

# Juridical Analysis Of Conventional Or Electronic Procurement Of Goods And Services And The Role Of Government Supervisory Agency

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## ABSTRACT

Procurement of goods and services through electronics (e-procurement) is a system that can be applied because it is more transparent, effective and efficient when compared to the conventional system of procurement of goods and services (face to face). In this article the author limits the study of the effectiveness of the application of law to the procurement of goods/services by the government which is carried out through conventional and electronic methods. In this paper, using a normative juridical method, namely analyzing the enactment of the rule of law and then describing it systematically. The current legislation regarding the procurement of goods and services through electronics can be said to be ineffective because the legal regulations have not specifically regulated this matter, both in substance and in technical implementation. So it is necessary to immediately establish a law that regulates the procurement of goods and services through electronics (e-Procurement). This regulation will be the basis for implementing e-Procurement, given the increasingly complex problems in the procurement of goods and services, these regulations continue to be adjusted and changes and improvements are made, both in terms of substance and technical supporting regulations.

## ABSTRAK

Pengadaan barang dan jasa melalui elektronik (e-procurement) merupakan sistem yang dapat diterapkan karena lebih transparan, efektif dan efisien jika dibandingkan dengan sistem pengadaan barang dan jasa secara konvensional (tatap muka). Dalam artikel ini penulis membatasi kajian tentang efektivitas penerapan hukum terhadap pengadaan barang/jasa oleh pemerintah yang dilakukan melalui cara konvensional dan elektronik. Dalam tulisan ini, menggunakan metode yuridis normatif, yaitu menganalisis berlakunya aturan hukum dan kemudian menggambarkannya secara sistematis. Peraturan perundang-undangan mengenai pengadaan barang dan jasa melalui elektronik yang ada saat ini dapat dikatakan tidak efektif karena peraturan perundang-undangan belum mengatur secara khusus hal tersebut, baik secara substansi maupun teknis pelaksanaannya. Sehingga perlu segera dibentuk undang-undang yang mengatur tentang pengadaan barang dan jasa melalui elektronik (e-Procurement). Regulasi ini akan menjadi dasar penerapan e-Procurement, mengingat semakin kompleksnya permasalahan dalam pengadaan barang dan jasa, regulasi tersebut terus disesuaikan dan dilakukan perubahan dan penyempurnaan, baik dari sisi substansi maupun regulasi pendukung teknis.

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## I. INTRODUCTION

In the life of the nation, the government is encouraged to prosper the society with justice for all Indonesian citizens (Pakpahan & Sihombing, 2012) For this reason, it is obligatory for the government to provide everything that is the needs and desires of the people, in this case goods/services as well as long-term development (Ansari, 2018). In this case, the government is the administration of the government which requires goods/services. In general, the procurement of goods/services begins with a purchase or sale of goods in the market which is done in cash. However, with the development of technology which then expanded towards those using futures payment services in the form of making documents that will be accounted for by the seller and the buyer. Activities for the procurement of goods/services to certain parties must have principles, norms, and ethics so that they can regulate the determination of policies on the procurement of goods and services.

Efforts made by the parties to obtain goods or services by means of a process of reaching an agreement on the value of price, time and others are called procurement of goods/services (Adrian, 2010). The essence of a procurement of goods/services can be carried out properly, if between one party and another party, namely the provider of goods/services and or users can work together, subject to applicable ethics and norms.

In this developing era, the government must act fairly, honestly and openly, with the aim of making all government policies more effective and efficient. The purpose of public information transparency is to realize good, open, effective, efficient, and accountable governance (Nunuk Febrianingsih, 2012).

At the level of Law no. 14 of 2018 concerning Openness of Public Information, namely that each individual has the right to obtain public information services. Transparency referred to in this Law is in terms of the achievement and implementation of the wheels of government and services that are honest, clean and fair to the community.

