



DECISION

Number 026/PUU-III/2005

FOR THE SAKE OF JUSTICE UNDER THE ONE 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 13 Year 2005 on the State Revenues and Expenditures Budget of Budget Year 2006 (hereinafter referred to as the APBN Law) against the 1945 Constitution of the State of Republic of Indonesia (hereinafter referred to as the 1945 Constitution), filed by:

1. **Executive Board of the Indonesian Teachers' Association**, in this matter represented by the Chairperson of PB PGRI H.M. Rusli Yunus, with its address at Jl. Tanah Abang III No. 24 Central Jakarta. Telephone 021 – 3841121 and 021 – 3849856, Fax. 021 – 3446504, hereinafter referred to as **Petitioner I**;
2. **Administrators of Indonesian Education Scholars' Association (ISPI)** in this matter represented by its chairperson Prof. Dr. H. Soedijarto, MS. MA., Indonesian Citizen, with its address at Pejaten Raya Block A.1 No. 32 South Jakarta 12510, hereinafter referred to as **Petitioner II**;

3. **World's Conscience Foundation (*Yayasan Nurani Dunia*)**, in this matter represented by its General Chairperson, *Imam Budi Darmawan Prasodjo*, Indonesian Citizen, with its address at Jl. Proklamasi No. 37 Central Jakarta, hereinafter referred to as **Petitioner III**;

4. **M. Arif Pribadi Prasodjo**, in his capacity as Community Development Coordinator of *Yayasan Nurani Dunia*, Indonesian Citizen, with its address at Jl. Proklamasi No. 37 Central Jakarta, hereinafter referred to as **Petitioner IV**;

5. Name : **Drs. Oeng Rosliana**

Place/date of birth : Ciamis, 21 – 03 – 1962

Religion : Islam

Occupation : Teacher

Citizenship : Indonesian

Full Address : Jl. Pajajaran No. 49 Ciceri Peruni, Serang
Banten.

6. Name : **Muhammad Sibromulisi, S.Pd.**

Date/date of birth : Serang, 03 – 05 – 1950

Religion : Islam

Occupation : Civil Servant

Citizenship : Indonesian

- Full Address : Komp. Kejaksaan II No. 37 RT.02/RW.09
Cipare Sub-district, Serang District, Serang –
Banten.
7. Name : **Drs. M. Aang Djuanda**
- Date/date of birth : Majalengka, 04 – 01 – 1949
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Mawar VIII H3-14 RT.02/RW.07 Sangiang
Jaya Sub-district, Periuk Kota District,
Tangerang – Banten.
8. Name : **H. Sahiri Hermawan, SH.**
- Date/date of birth : Jakarta, 08 – 11 - 1931
- Religion : Islam
- Occupation : Teacher / Lecturer
- Citizenship : Indonesian
- Full Address : Jl. Cijerah 124 RT.006/RW.03 Cijerah Sub-
district, Bandung Kulon District – Bandung.
9. Name : **Drs. H. K. Edi Permadi, MM.Pd.**
- Date/date of birth : Tasikmalaya, 10 – 06 – 1946
- Religion : Islam
- Occupation : Civil Servant

- Citizenship : Indonesian
- Full Address : Kp. Sukamulya RT.04/Rw.13, Cinunuk Village,
Cileunyi Distrct– Bandung.
10. Name : **Drs. Introko**
- Date/date of birth : Sleman, 01 – 12 – 1959
- Religion : Islam
- Occupation : Teacher
- Citizenship : Indonesian
- Full Address : Kragilan RT.06/RW.09, Sinduadi Sub-district,
Mlati Sleman District.
11. Name : **Drs. Soenarko**
- Date/date of birth : Pati, 07 - 1948
- Religion : Islam
- Occupation : Teacher / Civil Servant
- Citizenship : Indonesian
- Full Address : Jatimulyo Baru B.12 RT.025/RW.06, Kricak
Sub-district, Tegalrejo District – Yogyakarta.
12. Name : **Drs. Rustopo, SH.**
- Date/date of birth : Brebes, 09 – 03 – 1946
- Religion : —
- Occupation : Lecturer
- Citizenship : Indonesian

- Full Address : Jl. Menoreh Utara XII / 16 RT.05/RW.01
Semarang.
13. Name : **Dra. Sri Suciati**
- Date/date of birth : Magelang, March 16, 1965
- Religion : Islam
- Occupation : Lecturer
- Citizenship : Indonesian
- Full Address : Jl. Wologito Utara No. 20 RT.03/RW.06,
Kembangarum Sub-district, Semarang Barat
District, Semarang.
14. Name : **Drs. H. Matadjit, MM.**
- Date/date of birth : Gresik, 15 – 08 - 1939
- Religion : Islam
- Occupation : Retired Civil Servant
- Citizenship : Indonesian
- Full Address : Kebraon III / 22 RT.003/RW.02, Kebraon Sub-
district, Karangpilang District – Surabaya.
15. Name : **Drs. H. Ichwan Sumadi**
- Date/date of birth : Trenggalek, October 1, 1946
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian

- Full Address : Rungkut Asli Utara 5 / 10 FL-15
16. Name : **Tjok Istri Mas Ningguwathini**
- Date/date of birth : Denpasar, 27 – 09 – 1953
- Religion : Hindu
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. WR. Supratman GG III/3, East Denpasar District, Denpasar – Bali.
17. Name : **Drs. I. GD Weten Aryasuda M.Pd.**
- Date/date of birth : Karang Asem, 31 – 12 – 1953
- Religion : Hindu
- Occupation : Lecturer
- Citizenship : Indonesian
- Full Address : Jl. Bisma No. 35, East Denpasar District, Denpasar – Bali.
18. Name : **Drs. Arsyad**
- Date/date of birth : Bima, 12 – 12 – 1958
- Religion : Islam
- Occupation : Teacher / Civil Servant
- Citizenship : Indonesian

- Full Address : Jl. Barntas No. 8 RT.08/RW.03 Tanjung Karang Sub-district, Ampengan District, Mataram NTB.
19. Name : **H. L. Muhammad Syubki S. Pd.**
- Date/date of birth : Sengkol, 17 – 07 – 1948
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Sengkol, Sengkol Village, Pujut District, Central Lombok Regency.
20. Name : **Drs. Octo Ouwpoly**
- Date/date of birth : Alor, 27 – 10 – 1954
- Religion : Christian
- Occupation : Lecturer
- Citizenship : Indonesian
- Full Address : Jl. Untung Surapati I B, RT.09/RW.05 Makoten Sub-district, Oebobo District, Kupang – NTT.
21. Name : **Octavianus P. Putyrulan**
- Date/date of birth : West Sumba, 27 – 10 – 1953
- Religion : Christian
- Occupation : Civil Servant
- Citizenship : Indonesian

- Full Address : Jl. Kian Kelaki, RT.17/RW.06, Bakunase Sub-district, Oebobo District, Kupang 85116.
22. Name : **Jusuf Hasan**
- Date/date of birth : Makian, 12 – 01 – 1951
- Religion : Islam
- Occupation : Teacher
- Citizenship : Indonesian
- Full Address : Gambesi Sub-District, RT.01/RW.01, Gambesi Sub-district, South Ternate District, North Maluku Province.
23. Name : **Drs. Gusrizal**
- Date/date of birth : Baserah, 01 – 08 – 1956
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Mahoni No. 180, RT.04/RW.06, East Sdm. Sub-district, Marpayan Damai Distrct, Pekanbaru
24. Name : **Drs. H. Mukhlis**
- Date/date of birth : Kampar, 01 – 05 – 1949
- Religion : Islam
- Occupation : Civil Servant

