

Legal Gaps in the Governance of National Strategic Programs: A Legal Analysis of the Legal Basis for the Free Nutritious Meal Program

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ABSTRACT: The Free Nutritious Meal Program (*Program Makan Bergizi Gratis*/MBG), launched by the Indonesian government in January 2025, has grown into one of the largest fiscal interventions in the country's social policy history, with state budget allocations reaching Rp268 trillion in 2026. Despite its scale, MBG's legal foundation rests solely on Presidential Regulations—Perpres No. 83 of 2024 on the National Nutrition Agency (BGN) and Perpres No. 115 of 2025 on MBG Governance—supplemented by internal technical guidelines (*juknis*) issued by BGN officials. This study examines whether such a regulatory framework is constitutionally and legally adequate for a program of this magnitude, particularly in light of Article 23 of the 1945 Constitution, which mandates that the state budget be enacted through law. Using a normative-juridical method with statutory, conceptual, and case approaches, this research analyzes the position of Presidential Regulations within Indonesia's hierarchy of legislation under Law No. 12 of 2011 as amended by Law No. 13 of 2022, framed through Hans Kelsen's Stufenbau theory and Hans Nawiasky's norm classification. The analysis is substantiated by empirical evidence, including the 2026 corruption case implicating BGN's leadership through an affiliated foundation, and recurring mass food-poisoning incidents linked to weak binding technical standards. The findings indicate that the current sub-legislative framework creates structural vulnerabilities in financial accountability, food-safety enforcement, and legislative oversight. This study argues for the reconstruction of MBG's legal basis into a law-level regulation (*Undang-Undang*), drawing on comparative precedents such as the National Social Security System Law, to ensure binding sanctions, mandatory parliamentary reporting, and independent audit mechanisms commensurate with the program's fiscal and social risks.

KEYWORDS: Free Nutritious Meal Program; hierarchy of legislation; Presidential Regulation; national strategic program; legal reconstruction; state budget law

I. INTRODUCTION

Since its official launch on 6 January 2025, the Free Nutritious Meal Program (*Program Makan Bergizi Gratis*, hereinafter MBG) has become one of the most extensive social welfare interventions in Indonesia's post-reform history. Framed by the Prabowo Subianto administration as a strategic pillar of the *Asta Cita* vision toward *Indonesia Emas 2045*, the program targets students from early childhood education through senior secondary school, as well as pregnant and breastfeeding mothers, with the explicit aim of reducing the national stunting prevalence, which stood at 21.5 percent in 2024—above the World Health Organization's critical threshold of 20 percent. The program's fiscal scale has expanded rapidly: from an initial allocation of Rp71 trillion in the 2025 state budget to Rp268 trillion in 2026, positioning MBG among the largest single social expenditure items in Indonesia's fiscal history.

Despite this scale, MBG's legal architecture remains anchored exclusively in sub-legislative instruments. Its institutional basis is Presidential Regulation (*Peraturan Presiden*/Perpres) No. 83 of 2024 concerning the National Nutrition Agency (*Badan Gizi Nasional*/BGN), which established BGN as the program's implementing body, while Perpres No. 115 of 2025 concerning MBG Governance regulates its implementation, monitoring, evaluation, financing, and procurement mechanisms. Beneath these instruments, operational details—including food-safety standards, distribution quotas, and procurement procedures at the level of *Satuan Pelayanan Pemenuhan Gizi* (SPPG)—are governed by internal BGN regulations and technical guidelines (*juknis*), which occupy an even lower and more informal position within Indonesia's hierarchy of legislation (Hakim & Yuliana, 2025).