In accordance with the above facts, there is electronic procurement abbreviated as e-procurement, a system of procurement of goods/services that uses multilevel technology and can minimize auction practices by the government that can harm the government's finances. E-Procurement itself can be interpreted as the process of procuring government goods and services and is carried out by utilizing technology and facilities that are process-based and open electronically. The implementation is done electronically based on the web/internet.

Basically the purpose of the procurement of goods and services based on Article 4 of Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services is as follows: Open system, Fair and fair business competition, Prioritizing procurement efficiency processes, Monitoring the audit process, Access accurate and real time information.

The interaction between service providers and users, and the community can be easier and can speed up the process of procuring goods/services. In essence, this e-procurement can automatically increase control in various deviations from existing regulations. The government can procure goods/services by method or by means of tendering or e-purchasing.

Basically, the e-procurement uses the internet as one of the supporting instruments, but that does not mean an agreement between the procurement committee and the participants providing goods that occurs on the internet. It is said that it is not pure and the validity of the contract does not need to be doubted, because it is also possible to enter data through the website, the goods must provide documents and offer other data in the form of hard copies. With the issuance of a Decree (SK) for the determination of goods and services, a person is appointed as the winner of the auction. In this case, it can be said that e-procurement still emphasizes on real and concrete forms or has not been able to carry out trading electronically (Yustisia, 2005).

The implementation of the e-procurement system in all agencies with the hope of preventing waste of state finances, that is, the target starting in 2012 is at least 70 percent of all expenditures and around 40 percent of the provincial, city and district governments used in the procurement of

goods/services should be mandatory. using an electronic system. The sixth president, Susilo Bambang Yudhoyono, asked the relevant ministers to review and test the implementation of the e-procurement system with the aim of not causing corruption in the implementation of the provision of goods and services by the government (Indonesia Corruption Watch, 2013).

For the Corruption Eradication Commission (KPK), e-procurement is a weapon to eradicate corruption (Winsherly Tan, Asmin Patros, 2018). The government in the sector of the procurement of goods/services has a big target to be well controlled. In order to prevent corruption in the procurement of goods/services, Presidential Regulation Number 54 of 2010. Article 111 of Presidential Regulation Number 16 of 2018 regulates the establishment of electronic procurement services to facilitate procurement service units or ULPs to procure and implement government procurement of goods and services.

Procurement of goods and services or (e-procurement) is not without problems but remains at a good level. Conventionally, the procurement of goods/services has implemented using e-procurement compared to the manual method. So based on the description above, this paper will limit the discussion to the effectiveness of the legislation on the procurement of government goods/services both conventionally and electronically.

## II. RESEARCH METHODS

The juridical-normative approach is used by the author to analyze the study along with the rules that apply in the community then describe it and analyze it systematically (Mubaryanto dan Suratmo M.Suparmako, 1987). The data sources used include: Data source, The study uses secondary data, which consists of:

1) Primary legal materials consisting of:

- (a) 1945 Constitution
- (b) Law Number 30 of 2002 concerning the Eradication of Criminal Acts of Corruption.
- (c) Law Number 11 of 2008 concerning Information and Electronic Transactions.
- (d) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions.
- (e) Presidential Decree No. 80 of 2003 was changed to Presidential Decree No. 54 of 2010 concerning the procurement of government goods and services.
- (f) Presidential Regulation Number 16 of 2018 concerning Government Procurement of Goods/Services.

2) Secondary legal materials, namely materials that are closely related to primary legal materials.

3) Tertiary legal materials, namely materials that provide guidance as well as primary and secondary legal materials. The tertiary legal materials used in this study are in the form of legal dictionaries, large Indonesian dictionaries, large English dictionaries, encyclopedias and so on.

Data collection technique, The data collection tool used in this research is literature study. Data analysis, In this study, the qualitative analysis method was used, namely the data obtained in the form of activities on the results of data processing to draw conclusions and analyzed into synergistic data for easy understanding (Soerjono Soekanto dan Sri Mamudji, 1985).

