



## DECISION

Number 011/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 on the case of petition for Judicial Review of the Law of the Republic of Indonesia Number 20 Year 2003 regarding National Education System, against the 1945 Constitution of the State of the Republic of Indonesia, filed by:

1. Name : Fathul Hadie Utsman
- Place/Date of Birth : Banyuwangi, September 15, 1959
- Address : Tegal Pare Rt. 001 Rw. 002 Muncar  
Banyuwangi, East Java.
- Status : Individual Citizen of the Republic of Indonesia,  
Student's Guardian, Director of NGO:  
ACC/SERGAP (*Abnormal Constitutional  
Control*/People's Ethical Voice to Sue

Ambivalence and Abnormalization of Laws and Regulations), acting for and on behalf of himself and as the attorney of:

2. Name : Drs. Abd. Halim Soebahar, M.A.,  
Place : Banyuwangi, October 7, 1962  
Address : Jl. Kartanegara IV/88 Jember, East Java  
Status : Individual Citizen of the Republic of Indonesia  
Students' Guardian, Lecturer.

3. Name : Dr. M. Hadi Purnomo, M.Pd.  
Place : Banyuwangi, December 1, 1965  
Address : Kacap Iring 23 Gebang, Jember, East Java  
Status : Individual Citizen of the Republic of Indonesia  
Headmaster of Senior High School.

4. Name : Drs. Zainal Fanani  
Place : Banyuwangi, December 17, 1956  
Address : JL. M. Yamin No. 25 Tegal Besar, Jember,  
East Java  
Status : Individual Citizen of the Republic of Indonesia  
Headmaster of Junior High School

5. Name : Sanusi Afandi S.H.,M.M.  
Place : Banyuwangi, August 5, 1955

- Address : Krajan Rt. 004 Rw. 001 Kalibaru Wetan,  
Banyuwangi, East Java.
- Status : Individual Citizen of the Republic of Indonesia  
Teacher/Lecturer
6. Name : Dra. Hamdanah, M. Hum.
- Place : Banyuwangi, October 7, 1966
- Address : Jl. Kartanegara IV/88 Jember, East Java.
- Status : Individual Citizen of the Republic of Indonesia  
Lecturer
7. Name : Dra. Sumilatum
- Place : Banyuwangi, May 23, 1962
- Address : Tegal Pare Rt. 001 Rw. 002 Muncar,  
Banyuwangi, East Java.
- Status : Individual Citizen of the Republic of Indonesia  
Teacher
8. Name : Darimia Hidayati, S.P.
- Place : Jember, April 8, 1984
- Address : JL. Mastrip 1A/16 Jember, East Java.
- Status : Individual Citizen of the Republic of Indonesia  
Postgraduate Student
9. Name : JN. Raisal Haq

Place : Banyuwangi, March 6, 1992

Address : Tegal Pare Rt. 001 Rw. 002 Muncar,  
Banyuwangi, East Java.

Status : Individual Citizen Individual of the Republic of  
Indonesia  
MTs Student.

Based on a Special Power of Attorney dated April 21, 2005.

Hereinafter referred to as **PETITIONERS**

Having read the petition of the Petitioners;

Having heard the statements of the Petitioners;

Having heard the statements of the Government and the Related Parties;

Having read the written statements of the Government and the Related  
Parties;

Having read the written statement of the People's Legislative Assembly of  
the Republic of Indonesia;

Having heard the statements of experts and witnesses of the Petitioners;

Having heard the statement of the Special Committee Team on Draft Law  
Number 20 Year 2003;

Having read the written statement of the Special Committee Team on  
Draft Law Number 20 Year 2003;

Having examined the evidence;

## LEGAL CONSIDERATIONS

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

Considering whereas before entering the main issue of the case, the Constitutional Court (hereinafter the Court) needs to first take the following matters into account:

1. The authority of the Court to examine, hear, and decide upon the petition of the Petitioners;
2. Legal Standing of the Petitioners for filling the *a quo* petition;

With regard to the aforementioned two matters, the Court is of the following opinion:

### **1. Authority of the Court**

Considering whereas based on the provision of Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia Year 1945, hereinafter referred to as the 1945 Constitution as reaffirmed 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 State Gazette of the Republic of Indonesia Number 4316) hereinafter referred to as the Constitutional Court Law, the authorities of the Court are:

- a. to conduct judicial review of laws against the 1945 Constitution;
- b. to settle disputes between state institutions whose authorities are granted by the 1945 Constitution;
- c. to decide upon dissolution of political parties; and
- d. to decide upon disputes on the results of general elections;

Considering whereas the petition of the Petitioners is concerning judicial review of the Law of the Republic of Indonesia Number 20 Year 2003 regarding 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 National Education System Law;

Considering whereas therefore the Court has the authority to examine, hear and decide upon the petition of the Petitioners;

## **2. Legal standing of the Petitioners**

Considering whereas pursuant to Article 51 Paragraph (1) of the Constitutional Court Law, Petitioners for judicial review of a law against the 1945 Constitution shall be parties who deem that their constitutional rights and/or authorities are impaired by the coming into effect of a law, namely a) Indonesian citizen individuals (including group of people having a common interest); b) units of customary law communities 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; c) public or private legal entities; or d) state institutions;

Considering whereas in its legal considerations for Decision on Case No. 006/PUU-III/2005 and Case No. 010/PUU-III/2005 the Court has determined 5 (five) requirements for the existence of constitutional impairment due to the coming into effect of a law as intended in Article 51 Paragraph (1) of the Constitutional Court Law, as follows:

- a. The Petitioners must have constitutional rights granted by the 1945 Constitution;
- b. the Petitioners believe that their constitutional rights have been impaired by the coming into effect of a law;
- c. the impairment of such constitutional rights shall be 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 impairment of such constitutional rights and the law petitioned for review;
- e. if the petition is granted, it is expected that, the impairment of constitutional rights argued will not or do not occur any longer;

Considering whereas the Petitioners in the judicial review of the National Education System Law are:

- 1) Fathul Hadie Utsman, Indonesian citizen individual, Students' Guardian, acting for on behalf of himself and as the Attorney of Petitioner No. 2) through Petitioner Number 9);
- 2) Drs. Abd. Halim Soebahar, MA., individual, Students' Guardian, and Lecturer;
- 3) Dr. M. Hadi Purnomo, M.Pd., Individual Indonesian Citizen, Headmaster of Senior High School;
- 4) Drs. Zainal Fanani, Individual Indonesian Citizen, Headmaster of Junior High School;
- 5) Sanusi Affandi, S.H., MM., Individual Indonesian Citizen, Teacher/Lecturer;
- 6) Dra. Hamdanah, M.Hum, Individual Indonesian Citizen, Lecturer;
- 7) Dra. Sumilatun, Individual Indonesian Citizen, Teacher;
- 8) Darimia Hidayati, SP., Individual Indonesian Citizen, Postgraduate Program Student;
- 9) JN. Raisal Haq, Individual Indonesian Citizen, MTs Student;

Considering whereas based on Exhibit P-5, the Petitioners can qualify as individual Indonesian citizens, including groups of people having a common interest as intended in Article 51 Paragraph (1) of the Constitutional Court Law;

Considering whereas the Petitioners argue that they have constitutional rights mentioned in Article 27 Paragraph (2), Article 28D Paragraph (2), Article 28H Paragraph (1) and Paragraph (3) of the 1945 Constitution, as follows:

- Article 27 Paragraph (2), "*Every citizen shall have the right to work and to a living befitting human beings*";



- Article 28D Paragraph (2), *“Every person shall have the right to work and to receive fair and proper remuneration and treatment in work relationship”*;
- Article 28H Paragraph (1), *“Every person shall have the right to live a physically and mentally prosperous life ...”*;
- Article 28H Paragraph (3), *“Every person shall have the right social security allowing him/her to develop completely as a dignified human being”*;

Considering whereas the Petitioners believe that the aforementioned constitutional rights are impaired by the coming into effect of the National Education System Law, particularly by the coming into effect of Article 17 Paragraph (1) and Paragraph (2), and Elucidation of Article 49 Paragraph (1) thereof;

Considering whereas the impairment of constitutional rights of the Petitioners is specific and potential in nature if the articles of the National Education System Law argued by the Petitioners are put into effect, particularly the provisions regarding educational budget of 20% in gradual implementation as spelled out in the Elucidation of Article 49 Paragraph (1) of the National Education System Law;