This regulatory configuration raises a constitutional question that has received insufficient scholarly attention. Article 23 of the 1945 Constitution of the Republic of Indonesia mandates that the state budget (*Anggaran Pendapatan dan Belanja Negara*/APBN) be stipulated annually through a law (*Undang-Undang*), reflecting the principle that expenditures of significant public consequence require the involvement and oversight of the House of Representatives (DPR). While MBG's annual funding is technically absorbed into the yearly APBN Law, the program's governance framework, institutional accountability mechanisms, and technical

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implementation standards have never themselves been subject to a dedicated law. Under the normative hierarchy established by Law No. 12 of 2011 on the Formation of Legislation, as amended by Law No. 13 of 2022, a Presidential Regulation ranks below statutes and government regulations, and its legitimacy is derivative rather than autonomous (Harahap, 2025; Prianto, 2024). Drawing on Hans Kelsen's *Stufenbau* theory and Hans Nawiasky's classification of legal norms, a regulatory instrument positioned this low in the hierarchy is inherently limited in its capacity to bind third parties, impose criminal sanctions, or mandate structured parliamentary oversight—features typically reserved for statutes.

The adequacy of this framework has been thrown into sharp relief by recent events. In June 2026, the Attorney General's Office named BGN's top leadership—including its former Head, Dadan Hindayana, and two deputies—as suspects in a corruption case involving the alleged mark-up of MBG procurement (including electric motorcycles, footwear, and televisions) channeled through a foundation affiliated with the agency's leadership. The number of individuals implicated reportedly expanded from 26 to 41 within weeks of the initial disclosure. This case followed nearly eighteen months of persistent public criticism concerning mass food-poisoning incidents affecting tens of thousands of students across multiple provinces, incidents that several legal scholars attribute to the absence of binding, statute-level food-safety and vendor-accountability standards (Riyanto & Sinaga, 2025; Udiana et al., 2025; Dluha & Qorib, 2026; Febrian, 2026). Both phenomena—financial malfeasance and public-health failures—point to a common structural deficiency: a governance architecture built on regulations that can be amended unilaterally by the executive, without the institutional rigidity, sanction clarity, and oversight mechanisms that a law-level instrument would provide.

This gap between the fiscal and social scale of MBG on one hand, and the sub-legislative character of its legal foundation on the other, forms the central problem addressed in this study. While prior research has examined MBG's legal basis from various angles—including its constitutional dimension in relation to the right to education (Fikri, 2025), its governance and accountability structure (Tahtazany et al., 2026), and sector-specific liability questions such as food poisoning and partnership schemes (Febrian, 2026; Zulaika et al., 2025)—few studies have systematically situated MBG within Indonesia's normative hierarchy of legislation to argue explicitly for its reconstruction into a statute (*Undang-Undang*). This study seeks to fill that gap.

Accordingly, this research aims to: (1) analyze the juridical position of Perpres No. 83 of 2024 and Perpres No. 115 of 2025 within Indonesia's hierarchy of legislation and assess whether this position is commensurate with the scale and risk profile of the MBG program; (2) identify the specific technical and operational aspects of MBG—particularly financial governance, third-party accountability, and food-safety enforcement—that remain inadequately regulated at the sub-legislative level; and (3) construct a normative argument, informed by comparative precedents such as the National Social Security System Law, for reconstructing MBG's legal foundation into a law-level regulation. Using a normative-juridical method with statutory, conceptual, and case-based approaches, this study contributes to the broader discourse on the legal architecture of national strategic programs in Indonesia and offers policy-relevant recommendations for strengthening the rule of law in the administration of large-scale social expenditure.