- Citizenship : Indonesian
- Full Address : Jln. Tongkol I No. 17 West Tangkepang, RT. 02/RW.01, West Tangkepang Sub-district, Bukit Raya District, Pekanbaru – Riau.
25. Name : **Effi Herman**
- Date/date of birth : Batang Hari, 30 – 05 – 1952
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Teluk Indah Complex No. 43, RT.02/RW.01, P. Sulu Sub-district, T. Pura District, Jambi
26. Name : **Drs. Letfariasmi**
- Date/date of birth : Solok, 13 – 04 – 1958
- Religion : Islam
- Occupation : Teacher
- Citizenship : Indonesian
- Full Address : Jl. Mandaliko No. 22, RT.01/RW.II, Kampung Baru Sub-district, Lubug Bagalung District, Padang
27. Name : **Drs. Maznitos**
- Date/date of birth : Solok, 18 – 08 – 1948
- Religion : Islam

- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Tanjung Indah II Block E/31, RT.04/RW.04
Kp. Lapai Sub-district, Nanggalo District,
Padang-West Sumatra
28. Name : **Drs. H. Ade Kiswaya, SH. MPd.**
- Date/date of birth : Ciamis, 10 – 05 – 1954
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Purnawirawan No. 39 Block. I
,RT.03/RW.02, Gunung Terang Sub-district,
West Tanjung Karang District, Bandar
Lampung
29. Name : **Ali Imron. M. SC.**
- Date/date of birth : Lampung, 07 – 07 – 1952
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Bahagia III Block.H.9 LK.II, RT.08/RW.03
Gunung terang Sub-district, West Tanjung
Karang District, Bandar Lampung

30. Name : **Lisnahayati**
- Date/date of birth : Tanjung Pura, 24 – 07 – 1959
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Pukat Gg. Bilal No. 24, RT.01/RW.17 Sub-district Bantan, Medan Tambung District, Medan
31. Name : **Abd. Latif**
- Date/date of birth : Medan, 17 – 08 – 1949
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Pukat Gg. Bilal No.4 LK. XV, East Bantan Timur Sub-district, Medan Tambung District, Medan
32. Name : **H. Zairin Rasul**
- Date/date of birth : Bengkulu Sel, 01 – 04 – 1948
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian

- Full Address : Jl. Mangga No.19, RT.17/RW.06, Lingkar Timur Sub-district, Gading Cempaka District, Bengkulu City.
33. Name : **Joni, SPd.**
- Date/date of birth : Kembang Seri, 12 – 05 – 1958
- Religion : Islam
- Occupation : Teacher / Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Cimanuk I F No. 44, RT.04/RW.02, Padang Harapan Sub-district, Gading Cempaka District, Bengkulu City
34. Name : **Drs. H. Syarwani Ahmad, MM.**
- Date/date of birth : O.K.U./ Mengulak, 16 – 12 – 1948
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. A. Yani Ir. Amilin No. 190, Tangga Takat Sub-district, Seberang Ulu II District, Palembang
35. Name : **Drs. Magdad M. Hum.**
- Date/date of birth : Jakarta, 16 – 07 – 1962
- Religion : Islam

- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Putak 2 Blok M II No. 5, RT.40/RW.16, Sako
Sub-district, Sako District, Palembang
36. Name : **Drs. Muhammad Marwani.**
- Date/date of birth : Banjarmasin, 23 – 05 – 1957
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Bandarmasin Komp. DPR No.12,
RT.23/RW.15 South Belitung Sub-district, West
Banjarmasin District, Banjarmasin
37. Name : **Drs. H. M. Arifin**
- Date/date of birth : Haruyan, 14 – 03 – 1947
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Cempaka Putih No. 11, RT/RW.09, Kebun
Bunga Sub-district, East Banjarmasin District,
Banjarmasin 70235
38. Name : **Drs. H. Musyarim, MM.**
- Date/date of birth : Tenggaraong, 10 – 10 – 1956

- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. K.H. Wahid No.5, RT.32, Sempaja Sub-district. North Samarinda District, East Kalimantan.
39. Name : **Sutomo Aris Wijayanto. S.Pd.**
- Date/date of birth : Sragen, 9 – 11 – 1951
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Jl. Juanda Salak 8 No.75, RT.14, Air Hitam Sub-district, Samarinda Ulu District, Samarinda 75124
40. Name : **Aunur Rahman, SPd.**
- Date/date of birth : Pontianak, 28 – 08 – 1967
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Gang Assuha, RT.02/RW.02, Saigon Sub-district, East Pontianak District, Pontianak 78232

41. Name : **U. Husna Asmara, DR.**
- Date/date of birth : Nanga Serawai, 05 – 09 – 1952
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian
- Full Address : Untan Complex. Jl. Silat P.55, RT.02/RW.05,
Bangka Belitung Sub-district, South Pontianak
District, Pontianak 78124
42. Name : **Drs. Massaire**
- Date/date of birth : Soppeng, 31 – 12 – 1947
- Religion : Islam
- Occupation : School Supervisor of National Education
- Citizenship : Indonesian
- Full Address : Jl. Perintis Kemerdekaan Komp. Hersoko
Permai Block L No. 2, Makassar- South
Sulawesi
43. Name : **Drs. Rukman Pallawa, M. Pd.**
- Date/date of birth : Soppeng, 11 – 08 – 1951
- Religion : Islam
- Occupation : Civil Servant
- Citizenship : Indonesian

- Full Address : Perumahan Makijo Baji Block. C No.7,
Makassar City
44. Name : **Drs. H. Laode Parisa Syalik**
- Date/date of birth : Muna, 31 – 12 – 1947
- Religion : Islam
- Occupation : Retired Teacher
- Citizenship : Indonesian
- Full Address : Jl.Bunga Tanjung no.2A Kendari, RT. 02/RW.
02, Watu-Watu Sub-district, West Kendari
District, Southeast Sulawesi
45. Name : **DR. Enos Taruh, MPd.**
- Date/date of birth : Kalongan Taulad, 12 – 08 – 1959
- Religion : Protestant
- Occupation : Lecturer
- Citizenship : Indonesian
- Full Address : Jl. Sudirman I, Limba U II Sub-district, Kota
Selatan District, Gorontalo 96115
46. Name : **Drs. Berthyn Lakebo, M. Ed.**
- Date/date of birth : Kendari, 05 –12 – 1945
- Religion : Christian
- Occupation : Retired Civil Servant
- Citizenship : Indonesian

Full Address : Jl. R.Soeprapto – Lorong Toarima No.11, RT.
03/RW.05, Punggolaka Sub-district, Mandonga
District, Kendari 93115, Southeast Sulawesi

47. Name : **Drs. Hamzah Achmad, M.Pd.**

Date/date of birth : Gorontalo, 08 – 12 – 1954

Religion : Islam

Occupation : Civil Servant

Citizenship : Indonesian

Full Address : Jl. P.Hidayat, RT.03/RW.03, Heledulen Sub-
district, Kota Selatan District, Gorontalo

Petitioner Number 5 through Petitioner Number 47 is hereinafter referred to as **Petitioner V.**

Respectively by virtue of special powers of attorney dated December 10, 2005, January 18, 2006, and January 26, 2006, granting the authority to **Taruna, SH., H. Mustahdi, SH. MH., Dr. Andi Muhammad Asrun, SH. MH., and Euis Mulyati, SH.** all of whom are Advocates/Lawyers, choosing their legal domicile at the Secretariat of the Executive Board of the Indonesian Teachers' Association (hereinafter referred to as PB PGRI) at Jl. Tanah Abang III No. 24 Central Jakarta. Telephone 021-38411121 and 021-9204388, acting individually or jointly. Hereinafter they are referred to as **Petitioners;**

LEGAL CONSIDERATIONS

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

Considering whereas prior to examining the principal issue of the case, the Constitutional Court (hereinafter referred to as the Court) shall first take the following matters into account:

- First, whether the Court has the authority to examine, hear, and decide upon the petition filed by the Petitioners;
- Second, whether the Petitioners have the legal standing to file the *a quo* petition;

