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Constitutional Responsibility of the State for the Protection of the Right to Health in the Implementation of the Free Nutritious Meal Program

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ABSTRACT

This study focuses on the constitutional responsibility of the state for the protection of the right to health in the implementation of the free nutritious food (MBG) Program, by placing mass poisoning events as problematic indicators of the fulfillment of state obligations on children's health rights. The research uses normative juridical methods with constitutional and conceptual approaches, analyzing the obligations of the state based on the 1945 Indonesian constitution, international legal instruments, and legislation related to health and food. The findings show that there is a normative gap between the constitutional guarantee of the right to health and the weak mechanism for implementing social programs in the aspects of supervision, accountability, and legal protection. The state has not fully fulfilled the three dimensions of the constitutional obligation (obligation to respect, protect, and fulfill) in ensuring the food security of the MBG program. The weakness of technical regulations, the fragmentation of supervisory institutions, and the absence of clear accountability mechanisms reflect a disregard for the principles of the welfare state as mandated by the Constitution. This article recommends the reconstruction of a legal framework that integrates the constitutional dimension of the right to health with the operational design of the program, the institutional strengthening of integrated supervision, as well as the affirmation of state accountability mechanisms through administrative, civil and criminal channels. The fulfillment of the constitutional rights of citizens cannot be left solely to market mechanisms or returned to the logic of administrative efficiency, but must be guaranteed through a solid legal infrastructure and an effective accountability system.

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INTRODUCTION

The Constitution of the Republic of Indonesia of 1945 (UUD NRI 1945) explicitly mandates the state to ensure the welfare of all citizens, including the right to health and a decent standard of living. Article 28h paragraph (1) of the 1945 Indonesian constitution affirms that everyone has the right to live in inner and outer prosperity, to reside, and to obtain a good and healthy living environment and the right to obtain health services. This constitutional guarantee is reinforced by Article 34 paragraph (3) which states that the state is responsible for the provision of health care facilities and decent public service facilities. These constitutional provisions put the state in a position as a duty bearer who has a positive obligation to ensure the fulfillment of basic rights of citizens, especially vulnerable groups such as children (Asshiddiqie, 2006:87).

In the context of the right to health, the dimensions of food and nutrition are integral and inseparable. The International Covenant on Economic, Social and Cultural Rights (ICESCR) which Indonesia has ratified through Law No. 11 of 2005 recognizes the right to the highest attainable standard of health as enshrined in Article 12, as well as the right to adequate food in Article 11. General Comment No. 12 the UN Committee on economic, social and Cultural Rights affirms that the right to food includes not only availability, but also accessibility, adequacy, and most importantly, food safety (UN CESCR, 1999:para.8). States as parties to ratify the covenant have an international legal obligation to respect, protect, and fulfill these rights progressively (Shue, 1996:52).

The free nutritious food (MBG) Program launched by the Indonesian government in 2024 is actually a manifestation of the country's constitutional obligation to fulfill the right to health and nutrition, especially in efforts to overcome stunting and malnutrition in children. The trillion-dollar program is designed to reach millions of beneficiaries across Indonesia, reflecting the country's political commitment to the well-being of future generations. However, the implementation of the MBG program experienced a crisis of public confidence after the occurrence of more than 9,000 cases of food poisoning that afflicted children of program participants in various regions at the beginning of 2025 (Teresia, 2025). This incident is not just an operational technical issue, but rather reflects the failure of the state to fulfill its constitutional obligation to protect the right to health of citizens.

From the perspective of constitutional law, the case of mass poisoning in the MBG program raises fundamental questions about the limits and mechanisms of state accountability when the implementation of public policies actually threatens constitutional rights that should be protected. Jimly Asshiddiqie asserted that in a Democratic state of law, every action of the state—including the implementation of public policies—must be legally accountable (legal accountability) and must not contradict the guarantees of human rights that have been established in the Constitution (Asshiddiqie, 2010:143). When the state takes an active role in the provision of public services such as mass nutrition programs, then the state also bears a legal obligation to ensure that the implementation of such programs does not pose a danger to the beneficiaries (Marzuki, 2011:158).

