



DECISION
Number 13/PUU-VI/2008

FOR THE SAKE OF JUSTICE BASED ON GOD THE ALMIGHTY
CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA

[1.1] The ones that examine, adjudicate, and sentence the constitutional cases in the first and final levels, giving the sentence in the case of petition of Review on Law Number 16 of the year 2008 concerning Amendment on the Law Number 45 of the year 2007 concerning State Revenue and Expenditure Budget of Budgeting Year of 2008 on Constitution of the Republic of Indonesia of 1945 that was proposed by :

[1.2]

1. **Prof. Dr. H. Mohammad Surya**, the occupation as the General Chairperson of the Board Management of PGRI, having address at PGRI Building Tanah Abang III Street, Number 24 Central Jakarta;
2. **H. M. Rusli Yunus**, the occupation as the Chairperson of the Board Management of PGRI Executive Board, having address at PGRI Building Tanah Abang III Street, Number 24 Central Jakarta;
3. **Ir. Abdul Azis Hoesein, MEngSc, Dipl.HE**, the occupation as Chairperson of the Board Management of PGRI, having address at PGRI Building Tanah Abang III Street, Number 24 Central Jakarta;

4. **Drs. Ramli Rasjid M.Si., M.Pd**, the occupation as Chairperson of the PGRI of Nanggroe Aceh Darussalam province, having address at Panglima Nyak Makam Street Number 4 Nanggroe Aceh Darussalam;
5. **Tamrin, S.Pd**, the occupation as the Teacher / General Secretary of the PGRI of Bengkulu Province, having address at Hibrida 13A Street Number 51 Bengkulu;
6. **Drs. H. Gusrizal, M.Pd**, the occupation as the Chairperson of State Senior High School 3 / Deputy Chairperson of PGRI of Riau Province, having address at Yos Sudarso Street Number 100A, Pekanbaru, Riau;
7. **Effi Herman, S.Pd**, the occupation as the Education and Culture School Supervisor of Jambi City / General Secretary of PGRI of Jambi, having address at Teluk Indah Complex Number 43 P.Sulur, Neighborhood council of 21 Jambi;
8. **Zambi Akil, S.Pd**, the occupation as the General Secretary of PGRI of West Sumatra Province, having address at Jenderal Sudirman Street Number 1A, Padang;
9. **Drs. Aidil Fitriyah**, the occupation as the Chairperson of PGRI of South Sumatra, having address at the PGRI Secretariat of South Sumatra, Palembang;
10. **Drs. Izhar Matrian, M.M**, the occupation as the LPMP Lecturer Lampung / Chairperson of PGRI of Lampung Province, having address at Panglima Polim Street Melati Block Number 6 Bandar Lampung;

11. **Drs. Wahyu Pradono, M.M.**, the occupation as the General Secretary of PGRI of DKI Jakarta, having address at Jakarta Teacher Building, T.B Simatupang Street Number 48A Tanjung Barat Jagakarsa South Jakarta 12530;
12. **Muhammad Sibromulisi**, the occupation as the General Secretary of PGRI of Banten Province, having address at Komplek Kejaksaan II Street Number 37 Serang 42117;
13. **Sahiri Hermawan, S.H., M.H**, the occupation as Chairperson of PGRI of West Java Province, having address at the Secretariat of PGRI of West Java, Bandung;
14. **Drs. Soedharto, M.A**, the occupation as the Chairperson of the PGRI of Central Java Province, having address at the Secretariat of PGRI of the Central Java, Semarang;
15. **Drs. H. Sugito, M.Si**, the occupation as the Chairperson of PGRI of the D.I Yogyakarta Province, having address at Babaran Street Number 48A Yogyakarta;
16. **Drs. H. Matadjit, M.M.**, the occupation as Chairperson of PGRI of the East Java Province, having address at Ahmad Yani Street Number 6-8 Surabaya;
17. **Drs. Igd Wentan Aryasula, M.Pd**, the occupation as the Teacher, having address at North Nangka Street, Denpasar Bali;

18. **Drs. H.M. Ali H. Arahim**, the occupation as the Supervisor / General Secretary of PGRI of the West Nusa Tenggara Province, having address at Kaktus Street Number 8 Mataram;
19. **Drs. Ocro Ouwpoly**, the occupation as the Chairperson of PGRI of the West Nusa Tenggara Province, having address at Perintis Kemerdekaan III Street Number 40 Kota Baru, Kupang, East Nusa Tenggara;
20. **Laspindo, S.Pd**, the occupation as the General Secretary of PGRI the Central Kalimantan Province, having address at the Secretariat of PGRI of the Central Kalimantan, Palangkaraya;
21. **Sutomo Aris Wijayanto, S.Pd**, the occupation as PNS (Civil Servant) / General Secretary of PGRI of the East Kalimantan Province, having address at Ratan Sempurut Street Number 75, Samarinda, East Kalimantan;
22. **M. Ali Daud**, the occupation as the Chairperson of PGRI of the West Kalimantan Province, having address at the Secretariat of PGRI of the West Kalimantan, Pontianak;
23. **Drs. H. Dahri**, the occupation as the Chairperson of the South Kalimantan Province PGRI, having address at Sultan Adam Sultan Adam Permai Street Complex 3 Number 73 Banjarmasin, South Kalimantan;
24. **Drs. H. Muhammad Asmin, M.Pd**, the occupation as the Chairperson of PGRI of the South Sulawesi Province, having address at Amanagappa Street Number 34 Makassar South Sulawesi;

25. **Drs. H. Muslimin, M.M.**, the occupation as the Head of State Senior High School 1 Mamuju and Secretary of PGRI in the field of Information and Communication of the West Sulawesi Province, having address at Mamuju Street, West Sulawesi;

26. **Drs. Laode Parisa Syalik**, the occupation as the Deputy Chairperson of PGRI of the Southeast Sulawesi Province, having address at Bunga Tanjung Street Number 2A, Kendari;

27. **Dra. Hj. Z. Mentemas Jusuf**, the occupation as the Deputy Chairperson of PGRI of the Gorontalo Province, having address at Samratulangi Street neighborhood association of 01 / neighborhood council of 01 Limba U1 Sub District Gorontalo;

28. **Saparun Sitaniase**, the occupation as the Teacher, having address at Batumerah neighborhood association of 001 / neighborhood council of 08 Siriman Subdistrict Ambon City, Maluku Province;

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

Pursuant to the Power of Attorney dated April 29, 2008 authorizing Dr. Andi Muhammad Asrun, S.H., M.H., and Dewi Triyani S.H., having domicile at PGRI Building Tanah Abang III Street Number 24 Central Jakarta.

Hereinafter referred to as ----- **the**

Petitioners;

[1.3] Having read the petition from the Petitioners;

Having heard the statements of the Petitioners;

Having heard and read written statements from the Government;

Having read the written statement from the House of Representatives;

Have examined the evidences;

Have heard and read the written statement taken from the experts from the Applicants;

Having read the conclusions of the Petitioners;

2. FACTS OF THE CASE

[2.1] Considering whereas the Petitioners have submitted a petition application with the application letter dated May 2, 2008 that has been received and registered at Registrar of the Constitutional Court (hereinafter referred to as the Registrar of the Court) dated May 9, 2008 by registering the Case Number 13 / PUU-VI / 2008, which has been repaired for 2 (two) times and received at the Registrar of the Court dated May 14, 2008 and June 3, 2008, which outlines the following matters:

I. BACKGROUND OF THOUGHTS OF PETITION APPLICATION

I.A. GENERAL THOUGHT

I.A.1. Mandate of the Implementation of Education in the 1945 Constitution

Whereas the founding fathers of the Republic of Indonesia since the early had realized that education is the most strategic step to achieve national progress. Such awareness is not a historical issue, however it has a deep historical steeping because of the blessing of education, the founding fathers make up their minds to form an independent, sovereign and prosperous national country in the past early twentieth century. The ideal of independence for the Indonesian people was born as a result of the thought struggle by the elites who studied in formal education institutions, which were well managed and quality. Awareness of the importance of education as a golden bridge towards the welfare of the nation encourages the birth of thought as it is presented in the fourth paragraph of the Preamble of the 1945 Constitution. Awareness of the founding fathers about the importance of education as a golden bridge in order to achieve the welfare of the nation has also inspired members of the People's Consultation Assembly (Period of 1999-2004) to include clauses "The nation prioritizes the education budget of at least 20% of the State Revenue and Expenditure Budget as well as from the Regional Revenue and Expenditures Budget to fulfill the need for national education " as stipulated in Article 31 paragraph (4) of the 1945 Constitution (Exhibit P-1). Obligation of the nation to prioritize the education sector is also in line with the spirit of Law Number 20 of the year 2003 concerning the National Education System (Exhibit P-2).

Such constitutional obligation means that the government administration in the central and regional level is obliged to allocate a minimum budget of 20% of the State Budget and Regional Budget for education. The education budget allocation is intended to improve the quality of education, not to improve the welfare of education providers which serves as the burden of the government

budget in the context of the government routine budget. The constitutional obligation must be fulfilled by fulfilling the provisions that is presented in the Article 31 paragraph (4) of the 1945 Constitution, namely by striving to achieve the education budget allocation minimally by 20% of the State Budget and by 20% of the Regional Budget. The fulfillment of constitutional obligations must be sincere, honest and seriously, so that it can achieve qualified education.

All provisions of the constitution place the Government as the person in charge and the main player in educational activities, by still acknowledging the portion of the community to take parts in organizing any education activities. The constitutional obligation by stipulating the portion of the education budget by 20% of the State Budget (APBN) indicates the nature of education that is so important for the country journey in the future, by preparing the quality of Indonesian people having their ability technically to build the country and compete through technology development

by paying attention to the aspect of noble character.

The responsibility of the Government to carry out education is also carried out by pursuing educational activities based on the national education system with the provision of educational infrastructure and facilities that are of course not cheap. Educational success is one of the main indicators of successful implementation of the government duties. Therefore, the Government should properly give attention to the education, particularly through fund allocation for educational activities.

In this application, the Petitioners propose the Constitutional Court to decides the Law Number 16 of the year 2008 concerning Amendments on the Law Number 45 of the year 2007 concerning State Revenue and Expenditure Budget for

Budget Year of 2008 (hereinafter referred to as the Law Number 16 of 2008, Exhibit P-3) as far as it is concerned to the education budget, it does not have any binding legal force, because as stated in the Addendum of Law Number 16 of the 2008 (see Exhibit P-3, page 3) it says that the "education budget" is estimated to reach about 15.6% (which includes the salary of educators, but excluding official education budget, which means that it is still under the provisions of Article 31 paragraph (4) of the 1945 Constitution which requires an education budget allocation of 20% from the State Budget (APBN) and 20% from the Regional Budget (APBD). Definition of education budget as referred to in the Law Number 16 of the year 2008 is to comply with the Decision of the Constitutional Court Number 24 / PUU-V / 2007 dated February 20, 2008. The consideration is that there must be a legal decision to force the government to comply with the provisions of the education budget allocation by at least 20% of the State Budget (APBN), by correcting the overall State Budget (APBN) / Regional Budget (APBD). Here and there amendments to the State Budget to fulfill the provisions of Article 31 paragraph (4) of the Constitution 1945 is the obligation and responsibility of the compilers of the State Budget (APBN), namely the Government with the House of the People Representatives (DPR). This can be proven at least since the Constitutional Court through the Decision on the Case Number 012 / PUU-III / 2005 dated October 13, 2005, which states that "as far as the education sector is stated to be contrary to Article 31 paragraph (4) of the 1945 Constitution and therefore, it is declared to have no binding legal force ". Composition of budget managers in the State Budget (APBN) is a multi-state agency and institution, which will not create voluntary attitude of one institution to

cut its budget for the sake of interest of the education budget that is simply identified as the property of the Ministry of Education.

The Law Number 16 of the year 2008, with the provisions of the education budget allocation to be estimated at around 15.6%, truly the 1945 Constitution, which the Decision of the Constitutional Court in Case Number 24 / PUU-V / 2007 stated in the section [3.16.9] that is, therefore, through this Decision of the Court, there may be no more reasons to avoid or delay the fulfillment of the budget provisions of at least 20% for education sector, both in the State Budget (APBN) and Regional Budget (APBD) in each province, district, and city throughout Indonesia pursuant to the provisions of the Article 31 paragraph (4) of the 1945 Constitution is the highest law (*de hoogste wet*) which should not be delayed its implementation, including the 20% education budget provisions pursuant to the Decision of the Court Number 012 / PUU-III / 2005.

While reaffirming the quotation of the above decision, the Chairman of the Constitutional Court at the ends of the hearing on the Decision on the Case Number 24 / PUU-V / 2007 on February 20, 2008 confirmed if in the future the provision of a 20% budget allocation from the State Budget (APBN) is not met, then the Constitutional Court will cancel the overall state budget violating the provisions of the Article 31 paragraph (4) of the 1945 Constitution. In fact, the presence of the Law Number 16 of 2008 is truly violating the constitution. And this is a violation of the 1945 Constitution, particularly the Article 31 of the paragraph (4) of the 1945 Constitution for the umpteenth times by the Government at this time, by the reason that national finance does not allow to fulfill the provisions of Article 31 paragraph (4) the 1945 Constitution due to the

economic crisis that is still faced by this country sounds like an old song that is always repeated to justify the violation of the 1945 Constitution

Quo vadis republic.

It is necessary for us to reflect once again that as an effort to provide a legal basis for the implementation of the education, the Government as well as the DPR have made the Law Number 20 of the year 2003. Article 1 of the Law Number 20 of the year 2003 clearly interprets the education and its supporting components of the education activities as follows:

1. Education is a conscious and planned effort to create a learning atmosphere and learning processes so that students can actively develops their potential to have religious spiritual strengths, self control, personality, intelligence, noble characters and any necessary skills for themselves, the nation community and the state.
2. National education is the education based on Pancasila and the 1945 Constitution having roots in religious values, Indonesian national culture and being responsive to the demands of changing era.
3. The national education system is the whole interrelated components in an integrated manner to achieve national education goals.
4. Education personnel are members of the community who devote and are appointed to support the education.
5. Educators are qualified teaching staff as teachers, lecturers, counselors, tutors, widyaiswara, tutors, instructors, facilitators and any other designations

who are in accordance with their specialty, and participate in implementing the education.

6. The education unit is a group of education service implementing education on formal, non-formal and informal channels on every level and type of education.
7. Compulsory education is a minimum education program that is obliged to be followed by the citizens of the Republic of Indonesia for the responsibility of the Government and the Regional Government.

I.A.2 Act Number 20 of the year 2003

The Law Number 20 of the year 2003 also ensures equal rights for every citizen to gain education as written in the Article 5 paragraph (1) is that, "Every citizen has the same rights to gain qualified education". Some other provisions in the Law Number 20 of the year 2003 which supports the implementation of the optimal education activities are described below:

Article 6 paragraph (1) reads:

(1). Every citizen in the age of seven to fifteen years are obliged to gain the primary education.

Article 11 paragraph (2) reads:

(2). The Government and Regional Government must guarantee the availability of funds in order to implement the education for every citizen in the age of seven to fifteen years.

Article 34 paragraph (1), (2), (3) reads:

- (1). *Every citizen who is in the age of 6 (six) years old can join the compulsory education program.*
- (2). The Government and the Regional Government guarantee the implementation of compulsory education minimally at the primary education level without charging any fees.
- (3). *The compulsory learning is the responsibility of the state that is organized by government education institutions, local governments and communities.*

Article 40 paragraph (1) letter a reads:

- (1). *Educators and education personnel are entitled to obtain:*
 - a. *Appropriate and adequate income and welfare guarantees.*

Article 46 paragraph (2) reads:

- (2). *The Government and the Regional Government are responsible for providing education budget as stipulated in the Article 31 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.*

Article 47 paragraph (1) reads:

- (1). *Sources of educational funding are determined based on the principles of justice, adequacy, and sustainability.*

Article 48 paragraph (1) reads:

(1). Management of education funds is based on the principles of justice, efficiency, public transparency and accountability.

Article 49 paragraph (1) reads:

(1). Education funds in addition to education salaries and official education costs are allocated at minimum of 20% of the State Budget (APBN) in the education sector and minimum of 20% of the Regional Budget (APBD).

Those who have been declared as having no legal binding force through the Decision of the Constitutional Court on February 20, 2008 (Case Number 24 / PUU-V / 2007).

Article 49 paragraph (2) reads:

(2). The salaries of teachers and lecturers appointed by the government are allocated in the State Budget (ABPN).

I.A.3 IMPERATIVE NATURE OF THE 20% EDUCATION BUDGETS OF THE STATE BUDGET (APBN)

- Whereas the provisions concerning the education budget allocation which are at least 20% in the 1945 Constitution if it is related to the strategies of the development that should place education as *human investment*, then the education must be seen as a more important aspect than any other fields. The education sector should be prioritized without denying any other fields that are also important for the sustainability of the national and state life. This is the best, strategic and fundamental effort to encourage improvement of the

quality of human resources in developing the progress in the life of nation and state in the midst of global life that requires adequate competition capabilities. Thus, the policy adopted in preparing the budget must also be directed to improve the ability of the state to carry out its constitutional obligations as determined in the Article 31 paragraph (4) of the 1945 Constitution to implement and finance the compulsory education for the primary education by reallocating funds from other functions in the State Budget (APBN) for educational functions. Priority for allocation of excess funds obtained from the results of state expenditure savings and / or increased income yields must also comply with the orders to prioritize the education budget as referred to in Article 31 paragraph (4) of the 1945 Constitution. Therefore, the nature of the existence of the Article 31 of the 1945 Constitution is imperative (*dwingend recht*), which cannot be avoided as long as it is still presented in the 1945 Constitution.

- Whereas it turns out that in the 2005 budget year, the education budget was regulated pursuant to the Law Number 36 of the year 2004 concerning the State Budget of the 2005 budget year namely less than 20%, so that through the Decision of the Constitution Court Number 012 / PUU-III / 2005 dated October 19, 2005, it states that "Law Number 36 of the year 2004 concerning the State Budget of the 2005 Budget Year as far as concerning the education sector, it is declared to be contrary to the Article 31 paragraph (4) of the 1945 Constitution and therefore it is declared not to have binding legal force".
- Whereas also through the Law Number 13 of the year 2005 concerning the State Budget (APBN) of the 200g Budget year, it turns out that the education

budget is not / yet reaching 20%, this law only accommodates 9.1% (nine point one percent), so that through the testing on the laws that are petitioned by the Petitioners, the Constitutional Court in the Decision Number 026 / PUU-III / 2005 dated March 22, 2006 states that the Law Number 13 Year 2005 concerning State Budget of the 2006 Budget Year as far as concerning the education sector, it is declared to be contrary to the Article 31 paragraph (4) of the 1945 Constitution and therefore, it is declared not to have binding legal force.

- Out of the two previous Decisions of the Constitutional Court, it can be concluded that the Article 31 paragraph (4) of the 1945 Constitution is a constitutionality absolute measure of the Laws of the State Budget, thus, it is absolute that every Law concerning State Budget which also regulates the amount of the education budget which cannot be contradictory (unconstitutional), inconsistent and may not be nonconforming with the provisions of Article 31 of the paragraph (4) of the 1945 Constitution.

I.A.4 REVISED STATE BUDGET / APBN-P BUDGET YEAR 2008

In the Addendum of the Law Number 16 of the year 2008 concerning Amendment to the Law Number 45 of 2007 concerning the State Budget Year of 2008 Budget year paragraph 2 page 3 and attachments to the budget pursuant to the program as an integral part of the Law Number 45

In 2007 concerning the State Budget of the 2008 Budget Year for the education sector, it was declared that "... in the REVISED STATE BUDGET / APBN-P of 2008 Budget year, the ratio of the education budget is estimated to reach 15.6% (fifteen point six percent).

Total of the budget / allocation of the education fund is only about 15.6% of the State Budget of the 2007 Budget Year, this violates the 1945 Constitution that requires to prioritize the allocation of education funds at least 20% of the State Budget (APBN) and Regional State Budget (APBD), as stated in the Article 31 paragraph (4) of the 1945 Constitution, "The State prioritizes the education budget at least 20% of the State Budget (APBN) and Regional State Budget (APBD) to meet the needs of organizing education ".

Ironically, if referring to the definition of the education budget as presented in the Decision of the Constitutional Court Number 24 / PUU-V / 2007 by the Law Number 45 of the year 2007, then in the Law Number 16 of the year 2008 brings more uncertainty to the education budget allocation by saying "Estimated to reach 15.6%", or smaller than the budget allocation that is stated to be 18% (eighteen percent) in the Law Number 45 of the Year 2007. Thus, the composers of the Law Number 16 of the year 2008 deliberately and consciously do not allocate the education funds by 20% of the state budget, so the Constitutional Court must declare that the Number 16 of 2008 is contrary to provisions of Article 31 paragraph (4) of the 1945 Constitution.

I.A.5 1945 Constitution of the Republic of Indonesia

- Preamble : the goals of independence is to educate the life of the nation.
- Article 31 paragraph (3) of the 1945 Constitution pre-amendment: has never been defined or interpreted in terms of financing.
- It turns out that Indonesia is left behind: if ASEAN countries spend up to 4.0% of GDP for the Indonesian education for 4 decades ranging from 2.6%.

- Therefore the new 1945 Constitution quantitatively is called 20% of the National Budget, in order to stimulate the government to give more attention to the education.

I.A.6. Comparison with other countries

Comparing Indonesian education to countries in ASEAN or East Asia is left behind in (Exhibit P-4, The World Bank report):

1. Number of student participation in the school system;
2. Primary Education (9 years of education) has not been completed, because of facing problems:
 - 1) the quality is very left behind;
 - 2) Average Indonesian studying time is only 7 years;
 - 3) Literacy eradication is still 91%;
 - 4) Provision of the budget by the government has not been based on the needs.
3. The pace of achieving the above educational goals is very slow, and tends to get worse.
4. There is an educational gap between any regions in Indonesia.
5. The characteristics of ideal primary education are as follows:
 1. 9 years of full learning from 7 years to 15 years;
 2. There are no payments from parents or students;

3. There are no entry requirements;
4. Provision of learning places and educational facilities and teachers to remote villages and regions;
5. Provision of learning places and teachers for those with disabilities;
6. Competence at the end of 9 years of learning allows the students to be able to enter secondary school.