II. RESEARCH METHOD

This study employs a normative-juridical (*yuridis normatif*) research method, which treats law as a coherent system of norms to be analyzed through doctrinal reasoning rather than empirical field observation, and is therefore appropriate for examining the internal consistency and hierarchical validity of MBG's legal foundation. The research draws on three complementary approaches: first, the statutory approach (*statute approach*), which examines the text and hierarchical position of relevant legal instruments, including the 1945 Constitution of the Republic of Indonesia (particularly Article 23 on state budgeting), Law No. 12 of 2011 on the Formation of Legislation as amended by Law No. 13 of 2022, Law No. 17 of 2023 on Health, Perpres No. 83 of 2024 on the National Nutrition Agency, and Perpres No. 115 of 2025 on MBG Governance, together with subordinate BGN regulations and technical guidelines; second, the conceptual approach (*conceptual approach*), which employs Hans Kelsen's *Stufenbau* theory and Hans Nawiasky's classification of legal norms as the analytical framework for assessing whether the Presidential Regulation, as the highest instrument currently governing MBG, occupies a position commensurate with the program's fiscal scale and risk profile; and third, the case approach (*case approach*), which incorporates the 2026 BGN corruption case and recurrent mass foodpoisoning incidents as empirical illustrations of the practical consequences flowing from an inadequate legal foundation. Legal materials used in this study are classified into primary legal materials, consisting of the aforementioned constitutional provisions, statutes, presidential regulations, and institutional regulations; secondary legal materials, comprising books, peer-reviewed journal articles, prior research findings, and scholarly commentary relevant to the hierarchy of legislation and the governance of MBG; and tertiary legal materials, including legal dictionaries and encyclopedic references used to clarify technical terminology. These materials were collected through library-based research (*studi kepustakaan*), drawing on both physical and digital sources such as official government gazettes (*Lembaran Negara*), institutional legal databases, and indexed academic journals, and were subsequently analyzed using a qualitative method that involves interpreting the meaning and scope of each norm, identifying the interrelations and potential conflicts between norms across the legislative hierarchy, pinpointing regulatory gaps and inconsistencies in the current legal framework governing MBG, and systematically constructing an argument that connects these findings to the study's central proposition regarding the necessity of reconstructing MBG's legal basis into a law-level regulation.

III. DISCUSSION

A. The Juridical Position of Perpres No. 83/2024 and Perpres No. 115/2025 within Indonesia's Hierarchy of Legislation.

The starting point for evaluating the legal adequacy of the MBG program is to situate its two foundational instruments—Perpres No. 83 of 2024 concerning the National Nutrition Agency (BGN) and Perpres No. 115 of 2025 concerning MBG Governance—within the formal hierarchy of Indonesian legislation. Article 7 paragraph (1) of Law No. 12 of 2011 on the Formation of Legislation, as amended by Law No. 13 of 2022, establishes a seven-tier hierarchy: the 1945 Constitution, MPR Decrees, statutes/government regulations in lieu of law (Perppu), government regulations (Peraturan Pemerintah), presidential regulations (Peraturan Presiden), provincial regulations, and regency/municipal regulations. Within this structure, a Presidential Regulation occupies a subordinate position to statutes and government regulations, functioning primarily as an instrument for implementing higher-level norms rather than as an autonomous source of binding law (Harahap, 2025). This positioning is not merely formal but carries substantive consequences: instruments ranked below statutes derive their validity and scope of authority entirely from the norms above them, and cannot independently create new legal obligations that exceed what has been delegated by a law or the Constitution.

Applying Hans Kelsen's *Stufenbau* theory, which conceives of law as a hierarchically layered system in which the validity of a lower norm depends on its conformity with a higher norm and ultimately traces back to a *Grundnorm*, the placement of MBG's core legal instruments at the level of Perpres reveals an inherent structural fragility (Prianto, 2024). Hans Nawiasky's refinement of this theory—distinguishing between *Staatsfundamentalnorm* (Pancasila and the Preamble of the 1945 Constitution), *Staatsgrundgesetz* (the Constitution's articles), *formell Gesetz* (statutes), and *Verordnung en autonome Satzung* (implementing and autonomous regulations)—further clarifies that Perpres belongs to the fourth and lowest formal category, one intended for technical implementation rather than the establishment of primary policy frameworks governing matters of significant public consequence. Under this classification, a program of MBG's scale and risk profile—commanding Rp268 trillion in state expenditure for 2026 alone—sits uneasily within an instrument category designed for derivative, implementation-level regulation rather than foundational policy architecture.

