

# The Paradox of Justice in the Free Nutritious Meal Program

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### Abstract

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The Free Nutritious Meal Program, initiated under Presidential Regulation No. 83 of 2024 concerning the National Nutrition Agency, represents a strategic government policy aimed at improving children's nutritional quality as part of fulfilling the right to health guaranteed under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, in practice, the implementation of MBG has generated serious problems, including mass food poisoning incidents affecting more than 7,000 students across various regions. This article employs a juridical-normative approach. The findings reveal that the absence of a regulatory framework – given that the implementation of MBG relies solely on internal technical guidelines of the National Nutrition Agency without a binding legal basis equivalent to a Presidential Regulation – has resulted in a normative vacuum, weakened food safety standards, and the lack of an emergency legal response mechanism. Such conditions amount to violations of the right to health, the right to food safety, and social justice. From the perspective of justice theory, although MBG was intended as an instrument of distributive justice, substantively it fails to deliver fairness and capability, instead creating new vulnerabilities for marginalized groups, particularly children. Moreover, the involvement of military and police apparatus in the management of the Free Nutritious Meal Program undermines the system of checks and balances in public administration, rendering MBG a concrete example of policy failure that erodes the principle of social justice.

## 1. Introduction

The Free Nutritious Meal Program (*Makan Siang Gratis*, MBG) constitutes one of the priority initiatives of President Prabowo Subianto's administration, launched in conjunction with the promulgation of Presidential Regulation No. 83 of 2024 on the National Nutrition Agency (BGN).<sup>1</sup> This program is heralded as a manifestation of the state's commitment to improving the quality of Indonesia's human resources, particularly the younger generation, through the fulfillment of adequate, healthy, and equitable nutritional needs. From the perspective of legal politics, MBG may be regarded as an affirmative policy aimed at implementing the mandate of Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which expressly stipulates that "every person shall have the right to live in physical and spiritual prosperity, to reside, and to enjoy a good and healthy living environment, and shall have the right to obtain health services." This

<sup>1</sup> Reni Saptati D.I., "Program MBG: Buka Akses Gizi Sehat Untuk Masyarakat Indonesia," *Mediakeuangan.Kemenkeu.Go.Id*, March 2, 2025, <https://mediakeuangan.kemenkeu.go.id/article/show/program-mbg-buka-akses-gizi-sehat-untuk-masyarakat-indonesia>.

constitutional provision affirms that the right to health, including the right to safe and nutritious food, constitutes a fundamental right guaranteed by the state.<sup>2</sup>

Nevertheless, the implementation of the MBG reveals a serious paradox of justice. Within the first eight months of its operation, data collected from various regions indicate that more than 7,000 schoolchildren became victims of mass food poisoning after consuming meals provided under the program.<sup>3</sup> This fact constitutes a fundamental legal issue, as it directly concerns the constitutional guarantees of citizens' health and safety. As stipulated in Article 4 paragraph (1) letter (a) of Law No. 17 of 2023 on Health (hereinafter Law No. 17/2023), every person has the right to health, while Article 64 of Law No. 17/2023 further affirms that the government bears responsibility for ensuring the availability of food that is safe, of good quality, nutritious, and in accordance with the nutritional needs of society. In light of these provisions, the failure of MBG's implementation, culminating in incidents of mass poisoning, may be construed as a form of state negligence in fulfilling its legal obligations.

The regulatory failure underlying the MBG is evident in the legal framework supporting its implementation. To date, the execution of MBG has relied solely on technical regulations in the form of internal guidelines (*petunjuk teknis* or *juknis*) issued by the BGN. Yet, a public policy of national scope, covering tens of millions of schoolchildren and consuming as much as 44.2% of the education budget in 2026, ought to be underpinned by a clear and robust legal basis, at the very least in the form of a Presidential Regulation comprehensively governing program management, food safety standards, monitoring mechanisms, and procedures for addressing mass poisoning incidents.<sup>4</sup> This regulatory ambiguity results in weak accountability, the absence of legal liability mechanisms, and heightened risks of non-transparent implementation practices. Article 1, point 3 of Law No. 23 of 2014 on Regional Government explicitly affirms accountability as one of the fundamental principles of governance. Accordingly, the absence of a coherent regulatory framework in MBG constitutes a legal defect within the broader political-legal architecture of national food policy.

The incidents of mass poisoning caused by the MBG raise a fundamental question: Does this program align with the principle of justice? Referring to Aristotle's theory of distributive justice, justice is understood as the allocation of resources to each individual according to their needs.<sup>5</sup> On this basis, MBG appears to comply with the principle of distributive justice, as it is designed to benefit all schoolchildren without discrimination. However, substantive justice is lost in practice, as what is distributed is not safe and nutritious food, but rather contaminated and hazardous meals. This stands in clear contradiction to the maxim *salus populi suprema lex*,

<sup>2</sup> Sultoni Fikri and Reza Maulana Hikam, "Power Engineering under the Guise of Nutrition: A Critical Analysis of Badan Gizi Nasional Formation," *Trunojoyo Law Review* 7, no. 2 (2025): 253-86, <https://journal.trunojoyo.ac.id/trunojoyo-law-review/article/view/29925/11228>.