I.A.6.a Comparative facts:

- Human Development Index (HDI) that is issued by UNDP, then Indonesia is in a position below China, because literacy and learning time are worse. Two factors of education include in the calculation of this HDI, namely literacy and the average learning times;
- Indonesia's education budget for years is about 2.4% of the GDP, while other ASEAN countries are between 3.6% -4.0% (Malaysia, Singapore) Exhibit P-4;
- Education budgets for Malaysia, Singapore, Thailand, Taiwan have averages by 20% of their APBN, vide Exhibit P-4;
- Workers, illustration of 72% of Indonesian workers are those who do not go to school or do not finish elementary school (32%), and about 1/3 (32%) is Elementary school graduation, 8% of junior high school graduation and 12% of high school graduation, and about 4% of university graduation. Through a low level of Indonesian workers and not mastering technology, then in competition, Indonesia does not have advantage. Therefore, it is necessary to

immediately improve the quality of Human Resources through education so that it is necessary to be put in the top priority;

- Primary education (9 years of education, Universal Education, Elementary and Junior High School);
- Neighboring countries complete their primary education as an education program mainly through a) providing learning facilities (school buildings, furniture, provision of books for each student, teaching aids, qualified teachers, adequate operational costs, professional learning and teaching evaluation, evaluation of the quality of students and schools).
- This primary education in foreign countries is completely free, parents and students do not have to pay any levies. This is because of the primary education organization based on the principle that is an obligation (both moral and legally confirmed) for the state to provide provisions of knowledge and skills from the age of 7 years to 15 years, so that at the age of working (16 years) the students have already been reasonable and sufficient knowledgeable
- .For comparison in the 1970s, Singapore (2.7 million), Taiwan (14 million), Korea (47 million) with a targeted program to complete 9 years and 14 years of learning times. Furthermore, these students continue their education in the secondary and higher education.
- Data

Pure Participation Rate (APM): students in the age of elementary or junior high school, compared to groups of school age.

Rough Participation Rate (APK): the number of all students in school, including those below or above age, including those who repeat, compared to all students in the school age group.

Repeat Numbers (AM): students who do not go to school.

Dropout Rate (AP): students who leave school in the middle of the road.

Forwarding Number (AT): students who continue to higher education.

- The current situation

Elementary School: 95% APM; APK 106%; AM 7%; AP 3.7%; AT 75%

Ideally: APM 99%; APK 102%; AM below 0.5%; AP below 0.2%; AT 100%

Junior High School: 50% APM; 82% APK; AM 5%; AP 12%; AT 50%

Ideally: APM 99%; APK 102%; AM below 0.5%; AP below 0.2%; AT 80%

(Note: some of the data above is approximate, but the amount is close to the reality).

I.A.6.b To complete primary education, it is required:

- Primary School: the age group by 28.4 million children requires:
 - Infrastructure (buildings): repair more than 80,000 heavily damaged spaces
 - Building new buildings in remote areas that have no elementary school or where residents begin to increase (estimated 10,000 buildings);

- Providing teachers: for elementary schools who are still lacking teachers, and new elementary schools.

It is estimated that it is required 110,000 teaching staff;

- Training existing teachers, so that they can meet competency requirements based on the Law of Teachers and Lecturers;
- Providing books and props, for almost all elementary schools, about 160,000 Elementary schools;
- Improving the monitoring and evaluation system of elementary schools;
- Adjusting the curriculum to local conditions;
- Providing reasonable and sufficient operational funds;
- Strengthening education services in the region;

I.A.6.c Junior High School: the age group of 15 million children, facing the problems:

- Infrastructure: repairing heavily damaged buildings;
- Building new buildings to remote areas; To accommodate three million students who do not have schools, it is required about 5,000 junior high school new buildings;
- Providing teachers for new junior high schools. It is estimated that it is required 70,000 teaching staff;
- Training existing teachers;

- Providing books and teaching aids, for junior high schools, which later the number is about 50,000 pieces;
- Improving the monitoring and evaluation system;
- Providing reasonable and sufficient operational funds;
- Strengthening education offices in the region;

If there is enough budget to be provided to complete primary education / 9 years of study, even though the biggest problem is in junior high school and it involves 3 million students and 5000 buildings, only 8 years later, the primary education will be completed. Therefore, it is necessary to provide a sufficient budget as soon as possible to complete this primary education.

I.A.6.d. Literacy

Indonesia faces progress in eradicating illiteracy. At the independence time, the illiteracy was 6%, and in the early 1990s, it was 83%, and currently, it is estimated at 91.3%. Female illiteracy is greater than men. But, it is feared that this literacy rate is false and is "passive", meaning literacy is fading, since there is no library in the villages, and lack of maintenance works, then the effort to eradicate illiteracy (Package A) for those who have never attended school or do not graduate from elementary school are still low. It is still necessary to conduct literacy eradication and maintenance continuously as part of the efforts to improve Indonesian human resources.

I.B. Education Budget Allocation

The founders of this republic strongly believed that only through organization of a national education system that is relevant and qualified, it can achieve the Indonesian goals, namely Indonesian people who are smart in their lives, advanced national culture and prosperous life of its people. The ideals of the founders of this republic for presenting quality education is gaining new constitutional ground, by the inclusion of a minimum education budget allocation by 20% of the State Budget in the Article 31 paragraph (4) of the 1945 Constitution. But, until this petition was submitted, the realization of the budget allocation as ordered by the constitution still has no realization. Therefore, it is not surprising after six decades of independent Indonesia, the ideals of the founding fathers are still not reached. Indonesia is even left behind from any neighboring countries which are currently achieved decades after the Indonesian independence, such as Malaysia (1957), Singapore (1965), Vietnam who just stopped the war in the late 1970s,

Taiwan (1949), South Korea in the 1950s.

I.C. VIOLATION CATEGORY

I.C.1 Substantial violations

Substantial violations can be seen in the methodology of education budget calculation. Substantially, calculating the education budget inputting the official education budget components (in-service training) is *wrong since it contradicts the international convention (UNESCO)* concerning how to calculate the education budget of a country that should only include pre-service program formal education. Meanwhile, the official education held other than by the Ministry of Education

National and Ministry of Religion, includes in the categorization of in-service training program as the part of each sector and not the education sector as intended in the allocation of government budget system.

The international convention must be used because:

- Become an international standard of educational statistics;
- It is used to make comparisons between countries;
- As the "policy tool" and "benchmaking" of the Government in providing minimal service to the basic needs in the field of education; and
- Equality of the international perceptions in providing services to the right of obtaining education as one of the human rights which is "*the most enabling of rights which if accomplished makes great progress towards achieving other rights*" as stated in Global Conference on the Education field that was held in Johannesburg, South Africa in 2004.

I.C.2. Legal violations

The conclusion of the government legally also contradicts the Article 31 paragraph (4) of the 1945 Constitution. In the Article 31 paragraph (4) of the 1945 Constitution, it is stated that "The state prioritizes the education budget of at least twenty percent of the state's revenue and expenditure budget and from the regional revenue and expenditure budget to meet the needs of organizing National Education".

Legal violations of the calculation system carried out by the Government are:

- The law has complied with the international conventions namely by excluding official education fees from the understanding of education funds, meanwhile the Government's calculation does not exclude it.
- The amount of education budget in the education sector pursuant to the Law Number 20 of the year 2003 is 20% of the State Budget (APBN) and 20% of the Regional Budget (APBD). It means that the education budget allocation is 20% of the State Budget (APBN) plus 20% from the APBD so that the proportion and amount of the State Budget (APBN) is added than it will be greater than 20%. Meanwhile, the calculation is presented by the government is not appropriate, namely by summing up the funds provided by the center and the region and only divided by the amount of the State Budget (APBN). Here, legally, there is a violation in how to calculate the percentage of the education budget because it is not pursuant to the mandate of the law.

I.C.3. Intrinsic violation

Behind the legal provisions concerning the proportion of the minimum education budget, it implies a very noble mission from the state, namely that the government can "fulfill the national education needs ", as presented in the last words of the Article 31 paragraph (4) of the 1945 Constitution. One of the national education needs is to provide services to meet the needs of financing primary education compulsory as the responsibility of the state, as mandated by the third amendment to the 1945 Constitution which states that "every citizen must join the primary education and the state must pay for it "(paragraph 2). Further, it is reaffirmed in the Law Number 20 of 2003 concerning

National Education System Article 34 paragraph (2) that "government and regional government guarantee the implementation of compulsory education at a minimum level of primary education to be free of charge ". The primary education as intended includes Elementary School and Junior High schools as stipulated in Article 17 paragraph (2).

Because pursuant to the legal provisions that must be complied with, the Government has violated the law by not fulfilling the proportion of at least 20% in the education budget allocation for the 2008 fiscal year, and intrinsically, the Government has also not succeeded in carrying out the primary education learning compulsory that is fully funded by the government as mandated by the law. The small routine costs provided for education operations, limited School Operational Assistance (BOS) and still large numbers of elementary school and junior high school age children who are forced to enter private schools so that parents are forced to be charged the education costs as required for the primary education, are one of the consequences of, in addition to other causes, not fulfilling sufficient proportion of the education budget from the government.

The release of funds for official education from the education sector category is very appropriate, because these activities are part of the administration sector of state administration, national defense, health and basic infrastructure development, all of which are the responsibilities of the government to finance it, as the Government's obligation to finance the primary education that is mandatory for every citizen. But, the budget allocation for service education is not included in the allocation category of the education budget as mandated in Article 31 paragraph (4) of the 1945 Constitution.

Indeed, understanding of the education budget as it is outlined in the Law Number 20 of the Year 2003 is already being an international understanding in the world of education and study of economic development, which is also used by international agencies such as UNESCO, UNDP and the World Bank. At the time of UNESCO in 1996 comparing education budget allocations for various countries mentioning that in 1992, the average developed countries allocated 5.3% of their GNP to the education sector, average developing countries by 4.2% of their GNP for the education, and underdeveloped countries were only 2.8% of their GNP, which its meaning is the same as understanding the Article 49 paragraph (1) of Law Number 20 of 2003. Also, in 2003, the World Bank submitted data which, among other things, stated that Indonesia's education budget by 1.4% GDP, Vietnam by 2.8% GDP, South Korea by 5.3% of GDP, and so on, have the same meanings. From various data of the comparison between countries in terms of the education budget published by

UNESCO and the World Bank, Indonesia in terms of education financing is indeed in the lowest level. In 1992, according to UNESCO, at the time of the Government of India charged the education funding 89% of the necessity, Indonesia only provided 62.8% of the funds needs for the national education organization.

According to the *UNDP Human Development Report* in 2005, Indonesia's position was in the 110th rank out of 177 assessed countries. Indonesia's expenditure for the education sector in 1990 was 1% of the GDP and in 2002, it increased by 1.2%. Meanwhile, according to the report in 2002, state expenditure for the education was only 9% of the national budget.

From the description above, it can be concluded that the assessment stating that the funds provided by the Government for the education is far from the necessary needs to carry out the constitutional responsibility of the Government in organizing national education pursuant to the provisions of the Article 31 paragraph (1), paragraph (2), paragraph (5) of the 1945 Constitution, is proven.

On the basis of all the above considerations, the Petitioners proposed the application for testing of the Law Number 16 of 2008 on the 1945 Constitution.

II. AUTHORITY OF CONSTITUTIONAL COURT

Whereas Article 24C paragraph (1) of the 1945 Constitution Juncto Article 10 paragraph (1) of the Law Number 24 of the year 2003 concerning the Constitutional Court states (hereinafter referred to as the Law Number 24 Year 2003, Exhibit P-5):

"Whereas the Constitutional Court has the authority to judge at the first level and its final decision is final to examine the laws against The Constitution, deciding the dispute over the authority of the state institutions which its authority is given by the Constitution, deciding dissolution of political parties and deciding the disputes about the results of elections ".

With regard to the jurisdiction of the Constitutional Court as mentioned above, then, the Constitutional Court has the right and authority to conduct a judicial review on the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of 2007 concerning the State Budget of the 2008 Budget Year (hereinafter abbreviated as Law 16 of 2008) ".

Related to the examination of the application for testing the law against the 1945 Constitution, both the provisions of Article 24C of the 1945 Constitution and the provisions of the Law Number 24 of 2003, it does not distinguish type of the law testing. Therefore, the Law of APBN or Law of REVISED STATE BUDGET / APBN-P can be tested whether it is contrary to the 1945 Constitution or not. More than that, the Constitution Court during examining the application for judicial review regulating the APBN against the 1945 Constitution states that the law regulates the State Budget can be tested for its constitutionality against the 1945 Constitution (Read at least the Decision of the Constitutional Court Number 012 / PUU-III / 2005 and the Decision of the Constitution Court Number 026 / PUU-III / 2005).

III. LEGAL POSITION AND PETITIONER CONSTITUTIONAL INTERESTS

III.1 Acknowledgment of the right of every citizen of the Republic of Indonesia to file the application for reviewing the law against the 1945 Constitution is one of the indicators of progress in the life of the nation and state. Reviewing on the law against the 1945 Constitution is a manifestation of constitutional guarantee to the implementation of the basic rights of every citizen as stipulated in the Article 24C of the 1945 Constitution and the Law Number 24 of the Year 2003. The Constitutional Court is a judicial body to safeguards the human rights as the manifestation of the guardian of the constitution role (guardian of the constitution) and the sole interpreter of the constitution.

In the applicable civil procedural law, only people who are declared to have only legal interests, namely people who feel their rights to be violated by another person, can file a lawsuit (the principle of no claim without legal interest, or

zonder belang geen rechtsingan). Definition of the principle is that only people have legal interests who can file a lawsuit, including an application. In its development, it turns out that the provisions or principles do not apply absolutely related to the recognition of the right of certain people or institutions to file a lawsuit, including application, in the name of public interests, which in the universal legal doctrine, it is known as "*organizational standing (legal standing)*".

As stated in the Article 51 paragraph (1) of Law Number 24 In 2003, the Petitioners are the party who consider the constitutional rights and / or obligations are impaired by the establishment of the law, namely:

- a. individual Indonesian citizen;
- b. unity of the customary law community as long as they are alive and conforming to the community development and the principle of the unitary state of the Republic of Indonesia as regulated by law;
- c. public or private legal entity;
- d. state institutions.

III.2 The doctrine of "*organization standing*" in fact is not only known in the doctrine, but also has been adopted in the legislation in Indonesia, among others, namely by the Law Number 18 of 1999 concerning Consumer Protection, the Law Number 23 of 1997 concerning Environment, the Law Number 4 of 1999 concerning Forestry, the Law Number 18 of 1999 concerning Industrial Services, and the Law Number 20 of 2003 concerning the National Education System

(hereinafter Law Number 20 of 2003) and Law Number 14 of 2005 concerning Teachers and Lecturers (hereinafter referred to as the Law Number 14 of 2005, Exhibit P-6).

However, not all organizations can act on behalf of the public interests, because only organizations that meet certain requirements as specified in various jurisprudence laws and regulations, namely:

- a. in the form of a legal entity or foundation;
- b. in the articles of association of the organization concerned mentions firmly about the purpose of the establishment of the organization;
- c. has carried out activities in accordance with its articles of association.

III.3 Whereas based on the description above, the Petitioners also have legal standing as intended in Article 51 Law Number 24 of 2003. Article 51 paragraph (1) states:

The petitioners are the party who considers their constitutionality right and / or authority is impaired by the establishment of the law, namely:

- a. individual Indonesian citizen;
- b. unity of customary law community as long as they are alive and pursuant to the community development and the principle of the unitary state of the Republic of Indonesia as regulated in the law;
- c. public or private legal entity; or
- d. state institutions.

The Petitioners are the Executive Board of the Indonesian Teachers Association (PB PGRI) and a group of individual teachers and / or administrators of PGRI in various regions in Indonesia. Whereas the PGRI has about 1.6 million teachers and implementers of the education, as well as having organizational aspirations to advance education (PGRI Articles of Association / Bylaws, Exhibit P-7), so that thus, PGRI has an interest in the administration of education and improving the quality of education that is very dependent on the budget that is provided by the Government.

The Law Number 20 of 2003 stipulates teachers as a profession, whereas the Law Number 14 of 2005 concerning Teachers and Lecturers, stipulates that the future of the teaching profession depends on commitment and consistency of the Government in implementing the two laws.

Based on the provisions of the PGRI Household Articles (ART), Article 28 paragraph (4), it states:

"The Executive Board represents PGRI inside and outside the court which the implementation is regulated in organizational regulations".

Also, the Petitioner's legal standing issue is stated in the Decision of the Case Number 026 / PUU-III / 2005 has provided legal standing to PGRI with qualifications as individuals or groups of individual as referred to in Article 51 of Law Number 24 of the year 2003 to submit an application for testing the Law Number 13 of the Year 2005 concerning the State Budget of the 2006 Year Budget.

III.4 By referring to the Article 28C paragraph (2) of the 1945 Constitution, it can be said that the Petitioners have legal standing for struggling the improvements in the implementation of education through implementation of the provision of education budget allocation which is at least 20% of the APBN as mandated in the Article 31 paragraph (4) of the 1945 Constitution. The Article 28C paragraph (2) of the 1945 Constitution states:

*"Everyone has the right to advance himself in **struggling for his rights collectively** to build the community, nation and state "(skewed and thickened printed from the Petitioners, note).*

Starting from the existence of the constitutional guarantee as stated in the Article 28C paragraph (2) of the 1945 Constitution, the Petitioners submit a petition for an increase in the education budget allocation at least by 20% of the APBN as mandated in the Article 31 paragraph (4) of the 1945 Constitution. The constitutional guarantee of the Article 28C paragraph (2) of the 1945 Constitution is then reaffirmed in the regulation of the right to struggle for the quality education improvement as a collective right by teachers and groups of community in the Law Number 20 of 2003 and Law Number 14 of the Year 2005. More clearly, Article 1 item (4) of Law Number 20 of the year 2003 states:

"Educators are qualified teaching staff as teachers, lecturers, counselors, tutors, widyaiswara, tutors, instructors, facilitators, and any other names who are conforming with their specialty, and participate in carrying out the education ".

By referring to the provisions of Article 1 point (4) of Law Number 20 of the year 2003, then it is interpreted that teachers have responsibility for applying the education and increase as well as improve the quality of education, all of these

works require budget allocation which the Article 31 paragraph (4) the 1945 Constitution has mandated an education budget allocation of at least 20% of the APBN.

Article 1 point (27) of the Law Number 20 of the Year 2003 also provides a role to the community to be involved in advancing education. Provisions of the Article 1 point (27) states:

"The community is a group of Indonesian non-government citizens having attention and role in the field of education".

Recognition of the responsibility of the teaching profession to participate in the struggle of the quality of education is also mandated in the Law Number 14 of the Year 2005. In the part of "considering" the Law Number 14 of the year 2005, it is said "that teachers and lecturers have very strategic functions, roles and positions in the national development in the field of education as referred to in letter a, so that it is necessary to be developed as a dignified profession.

The Law Number 14 of the year 2005 also provides recognition for the existence of a teacher professional organization (Article 1 point 13). These conditions can be used as a legal basis for recognition of teaching profession organizations such as PGRI.

Regarding the issue of "legal standing", please allow the Petitioners to quote again the Decision of the Constitutional Court Number 026 / PUU-III / 2005, as follows:

"Indonesian Teacher Association (PGRI)".

Whereas this organization is a place where all teachers and other education personnel are gathered, who have the Articles of Association and the House Budget (AD & ART), whose its existence has been recognized by the authorized agency in this case, the Department of Justice, dated September 20, 1954 No.JA.5 / 82/12, which decides and certifies the Articles of Association of the Indonesian Republic Teachers Association abbreviated as PGRI and therefore, it recognizes the association of the "Republic of Indonesia Teacher Association" as a legal entity that has the right in its own name, carries out the law and defend their rights in advance and outside the court. So, therefore PGRI is a legal entity.

Whereas PGRI in submitting a petition for the Testing of the Law Number 13 of the year 2005 concerning State Budget (APBN) of 2006 Budget Year towards the 1945 Constitution is represented by H.M. Rusli Yunus that is based on the results of the PGRI meeting dated December 14, 2005 which was then followed up with a letter of authorization Number 938 / Um / PB / XIX / 2005 dated December 14, 2005 from the General Chairperson of the PGRI Executive Board, Prof. Dr. H. Mohammad Surya to the Chairperson of the PGRI Executive Board, H.M. Rusli Yunus, which was decided PGRI will submit a petition for testing towards the a quo law.

Whereas the PGRI has about 1.6 million teachers and is based on Article 6 and Article 7 PGRI's AD & ART as the motor for implementing education, so that thus, PGRI has an interest in the administration of education and improvement of the quality of education that is very dependent on the budget provided by the Government. The Law Number 23 of 2003 concerning The National Education

System assigns teachers as a profession, while the Law Number 14 of 2005 concerning Teachers and Lecturers that was legalized dated December 6, 2005, determines that the future of the teaching profession depends on the Government's commitment and consistency in implementing both laws.

Thus, the legal position of PGRI as a legal entity has fulfilled the criteria as referred to in Article 51 paragraph (1) letter c of Law Number 24 Year 2003 concerning the Constitutional Court.

By such construction thinking, it can be said that the Petitioners have legal standing to submit a petition of the testing towards Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditure Budget for the 2008 Budget Year against the 1945 Constitution. Therefore, the Petitioners have opinion that the legal standing of the Petitioners is very strong and relevant to this petition.

And the Petitioners consider that the Law Number 16 of 2008 is contradictory with the Article 31 of the 1945 Constitution, particularly the provisions of the Article 31 paragraph (4) of the 1945 Constitution. The Petitioners feel that their constitutional rights and / or obligations are impaired. Therefore, the Petitioners feel to be entitled to submit a testing towards the a quo law, as determined in the Law Number 24 of the year 2003 concerning the Constitutional Court.

Pursuant to all the descriptions and reasons that have been based on the law and supported by the evidences above, the Petitioners plead that the Constitutional Court of the Republic of Indonesia is pleased to decide:

In the Principal Cases:

1. Receive and grant the Petitioners' overall petitions;
2. Declare that the Law Number 16 of 2008 concerning Amendment to the Law Number 45 of the year 2007 concerning State Revenue and Expenditure Budget for the 2008 Budget Year (LN in 2008 Number 63, TLN Number 4848) as far as concerning the budget of education is contrary to the Article 31 paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia;

3. Declare that the Law Number 16 of 2008 concerning Amendment to the Law Number 45 of the year 2007 concerning State Revenue and Expenditure Budget for the 2008 Budget Year (LN in 2008 Number 63, TLN Number 4848) as far as concerning the budget of education does not have any binding legal force;
4. Order the release of this decision in the State Gazette of the Republic of Indonesia as it should be.