In respect of the above mentioned two issues, Court is of the following opinion:

Authority of the Court

Considering whereas in accordance with the provision of Article 24C Paragraph (1) of the 1945 Constitution of the State of Republic of Indonesia (hereinafter referred to as the 1945 Constitution), the Court has the authority to hear at the first and final level the decisions of which shall be final, in conducting judicial review of laws against the 1945 Constitution. Such provision is further reaffirmed in Article 10 Paragraph (1) of the Law of the Republic of Indonesia Number 24 Year 2003 on 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) *juncto* Article 12 Paragraph (1) of the Law of the Republic of Indonesia Number 4 Year 2004 on Judicial Power (State Gazette of the Republic of Indonesia Year 2004 Number 8, Supplement to State Gazette of the Republic of Indonesia Number 4358);

Considering whereas prior to deciding whether or not the Court has the authority to examine and decide upon the petition of the *a quo* Petitioners, the Court will take into account the statement of the expert presented in the hearing by the Government, namely Prof. DR. Arifin Suryaatmaja S.H., who principally explained about the following matters:

1. The specific legal nature of an APBN Law (*het rechtskarakter van de begrotingswet*) which is stipulated every year, cannot be considered equal to regular laws, and to what extent it is made as the legal basis for reviewing the constitutionality of as the APBN Law;
2. State Revenues and Expenditures Budget is a manifestation of state finance management, stipulated every year by law, constitutes a manifestation of sovereignty in accordance with the provision of Article 23 Paragraph (1) of the 1945 Constitution, in which the approval of the State Revenues and Expenditures Budget is stipulated by the People's Legislative Assembly (DPR) because only People's Legislative Assembly (DPR) has the "budgetary right";

3. From socio-economic perspective, the State Revenues and Expenditures Budget emphasizes the aspect of political economy, while from the normative-judicial perspective the APBN Law is a form of authorization, based on the mandate from the people including the Petitioners;
4. The APBN Law approved by the People's Legislative Assembly (DPR) is the implementation of the sovereignty of the People including the Petitioners in the form of budgetary authorization, and that it would be impossible for the People's Legislative Assembly to choose (*keuzefunctie van de begroting*) to harm the people, because the calculation has considered the interest of people at large as well as the interest of governance;
5. The APBN Law does not meet the criteria to be categorized as a law in the substantive sense of the term, because it does not bind the public including the Petitioners, and only binds the Government and officials that receive the budgetary authorization, so that it cannot be reviewed because the APBN Law only contains the amounts of revenues and expenditures as well as surplus balance or deficit balance, and does not contain any substance with regulatory nature;

Considering whereas regardless of the fact that the petition for review of Law Number 36 Year 2004 on the State Revenues and Expenditures Budget Year 2005 has been examined and decided, in Court Decision Number 012/PUU-III/2005 dated October 13, 2005, the Court will consider the statement

of the expert with respect to its authority, pertaining to which the Court is of the following opinion:

- i. Whereas both the 1945 Constitution and the Constitutional Court Law do not specify the types of law which are under the authority of the Court to review, so that it is irrelevant to make a categorization whether the law being reviewed is a law in a formal sense or a law in a substantive sense;
- ii. Whereas the legislation hierarchy places the 1945 Constitution as the basic law or the highest law, which means that every subordinate law, must be in accordance with and must not be contradictory to the 1945 Constitution;
- iii. Whereas although the figures in the State Revenues and Expenditures Budget are attachment to the APBN Law, they constitute an inseparable part so as to be read as one integral part of the APBN Law, and hence it must be understood as a law under the authority of the Court to review;
- iv. Whereas the duties and authorities as the guardian of the Constitution give authorities to the Court to review by examining and then deciding, whether the APBN Law is already in accordance with the highest law namely the 1945 Constitution;

Considering whereas based on the abovementioned considerations, the petition of Petitioners is concerning substantive review of Law Number 13 Year 2005 on the State Revenues and Expenditures Budget (APBN) of Budget Year 2006 against the 1945 Constitution, which is one of the authorities of the Court,

and hence the Court has the authority to examine, hear, and decide upon the *a quo* petition;

Legal Standing of the Petitioners

Considering whereas in the qualification as individuals or association of individuals, the Indonesian Teachers' Association (*PGRI*) whose members are spread throughout Indonesia as Petitioner I, H.M. Rusli Yunus acts to represent PGRI which is an organization of teachers throughout Indonesia;

Whereas Article 31 Paragraph (1) of the 1945 Constitution states, "*Every person shall have the right to obtain education*". While Paragraph (2) of the same article states, "*Every person shall be obligated to follow basic education and the government shall be obligated to finance it*". Thus, in accordance with the 1945 Constitution, on the one hand, education is the right of every citizen, and on the other hand, it is an obligation of the state to fulfill the aforementioned right, especially because the state requires every citizen to attend education and requires the government finance it. In accordance with the provision of Article 31 Paragraph (3) of the 1945 Constitution, the Government shall manage and organize a national education system regulated by law;

Whereas the law as intended in the aforementioned Article 31 Paragraph (3) of the 1945 Constitution has now been established namely Law Number 20 Year 2003 on the National Education System (State Gazette of the Republic of Indonesia Year 2003 Number 78, Supplement to State Gazette of the Republic of

Indonesia Number 4301, hereinafter referred to as the Sisdiknas Law). In accordance with Article 39 Paragraph (3) of the Sisdiknas Law, teachers shall be educators who teach in primary and secondary education units;

Whereas therefore, it is clear that teachers constitute an integral part of the national education system and that the educational budget constitutes one of the important factors that determine whether or not the foregoing system is running. Thus, it is also clear that without sufficient educational budget the improvement of education will be difficult to implement;

Whereas, based on the above description, it is evident that there is a direct interest of teachers towards the educational budget in connection with the performance of national education system as intended in Article 31 Paragraph (3) of the 1945 Constitution;

Whereas, as an organization of teachers throughout Indonesia, PGRI is an organization having a legal entity status (*rechtspersoonlijke vereniging*) pursuant to the Stipulation of the Minister of Justice dated September 20, 1954 Number J.A.5/82/12. Hence, as intended in the elucidation of Article 51 Paragraph (1) of the Constitutional Court Law, it is deemed to have the legal standing. Article 6 of the Articles of Association of PGRI states that PGRI is intended, among other things, for participating actively in achieving the national goals in the context of improving the intellectual life of the nation and to create true Indonesian people, to participate in developing the system and implementing the national education;

Whereas furthermore Article 28 Paragraph (4) of the Articles of Association of PGRI states that PB PGRI shall be given the authority to, among other things, represent PGRI inside and outside the court the implementation of which shall be regulated in the regulations of PGRI organization;

Whereas Petitioner I, H.M. Rusli Yunus, is the Chairperson of PB PGRI who, based on the Decision of Executive Board Meeting of PGRI on December 14, 2005, was given the authority to represent PB PGRI to file the petition for judicial review of the APBN Law against the 1945 Constitution before the Court (*vide* Exhibit P-10);

Whereas pursuant to the entire description above, Petitioner I has the qualification to file the *a quo* petition;

Considering whereas Petitioner II, ISPI, is a professional organization whose members consist of citizens having the professions in education sector. Article 5 of its Articles of Association states that ISPI is aimed at contributing energy and thoughts for a well-directed, efficient and effective national education. Thus, the members of ISPI have the interest in the implementation of a good education in Indonesia which is deemed to have been left behind;

Considering whereas the provision of Article 31 of the 1945 Constitution regulates the citizens' right to obtain education, and the citizens' obligation to follow basic education which must be financed by the Government, and also provides that education shall be prioritized in receiving the budget of at least 20%