This tension is compounded by an unresolved ambiguity in Indonesian legislative theory regarding the precise vertical relationship between Presidential Regulations and Government Regulations. Scholarly analysis has noted that Law No. 12 of 2011 does not explicitly and unambiguously state the hierarchical ordering between *Peraturan Pemerintah* and *Peraturan Presiden*, a gap that has, in practice, allowed Presidential Regulations to be issued as though they possessed authority equivalent to Government Regulations, even though their proper position in the hierarchy should be subordinate. This ambiguity is not incidental to the MBG case: it is precisely this interpretive latitude that has permitted the executive to establish an entirely new agency (BGN), define its institutional mandate, and prescribe detailed governance mechanisms for a multi-trillion-rupiah program, all without the deliberative and consultative process that statute-making through the House of Representatives (DPR) would require. Some legal scholars have gone further, arguing that the ease and speed with which Presidential Regulations can be drafted and promulgated—compared to the more rigorous, multi-stage process mandated for statutes—makes this instrument particularly susceptible to being used as a vehicle for expanding executive authority beyond its constitutionally appropriate scope, and have called for a reconstruction of the Presidential Regulation's position within the hierarchy precisely to prevent this kind of institutional overreach.

The specific implications for MBG are threefold. First, from the perspective of legal certainty (*kepastian hukum*), a Perpres can be amended, revoked, or replaced unilaterally by the President without requiring DPR deliberation, meaning that the entire institutional and governance architecture of BGN—including its funding mechanisms, oversight structures, and accountability provisions—remains contingent upon executive discretion rather than being anchored in a more durable legislative consensus (Hakim & Yuliana, 2025). Second, from the perspective of institutional legitimacy, the establishment of BGN as an entirely new state agency, endowed with authority to manage one of the largest social expenditure programs in Indonesian history, through an instrument that bypasses full legislative scrutiny raises questions about whether the scale of delegated authority is proportionate to the process by which that authority was conferred. Third, from the perspective of normative completeness, critical operational matters—including food-safety standards, procurement mechanisms for third-party partnerships, and the internal financial governance of implementing units (SPPG)—are pushed even further down the hierarchy into BGN's internal regulations and technical guidelines (*juknis*), instruments that, per the analysis in Section 3.1 above, do not even appear within the formal seventier hierarchy of Article 7, and are more accurately characterized as *beleidsregel* or policy regulations lacking general binding force and external sanction capacity.

It is important to note, however, that the use of a Perpres to establish MBG's initial framework is not, in itself, constitutionally unlawful. The President possesses attributive authority under the 1945 Constitution to issue Presidential Regulations for the implementation of governmental functions, and Indonesian administrative practice has long relied on Perpres to operationalize policies where a dedicated statute has not yet been enacted—precisely because Perpres is often deployed as a stopgap measure to prevent a legal vacuum (*kekosongan hukum*) and to enable swift governmental action. The critical distinction this study draws, therefore, is not between lawful and unlawful regulation, but between provisionally adequate and structurally sustainable regulation. A Perpres may be an appropriate instrument for the initial, rapid establishment of a program under urgent political and social

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pressure; it is a demonstrably inadequate instrument, however, for the long-term governance of a program that has matured into a permanent, multi-trillion-rupiah fixture of national fiscal policy, precisely because it lacks the institutional rigidity, sanction clarity, and legislative oversight mechanisms that only a statute can provide. This distinction between the transitional legitimacy of Perpres 83/2024 and 115/2025 at MBG's inception, and their structural insufficiency as the program's permanent legal foundation, forms the analytical bridge to the empirical evidence examined in the following subsections—namely, the extent to which this hierarchical and normative gap has translated into concrete governance failures.

B. The Constitutional Imperative of Article 23 of the 1945 Constitution and the Disjuncture with MBG's Budgetary Governance.