The complexity of the legal issues in this case lies in three dimensions. First, the normative-constitutional dimension: how the 1945 Indonesian constitution and its derivative laws and regulations regulate the state's obligation to guarantee the right to health and food security, and the extent to which failure to implement the program can be categorized as a violation of constitutional obligations. Second, the institutional dimension: how to design the institutional structure of supervision and accountability in the MBG program, including the division of authority between Central and local governments, as well as inter-agency coordination such as BPOM, Ministry of Health, Ministry of Education, and National Nutrition Agency. Third, the dimension of the accountability mechanism: what legal instruments are available to victims and the public to hold the state accountable, whether through administrative, civil, or criminal channels.

Academic studies of state responsibility for health and food programs in Indonesia are still limited to policy analysis or program evaluation without touching deeper constitutional dimensions. Previous research has focused more on aspects of program effectiveness (CISDI, 2024), budget governance, or implementation technical issues. In fact, the fundamental question that needs to be answered is: is the Indonesian legal framework adequate in outlining the constitutional responsibility of the state to protect the right to health in the context of mass social programs? Is the existing supervision and accountability mechanism in line with the principles of the rule of law and welfare state as mandated by the 1945 Indonesian constitution? These questions require a comprehensive normative juridical analysis to

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identify the gap between constitutional guarantees and the reality of legal implementation on the ground.

The urgency of the study is also driven by the fact that cases of mass MBG poisoning are not isolated phenomena, but rather part of a broader pattern of weaknesses in Indonesia's consumer protection and food safety surveillance systems. BPOM Data show that there are still high cases of unsafe food circulating in the community, including in government assistance programs (BPOM, 2024). This indicates a structural weakness in the legal and institutional systems that govern food security and the protection of Public Health. In the absence of a thorough evaluation of the existing legal framework and systematic institutional reforms, the risk of recurrence of similar events in the future remains high.

This study aims to critically analyze the constitutional responsibility of the state in protecting the right to health of citizens, particularly in the context of the implementation of the free nutritious meal Program. The analysis focused on two main aspects: first, the normative dimension of how the 1945 NRI Constitution and related legislation regulate the state's obligations in ensuring food security and the right to health; second, the identification of structural weaknesses in legal and institutional design that lead to the failure of the protection of constitutional rights. Through normative juridical approach, this study is expected to provide academic contribution in strengthening the constitutional foundation for the protection of health rights in Indonesia, as well as formulate comprehensive legal recommendations to improve the system of protection of constitutional rights in the implementation of social welfare programs.

METHOD

This study uses normative juridical methods with constitutional and conceptual approaches to analyze legal norms, constitutional principles, and doctrines related to state responsibility in the protection of the right to health. The legal materials used include primary legal materials in the form of the 1945 Indonesian constitution, ratified international legal instruments, legislation in the field of Health and food, as well as technical regulations on free nutritious food programs; secondary legal materials in the form of textbooks, national and international law journal articles, and Policy Analysis documents; and tertiary legal materials in the form of legal dictionaries, encyclopedias, and credible media sources. The collection of legal material is carried out through a systematic study of the literature, while the analysis is carried out qualitatively through systematic interpretation, prescriptive analysis and identification of normative gaps between constitutional guarantees and implementation mechanisms, with deductive legal reasoning to formulate conclusions. This study does not use primary empirical data, but relies entirely on the analysis of legal documents and academic literature.

RESULTS AND DISCUSSION

A. Normative construction of the constitutional responsibility of the State for the protection of the right to health

The construction of the state's constitutional responsibility for the protection of the right to health in the Indonesian legal system is rooted in the philosophy of the welfare state (welfare state) adopted by the 1945 Indonesian constitution. The preamble of the 1945 Indonesian constitution fourth paragraph explicitly states the purpose of the state to "protect all Indonesian people and all Indonesian blood and to promote the general welfare, educate the life of the nation". The phrase "protecting "and" advancing the general welfare " is not merely a political statement, but rather a constitutional mandate that binds the state to take an active role in ensuring the welfare of citizens (Asshiddiqie, 2006:91). This is in line with the concept of the modern welfare state which places the state not only as a guardian of order (nachtwakersstaat), but as a protector and guarantor of the fulfillment of basic needs of citizens (Friedmann, 1967:503-504).