<sup>3</sup> Faisal Irfani, "Ribuan Kasus Keracunan, SPPG Terus Beroperasi – 'Sertifikat Laik Kebersihan Sedang Diurus,'" *Www.Bbc.Com*, October 1, 2025, <https://www.bbc.com/indonesia/articles/c20327zvw43o>.

<sup>4</sup> Gede Arga Adrian, "Kasus Keracunan MBG Bukan Sekadar Angka," *Www.Ums.Ac.Id*, September 18, 2025, <https://www.ums.ac.id/berita/teropong-jagat/kasus-keracunan-mbg-bukan-sekadar-angka>.

<sup>5</sup> Manuel Andreas Knoll, "The Meaning of Distributive Justice for Aristotle's Theory of Constitutions," *FONS* 1, no. 1 (February 26, 2016): 57-97, doi:10.20318/fons.2016.2529; Eckart Schütrumpf, "What Is 'Just in Distribution' in Aristotle's Nicomachean Ethics and Politics – Too Much Justice, Too Little Right," in *New Perspectives on Distributive Justice* (Berlin: De Gruyter, 2018), 151-70, doi:10.1515/9783110537369-010.

the safety of the people is the supreme law. Accordingly, while MBG may reach millions of beneficiaries in quantitative terms, it fails to realize the principle of substantive justice in qualitative terms. Against this backdrop, the present study seeks to reaffirm the legal issues inherent in MBG within the framework of justice. The purpose of this analysis is to critically examine the implementation of MBG from the perspectives of distributive justice, substantive justice, and procedural justice, while also assessing the extent to which the state fulfills its obligations in guaranteeing the fundamental rights of its citizens.

## 2. Methods

This study employs a juridical-normative method.<sup>6</sup> The approaches applied are the statute approach and the conceptual approach. The statutory approach is carried out through an examination of legal norms, including the UUD NRI 1945; the Indonesian Civil Code; Law No. 17/2023; Presidential Regulation No. 83 of 2024 on the National Nutrition Agency; and the Technical Guidelines of the Deputy for Systems and Governance of the National Nutrition Agency No. 004/05/03/SK.04/02/2025 on Standards, Provision, and Distribution of Milk under the MBG Program. Meanwhile, the conceptual approach is employed to analyze theories of justice, namely distributive, substantive, and procedural justice.

## 3. Results and Discussion

### 3.1. Regulatory and Governance Failures of MBG

Public policy, by its very nature, cannot be separated from the legal framework upon which it is founded. According to the concept of the *Rechtstaat*, every governmental action, whether administrative in character or in the form of strategic public policy, must rest upon a legal basis that is clear, measurable, and legally accountable. This requirement is a direct consequence of the principle of legality as enshrined in Article 1 paragraph (3) of the UUD NRI 1945, which affirms that "Indonesia is a state based on law." Accordingly, the implementation of the MBG Program, as a national priority program, ought to adhere strictly to the principles of legality and legal certainty as guaranteed under Article 28D paragraph (1) of the UUD NRI 1945.

From the perspective of legal politics, the MBG Program demonstrates a serious regulatory gap. The absence of a comprehensive legal basis in the form of a Presidential Regulation or Government Regulation has resulted in the program's implementation relying solely on the Technical Guidelines of the Deputy for Systems and Governance of the National Nutrition Agency No. 004/05/03/SK.04/02/2025 on Standards, Provision, and Distribution of Milk under the MBG Program. Hierarchically, such technical guidelines constitute internal administrative policy instruments of an operational nature, rather than generally binding legal norms. Pursuant to Article 8 paragraphs (1) and (2) of Law No. 12 of 2011 on the Formation of Laws and Regulations, as amended by Law No. 13 of 2022 (Law No. 13/2022), technical guidelines are not included among the recognized types and hierarchy of legislation that carry general binding force. Their applicability is strictly internal and limited, and thus cannot serve as a legitimate legal basis for the implementation of a national policy that directly affects citizens' rights.

<sup>6</sup> Amiruddin Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT. Raja Grafindo Persada, 2006).

The absence of a clear legal foundation weakens the mechanisms of legal accountability in the implementation of the MBG Program. In fact, every public policy concerning the fulfillment of citizens' fundamental rights must be equipped with both vertical and horizontal accountability mechanisms. Vertical accountability refers to the obligation of the implementing agency to adhere to higher legal norms, whereas horizontal accountability relates to the obligation to provide legal protection for affected communities.<sup>7</sup> In the absence of a formal legal framework, accountability mechanisms become blurred, and violations of citizens' rights are rendered difficult to challenge or remedy through legal channels.