Article 23 of the 1945 Constitution of the Republic of Indonesia constitutes the foundational constitutional norm governing state finance, stipulating in paragraph (1) that the state budget (*Anggaran Pendapatan dan Belanja Negara/APBN*) shall be determined annually through a law, to be implemented in a transparent and accountable manner for the greatest prosperity of the people. This provision is not a mere procedural formality; it embodies the constitutional principle of budget legality (*legalitas anggaran*), whereby the power of the purse—historically among the most consequential instruments of state authority—is subjected to deliberation and approval by the House of Representatives (DPR) as the institutional embodiment of popular sovereignty. The constitutional design places the DPR's budgetary function alongside its legislative and oversight functions as one of the three pillars through which representative government exercises control over executive action, reflecting the classical doctrine that "no taxation, and no expenditure, without representation." Within this framework, MBG's annual funding is, at first glance, constitutionally compliant: the program's budget allocation—Rp71 trillion in 2025 and Rp268 trillion in 2026—is formally absorbed into the annual APBN Law, which is itself deliberated and enacted jointly by the President and the DPR pursuant to Article 23 paragraph (1).

However, a closer constitutional analysis reveals a significant disjuncture between the legitimacy of appropriation and the legitimacy of governance. The DPR's approval of the APBN Law confers legitimacy upon the aggregate sum allocated to MBG as a budget line item, but it does not extend to the institutional architecture, procurement mechanisms, financial oversight structures, or accountability channels through which that sum is subsequently disbursed and managed. These latter matters—arguably the aspects of the program most susceptible to malfeasance—are governed entirely by Perpres No. 83/2024, Perpres No. 115/2025, and BGN's internal technical guidelines, instruments over which the DPR exercises, at most, an indirect and non-binding oversight function through periodic hearings (*rapat dengar pendapat*), rather than the direct, statute-based control that Article 23 envisions for matters of state finance. In other words, the constitutional mandate that "the budget be determined by law" has been satisfied only at the level of the aggregate fiscal figure, while the governance of how that figure is executed—which agency manages it, what internal controls exist, what sanctions apply to misuse, and what reporting obligations bind program administrators—remains outside the ambit of any law altogether. This is a disjuncture between form and substance: the constitutional letter of Article 23 is technically observed, while the constitutional spirit of comprehensive legislative accountability over state expenditure is left substantially unfulfilled.

This disjuncture carries particular weight when examined against the broader constitutional jurisprudence on education financing and social rights, which some scholars have used to interrogate MBG's budgetary positioning more directly. Recent research evaluating MBG's constitutionality in relation to the right to basic education has argued that the state's constitutional responsibility for financing social programs of this nature requires not merely budgetary allocation, but a coherent legal-political architecture (*politik hukum anggaran*) that ensures equitable and accountable access to the intended benefits (referring to the 2026 study on MBG's constitutionality and the right to basic education). This line of reasoning is instructive: if the constitutional guarantee of a right—whether to education, health, or adequate nutrition—is to be meaningfully realized through a state expenditure program, the legal instrument governing that program's execution ought to carry commensurate constitutional weight, rather than being relegated to an instrument whose amendment lies entirely within executive discretion. Understood through the lens of Hans Nawiasky's normative hierarchy discussed in Section 3.1, the *Staatsgrundgesetz* (constitutional provisions such as Article 23) establishes the obligation to legislate the budget, but leaves unaddressed the appropriate normative level for the governance mechanisms accompanying that budget—a gap that MBG's current legal architecture has resolved, by default, in favor of the lowest available instrument rather than the one most proportionate to the program's scale.

The practical consequence of this constitutional gap became starkly apparent in the 2026 BGN corruption case, in which state funds nominally authorized through the APBN Law were subsequently found to have been channeled through a foundation affiliated with BGN's own leadership—an arrangement that a properly constituted statute, with mandatory reporting obligations, independent audit requirements, and criminal sanction provisions specific to the program, would have been structurally better positioned to prevent or at least more swiftly detect (Hakim & Yuliana, 2025). This illustrates that constitutional compliance at the point of budget approval offers no guarantee of accountability at the point of budget execution, particularly where the intervening governance framework is left to sub-legislative instruments amendable at executive discretion. The disjuncture identified here, therefore, is not merely academic: it represents a structural seam in Indonesia's constitutional design for state finance—one where Article 23's

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requirement of legislative approval for the budget figure has inadvertently created a false sense of comprehensive legislative oversight, while the governance substance beneath that figure escapes the very accountability mechanisms the Constitution was designed to guarantee. This constitutional-governance gap forms the normative backdrop against which the empirical failures examined in the following subsection must be understood.