[2.2] Considering whereas to strengthen the arguments of the petition, the petitioners submits written evidences that are given mark as Exhibit P-1 up to Exhibit P-7 and have also proposed 1 (one) expert who give information under the oath, as follows:

1. Exhibit P-1 : Photocopy of the 1945 Constitution of the Republic of Indonesia;
2. Exhibit P-2 : Photocopy of the Law Number 20 of the year 2003 concerning the National Education System;
3. Exhibit P-3 : Photocopy of the Law Number 16 of the year 2008 concerning Amendment to the Law Number 45 of the year 2007 concerning State Revenue and Expenditure Budget of 2008 budget year;
4. Exhibit P-4 : Photocopy of the reports by World Bank, Bappenas, Royal Netherland Embassy;
5. Exhibit P-5 : Photocopy of the Law Number 24 of the year 2003 concerning Constitutional Court

6. Exhibit P-6 : Photocopy of the Law Number 14 of the year 2005 concerning Teacher and Lecturer;
7. Exhibit P-7 : Photocopy of the Articles of Association and Bylaws of the Republic of Indonesia Teacher Association;

Statement of the Experts of the Petitioners Drs. Ibrahim Musa, M.A., M.Pd

- Whereas the unit of education costs allocated to schools still has no basis, still based on the available budget previously called as the *historical budgeting system*, so it is based on the former and then added by any specific percentage. The education budget should be calculated based on the needs for the implementation of education itself in two levels namely one level education that carries out the education itself and then added to the cost of the educational pattern starting from the below level, at the district level then at the provincial level and national level.
- Whereas the priority in the budget structure should in such a way meet the national education standards consisting of eight standards for the education units. These are the references in determining whether 20% is adequate or not;
- Whereas it is necessary to conduct a restructuring in the education budget system;
- Whereas the state prioritizes the education budget of at least twenty percent of the state's revenue and expenditure budget and from the regional revenue and expenditure budget to meet the needs of the implementation of national

education as an obligation of the Indonesian people which must refer to 20% and as a minimum requirement that must be followed by controlling the method of budgeting, the use of the budget that is in accordance with educational needs and not based on experience;

[2.3] Considering whereas at the trial on July 15, 2008, the Government as represented by the Minister of Finance and the Secretary General of the Department of National Education have provided information, which is then completed with additional information received at the Registrar's Office of the Court on July 28, 2008 and July 29, 2008, as follows:

I. GENERAL

In order to carry out the mandate of Article 23 paragraph (1) and paragraph (2) of the 1945 Constitution, the Draft of the Law on the State Revenue and Expenditure Budget (RAPBN) as a manifestation of state financial management proposed by the President every year to be discussed together with the House of Representatives by considering the considerations of the Regional Representative Council (DPD).

The State Budget (APBN) for 2008 Budget Year is prepared according to the Work Plan of the State Ministry / Institution of 2008 which is then outlined in the Government Work Plan (RKP) in 2008, as well as the Macroeconomic Framework and Principles of 2008 Fiscal Policy. In addition, in preparing the 2008 REVISED STATE BUDGET / APBN-P, it also considers any developing economic, social and political conditions.

The budget is an accountability, management and economic policy instrument. As an economic policy instrument, the budget functions to realize the economic growth and stability as well as income distribution in order to achieve state goals.

In the 2004-2009 Medium Term Development Plan (RPJM), as referred to in the Presidential Regulation Number 7 of 2005, as an implementing regulation of the Article 19 paragraph (1) of the Law Number 25 of 2004 concerning the National Development Planning System, it has been established 3 (three) national development agendas, which are directions of medium-term development policy, namely:

1. Creating a safe and peaceful Indonesia;
2. Creating a fair and democratic Indonesia;
3. Improving people's welfare.

These three national development agendas are the main pillars to achieve national development goals as stated in the Preamble of the 1945 Constitution. The successful implementation of one agenda is closely related to the progress of the implementation of other agendas, which its annual implementation is detailed in the Government Work Plan (RKP). In accordance with the challenges and problems faced in order to accelerate the achievement of medium-term development goals, then in the 2008 RKP, as the fourth year of the implementation of the 2004 – 2009 National RPJM, it was established the national development theme namely

"Acceleration the economic growth to reduce poverty and unemployment".

To realize this theme, the preparation of the 2008 REVISED STATE BUDGET / APBN-P was directed to overcome fundamental problems as the priority of national development, namely:

1. increased investment, exports and employment opportunities;
2. revitalization of agriculture, fisheries, forestry and rural development;
3. accelerating infrastructure development and improving management energy;
4. increasing accessibility and quality of education and health;
5. increasing effectiveness of poverty reduction;
6. eradicating corruption and accelerating the implementation of bureaucratic reform;
7. strengthening defense capabilities and strengthening internal state security; and
8. disaster management, risk reduction of natural disasters, and increasing eradication of infectious diseases.

The eight national development priorities are reflected in the direction and the form of the 2008 REVISED STATE BUDGET / APBN-P.

II. LEGAL STANDING OF THE PETITIONERS

Regarding the legal standing of the Petitioners in a quo case, the Government gives entirely to the Chairman / Panel of Judge of the Constitutional Court to assess it, because most of the Petitioners are the same Petitioners in the application for Judicial Review of the Law on past State Revenues and Expenditures.

If the Chairman / Panel of Judges of the Constitutional Court considers that the Petitioners do not have legal standing, the Government requests the Chairperson / Panel of Judges of the Constitutional Court Judge to wisely *stated that the petition by the petitioners cannot be accepted (niet ontvankelijk verklaard)*. However, if the Chairman / Panel of Judges of the Constitutional Court has another opinion, the following is delivered by the Government's explanation towards the material for testing the Law Number 16 of 2008 concerning Amendments to the Law Number 45 of the Year 2007 concerning the State Budget of the 2008 Budget Year.

III. GOVERNMENT EXPLANATION OF PETITION ON REVIEW TOWARDS THE LAW NUMBER 16 OF 2008 CONCERNING AMENDMENT OF THE LAW NUMBER 45 OF 2007 CONCERNING STATE REVENUE AND EXPENDITURE BUDGET IN 2008 BUDGET YEAR

A. General Policy of State Budget (APBN)

Amendment of 2008 Budget Year

The government realizes that to achieve development goals in 2008, there are several challenges that must be faced. For that, targets of the Government work programs in 2008 are expected to provide important progress in implementing the three development agendas as outlined in the 2004-

2009 National RPJM. Meanwhile, main challenges of macroeconomic framework and development financing faced in 2008 are:

1. Encouraging accelerated economic growth;
2. Accelerating the reduction of unemployment and poverty; and
3. Maintaining economic stability.

Based on the three agendas and the main challenges faced, the preparation of the 2008 REVISED STATE BUDGET / APBN-P is directed to overcome the basic problems as the development priority.

Thus, policy of the Central government budget allocation in 2008 is directed primarily to support national economic activities in encouraging growth, creating and expanding employment, and improving quality service to the community and reducing poverty, besides it also keeps maintaining national stability, smooth Government operational activities and improving service quality to the community. In line with the direction of the policy, then the priorities of the budget allocation of the central government in 2008 are:

- a. provision of basic infrastructure to support national economic activities;
- b. provision of basic service to the community, specifically in the field of education and health, by paying attention to increased ratio of the education budget pursuant to the mandate of the 1945 Constitution, and increasing equity efforts;
- c. improvement of income and welfare of state officials and retirees;

- d. improving service quality and efficiency in implementing government operational activities;
- e. provision of subsidies to help stabilize the price of goods and services at an affordable level to the community; and
- f. fulfillment of debt interest payment obligations.

Policy directions as described above are intended to carry out the mandate of the constitution in order to fulfill the rights of citizens towards:

1. reliable work and livelihood for humanity;
2. physically and mentally prosperous life, obtaining good and health settlement and environment, as well as having right to get health services; and
3. social security that allows full development fully as dignified human, and get a reliable education.

Based on the latest global and domestic economic developments, the government creates several changes to the variable of 2008 macroeconomics that is used as the basic assumption of REVISED STATE BUDGET / APBN-P 2008 compilation.

There are changes to some of these basic assumptions made by the following consideration:

1. External factors, such as performance of the world economy, raw oil prices, and prices of world food commodities that are affecting on the development of

various macroeconomic indicators so that in turn, these affect on the amount of national income, state expenditure, and budget financing.

2. Various problems and development challenges faced by the consequences of changes from external factors and current assessments of domestic economic, social and political conditions in the current year which will affect on the composition of state spending.

Whereas based on the above considerations, then in order to secure the implementation of the 2008 REVISED STATE BUDGET / APBN-P, it is necessary for immediate adjustments to various state revenue targets, state spending, budget deficits, and budget financing needs and sources in order to be realistic and able to support achievement of 2008 and medium-term economic development goals, both in order to support national economic activities in encouraging the growth, creating and expanding employment, as well as improving the quality of service to the community and reducing poverty, in addition to maintaining national stability in accordance with the national development program.

In addition, the balance of development including budgeting is necessary to be kept maintained in order to achieve priorities of community prosperity improvement of the society and implementation of state duties that have been mandated in the 1945 Constitution. Based on the development of the economic conditions as mentioned above, the Government and the House of Representatives make amendments to the Law Number 45 of the Year 2007 concerning the State Revenue and Expenditure Budget of 2008 Budget Year. These changes are stated in the Law Number 16 of the year 2008 concerning

Amendments to the Law Number 45 of 2007 concerning State Budget of the 2008 Budget Year.

As one of the main focuses of national development, the state prioritizes the state budget for income and expenditure as well as from regional income and expenditure budget to meet the needs of implementation of national education.

B. Education Budget in the Amendment of State Revenue and Expenditure Budget (REVISED STATE BUDGET / APBN-P) of 2008 Budget Year

Education is a conscious effort so that humans can develop their potential through the learning process and / or other known and recognized methods by the community. True education is an endeavor to advancing the life of the nation which can be seen by an improvement in the quality of life and the welfare of the Indonesian people as a whole.

In this case, the 1945 Constitution explicitly mandates that every citizen of the state has the right to gain education and the Government has the obligations and responsibilities in administering education to achieve the state goals, namely to educate the life of the nation and create public welfare. Education plays an important role in national development and gives a significant contribution to economic growth and encourages a process of socio-cultural transformation.

Education will create educated communities that form critical mass as a prerequisite for the realization of an advanced, independent, prosperous, welfare, and democratic society. For this reason, **the Government has established the field of education as a strategic agenda in the national development as well as the main priority in the Government's work plan.**

In order to improve the quality and relevance of education, the Government continues to make various efforts to improve qualifications and competencies of educators and education personnel through qualification improvement programs and educator profession certification, accompanied by the provision of various types of benefits including functional allowances, professional allowances, and special benefits, build library and laboratory facilities, provide teaching materials, especially textbooks and educational equipment strengthening Life Skills Education, and arranging relationships between educational institutions and the world of industry and business.

There is a renewal of the national education system to renew the vision, mission and development strategy for the national education as well as adjust the education implementation with the implementation of regional autonomy. The national education has a vision to realize the education system as a strong and authoritative social institution to empower all Indonesian citizens to develop into a quality human being so that they have capability and proactively respond to the challenges of an ever-changing era.

Through this vision of education, the national education has the following mission:

1. striving for the expansion and equalization of opportunities to obtain quality education for all Indonesian people;
2. assisting and facilitating potential development the children of nation in a whole from an early age until the end of life in order to realize learning community;

3. increasing readiness for input and quality of the education process for optimizing the formation of moral personality;
4. improving the professionalism and accountability of educational institutions as the center of knowledge, skills, experience, attitude, and values based on national and global standards; and
5. Empowering the participation of the community in the implementation of education based on the principle of autonomy in the context of the unitary state of the Republic of Indonesia.

There are various efforts that have been conducted to improve education management through strengthening decentralization and education autonomy with the education unit level. Improved management system is also taken through the implementation of school-based management in order to encourage community participation and create public accountability in the administration of education.

The government is fully aware that education is one of the very important and strategic fields in the national development agenda. Quality education can bring Indonesia into a modern, advanced, prosperous and prosperous nation that is reflected in excellence and ability to compete with other nations in the world. For this reason, the Government has placed education as one of the main priorities in the national development agenda, because quality education can contribute significantly to the efforts of improving Indonesian people welfare. Realizing this issue, the Government strives to continuously increase education budget allocations, so that it can gradually meet the real needs.

As one of the main focuses of national development, the state prioritizes the state revenue and expenditure budget as well as from the regional income and expenditure budget to meet the needs of the national education organization, by allocating at least 20% of the state budget and APBD for the national education.

Therefore, the Government continues to strive to increase the education budget from year to year to reach 20% (twenty percent) of the APBN and APBD as mandated in the provisions of Article 31 paragraph (4) of the 1945 Constitution.

Based on the provisions of Article 31 paragraph (4) of the 1945 Constitution, it is stated "**State prioritizes the education budget of at least twenty percent of the state revenue and expenditure budget and from the regional revenue and expenditure budget to meet the needs of national education implementation**".

As a follow-up or operational rules of these provisions in the Law concerning State Budget (APBN) which is applicable every fiscal year, the education budget is allocated to implement the educational functions.

Whereas in allocating the education budget in the 2008 REVISED STATE BUDGET / APBN-P, it has considered:

- The Decision of the Constitutional Court Number 24 / PUU-V / 2007 dated February 20, 2008 which states that the phrase "salary of educators and" in the provisions of Article 49 paragraph (1) of the Law Number 20 of 2003 concerning the National Education System (National Education System Law) is contrary to the 1945 Constitution and has no binding legal force. Based on the Decision of the Constitutional Court, then the provisions of the Article 49

paragraph (1) the National Education System Law should be read, must be read **"education funds in addition to educators' salaries and official education fees are allocated a minimum of 20% of the State Revenue and Expenditure Budget (APBN) in the education sector and at least 20% of the Regional Budget (APBD) "**.

- Law Number 14 of the year 2005 concerning Teachers and Lecturers, who support the improvement of the welfare of the educators.
- Law Number 32 of the year 2004 concerning Regional Government, who has established an educational function (along with the budget) is delegated to the regions, so that the General Allocation Fund (DAU) and Special Allocation Funds (DAK) of the education are calculated in the formula ratio of education budget.

In the following table, it can be seen that the development of budget provision of education function in the budget allocation since the 2007 budget year until the 2008 budget year is as follows:

No	Description	REVISED STATE BUDGET / APBN-P 2007 BY	REVISED STATE BUDGET / APBN-P 2008 BY
1.	Education budget for all K/L	Rp. 55.7 trillion	Rp. 58.6 trillion
2.	a. educator salaries in DAU. (1,8/2,5 x 70% x 90% x DAU)	Rp. 74.7 trillion	Rp. 81.4 trillion

	b. Non educator salary budget in DAU	Rp. 6.6 trillion	Rp. 7. 2 trillion
3.	Education DAK	Rp. 5.2 trillion	Rp. 7.0 trillion
4.	Total of education budget	Rp. 142.2 trillion	Rp. 154.2 trillion
5.	State Expenditures	Rp. 752.3 trillion	Rp. 989.5 trillion
	Percentage of education budget to the State Budget (APBN) = (No 4: No 5) x 100%	18,9%	15,6%

Based on the calculation of the education budget as a percentage toward the State Budget (APBN), it is a comparison value (in percent) between budget allocations in the education function in the state expenditure (excluding the official education budget) on overall state expenditures, then it is obtained the education budget the percentage in the amendment of the 2008 REVISED STATE BUDGET / APBN-P to be estimated to reach 15.6% (fifteen point six) percent.

Although the total education budget in nominal term increases from Rp.142.2 trillion (REVISED STATE BUDGET / APBN-P 2007) to Rp.154.2 trillion (REVISED STATE BUDGET / APBN-P 2008), but in term of the percentage value, it has decreased. This decrease is due over budgeting of the state expenditure from Rp. 752.4 trillion (REVISED STATE BUDGET / APBN-P 2007) to Rp.989.5 trillion (REVISED STATE BUDGET / APBN-P 2008) as a result of

external factor (rapid increased international crude oil prices) which is out of control from the Government (*force majeure*).

Related to this issues, the Government can deliver any issues related to the structure of state expenditure in the State Budget (APBN). Pursuant to the provisions of the Article 11 paragraph (5) of Law Number 17 of 2003 concerning State Finance, the state expenditure is detailed according to organization, function and type of expenditures. State expenditure details according to the organization are adjusted based on the composition of state ministries / central government institutions.

While the details of state expenditure based on to the function consist of: (1) public services; (2) defense; (3) order and security; (4) economy; (5) living environment; (6) housing and public facilities; (7) health; (8) tourism and culture; (9) religion; (10) education; and (11) social protection. Grouping the central government expenditures based on their functions is the manifestation of government tasks in specific field that is applied in order to achieve national development goals.

Meanwhile, the details of state expenditures by type of the expenditures consist of (1) employee spending; (2) spending for goods; (3) capital expenditure; (4) debt interest payments; (5) subsidies; (6) grant spending; (7) social assistance; and (8) other spending.

The realization of the central government budget in the last 3 years is still concentrated on the public service functions with an average proportion of 65.6% of total of central government spending. Relatively high proportion of budget

allocation to the public service functions indicates that the dominant government function is still concentrated on providing public services to the community.

The realization of public service function budget is used to implement various public service programs which include, among others, subsidy programs, debt interest payment program, and public service programs that are carried out by state ministries / institutions. Seeing at the types of spending, the realization of subsidies and debt interest payments dominate the central government expenditure with a proportion of 29.0% and 17.2%. Both types of expenditures are compulsory (*non discretionary expenditure*), its use is certain and inevitable.

As a result of rapid increased crude oil prices on the international market from the assumption of USD 60 / barrel in the 2008 state budget to USD 95 / barrel in the REVISED STATE BUDGET / APBN-P 2008, there is an increase on the burden of energy subsidies from Rp. 75.6 trillion (in APBN 2008) to Rp. 187.1 trillion (in the 2008 Revised State Budget (REVISED STATE BUDGET / APBN-P)). Such condition will continue to happen without being predictable or calculated certainly. In addition, there is a debt interest payment burden which is an inevitable obligation. Therefore, expenditures on subsidies and debt interest payments should not be used as a ratio of part of state expenditures.

It is natural that the burden of energy subsidies and debt interest payments is as an expenditure activity that is excluded from the calculation of state expenditure allocation comparison (central government) according to its function. As long as the energy subsidy expense and debt interest payment expenses are not separated in the state expenditure, it can provide distorting illustration of the APBN structure. Because actually, the expenditures on energy subsidies and

debt interest payment are not desired ones, but it is rather to be forced to do, as a "*force majeure*" which must be borne together evenly.

Force Majeur as referred to above is a condition in which the 2008 REVISED STATE BUDGET / APBN-P is a budget that is not in a normal and nature condition. Allocation of energy subsidies and debt interest payments reaching Rp.281.9 trillion or around 28.5% of total state expenditure, indicates irregularities and abnormalities in the 2008 REVISED STATE BUDGET / APBN-P structure. State expenditure used for energy subsidies and debt interest payment is also a form of implementation of the very urgent public interests. Though, the service of public interest has equal importance with the education budget, but it is more urgent and inevitable.

By the presence of the burdens of energy subsidies and debt interest payments resulting in an abnormal and unnatural REVISED STATE BUDGET / APBN-P 2008 structure, then it is natural if the calculation of the percentage of the education budget is a comparison of the education function budget to the total "**pure**" expenditure budget, which does not include the burden of energy subsidies and debt interest payments. By using the calculation approach of the education budget, the Government shows that the government still fulfills the provisions of the constitution.

Meaning, the state continues to prioritize the education budget, if it compares with other budget groups according to their functions. And, the criteria of at least twenty percent of the APBN are also met when compared with the total "pure" or "nett" expenditure budget, that is separating expenditures for energy subsidies and debt interest payments as the inevitable ones.

By comparing the education budget that takes into account the irregularity conditions in the state expenditure in the 2008 REVISED STATE BUDGET / APBN-P, the Government actually has carried out the mandate of the constitution in accordance with conditions and the circumstances that occur at the time of drafting the Law Number 16 of the Year 2008 concerning Amendment to the Law Number 45 of the year 2007 concerning the State Budget for 2008 Budget Year. The condition of the REVISED STATE BUDGET / APBN-P 2008 toward the 1945 Constitution has fulfilled the nature of "*conditionally constitutional*" considering the circumstances and conditions that occur at this current time, so the Government considers that the education budget allocation in the 2008 REVISED STATE BUDGET / APBN-P based on the calculation procedure has **fulfilled the provisions of the 1945 Constitution so that the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the Year 2007 concerning the State Revenue and Expenditure Budget of 2008 Budget Year has been constitutional**, because by the calculation procedure of the education budget percentages for the APBN, the ratio of the education function budget for the state expenditure (without energy subsidies and debt interest payment) then the percentage of the education budget **has** already reached **21.8% (twenty one point eight percent)**.

A "*conditionally constitutional*" on the education budget in the state revenue and expenditure budget can be found not only in the event of the burden existence of energy subsidies and debt interest payments, it can also be found in the case of other emergencies.

About this *conditionally constitutional*, we might use such presuppositions regarding war emergency situation. Such emergency condition requires a much bigger allocation of state budget for defense and security budget, which certainly causes the budget education is less than 20% of the total APBN. In that case, then the Education budget is also *conditionally constitutional* because it must be compared with the total APBN minus the additional costs to overcome the war emergency. This will lead to a percentage of the education budget by 20% of the total APBN after deducting the extra emergency costs of the war.

Related to the inevitable state expenditure, then in this Government statement, the Government should ask for the wisdom to the Chairmain / Panel of Judges of the Constitutional Court to consider the calculation of the education budget percentage for the APBN with the comparison value (in percent) between budget allocation in the education function in state expenditure on the total state expenditure (excluding energy subsidies and debt interest payments), as presented in the following table.