Considering whereas there is a causal relationship between the impairment of constitutional rights of the Petitioners and the coming into effect of the National Education System Law and that logically, the impairment of the constitutional rights of the Petitioners is expected to no longer occur if the petition of the Petitioners is granted;

Considering whereas the Petitioners, either as Students' Guardians, teachers, lecturers, college students, or students have a great interest in the implementation of the constitutional provision regarding minimum education budget of 20% as the first priority, because otherwise the Petitioners would not be able to maximize their constitutional rights guaranteed by the 1945 Constitution;

Considering whereas the Petitioners argued that the impairment of constitutional rights is specific and factual, because such impairment is encountered by the Petitioners as Students' Guardians, teachers, lecturers, students and college students in the following forms:

- a. Compulsory education which should have been financed by the State and should have been without any fee required is in fact not fully financed by the state and still requires fee from the students/students' guardians;
- b. Most of educational personnel and educators, should have had the right to receive adequate income and health security as mandated in Article 40 Paragraph (1) Sub-Paragraph a of the National Education System Law, while in fact they still receive income far below the regional/Regency/Municipal minimum wage;
- c. School facilities and infrastructures are not satisfied in regions categorized as economically disadvantaged;
- d. Government subsidy for private educational institutions is still very low, including for private schools that organize compulsory education program;

- e. Government donation to formal and non formal education and community-based education is still low as well;

Considering whereas in its oral statement and written statement, the Government is of the opinion that the Petitioners do not meet the legal standing requirements as provided for in Article 51 Paragraph (1) of the Constitutional Court Law to file the petition for judicial review of the National Education System Law, because their interest and impairment of their constitutional rights are unclear;

Considering whereas based on to the aforementioned reasons, the majority of Constitutional Court Justices are of the opinion that the Petitioners have *the legal standing* as intended in Article 51 Paragraph (1) of the Constitutional Court Law, except Petitioner JN. Raisal Haq, because the party concerned is underage (*minderjarig*) to have a case before the Court so that he is incapable to perform a legal action (*onbekwaam*) to give giving the authority to the Petitioner Fathul Hadie Utsman. In this case, there are 3 (three) Constitutional Court Justices who are of the opinion that the Petitioners have no *legal standing* based on the reasons that will be described in the *dissenting opinion* part of this decision;

Considering whereas accordingly, except for Petitioner JN. Raisal Haq, the Court is of the opinion that Petitioners number 1) through number 8) meet the legal standing requirements to file the petition for judicial review of Article 17

Paragraph (1) and Paragraph (2) as well as Elucidation of Article 49 Paragraph (1) of the National Education System Law against the 1945 Constitution;

Considering whereas since the Court has the authority to examine, hear, and decide upon the *a quo* petition, and as most of the Petitioners have *legal standing*, the Court will give further considerations on the Principal Issue;

### **3. Principal Issue of the Case**

Considering whereas in the principal issue of the petition, the Petitioners filed a petition for substantive review of the constitutionality of Article 17 Paragraph (1) and Paragraph (2), and Elucidation of Article 49 Paragraph (1) of the National Education System Law which read as follows:

- Article 17 Paragraph (1), "*Basic education shall be an educational level that serves as the basis for secondary education level*";
- Article 17 Paragraph (2), "*Basic education shall take the forms of Elementary School (SD) and Madrasah Ibtidaiyah (MI) or other forms of similar level and Junior High School (SMP) and Madrasah Tsanawiyah (MTs), or forms of similar level*";
- Elucidation of Article 49 Paragraph (1), "*The fulfillment of education budget can be conducted in stages*";

Considering whereas according to the Petitioners' arguments, Article 17 Paragraph (1) and Paragraph (2) of the National Education System Law which

defines and limits the level of basic education to include SD/MI and SMP/MTs is contradictory to Article 31 Paragraph (2) of the 1945 Constitution which reads, *“Every citizen shall be obligated to follow basic education and the government shall be obligated to finance it”*, because the provision confuses the definition of basic education with educational level, and in addition, the limitation of basic education to SD/MI and SMP/MTs is not realistic considering that current employment condition requires the minimum of Senior High School (SMA) graduates, so that according to the Petitioners basic education should be until SMA.