(twenty percent) of the State Revenues and Expenditures Budget to meet the needs for organizing national education. The two matters have determined the existence of the constitutional right of the Petitioner to a guaranteed application of Article 31 of the 1945 Constitution in compulsory education and to the allocation of state revenues and expenditures budget. According to the Petitioner, such provisions are not complied with in the APBN Law;

Considering whereas based on the above considerations, the Court considers that the provision of Article 51 Paragraph (1) of the Constitutional Court Law and the jurisprudence of the Court concerning legal standing to file a petition in the Court have been fulfilled, and hence the Court is of the opinion that Petitioner II, ISPI, as a group of individuals, has the legal standing to file the petition for judicial review of the APBN Law as described in the *a quo* petition;

Considering whereas Petitioner III, Imam Budi Darmawan Prasodjo, acts to represent *Yayasan Nurani Dunia* (World's Conscience Foundation) namely a foundation having the legal status and having been registered at the District Court of Central Jakarta on May 14, 2002, prior to the effective date of Law Number 16 Year 2001 on Foundation. Although in Article 3 of its Articles of Association provides that the foundation shall conduct the activities of establishing, organizing, and providing both formal and informal education facilities, there is no sufficient explanations to assess the constitutional impairment, and hence the Court cannot decide its qualification in accordance

with Article 51 Paragraph (1) of the Constitutional Court Law. Accordingly, the Court will not go into further consideration on the legal standing of Petitioner III;

Considering whereas Petitioner IV, M. Arif Pribadi Prasodjo, who claimed himself as the coordinator of *Yayasan Nurani Dunia*, as Petitioner III, did not propose the evidence showing either his qualification or the represented organization nor the constitutional rights impaired by the coming into effect of the APBN Law, as intended in Article 51 Paragraph (1) of the Constitutional Court Law. Therefore, the legal standing of Petitioner IV will not be taken into further consideration either;

Considering whereas Petitioner V is a group of people consisting of teachers, lecturers, and retired teachers, hence the consideration as described for Petitioner I shall apply *mutatis mutandis* to Petitioner V;

Considering whereas since some of the Petitioners have the legal standing, the Court must further consider the principal issue of the petition of Petitioner I, Petitioner II, and Petitioner V;

Concerning the Petition for a Provisional (Interlocutory) Decision

Considering whereas besides filing the petition as in the Principal Case, the Petitioners filed the petition for a provisional (interlocutory) decision for the Court to decide a “**temporary termination**” of the applicability of the APBN Law which was later petitioned separately and consecutively in letters dated December 28, 2005 and January 27, 2006, in order to avoid “budgeting difficulty”

if the petition for judicial review of the APBN on Law is granted, on the following grounds:

1. whereas at the time the *a quo* case is examined by the Court, it is estimated that only 5% (five percent) of the total budget have been absorbed;
2. whereas the examination of the *a quo* case is predicted to take 60 days or two months, while the Government and the People's Legislative Assembly (DPR) have sufficient expert agencies to prepare a new State Revenues and Expenditures Budget as a revision of the old State Revenues and Expenditures Budget which is contradictory to the 1945 Constitution;

Considering whereas with respect to such petition the Court gave its opinion which was pronounced in the session open for public on February 7, 2006, that a provisional (interlocutory) decision in the case of petition for judicial review of a law is neither regulated in the Constitutional Court Law, nor recognized in the procedural law of judicial review of a law against the 1945 Constitution. The substance of Article 58 the Constitutional Court Law also firmly disallows such matter. Article 58 of the *a quo* Law states, "*Laws being reviewed by the Constitutional Court shall remain effective, prior to any decision stating that such law are is contradictory to the 1945 Constitution of the State of Republic of Indonesia*". Thus, if such matter is granted in the provisional (interlocutory) decision by the Court, then such provisional (interlocutory) decision shall constitute the principal issue or substance of the petition, while a provisional decision concerning temporary actions taken by the Court must not

concern the substance of the case, although they must be related to the substance of the case;

Considering whereas with such considerations, the Court rejects the petition for a provisional decision of the Petitioners as declared in the hearing on February 7, 2006;

Principal Issue of the Case

Considering whereas since the Court has once examined and decided upon a petition for judicial review of an APBN Law namely in case Number 012/PUU-III/2005, the substance of the considerations of such decision shall be deemed as references that are considered in deciding upon this case;

Considering whereas the principal issue that must be considered by the Court in this matter is whether the APBN Law is contradictory to the 1945 Constitution because the educational budget, as argued by the Petitioners, does not meet the minimum allocation of 20% (twenty percent) of the State Revenues and Expenditures Budget as well as the Regional Revenues and Expenditures Budget as stipulated in Article 31 Paragraph (4) of the 1945 Constitution, the principal issue of which will be addressed in 2 (two) parts, namely:

1. Whether or not the allocation of educational budget in the 2006 State Revenues and Expenditures Budget meets the provisions of the 1945 Constitution;

2. Whether the non-fulfillment of the allocation of 20% (twenty percent) of educational budget makes the APBN Law contradictory to the 1945 Constitution.

In respect of the foregoing 2 (two) issues the Court is of the following opinion:

1. **Budget Allocation in the 2006 State Revenues and Expenditures Budget (APBN)**

Considering whereas apart from several alternatives proposed by the Government in calculating the amount of educational budget in the State Revenues and Expenditures Budget, in the hearing on March 13, 2006, the People's Legislative Assembly (in this matter Commission X) for the second time gave statement, and the statement was supported by the Government Representative on the same hearing day, that the agreement achieved in the budget discussion between the Government and the People's Legislative Assembly particularly in calculating the percentage of educational budget, is by adding up the budget in budget items for the Department of National Education after deduction of teachers/lecturers' salary and budget items for the Department of Religious Affairs after teachers' salary deduction, and after budget for service education, and divided by Central Expenditures Budget (ABP), so as to equal 9.1% (nine point one percent);

Considering whereas in the same hearing, Commission X of the People's Legislative Assembly also stated that the aforementioned calculation method of educational budget is intended as an interpretation by the People's Legislative Assembly in understanding the provisions set forth in Article 31 Paragraph (4) of the 1945 Constitution. Such interpretation has become the Government's determination as declared in the hearing of the Court on March 13, 2006. This can be understood as the goodwill of the Government and the People's Legislative Assembly, hence the Court makes it a standard for evaluating the allocation of educational budget in the APBN Law pursuant to Article 31 Paragraph (4) of the 1945 Constitution, without closing the possibility of interpretations developing in the future;

Considering whereas therefore, the Educational Budget Fund in the 2006 State Revenues and Expenditures Budget with the aforementioned formulation, namely the total educational fund minus teachers' salary and official service education fund, plus educational budget in the Department of Religious Affairs after teachers' salary deduction, compared to the Central Expenditures Budget namely the State Revenues and Expenditures Budget after Regional Expenditures Budget (DAU/DAK/DBH) deduction, is 9.1% (nine point one percent), and hence the APBN Law only allocates educational budget below the minimum figure mentioned in the 1945 Constitution. It is in accordance with the written and oral statements of the Minister of Finance dated March 13, 2006 in the hearing, and of the Commission X of the People's Legislative Assembly of

the Republic of Indonesia (DPR RI), that have been in conformity with the statements of the Petitioners;