No	Description	REVISED STATE BUDGET / APBN-P 2008 BY
1.	Education budget for all K/L	Rp. 58.6 trillion
2.	a. educator salaries in DAU. (1,8/2,5 x 70% x 90% x DAU)	Rp. 81.4 trillion
	b. Non educator salary budget in	Rp. 7. 2 trillion

	DAU	
3.	Education DAK	Rp. 7.0 trillion
4.	Total of education budget	Rp. 154.2 trillion
5.	State Expenditures	Rp. 989.5 trillion
6.	Toal of pure state expenditure (without energy subsidy and debt interest payment)	Rp. 707,6 trillion
	Percentage of education budget to the State Budget (APBN) = (No 4: No 5) x 100%	21,8 %

Based on the table above, the calculation of education budget percentage of the state budget is the comparison value of the education budget function toward the total state expenditure (without energy subsidies and debt interest payments) which reach by 21.8%.

**C. Effects on Cancellation of the Law Number 16 of the year 2008
concerning Amendments to the Law Number 45 of the year 2007
concerning State Budget of 2008 Budget Year**

Whereas the Petitioners' petition to the Constitutional Court to declare that the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditures Budget of 2008

Budget Year does not have legal force binding because it is contrary to the Article 31 paragraph (4) of the 1945 Constitution is an excessive petition.

The Government argues that the Petitioners' objections to the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditures Budget of 2008 Budget Year substantively even will harm the citizen constitutional citizens in general because if the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditures Budget of 2008 Budget Year is declared to have no binding legal force, then there are legal consequences that the Indonesian nation must implement the State Revenue and Expenditure Budget in the previous year which its nominal is actually smaller than the State Budget of 2008 Budget Year. Decreasing education budget allocation will actually disrupt the implementation of the education accessibility and quality improvement programs.

Besides this, if the education budget is imposed firstly by 20% while still considering energy subsidies and debt payments as the state expenditure, then other development activities including infrastructure, management of natural disasters, defense and security, foreign country cooperation, legal development, public welfare improvement, health, and others can be hampered and ultimately the goals of unity state of the Republic of Indonesia cannot not be achieved.

Pursuant to the explanation above, the Government has opinion that the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditures Budget of 2008 Budget Year does not conflict with the Article 31 paragraph (4) of the 1945

Constitution, and does not harm the constitutional rights and or authorities of the Petitioners.

IV. CONCLUSION

Based on the explanation and arguments as mentioned above, the Government pleads to the Honorable Chairman / Panel of Judges of the Constitutional Court who examines and decides the petition for testing the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditures Budget of 2008 Budget Year can give a decision as follows:

1. Declaring that the Petitioners do not have legal standing;
2. Refusing the petition for testing of the Petitioners (void) in a whole or at least declaring that the petition for testing of the Petitioners is not acceptable (*niet ontvankelijk verklaard*).
3. Receiving the Government's overall statements;
4. Declaring that the Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditures Budget of 2008 Budget Year **is not contrary** to the 1945 Constitution of the Republic of Indonesia.
5. Declaring that Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of the year 2007 concerning State Revenue and Expenditures Budget of 2008 Budget Year **still has legal strength and still**

applies throughout the territory of the unitary state of the Republic of Indonesia.

However, if the Chairman / Panel of Judge of the Court has another opinion, please making a wise and fair decision (*ex aequo et bono*).

Additional Government Information

Using the calculation method of the education budget in the 2008 REVISED STATE BUDGET / APBN-P which excludes expenditures for energy subsidy payment and debt interest payment as a dividing factor in total state expenditure, it can be obtained the ratio of the education budget that meets the constitution requirement namely by 21.8% (twenty one point eight percent).

If the calculation method as intended, is also used in the previous budget year, then in 2007 it was obtained a figure of 24.5%, in 2006, it was obtained a figure of 23.6%, and in 2005, it was obtained a figure of 19.5% (the tables can be seen in the attachment). Looking at the percentage figures, energy subsidy payment and debt interest payment are a significant factor in total state expenditure, and the percentage of the education budget.

Related to the situation in the preparation of the 2008 REVISED STATE BUDGET / APBN-P, which there is a rapid increase on the international oil price, it has changed all of the calculations compiled in the 2008 REVISED STATE BUDGET / APBN-P, including in the allocation of state expenditure to pay for the energy subsidies. The rapid increase of crude oil price in the international market from the assumption of USD 60 / barrel in the 2008 APBN to be USD 95 / barrel in the 2008 REVISED STATE BUDGET / APBN-P, the burden of energy

subsidies increases from Rp. 75.6 trillion (in the 2008 State Budget) to Rp. 187.1 trillion (in the REVISED STATE BUDGET / APBN-P 2008). This increase in state spending for energy subsidies, certainly also affects on total state expenditure.

With the increase in total state expenditure due to external factors, the education budget nominal will automatically increase to fulfill the constitutional mandate. Increase in nominal education budget automatically, besides making it difficult to budget, is also not legally and politically appropriate.

On the other hand, an increase in the nominal education budget is not necessarily a gift for the world of education. Every additional education budget in the APBN in order to fulfill the constitutional mandate caused by addition of total state expenditure can cause difficulties to "utilize fully" the education budget. Difficulty of available education budget utilization can affect on the quality of spending which is not necessarily supportive on the improvement in the world of education.

The government is aware that the budget for education functions in the 2008 State Budget remains a major concern. This is reflected both at the allocated budget to the Ministry of National Education as well as the Ministry of Religion. Allocation of expenditure to the Ministry of National Education in the first rank until now (set aside Defense, Police, Religion, Finance, Justice-MA, Ministry of Law and Human Rights, and foreign affairs).

It can be stated, since 2007 the Ministry of Religion also give more attention to religious education since there is allocation budget for these needs which is originally managed by the Ministry of National Education into directly managed by the Ministry of Religion. By such priority, the budget of other state ministries /

institutions to support the growth and equity (including those distributed through the Department of Domestic and Ministry of Public Works to support the National Community Empowerment Program - PNPM is placed on the following ranking. By using the education budget, the Government has distributed available budget mainly to finance the education operations in education units, such as School Operational Costs (BOS), School Operational Book Costs, Quality Management Operational Costs (BOMM), and other subsidies that are directly given to teachers in the form of functional benefits, professional allowances, special allowances, and other benefits.

Meanwhile, based on the program, the education budget prioritizes the main programs, namely the 9-Year Basic Education Compulsory Education Program (Basic Education), Secondary Education, Higher Education, and Improvement of Quality of Educators and Education Personnel which obtain budget with large portion (related data presented in the attachment).

In essence, the Government is responsible for improving the public welfare and educating life of the nation in accordance with the constitution mandate. Allocation and use of the budget to meet the mandate should have been prepared based on the budget planning accompanied by achievement targets and fulfillment of needs in a realistic manner that can be implemented and absorbed by ministries / institutions.

For the education, the Government has and always gives the highest priority to the state expenditures for educational functions as seen from very high increases in the National Budget for the Ministry of National Education and Ministry of Religion. But such very high budget increase can cause problems in absorption

and efficiency as well effectiveness of budget use, especially if there is an automatic increase of education budget nominally as described previously.

The burden of subsidy spending and debt interest payments as a factor with great effects on the calculation of total state expenditure related to the grounds of "*conditionally constitutional*" in the education budget of the 2008 REVISED STATE BUDGET / APBN-P, is a reasonable reason. The government has never any intension to injure the constitution mandate, but during the burden of subsidy spending and debt interest payments which are still included as part of total state expenditure, then as explained before, in addition to being distorted, it has very clear effects on the education budget allocation. Therefore, the subsidy spending and debt interest payments should not be used as part of the state spending.

In accordance with the intention of filing this case, there is no "mistakes" made by the Government against the constitution, because the one who is "judged" in this case is not the Government, but the law. The government always strives so that all duties and responsibilities given by the constitution to improve the public welfare, and not only concerning the education sector alone, can be carried out properly and in a balance manner with the principles of efficiency, optimal, appropriate and the principle of maximum benefit.

I. PRIORITY FOR DETERMINING ALLOCATION OF 2005-2008 EDUCATIONAL BUDGET

In allocating funding for development priorities, it is not only paying attention to various other statutory provisions, but it also considers the provisions as presented in the Law Number 32 of the Year 2004 concerning Regional Government, which divides authority between (Center) Government and Regional

Government, and the Law Number 33 of the year 2004 concerning Financial Balance, which directs finance distribution between the Center Government and Regional Government to implement each authority in accordance with what has been stipulated in the Law Number 32 of the year 2004. Authority in the field of education, including one of the basic services in accordance with the spirit of fiscal decentralization most of them become the authority of the Regional Government.

The ability of the region to carry out this authority keeps increased, along with the increase in spending transfers to the regions as shown in table I below:

Table I Spending Transfer To the Regions

BUDGET YEARS	BALANCING FUNDS				OTSUS AND ADJUSTMENT FUNDS		
	PROFIT SHARING FUNDS	PUBLIC ALLOCATION FUNDS	SPECIAL ALLOCATION FUNDS	TOTAL	SPECIAL AUTONOMY FUNDS	ADJUSTMENT FUNDS	TOTAL
2001	20.007,7	60.345,8	700,9	81.054,4	0,0	0,0	0,0
2002	24.884,1	69.159,4	613,1	94.656,6	1.175,0	2.372,5	3.547,5

2003	31.369, 5	76.977,9	2.723,0	111.070,4	1.539,6	7.704,3	9.243,9
2004	36.700, 3	81.130,0	4.036,4	121.867,6	1.642,6	5.212,7	6.855,3
2005	49.692, 3	88.765,4	4.763,6	143.221,3	1.775,3	5.467,3	7.242,6
2006	64.900, 3	145.664, 2	11.556,1	222.120,6	3.448,3	561,1	4.049,4
2007	62.726, 3	164.787, 4	17.094,1	244.607,8	4.045,7	5.547,5	9.593,2
2008	77.726, 8	179.507, 1	21.202,1	278.436,1	7.510,3	6.476,4	13.986, 7

General Allocation Fund (DAU) as the main component in the spending transfers to the regions for the implementation of regional authority, has increased more than doubled in the last 4 years (from Rp. 121.9 trillion in in 2004 to Rp.278.4 trillion in 2008). There was also a significant increase to the Special Allocation Fund (DAK) which was intended to be used to support national priorities. Especially for DAK in the education sector, in the period from 2006 to 2008, the DAK allocation for education increase from Rp.2.9 trillion to Rp. 7 trillion.

Even though there is a continuous increasing allocations to regions, which means that the ability of regions to implement the education authority has also increased rapidly, allocations at the central government level also still receive major attention as reflected in the allocation of the Ministry of National Education as the main institution assigned to carry out the education function at the central government level (Table 2). The allocation of the Department of National Education is in the first rank until the present (setting aside functions that actually become the main tasks of the main central government such as Defense, Police, Religion, Finance, Justice-MA and Law and Human Rights as well as Foreign Affairs). It should be noted, that since 2007, the Ministry of Religion has also given more attention to the religious education since the budget is placed for this purpose originally managed by the Ministry of National Education to be directly managed by the Ministry of Religion. By such priority, other state ministry / institution budgets to support growth and equity (including that are distributed by the Ministry of Domestic Affairs and the Department of Public Works to support National Community Empowerment Program (PNMP) to be placed in the following ranking.

Tablen2 Allocation of State Ministries / Institutions, 2005 – 2008 (in trillion)

STATE MINISTRIES / INSTITUTIONS	LKPP 2005	LKPP 2006	REVISED STATE BUDGET / APBN-P 2007	REVISED STATE BUDGET / APBN-P 2008
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Department of National Education	21,6	36,8	44,1	45,3
Department of Defense	22,0	28,2	32,6	32,9
Department of Public Works	13,1	18,0	24,2	32,7
State Policy	11,2	16,8	20,0	21,2
Department of Health	7,8	13,5	17,2	18,4
Department of Religion	6,7	9,7	13,8	16,0
Department of Transportation	5,8	8,5	10,5	15,4
Department of Finance	4,6	6,6	9,6	15,0
BRR NAD-Nias	0,0	9,6	10,0	10,9
Department of Agriculture	4,0	6,3	8,8	8,3
Constitutional Court	1,1	2,2	3,1	5,8
Department of Domestic Affairs	0,9	1,2	3,8	5,7
Department of Energy and Mineral Resources	3,3	5,4	6,5	5,546
Department of Foreign Affairs	3,7	4,7	5,4	4,1
Department of Law and	1,6	3,4	4,0	4,4

Human Rights				
The biggest allocation of 15 K/L	107,4	170,9	213,7	242,5
Other 59 K/L allocations	20,1	33,4	44,3	47,5
Total of overall K/L Allocation (74 K/L)	127,4	204,2	258,0	290,0

By such prioritization, it can also be seen, that in terms of government service function, the education function has the second rank after the public service function. But it should be noted, that the public service function includes inevitable obligations such as the provision of subsidies and debt interest payments. Thus, if the public service function is not taken into account, then the function of education is in the first rank (Table 3).

Table 3 Allocation Based on the Functions, 2005 – 2008 (in trillion)

NAME OF FUNCTIONS	LKPP 2005	LKPP 2006	REVISED STATE BUDGET / APBN-P 2007	REVISED STATE BUDGET / APBN-P 2008
Public Service	255,6	284,3	300,3	372,5
Defense	21,6	24,4	29,8	14,0

Order and Security	15,6	23,7	27,1	15,2
Economy	23,5	38,3	50,7	63,7
Living Environment	1,3	2,7	6,3	6,7
Housing and Public facilities	4,2	5,5	10,1	14,1
Health	5,8	12,2	17,2	17,3
Tourism and Culture	0,6	0,9	1,5	1,4
Religion	1,3	1,4	1,9	0,9
Social Protection	29,3	45,3	50,3	64,0
TOTAL	2,3	2,3	2,9	3,5

Notes:

1. In the 2007 State Budget, the allocation for the education function is Rp. 54.1 trillion, it is higher than the economic functions by Rp.51.2 trillion. However, the realization of the educational function is lower than the economy function (REVISED STATE BUDGET / APBN-P 2007);

2. Since 2008, Employee Expenditures for TNI / Polri have been reallocated to Public Service functions so that it results in a decreased function of Defense, Order and Security in 2008 compared with one in 2007.

II. DISTRIBUTION / ALLOCATION OF STATE SPENDING IN THE STATE REVENUE AND EXPENDITURE BUDGET IN 2005-2008 BUDGET YEAR

Pursuant to the provisions of Article 11 paragraph (5) of Law Number 17 of the Year 2003 concerning State Finance, the state spending is broken down according to organization, function, and type of spending. State expenditure details according to the organization are adjusted with the composition of state ministries / central government agencies.

While the details of state expenditure according to the function consist of: (1) public service; (2) defense; (3) order and security; (4) economics (5) living environment; (6) housing and public facilities; (7) health; (8) tourism and culture; (9) religion; (10) education; and (11) social protection. Grouping of the central government spending according to function is the realization of the government task in certain fields that are implemented in order to achieve the national development goals.

Meanwhile, the details of state expenditure according to type of expenditure consist of: (1) employee expenditure; (2) spending for goods; (3) capital expenditure; (4) debt interest payments; (5) subsidies; (6) grant spending; (7) social assistance; and (8) other spending.

In the State Budget and Expenditure Budget as well as Regional Revenue and Expenditure Budget, there are 3 (three) allocation groups as the fundamental

basis of the State Revenue and Expenditure Budget and Regional Budget and Expenditures, which consist of:

a. State revenues and grants

- Tax revenue

1. Domestic taxes;
2. International trade tax;

- Non-tax revenues

1. Acceptance of natural resources;
2. Part of Profit of State-Owned Enterprises (BUMN);
3. Other Non-Tax State Revenues.

- Grant

b. State expenditure

• Central government spending

- spending for employees;
- spending for goods;
- Capital expenditure (investment and development);
- social assistance;
- Other spending (assistance, grants, emergency response).

- Non-discretionary expenses

- Subsidies

- 1. Energy subsidies

- 2. Non-energy subsidies

- Payment of debt interest

- 1. Domestic debt

- 2. Foreign debt

- Transfer to the area

- 1. Balancing funds

- a. Profit sharing fund;

- b. General allocation fund;

- c. Special allocation funds;

- 2. Special autonomy and balancing funds

- c. Financing

- 1. Domestic financing

- 1. Domestic banking;

- 2. Domestic non-banking;

- 2. Foreign financing (net)

- i. Withdrawal of foreign loans (net);
- ii. Payment of principal foreign debt installments;

Subsidies and debt interest payments are mandatory expenditures or have certain and inevitable use (*non discretionary expenditure*), and contributions from the use of these funds in related budget year is not planned anymore, because it has been used on previous years by the Central Government and / or the Regional Government. The loan is also partially used to finance the education function in the past year.

It is natural if the burden of energy subsidies and debt interest payments is as a spending activity that is excluded from comparison calculation of state expenditure allocation (Central Government) according to its function. As long as the burden of energy subsidies and the burden of debt interest payments are not separated in the state expenditure then it can produce a distortive illustration of the APBN structure. Because actually expenditure for energy subsidies and debt interest is not the desired one, but it is forced to do, and as a consequence that must be borne together equally.

By such burden of energy subsidies and debt interest payments resulting in an abnormal and unnatural REVISED STATE BUDGET / APBN-P 2008 structure, then it is reasonable if the percentage calculation of the education budget is the comparison of the education function budget to the total "**Pure**" expenditure budget, excluding the burden of energy subsidies and debt interest payments. By using the calculation approach method of the education budget, the Government shows that the Government still fulfills the provisions of the constitution.

The calculation percentage of the education budget for the APBN with comparison value (in percent) between budget allocation in the education function in the state expenditure on total state expenditure (excluding energy subsidies and debt interest payments), is as follows:

Table 4 Percentage of the Education Budget to the Total State Expenditure Budget (without energy subsidies and debt interest payments) in 2005-2008

(in trillion)

No.	DESCRIPTION				
I.	Central Government Budget (including Salary Educators)	33.423,9	48.171,3	55.668,2	58.565,4
	1. Education Budget on the overall K/L	30.053,9	43.701,3	50.448,2	53.018,4
	2. Salary of Educators Dep. Of National Education	2.200,0	2.300,0	2.700,0	2.653,0
	3. Salary of Educators of the	1.170,0	2.170,0	2.520,0	2.894,0

	Dep. Of Religion				
II.	Transfers to Regions	45.035,7	74.819,4	86.534,4	95.620,1
		3.550,6	5.826,6	6.591,5	7.180,3
	1. DAU Non Salary Education (4% x DAU)				
	2. Salary of Educators in DAU (1,8/2,5x70%x90%x DAU)	40.264,1	66.073,3	74.747,6	81.424,4
	3. Education DAK	1.221,0	2.919,5	5.195,3	7.015,4
III.	Subsidies				
	1. Fuel Subsidy	89.194,0	64.212,1	55.604,3	126.816,2
	2. Energy subsidy	101.705,0	95.458,1	88.048,3	187.107,8
	3. Total subsidy	119.089,5	107.627,6	105.073,4	234.405,0
	4. Debt interest payment	60.982,2	82.494,7	83.555,1	94.794,2

IV.	Total State Expenditure	565.069,8	699.099,1	752.373,3	989.493,8
V.	Total of State Expenditure excluding Fuel Subsidy	475.875,8	634.887,0	696.769,0	862.677,6
VI.	Total state expenditure does not	463.354,8	603.641,0	664.325,0	802.386,0
VII.	including all energy subsidies	445.980,3	591.471,5	647.299,9	755.088,8
VIII.	Total state expenditure does not	414.893,6	552.392,3	613.213,9	767.883,4
IX.	including all subsidies	402.382,6	521.146,3	580.769,9	707.591,8
X.	Total state expenditure does not	384.998,1	508.976,8	563.744,8	660.294, 6
	Percentage of education budget	19,5%	23,6%	24,5%	21,8%

	on state expenditure = (I+II) / IX x 100%				
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III. EDUCATION BUDGET IN STATE REVENUE AND EXPENDITURE BUDGET OF 2005-2008 BUDGET YEAR

Pursuant to the provisions of the 1945 Constitution Article 31 paragraph (4) stating that: the state prioritizes the education budget of at least twenty percent of the State Budget and the Regional Revenues and Expenditures Budget to meet the needs of the National Education organization.

What is meant by the education budget is the budget allocated to the education function of all state ministries / institutions (including state ministries / institutions that are not categorized as the education functions but carrying out education) as mandated by the Article 11 paragraph (5) of Law Number 17 of 2003 concerning State Finance including state expenditures as specified by organization, function and types of spending.

As further stipulated in the Government Regulation Number 21 of the year 2004 concerning the Preparation of the Ministry's Work Plan and State / Institution Budget, that the education function consists of:

1. Sub-function of early childhood education;
2. Sub-function of basic education;
3. Sub-function of secondary education;

4. Sub-functions of non-formal and informal education;
5. Sub-functions of official education;
6. Sub-function of higher education;
7. Sub-function of assistance services to education;
8. Sub function of religious education;
9. Sub-function of education research and development; and
10. Other educational functions.

Table 5 DEVELOPMENT OF EDUCATION BUDGET IN 2005-2008

No	Description	Revised State Budget (APBN-P) 2005	Revised State Budget (APBN-P) 2006	Revised State Budget (APBN-P) 2007	Revised State Budget (APBN-P) 2008
	Education budget in overall K/L	30.053,9	48.171,3	55.668,2	58.565,4
	a. non Salaries	26.683,9	43.701,3	50.448,2	53.018,4
	b. educator salaries	3.370,0	4.470,0	5.220,0	5.547,0
	b.1. Department of national education	2.200,0	2.300,0	2.700,0	2.653,0

	b.2. department of religion	1.170,0	2.170,0	2.520,0	2.894,0
	Number of transfer allocation to the regional	45.035,7	74.819,4	86.534,4	95.620,1
	a. educator salary in DAU (1,8/2,5x70%x90%xDAU)	40.264,1	66.073,3	74.747,6	81.424,4
	b. budget of non educator salary in DAU (4%xDAU)	3.550,6	5.826,6	6.591,5	7.180,3
	c. Education DAK	1.221,0	2.919,5	5.195,3	7.015,4
	Total of education budget including educator salaries	75.089,6	122.990,7	142.202,6	154.185,5

Furthermore, in accordance with the provisions of Article 1 number 1 of the Law Number 20 of the year 2003 concerning the National Education System stating that education is a conscious and planned effort to create an atmosphere of learning and the learning process so that students actively develop their potentials to have religious spiritual power, self-control, personality, intelligence,

noble character, and skills as required by themselves, community, nation and state, while in the provisions of number 1 Article 3 of the Law Number 20 of 2003 concerning the National Education System, stating that the understanding of the national education system is the whole interrelated integral education components to achieve national education goals.