Considering whereas the Petitioners argued that the Elucidation of Article 49 Paragraph (1) of the National Education System Law is contradictory to Article 31 Paragraph (4) of the 1945 Constitution which reads, *“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”* and obscures the norms contained in Article 49 Paragraph (1) of the National Education System Law which reads, *“The allocation for educational fund beside educators’ salary and service education cost shall be at least 20% of the State Revenues and Expenditures Budget (APBN) in the education sector and at least 20% of the Regional Revenues and Expenditures Budget (APBD)”*;

Considering whereas the Petitioners have presented written evidence (Exhibits P-1 through P-5), an education expert Dr. Andi Jamaro Dulung, M.Si,

and a witness Drs. Shonhadji (a Headmaster/teacher of Private SMP/M.Ts. and Students' Guardian) who principally supported the Petitioners' arguments which can be read completely in the description regarding the principal issue of the case;

Considering whereas the Court has read and heard the written and oral statements of the Government in the hearing, which can be read completely in the description regarding the principal issue of the case, which principally reject the Petitioners' arguments;

Considering whereas the People's Legislative Assembly (DPR) in its written statement dated August 22, 2005 states that educational financing shall be conducted in stages as intended in the Elucidation of Article 49 Paragraph (1) of the National Education System Law because of the factor of the state's limited capacity in accumulating state revenues which makes it impossible to prioritize the minimum education budget of 20% and also because it is aimed at facilitating the distribution of education fund to be effective and efficient for economically-disadvantaged communities. Whereas the provision of Article 17 Paragraph (1) and Paragraph (2) of the National Education System Law does not constitute a limitation for basic education, but due to the Government's limited capacity to give subsidy only up to the level of 9-year basic education. The complete statement of the People's Legislative Assembly is described in the Principal Issue of the case;

Considering whereas in its Plenary Session on September 19, 2005 the Court heard the statement of the Head of Commission VI of the People's Legislative Assembly of 1999 – 2004 Period, who is in charge of the Education Sector as well as the statement of the Head of Working Committee (*Panja*) of the People's Legislative Assembly that discussed the National Education System Draft Law, which principally pertain the following matters:

- a. Whereas the National Education System Draft Law is a Draft Law proposed on the initiative of the People's Legislative Assembly that have been prepared for 2 (two) years to replace Law No. 2 Year 1989 and in the discussion process, its enactment into the National Education System Law was accepted by acclamation, without *voting*;
- b. Whereas the Petitioners have confused the definition of educational level with school. Basic education level intended in the National Education System Law is related to 9-year compulsory education (within the range of 6 – 15 years of age) as commonly applied in many countries;
- c. Whereas the provision of Article 49 Paragraph (1) of the National Education System Law is an interpretation of the People's Legislative Assembly of Article 31 Paragraph (4) of the 1945 Constitution which provides for the minimum education budget of 20% of the State Revenues and Expenditure Budget (APBN) and the Regional Revenues and Expenditure Budget (APBD) excluding the educators' salary and service education, because if both

aspects are included the minimum figure of 20% will has been actually reached;

- d. Therefore, as a compensation, the People's Legislative Assembly approved of its gradual implementation, as referred to in the Elucidation of Article 49 Paragraph (1) of the National Education System Law;
- e. The People's Legislative Assembly has made an agreement with the Government represented by 7 (seven) Ministers that the minimum educational budget of 20% will be reached in stages in 2009 budget year;

The complete statement of Commission VI of the People's Legislative Assembly of the 1999-2004 Period is set out in the description regarding the Principal Issue of the case;

Considering whereas the Court summoned the related parties, namely central executives of professional/social organizations with activities in, and having concern as well as commitment in, education, such as the Central Managing Board of the Indonesian Teachers' Union (PB PGRI), High Council of *Taman Siswa*, General Chairperson of the Indonesian Educational Scholars Association (ISPI), General Chairperson of the Indonesian Private University Association (APTISI), the Central Managing Board of Nahdlatul Ulama (PB NU), and Central Executives of Muhammadiyah who basically have given the following statements:



1. PB PGRI (Prof. Dr. H Muhamad Surya and Drs.H. Sumardhi Thaher) stated that state administrators must obey and perform the mandate of the 1945 Constitution, so that gradual implementation of Article 31 Paragraph (4) of the 1945 Constitution regarding the education budget that must be prioritized by the state namely the minimum of 20% of the APBN and the APBD is basically a violation of the 1945 Constitution. As to the Government's reason that the current fund is insufficient, PB PGRI is of the opinion that the Government can increase state revenues through taxes, expenditure cut for officials, and a firm law enforcement. Regarding 9-year basic educational level, it is ideally up to SMA as suggested by the Petitioners, but PB PGRI is of the opinion that the current basic education of 9 year is adequate.
2. The High Council of *Taman Siswa* Association (represented by its Chairperson I, Ki Soenarno Hadiwijoyo) stated that they basically agree with the Petitioners' petition, so that the order of the 1945 Constitution regarding the priority for the minimum education budget of 20% should be appropriately implemented in the next budget year of 2006. Concerning 9-year basic education, the minimum requirement of SMA graduates for employment means that the basic education graduates are deprived of their rights to proper work.
3. The General Chairperson of ISPI (Prof. Dr. H. Soedijarto, MA.) stated that the priority for the minimum education budget of 20% is a consequence of the Unitary State of the Republic of Indonesia as a *welfare state*, so that he

supported the Petitioners who questioned the Elucidation of Article 49 Paragraph (1) of the National Education System Law which states the minimum education budget of 20% shall be implemented in stages, as if the improvement of poor national education could be postponed while in fact such postponement is more dangerous than tsunami. Whereas ISPI is of the opinion that the 9-year basic education is already appropriate, because for a country like Indonesia the ambition of compulsory basic education of 12 years is just a dream.

4. The Chairperson of APTISI Dr. Ir. Suharyadi, M.S. stated that the Elucidation of Article 49 Paragraph (1) is very confusing and ambivalent toward the state's intention to prioritize the minimum education fund of 20% through the APBN and the APBD as mandated by Article 31 Paragraph (4) of the 1945 Constitution. In addition, the Elucidation should make the provision clear instead of making it unclear, so that APTISI supported the Petitioners' petition, but with respect to compulsory basic education up to SMA, APTISI did not agree with the Petitioners.
5. PB NU (Andi Jamaro and Junaidi, S.H.) stated that PB NU highly regretted that the National Education Minister's lack of perseverance in implementing the mandate of the 1945 Constitution regarding the minimum education budget of 20% that must be prioritized by the state, therefore PB NU supported the Petitioners.

6. The Central Executives of Muhammadiyah (represented by Basic and Secondary Education Council H. Ali Tahir Parasong, S.H., M.Hum. and Drs. H. Firmansyah, M.Ag.) stated that principally and idealistically Muhammadiyah highly appreciates the Petitioners' petition, but pragmatically Muhammadiyah agrees with the Minister of National Education on a gradual and persuasive implementation thereof.

Considering whereas before considering the Petitioners' arguments and evidence, oral and/or written statements of the Government, written statement of the People's Legislative Assembly, oral and/or written statement of the Working Committee of the People's Legislative Assembly regarding the National Education System Draft Law, oral and/or written statements of the related parties, as well as oral conclusion by the Petitioners, the Court will first study the legal policy in the education sector according to the directions of the 1945 Constitution as follows:

1. Whereas one of the goals of the Unitary State of the Republic of Indonesia (NKRI) is to develop the intellectual life of the nation (Preamble to the 1945 Constitution, Paragraph 4);
2. Whereas the Unitary State of the Republic of Indonesia (NKRI) is a constitutional state [Article 1 Paragraph (3) of the 1945 Constitution] with *welfare state* characteristic, the tradition of which in European countries gives free education even up to university level;