The legal implications of this regulatory vacuum are evident in the weakened standards of food safety within the implementation of the MBG Program. Article 64 of Law No. 17/2023 stipulates that "the government is responsible for ensuring the availability of food that is safe, of good quality, nutritious, and in accordance with the nutritional needs of society." This provision is reinforced by Article 4(b) of Law No. 18 of 2012 on Food (Law No. 18/2012), which requires the provision of diverse food that meets the requirements of safety, quality, and nutrition for public consumption. In the absence of regulations governing mechanisms for monitoring, storage, distribution, and quality testing of food under the MBG Program, the state's legal responsibility becomes weakened, and the potential for violations of the right to health becomes manifest.

The mass food poisoning incident affecting more than 7,000 schoolchildren within the first eight months of MBG's implementation stands as clear evidence of governance failure.<sup>8</sup> This incident constitutes a form of administrative negligence on the part of the state. The government's responsibility cannot be discharged merely by appointing vendors or catering service providers; rather, it bears a legal obligation to ensure that every stage of food production and distribution complies with established food safety standards. Such an obligation is expressly mandated under Article 64 paragraphs (1) and (2) of Law No. 17/2023, which stipulates that efforts to fulfill nutritional needs must aim to improve the nutritional quality of individuals and society through three principal measures.

Within the framework of the general principles of good governance (AUPB)<sup>9</sup>, the failure of the MBG Program may be regarded as a violation of the principles of legal certainty, professionalism, and openness, as stipulated in Article 10 paragraph (1) of Law No. 30 of 2014 on Government Administration (Law No. 30/2014). The principle of legal certainty requires that every act of a government official must have a clear legal basis and must not conflict with higher norms. Meanwhile, the principle of openness demands transparency in decision-making processes and the implementation of public policies. The absence of formal regulations

<sup>7</sup> David M. Engel, "Vertical and Horizontal Perspectives on Rights Consciousness," *Indiana Journal of Global Legal Studies* 19, no. 2 (2012): 423–55, doi:10.2979/indjglolegstu.19.2.423; Hannah Franzki and Maria Carolina Olarte, "The Vertical and Horizontal Expansion of Transitional Justice: Explanations and Implications for a Contested Field," in *Transitional Justice Theories* (London: Routledge, 2013), 117–36, doi:10.4324/9780203465738-13.

<sup>8</sup> Irfani, "Ribuan Kasus Keracunan, SPPG Terus Beroperasi – 'Sertifikat Laik Kebersihan Sedang Diurus.'"

<sup>9</sup> I Wayan Lendra, Daud Husni, and Yuyun Fitriani, "Kebijakan Makan Bergizi Gratis Dan Relevansinya Terhadap Nilai-Nilai Good Governance: Analisis Kualitatif Dalam Administrasi Publik," *Arus Jurnal Sosial Dan Humaniora* 5, no. 1 (April 30, 2025): 937–45, doi:10.57250/ajsh.v5i1.1252.

has resulted in MBG being governed only by internal administrative documents, which cannot be formally reviewed by the Supreme Court through the mechanism of judicial review, as they do not qualify as legislation. Consequently, the legal avenues for correcting substantively flawed policies are foreclosed, and society is deprived of instruments to demand accountability.

In addition, the absence of a legal emergency response mechanism constitutes a serious concern that endangers public safety. The state is under an obligation to establish legal and administrative protocols to address extraordinary events such as mass poisoning. This obligation reflects the principle of due diligence in public law, namely the duty of the state to act promptly and effectively in preventing and mitigating harm arising from its own public policies. Article 5(b) of Law No. 24 of 2007 on Disaster Management (Law No. 24/2007) affirms that the government and regional governments are responsible for protecting society from disaster threats, including non-natural disasters such as disease outbreaks or mass poisoning. In the context of MBG, the absence of a legal emergency response mechanism signifies the government's failure to discharge its constitutional duty to protect its citizens from health threats originating from state policies themselves.

Another weakness in the governance of MBG lies in the absence of an independent regulatory body vested with supervisory and food safety audit authority. The BGN, as established under Government Regulation No. 83/2024, performs primarily coordinative and operational functions, yet lacks the authoritative characteristics of a supervisory institution.<sup>10</sup> Consequently, no functional separation exists between the policymaking body and the policy oversight body, thereby creating a potential conflict of interest. This situation exemplifies self-regulatory governance, namely a condition in which the implementing agency simultaneously assumes the role of evaluating the effectiveness of its own policies. Such an arrangement runs counter to the principle of checks and balances, which constitutes a cornerstone of sound governance.

This situation illustrates the constitutional system's weak responsiveness to the right to health. Article 28I paragraph (4) of the UUD NRI 1945 affirms that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government. The implementation of MBG, which instead endangers public health, may be regarded as a form of state omission or state negligence in discharging its constitutional obligations. Such a policy stands in contradiction to the purpose of law as articulated by Gustav Radbruch, namely that law must embody three values: justice, legal certainty, and expediency.<sup>11</sup> In practice, MBG fails to realize all three: it is unjust as it inflicts harm upon

<sup>10</sup> Fikri and Hikam, "Power Engineering under the Guise of Nutrition: A Critical Analysis of Badan Gizi Nasional Formation."