Article 28h paragraph (1) of the 1945 Indonesian constitution provides a firm legal basis: "everyone has the right to live in prosperity physically and mentally, reside, and get a good and healthy living environment and the right to obtain health services."This provision places the right to health as a constitutional right equal to other fundamental rights. The Constitutional Court in several of its decisions has affirmed that the rights guaranteed in Article 28h are non-derogable in certain contexts and the state has a positive obligation to fulfill them (Constitutional Court decision number 003/PUU-IV/2006). The grammatical interpretation of the phrase "entitled to Health Services" indicates that the state is not only obliged not to block access to health (negative obligation), but also must actively provide and

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ensure access to quality health services (positive obligation) (Marzuki, 2011:162).

Article 34 of the 1945 Indonesian Constitution clarifies the operational dimension of the state obligation. Paragraph (1) states that "the poor and abandoned children are cared for by the state", which implicitly includes meeting nutritional and health needs. Paragraph (2) affirms that "the state develops a system of Social Security for all the people and empowers the weak and incapable in accordance with human dignity."The most crucial is Paragraph (3): "The State is responsible for the provision of health care facilities and decent public service facilities."The use of the word "responsible" (responsible) instead of "obliged" (obliged) indicates a stronger dimension of accountability: the state not only has the obligation to provide, but it must also be able to be held accountable if it fails to comply or if its implementation causes harm to citizens (Hadjon, 1987:89).

In the context of international law, Indonesia has ratified the ICESCR through Law No. 11 of 2005, which means that the provisions of the covenant become part of national law and bind countries to implement it. Article 12 of the ICESCR recognizes "the right of everyone to the enjoyment of the highest attainable standards of physical and mental health."General Comment No. 14 the UN ECOSOC Committee outlines that the right to health includes four essential elements: availability, accessibility, acceptability, and quality (UN CESCR, 2000:para.12). Further, General Comment No. 12 on the right to food affirms that food must not only be available and accessible, but must also be safe and nutritious (UN CESCR, 1999:para.8-9). Failure to ensure food security in state-run programs is a violation of Indonesia's international obligations.

The ECOSOC committee also formulates a typology of state obligations at three levels:obligation to respect (respecting rights by not intervening that reduces or hinders the fulfillment of rights), obligation to protect (protecting rights from infringement by third parties, including non-state actors), and obligation to fulfill (fulfilling rights by taking positive steps to realize them) (Shue, 1996:52-53; Chapman and Russell, 2002: 6-7). In the context of the MBG Program, the state has an obligation to: (a) not provide food that endangers health (to respect); (b) protect beneficiaries from unsafe food provided by service providers (to protect); and (c) ensure the consistent availability of nutritious and safe food (to fulfill). Cases of mass poisoning indicate the failure of the state in fulfilling these three dimensions of obligations.

The constitutional guarantee of the right to health is operationalized through various sectoral laws. Law No. 36 of 2009 on health comprehensively regulates the responsibility of the government in the implementation of health efforts. Article 14 paragraph (1) States: "the government is responsible for planning, organizing, organizing, fostering, and supervising the implementation of equitable and affordable health efforts by the community."Article 168 affirms that in order to organize effective and efficient health efforts, the government and local governments are responsible for planning, organizing, organizing, fostering, and supervising the implementation of comprehensive, integrated, and sustainable health efforts. This provision imposes holistic obligations on the state, not only in the provision of services but also in supervision and coaching (Koeswadji, 1998:56).