3. Whereas the State guarantees the right of every citizen to obtain education [Article 31 Paragraph (1) of the 1945 Constitution], because education is a personal development instrument of human being as a part of human rights, as provided for in Article 28C Paragraph (1) of the 1945 Constitution which reads "Every person shall have the right to develop himself/herself through the fulfillment of their basic needs, shall have the right to obtain education and to enjoy the benefits of science and technology, arts and culture for the enhancement of the quality of their life and for the welfare of humankind";
4. Whereas the National Education System regulated in an organic law (the National Education System Law) must be able to enhance faith and devoutness, to develop the intellectual life of the nation, and to advance science and technology oriented to 4 (four) matters, namely to uphold religious values, to maintain the national unity, to enhance civilization, and to enhance the welfare of humankind [Article 31 Paragraphs (3) and (5) of the 1945 Constitution];
5. As a consequence of Article 31 Paragraph (2) of the 1945 Constitution that "Every citizen shall be obligated to follow basic education and the government shall be obligated to finance it", the education budget financing is the main responsibility of the government, including regional governments, so that the country prioritizes the minimum education budget of 20% of the APBN and the APBD [Article 31 Paragraph (4) of the 1945 Constitution]. In fact, basic

education, both public and private, must be free, because it is the state's responsibility obligating every citizen to follow basic education;

Considering whereas based on the legal policy in education sector according to the aforementioned directions of the 1945 Constitution and the facts disclosed in the having, the Court is of the following opinion:

- a. Whereas the Petitioners' arguments stating that Article 17 Paragraph (1) and Paragraph (2) of the National Education System Law is contradictory to Article 31 Paragraph (2) of the 1945 Constitution, are only based on assumptions which are not supported by evidence or statements of the related parties. In addition, Article 31 Paragraph (2) of the 1945 Constitution does not regulate the limitation of what is intended by basic education, leaves the regulation thereof to the law regarding national education system. Compulsory education through 9-year basic education is commonly adopted by almost all countries, as stated by the Government and the People's Legislative Assembly. Therefore, the Petitioners' arguments that the provision of Article 17 Paragraph (1) and Paragraph (2) is contradictory to the 1945 Constitution are not sufficiently grounded;
- b. Whereas subsequently the Petitioners argued that the Elucidation of Article 49 Paragraph (1) of the National Education System Law is contradictory to Article 31 Paragraph (4) of the 1945 Constitution. With respect to the Petitioners' arguments, the Court is of the opinion that basically the implementation of Constitutional provisions must not be postponed. The

1945 Constitution has *expressis verbis* determined that the minimum education budget of 20% must be prioritized as reflected in the APBN and the APBD and must not be reduced by laws and regulations which are hierarchically in a lower position. The Elucidation of Article 49 Paragraph (1) of the National Education System Law has also formed a new norm that obscure the norms contained in the elucidated Article 49 Paragraph (1), so that the provision in the Elucidation of Article 49 Paragraph (1) is also contradictory to the commonly-accepted principles and theories of laws and regulations in legal science knowledge which are later spelled out in the Law of the Republic of Indonesia Number 10 Year 2004 regarding Formulation of Laws and Regulations (*vide* Decision of the Constitutional Court Number 005/PUU-III/2005 in the petition for judicial review of the Elucidation of Article 59 Paragraph (1) of the Law of the Republic of Indonesia Number 32 Year 2004 regarding Regional Government).

Moreover, education in Indonesia has been left behind, so that it is time that education must become the main priority of development in Indonesia, among others, through priority in budget. The existence of the Elucidation of Article 49 Paragraph (1) of the National Education System Law becomes a reason for the Government, both Central and Regional Governments, not to meet the 20% limit of education budget in the APBN and the APBD, so that the Petitioners' arguments are sufficiently grounded;

In view of the provisions of Article 56 Paragraph (2), Paragraph (3), and Paragraph (5), and Article 57 Paragraph (1) and Paragraph (3) of the Law of the Republic of Indonesia Number 24 Year 2003 regarding the Constitutional Court;

### **PASSING THE DECISION**

To declare that the Petitioners' petition is granted party;

To declare that the Elucidation of Article 49 Paragraph (1) of the Law of the Republic of Indonesia Number 20 Year 2003 regarding National Education System (State Gazette Year 2003 Number 78, Supplement to State Gazette of the Republic of Indonesia Number 4301) is contradictory to the 1945 Constitution of the Republic of Indonesia;

To declare that the Elucidation of Article 49 Paragraph (1) of the Law of the Republic of Indonesia Number 20 Year 2003 regarding 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) has no binding legal effect;

To reject the remaining petition of the Petitioners;

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

### **Dissenting Opinion**

With respect to this Decision, three Constitutional Court Justices have a dissenting opinion.