<sup>11</sup> V.V. Serediuk and S.K. Dudar, "Radbruch's Formula: Conceptual Analysis and Practical Importance," *Uzhhorod National University Herald. Series: Law* 4, no. 84 (September 28, 2024): 389–96, doi:10.24144/2307-3322.2024.84.4.54; Tetiana Podkovenko, "The Concept of Gustav Radbrukh's Natural Law," *Aktual'ni Problemi Pravoznavstva* 1, no. 3 (2021): 37–42, doi:10.35774/app2021.03.037; Muklis Al'anam, "Teori Keadilan Perspektif Gustav Radbruch: Hubungan Moral Dan Hukum," *Jurnal Humaniora: Jurnal Ilmu Sosial, Ekonomi Dan Hukum* 9, no. 1 (April 30, 2025): 119–33, doi:10.30601/humaniora.v9i1.6393; Mutia Evi Kristhy et al., "The Role of Judges in Realizing the Three Basic Legal Values Reviewed from Gustav Radbruch's View," *Journal of Political And Legal Sovereignty* 1, no. 2 (April 30, 2023): 87–91, doi:10.38142/jpls.v1i2.81.

vulnerable groups; it lacks legal certainty due to the absence of a clear formal legal basis; and it is devoid of expediency as it generates the risk of widespread public health hazards.<sup>12</sup>

The legal vacuum surrounding MBG also creates significant difficulties in determining the legal subject of liability in cases of mass food poisoning. Should such liability rest with the catering providers, the local government, or the BGN? The absence of clear regulation has resulted in a liability vacuum. Under the principle of legal responsibility, however, the state may be held accountable based on vicarious liability for unlawful acts committed by third parties in the implementation of government programs. This principle is consistent with Article 1367 of the Indonesian Civil Code (KUH Perdata), which stipulates that a person is liable not only for losses caused by their own actions but also for losses arising from the acts of those under their supervision. Accordingly, the state cannot evade legal responsibility even when the implementation of MBG is delegated to private entities.

### 3.2. Violation of the Right to Health and Food Safety

The mass poisoning that afflicted thousands of schoolchildren as a result of consuming food provided<sup>13</sup> under the MBG program cannot be regarded merely as an administrative incident or a technical failure. Rather, it constitutes a violation of citizens' fundamental rights to health and food safety.<sup>14</sup> Violations of such basic rights are intolerable, as the state bears an active duty to guarantee, respect, and protect these rights. The implementation of MBG, which culminated in widespread poisoning, demonstrates the state's negligence in fulfilling its legal obligations, both in normative and practical dimensions, thereby giving rise to state liability that must be accounted for under the law.

The right to health is explicitly recognized and guaranteed under Article 28H paragraph (1) of the UUD NRI 1945, which affirms that "every person shall have the right to live in physical and spiritual prosperity, to have a home, and to enjoy a good and healthy environment as well as to receive health care." This constitutional guarantee is further reinforced by Article 34 paragraph (3) of the UUD NRI 1945, which obliges the state to be responsible for the provision of adequate health services and proper public facilities. This norm is imperative in nature rather than declaratory, meaning that the state's duty is not merely moral but constitutes a binding legal obligation to safeguard the right to health of every citizen. When a government program instead poses a danger to public health, such conduct amounts to a direct violation of the Constitution.

Article 4, paragraph (1) of Law No. 17/2023 affirms that every person has the right to health, while Article 9 of the same Law stipulates that the Central Government and Regional Governments are responsible for ensuring the availability of a healthy environment for the community. On this legal basis, the right to health cannot be regarded as a negotiable entitlement or one that may be compromised on grounds of policy efficiency. Within the

<sup>12</sup> Ontran Sumantri Riyanto and Mei Rianita Elfrida Sinaga, "Penegakan Hak Anak Atas Makanan Aman Dan Sehat: Studi Kasus Keracunan Dalam Program Makan Bergizi Gratis Ditinjau Dari Tanggung Jawab Negara," *Juris Humanity: Jurnal Riset Dan Kajian Hukum Hak Asasi Manusia* 4, no. 1 (June 9, 2025): 1-10, doi:10.37631/jrkhm.v4i1.84.

<sup>13</sup> Ali Khomsan, "MBG: Masalah Keracunan Makanan Dan Pro-Poor," *News.Detik.Com*, September 23, 2025, <https://news.detik.com/kolom/d-8126240/mbg-masalah-keracunan-makanan-dan-pro-poor>.

<sup>14</sup> Riyanto and Sinaga, "Penegakan Hak Anak Atas Makanan Aman Dan Sehat: Studi Kasus Keracunan Dalam Program Makan Bergizi Gratis Ditinjau Dari Tanggung Jawab Negara."

context of the MBG program, the state cannot invoke the negligence of food providers as the sole cause of the mass poisoning incident, as the ultimate responsibility lies with the state itself as the organizer of public policy.