CONCLUSIONS

This study set out to examine whether Indonesia's current legal architecture for the Free Nutritious Meal Program (MBG)—anchored solely in Perpres No. 83 of 2024 and Perpres No. 115 of 2025, supplemented by internal BGN technical guidelines—is juridically adequate for a program of its fiscal scale and social risk. The analysis demonstrates that it is not. Situated within Indonesia's formal hierarchy of legislation under Law No. 12 of 2011 as amended by Law No. 13 of 2022, and examined through the analytical lens of Hans Kelsen's *Stufenbau* theory and Hans Nawiasky's classification of legal norms, MBG's foundational instruments occupy a subordinate, derivative position designed for technical implementation rather than for establishing the primary institutional and financial architecture of a program commanding Rp268 trillion in state expenditure in 2026 alone. This structural mismatch is compounded by a genuine constitutional disjuncture: while Article 23 of the 1945 Constitution is formally satisfied through the annual APBN Law's inclusion of MBG's budget allocation, the governance mechanisms determining how that allocation is institutionally managed, procured, and audited remain confined to instruments over which the House of Representatives exercises no binding legislative control—leaving the constitutional spirit of comprehensive legislative accountability substantially unrealized even as its letter is technically observed.

These theoretical and constitutional findings are not abstract concerns; they are borne out empirically. The 2026 corruption case implicating BGN's former leadership—in which program funds were allegedly channeled through an affiliated foundation for procurement mark-ups—illustrates precisely how the absence of statute-mandated financial oversight, independent audit requirements, and clear criminal sanctions created exploitable governance gaps. Similarly, the recurring mass food-poisoning incidents affecting tens of thousands of students point to the same underlying deficiency: food-safety and vendor-accountability standards that exist only at the level of internal technical guidelines lack the binding force and enforceable sanctions necessary to compel compliance from third-party partners. Both cases confirm that the vulnerabilities predicted by a hierarchical and constitutional analysis of MBG's legal foundation are not merely theoretical risks, but have already materialized into concrete governance failures with significant fiscal and human costs. Comparative analysis with law-based national programs such as the National Social Security System under Law No. 24 of 2011 concerning BPJS further underscores that statutory regulation is both achievable and precedented in Indonesia for programs of comparable or lesser fiscal scale, offering mandatory parliamentary reporting, independent audit mechanisms, and specific sanction regimes that MBG currently lacks.

Accordingly, this study concludes that MBG's legal foundation requires reconstruction rather than mere administrative refinement. The recommendation is not to declare Perpres No. 83/2024 and Perpres No. 115/2025 unlawful—both instruments fall within the President's constitutionally attributed authority and served a legitimate function in enabling the program's rapid initial establishment—but to recognize that their continued use as MBG's sole and permanent legal basis is structurally unsustainable given the program's maturation into a fixture of national fiscal policy. A dedicated statute on the Free Nutritious Meal Program, deliberated jointly by the President and the DPR, would elevate MBG's institutional framework, financial governance, food-safety standards, and third-party accountability mechanisms to a normative level commensurate with the program's scale, thereby providing the legislative oversight, binding sanctions, and audit rigor that sub-legislative instruments cannot independently supply. At the same time, this study acknowledges that statutory elevation alone is not a self-executing remedy; as the swift action of BPKP, PPATK, KPK, and the Attorney General's Office in uncovering the 2026 corruption case demonstrates, the effectiveness of any legal framework ultimately depends on the integrity and vigilance of the institutions charged with its enforcement. Future research should therefore examine not only the design of a prospective MBG statute, but also the institutional and procedural reforms necessary to ensure that a stronger legal foundation translates into genuinely improved governance outcomes in practice.

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