2. Whether the 2006 State Revenues and Expenditures Budget is contradictory to the 1945 Constitution

Considering whereas, although the Court agrees with the Government and the People's Legislative Assembly concerning the limitations encountered by Indonesia with regard to the national economic condition in connection with the global economy term, *prima facie*, it has been evident that the constitutional instruction particularly Article 31 Paragraph (4) of the 1945 Constitution is not implemented in the APBN Law, despite an increase from the 2005 State Revenues and Expenditures Budget. With the rational explanation of the reasons for the inability to implement the instruction of Article 31 Paragraph (4) of the 1945 Constitution, the principal question now is: Whether the APBN Law is thereby contradictory to the 1945 Constitution. The Court is of the opinion that for a legal provision to be declared "contradictory to the 1945 Constitution", it does not have to be considered contradictory to or diametrically in *conflict* with the constitution, but it can happen because the provision is *inconsistent* or *non-conforming (unvereinbar)* with the constitution as the highest law, *in casu* in the *a quo* case. The reason is that the concrete percentage of educational budget indicated in Article 31 Paragraph (4) of the 1945 Constitution is one of the constitutionality standards of the APBN Law, and therefore it has been proved, as described above, that the allocation of educational budget in the State

Revenues and Expenditures Budget is *non-conforming (unvereinbar)* with the mandate of Article 31 Paragraph (4) of the 1945 Constitution. Therefore, the allocation of educational budget of 9.1% (nine point one percent) in the APBN Law is contradictory to the 1945 Constitution (**unconstitutional**);

Considering whereas prior to stipulating further legal effects of such matter, the Court will consider the conditions surrounding the drafting of the 2006 State Revenues and Expenditures Budget, as stated by the Government, the People's Legislative Assembly, or experts, consisting of the following matters:

- 1) State Revenues and Expenditures Budget of Budget Year 2006 is still facing challenges and obstacles in relation to the tendency of increasing inflation, fluctuating exchange rate, and the progress of oil price in international market which is still high;
- 2) To maintain the stability of macro economy and to support higher economic growth, the State Revenues and Expenditures Budget of Budget Year 2006 is drafted as an attempt to reduce the budget deficit as well as to reduce debt ratio towards gross domestic products (GDP) in the context of maintaining fiscal sustainability;
- 3) The Government's obligation in paying the high principal installment of foreign debts must also be considered in making decisions on state expenditures budget drafting.

Although the Court can understand the foregoing conditions, the Court must still guarantee the implementation of the mandate of the 1945 Constitution concerning educational budget that must be prioritized namely the minimum of 20% (twenty percent) of the State Revenues and Expenditures Budget. In addition, if related to the development strategies that should place education as *human investment*, education must be viewed more important than other sectors. The educational sector should be prioritized without disregarding other sectors which are also important for the national living sustainability. This constitutes the best, strategic and fundamental effort to support the improvement of human resource quality in developing the well-established national living in the middle of global living that requires adequate competitive edge. The policy held in budget drafting must therefore be directed to improving the state's ability in implementing **its constitutional obligations provided for in Article 31 the 1945 Constitution** to implement and finance compulsory education for primary education by reallocating funds from other functions in the State Revenues and Expenditures Budget for educational function. The allocation priority from the excess of fund obtained from the results of state expenditures saving and/or the results of revenue increase must still follow the instruction to prioritize educational budget as intended in Article 31 Paragraph (4) of the 1945 Constitution. The existence of Article 31 of the 1945 Constitution is imperative in nature (*dwingend recht*), which is inevitable insofar as it is still provided for in the 1945 Constitution, except in emergency situation, such as in the event of

governmental disaster as intended in the consideration of Decision Number 012/PUU-III/2005 dated October 13, 2005;

Considering whereas by referring to the previous Court Decision, incorporated in the consideration part in this decision of this case, the aforementioned consideration needs to be repeated to reaffirm the determination of the Court as follows:

“The state’s obligation to citizens in educational sector has a more fundamental basis, because one of the objectives of the establishment of the Unitary State of the Republic of Indonesia (*het doel van de staat*) is to improve the nation’s intellectual life as expressed in the Preamble to the 1945 Constitution in the fourth Paragraph which reads, “Furthermore, in order to form a Government of the State of Indonesia which shall protect the entire Indonesian nation and the entire Indonesian native land, and in order to advance general welfare, to develop the intellectual life of the nation ...” Therefore, one of the obligations is attached to the existence of the state namely that it is in fact for the purpose of improving the nation’s intellectual life that Indonesian country has been established. The citizens’ right to obtain education is not just limited to the state’s obligation to respect and protect but that the state is obligated to fulfill the citizens’ right. Education is so important to Indonesia, that it is not only stipulated as the citizens’ right, but the 1945 Constitution deems it necessary to make basic education as the citizens’ obligation. To fulfill the citizens’ right properly the 1945 Constitution, Article 31 Paragraph (2) requires the government to finance it. From

human rights' point of view, the right to obtain education is included in human rights outside civil and political rights, and is included in the social, economic, and cultural rights. The state's obligation to respect, and to fulfill the social economic political rights is an obligation to result and not an obligation to conduct as that with respect to civil and political rights. The state's obligation in terms of "*obligation to result*" has been fulfilled if the state with goodwill has utilized the maximum available resources and has conducted progressive realization".

Considering whereas in respect of the affirmation of the above considerations, the Court is of the opinion that the petition of the Petitioners is sufficiently grounded, hence the Court will further take into account the considerations of the Court in the previous decision, concerning several legal effects that must be taken into account, among other things stating:

- 1) If the Court declares that the APBN Law has no binding legal effect, the legal consequence is that the whole state revenues and expenditures plan set out in the APBN shall no longer have any binding effect to the President who in accordance with Law Number 17 Year 2003 regarding State Finance namely Article 6 Paragraph (1), is the holder of state finance management authority. The whole realization of state revenues and expenditures which is based on the APBN Law will no longer have any legal ground;
- 2) If on the Court's decision stating that the APBN Law no longer has any has binding legal effect, then the President with the approval from the People's Legislative Assembly must reformulate the allocation from revenues and

expenditures that have been realized so that the 20% (twenty percent) for education sector is fulfilled by reducing the budget for other sectors, it will certainly cause legal uncertainty in the expenditures realization that has been incurred by other sectors whose budget must be reduced. From administrative point of view, financial management is very difficult to conduct because it will completely change the financial administration in Indonesia, which thereby requires adjustment. It requires costs, energy and time that are very difficult to calculate;

Considering whereas by still considering the conditions described in the considerations of Court Decision Number 012/PUU-III/2005, and also considering, however, that the condition mentioned in such decision occurred in different time period during which the petition was filed and examined at the end of Budget Year, while *in casu*, the petition was filed and examined in the beginning of a Budget Year, different from the earlier case. In this case, there is still a big chance for the Government and the People's Legislative Assembly to increase the educational budget more significantly by budget reallocation through the Amended State Revenues and Expenditures Budget (APBN-P) which better reflects the seriousness of the Government and the People's Legislative Assembly to implement the provision of Article 31 Paragraph (4) of the 1945 Constitution which is firmly instructed to be prioritized;

Considering whereas the Court has in fact stated that although the State Revenues and Expenditures Budget 2005 is contradictory to the 1945

Constitution, it was declared that the petition of the Petitioners can not be accepted (*niet ontvankelijk verklaard*) because if it had been granted, the effects would have been worse because the educational budget of previous year, which was less than the educational budget of the current year, would be applied;

Considering whereas for this case, the reasons concerning the impairment because of the smaller previous educational budget are still relevant. However, such consideration cannot be made as a justification (*rechtsvaardigingsgrond*). The effort of merely increasing educational budget solely for the purpose of avoiding the possibility of granting similar petitions in the future, must be deemed not in accordance with the spirit of the 1945 Constitution (*the spirit of the constitution*), because, with the existence of Court Decision Number 012/PUU-III/2005, the Government and the People's Legislative Assembly should have precisely known that educational budget which is less than 20% (twenty percent) is contradictory to Article 31 Paragraph (4) of the 1945 Constitution;