To carry out the mandate of the Law Number 20 of the year 2003 concerning the National Education System, the Government has issued various Government Regulations among others are:

- a. Government Regulation Number 19 of 2005 concerning Education National Standards;
- b. Government Regulation Number 55 of 2007 concerning Religious Education and Religious;
- c. Government Regulation Number 47 of 2008 concerning Compulsory Education of 9 (nine) year Primary Education;
- d. Government Regulation Number 48 of 2008 concerning Education Funding.

While some other Government Regulations are still in the completeness process, among others are:

- a. Draft Government Regulation concerning Service Education;
- b. Draft Government Regulation concerning the Implementation of Education;
- c. Draft Government Regulation concerning Teachers;
- d. Draft Government Regulation concerning Lecturers.

Pursuant to the Law Number 14 of 2005 concerning Teachers and Lecturers Article 14 paragraph (1) that in carrying out professional duties, the teacher has the right to earn income above minimum living needs and guarantees of public welfare. Furthermore, in Article 15 paragraph (1), it is affirmed that the Income above the minimum life needs includes basic salary, benefits that are attached to the salary, as well as other income in the form of professional allowances, functional allowances, special benefits, and additional benefits related to their duties as a teacher that are determined by the principle of appreciation on the basis of achievement.

Table 6. ALLOCATION OF FUNCTIONAL ALLOWANCES, PROFESSIONAL ALLOWANCES, SPECIAL ALLOWANCES, AND ADDITIONAL BENEFITS IN 2006-2008

No	DESCRIPTION	2006	2007	2008
1.	Functional Allowances			
	a. Department of National Education			
	a.1 Total Teachers	90.000	478.671	478.000
	a.2. Budget Allocation (billion rupiah)	124,2	1.148,8	1.434,0
	b. Department of			

	Religion			
	b.1. Total Teachers		630.701	630.270
	b.2. Budget Allocation (billion rupiah)		1.709,2	1.709,6
2.	Professional Allowances			
	a. Department of National Education			
	a.1 Total Teachers		20.000	129.064
	a.2. Budget Allocation (billion rupiah)		90,0	2.787,8
	b. Department of Religion			
	b.1. Total Teachers		750	6.000
	b.2. Budget Allocation (billion rupiah)		13,5	108,0
3.	Special Allowances			
	a. Department of National Education			

	a.1 Total Teachers		20.000	20.000
	a.2. Budget Allocation (billion rupiah)		324,0	324,0
	b. Department of Religion			
	b.1. Total Teachers		500	3.174
	b.2. Budget Allocation (billion rupiah)		9,0	51,4
5.	Additional Benefits			
	a. Department of National Education			
	a.1 Total Teachers		27.025	30.113
	a.2. Budget Allocation (billion rupiah)		48,1	55,4
	b. Department of Religion			
	b.1. Total Teachers			
	b.2. Budget Allocation (billion rupiah)			

Functional allowance is an allowance given to the teachers that are appointed by an education unit organized by the Government and Regional government. To the teachers appointed by the education unit organized by the community, it is given a functional allowance subsidy by the Government and / or Regional Government. The amount of the allowance is set by the Government.

Professional allowance is an allowance given to teachers who have a certificate of educator appointed by the education provider and / or education unit organized by the community. This professional allowance is given equal to 1 (one) time of the basic salary of the teacher appointed by an education unit organized by the Government or Regional Government at the same level, tenure and qualifications.

Special allowances are an allowance given to teachers serving in a special area. This special allowance is given equal to 1 (one) time of the basic salary of the teacher appointed by an education unit organized by the Government or Regional Government at the same level, tenure and qualifications.

An additional benefit is the additional welfare that is obtained in the forms of education benefits, education insurance, scholarships, and awards for teachers, as well as the ease of getting education for children of the teacher, health services, or other forms of welfare.

IV. ALLOCATION OF EDUCATION BUDGET AND ACHIEVEMENT OF EDUCATION DEVELOPMENT IN NATIONAL EDUCATION DEPARTMENT IN 2005 – 2006

The annual budget allocation for education keeps increasing and gradually there are various national education development programs that have been implemented to realize educational development targets as stipulated in the Government work plan for 2005, 2006, 2007, and 2008 and the Ministry of 2005-2009 strategic plan of Department of National Education. Within the last three years, in general various targets of educational development results have been successfully achieved quite well, even for several Performance Key Indicators (IKK), the target can be exceeded significantly.

The spirit of education reform both expressed and implied in the amendments to the 1945 Constitution, the National Education System Law, and the Law of Teacher and Lecturer has inspired the Ministry of National Education to take various fundamental and large-scale breakthrough policies during the period of 2005-2008, which in the medium and long term, it is expected to influence significantly on increasing and equitable access to education, improving quality, relevance, and competitiveness of education, as well as strengthening governance, accountability, and public image of education.

There are at least 9 breakthrough policies that have been taken during the period of 2005-2008, as follows:

- 1) Mass education funding;
- 2) Improving qualifications, competence and certification of educators and education personnel
in a massive manner;
- 3) Mass application of ICT for e-learning and e-administration;

- 4) Construction of infrastructure and facilities for mass education;
- 5) Rehabilitation of infrastructure and facilities for mass education;
- 6) Basic book reform;
- 7) Improving the quality, relevance and competitiveness of education with a comprehensive approach;
- 8) Strengthening governance, accountability and public image of education with comprehensive approach;
- 9) Intensification and intensification of non-formal and informal education to achieve provide education services for students who cannot afford formal education (reaching the unreached).

These nine policies can be explained as follows:

1. Funding for Mass Education

Education funding is one of the important breakthroughs that is carried out by the Ministry of National Education by the support of the House of People Representative. The education funding policy in 2007 and 2008 was a continuation of the education funding program that was implemented in 2005 and 2006. Education funding programs are continued because it shows encouraging results and is felt by educational stakeholders. Educational funding program in 2007 and 2008 includes the School Operational Assistance (BOS) program, Book BOS program, Special Student Assistance program (BKM), Operational Assistance program of Quality Management (BOMM), and scholarship programs.

2. Increasing Qualifications, Competencies and Certification of Educators and Education Personnel in A Massive Manner

Only in two months after the formation of the united Indonesian cabinet, the President of the Republic of Indonesia in front of the teachers at the commemoration of the national teacher's day at Istora Senayan, on December 2, 2004, declared his political commitment to promote teacher's dignity as an equivalent profession with other professions such as accountants, pharmacists, notaries, lawyers, and doctor. One year after that the president's political commitment, it was followed up by Government together with the House of People Representative by establishing the Law of Teacher and Lecturer. This law determines teachers and lecturers as a separate profession. Consistent with the requirements of other professions, then to be a teacher must fulfill educational qualifications of at least S-1 or D-4, while for lecturers, at least it has a master's degree for those who are studying undergraduate and / or diploma study programs, while for those who teach undergraduate and / or S-3 study programs, they must have at least an S-3 education degree. In addition, both teachers and lecturers must have a professional certificate in the form of a certificate for educators which to obtain it, it requires professional education above the undergraduate or D-4 program.

There are various efforts to improve the qualifications and competence of teachers that are carried out by the Ministry of National Education involving various teacher organizations such as Teacher Work Stabilization (PKG), Teacher Working Group (KKG), and Subject Teacher Consultation (MGMP) that are distributed throughout regencies / cities in Indonesia. In addition, the

Ministry of National Education also carry out various improvements to the training system at 30 Educational Quality Assurance Institutions (LPMP) and 12 Centers of Development and Empowerment of Educators and Education Personnel (P4TK). Teacher certification is carried out in order to ensure that the teacher has pedagogic, professional, social and personality competencies. The teacher certification was started in 2007 on the basis of Regulation of Minister of National Education Number 18 of 2007 for the certification with portfolio assessment methods for 200,450 teachers with positions and Number 40 of 2007 for certification through education channels for 80,000 in-service teachers.

Improvement for qualifications, competence and teacher certification programs are also applied to assistive teachers because the Government has committed to appoint all assistive teachers, namely by 210,600 people, to become civil servants no later than 2008. This program is also applied to in-service teachers as education personnel such as school principals and school supervisors. To ensure the quality of the improvement of qualification and competency programs as well as teacher certification, the revitalization of the LPTK is very relevant.

3. Mass Application of ICT for e-learning and e-administration

The application of ICT at the Ministry of National Education has been initiated by the Directorate General of Higher Education since high technology started to enter Indonesia sporadically through various public and private universities. This competence in higher education is then transmitted to primary and secondary education levels as well as to the community. Directorate of

Vocational Secondary Education in 1999 pioneered ICT applications through "Jarnet" program. The Jarnet Program is able to connect a number of vocational high schools equipped with adequate equipment. In 2000, Jarnet developed into a School Information Network (JIS) using a Local Area Network (LAN) system. LAN as an ICT network with small area coverage, such as campus computer networks, schools, office, building or house, of course, by time passing feels to be inadequate. In 2005, the Ministry of National Education implemented a library-based ICT network system in 10 universities. In that year, it was also conducted ICT-based learning in 125 high schools / vocational schools in 125 regencies. Also in the same year, there was increased JIS capacity by replacing the LAN system into a WAN (*Wide Area Network*) system. WAN is an ICT network that covers a large area, such as cities, districts, provinces, or even countries. The WAN is used to connect one local network with another local network. Thus, the user or computer at one location can communicate with users or computers in other locations. It was initiated in one city, so that at that time, it was commonly called as WAN City. Then, it develops with the establishment of the ICT Center in each regency/city.

On the basis of experience and confidence gained from various pioneering efforts, starting in 2006 the Ministry of National Education committed to apply ICT on a large scale both for e-learning and e-administration, one year went before the creation of the National ICT Council in 2007. The mass ICT application is marked by its installation and the start of the operation of the National Education Network (Jardiknas) in 2006, a network with ability to connect all units of education at all levels of education and all government

offices in the field of education both at the center and in the region levels. When the ICT Council is established, Jardiknas is the largest ICT network owned by the board. There is indeed very high relevance of the ICT for improved and equitable access to education, improving the quality, relevance and competitiveness of education, and governance, accountability, and the public image of education for Indonesia's population by 230 million with more than 50 million formal education students, spreads over volcanic islands with more than 17,000 islands. ICT can be used to improve access and quality, and at the same time, it can improve the effectiveness of governance.

Jardiknas covers four networking zones, namely the office zone (DiknasNet), higher education zone (Inherent = Indonesia Higher Education Network), school zone (SchoolNet) and personal zones (Teachers and Students Net). DiknasNet utilizes jardiknas for online data transactions for education information systems (SIM) management. Inherent utilizes Jardiknas for implementation of ICT-based on Tridarma university-based ICT and for e-administration. SchoolNet utilizes Jardiknas to facilitate e-learning and e-administration. *Teachers and Students Net* is used to facilitate access to information and individual interaction of the education community, especially educators and students.

4. Development of Mass Education Infrastructure and Facilities

The priority of infrastructure and facility development on a large scale is a breakthrough effort made by the Government to improve access to the education. There are some infrastructure built by the government, namely

New School Unit (USB), new State University (PTN), New Classroom (RKB), library, and laboratory.

5. Rehabilitation of Mass Education Infrastructure and Facilities

Data at the end of 2004 showed that elementary school / Islamic elementary school classrooms were heavily and moderately damaged by 498,600, or approximately 49.95% of the total school classrooms throughout Indonesia. The government is very concerned about this reality.. Such extensive damage is an accumulation of several causes. *First*, most elementary school / Islamic elementary school buildings were built in the 70s and the 80s at the time that the new order government was in full spirit to complete compulsory basic education for 6 years, so most school buildings are 25 years old, 35 years old, or even more. *Second*, control of various elementary school / Islamic elementary school building construction projects at that time it seemed to be weak so that there were so many buildings that are indeed easily damaged, as could be seen from when there was any earthquake or tsunami in Nanggroe Aceh Darussalam, Special Region of Yogyakarta, Central Java, West Sumatra, and Bengkulu, there were many collapse elementary school / Islamic elementary school buildings with no reinforced concrete structure. *Third*, since the implementation of fiscal decentralization and regional autonomy in 2000, most regions that have received delegation of authority towards elementary school did not pay attention to maintenance of the building, so that during the period of 2000-2005 there was a process of rapid decline in physical conditions over these buildings. The united Indonesian cabinet government committed to overcoming this problem in its tenure,

through reconstruction or rehabilitation of elementary school / Islamic elementary school buildings with adequate earthquake resistant quality standards.

6. Fundamental Book Reform

National bookkeeping policy entered a new phase since the issuance of the Regulation of the Minister of National Education Number 11 of the Year 2005 concerning Textbooks. Before the enactment of the Regulation of the Minister of National Education No. 11 of 2005, there were a number of policies regarding the procurement of textbooks to be applied in Indonesia. Until 1995/1996, the applicable policy was a textbook system. In the textbook phase, procurement of books was entirely under the authority of the Ministry of National Education through the *Balai Pustaka* publisher. Balai Pustaka is a business unit under the Ministry of National Education. The Ministry of National Education took a single monopoly in the procurement of books. The package Books are distributed free of charge to schools. In this phase, indeed students and schools benefited greatly because there was no need to spend money, but on the other hand, the monopoly of book writing has turned off creativity and enthusiasm to write by any book writers, monopoly of publishing has narrowed the space for many publishers, mainly the small ones, as well as duplication and distribution monopoly has narrowed moving space and even led to bankruptcy for a lot of textbook retailers. Weakness of the previous book procurement model was then corrected through the Regulation of Minister of National Education No. 11 of 2005 concerning Textbooks. The Regulation of Minister of National Education was later perfected by issuance

of Regulation of Minister of National Education number 2 of 2008 which maintained some substances such as the above issues and added by several new substances, namely:

- 1) Encouraging the Ministry of National Education, Ministry of Religion, and Regional Government to buy the right of copying book, then allow anyone to copy it, publish it, and even trade it. If it is traded then the price should not exceed the printing and distribution costs added by a profit margin of 15%, so the price of the textbook is expected to be able to decrease from the market price of Rp.20,000-Rp. 30,000 / copy to be only Rp.6,000-Rp.8,000 / copy. The purpose of this policy is to improve the access to textbooks.
- 2) Encouraging the Ministry of National Education, Ministry of Religion, and Regional Governments to provide working capital subsidies for prospective bookstore founders in any areas without any retail textbook store.

In 2007 the Ministry of National Education had started to purchase the copyrights of 37 textbooks and in 2008 the practice was continued even in a larger scale. In accordance with item 1 above, the Ministry of National Education invited anyone to duplicate it, publish it, and even trade it. The Ministry of National Education in the 2008 budget year also provided subsidies for book writing incentives to any authors whose their proposals were qualify.

7. Increasing the Quality, Relevance and Competitiveness of Education with a comprehensive approach

The Ministry of National Education has developed a comprehensive approach to improve the quality, relevance and competitiveness of education. This comprehensive approach design is based on the Law Number 20 of the Year 2003 concerning the National Education System that mandates for the development of national education standards and the implementation of extensive autonomy to the education unit. On the basis of the law, it was issued the Government Regulation Number 19 Year 2005 concerning National Education Standards which mandate the establishment of the National Education Standard Agency with the main task of developing 8 National Education Standards (SNP), namely: (1) Content Standards, (2) Graduate Competency Standards, (3) Standards of Educators and Education Personnel, (4) Means of Facilities and Infrastructure, (5) Assessment Standards, (6) Process Standards, (7) Management Standards, and (8) Cost Standards. These eight standards become references in education quality assurance applied in the context of education unit autonomy. In the context of quality assurance, this is the policy concerning the developed curriculum. The curriculum is self-developed by each education unit, which is popularly referred to as Education Unit Level Curriculum (KTSP). The education units have its freedom to develop its own KTSP according to education unit characteristics and characteristics of their respective environments, as long as the KTSP can meet the Content Standards and Graduate Competency Standards. There are also other quality guarantee Programs that are developed on the basis of SNP including: (1) Improvement program for qualifications and competence of educators and education staff pursuant to the Law Number 14 of 2005 and SNP, (2) Educator certification program

pursuant to the Law Number 14 of 2005 and SNP, (3) Program to increase the professionalism of educators and education personnel pursuant to the Law Number 14 of 2005 and SNP, (4) The welfare improvement program for educators pursuant to Law Number 14 of 2005 and SNP, (5) Program for procurement and repair of SNP-based physical facilities and infrastructure, (6) SNP-based book reform program, (7) e-learning and e-administration application programs of SNP- based education, (8) Funding program for operating SNP-based education units, (9) SNP-based national examination program, with a graduation threshold for the mean value of the National Examination is always increased from year to year, (10) SNP-based accreditation Program, (11) SNP-based education evaluation program, and (12) SNP-based education unit general quality assurance program.

In addition, the Ministry of National Education also developed on-top quality assurance program (on-top SNP), which includes: (1) pioneering and coaching programs of local excellence based education unit, (2) pioneering and development program of international standard or world class education units, (3) International competition or Olympiad program, with gold medal acquisition that is quite significant each year. (4) benchmarking programs with education units or programs in OECD countries.

8. Strengthening Governance, Accountability, and Public Image of Education With a comprehensive approach

Strengthening governance, accountability and public image is carried out in a comprehensive and systematic manner following the framework as follows:

a. Legislation arrangements including:

- 1) Revoking any laws and regulations that are contrary to higher legislation, containing potential conflict of interest, ineffective, distorted, or no longer relevant;
 - 2) creating new necessary legislation in order to more encourage expanded and equitable access to education, improving the quality, relevance and competitiveness of education.
- b. Structuring the structure and function of the Ministry of National Education including:
- 1) rearranging the organizational structure of the Ministry of National Education in order to become a strong structural foundation for the establishment of a reliable intern control system;
 - 2) reorganizing work systems and procedures, especially for routine works and ones with a large volume with the aim to improve work efficiency and effectiveness, reduce the potential for conflict of interests, improve internal check, and improve protection of assets owned;
 - 3) improving the effectiveness and efficiency of work systems and procedures by integrating ICT applications into systems and procedures through a reliable Management Information System (SIM);
 - 4) conducting an inventory of state property in accordance with the Agency Accounting System (SAI);
 - 5) improving effectiveness and efficiency of the accounting system and procedures as well as financial reporting according to SAI.

c. Apparatus development including:

- 1) increasing the capacity and competence of the apparatus in carrying out their respective duties;
- 2) increasing compliance with the law and regulations in carrying out their respective duties.

d. Increasing the effectiveness of supervision including:

1. expanding and intensifying supervision, including inspection, through the addition of types of checks such as early checks, performance checks, and investigation investigations, as well as additional examination frequency;
2. follow up on the results of the examination, both the inspection by Inspectorate General, BPKP, and BPK, according to the laws and regulations, and expressly and consistently give sanctions for all violations in accordance with laws and regulations;
3. submitting to violations law enforcement agencies cases that are no longer possible to be handled by the Ministry of National Education;
4. verifying or even investigate if necessary any complaints reported by the community, and later giving follow up according to the legislation;
5. implementing strictly and consistently Presidential Instruction Number 5 of the year 2004 concerning Acceleration of Eradication of Corruption;

6. improving the quality of work unit management through ISO 9001: 2000 certification programs;
7. aggressively and proactively making socialization to various programs and its achievements to the broader community.

9. Intensification and Extensification of Non-formal and Informal Education for Using Education Services for Students Who Cannot Afford Formal Education (Reaching The Unreached)

Non-formal education for Indonesia plays very important role especially for those who are poor, living in border areas, remote islands, in relatively isolated mountainous regions, or other areas that are still isolated because of lack of public transportation infrastructure and utilities adequately.

Until 2004, actually format of various designs of non-formal education programs have been successfully developed quite well, namely: 1) non-formal PAUD, (2) literacy education, (3) equality education of Package A, Package B, and Package C, (4) Life skills education, (5) community Reading Place (TBM), and (6) gender mainstreaming.

For illiteracy eradication, Dakar commitment in 2000 stated that each member of UNESCO is committed to reducing the number of illiteracy to be the two halves in 2015. In 2004, there were 15 million illiterate people (10.2%), in the age of 15 years and more in Indonesia and at the end of 2007, the figure was successfully reduced to 11 million people (7.2%).

Equality education is served by the programs (1) direct learning in centers of community learning activities in every sub-district, studio of learning activities

in each regency / city, Islamic boarding schools, Sunday school, as well as coaching and education and training programs and technical implementing units of some departments, (2) learning for migrant workers and their families, (3) service programs of pick up the ball, (4) forming learning barns, and (5) on-line equality education or often called as virtual school.

Equity education in 2007 has contributed 0.4% in the establishment of APK Elementary School / Islamic Elementary School / Package A, 4.6% in the formation of APK Junior High School / Islamic Junior High School / Package B, and 3.8% in the formation of APK C. Senior High School / Islamic Senior High School / Vocational High School Package.

In organizing education development, the Government established education development policy in three main policies, namely (1) Expansion and equitable access to education, (2) Quality improvement, relevance, and educational competitiveness, and (3) Strengthening governance, accountability and public image of education. State Budget (APBN) fund utilization is focused on the Principal Policy (1) and Principal Policy (2) which are investment in all education levels. While the Main Policy (3) is more of a supporting activity. For example, for the 2007 budget year, the allocated fund to the Basic Policy (1) is 42.70% of the total budget, for the Main Policy (2) is 34.30%, and for Main Policy (3) is 23%.

Table 7 Education Function Budget in the Ministry of National Education and Other Functions

(in billion)

No.	PROGRAMS	2005 REVISED STATE BUDGET (APBN-P)	2006 REVISED STATE BUDGET (APBN-P)	2007 REVISED STATE BUDGET (APBN-P)	2008 REVISED STATE BUDGET (APBN-P)
A.	EDUCATIONAL FUNCTIONS	26.881,90	40.345,66	43.935,09	44.840,92
	1. 9-year compulsory national education	11.292,31	20.158,88	20.489,45	22.289,18
	2. secondary education	2.621,67	3.635,88	3.794,81	3.514,75
	3. higher education	7.728,61	10.494,98	8.077,93	13.089,36
	4. Non Formal education	362,17	839,39	1.254,64	802,59
	5. improvement quality of educator and education personnel	2.767,38	3.374,30	2.392,67	2.573,58
	6. early childhood	273,24	269,67	445,85	581,44

	education				
	7.development of reading habits and library guidance	70,27	101,96	178,74	83,19
	8. management of educational service	305,16	387,35	1.042,32	1.023,27
	9.educational research and development	117,09	225,03	612,08	883,56
	10.implementation of state and government leadership	1.337,89	858,20	5.647,26	-
	11. others (Minister of Youth and Sports	6,10	0,00	0,00	-
B.	OTHER FUNCTIONS	232,07	317,00	582,98	232,07
	TOTAL	27.113,97	40.662,65	44.518,08	45.332,99

Seeing at the proportion of the use of the budget based on the type of expenditure, namely Employee Spending, Spending for Goods, Capital Expenditures, and Social Assistance, budget in 2008 also showed that most

of the funds were used for Social assistance which reached 67.20%. Other types of spending, namely Spending for Goods was 13.36%, Employee Expenditures was 13.66%, and Capital Expenditures was 5.77%. In 2007, this fund was also distributed primarily to finance education operations in education units such as School Operational Costs (BOS), Book School Operational Costs (BOS), BOMM, and others subsidies that are directly given to teachers in the form of functional allowances, professional allowances, special allowances, and other benefits.