Law No. 18 of 2012 on food provides a specific legal framework for food safety. Article 3 states the purpose of food regulation is to: "the availability of adequate, safe, quality, nutritious, and diverse food. Article 5 Paragraph (1) confirms: "the government and local governments are responsible for meeting the food needs of the entire community."The most relevant to the MBG case is Article 69 which regulates food safety: "Everyone who produces food for circulation is prohibited from using prohibited ingredients and / or ingredients that exceed the threshold."Article 91 further regulates that the government has the authority to guide and supervise food safety (president of the Republic of Indonesia, 2012). However, the effectiveness of this supervision depends a lot on institutional capacity and inter-institutional coordination, which in practice is still weak (Putri, 2022:287).

Law No. 8 of 1999 on Consumer Protection adds a dimension of legal protection for service recipients. Article 4 letter a gives the consumer the right "to comfort, security, and safety in consuming goods and/or services."Article 7 letters d and e require business actors to "guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services" and "provide compensation, compensation and/or reimbursement for losses due to the use, use and utilization of goods and/or services traded."In the context of MBG, although this program is not a purely commercial transaction, the principles of consumer protection remain relevant because they involve the provision of food by third parties to beneficiaries (President of the Republic of Indonesia, 1999). Security standards in government programs should be even higher than in ordinary commercial

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transactions, given that beneficiaries are vulnerable groups who have no choice (captive consumers).

However, problems arise when these sectoral regulations are translated into technical guidelines for program implementation. The free nutritious eating guidelines published by the Ministry of Primary and Secondary Education (2024) focus more on menu aspects, nutritional values, and distribution mechanisms, but lack sufficient emphasis on food safety standards, kitchen certification mechanisms, and strict supervision protocols. The guidelines do not explicitly refer to the state's constitutional obligation to protect the right to health, so implementation of the program tends to see success only in terms of Budget reach and efficiency, rather than from the perspective of protecting the constitutional rights of beneficiaries (Kemdikdasmen, 2024:12-15). It reflects the disconnect between constitutional norms and the operationalization of policy at the technical level.

BPOM Regulation Number 4 of 2024 concerning guidelines for issuing certificates of fulfillment of household industrial processed food production commitments provides a certification framework for small-scale food producers. However, in the practice of implementing MBG, many provider kitchens do not meet this certification standard or even operate without adequate permits (BPOM, 2024). This indicates weak enforcement of existing regulations. BPOM supervision, which should be the last bastion of food safety, is not effective due to limited resources, poor coordination with program managers, and the absence of a preventive audit mechanism before the kitchen starts operating (Lamb, 2025).

Analysis of the above legal framework shows a significant gap between strong constitutional guarantees and weak implementation mechanisms. At the constitutional and statutory level, the right to health and food security is expressly recognized by placing the state as a fully responsible duty bearer. However, at the level of implementing regulations and technical guidelines, there is a reduction of this constitutional dimension to merely the administrative and technical targets of the program. The MBG guidelines do not integrate human rights principles such as non-discrimination, accountability, participation, and transparency (PANEL principles) which should be the framework for the implementation of rights-based programs (OHCHR, 2006:15-17).

First, there is no participatory monitoring mechanism involving parents or civil society in monitoring the quality and safety of food provided. The Program is run on a top-down basis with the assumption that the state apparatus will perform its supervisory function well, whereas the capacity and integrity of the apparatus in the field vary greatly. Second, the accountability mechanisms available are very weak. There is no explicit provision in the MBG guidelines on what happens if a beneficiary suffers poisoning: who is responsible, how the investigation proceeds and what form of compensation is guaranteed. Third, there are no redress mechanisms that are easily accessible to victims. The complaint and dispute resolution channels are not clearly regulated, so victims have to find their own legal mechanisms available through public channels (civil lawsuits, criminal reports, or administrative complaints) which are long processes and require large costs (CISDI, 2024:9-11).

This normative Gap is also seen in the fragmentation of inter-institutional authority arrangements. The MBG Program involves at least five ministries/agencies: the Ministry of Education, the Ministry of Health, the National Nutrition Agency, BPOM, and local governments. However, there is no legal instrument that comprehensively regulates the division of authority, coordination protocols, and mechanisms for the escalation of these inter-institutional issues. Presidential regulations or government regulations that are supposed to regulate cross-sectoral governance do not exist or are not comprehensive. As a result, when a case of poisoning occurs, there is a throwing of responsibilities between institutions: the program manager blames the provider, the provider blames the supplier, and the supervisor claims not to have sufficient authority or resources to prevent (Purnomo and Pamungkas, 2025:460).