Considering whereas accordingly, the Court is of the opinion that the petition of Petitioners I, II, and V is sufficiently grounded. However, to remove the negative impacts to the optimum extent towards the implementation of the 2006 State Revenues and Expenditures Budget, the Court can only **grant the petition of Petitioners partly**, by declaring that the APBN Law, insofar as concerning educational budget in the 2006 State Revenues and Expenditures Budget 9.1% (nine point one percent) of the State Revenues and Expenditures Budget **as the highest limit**, is contradictory to the 1945 Constitution. 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 APBN Law. It means that the APBN 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 2006 Amended State Revenues and Expenditures Budget-Amendment;

Considering whereas before the educational budget reaches 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;

Considering whereas based on all the above considerations, the Court concludes that the petition of Petitioners I, II, and V is sufficiently grounded insofar as concerning the amount/percentage of educational budget in the 2006 State Revenues and Expenditures Budget as the highest limit, because it is contradictory to the 1945 Constitution, and hence the petition of Petitioners I, II,

and V must be granted partly. Whereas since Petitioners III and IV do not have sufficient legal standing, it must be declared that their petition can not be accepted (*niet ontvankelijk verklaard*);

In view of Article 56 Paragraphs (1), (2), and (3), Article 57 Paragraph (1) and (3), and Article 58 the Law of the Republic of Indonesia Number 24 Year 2003 on 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);

PASSING THE DECISION

- To reject the Petitioners' petition for a provisional decision;
- To declare that the petition of Petitioners III and IV can not be accepted (*niet ontvankelijk verklaard*);
- To grant the petition of Petitioners I, II, and V partly;
- To declare that the Law of the Republic of Indonesia Number 13 Year 2005 on the State Revenues and Expenditures Budget of Budget Year 2006 (State Gazette of the Republic of Indonesia Year 2005 Number 133, Supplement to State Gazette of the Republic of Indonesia Number 4571) **insofar as concerning the educational budget of 9.1% (nine point one percent) as the highest limit, is contradictory to the 1945 Constitution of the State of Republic of Indonesia;**

- To declare that the Law of the Republic of Indonesia Number 13 Year 2005 on the State Revenues and Expenditures Budget of Budget Year 2006 (State Gazette of the Republic of Indonesia Year 2005 Number 133, Supplement to State Gazette of the Republic of Indonesia Number 4571) **insofar as concerning the educational budget of 9.1% (nine point one percent) as the highest limit, has no binding legal effect;**
- To order the appropriate inclusion of this decision in the Official Gazette of the Republic of Indonesia;
- To reject the petition of Petitioners I, II, and V for the remaining matters.

With respect to the foregoing Court Decision, 2 (two) Constitutional Court Justices have concurring opinions and 2 (two) Constitutional Court Justices have dissenting opinions, as follows:

Concurring Opinion:

Constitutional Court Justices I Dewa Gede Palguna, S.H., M.H. and Soedarsono, S.H.

Whereas although we agree with the conclusion of the majority of justices that granted the *a quo* petition partly, we have concurring a opinion consideration to come to such conclusion due to the difference in the way of assessing the legal standing of the Petitioners and in the way of determining the components included in the definition of educational budget, as well as its method of

calculation, when its constitutionality is to be reviewed against Article 31 Paragraph (4) of the 1945 Constitution;

Whereas with respect to the *a quo* petition, we are of the opinion that the determination of legal standing of the Petitioners is directly related to the substance or principal issue of the petition, particularly in assessing whether or not there is constitutional right impairment to the Petitioners. This is because, in accordance with the provision of Article 51 Paragraph (1) of the Constitutional Court Law, to qualify as Petitioner in the review of a law, a party must:

- a. First, explain his qualification; and
- b. Second, explain the constitutional right impairment encountered in such qualification.

Since the *a quo* petition is concerning educational budget, which, in the context of Article 31 the 1945 Constitution, is connected to the arrangement of national education as a system, in which teachers and lecturers are an integral part, in the *a quo* petition, it shall be teachers or lecturers who have the qualification to act as Petitioners. The issue of the constitutional right impairment of those fulfilling the aforementioned qualification can be determined or recognized after considering the principal issue of petition. The reason is that, in the *a quo* petition, the arguments concerning constitutional right impairment of those having such qualification by the Petitioners themselves are directly related to the educational budget in the APBN Law – which is also in line with our opinion.

Meanwhile, the aforementioned calculation method of educational budget in the APBN Law is in fact constitutes a part of consideration on the principal issue of the *a quo* petition. Hence, the legal standing of the Petitioners can be determined after considering the principal issue of the petition;

Whereas Article 31 Paragraph (4) of the 1945 Constitution states, "*The state shall prioritize the educational budget by allocating at least twenty percent of the state revenues and expenditures budget and of the regional revenues and expenditures budget in order to meet the needs for organizing national education*". With such formulation, *prima facie*, the 1945 Constitution does not allow any interpretations other than the following:

- (a) the state must prioritize the educational budget in the State Revenues and Expenditures Budget (and from the Regional Revenues and Expenditures Budget); and
- (b) the foregoing priority must be at least 20% of the State Revenues and Expenditures Budget (and of the Regional Revenues and Expenditures Budget);

Whereas in the hearing on March 13, 2006, the People's Legislative Assembly (in this matter Commission X) for the second time gave its statement, and the statement was supported by the government representative in the same hearing, that the agreement reached in the budget discussion between the Government and the People's Legislative Assembly, particularly in the way of

calculating the percentage of the educational budget, is by adding up the budget in budget items for the Department of National Education (after teachers/lecturers salary deduction) and budget items for the Department of Religious Affairs (after teacher salary deduction), after the budget deduction for service education, then divided by the Central Expenditures Budget (ABP), so as to obtain the figure around 9.1%, as also described in the legal considerations of this Court Decision;

Whereas, in the same hearing, Commission X of the People's Legislative Assembly also stated that the calculation method of educational budget as described above is also said as "official interpretation" of the People's Legislative Assembly in understanding the purpose of provisions in Article 31 Paragraph (4) of the 1945 Constitution which states, "The state shall prioritize the educational budget by allocating at least twenty percent of the state revenues and expenditures budget and of the regional revenues and expenditures budget in order to meet the needs for organizing national education". Apart from whether or not such interpretation is correct and apart from the goodwill that underlies such interpretation, in the event of doubts on the constitutionality of such interpretation, either concerning the method or the results, it is the Court that has the authority to decide upon the constitutional interpretation by using the review method pursuant to Article 31 Paragraph (4) of the 1945 Constitution;

Whereas based on the statements of the Government and the People's Legislative Assembly in the hearing, the written statements of the Government

and the written statement of the People's Legislative Assembly, and evidence in the forms of other written documents submitted in the hearing and/or completing the statements of the parties in the hearing, it transpires that there has been a change in the budget allocation system in the State Revenues and Expenditures Budget. As a result of the foregoing change, the details of budget allocation no longer refers to sectors but to functions, hence to know the amount of educational budget in the 2006 State Revenues and Expenditures Budget depends on the interpretation of the definition of educational functions and the allocated budget therefor in the aforementioned State Revenues and Expenditures Budget. Furthermore, the figure amount (budget) obtained based on such interpretation will be compared to the amount of the whole state expenditures plans year 2006 to find the percentage of educational budget in the 2006 State Revenues and Expenditures Budget;

Whereas from the perspective of drafting history of Article 31 of the 1945 Constitution, particularly Article 31 Paragraph (4), it can be concluded that service education is excluded from the definition of education in Article 31 of the 1945 Constitution, thus, service educational budget must be excluded from the definition of educational budget in the State Revenues and Expenditures Budget as well. Meanwhile, there is no record showing the exclusion of budget for teachers' salary from the definition of educational budget. Thus, although Article 49 Paragraph (1) of the Sisdiknas Law has excluded the budget for teachers' salary (and service educational budget) from the calculation of educational funds, constitutionally, in assessing the constitutionality of educational budget in the

2006 State Revenues and Expenditures Budget Year, reference must be made to Article 31 Paragraph (4) of the 1945 Constitution. In addition, if the budget for teachers' salary is excluded or removed from the calculation of educational budget in the State Revenues and Expenditures Budget, *in casu* the 2006 State Revenues and Expenditures Budget, such calculation method will require that teachers must be considered as having no qualification to file a petition for judicial review of the APBN Law concerning educational budget, which further requires the Petitioners in the *a quo* petition, *in casu* Petitioner I and some of Petitioners V to be considered as having no legal standing to file the petition for review of the APBN 2006 Law. This conclusion is clearly contradictory to the principle of education in which teachers or lecturers are the attached elements therein.