The main programs getting large portions of budget are Compulsory Education Program (*Wajar*), Primary Education of 9 Years, Secondary Education, Higher Education and Quality Improvement of Educators and Education Staff.

Total budget from 2005 to 2008 to be allocated to the 9-year Compulsory Education Program was Rp.73.7 trillion, with details 2005 by 10.82 trillion, in 2006 by Rp.20.29 trillion, in 2007 by Rp.20.46 trillion, and in 2008 by Rp.22.13 trillion. The funds were used to increase the achievement of the Pure Participation Rate (APM) of Elementary School (SD) / Islamic Elementary School - *Madrasah Ibtidaiyah* (MI) and Raw Participation Rate (APK) Junior High School (SMP) / Islamic Junior High School - *Madrasah Tsanawiyah* (MTs) respectively by 94.12% and 81.22% in 2004 by 94.81% and 95% in 2008. The priority activities in 2008 were to support the program are:

1. The granting of BOS to elementary school / MI students is Rp.6.82 trillion with the targets are 26,862,332 students;

2. The granting of BOS to SMP / MTs students is Rp. 3.2 trillion with the targets are 9,015,069 students;
3. The granting of BOS books for elementary / MI students is Rp.432.5 billion, with the targets are 19,657,292 students;
4. The granting of BOS books for SMP / MTs students is Rp. 147.4 billion with targets are 6,700,417 students;
5. Provision of elementary school scholarships is Rp.323.4 billion for 898,400 students;
6. Construction of New Junior / Islamic Junior (MTs) School Units (USB) by Rp.611 billion for 470 USB;
7. Construction of New Junior / Islamic Junior (MTs) Classrooms (RKB) by Rp.690.9 billion for 11,069 RKB;
8. Rehabilitation of Junior / Islamic Junior (MTs) by Rp. 320 billion for 5,100 spaces;
9. Laboratory construction by Rp.318.8 billion for 3,750 laboratories;
10. Construction of an elementary learning resource center is Rp. 604.2 billion to 6,396 schools;
11. The construction of a Junior Learning Resource Center is Rp.297.5 billion for 3,500 schools;
12. Application of ICT in primary education is Rp. 300 billion to 2,206 schools;

13. Accelerating the improvement of qualifications and competencies of primary education teachers by Rp.519.7 billion for 270,000 teachers;
14. Functional allowances subsidies for non-Civil Servant teachers of primary education by Rp.1.02 trillion for 478,000 teachers;
15. Special benefits for primary education teachers by Rp.324 billion to 19,800 teachers;
16. Professional allowance for primary education teachers by Rp.2.64 trillion to 129,056 teachers;
17. The implementation of Package A equivalent to Elementary school by is Rp. 60.7 billion for 119,180 person;
18. The implementation of Package B is equivalent to Junior High School by Rp.675.6 billion to 550,250 person.

The total budget from 2005 to 2008 that was allocated to the Secondary Education Program was Rp. 13.4 trillion, with details in 2005 by Rp.2.49 trillion, in 2006 by Rp.3.64 trillion, in 2007 by Rp.3.76 trillion, and 2008 by Rp.3.53 trillion. The funds were used to improve the achievement of APK secondary education from 49.1% in 2004 to be 64.20% in 2008. Priority activities in 2008 to support the programs are:

1. Provision of BOMM for High School is Rp.85 billion for 1,063 schools;
2. Provision of BOMM for Vocational Schools is Rp.209.5 billion for 2,792,768 students;

3. Provision of scholarships for poor high school students by Rp.242.3 billion for 310,609 students;
4. Provision of scholarships for poor vocational students by to Rp.329.2 billion for 410,020 students;
5. Construction of USB High Schools and Vocational Schools by Rp. 175.5 billion for 225 USB;
6. Construction of RKB high school and vocational school by Rp. 423.9 billion for 5,414 RKB;
7. Rehabilitation of high school and vocational classrooms by Rp.124 billion for 2,170 classrooms;
8. Construction of laboratories, libraries, workshops, and centers of learning by Rp.137.6 billion for 784 spaces;
9. Application of ICT in secondary education by Rp.208.3 billion for 1,576 schools;
10. Accelerating the improvement of the qualifications and competencies of secondary education teachers by Rp.20.3 billion for 270,000 teachers;
11. Functional allowance subsidies for non-civil servant teachers of secondary education by Rp. 409.6 billion for 136,535 teachers;
12. improvement of teacher quality and professionalism by Rp.48.2 billion to 33 provinces;

Total budget from 2005 to 2008 that was allocated to Higher Education Program was Rp.38 trillion, with details in 2005 by 6.90 trillion, in 2006 by Rp. 10.4 trillion, in 2007 by Rp.7.63 trillion, and in 2008 by Rp.13.06 trillion. The funds were used to increase the APK achievement of 14.62% in 2004 to 18.50% in 2008. Priority activities in 2008 to support the program are:

1. Research in universities by Rp.390 billion for 9,992 titles;
2. Construction of buildings and laboratories by Rp. 608.3 billion for 231 packages;
3. Establishing new polytechnics and strengthening existing polytechnics by Rp.632.2 billion for 40 poly;
4. Development of scientific fields by Rp.510 billion for 51 high universities;
5. Increasing the academic qualifications of lecturers in domestic and foreign levels by Rp.541.2 billion for 16,576 lecturers;
6. Provision of various scholarships by Rp.443.4 billion for 165,116 university students;
7. Professional allowance for Lecturers by Rp. 307 billion for 21,000 lecturers;

The total budget that was allocated from 2005 to 2008 in the Quality Improvement Program for Educators and Education Personnel was Rp. 11.1 trillion, with details in 2005 by Rp. 2.75 trillion, in 2006 by Rp.3.1 trillion, in 2007 by Rp.2.47 trillion, and in 2008 by Rp. 2.75 trillion. Priority activities in 2008 to support the program are:

1. Payment of teacher's honorarium (Senior / Vocational High Schools) by Rp.625.5 billion for 73,467 teachers;
2. Improvement of teacher quality and professionalism by Rp. 99.8 billion for 33 provinces;
3. In-service teacher certification by Rp.400 billion for 200,000 teachers;
4. Professional allowance for secondary education teachers by Rp.147.6 billion.

V. ALLOCATION OF EDUCATION BUDGET AND EDUCATION DEVELOPMENT ACHIEVEMENT IN THE DEPARTMENT OF RELIGION IN 2005-2008

Pursuant to the mandate of the 1945 Constitution and the Law Number 20 of the Year 2003 concerning the National Education System, the Government keeps working to prioritize education programs and budgets including education units managed by the Ministry of Religion. This can be seen from developments of education budget in the Ministry of Religion in the past four years showing a significant increase, namely in 2005 (REVISED STATE BUDGET / APBN-P) by Rp.5,891 billion, in 2006 (REVISED STATE BUDGET / APBN-P) by Rp.8,528 billion, in 2007 (REVISED STATE BUDGET / APBN-P) by Rp. 11,517 billion, and in 2008 (REVISED STATE BUDGET / APBN-P) by Rp. 12,780 billion.

Seeing at the total REVISED STATE BUDGET / APBN-P budget in 2008, the Ministry of Religion placed the educational function, including salaries and benefits of educators and personnel education as the top priority with a

budget allocation by 78.8% of the total budget of Rp. 16,213 billion. While the rest by Rp.3,433 billion (21.2%) was allocated for other functions and programs, namely: Function of Public Service, Function of Religion, Gender & Child Mainstreaming Institutional Strengthening Program, and Development and Improvement Programs of Cross-religious Youth Participation.

Table 8 Budget for Education Functions in the Department of Religion and Other Functions

(in billion)

No.	PROGRAMS	2005 REVISED STATE BUDGET (APBN-P)	2006 REVISED STATE BUDGET (APBN-P)	2007 REVISED STATE BUDGET (APBN-P)	2008 REVISED STATE BUDGET (APBN-P)
A.	A. EDUCATIONAL FUNCTIONS	5.891,20	8.528,00	11.517,42	12.780,27
	1. 9-year compulsory national education	2.349,98	3.163,02	3.223,82	2.777,52
	2. secondary education	859,30	1.261,39	718,41	483,04

	3. higher education	1.437,11	2.128,43	1.262,76	1.121,19
	4. Non Formal education	27,38	31,59	28,91	28,29
	5. improvement quality of educator and education personnel	100,00	185,91	1.116,46	1.680,47
	6. early childhood education	25,19	39,89	27,34	16,13
	7. management of educational service	17,15	55,13	46,71	6.378,51
	8. Implementation of State and government leadership	0,00	0,00	4.440,38	-
	9. improvement of religion and religious education	1.075,15	1.662,67	212,61	295,10

B.	FUNGSI LAINNYA	1.128,18	2.650,18	3.342,33	3.433,31
	JUMLAH	7.019,38	11.178,18	14.859,75	16.213,58

In 2007 budget year, most of the funds were allocated for Social assistance reaching 23.94%, Spending of Goods by 11.61%, Employee Expenditures by 48.82%, and Capital Expenditures by 15.62%. The allocation of funds is prioritized for finance education operations in education units such as School Operational Costs (BOS), Book School Operational Costs, Quality Operational Management Costs (BOMM), and other subsidies that are directly given to the teacher in the forms of functional allowances, professional allowances, special allowances, and other benefits.

Seeing at the proportion of the use of the budget according to the types of expenditure, namely Employee Spending, Spending for Goods, Capital Expenditures, and Social Assistance, budget in 2008 also showed that most of the funds were used for Social assistance reaching 28.98%. Other types of shopping, namely Shopping for Goods by 18.82%, Employee Expenditures by 50.05%, and Capital Expenditures by 9.14%. As In 2007, this funds were also distributed primarily to finance education operations in education units, such as School Operational Costs (BOS), Book School Operational Costs, Quality Operational Management Costs (BOMM), and other subsidies, that are directly given to the teacher in the forms of functional allowances, professional allowances, special allowances, and other benefits.

The main programs obtaining the budget in a large portion are the 9-year Compulsory Education Program, Secondary Education, Higher Education and Quality Improvement of Educators and Education Personnel.

The total budget that was allocated from 2005 to 2008 in the 9-Year Basic Education Program was Rp. 11,624 trillion, with details in 2005 by Rp.2,279 trillion, in 2006 by Rp.3,074 trillion, in 2007 by Rp.3,517 trillion, and in 2008 by Rp.2,754 trillion. The funds were used to improve the achievement of the APK MI in 2005/2006 MI by 11.95%, in 2006/2007 by 12.05% and in 2007/2008 by 12.17% and in 2008/2009, it was planned to reach 12.95% and the MTs APK by 16.10% in 2004 by 23.45% in 2008.

Meanwhile, it is pursuant to the Government Priority Program as presented in the 2004-2009 RPJMN, the Ministry of Religion focused on the education budget allocation in 2008 for:

1. Accelerating the achievement of 9-year compulsory education targets with a total budget by Rp.2,777.5 billion (21.7%) including:
 - a. Provision of BOS at the primary education level, 6,142,751 Students: MI / Primary (Ula) by @ Rp. 225,000, - MTs / Secondary (Wustha) @ Rp. 354,000, - with a budget allocation by Rp. 1,877.2 billion;
 - b. Provision of Primary Education Textbooks, 6,142,751 Students by @ Rp.22,000, - with a budget allocation by Rp. 135.1 billion;
 - c. The construction of new MI and MTs school units by 360 units, with budget allocation by Rp.102.5 billion;

- d. Construction of One-Roof MTs and MIs by 139 units with budget allocation by Rp.102.4 billion;
 - e. Scholarships for poor MI students by 360,000 students, with a budget allocation of Rp.129.6 billion;
 - f. Assistance for the Construction of Supporting Infrastructure for 1,000 MI and MTs rooms, with a budget allocation of Rp.125.0 billion;
 - g. Scholarships for poor MTs students by 280,000 students, with a budget allocation of Rp.201.6 billion;
 - h. Assistance in organizing A / B Packages and PPS for Compulsory Education Program in Islamic Boarding School by 8,057 groups, with a budget allocation of Rp. 30.0 billion;
 - i. Assistance of MI Islamic School Quality Improvement (BPMM) for 400 Islamic schools (MI), with a budget allocation of Rp. 20.0 billion;
 - j. Assistance of MTs Islamic School Quality Improvement (BPMM) for 250 Islamic Schools (MTs), with a budget allocation of Rp. 15.0 billion.
2. Improvement of professionalism and welfare of educators and personnel education in order to improve the quality of education with total budget of Rp. 1,680.1 billion (13.1%) including:
- a. Improvement Acceleration of Qualification and Competency for Educators by 37,500 Educators, with a budget allocation of Rp. 75.0 billion;

- b. Functional Allowances for Non-Civil Servant Teachers for MI, MTs and MA for 501,831 Teacher by @ Rp. 200,000 / month, with a budget allocation of Rp. 1,204.3 billion;
 - c. Professional Allowances for Non-Civil Servant Madrasa Teachers by 6,000 Teachers, with a budget allocation of Rp.108 billion;
 - d. Special Benefits of Non- Civil Servant Madrasah Teachers for 3,081 Teachers, with a budget allocation of Rp.49.9 billion;
 - e. Certification Acceleration of Madrasah Teacher and Religious Education Teachers at schools, for 63,300 Teachers, with a budget allocation of Rp. 126.6 billion;
3. Improvement quality of secondary education with a total budget of Rp.483 billion (3.8%) including:
- a. Provision of quality improvement assistance for Islamic Senior High School (MA) by 120 schools, with a budget allocation of Rp. 96.0 billion;
 - b. Scholarships for Islamic Senior High School poor students by 210,188 students, with a budget allocation of Rp. 159.7 billion;
 - c. Rehabilitation of Islamic Senior High School for 900 rooms, with a budget allocation of Rp. 45 billion;
 - d. Construction of allocation including the development of excellence Islamic Senior High School with international standard by 10 units, with a budget allocation of Rp.20.0 billion;

- e. Development of Supporting Infrastructure for Islamic Senior High Schools for 1,000 rooms, with a budget allocation of Rp. 145.0 billion;
 - f. Development of Skill Education for Islamic Senior High Schools to 60 schools, with a budget allocation of Rp.3.0 billion;
 - g. Assistance of Quality Improvement of Islamic Senior High Schools through Achievement Contracts for 10 schools, with a budget allocation of Rp. 11.5 billion;
 - h. Empowerment of 200 MGMP, POKJAWAS and KKG in 200 locations, with a budget allocation of Rp.3.0 billion;
4. Improvement Quality of Religious Higher Education with a total budget of Rp. 1,121.2 billion (8.8%) including:
- a. Research at Religious University for 1,400 titles, development of 72 libraries in Religious Universities, with a budget allocation of Rp.88.0 billion;
 - b. Construction of buildings and laboratories, for 72 packages with a budget allocation of Rp.270.9 billion;
 - c. Improvement of academic qualifications of lecturers in domestic and foreign levels for 1,575 lecturers, with a budget allocation of Rp.48.1 billion;
 - d. Provision of scholarships for poor and with achievement students for 48,900 university students, with a budget allocation of Rp. 58.6 billion;

5. Management of education services with a total budget of Rp.6,378.5 billion (49.9%) including:
 - a. Provision of salaries and benefits attached to salaries for civil servant educators and education personnel with an increase of 20% from 2007, with a budget allocation of Rp.2,893.7 billion;
 - b. Provision of functional allowances for civil servant teachers by 128,166 teachers, with a budget allocation of Rp.504.5 billion;
 - c. Provision of professional allowances for teachers who have obtained profession certificates for 1 (one) time of the basic salary for civil servant teachers by 11,702 teachers, with a budget allocation of Rp. 371.7 billion.

6. Improvement quality of religion and religious education with total budget of Rp.295.1 billion (2.3%) including:
 - a. Improvement quality of education in Islamic boarding schools, pasraman, seminaries, pabbajja samanera in 33 locations, with a budget allocation of Rp.7.7 billion;
 - b. Scholarships for Students with achievement in top universities for 1,100 students, with a budget allocation of Rp.34.1 billion;
 - c. Procurement of religious education books for 72,000 copies, with a budget allocation of Rp. 3.6 billion;
 - d. Development of Islamic boarding school library by 1 package, with a budget allocation of Rp. 1 billion;

- e. Incentives for Islamic elementary school teachers for 5,000 teachers, with a budget allocation by Rp. 12.0 billion;
 - f. Assistance of religious education facilities and infrastructure in 344 locations, with a budget allocation of Rp.3.4 billion.
7. Development of early childhood education with a total budget of Rp. 16.1 billion (0.1%) including:
- a. Development of Islamic kindergarten (RA / BA) curriculum in 4 packages, with a budget allocation of Rp.1.1 billion;
 - b. Assistance of early childhood education organization in 33 locations, with a budget allocation of Rp. 5.1 billion;
 - c. Assistance of Islamic kindergarten (RA / BA) Facilities and Infrastructure in 33 locations, with a budget allocation of Rp. 5.1 billion;
 - d. Education and training for Islamic kindergarten (RA / BA) educators for 21 activities, with a budget allocation of Rp.4.1 billion.
8. Development of non-formal religious education with a total budget by Rp.28.2 billion (0.2%) including:
- a. Expansion of access to secondary education through Package C program at Islamic Boarding School in 124 locations by Rp. 5.4 billion;
 - b. Improvement quality of religious education in Islamic elementary schools, Islamic learning assembly (*majelis taklim*), *pasraman*,

seminari, pabbajja samanera for 24 packages, with a budget allocation of Rp.2.4 billion.

The program and budget for education functions in the Ministry of Religion will keep to be tried to improve in accordance with the ability of the Government budget by prioritizing programs and targets in order to implement the mandate of Law Number 20 of 2003 concerning the National Education System and Law Number 14 of 2005 concerning Teachers and Lecturers.

Programs that will remain the Government's priority in the future for the education function in the Ministry of Religion is the completion of the 9-year Compulsory Education program with good quality through formal education channels (Islamic Elementary School and Islamic Junior High School) as well as through non-formal education channels (Salafiyah Islamic Boarding Houses in First and Second Level - *Ula and Wustha*), Package A program equivalent to Elementary School / Islamic Elementary School and Package B program equivalent to Junior High School / Islamic Junior High School in the boarding school environment. Also, improvement acceleration of professionalism and welfare of educators and education personnel will be continuously done through improvement acceleration of qualifications, certification of teacher and lecturers, provision of professional allowances and functional allowances for teachers and lecturers.

Acceleration of improvement quality programs for Islamic Senior High Schools, Islamic University, and Islamic and Religious Education as well as development of early childhood education will also be continuously carried out in the Government's efforts in providing quality education services. It is not

only about acceleration programs as mentioned above, the Government will continue to prioritize any programs and targets that are more measurable and accountable through good program achievements and targets both annual as well as medium and long terms.

[2.4] Considering whereas the House of People Representative has submitted written information dated July 2008 received at the Registrar's Office of the Court on August 6, 2008 which describes as follows:

A. Provisions of Law Number 16 of the year 2008 concerning Amendments on the Law Number 45 of the Year 2007 concerning State Revenue and Expenditure Budget for 2008 Budget Year that was applied for Testing Towards the 1945 Constitution of the Republic of Indonesia

The a quo Petitioners in their petition filed a material testing for the Law Number 16 of 2008 concerning Amendments to the Law Number 45 of 2007 concerning State Revenue and Expenditure Budget for 2008 Budget Year towards the 1945 Constitution specifically regarding the provisions of the education budget at education sector.

B. Constitutional rights and / or authority considered by the Petitioners are impaired by the coming into effect of the Law Number 16 of 2008 concerning Amendments to the Law Number 45 of 2007 concerning State Revenue and Expenditure Budget for 2008 Budget Year.

The Petitioners in the a quo petition stated that their constitutional right has been impaired and violated by the coming into effect of the Law

Number 16 of 2008 concerning Amendments to the Law Number 45 of 2007 concerning State Revenue and Expenditure Budget for 2008 Budget Year towards the 1945 Constitution, namely as follows:

- a. Whereas in the Addendum of the Law concerning the State Budget in 2008 budget year, it states that "the education budget is estimated to reach about 15.6% of the state budget". This means that the budget allocation is still under the constitutional provisions of education budget allocation by 20% of the National Budget. The total budget allocation is 15.6% of the State Budget can be found after the ratio of the education budget also calculates the salaries of teachers and educators.
- b. Whereas it is a big mistake if in the education budget, it also includes the "salary of teachers and educators", because in the aspect of salaries of teacher and educators are included in the budget of the General Allocation Fund (DAU).

Therefore, the Petitioners assume that the *a quo* provisions are considered by the Petitioners to be contrary to the 1945 Constitution, in particular, the provision of Article 31 paragraph (4) of the 1945 Constitution stating that, "The State prioritizes the education budget of at least twenty percent from the State Revenue and Expenditure Budget and from the Regional revenue and expenditure budget to meet the needs for national education ".

C. Information from the House of Representatives on the Judicial Review of the Law Number 16 of the Year 2008 concerning Amendment to the Law Number 45 of the Year 2007 concerning the

State Budget and Expenditure Budget of 2008 Budget Year towards the 1945 Constitution.

C.1. Regarding Legal Standing of the Petitioners

Pursuant to the provisions of Article 51 paragraph (1) of the Law Number 24 of 2003 concerning the Constitutional Court, it states that the Petitioner is a party that considers its constitutional rights / authority is impaired by the coming into effect of the law, namely:

- a. individual Indonesian citizens;
- b. unity of the customary law community as long as they are alive and conforming to the community development and the principle of the unitary state of the Republic of Indonesia as regulated by law;
- c. public or private legal entity;
- d. state institutions.