From the perspective of constitutional theory, this gap reflects what is referred to as constitutional underenforcement: a situation where strong constitutional guarantees do not translate into effective enforcement mechanisms at the operational level (Sager, 1978:1212). It is dangerous because it creates the illusion of protection: the Constitution promises rights, but in reality citizens do not have effective legal instruments to demand the fulfillment of such rights or hold the state accountable when violations occur. In the context of developing countries such as Indonesia, constitutional underenforcement often occurs due to a combination of factors: lack of political will to translate constitutional norms into detailed regulations, limited bureaucratic capacity, and the absence of a strong independent monitoring mechanism (Tushnet, 1999:2795).

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B. Structural weaknesses of legal and institutional design in the implementation of the MBG Program

One of the most fundamental weaknesses in the implementation of the MBG Program is institutional fragmentation which results in the absence of a single institution that has full authority and responsibility for the entire food safety supply chain in the program. BPOM formally has a mandate for food safety supervision under Presidential Regulation No. 80 of 2017, but its authority is limited to post-market supervision and does not include daily operational supervision of government program provider kitchens. The Ministry of Health has authority in the aspects of nutrition and public health, but does not have direct authority to stop the operation of kitchens that do not meet the standards. The National Nutrition Agency as the coordinator of the program has a focus on nutrition and distribution aspects, not on food safety aspects. Local governments as implementers in the field have limited technical capacity and resources to carry out adequate supervision (Putri, 2022:289-290).

This fragmentation results in a situation where there is no single point of accountability. When a case of poisoning occurs, the investigation involves various institutions, each of which has different procedures and authorities, so the resolution process is slow and uncoordinated. There is no integrated investigation protocol that regulates how BPOM, health offices, and program managers should coordinate when an incident occurs. The results of an investigation from one agency are not automatically followed up by other agencies. For example, BPOM's findings on violations of food safety standards do not automatically result in administrative sanctions from program managers or termination of contracts with problematic providers (Purnomo and Pamungkas, 2025:461).

From the perspective of the theory of state administrative law, this situation is contrary to the principle of unity of command and clear lines of accountability which is a prerequisite for effective and responsible government (Hadjon, 1987:102). Ridwan HR emphasized that in the implementation of government functions, especially those concerning vital public services, there must be clarity about who is responsible, to whom to account, and what are the legal consequences of failure to fulfill responsibilities (Ridwan, 2006:298). Without a clear institutional structure, a program as large as MBG is vulnerable to an accountability vacuum in which all parties have some responsibility but no one is fully responsible.

The procurement regulation of service providers in the MBG program also shows structural weaknesses. The guidelines published by the Ministry of Education (2024) set out general requirements for providers, but are not strict enough in terms of food safety standards. Existing requirements are more focused on production capacity (the ability to provide food in a certain amount) and competitive prices, while aspects of halal certification, BPOM permits, hygiene eligibility certificates, and food safety track records are not mandatory requirements that must be met before the contract is signed. As a result, many up-and-coming providers, lacking experience in large-scale catering, and lacking adequate food safety infrastructure, could still win tenders (CISDI, 2024:8).

Furthermore, the contract between the government and the provider does not contain a comprehensive liability clause. There is no provision on the provider's obligation to provide direct compensation to the victim in the event of poisoning, there is no compulsory insurance mechanism that the provider must have, and there is no performance bond that can be seized if the provider fails to meet the standards. In public procurement law, the standard of government contracts should be stricter than private contracts because it involves public money and vital public interests (Simamora, 2013:145). However, in MBG practice, the contract templates used tend to be generic and do not anticipate specific risks related to food safety for children's consumption.