The doctrine of state responsibility positions the state as a subject of law that may be held accountable for its actions or omissions that result in harm to its citizens. This doctrine has been codified in the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), prepared by the International Law Commission (ILC), which in principle also applies conceptually within national legal frameworks. The doctrine affirms that the state bears responsibility for any unlawful acts committed by state organs or by entities acting on behalf of the state. In the context of the MBG program, the BGN and its implementing agencies at the regional level constitute extensions of the state. Consequently, any harm resulting from governance failures in the program falls within the legal responsibility of the state and cannot be reduced merely to the administrative liability of implementing officials. In the MBG case, where a policy designed to fulfill children's nutritional rights instead resulted in mass casualties, the principle of accountability has been violated. The state has failed to discharge its protective function as mandated by positive.

The right to safe and nutritious food constitutes an integral component of the right to health. Article 1 point 4 of Law No. 18/2012 defines food safety as the condition and necessary measures to prevent food from potential biological, chemical, and other contaminants that may disrupt, harm, or endanger human health. Furthermore, Article 60 paragraph (1) of Law No. 18/2012 stipulates that any person engaged in food production for distribution is legally required to comply with sanitation requirements and food quality standards. When the MBG program distributes food without ensuring safety standards and without a structured monitoring mechanism<sup>15</sup>, the state, in legal terms, has violated the principle of *due diligence* under administrative law and health law.

Furthermore, the violation of the right to health arising from the MBG program carries a serious dimension of injustice. Empirical evidence shows that the majority of victims of food poisoning were elementary school children from low-income families, particularly in non-urban areas.<sup>16</sup> This illustrates that the MBG policy, which was intended to function as an instrument of nutritional equity and social justice, in practice has deepened social inequality and revealed structural bias in the implementation of public policy. Referring to Aristotle's theory of distributive justice, justice entails providing to each individual according to their needs and proportion.<sup>17</sup> Accordingly, MBG should have ensured the provision of safe, healthy, and high-quality nutrition to the most vulnerable groups, rather than endangering them.<sup>18</sup> From the perspective of John Rawls' substantive justice, the difference principle requires that public policies creating inequality can only be justified if such inequality benefits the least

<sup>15</sup> Wahyu Andrianto, "Keracunan Makanan Dalam Program MBG: Tanggung Jawab Siapa?," *Kumparan.Com*, September 28, 2025, <https://kumparan.com/wahyuandrianto/keracunan-makanan-dalam-program-mbg-tanggung-jawab-siapa-25vwRTfjO1h>.

<sup>16</sup> Adrian, "Kasus Keracunan MBG Bukan Sekadar Angka."

<sup>17</sup> Knoll, "The Meaning of Distributive Justice for Aristotle's Theory of Constitutions."

<sup>18</sup> Andrianto, "Keracunan Makanan Dalam Program MBG: Tanggung Jawab Siapa?"

advantaged members of society.<sup>19</sup> The implementation of MBG, culminating in mass poisoning, clearly fails to satisfy this principle. The injustice that has arisen constitutes a violation of the fundamental rights of children to live healthily and to receive protection from the state. This condition exemplifies injustice by design, namely when a public policy is formulated without adequate consideration for the legal protection of vulnerable groups, thereby embedding injustice as an inherent feature of the policy framework itself.

From a civil law perspective, the mass food poisoning incident caused by meals provided under the MBG program fulfills the elements of an unlawful act (*onrechtmatige daad*) as stipulated in Article 1365 of the Indonesian Civil Code (KUHPerdata): "Every unlawful act which causes damage to another obliges the person by whose fault the damage was caused to compensate for such damage." The element of unlawfulness is satisfied because the state (through the implementing agency of MBG) committed negligence in supervision, resulting in harm to citizens. The element of fault is also satisfied, as the program organizers should have been aware of the risks of food contamination when food safety standards were not applied. Accordingly, in law, the state may be held liable for compensation, either directly or through a citizen lawsuit mechanism, based on administrative negligence. Article 1367 of the Civil Code reinforces the principle of vicarious liability, providing that a person is responsible for the damage caused by those under their supervision. This principle is highly relevant in the context of the state, where MBG implementers (such as catering service providers) act pursuant to a mandate or contractual arrangement with the government. The government cannot disclaim legal responsibility for the acts or omissions of such third parties, since they operate within the scope of executing a state policy.

