the Court does not immediately declare in its decision that the 2005 State Budget Law and the 2006

State Budget Law do not have binding legal effect due to special considerations as declared in the considerations of the decision of the case;

Considering whereas the statement of claims (*petitum*) of the *a quo* petition filed by the Petitioners is in essence similar to the rulings of the Court upon the case Number 026/PUU-III/2005. In the court examination of the *a quo* case, the Court has not encountered different matters from that of the case Number 026/PUU-III/2005 except for the increase in the percentage of educational budget for year 2007 to become 11.8% or a total of Rp.54.067.138.418.000,- obtained from the total amount of the 2007 State Budget.

Considering whereas the Government, in its statement presented in the court dated February 13, 2007 by the Directorate General of Budget for the Department of Finance, stated that the drafting of State Revenues and Expenditures Budget for Fiscal Year 2007 was conducted by balancing various needs for national purposes with the funding capacity of the state. The Government has been attempting to significantly increase the budget allocation for educational functions annually, and has also been attempting to increase the budget for educational functions by applying the mechanism of the Amended State Revenues and Expenditures Budget;

Considering whereas the Government in the court hearing dated March 7, 2007 represented by the State Minister for Developmental Planning (BAPPENAS) stated that basically the Government has a strong commitment in



providing the educational budget in accordance with the mandate of the constitution, and considered it is necessary to have a joint discussion between the Government, the People's Legislative Assembly and other stakeholders including PGRI, in order to review various laws related to the educational budget. The joint discussion is expected to formulate strategies and stages in fulfilling the twenty percent amount for educational based on the consideration of the financial capacity of the state and comprehensive consideration of the development as needed in other sectors under the responsibility of the Government.

Considering whereas in its statement dated February 14, 2007, the Government requested the Court to decide that, in essence, Law Number 18 Year 2006 regarding 2007 State Revenues and Expenditures Budget still has legal effect and remains applicable in the entire territory of the Unitary State of the Republic of Indonesia.

Considering whereas in Case Decision Number 026/PUU-III/2005, the Court has established a method of calculating the percentage of the educational budget according to the agreement reached in a discussion on budgetary issue between the Government and the People's Legislative Assembly. The calculation method is applied by adding up the budget to the budget quota for the Department of National Education subtracted by teachers/lecturers' salary and the budget quota for the Department of Religious Affairs subtracted by the service educational budget and divided by Central Government Expenditures Budget (ABP);

Considering whereas the Concluding Opinion of the Government dated March 21, 2007 in Table 2, the eleventh Alternative to the Educational Budget Ratio for Fiscal Year 2007 is in accordance with the alternative in Case Decision Number 026/PUU-III/2005. In the Table proposed by the Government, the 2007 educational budget is written as having the percentage of 18.7%, hence the percentage conforms to the calculation made by the Petitioners;

Considering whereas towards the possible recurrence of similar petitions in the future in relation to the percentage of educational budget in the State Revenues and Expenditures Budget being incompatible with Article 31 Paragraph (4) of the 1945 Constitution, it is necessary for the Court to declare its opinion as follows. The Decisions for Case Number 012/PUU-III/2005 and Case Number 026/PUU-III/2005 are, in essence, related to: (1) the establishment of the elements of educational budget as intended in Article 31 Paragraph (4) of the 1945 Constitution, (2) subsequent to the establishment of the elements of educational budget, hence the calculation of its percentage relative to the total State Revenues and Expenditures Budget can be made, (3) the establishment whether the percentage of educational budget being under 20% of the total State Revenues and Expenditures Budget is contrary to the 1945 Constitution. In both Decisions, the Court had declared its opinion, that the elements of educational budget are as decided by the President and the People's Legislative Assembly and as included in Article 49 Paragraph (1) the Law of the Republic of Indonesia Number 20 Year 2003 regarding the National Education System (the National

Education Law). Such a Court stand is unrelated to the inclusion of educators' salary as a part of the educational budget. Therefore, if the Government is of the opinion as intended in the additional statement dated April 27, 2007, that the element of educators' salary is a part of the educational budget calculation, it can only be conducted by firstly modifying the calculation formula based on the provision of Article 49 Paragraph (1) of the National Education Law which states, "*Educational fund aside from educators' salary and service education expenses is allocated at least 20% of the State Revenues and Expenditures Budget in educational sector and at least 20% of the Regional Revenues and Expenditures Budget*";

Considering whereas with respect to the additional written statement from the Government dated April 27, 2007 requesting that ***the Court shall base the calculation on the provisions regulated in Laws inferior to the 1945 Constitution (such as the National Education Law) since the review of the State Budget Law is conducted against the 1945 Constitution***, the Court needs to affirm that the formula to calculate the abovementioned educational budget is not decided by the Court, but is instead by the agreement between the Government and the People's Legislative Assembly in elaborating the provision in Article 31 Paragraph (4) of the 1945 Constitution as stated in Article 49 Paragraph (1) of the National Education Law. Hence, insofar as the provision in Article 49 Paragraph (1) is not yet amended, the provision remains applicable and publicly binding, including to the Government, the People's Legislative Assembly, and the Court themselves;

Considering whereas one Constitutional Court Justice in accordance to his Dissenting Opinion in the Decision of the Constitutional Court Number 026/PUU-III/2005, is of the opinion that the 2007 State Budget Law is not against Article 31 Paragraph (4) of the 1945 Constitution since the percentage of the Educational Budget in the 2007 State Budget is higher than that of the 2006 State Budget. However, since he is legally bound and must abide by the Decision of the Constitutional Court Number 026/PUU-III/2005, the Constitutional Court Justice does not express a Dissenting Opinion in this Decision;