## III. RESULTS AND DISCUSSION

The procurement of goods and services needs to be carried out more honestly, transparently, and with fair treatment for all parties involved. Therefore, it is necessary to formulate a strategy and plan for the development of policy determination on the laws and regulations for the procurement of government goods and services and the demands for good, directed, sustainable, integrated, and properly coordinated environmental development (Romli Atmasasmita, 2014). E-procurement will be considered better because its implementation is directed precisely, effectively, efficiently and

transparently so as to minimize fraudulent practices that can harm state finances. The auction process itself will be fair and competitive (Andriana, 2021).

The effectiveness of e-procurement is seen from the effectiveness of the legislation. can be seen from several factors regarding the effectiveness of legislation (Achmad Ali, 2009), namely:

- a. Contents of the Law
- b. Techniques for acquiring knowledge
- c. The scope of legislation in society related to institutions.
- d. The process of the birth of legislation that was born not in a hurry for the sake of a moment.

Viewed from 2 (two) perspectives on the effectiveness of the legislation, namely:<sup>1</sup>

- a. The perspective that views the rule of law as an institution in terms of its characteristics, this perspective is called the organizational perspective.
- b. Focusing more on the individual/personal, as well as associations regulated by law, this perspective is called the individual perspective or obedience.

There are several issues that the author wants to examine, including:

- a. Urge the need to draw up immediately when the need for legislation arises.
- b. The emergence of necessary changes to the applicable legislation.
- c. The legislation in this life is why it is needed.
- d. Who is involved in forming and compiling the legislation.
- e. Anyone who is in the groups who are in the pressure-groups in society.

Regarding the laws and regulations that will be reviewed relating to e-procurement are:

- a. Presidential Regulation Number 16 of 2018 concerning the procurement of government goods and services.
- b. Law No. 17 of 2003 concerning state finances.
- c. Law No. 19 of 2016 concerning information and electronic transactions.
- d. Law number 14 of 2008 concerning the disclosure of public information.

#### **I. E-Procurement In Terms Of The Legal Effectiveness Of Presidential Regulation Number 16 Of 2018 Concerning The Procurement Of Government Goods And Services.**

The latest Presidential Regulation Number 16 of 2018 is regulated and is always changing. The procurement of goods and services in Presidential Regulation Number 54 of 2010 is regulated in articles 69 to 73. The existence of KKN practices so that e-procurement arrangements are urged because they are based on phenomena that occur in society where the process of procurement of goods and services is very much indicated by fraudulent practices (Wardhani et al., 2021). Transparency international in the corruption perception index (CPI) issued e-procurement which became news or a very important issue in eradicating corruption in Indonesia.

Until now, the central government, regional governments, BUMN, BUMD in Indonesia have implemented electronic procurement of goods and services. Agencies in Indonesia that use e-procurement as of June 2019 have reached 731 agencies, both at ministry agencies, institutions, provinces, BUMN, regions, cities and universities. Procurement packages from 2012 to 2018, procurements auctioned through e-procurement were 1,037,957 packages and of them in 2018 reached 375,021 packages. In 2018 and 2019 the percentage difference between the auction ceilings was 18.39% in 2018 and 20.08% in 2019 (Indonesia Corruption Watch, 2021).

The procurement process is already vulnerable to leaks, it is no longer a special secret but has become an open secret that every procurement of goods and services always has the nuances of Corruption, Collusion and Nepotism (KKN). Why is that, because with every procurement that if you have connections with related parties, you will give a fairly large

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<sup>1</sup> Ibid.

commission, for whoever will give the most then he is the winner of the tender. After the existence of this e-procurement, it will minimize and minimize the space for KKN (Anggeline, 2016).

Changes in this process make the interaction process between service providers and service users run well. The implementation of e-procurement is no less important, it can improve the control system for various irregularities and violations of existing rules (Rossita et al., 2014).