The standard operating procedures (sops) that must be carried out by providers are also not detailed enough. The MBG guidelines provide general guidance on menus and nutritional values, but do not provide details on: (a) storage temperature standards for raw materials and finished foods; (b) maximum duration between cooking time and consumption time; (c) kitchen and equipment sanitation protocols; (d) qualification and training of food handlers; (e) sampling mechanisms and testing of food quality before distribution; (f) handling protocols if there are indications of food unfit for consumption. This non-detailed SOP opens up space for interpretations and practices that vary between providers, which ultimately increases the risk of food safety incidents (Kemdikdasmen, 2024:18-20).

In the theory of Public Health Regulation, the concept of precautionary principle is known which states that in situations where there is a potential

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for serious or permanent harm to health, the absence of full scientific certainty should not be used as a reason to delay preventive measures (Trouwborst, 2006:8). The application of this principle in the context of MBG should require countries to set very strict food safety standards and conduct thorough verification of providers before the program begins. In practice, however, the program is rolled out very quickly with priority on scope and scale, without adequate food safety infrastructure. This reflects a political bias that is more concerned with achieving short-term political targets (number of children served) than the quality and safety of long-term services (Purnomo and Pamungkas, 2025:462).

The most crucial weakness in the legal design of the MBG program is the absence of a clear, fast, and effective accountability mechanism for victims. When a case of poisoning occurs, the victim and his family are faced with a complex, slow, and expensive legal system to obtain justice. There is no standing complaint mechanism specifically set up to handle cases related to the MBG program. Victims must use the common legal channels available: civil lawsuits based on unlawful acts (article 1365 of the Civil Code), Criminal reports if there are elements of a crime (article 360 of the criminal code on negligence causing death/serious injury, or articles 91-96 of the Food Law), or administrative complaints to authorized officials (President of the Republic of Indonesia, 1999; President of the Republic of Indonesia, 2012).

The Civil path faces substantial obstacles: (a) the burden of proof is on the plaintiff to prove the elements of guilt, harm, and causal relationship, which requires considerable expertise and expense; (b) the lengthy litigation process (which can take years) is unresponsive to the victim's urgent need for medical expenses and compensation; (c) there is no effective class action mechanism in Indonesia resulting in thousands of victims having to file inefficient individual lawsuits (Mertokusumo, 2009: 17-18). Criminal lines are also problematic: (d) investigations and investigations take a long time; (e) focus on punishment of the perpetrator, not compensation of the victim; (f) often stalled because of the difficulty of proving elements of intent or negligence that meet the standards of Criminal Evidence (Hamzah, 2008:89). Administrative channels are least effective: (g) administrative sanctions (reprimands, termination of permits) do not provide financial compensation to victims; (h) complaints procedures are not transparent and are often not followed up; (I) there is no clear time limit for the resolution of complaints (Hadjon, 1987:125).

In the perspective of international human rights law, states have an obligation to provide effective remedies for victims of human rights violations, including the right to health. International Covenant on Civil and Political Rights (ICCPR) Article 2(3) requires states to ensure everyone whose rights are violated has access to effective remedies, even if the violation is committed by a non-state party (UN HRC, 2004:para.15). General Comment No. 31 the UN Human Rights Committee affirms that "effective remedies" must meet the criteria: accessible (easily accessible), affordable (affordable in cost), timely (fast), and effective (provide tangible results in the form of compensation or recovery) (UN HRC, 2004:para.16).

The mechanisms present in the case of MBG do not meet these criteria. There is no emergency compensation fund that can be immediately disbursed for the victim's medical expenses. There is no no-fault compensation scheme as applied in some jurisdictions for vaccination or medical injury cases, where the victim can obtain compensation without having to prove the guilt of a particular party (Oliphant and Wright, 2012:1223). There are no independent agencies such as ombudsmen or special commissions that can conduct a quick investigation and recommend compensation. All available mechanisms require a lengthy litigation process, which is unresponsive to the urgency of the situation of victims who are mostly children from underprivileged families who do not have the resources to litigate (Andryawan et al., 2025:1933).