Article 28I paragraph (4) of the UUD NRI 1945 affirms that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government. In the context of the MBG mass poisoning, the state cannot merely assert that the incident was a technical fault of the implementers. The state is legally obliged to provide remedies and ensure proportional accountability, whether through compensation, rehabilitation, or legal proceedings against negligent parties. This principle aligns with the *maxim salus populi suprema lex esto*, the safety of the people is the highest law, which positions the protection of citizens' safety as the paramount moral and legal standard in governance. The state's obligation to guarantee the right to health is also enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, which Indonesia ratified through Law No. 11 of 2005 on the Ratification of the International Covenant on Economic, Social and Cultural Rights. Article 12, paragraph (2) of the ICESCR obliges states to take steps to realize the right to the highest attainable standard of physical and mental health, including through the prevention and treatment of diseases and the provision of hygienic environmental conditions. The failure of the state to ensure food safety under the MBG program constitutes a

<sup>19</sup> J. E. J. Altham, "Rawls's Difference Principle," *Philosophy* 48, no. 183 (January 25, 1973): 75–78, doi:10.1017/S0031819100060447; Sunaryo Sunaryo, "Konsep Fairness John Rawls, Kritik Dan Relevansinya," *Jurnal Konstitusi* 19, no. 1 (March 28, 2022): 001, doi:10.31078/jk1911; A. Khudori Soleh, "Mencermati Teori Keadilan Sosial John Rawls," *ULUL ALBAB Jurnal Studi Islam* 5, no. 1 (2018), doi:10.18860/ua.v5i1.6152.

violation by omission, namely a breach arising from the state's negligence in fulfilling its obligations.

Thus, the violation of the right to health and food safety under the MBG Program carries broad legal implications: (1) constitutionally, it infringes upon citizens' fundamental right to health; (2) administratively, it reflects state negligence in the supervision and implementation of public policy; and (3) civilly, it gives rise to liability for damages under the doctrine of *onrechtmatige daad*. From the perspective of justice, a program that was intended to embody the state's responsibility has instead become an instrument of injustice, disproportionately harming the most vulnerable group, children from low-income families.

### 3.3. The Justice Perspective: Distribution vs. Substance

The justice perspective of the MBG Program must be situated within the dialectic between distributive justice and substantive justice. Aristotle, in Nicomachean Ethics, distinguishes two forms of justice: distributive justice, which emphasizes the allocation of resources according to proportion, and corrective justice, which focuses on remedying injustices that have occurred.<sup>20</sup> The MBG Program clearly operates within the realm of distributive justice, as the government seeks to distribute nutritional and food benefits to broader segments of society, particularly school children. However, justice in its substantive sense can only be realized if such a distribution complies with the requirements of safety, quality, and food security, as guaranteed by the constitutional rights of every citizen.

On paper, the distributive justice of the MBG Program appears ideal, reflecting the implementation of Article 28H paragraph (1) of the UUD NRI 1945. The fulfillment of balanced nutrition through a national program constitutes an instrument for realizing this right. However, problems arise when distributive justice is not accompanied by substantive justice. The mere distribution of food without ensuring its safety runs contrary to Article 28I paragraph (4) of the UUD NRI 1945. The State cannot simply distribute benefits; it must also ensure that such benefits do not generate new risks to the lives and health of its citizens.

The failure of the MBG Program, which resulted in thousands of children suffering from food poisoning, constitutes a distortion of substantive justice. Within Rawls's theory of justice, justice must rest upon the principle of fairness, namely that every public policy must be rationally acceptable to all parties from an equal position (the original position). If food distribution creates disproportionate risks for certain groups, particularly children from low-income families, then the principle of fairness is violated. In this context, the State has failed to uphold the principle of proportionality between the promised benefits and the potential harms borne by society. A program intended as an instrument of affirmative action has, in practice, generated structural discrimination, as its adverse effects fall more heavily upon vulnerable groups.

Within the framework of justice as capability, as developed by Amartya Sen, justice is assessed not merely through the distribution of resources, but through the extent to which public policy enhances the capability of individuals to live healthy and dignified lives.<sup>21</sup> The

<sup>20</sup> Knoll, "The Meaning of Distributive Justice for Aristotle's Theory of Constitutions."

<sup>21</sup> Sylvia Walby, "Sen and the Measurement of Justice and Capabilities," *Theory, Culture & Society* 29, no. 1 (January 18, 2012): 99–118, doi:10.1177/0263276411423033; Patricia McGrath Morris, "The Capabilities Perspective: A Framework for Social Justice," *Families in Society: The Journal of Contemporary Social*

provision of milk or nutritious food is meaningful only insofar as it strengthens children's capacity to grow and develop. Conversely, if the food distributed poses health risks, the program in fact diminishes individual capability and weakens the nation's human capital. The MBG Program has thus failed to realize substantive justice, as it does not expand individuals' actual ability to live healthily, but rather generates new threats to the right to life and safety.

The failure to realize substantive justice constitutes a violation of the principle of food safety as stipulated in Article 12 of Law No. 18/2012, which places responsibility upon the central and regional governments for ensuring food safety throughout the entire food chain. This obligation is characterized as an obligation of result, rather than merely an obligation of conduct, meaning that the State must guarantee the outcome in the form of safe food, not simply demonstrate good faith in its implementation. Such failure is further inconsistent with Article 4(1)(c) of Law No. 17/2023, which affirms that "every person shall have the right to access health services that are safe, of high quality, and affordable, to attain the highest possible standard of health." Within the framework of the MBG Program, the provision of food that resulted in mass poisoning clearly fails to satisfy the requirement of "safety" as mandated by law.