These provisions are emphasized in the explanation, that which referred to as **the constitutional rights are the rights regulated in 1945 Constitution.**

The provisions concerning the explanation of Article 51 paragraph (1) explain that there are only rights explicitly regulated in the 1945 Constitution including as the "constitutional rights".

Therefore, pursuant to the Law Number 24 of the Year 2003 concerning the Constitutional Court, so that someone or a party can be accepted as an Petitioner who has a legal standing in the petition for testing the 1945 Constitution, it must first explain and prove:

- a. its qualifications as a Petitioner in the a quo petition as referred to in Article 51 paragraph (1) of Act Number 24 of 2003 concerning the Constitutional Court;
- b. its constitutional rights and / or authority as referred to in "**Addendum of Article 51 paragraph (1)**" is considered to have been impaired by the coming into effects of the law.
- c. The impairment of the constitutional rights and / or authority of the Petitioner as a result of the coming into effect of the law as petitioned for the testing.

Limitations concerning constitutional losses, the Constitution Court has provided understanding and limitations on the constitutional losses arising from the coming into effect of a law pursuant to the Article 51 paragraph (1) of the Law Number 24 of the Year 2003 concerning the Constitutional Court, it must fulfill 5 (five) requirements (vide Decision on the Case Number 006 / PUU-III / 2005 and Decision on the Case Number 010 / PUU III / 2005), as follows:

- a. the existence of the Petitioner's constitutional rights granted by the 1945 Constitution;
- b. whereas the Petitioner's constitutional rights are considered by the Petitioner to have been impaired by a law being tested;
- c. whereas constitutional impairment of the Petitioner as referred to has a specific and actual natures or at least potential according to logical reasoning can be assured to be found;

- d. there is a causal relationship (*causal verband*) between loss and the enactment of the law petitioned for testing;

- e. the possibility that through the granting of the petition then the constitutional impairment as argued will not or be no longer found.

If the five conditions are not fulfilled by the Petitioners in submitting a test of the law towards the 1945 Constitution, then the Petitioners do not have legal standing as a party.

According to the Petitioners in the *a quo* petition, that through the enactment of the Law Number 45 of the year 2008 concerning Amendments For the Law Number 45 of the year 2007 concerning the State Budget in 2008 Budget Year, then there are impaired constitutional rights and / or authority, because the allocation of education budget funds as presented in the Law Number 45 of the year 2007 is out of sync or not in line with the mandate of Article 31 paragraph (4) of the 1945 Constitution, so that it leads to the implementation and implementation of education in Indonesia to be left behind.

In this case, on a *quo* petition by the Petitioners formally, it is questionable about the legal standing of the Petitioners, namely:

1. The House of People Representatives (DPR) firstly questions the Petitioner's interests whether it is appropriate as a Law Number 16 of the year 2008 concerning Amendments to the Law Number 45 of 2007 concerning the State Revenue and Expenditure Budget of 2008 Budget Year (APBN 2008 Budget Year), whether it is the Executive Board of the Republic of Indonesia Teachers Association (PGRI), its members or teachers throughout Indonesia, because in a *quo* petition, it does not

clearly describe who is actually impaired by the enactment of the Law concerning State Budget of 2008 Year Budget.

2. The House of People Representatives (DPR argues that the implementation of education is the responsibility of the government and all components of the Indonesian nation in general, therefore the Petitioners cannot claim themselves as a party that is exclusively responsible and having interest in the implementation of education in Indonesia.
3. Pursuant to the ground in the number 2 above, the House of People Representatives has argued that the Petitioners is not correlated and / or related to the constitutional rights and / or authority for the enactment of the Law of State Budget of 2008 Year Budget, thus there is no or arising loss towards the Petitioner's constitutional rights and / or authority towards the enactment of the Law of State Budget of 2008 Year Budget, since the legal standing of the Petitioners in the a quo Petition does not fulfill the requirements as stated in Article 51 paragraph (1) Law Number 24 of 2003 concerning the Constitutional Court.

Based on the arguments mentioned above, the House of People Representatives requests that Panel of Judges of the Constitutional Court can wisely declare that the petition proposed by the Petitioners cannot be accepted (*niet ontvankelijk verklaard*).

C.2 Regarding the Constitutionality Testing of the Law

The Petitioners in the a quo petition argue that the constitutional rights has been impaired by the enactment of the Law Number 16 of 2008 concerning Amendments to Law Number 45 of the Year 2007 concerning the State Budget and Expenditure Budget of 2008 Budget Year is **the fact that the allocation of education funds presented in the Law concerning the State Budget of 2008 Budget Year is out of sync or in line with the thinking of the mandate of Article 31 paragraph (4) of the 1945 Constitution.**

Against the views of the Petitioner, the House of People Representatives provides the information as follows:

- a. As a legal state (*rechtstaat*), whereas all administration activities of the Republic of Indonesia must always be based on applicable law. For the implementation of effective applicable law, there are several grounds that must be considered, namely philosophically, juridically, sociologically, or politically reasons.
- b. Educating the life of the nation is one of the national goals of Indonesia as stated in paragraph IV of the Preamble of the 1945 Constitution. Further elaboration of the efforts to educating the life of the nation is regulated in Article 31 of the 1945 Constitution as stating as follows:

“(1) Every citizen has the right to education.

(2) Every citizen is obliged to attend basic education and the government is obliged to finance it.

(3) The Government tries and organizes a national education system, which increases faith and piety as well as noble characters in the framework of educating the life of the nation, as regulated in the law.

(4) The State prioritizes the education budget at least twenty percent of the state's revenue and expenditure budget as well as from the regional revenue and expenditure budget to meet the need for national education.

(5) The Government advances science and technology by upholding religious values and national unity for the progress of civilization and the welfare of humanity".

- c. Observing the views of the Petitioners regarding the allocation of education funds which is presented in the Law of State Budget of 2008 Budget Law, it is certainly inseparable from the mechanism of the rule of law in the Republic of Indonesia as explained in number 3 (three) above. As well as in explaining the meaning of an article in the law, it is also necessary to comprehensively and systematically connect with other article statements both in the same law and with other laws relating to each other. In this case, it is necessary for systematic interpretation studies.
- d. Whereas the implementation of Article 31 paragraph (4) of the 1945 Constitution through the enactment of the Law concerning State Revenue and Expenditure Budget with one-year validity period, so that in the Law concerning State Revenue and Expenditure Budget, it regulates the education budget allocation in the form of all activities to

improve faith and piety as well as noble characters in order to educate the life of the nation.

- e. Observing the allocation of education funds Juridically refers to the Article 31 paragraph (4) of the 1945 Constitution which states that:

"The state prioritizes the education budget of at least twenty percent of the state revenue and expenditure budget and from the regional income and expenditure budget to meet needs of the implementation of national education ".

Furthermore, the *calculation* of the education fund itself can be seen in further implementation at:

- Article 49 paragraph (1) of the Law of National Education System as has amended by the draft based on the Decision of the Constitutional Court Number 24 / PUU-V / 2007 into:

(1) Education funds in addition to official education costs are allocated minimum by 20% of the State Budget (APBN) in the education sector and a minimum of 20% of the Regional Revenue and Expenditure Budget of the Government.

- Article 46 paragraph (2) of the Law of National Education System:

"The government and the regional government are responsible for providing education budget as stipulated in Article 31 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

- f. By referring to the provisions of Article 31 paragraph (4) of the 1945 Constitution juncto Article 49 paragraph (1), Article 46 paragraph (2) of Law Number 20 of the Year 2003 concerning the National Education System, it can be drawn conclusions that: education allocation funds are 20% of the state budget and 20% from the Regional Budget outside the official education fees organized by department or non-departmental government institution functioning to improve capabilities and skills in carrying out service tasks for employees and prospective civil servants of a department or non-departmental government agencies.
- g. The amount of education budget allocation which according to the Petitioners is not including the official education budget as referred to in Article 29 of the Law of National Education System, it is legally aligned with the provisions of the Law of State Budget of 2008 Budget Year Article 1 numbers 35 and 36, as follows:

35. The education budget is the budget allocation for education functions in state expenditure, not including the service education budget.

36. Percentage calculation of the education budget is a comparison of education budget on overall state expenditure.

h. In a general explanation the Law of State Budget of 2008 Budget Year is clearly stated that pursuant to the mandate of the 1945 Constitution, the state prioritizes the education budget in the State Budget - APBN and Regional Budget - APBD to meet the needs of national education, with allocate at least 20.0% (twenty point zero percent) of the State Budget - APBN and Regional Budget - APBD for national education. But regarding the mandate of the constitution to pay attention to various other fields in an overall manner, in the 2008 REVISED STATE BUDGET / APBN-P the ratio of the education budget is estimated at 15.6% (fifteen point six percent). Calculation of the education budget is based on comparative value (in percent) between budget allocations for education functions in the state expenditure (including the salary of educators, but excluding the official budget) to overall state expenditure. This definition refers to the Decision of the Constitutional Court dated February 20, 2008 Number 24 / PUU-V / 2007 concerning Testing of Law Number 20 of 2003 concerning the National Education System and Law Number 18 Year 2006 concerning the State Budget of the 2007 Budget Year against the 1945 Constitution.

The calculation of the education budget is consistent with the mandate in the Article 31 paragraph (4) of the 1945 Constitution. In addition to budget allocation, the education must be in line with the Law Number 32 of the 2004 concerning Regional Government, which has established that educational functions (along with the budget) is delegated to the regions, as well as the Law Number 14 of the year 2005 concerning Teachers and Lecturers, who support welfare improvement.

- i. Looking at some considerations in drafting the law of State Budget of 2008 Budget Year 2008 explains one of which that preparing the state budget is adjusted to the needs of state government administration and its ability to collect in state revenues. There are some fundamental developments and changes that have a significant impact on a variety of economic indicators that affect on the main fiscal policy and State Budget of 2008 Budget Year 2008, as well as in order to secure the implementation of the State Budget.

- j. It is undeniable that the increase in the education budget by 20% of the state budget is a reform demand to improve the performance and education system in Indonesia that has been neglected, so that it is not in line with one of the national ideals of Indonesian people in accordance with the mandate of the Preamble to the 1945 Constitution namely educating the life of a nation. So that one of the amendments that can be found in the 1945 Constitution states in Article 31 paragraph (4) of the 1945 Constitution.

- k. Indeed, *das sollen* (which should be, including according to prevailing legal / statutory norms), the law of State Budget of 2008 Budget Year 2008 must be consistent with the provisions of Article 31 paragraph (4) the 1945 Constitution and refers to the meaning of education in accordance with the Law Number 20 of 2003 concerning the National Education System. But *das sein* (actually) it must indeed calculate the ability of the government to provide the education allocation budget is 20%. This must also be calculated the ability of the government, and this

can be done in a gradual manner as seen in further explanation at the Addendum of Article 49 paragraph (1), "*whereas the fulfillment of education funding can be done in a gradual manner*".

Furthermore, it can also be calculated that education is not merely responsibility of the government but also shared responsibility of all nation components, as stated in Article 46 paragraph (1) of the Law Number 20 of 2003 concerning the National Education System, as follows:

"Educational funding is a shared responsibility between government, local government and community".

Preparation of education funds must also consider to the principles as stipulated in Article 47 and Article 48 of the Law Number 20 of the year 2003 concerning the National Education System, which reads as follows:

Article 47:

(1) The source of educational funding is determined based on principles of fairness, adequacy and sustainability.

(2) The government, regional government and the community mobilize any available resources in accordance with any prevailing Regulations.

(3) Provision regarding the source of educational funding as well referred to in paragraph (1) and paragraph (2) is further regulated by Government regulations.

Article 48:

(1) Management of education funds is based on the principles of justice, efficiency, transparency and public accountability.

(2) Provision regarding the management of education funds as referred to in paragraph (1) is further regulated by Government Regulation.

- I. Education allocation fund is pursuant to the provisions of Article 31 paragraph (4) of the 1945 Constitution, for further implementation rules, these are also pursuant to the consistency of the Legislation Regulations which must also be accompanied by government capabilities in providing education budgets and at once must be accompanied by the performance and professionalism of educators. For improving future regulations, it is necessary to consider whether a budget of 20% of the State Budget and 20% of the Regional Budget also includes salaries of educators / teachers. In this case, it is necessary to improve the Law of State Budget and the Law of National Education System itself. So that the fulfillment of education fund allocation can be applied appropriately juridically or not deviate from any prevailing legislation provisions, however it also measures the financial capability of the state budget.
- m. Whereas it has conducted efforts to increase the education budget from year to year to reach 20% of the State Budget and Regional Budget as mandated in the provisions of Article 31 paragraph (4) of the 1945 Constitution.

- n. Whereas it is necessary to consider the education as the overall budgets that are used for the implementation of national education including all programs and activities aimed at educating the life of the nation, both in the center and in the region levels pursuant to the mandate of the 1945 Constitution.
- o. Whereas the State Budget is directed to carry out the mandate of constitution in order to fulfill citizens' rights to obtain reliable work and livelihood, prosperous living in physical and spiritual manners, settlement, and a good and healthy living environment, as well as being entitled to obtain health services and social security allowing for the development of themselves in a whole as dignified humans and obtain a reliable decent education.
- p. Whereas as one of the main focuses of national and state development prioritizes the state revenue and expenditure budget as well as from regional revenue and expenditure budget to meet the needs of national education, by allocating at least of 20% (twenty percent) of the State Budget and Regional Budget for the National Education.
- q. Whereas by referring to the 1945 Constitution, the fulfillment of the education budget at least 20% (twenty percent) is not only the State Budget obligations but also for the Regional Budget, so that in the future, by using the definition of the education budget, it is expected to fulfill the constitutional mandate appropriately, both in the State Budget and Regional Budget.

- r. Whereas according to the House of People Representatives, the petition by the Petitioners regarding the provisions in the *a quo* law is an over excessive request, because it will harm the constitutional rights of citizens in general and there is a void binding legal that does not have legal standing for financing government activities in general, including education. This will cause legal uncertainty in the administration of state life, because the 1945 Constitution does not regulate the legal standing of constitutional if the Law concerning State Budget is canceled by a Decision of the Constitutional Court. The Law concerning State Budget is a product of a specific law because the Law concerning State Budget has a validity period namely only one year.
- s. Whereas the Law concerning State Budget of 2008 Budget Year has had permanent legal strength because it was formed on the basis of shared agreement between the President and the House of People Representative, on the basis of the provision, then the government cannot apply the State Budget of 2007 Budget Year if the Law concerning State Budget of 2008 Budget Year is canceled by the Constitutional Court.
- t. Whereas if the petition by the Petitioner towards the provisions of the *a quo* Law is granted by the Constitutional Court, then it will implement the State Budget of 2007 Budget Year, meaning the education function budget in the State Budget of 2007 Budget Year is nominally smaller or decreased by Rp.8,011 billion from the State Budget of 2008 Budget

Year, so that it will interfere with the implementation of accessibility and quality improvement program of the education.

- u. Whereas based on the arguments, the House of Representatives believes that the a quo law does not conflict with Article 31 paragraph (4) of the Constitution 1945 and does not impair the constitutional rights and / or authorities of the Petitioners.

V. PETITUM

Based on the arguments as described above, the House of Representatives requests the Honorable Panel of Justice of the Constitutional Court to decide the following matters:

1. Granting the overall statements of the House of People Representative;
2. Declaring that the Petitioners have no legal standing so it must be declared unacceptable (*niet onvankelijke verklaard*);
3. Declaring the petition of the Petitioners is groundless so it must be stated to be rejected, or at least the petition of the Petitioners is not accepted;
4. Declaring that Law Number 16 of 2008 concerning Amendments of the Law Number 45 of 2007 concerning State Revenue and Expenditures Budget of 2008 Budget Year does not conflict with the 1945 Constitution;
5. Declaring that the Law Number 16 of 2008 concerning Amendments of Law Number 45 of 2007 concerning the State Revenue and Expenditures Budget of 2008 Budget Year has **binding law strength**.

If the Honorable Panel of Judges of the Constitutional Court has another opinion, please to make the fairest decision (*ex aequo et bono*).

[2.5] Considering whereas the Government and the House of People Representative do not deliver any conclusion, meanwhile the Petitioners have submitted written conclusions dated July 23, 2008 received at the Registrar's Office on July 24, 2008, the full contents of the case file;

[2.6] Considering whereas to shorten the description of this Decision, all of the issues that happened in the trial were appointed in the Minutes of Trial, and as an inseparable unity from this Decision;

3. LEGAL CONSIDERATIONS

[3.1] Considering that the purpose and objective of the No. a quo is to review the constitutionality of Law No. 16 of 2008 regarding Amendments to Law Number 45 of 2007 concerning the State Budget for Budget Year 2008 (State Gazette of Republic of Indonesia No. 63 of 2008, Supplement to Supplement to the State Gazette Republic of Indonesia No. 4848, hereinafter referred to as the 2008 APBN-P Law) on the 1945 Constitution of Republic of Indonesia (hereinafter referred to as the 1945 Constitution).

[3.2] Considering that, before taking the subject matter of the petition into consideration, the Constitutional Court (hereinafter referred to as the Court) shall first take the following into consideration:

1. If the Court has the authority to review, adjudicate, and decide upon the petition a quo;

2. If the Petitioners have legal standing to act as Petitioners in the petition a quo.

Toward both of these matters, the Court has the following opinion:

The Court's Authorities

[3.3] Considering that according to Article 24C paragraph (1) of the 1945 Constitution juncto Article 10 paragraph (1) of Law No. 24 of 2003 regarding the Constitutional Court (State Gazette of the Republic of Indonesia of 2003 No. 98, Supplement to the State Gazette of the Republic of Indonesia No. 4316, hereinafter referred to as the MK Law), the Court has the authority to adjudicate at the first and final level whose decisions are final to, among other things, review the law against the 1945 Constitution.

[3.4] Considering that the petition a quo is an application for examination of the law, in casu of the 2008 APBN-P Law against the 1945 Constitution. Therefore, the Court has the authority to review, adjudicate, and decide upon it.

Legal Standing of the Petitioners

[3.5] Considering that Article 51 paragraph (1) of the MK Law states that a Petitioner is a party who considers his/her constitutional rights and/or authority to be impaired by the coming into effect of the law, as follows:

- a. individual Indonesian citizens;
- b. customary law community units provided that they are alive and consistent with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the law;

c. public or private legal entities; or

d. state institutions.

Therefore, in order for a party to be legally accepted in the petition to review the law against the 1945 Constitution, the party shall first:

a. explain its position whether as an Indonesian citizen, a customary law community unit, a legal entity, or a state institution;

b. describe the impairment of his/her constitutional rights and/or authority in the position as referred to in letter a above.

[3.6] Considering also, since the Decision No. 006/PUU-III/2005 pronounced on May 31, 2005 and Decision No. 11/PUU-V/2007 pronounced on September 20, 2007, and any subsequent decisions, has become the establishment of the Court that the impairment of constitutional rights and/or authorities as referred to in Article 51 paragraph (1) of the Constitutional Court Law shall meet the following 5 (five) conditions:

a. there are constitutional rights and/or authorities granted by the 1945 Constitution;

b. the constitutional rights and/or authorities are impaired by the coming into effect of the law petitioned for review;

c. the impairment of constitutional rights and/or authorities is specific (special) and actual, or at least potential in nature which based on logical reasoning will be ensured;

- d. there is a causal relationship (causal verband) between the intended impairment and the enactment of the law petitioned for review;
- e. the possibility that with the granting of the petition, the constitutional impairment as argued will not or will no longer occur;

[3.7] Considering that the Petitioners have explained their position as the Executive Board *Persatuan Guru Republik Indonesia* (PGRI) and a group of teachers as individuals. Furthermore, in explaining their assumptions about the impairment of constitutional rights suffered as a result of the enactment of the 2008 APBN-P Law, the Petitioners propose the arguments which are essentially as follows:

- a. that Article 31 Paragraph (4) of the 1945 Constitution which requires the state to prioritize the education budget of at least 20% of the state budget and of the regional budget is imperative regulation (*dwingend recht*). This provision means that the education sector shall be prioritized without denying other sectors that are also important for the survival of the life of the nation and state;
- b. that the *imperative* nature of Article 31 paragraph (4) of the 1945 Constitution has also been evident from the decisions of the Court since 2005 which essentially states that the provisions of the law regulation the education budget of less than 20% of the state budget are contrary to 1945 Constitution;
- c. that in the 2008 APBN-P Law, the ratio of education budget is estimated to reach 15.6% (fifteen point six percent), *which* means it violates the mandate of the 1945 Constitution;

- d. that from the method of calculating the education budget carried out by 2008 APBN-P Law, by including the official education budget, the 2008 APBN-P Law has committed substantial violations. Meanwhile, the *law (sic!)* has followed international conventions that exclude official education fees from the definition of education funds, while the Government (*sic!*) does not exclude them, so the 2008 APBN-P Law also violates the law. Whereas, by ignoring the provision of 20% of the education budget from the APBN which is a requirement stipulated in Article 31 paragraph (4) of the 1945 Constitution, the 2008 APBN-P Law has also committed intrinsic violations;
- e. that, based on all descriptions in letters a to d above, the funds provided by the Government to carry out education are far from the requirements needed to carry out the constitutional responsibilities of the Government in carrying out national education in accordance with the provisions of Article 31 paragraph (1), paragraph (2), and paragraph (5) of the 1945 Constitution, so that the Petitioners, as part of the education component both according to Law No. 20 of 2003 regarding the National Education System and to Law No. 14 of 2005 regarding Teachers and Lecturers, have been harmed by the coming into effect of the 2008 APBN-P Law;
- f. that, as part of the education component, the Petitioners consider their constitutional rights to fight for their rights *collectively* to build the society, nation and state – as stipulated in Article 28C paragraph (2) of the 1945 Constitution – to be impaired by the enactment of the 2008 APBN-P Law. In this case, it is the right to fight for the improvement of implementing the education through the implementation of the provisions of allocated education

budget of at least 20% of the APBN, as mandated by Article 31 paragraph (4) of the 1945 Constitution.