Whereas, in respect of the foregoing considerations, the calculation method of educational budget in the 2006 State Revenues and Expenditures Budget that can be considered suitable to the way of thinking when Article 31 Paragraph (4) of the 1945 Constitution was formulated shall be the calculation method in which budget in all educational functions (after budget for service education deduction) plus budget for educators' salary is divided by the whole state expenditures budget, provided that "Educators" in this connection shall only refer to the definition of teachers and lecturers, not educators as defined in accordance with Article 1 Sub-Article 6 of the Sisdiknas Law.

Whereas, such calculation method, according to the Government in its statement in the hearing on February 20, 2006, obtains the figure 16.8 %. Apart from the calculation method, which in our opinion has been already suitable to the purpose of Article 31 Paragraph (4) of the 1945 Constitution, the result in the form of percentage worth 16.8 % is still questionable. This is because the component of “educators salary” included as a part of scope of educational budget in the Government’s statement is still unclear as to whether the definition of “educators” only means teachers and lecturers or includes tutors, instructors and others which in accordance with Article 1 Sub-Article 6 of the Sisdiknas Law are also included in the definition of Educators. However, even if the result of calculation of 16.8 % is correct (which means that the definition of “educators salary” included in the calculation of educational budget is only for teachers and lecturers’ salary), such calculation is still under the percentage stated by Article 31 Paragraph (4) of the 1945 Constitution, namely the minimum of 20% of the State Revenues and Expenditures Budget and the Regional Revenues and Expenditures Budget, hence it still must be considered not in accordance with the 1945 Constitution.

Whereas the Petitioners argued that the APBN Law in its attachment only allocates funds of Rp.36,755.8 billion after allocation of lecturers’ salary deduction so that the amount becomes Rp.34,635.4 or equivalent to 8.1 % of total State Revenues and Expenditures Budget Year 2006 worth Rp.427,598.3 billion, in which the Petitioners did not explain how the Petitioners made such calculation in order to arrive at such calculation, because the evidence referred to

by the Petitioners in the petition, namely Exhibit P-4 (*vide* Revised Petition page 15), is not at all an evidence that explains the foregoing calculation method because the evidence is only a photocopy of a book namely *Undang-Undang Dasar Republik Indonesia Year 1945 and Susunan Kabinet Indonesia Bersatu Tahun 2004-2009* (the 1945 Constitution of the Republic of Indonesia and the Structure of the United Indonesian Cabinet Year 2004-2009) (*vide* Exhibit P-4). However, apart from the fact that the Petitioners gave unclear explanation as to achievement of educational budget worth 8.1 % above, it is evident that even with the calculation method of educational budget which in our opinion is in accordance with the purpose of Article 31 Paragraph (4) of the 1945 Constitution, the Petitioners, *in casu* having the qualification to file the *a quo* petition, have been impaired by the coming into effect of the APBN Law, *in casu* a part of the *a quo* law mentioning the amount of budget for educational sector as described above.

Whereas, although based on the foregoing considerations it is evident that the educational budget in the 2006 State Revenues and Expenditures Budget has not fulfilled the instruction of Article 31 Paragraph (4) of the 1945 Constitution and thereby has harmed the Petitioners who meet the aforementioned qualification, **it does not mean** that all provisions in the APBN Law are contradictory to the 1945 Constitution and shall have no binding legal effect. In addition, **it does not mean** that the educational budget as mentioned in the State Revenues and Expenditures Budget Year 2006 (in the definition in accordance with the foregoing calculation, which results the percentage of 16.8

% of the State Revenues and Expenditures Budget) must be declared as having no binding legal effect entirely. **However, what must be declared as having no binding legal effect shall be when the amount is declared final** as the educational budget for Year 2006. It means that through the mechanism of discussion on the Amended State Revenues and Expenditures Budget (the Amended APBN), the President together with the People's Legislative Assembly shall be obliged to increase the amount of educational budget Year 2006 as intended in the attachment to the APBN Law which constitutes an inseparable part of the *a quo* law.

Dissenting Opinion:

Constitutional Court Justice H. Achmad Roestand, S.H.

I really agree with the Petitioners that educational budget in the State Revenues and Expenditures Budget must always be increased, because education highly influences the quality of human resources;

However, as stated in my dissenting opinion in the decision on Case Number 012/PUU-III/2005, I deem that the educational budget that has not reached 20% (twenty percent) of the State Revenues and Expenditures Budget and the Regional Revenues and Expenditures Budget does not automatically constitute a **contradiction** to Article 31 Paragraph (4) of the 1945 Constitution. While it must be understood as a **delay** which must be improved gradually in the next State Revenues and Expenditures Budgets, so that the figure of 20%

(twenty percent) will be achieved in turn. Such gradual increase of the educational budget has become an agreement between the Government and the People's Legislative Assembly, and the percentage of 20% (twenty percent) will have to be achieved in the State Revenues and Expenditures Budget year 2009;

It is understood that the content of Article 31 Paragraph (4) of the 1945 Constitution is normative in nature, but it is not realistic if the normative provision is applied without considering the objective condition of state revenues;

Based on the normative provision related to the objective condition of state revenues, I am of the opinion that with the educational budget not having reached 20% (twenty percent) of the State Revenues and Expenditures Budget, there is not any contradiction to the 1945 Constitution, insofar as the percentage of the educational budget in the current year is higher than the percentage of the educational budget in the State Revenues and Expenditures Budget of the previous year, based on the following considerations:

1. The National Objectives as mentioned in the fourth Paragraph of the Preamble to the 1945 Constitution are "to protect the entire Indonesian nation and the entire Indonesian native land, and in order to advance general welfare, to develop the intellectual life of the nation, and *to partake in implementing world order based upon independence, eternal peace and social justice*". Such formulation implies that although pursuant to article 31 Paragraph (4) of the 1945 Constitution education must be prioritized, certainly such priority must not ignore the accomplishment of national objectives in

general. It contains a meaning that the extremely limited state revenues must be allocated proportionally to support all activities in realizing the four national objectives. In the mean time some of the limited state revenues must also be allocated to fulfill matters that must not be neglected such as the fulfillment of various subsidies and payment of foreign debts and the interests thereof;

2. The limited state revenues are understood by the Government, the People's Legislative Assembly, even by the Petitioners themselves. All parties are of an opinion that it is impossible to achieve the percentage of 20% (twenty percent) in the 2006 State Revenues and Expenditures Budget. As revealed in the Court hearing, the Chairperson of the Indonesian Teachers' Association (PGRI) could understand and tolerate the percentage of the educational budget of 14.1% (fourteen point one percent) in the 2006 State Revenues and Expenditures Budget, and in the 2007 State Revenues and Expenditures Budget the percentage of 20% (twenty percent) must be achieved;
3. In calculating the percentage of educational budget towards the State Revenues and Expenditures Budget, there has been no agreement in deciding the numerator and denominator. The Government has proposed 9 (nine) alternatives (possibilities) in deciding the percentage of educational budget towards the State Revenues and Expenditures Budget. Apart from any alternative to take, it is certain that in using each of the alternatives, the percentage of educational budget in 2006 the State Revenues and Expenditures Budget will always be higher (increasing) than the percentage

in the State Revenues and Expenditures Budget 2005. This means that the educational budget is moving upwards towards 20% (twenty percent) as determined in Article 31 Paragraph (4) of the 1945 Constitution;

Based on the foregoing considerations, I am of the opinion that the 2006 APBN Law, including the amount of its educational budget, is not contradictory to the 1945 Constitution. Hence by referring compliantly to the provision of Article 56 Paragraph (5) of the Constitutional Court Law which reads: *"In the event the law concerned is not contradictory to the 1945 Constitution of the State of Republic of Indonesia, either concerning the establishment or concerning the substance partly or entirely, the decision shall declare that the petition is rejected"*, the petition of the Petitioners must be rejected;

Constitutional Court Justice Prof. H.A.S. Natabaya, S.H, LL.M.