The structural failures that have been outlined above have serious constitutional implications. First, there is a violation of the obligation to protect: the state fails to protect citizens, in particular children who are a vulnerable group, from harm caused by third parties (service providers). Article 28b paragraph (2) of the 1945 Indonesian constitution specifically provides constitutional guarantees for children: "every child has the right to survival, growth, and development and the right to protection from violence and discrimination."Food poisoning that causes illness, trauma, and even death is clearly a threat to a child's right to survival and growth. The failure of the state to prevent this through an effective surveillance system is a form of neglect that is contrary to constitutional obligations (Asshiddiqie, 2006:156).

Second, there is a violation of the principle of due diligence in government administration. The Constitutional Court in its various decisions affirms that the state must carry out its functions with due

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diligence and professionalism, especially in matters concerning the fundamental rights of citizens (Constitutional Court Decision No. 65/PUU-VIII/2010). The launch of mass programs without adequate surveillance infrastructure, without strict certification of providers, and without clear victim protection mechanisms, demonstrates the failure of the precautionary principle. This is not just administrative inefficiency, but constitutional negligence that endangers the constitutional rights of citizens.

Third, this case exposes the limited justiciability of economic, social, and cultural rights (ekosob) in Indonesia. Although the 1945 Constitution expressly recognizes the right to health as a constitutional right, the mechanism to demand compliance or hold the state accountable for violations of this right is still very weak. Indonesia's Constitutional Court has ruled that its authority is limited to the testing of laws against the Constitution, not to the review of government policies or actions. The Administrative Court can test administrative decisions but cannot test policies of a general nature (beleidsregel). As a result, the so-called justiciability gap occurs: rights are guaranteed by the Constitution but there is no effective legal forum to demand their fulfillment or hold accountable for their violation (Langford, 2008:8-10).

In Comparative Constitutional Law Literature, the concept of structural remedy is known as a solution to the systemic failure of the government to fulfill constitutional rights. Courts in countries such as South Africa, India, and Colombia have used this approach to order governments to undertake structural reforms in health, housing, or education systems when systemic failures are proven that violate constitutional rights (Rodríguez-Garavito, 2011:1669). Indonesia can learn from this practice by strengthening judicial review mechanisms for government policies that have implications for constitutional rights, or by establishing quasi-judicial institutions such as the Human Rights Commission with binding recommendations.

CONCLUSION

Normative juridical analysis shows that there is a serious gap between the constitutional guarantee of the right to health in the 1945 Indonesian constitution and the implementation of the free nutritious food Program which is still weak normatively and structurally. Although the Constitution and international human rights instruments have placed States on an obligation to respect, protect, and fulfill the right to health—including special protection for children—such obligations have not been adequately translated in the technical regulations, institutional design, and accountability mechanisms of the MBG program. Institutional fragmentation, weak food safety standards, the absence of a single point of accountability, and the unavailability of effective rights recovery mechanisms reflect the occurrence of constitutional underenforcement and violation of the obligation to protect. This condition not only shows the deficit of the state's due diligence in the implementation of welfare programs, but also reveals the justiciability gap in the fulfillment of economic, social, and cultural rights, so that it fundamentally indicates the unrealization of the welfare state principle as mandated by the Constitution. Based on the findings of the study, an integrated legal and institutional reform is needed to ensure the fulfillment of the country's constitutional responsibility in the implementation of the free nutritious meal Program. States need to establish a comprehensive regulatory framework based on a human rights approach that sets strict food safety standards, a system of certification and auditing of providers, integrated supervision with a single point of accountability, as well as rapid investigation mechanisms and effective compensation for victims, including a no-fault compensation scheme. This reform must be accompanied by strengthening or institutional restructuring of food supervision to be independent, fully authorized, and accountable, as well as strengthening accountability mechanisms through quasi-judicial institutions and expanding access to constitutional testing of government policies that have an impact on the right to health. In the short term, the government needs to establish a moratorium on expanding the program until the surveillance infrastructure is adequate, conduct a thorough audit of providers, revise contracts with liability and insurance clauses, and immediately compensate victims. Such efforts should be complemented by continuing education for all stakeholders and the development of a human rights impact assessment model as a preventive instrument so that every public policy is aligned with the constitutional mandate and welfare state principles.

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