Considering whereas based on the abovementioned Court Decisions the method for calculating the percentage of the educational budget has been clearly stated and insofar as it remains under 20%, it is contrary to the 1945 Constitution for sure. Hence, insofar as there remains no amendment to the educational budget elements as stated in Article 49 Paragraph (1) of the National Education Law and in the event that similar petitions being filed to the Court, hence the Court will apply the same calculation method or in other words, the Court has established a fixed and standard calculation formula based on Article 49 Paragraph (1) of the National Education Law. With the standard calculation formula, every individual is able to personally calculate the accurate and definite percentage of the educational budget since it is derived from an equally definite calculation, which is from the value or the total amount set forth in the State Revenues and Expenditures Budget. Hence the definite calculation to obtain the percentage of educational budget resulted from a mathematical and fixed

calculation the results of which can be accepted as an indisputable fact to which every individual has access and which can be perused whether it remains under 20%. Hence, such a matter, in the opinion of the Court, has to be deemed as a fact that requires no substantiation;

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 the State Revenues and Expenditures Budget by means of legislative review. The State Revenues and Expenditures Budget in the form of a law has different characteristics from laws in general. In laws in general, the statement of “not having any binding legal

effect” in a Decision of the Court is automatically applicable because the provision being reviewed cannot be directly used as a legal basis once the Decision is pronounced. It is a different issue with the State Budget Law that has greater legal consequences. In the case of laws in general, returning to a constitutional situation or abiding by the 1945 Constitution can generally be done only by declaring that a certain law does not have any binding legal effect. However, it is not the case with the State Budget Law because in order to conform to the mandate of the 1945 Constitution, the authorities preparing the State Revenues and Expenditures Budget must undertake activities to amend the State Revenues and Expenditures. The Court is not granted with the authority to force the authorities preparing the State Revenues and Expenditures Budget to make any amendment, however with the decision of the Court, the authorities preparing the State Revenues and Expenditures Budget should be encouraged to make amendments and, in this way, implement the mandate of the 1945 Constitution. The stakeholders have a significant role to encourage the authorities preparing the State Revenues and Expenditures Budget to make amendments thereto due to the decision of the Court. The status of the Constitutional Court as the guardian of the constitution must be interpreted in its legal sense, which means that it has to be done in steps and is restricted by law, mainly the 1945 Constitution. In a democratic system, stakeholders have a great opportunity to participate in decision-making, especially to enforce decisions mandated by the constitution. This means that the mandate of the constitution can be democratically implemented through representative bodies in the form of

legislative review;

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 2005 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 a portion in the Law of the State Revenues and Expenditures Budget namely the educational budget being contrary to the 1945 Constitution;

Considering whereas based on the abovementioned considerations, the Court concludes that the petition filed by the Petitioners is sufficiently grounded and therefore must be granted.

In view of Article 56 Paragraph (2) and Paragraph (3), Article 57 Paragraph (1) and Paragraph (3) of the Law of the Republic of Indonesia Number 24 Year 2003 regarding the Constitutional Court (State Gazette of the Republic

of Indonesia Number 98, Supplement to the State Gazette of the Republic of Indonesia Number 4316);

### **PASSING THE DECISION**

- To grant the Petitioner's petition in its entirety;
- To declare the Law of the Republic of Indonesia Number 18 Year 2006 regarding the State Revenues and Expenditures Budget for Fiscal Year 2007 (State Gazette of the Republic of Indonesia Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4662) **insofar as it relates to the educational budget as much as 11.8% (eleven point eight percent) as the top threshold contrary to the 1945 Constitution of the State of the Republic of Indonesia;**
- To declare Law Number 18 Year 2006 regarding the State Revenues and Expenditures Budget for Fiscal Year 2007 (State Gazette of the Republic of Indonesia Number 94, Supplement to the State Gazette of the Republic of Indonesia Number 4662) **insofar as it relates to the educational budget as much as 11.8% (eleven point eight percent) as the top threshold as having no binding legal effect;**
- 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 on Monday, April 30, 2007 and pronounced in the



Plenary Meeting of the Constitutional Court open for public held today, Tuesday, May 1, 2007, attended by nine Constitutional Court Justices, Jimly Asshiddiqie, as the Chairperson and concurrent Member, Maruarar Siahaan, H. Harjono, I Dewa Gede Palguna, Soedarsono, H.M. Laica Marzuki, H. Abdul Mukthie Fadjar, and H. Achmad Roestandi respectively as Members, assisted by Cholidin Nasir as the Substitute Registrar, as well as in the presence of the Petitioners/their Attorney-in-Fact, the Government or its representative, and the People's Legislative Assembly or its representative.

**CHIEF JUSTICE,**

**SGD.**

**Jimly Asshiddiqie**

**JUSTICES**

**SGD.**

**Maruarar Siahaan  
SGD.**

**I Dewa Gede Palguna  
SGD.**

**H.M. Laica Marzuki  
SGD.**

**H. Abdul Mukthie Fadjar**

**SGD.**

**H. Harjono  
SGD.**

**Soedarsono  
SGD.**

**H.A.S. Natabaya  
SGD.**

**H. Achmad Roestandi**

**SUBSTITUTE REGISTRAR**

**SGD.**

**Cholidin Nasir**