1. Constitutional Court Justice Prof. H. A. S. Natabaya, S.H., LL.M
2. Constitutional Court Justice H. Achmad Roestand, S.H
3. Constitutional Court Justice Soedarsono, S.H

With reference to Decision of the Constitutional Court Number 006/PUU-III/2005 dated May 31, 2005, constitutional impairment due to the coming into effect of a Law in accordance with Article 51 Paragraph (1) of the Constitutional Court Law must meet 5 (five) criteria as follows:

- a. The Petitioners must have constitutional rights granted by the 1945 Constitution;
- b. The Petitioners believe that their constitutional rights have been impaired by the coming into effect of the law petitioned;
- c. the impairment of such constitutional rights shall be 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 impairment of such constitutional rights and the law petitioned for review;
- e. if the petition is granted, it is expected that, the impairment of such constitutional rights argued will not or does not occur any longer;

In their petition the Petitioners' argued as follows:



1. Elucidation of Article 49 Paragraph (1) of Law No. 20 Year 2003 regarding National Education System which reads: " *The fulfillment of education budget can be conducted in stages*", is contradictory to Article 31 Paragraph (4), Article 27 Paragraph (2), Article 28D Paragraph (2), Article 28H Paragraphs (1) and (3) of the 1945 Constitution, so that the constitutional rights of the Petitioners are impaired;

2. Article 17 Paragraphs (1) and (2) of Law No. 20 Year 2003, regarding National Education System which reads:

Article 17 Paragraph (1): " *Basic education shall be an educational level that serves as the basis for secondary education level*";

Article 17 Paragraph (2): " *Basic education shall take the forms of Elementary School (SD) and Madrasah Ibtidaiyah (MI) or other forms of similar level and Junior High School (SMP) and Madrasah Tsanawiyah (MTs), or other forms of similar level*";

are contradictory to Article 31 Paragraph (4), Article 27 Paragraph (2), Article 28D Paragraph (2), Article 28 H Paragraphs (1) and (3) of the 1945 Constitution, so that the constitutional rights of the Petitioners are impaired;

Based on the Petitioners' arguments, the issue is whether the constitutional rights of the Petitioners are impaired by the coming into effect of Law No. 20 Year 2003, particularly Elucidation of Article 49 Paragraph (1) and Article 17 Paragraphs (1) and (2);

In view of Article 49 Paragraph (1) of Law No. 20 Year 2003 and elucidation of Article 49 Paragraph (1), which reads “The allocation for *education fund beside educators’ salary and service education cost shall be at least 20% of the State Revenues and Expenditures Budget (APBN) in the education sector and at least 20% of the Regional Revenues and Expenditures Budget (APBD), (The fulfillment of education budget can be conducted in stages)*”. The existence of elucidation of Article 49 Paragraph (1) of Law No. 20 Year 2003, does not create any impairment of constitutional rights of the Petitioners as regulated by the 1945 Constitution, as intended in Article 51 of the Constitutional Court Law. If there is any impairment of the Petitioners’ constitutional rights, such impairment has not been caused by the law petitioned for judicial review. In other words, there is no causal relationship (*causal verband*) between the impairment of Petitioners’ constitutional rights and the coming into effect of the *a quo* Law;

Considering whereas the fulfillment of such 20% budget for education conducted gradually, in accordance with the Elucidation of Article 49 Paragraph (1) of Law No. 20 Year 2003, is not contradictory to the constitution, considering that the 1945 Constitution contains general provisions, which must be further described by the legislators;

Considering whereas the budget fund for education is related to the APBN and the APBD, and therefore, Law No. 20 Year 2003, particularly

the Elucidation of Article 49 Paragraph (1), thereof regulates that the fulfillment of such 20% budget is conducted in stages. The term "in stages" does not necessarily mean *contradictory* because gradual implementation refers to stage by stage fulfillment towards the set target. Whereas being contradictory must be defined as a contradiction between two matters from opposing directions. Thus, the regulations is not a constitutional violation, therefore we are of the opinion that the Elucidation of Article 49 Paragraph (1) of Law No. 20 Year 2003 is only the state's effort to fulfill the provision of Article 49 of Law No. 20 Year 2003, by taking into account the state's financial condition so that the Elucidation of Article 49 Paragraph (1) of Law No. 20 Year 2003 is not contradictory to Article 31 Paragraph (4) of the 1945 Constitution;