The paradox of justice thus emerges: a program originally designed to improve national nutritional standards has instead generated new forms of injustice, manifesting in social vulnerability and legal uncertainty. This paradox can be understood through the principle *lex iniusta non est lex*, an unjust law is no law at all. When the implementation of public policy disregards the fundamental rights of citizens, such policy, both morally and juridically, forfeits its claim to legitimacy.<sup>22</sup> In this respect, the State has not only failed to ensure the safe distribution of nutrition but has also failed to guarantee substantive justice for the affected community. No rapid recovery mechanisms have been provided, no effective legal remedies for compensation have been offered, and no adequate regulatory standards have been established to prevent the recurrence of similar incidents.

Thus, justice in the context of the MBG program cannot be confined merely to equitable distribution of nutrition, but must also be assessed in terms of the quality of justice it produces, namely, substantive justice. Without adherence to food safety standards, the distribution of nutrition loses its normative meaning of justice. Distributive justice without substantive justice is merely a cosmetic form of justice: it appears equitable on the surface but in reality generates new forms of injustice in practice. Accordingly, the reform of the legal governance of the MBG program constitutes both a moral and constitutional imperative to ensure that substantive justice is genuinely realized for all citizens, particularly children, as the future generation of the nation.

### 3.4. The State in a Position of Neglect

Criticism of the MBG policy cannot be divorced from a broader reflection on how the State positions itself in the relationship between its constitutional obligations and its moral

Services 83, no. 4 (August 1, 2002): 365-73, doi:10.1606/1044-3894.16; Azad Ali, "'Capability Approach: A Philosophical Investigation of Amartya Sen's Idea of Justice,'" *International Journal of Scientific Research in Engineering and Management* 09, no. 05 (May 11, 2025): 1-9, doi:10.55041/IJSREM47487.

<sup>22</sup> Erhard Blankenburg, "The Waning of Legality in the Concept of Policy Implementation," *Law & Policy* 7, no. 4 (October 28, 1985): 481-91, doi:10.1111/j.1467-9930.1985.tb00363.x.

responsibilities toward its citizens. The State appears to have assumed a posture of neglect (*culpa in omittendo*), prioritizing quantitative achievements, the number of beneficiaries, over the assurance of quality, safety, and sustainability of the nutrition distributed. This tendency signifies a serious degradation of the principle of social justice as enshrined in the Preamble to the UUD NRI 1945, fourth paragraph, and in Article 33(4) of the UUD NRI 1945, which mandates that the national economy be organized based on the principles of solidarity, equitable efficiency, sustainability, and environmental soundness.

The MBG program may formally be claimed as an effort toward equitable welfare distribution; however, the substance of its implementation reveals a clear inconsistency between normative aspirations and administrative practice. The State has become trapped in a paradigm of output-oriented policy rather than justice-oriented governance. The policy logic that positions the number of beneficiaries as the principal indicator of success obscures the essence of substantive justice<sup>23</sup>, which ought to be measured by the quality of outcomes and the safety of the recipients. This approach contravenes the principle of *doelmatigheid*, the congruence between policy objectives and results, as well as the principle of legal certainty as codified in Article 10(1)(a) and (c) of Law No. 30/2014. The State must ensure that the policy genuinely enhances the welfare of its citizens.<sup>24</sup>

The involvement of military and police personnel within the Nutrition Program Implementation Unit (*Satuan Pelaksana Program Gizi*, SPPG) constitutes a constitutional anomaly that blurs the boundaries between civilian and military authority in governance.<sup>25</sup> The engagement of armed forces in matters of food distribution and civilian logistics not only violates the principle of professionalism as enshrined in Article 30(3) and (4) of the UUD NRI 1945, but also generates overlapping authority that erodes the principle of checks and balances. The separation of civilian and military functions is a foundational element of a democratic state governed by the rule of law. In the context of the MBG program, the presence of military and police actors in administrative domains creates a problem of dual accountability, as responsibility for program implementation becomes obscured among institutions lacking technical competence in nutrition and public health.

The involvement of security apparatus in nutrition programs also raises the potential violation of the principles of proportionality and accountability in good governance. Pursuant to Articles 3 and 4 of Law No. 28 of 1999 on State Administration Free from Corruption, Collusion, and Nepotism, every state administrator is obligated to uphold the principles of legal certainty, transparency, and professionalism. When public policy is executed by institutions lacking substantive competence, such policy becomes vulnerable to abuse of authority and risks losing its moral legitimacy. In line with the view of H.D. van Wijk, governmental actions that deviate from the principle of proportionality may be categorized as

<sup>23</sup> Bunga Kharisma and I Gde Sandy Satria, "Towards Achieving Substantive Justice: The Importance of Extending the Time Limit for Resolving Presidential Election Disputes," *Mimbar Keadilan* 17, no. 2 (July 10, 2024): 98–114, doi:10.30996/mk.v17i2.10924.