Whereas the Petitioners argued that the existence of Law Number 13 Year 2005 concerning State Revenues and Expenditures Budget year 2006 must be reviewed, because it is contradictory to Article 31 Paragraph (4) of the 1945 Constitution of the State of Republic of Indonesia, impairing the Petitioners' constitutional rights granted by the 1945 Constitution of the State of Republic of Indonesia;

Whereas insofar as it concerns the issue of impairment of the Petitioners' constitutional rights, Article 51 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court states: *"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.*

In its Decision of Case Number 006/PUU-III/2005 and Case Number 010/PUU-III/2005, the Court is of the opinion that the impairment occurring due to the coming into effect of a law pursuant to Article 51 Paragraph (1) of the Constitutional Court Law must meet 5 (five) cumulative criteria as follows:

- a. The Petitioners have constitutional rights granted by the 1945 Constitution of the State of Republic of Indonesia;
- b. The Petitioners deem that their constitutional rights have been impaired by the coming into effect of the law being reviewed;
- c. the constitutional impairment is specific and actual in nature or at least potential in nature which pursuant to logical reasoning will take place for sure;
- d. there is a causal relationship (*causal verband*) between the constitutional impairment of the Petitioners and the law 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.

Whereas to know whether the Petitioners' constitutional rights have been impaired due to the coming into effect of the APBN Law, 2 (two) legal issues need to be addressed in the first place:

1. Whether the APBN Law can be made as an object of petition as a law intended in Article 51 Paragraph (1) of the Constitutional Court Law, considering the special characteristic of a Law on State Revenues and Expenditures Budget (*het rechtskarakter van de begrotingswet*);
2. What special characteristics of the substance of Law on State Revenues and Expenditures Budget which make that Law on State Revenues and Expenditures Budget have different qualifications from other laws.

Whereas to address the first issue concerning the special characteristics of a law on State Revenues and Expenditures Budget (*het rechtskarakter van de begrotingswet*), we need to take into account the opinions of some prominent law experts, such as, B.F. Bellefroid in his book "*Inleiding tot de Rechtswetenschap in Nederland*", L.J. van Apeldoorn in his book "*Pengantar Ilmu Hukum*" translated from "*Inleiding tot de Studie van het Nederlandse Recht*", who differentiate law in formal sense from law in material sense (*wet in formele zin* and *wet in materiele zin*);

Basically, law in formal sense shall be a Government Decision which obtains the name of law because the form is stipulated by the establishment organ in accordance with the Constitution, while law in material sense shall be a

Government Decision which pursuant to its contents is called law because the Government Decision has binding effect in general;

In connection with the two definitions of law above and in respect of the stipulation of State Expenditures Budget (*begroting*), Prof. Buijs is of the opinion that the stipulation of Expenditures Budget shall be a Government's action. Expenditures Budget can only be stipulated by the Government, unless otherwise stipulated by the Constitution and the Expenditures Budget itself is not included in the provisions that bind the people (*burgers bindende bepalingen*);

With regard to State Revenues and Expenditures Budget stipulated by law, I.C. van der Vlies in his book *Handboek Wetgeving* states that pursuant to Article 105 of the Dutch *Grondwet*, State Revenues and Expenditures Budget shall be stipulated by law (this is similar to that provided for Article 23 of the 1945 Constitution of the State of Republic of Indonesia), State Revenues and Expenditures Budget shall be a law. However, the fact that a certain budget item is mentioned in the State Revenues and Expenditures Budget does not have the same influence as the influence of the inclusion of an article in a law of other types (*heeft echter niet hetzelfde gevolg als dat van een artikel in een ander soort wet*). Based on its characteristics, Law on State Revenues and Expenditures Budget is merely a law of authorization. Whereas the law is merely an authorization to Ministers, and thereby the Ministers cannot use the absence of a budget item in the State Revenues and Expenditures Budget as an excuse for avoiding their financial obligations;

Furthermore van der Vlies states that State Revenues and Expenditures Budget shall be formally a law but naturally it does not bind the Ministers or the people;

Whereas to identify whether or not there are special characteristics of the contents of a law on State Revenues and Expenditures Budget the law on State Finance must be put in context. Budget is an instrument of allocation of production factors. As a part of state finance, budget is the most complex aspect in financial economic policy. Thus, the drafting of state budget must also be considered based on the factors of the overall national economy;

Whereas Article 3 Paragraph (5) of Law Number 17 Year 2003 on State Finance states that State Revenues and Expenditures Budget shall have several functions namely authorization, planning, allocation, distribution, and stabilization functions. This means that those functions will strengthen the basis for and the objectives of budget in a country. Through the budget, state policy in development is directed toward increasing or decreasing the State Revenues and Expenditures Budget as a state policy in the form of work and policy plan containing figures stated in the form of law (*wet in formele zin*). Although law on the State Revenues and Expenditures Budget is similar to other laws, the law on the State Revenues and Expenditures Budget has special characteristics (*het karakter van wetsbegroting*), from the material law point of view law on State Revenues and Expenditures Budget does not bind the general public;

In respect of the two reasons above, it can be concluded that Law on State Revenues and Expenditures Budget in this matter Law Number 13 Year 2005 concerning State Revenues and Expenditures Budget of Budget Year 2006, shall be included in the category of laws that do not bind the people in general, hence the Petitioners have no Legal Standing or constitutional impairment in accordance with Article 51 Paragraph (1) of Law Number 24 Year 2003 on the Constitutional Court. Thus the Court should declare that the petition of Petitioners can not be accepted (*niet ontvankelijk verklaard*);

* * * * *

Hence this decision was made in the Consultative Meeting of 9 (nine) Constitutional Court Justices on Monday, March 20, 2006, and was pronounced in the Plenary Session of the Constitutional Court open for public on this day Wednesday, March 22, 2006, by us Prof. Dr. Jimly Asshiddiqie, S.H. as the Chairperson and concurrent Member, accompanied by Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A.S. Natabaya, S.H., LL.M, Prof. H. Abdul Mukhtie Fadjar, S.H., M.S., H. Achmad Roestandi, S.H., Dr. Harjono, S.H., MCL, I. Dewa Gede Palguna, S.H., M.H., Maruarar Siahaan, S.H., Soedarsono, S.H. respectively as Members and assisted by Cholidin Nasir, S.H. as Substitute Registrar and in the presence of the Petitioners and/or Petitioners' Attorney, the Government, and the People's Legislative Assembly of the Republic of Indonesia or its representatives.

CHIEF JUSTICE,

signed

Prof. Dr. Jimly Asshiddiqie S.H.

JUSTICES,

Signed

Prof. Dr. H. M Laica Marzuki, S.H.

Signed

Prof.. H.A.S Natabaya.S.H. LLM

signed

Prof. H. Abdul Mukthie Fadjar, S.H. M.S.

Signed

H. Achmad Roestandi, S.H.

signed

Dr. H. Harjono, S.H., M.CL.,

Signed

I Dewa Gede Palguna, S.H., M.H.

signed

Maruarar Siahaan, S.H.

signed

Soedarsono, S.H.

SUBSTITUTE REGISTRAR,

signed

Cholidin Nasir, S.H.