[3.8] Considering that because, to the application for review of laws aimed at laws whose substance is identical with the object of the petition a quo, the Court has repeatedly accepted the legal standing of the Petitioners whose legal standing is the same as of the Petitioners in the petition a quo, as contained in Decision No. 012/PUU-III/2005 pronounced on October 19, 2005, Decision No. 026/PUU-III/2005 pronounced on March 22, 2006, Decision No. 026/PUU-IV/2006 pronounced on May 01, 2007 and Decision No. 24/PUU-V/2007 pronounced on February 20, 2008, the considerations of the *Court* in the decisions referred to as *mutatis mutandis* shall also apply to the Petitioners in the petition a quo, so that the Petitioners shall be declared to have legal standing to act as a Petitioner in the petition a quo. Even so, a Constitutional Court Justice, H.A.S. Natabaya, as in previous decisions in reviewing the APBN Law, still considers that the Petitioners do not have legal standing to file the petition a quo;

[3.9] Considering that since the Court has the authority to review, adjudicate, and decide upon the petition a *quo* and it is submitted by parties who have legal standing to act as Petitioners, the Court shall consider the subject matter of the petition.

Subject Matter

[3.10] Considering that the issues in the petition a quo are related to the constitutionality of the 2008 APBN-P Law which the Petitioners deem contradictory to Article 31 paragraph (4) of the 1945 Constitution as it includes education budget of less than 20% of the state budget;

[3.11] *Considering* that in order to prove their arguments, the Petitioners, in addition to submitting documentary evidence, as contained in the Case of this decision, also present an expert, Drs. Ibrahim Musa, M.A., Ph.D, whose testimony was heard before the Court at the hearing on July 15, 2008 which basically explained the following matters:

a. whereas, according to the expert, there are several principles for developing education funding formulas, namely the principle of fairness, the principle of sufficiency, the principle of sustainability, the principle of efficiency, and the principle of accountability.

- The principle of fairness includes (i) adequacy of funds to carry out basic learning activities, (ii) inter-school equity, (iii) fiscal uniformity efforts to overcome differences in community's economic capacity, (iv) special education programs, (v) remedial programs, (vi) diseconomies-of-scale factors due to remote geographic location, (vii) heavy government burden, (viii) differences in the inter-regional level of costs;
- The principle of sufficiency includes: (i) subjects, (ii) grade level, (iii) education level, (iv) types of education (general, industrial, religious, vocational, professional);
- The principle of sustainability means that there must be a permanent source of funds and efforts to empower education units;
- The principle of efficiency means that with the same funds, higher results are achieved;

- The principle of accountability means that there must be transparency and the use of education costs comply with the rules and quality of results;
- b. whereas, according to the expert, for education units, the funding follows the following formula: basic costs of administering education plus poverty index and quality improvement incentives. Meanwhile, the basic costs of administering education include teachers' salaries and welfare benefits, facilities (buildings, books, computers, libraries, etc.), supporting administration of teaching and learning/administrative activities, and extracurricular, remedial and enrichment activities;
- c. whereas, meanwhile, with the education funding formula for the education units, the education funding formula is then obtained for the regency/municipal, provincial and national level.
- For the regency/municipal level, the education funding formula includes: total amount of costs at the level of education unit plus the costs of supervising/guiding and managing the regency/municipal area. The total amount of costs at the education unit level is obtained from the sum of total regional fiscal incentives plus the overall incentives of regency/municipal education quality activities;
 - At the provincial level, the education funding formula includes: teacher training, certification, KKG/MGPP plus coordination of curriculum development, special school fees and special services, international schools, locally-featured education units, and provincial management;

- For the national level, the education funding formula includes: education planning and development plus control/research/development of national education standards (content, process, graduates, teachers, education personnel, facilities and infrastructure, assessment, management, and financing), education monitoring and evaluation, poverty compensation, education quality compensation, and the management of national education administration unit.

d. whereas, thus the education budget shall pay attention to all the matters described in letters a to c above.

[3.12] Considering that the Court has also requested information of the legislators, namely the House of Representatives (*DPR*) and the President (Government), each of which provides the following information:

[3.12.1] Explanation of the House of Representatives (DPR)

In their written statement received at the Clerk of the Court on August 06, 2008, which is fully contained in the Case of this decision, the DPR basically explained:

- a. that the 2008 APBN Law does not include official education budgets in calculating the education budget, as stated in Article 1 numbers 35 and 36. It is also confirmed in the Explanatory Note of the 2008 APBN Law;
- b. that the preparation of the 2008 APBN Law is carried out by taking into consideration, among other things, its suitability with the needs of the administration of state government and the ability to collect state revenues, fundamental developments and changes that have a significant impact on

various economic indicators that influence fiscal policy points and the 2008 APBN budget. and safeguarding the implementation of the State Budget;

- c. that allocated education funds in accordance with Article 31 paragraph (4) of the 1945 Constitution, for further implementation rules in accordance with the consistency of laws and regulations, shall also be accompanied by the Government's ability to provide education budget and performance and professionalism of the educators. In this case, it is necessary to improve the APBN Law as well as the Laws on the National Education System, so that the fulfillment of allocated education fund does not judicially deviate from the applicable provisions and also measures the financial capability of the APBN;
- d. that the education budget, which has been attempted to be increased from year to year, needs to be seen as the overall budget used to administer national education which includes all programs and activities aimed at educating the life of the nation, both at Central and Regional levels in accordance with the mandate of the 1945 Constitution;
- e. that the fulfillment of the education budget of at least 20% is not only the obligations of the State Budget but also of the Regional Budget. In the future, by using the definition of the education budget, it is expected that the fulfillment of the constitutional mandate can be achieved;

[3.12.2] Explanation of the Government

The Government, in their written statement received at the Clerk of the Court on July 15, 28 and 29, 2008, which is fully contained in the Case of this decision,

and their direct statement before the Court in the hearing on July 15, 2008, essentially states:

- a. that the 2008 APBN-P Law is based on the current global and domestic economic developments and consideration of external factors, such as the price of crude oil and world food prices that affect the development of various macroeconomic indicators so as, in turn, to affect the amount of national income, state expenditure and financing budget;
- b. whereas, the calculation of education budget as a percentage of the state budget (APBN) is a comparative value (in percent) between the budget allocation for the educational functions in state expenditure on the overall state expenditure, that is, in 2008 APBN-P Law, estimated to reach 15.6%. although in percentage this figure appears to be decreasing, in nominal terms the total education budget increases from 142.2 trillion IDR (2007 APBN-P) to 154.2 trillion IDR (2008 APBN-P). The percentage decline is due to the increase in state expenditure from 752.4 trillion IDR (2007 APBN-P) to 899.5 trillion IDR (2008 APBN-P) as a result of external factors (soaring international crude oil prices) beyond the control of the Government (force majeure);
- c. that based on the budget structure (organization, function and type of expenditure), as determined in Law No. 17 of 2003 regarding the State Finance, the realization of the Central Government budget in the last three years is still concentrated in public service function with a proportion of 65.5% of total Central Government expenditure. That is, the dominant function of the government is concentrated on public services to the community, which in this

case includes subsidy programs, debt interest payment programs, and other public service programs carried out by state ministries/institutions;

- d. that judging from the type of expenditure, realization of subsidies and debt interest payments, both of which are non-discretionary expenditure (mandatory), their use is certain and inevitable, dominating Central Government expenditure, that is 29% and 17%. As a result of soaring crude oil prices in the international market, from the assumption of US\$60/barrel in the 2008 State Budget to US\$95/barrel in the 2008 APBN-P, the energy subsidy burden has jumped from 75.6 trillion IDR (in the 2008 State Budget/APBN) to 187.1 trillion IDR (in 2008 APBN-P). In fact, with an oil price of US\$145/barrel, energy subsidies are expected to reach 293 trillion IDR. That is, without being controlled by the Government, the ratio of education budget will automatically decrease every time there is an increase in world oil prices – even though in nominal terms the education budget continues to increase;
- e. whereas, therefore, according to the Government, subsidy expenditure and debt interest payments should not be used as a component or part of state expenditure in order to calculate the ratio of the education budget. As the expenditure on energy subsidies and debt interest is actually not something that is desired but because of force majeure. As long as subsidies and debt interest payments are not removed from the state expenditure component, a distorted picture of the state budget structure will certainly be produced;
- f. whereas, with the burden of energy subsidies and debt interest payments resulting in the abnormal and unnatural 2008 APBN-P structure, it is only

reasonable that the calculation of the percentage of the education budget is the ratio of educational function budget to the total "pure" budget, which does not include the burden on the energy subsidies and debt interest payments;

- g. whereas, by using the approach to calculating the percentage of education budget in letter f, according to the Government, the constitutional provisions have been fulfilled. Because, by means of such calculations, it means that the total expenditure budget minus energy subsidies and debt interest payments is 707.6 trillion IDR. The total education budget is 154.2 trillion IDR, so the percentage of the education budget is 154.2 trillion IDR divided by 707.6 trillion IDR, which is 21.8% (twenty one point eight percent);
- h. Whereas, according to the Government, taking into account the conditions as described in letters a to d and how to calculate the education budget as described in letters e to g above, the education budget in the 2008 APBN-P Law is conditionally constitutional.

The Court's Opinion

[3.13] Considering that, prior to this decision, since 2005 the Court has reviewed, tried and adjudicated the petition for reviewing the Law on State Budget (APBN), as stated in Decision No. 012/PUU-III/2005, No. 026/PUU-III/2005, No. 026/PUU-IV/2006, and No. 24/PUU-V/2007. Therefore, before further taking the substance of the petition a quo into consideration, the Court considers it important to remind the legislators, in casu of the DPR and the President, of the considerations of the Court in the four decisions as follows:

- a. Decision No. 012 / PUU-III / 2005 pronounced on October 19, 2005, that is the decision to review Law No. 36 of 2004 regarding the 2005 State Budget (APBN). In this decision, although the commands state that the petition could not be accepted (*niet ontvankelijk verklaard*), the reason is solely because if the petition is granted, then the Petitioners will become more disadvantaged, as confirmed in the legal considerations of the said decision which states, among other things, *"The Court has the opinion that the petition of the Petitioners is reasonable, but if the Court declares the petition is granted, based on Article 23 paragraph (3) of the 1945 Constitution last year's APBN provisions will apply. It is not possible to apply to the petition a quo, because it will lead to governmental disaster in the administration of state finances, which may lead to legal uncertainty (rechtsonzekerheid) and even the consequences can be worse if the education budget in the previous State Budget (APBN) is less in number"*. In another part of the decision, it is also said, *"If it turns out that the previous year's education budget was less in value or nominal amount than the current budget, if the petition is granted, then the Petitioners and all citizens who have the same interests as the Petitioners would be increasingly harmed"* (vide Decision No. 012/PUU-III/2005, p. 62).

However, it is important to note in this connection, although the Court stated that the application was unacceptable, the legal reasoning of the Court in the aforementioned decision had confirmed, *"The existence of the education budget allocation in the APBN Law which is less than 20 percent is contrary to the order of Article 31 paragraph (4) of the Constitution 1945 ..."* (vide Decision No. 012/PUU-III/2005, p. 61). In other words, at that time the Court had reminded the legislators that the fulfillment of the minimum education

budget requirement of 20% of the State Budget (APBN) was mandatory and, as a consequence, violations of such obligations were violations of the 1945 Constitution;

- b. Decision No. 026/PUU-III/2005 pronounced on March 22, 2006, that is the decision to review the Law No. 13 of 2005 regarding the 2006 State Budget (APBN), which the commands stated that it partially granted, in the legal consideration of the decision the Court reaffirmed their standing, "*... provided that the education budget has not reached the percentage of 20% (twenty percent) as stipulated in Article 31 paragraph (4) of the 1945 Constitution, such State Budget (APBN) will always be contradictory to the 1945 Constitution. However, in its implementation, the Court will take its legal consequences into consideration separately through a careful assessment of the overall national and global economic conditions and the basis for policy choices made by the Government and House of Representatives (DPR) in the relevant fiscal year*" (vide Decision No. 026/PUU-III/2005, p. 86). In another part, the legal consideration of the decision was also affirmed, "*In order to avoid stoppage and chaos in the administration of government, this Court decision only gives legal consequences for the unconstitutionality of the education budget in a limited way, that is about the highest limit, and not the entire State Budget (APBN). This means that the APBN Law remains legally binding and can be implemented as a legal basis for the implementation of the State Budget (APBN) under the Law a quo with obligations for the Government and House of Representatives (DPR) to allocate excess funds to be obtained from the results of state expenditure savings and/or results of increased income in the education budget in 2006 APBN-P*";

- c. Decision No. 026/PUU-IV/2006 pronounced on May 01, 2007, namely the decision to review the Law No. 18 of 2006 regarding the 2007 State Budget (APBN), in which the commands stated that it granted the petition for all (*in casu*, provided that the education budget is 11.8% as the highest limit), in its consideration the Court affirmed, *"Considering that in relation to the review of the State Budget (APBN) Law because the percentage is lower than that mandated by Article 31 paragraph (4) of the 1945 Constitution, the Court argues that the percentage of the education budget to the State Budget (APBN) is a fact which does not need proof, but what still needs to be decided by the Court is a consequence of the existence of such facts. The 1945 Constitution and the Constitutional Court Law authorize the Court to declare a law that is contrary to the Constitution as not having binding legal force. Although this authority can be applied to two previous cases relating to the percentage of the education budget, the Court in making its decision takes many aspects that can be brought about by its decision into consideration. The Court's Decision in Case No. 026/PUU-III/2005 is a proportional alternative taking the legal consequences that will be caused into consideration. With such a decision, it is still possible for the drafting authority of the State Budget (APBN) to increase the percentage of the education budget through mechanism of APBN-P (Amended State Budget) through legislative review"*. (*vide* Decision No. 026/PUU-IV/2006, p. 94). In another part of the legal consideration of the decision, the Court reminded, *"Considering that it is an indisputable fact, the amount of the education budget stated in the State Budget (APBN) from year to year since the State Budget (APBN) for TA 2004 until the State Budget (APBN) for TA 2004 has never*

reached a minimum percentage of 20% as intended in Article 31 Paragraph (4) of the 1945 Constitution. It is because, according to the Court, the Government and the DPR have not made optimal efforts to increase the education budget so that the mandate of the constitution can be fulfilled. Therefore, considering the imperative nature of Article 31 Paragraph (4) of the 1945 Constitution, the Court as the protector of the constitution needs to remind that a minimum education budget of 20% in the State Budget (APBN) must be prioritized and realized earnestly, so that the Court shall not declare that the entire State Budget (APBN) contained in the APBN Law does not have binding legal force due to a part of the APBN Law, that is regarding the education budget, which is contrary to the 1945 Constitution”;

- d. Decision No. 026/PUU-IV/2006 pronounced on May 01, 2007, that is the decision to review Law No. 20 of 2003 concerning the National Education System and Law No. 18 of 2006 concerning the 2007 State Budget (APBN), of which commands stated to grant the petition partially, the Court stated in its legal considerations, among other things, *"That with the inclusion of the salary component of educators in calculating the education budget, it becomes easier for the Government and the House of Representatives (DPR) to carry out the obligation of meeting the education budget of at least 20% (twenty percent) in the State Budget (APBN)... Therefore, with this Court Decision, there can no longer be a reason to avoid or delay the fulfillment of the budget requirement of at least 20% for education, both in the State Budget (APBN) and Regional Budget (APBD) in all provinces, regencies, and cities throughout Indonesia in accordance with provisions of Article 31 Paragraph (4) of the 1945 Constitution ..."* (vide Decision No. 026/PUU-IV/2006, p. 95).

[3.14] Considering that with four Court decisions as described in paragraph **[3.13]** letters a to d above, there is sufficient reason for the Court to assess the intentions of the legislators to violate the 1945 Constitution. Such circumstances, if left alone, will have an impact on the development of the attitude of being relative to the obligations to respect and obey the Constitution as the highest legal norm in the nation of laws and, on the other hand, such attitude is also a stimulation or encouragement for the regions (provinces, regencies/cities) not to prioritize the minimum education budget of 20% in its Regional Budget (APBD) as also ordered by the Constitution. Therefore, the relativity of obligation to respect and obey such Constitution is automatically a reduction of the meaning that Indonesia is a nation of laws as affirmed by Article 1 paragraph (3) of the 1945 Constitution and even, consciously or not, is a delegitimation of the constitution as the highest law;

[3.15] Considering that the Court can understand how to calculate the percentage of the education budget as explained by the Government as described in sub-paragraph **[3.12.2]**. However, even though such calculation methods appear to be proper and reasonable, such methods are not the ones used to calculate the percentage of the education budget in the 2008 APBN-P Law, so that it only has theoretical value that is academically debatable. Moreover, if the methods are only applied to the calculation of the percentage of the education budget. Therefore, the Court cannot accept it as a way of calculating the percentage of education budget with legal value in the petition a quo, so it must be excluded from the assessment in order to take the constitutionality of the education budget in the 2008 APBN-P into consideration. The method of calculation the 2008 APBN-P, and previous State Budget (APBN),

do not use the one as described by the Government above. If the legislators intend to use such a method as a method that has legal value in proving the constitutionality of calculating the percentage of the education budget in the APBN Law, the legislators should state it clearly in the law and apply it to all expenditure items or state expenditure items in the State Budget (APBN). However, it does not necessarily eliminate the rights of those who feel that their constitutional rights are impaired, as a result of the enactment of the norms of law which contain such calculation methods, to submit the review of constitutionality of the laws to the Court;

[3.16] Considering that as long as the Constitution still requires to prioritize the education budget of 20% of the State Budget (APBN) and the Regional Budget (APBD), regardless of the calculation method, then for the Court – as the protection of the 1945 Constitution – cannot but state that a norm of law is contrary to the 1945 Constitution if such norm of law does not respect the obligation. By paying careful attention to the legal considerations in the four decisions of the Court in the review of previous APBN Law, as described in paragraph **[3.13]** above, the Court regards that it is sufficient to provide legislators with the opportunity to formulate laws that guarantee compliance with the 1945 Constitution concerning education budget. Therefore, in order to uphold the authority of the Constitution as the highest law in accordance with the principle of constitutionalism in the nation of laws, as referred to in Article 1 paragraph (3) of the 1945 Constitution, the Court must declare that all provisions of the 2008 APBN-P Law concerning the education budget is contrary to the Constitution 1945. As a result of not meeting the calculation of the education budget of at least 20% of the State Budget (APBN), the overall calculation of the

budget in the 2008 APBN-P Law is unconstitutional. However, the necessity in taking all aspects of the state's interests into consideration leads the Court to continue to consider the risk of chaos in the organization of state financial administration, so that the legal consequences of contradicting the provisions of the 2008 APBN-P Law with the 1945 Constitution, that is not having legal force binding the provisions of the relevant law, will not necessarily be declared valid since this decision is pronounced but until the new APBN Law is made for budget year 2009. If later in the new APBN Law it turns out that the education budget does not reach a minimum of 20% of the State Budget (APBN) and of the Regional Budget (APBD) as well, the Court shall sufficiently appoint this decision in order to prove the unconstitutional provisions of the law in question. In order to encourage all regions (provinces, regencies/cities) to prioritize education budget of at least 20% in their Regional Budget (APBD), and to prevent the reduction of the meaning of Indonesia as a nation of laws, and to avoid the delegitimation of the constitution as the highest law, the Court needs once more to remind that the legislators should, at the latest in the APBN Law for Budget Year 2009, have fulfilled their constitutional obligations of providing a budget of at least 20% for education.

4. CONCLUSION

Based on all considerations of facts and laws as described above, the Court concluded:

[4.1] That the method of calculating the percentage of the education budget explained by the Government, that is the ratio of the educational function budget to the total state budget (which has been reduced by the budget for

energy subsidy expenses and debt interest payments) is not a calculation method adopted by the 2008 APBN-P Law, so it does not have legal value as evidence to take the constitutionality of the education budget in the 2008 APBN-P Law into consideration and therefore must be excluded;

[4.2] That it turns out that the education budget in the 2008 APBN-P Law is only 15.6%, so it does not meet the constitutional provisions of at least 20% of the state budget. Thus, the 2008 APBN-P Law is contradictory to the 1945 Constitution, so that the petition of the Petitioners is reasonable;

[4.3] That although the 2008 APBN-P Law is contradictory to the 1945 Constitution, in order to avoid the risk of chaos in the organization of state financial administration, the 2008 APBN-P Law is declared to remain in force until the enactment of the APBN Law for Budget Year 2009.

5. INJUNCTION

Bearing in mind Article 56 paragraph (2) and paragraph (3), Article 57 paragraph (1) and paragraph (3) of Law No. 24 of 2003 on the Constitutional Court (State Gazette of Republic of Indonesia of 2003 No. 98, Supplement to the State Gazette of Republic of Indonesia No. 4316), under the 1945 Constitution of the Republic of Indonesia,

Adjudicating,

Declaring that the petition of the Petitioners is granted;

Declaring that Law No. 16 of 2008 on Amendment to Law No. 45 of 2007 concerning State Budget for Budget Year 2008 (State Gazette of Republic of

Indonesia of 2008 No. 63, Supplement to the State Gazette of Republic of Indonesia No. 4848) is contrary to the 1945 Constitution of Republic of Indonesia;

Declaring that Law No. 16 of 2008 regarding Amendment to Law No. 45 of 2007 on the State Budget for Budget Year 2008 (State Gazette of Republic of Indonesia of 2008 No. 63, Supplement to the State Gazette of Republic of Indonesia No. 4848) remains valid until the enactment of State Budget Law for Budget Year 2009.

Ordering that this decision is properly contained in the State Gazette of Republic of Indonesia;

Thus it is decided in the Judicial Proceeding attended by nine Constitutional Court Justices on Monday, the eleventh of August two thousand and eight, and pronounced at the Plenary Session of the Constitutional Court open to the public today, Wednesday, the thirteenth of August two thousand and eight , by us Jimly Asshiddiqie, as Chairperson concurrently serving as Member, I Dewa Gede Palguna, H. Harjono, Moh. Mahfud MD, H.A.S. Natabaya, H. Abdul Mukthie Fadjar, Maruarar Siahaan, HM. Arsyad Sanusi, and Muhammad Alim, respectively as Members, assisted by Ida Ria Tambunan as Substitute Cler, and attended by the Petitioners and their Attorneys, House of Representatives or its representative, and the Government or its representative.

CHAIRPERSON,

[signature]

Jimly Asshiddiqie

MEMBERS,

[signature]

I Dewa Gede Palguna

[signature]

H. Harjono

[signature]

Moh. Mahfud MD

[signature]

H. Abdul Mukhtie Fadjar

[signature]

H.A.S. Natabaya

[signature]

Maruarar Siahaan

[signature]

Muhammad Alim

[signature]

HM. Arsyad Sanusi

SUBSTITUTE CLERK,

[signature]

Ida Ria Tambunan