<sup>24</sup> Afgha Okza Eriranda, Fajar Rahmad.S, and Eny Kusdarini, "Makna Welfare State Ditinjau Dari Implementasi Pasal 34 Ayat (1) Undang-Undang Dasar 1945," *Jurnal Hukum IUS QUIA IUSTUM* 31, no. 3 (November 1, 2024): 560–84, doi:10.20885/iustum.vol31.iss3.art4.

<sup>25</sup> Irfani, "Ribuan Kasus Keracunan, SPPG Terus Beroperasi – 'Sertifikat Laik Kebersihan Sedang Diurus.'"

*détournement de pouvoir*, namely the misuse of authority where the objectives pursued are inconsistent with the purpose for which the authority was originally granted.<sup>26</sup>

Criticism of the MBG policy is fundamentally rooted in the State's failure to recognize and embody its role as a welfare state. The UUD NRI 1945, particularly in Article 34 paragraphs (1) to (3), establishes the constitutional foundation of the welfare state by affirming the State's obligation to care for the poor and neglected children, as well as to develop a social security system for all citizens. Yet, in the implementation of MBG, the State appears more preoccupied with projecting an image of social concern than with realizing the principle of social justice in substantive terms. This constitutes a form of policy failure that erodes public trust in the capacity of the *rechtsstaat* to serve as both the protector and guarantor of the people's welfare.<sup>27</sup>

When quantitative orientation prevails over quality, public policy forfeits its moral legitimacy. The thousands of children who became victims of food poisoning under the MBG program are not merely casualties of technical failure, but rather victims of a policy structure that neglects the principles of due diligence and legal responsibility.<sup>28</sup> Such negligence may be categorized as *culpa lata*, a form of gross negligence by the State in carrying out its protective function. In this regard, the State cannot conceal itself behind policy rhetoric, for responsibility is inherent and inalienable.

The MBG policy illustrates that the State is undergoing an ethical disorientation in interpreting its constitutional mandate. Administrative achievements measured through distributional figures cannot redeem the moral failure of sacrificing citizens' safety. In this position, the State ceases to function as a protector and instead becomes the perpetrator of structural negligence. Justice delayed is justice denied; likewise, justice quantified is justice denied, justice measured solely by numbers and targets negates the human essence underlying public policy.

Thus, criticism of MBG does not merely rest at the level of nutritional policy, but extends to a broader crisis of legitimacy of the rule of law itself. When the State neglects the principle of quality, disregards mechanisms of accountability, and creates overlapping authorities, it places itself in direct contradiction with the *maxim salus populi suprema lex esto*, the safety of the people shall be the supreme law. Ironically, a principle that ought to serve as the guiding orientation of public policy has been reduced to nothing more than an administrative slogan devoid of substantive justice.

#### 4. Conclusions

The MBG program, in essence, constitutes a public policy initiative born of the noble aim to improve the nutritional quality of society. However, in its implementation, it has failed to uphold the principle of justice as mandated by the Constitution and statutory law. The

<sup>26</sup> Rizki Syafril et al., "Analisis Wewenang Pemerintah Dalam Kuasa Diskresi Administrasi," *JESS (Journal of Education on Social Science)* 7, no. 2 (November 13, 2023): 219-27, doi:10.24036/jess.v7i2.467; Muhammad Reza Baihaki, "Assessment of Elements of Abuse of Authority (Detournement De Pouvoir) Based on the Decision of the Constitutional Court," *Jurnal Konstitusi* 20, no. 1 (March 25, 2023): 100-122, doi:10.31078/jk2016.

<sup>27</sup> Eriranda, Rahmad.S, and Kusdarini, "Makna Welfare State Ditinjau Dari Implementasi Pasal 34 Ayat (1) Undang-Undang Dasar 1945."

<sup>28</sup> Adrian, "Kasus Keracunan MBG Bukan Sekadar Angka."

weakness of regulations that rely solely on internal technical guidelines, without a legal basis of presidential regulation, coupled with inadequate oversight and the absence of legal accountability mechanisms, has resulted in violations of the right to health as guaranteed under Article 28H paragraph (1) and Article 34 paragraph (3) of the UUD NRI 1945. The mass poisoning of thousands of children constitutes concrete evidence of state negligence in fulfilling its constitutional duty to protect citizens from threats to public health and safety. Accordingly, the State must urgently reconstruct the MBG policy through the promulgation of stronger formal regulations (in the form of a Presidential Regulation or even a statute), by tightening food safety standards and quality control, and by ensuring public participation at every stage of program formulation and implementation. Only then can MBG return to its original purpose: to realize social justice and to safeguard the constitutional rights of all citizens.

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