Considering whereas Article 17 Paragraphs (1) and (2) of Law No. 20 Year 2003, which are descriptions of Article 31 Paragraph (2) of the 1945 Constitution, obligates every citizen to follow basic education and that the government must finance it. Since Article 31 Paragraph (2) of the 1945 Constitution only mentions basic education, legislators shall further make regulations concerning basic education, which is referred to in Article 17 Paragraphs (1) and (2) of Law No. 20 Year 2003 that basic education is the education that serves as the basis for secondary education in the form of Elementary School and Junior High School. Thus, Article 17 Paragraph (1) and (2) of Law No. 20 Year 2003 does not harm the Petitioner

In connection with the presence of Petitioner principal 2 through 8, there is no causal relationship (*causal verband*) between the impairment and the coming into effect of the law petitioned for judicial review; because the constitutional rights regulated in Article 31 Paragraphs (2) and (4), Article 27 Paragraph (2), Article 28 D Paragraph (2), Article 28 H Paragraphs (1) and (3) of the 1945 Constitution are not violated by the Elucidation of Article 49 Paragraph (1) and Article 17 Paragraphs (1) and (2) of Law No. 20 Year 2003, based on the aforementioned description we are of the opinion that the Petitioners principal 2 through 8 do not have the legal standing to file the petition for judicial review of a law against the 1945 Constitution;

Considering whereas it was revealed in the hearing that the Petitioner principal 9, JN. Raisal Haq, is still underage, thus pursuant to Chapter XV regarding Underage and Guardianship, Part One Regarding Underage, Article 330 Paragraph (1), of the Indonesian Civil Code, which reads *"If laws and regulations use the term "underage", to the extent it is concerning Indonesian nation, the term shall mean: everyone who has not reached the age of 21 and is not married"*, Petitioner JN. Raisal Haq is under his parents' responsibility (*onderlijkemacht*), in this case the Petitioner **Fathul Hadie Utsman** as Attorney. In this case of judicial review **Fathul Hadie Utsman** as Petitioner did not encounter any impairment due to the coming into effect of the *a quo* Law, because there

is not any causal relationship (*causal verband*) between the impairment and the coming into effect of the law petitioned for judicial review, so that Petitioner JN Raisal Haq has no legal standing to file the petition for judicial review of the law against the 1945 Constitution, as described above;

With respect to the aforementioned description, we are of the opinion that the Petitioners have no legal standing, so that pursuant to Article 56 Paragraph (1) of the Constitutional Court Law, it must be declared that the petition of the Petitioners can not be accepted (*niet ontvankelijk verklaard*);

.....

Hence, this decision was made in the Consultative Meeting of 9 (nine) Constitutional Court justices on **Wednesday, October 5, 2005**, and was pronounced in the Plenary Session of the Constitutional Court open for public on this day **Wednesday, October 19, 2005** by **Prof. Dr. Jimly Asshiddiqie, S.H.** as the Chairperson and concurrent Member and **Prof. Dr. H.M. Laica Marzuki, S.H., Prof. H.A.S. Natabaya, S.H., LL.M, H. Achmad Roestandi, SH, Dr. Harjono, S.H., M.C.L, Prof. H. Abdul Mukthie Fadjar, S.H., M.S., I Dewa Gede Palguna, S.H., M.H., Maruarar Siahaan, S.H., and Soedarsono, S.H.**, respectively as members, assisted by **Ida Ria Tambunan, S.H.** as Substitute Registrar and in the presence of the Petitioners/their Attorneys, the Government, the People's

Legislative Assembly of the Republic of Indonesia, the People's Representative Council of the Republic of Indonesia, and the Related Parties.

**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.,LL.M.**

**Signed**

**H. Achmad Roestandi, SH**

**Signed**

**Prof.H.A.Mukthie Fadjar, S.H., M.S.**

**Signed**

**Dr. Harjono, S.H., M.C.L.**

**Signed**

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

**Signed**

**Maruarar Siahaan, S.H.**

**Signed**

**Soedarsono, S.H.**

**SUBSTITUTE REGISTRAR,**

**Signed**

**Ida Ria Tambunan, S.H.**