Management and procurement can achieve the target desired by the government if it is supported by Human Resources who are certainly reliable in their fields and can be competent and have high integrity. The implementation of the Pokja for the selection committee for procurement officials and prior to the establishment of the main tasks of procurement work, it was controlled by the project leader. The procurement committee is vulnerable to internal and external pressure due to the lack of achievements, especially the tender committees who can seriously and effectively implement them. A poor procurement system can lead to corruption and weak administrative legal sanctions (Beridiansyah, 2017).

The supervision system is also very important to pay attention to in addition to the problem of Human Resources, there are still many procurements of goods and services carried out in closed booths. The procurement process will not be accommodated, public involvement in overseeing the auction is still dominated by several business actors (Andriyani Susan, 2012). Information regarding direct appointments and related documents is difficult to access by the public so that project implementation under public supervision will be difficult and as a result the project becomes random and undirected.

Violations in the process of procurement of government goods and services regarding sanctions for every violation of the process of procurement of goods and services have been regulated in presidential regulation no. 16 of 2018, but the sanctions are less strict because the general punishment is only to compensate for losses and is only included in the black list data, even though the violation includes civil and criminal violations.

In addition to legal products, regulations for the procurement of goods/services in the legislation can still change if the president changes. Therefore, there is a need for strict regulations governing consistent procurement and must have strict sanctions and suppress fraud in the auction process.

The law on the procurement of goods/services electronically would be able to reduce the number of budget leaks. Therefore, the implementation of procurement projects is regulated in the law starting from procurement, planning to implementation and its existence regulates procurement. The regulation of the procurement of goods and services electronically is an effort to prevent leakage of budget use. The law must also include coercive rights to prevent corruption and also not escape strict sanctions (Tim Pengkajian SPKN, 2002).

## **II. E-Procurement In Terms Of The Legal Effectiveness Of Law No. 17 Of 2003 Concerning State Finances.**

State finances which in a broad sense include state finances, APBD, APBN in a narrow sense actually depend on the government's point of view. State finances are located in all state-owned enterprises in their respective fields.

One of the largest state expenditures is the procurement of goods and services as well as the shortcomings faced in the procurement of goods/services because in the implementation of payments using funds sourced from the APBN. Given the large budget spent on this procurement, its management should be regulated in order to avoid state losses. Even the smallest expenditures must be accounted for considering the money used for procurement comes from public money.

The state's loss in this case is, Lack of money, securities and goods that are real and definite in number as a result of unlawful acts, whether intentionally or negligently.

According to the Supreme Audit Agency (BPK), what is called a state loss is Article 1 paragraph (2) of Law Number 1 of 2004 concerning State Treasury: "an act that violates the law (reduction in state wealth) and or is caused by circumstances beyond and beyond human capabilities (force majeure)". State losses can be viewed from several elements:

- a) Material (object): securities, goods, and money.
- b) State/region: legal subject of loss sufferer
- c) Acts against the law
- d) In rupiah and goods the real and definite amount.

Law No. 1 of 2004 concerning the state treasury is regulated in articles 59 to 67 which is a settlement based on state losses. These provisions are regulated as follows:

- a) Violating the law or negligence of any person or business actor who violates the law will be immediately resolved by the applicable laws and regulations. Violation of the law, the negligence of an official that harms state finances, which is committed and takes over the authority of the treasury, must also be resolved with the applicable rules.
- b) Losses caused by civil servants who are not treasurers, or treasurers or other officials whose actions violate the law are obliged to compensate for such losses.
- c) The ministry or institution knows that in the agency there is a state financial loss, the ministry or institution immediately demands compensation from the party concerned.

In Chapter XI Article 59 of Law no. 1 of 2004 reads:

"Any regional state losses caused by unlawful acts or negligence of a person must be immediately resolved in accordance with the provisions of the applicable laws and regulations. The treasurer, non-treasurer civil servant, or other official who because of their actions violates the law or neglects the obligations imposed on them directly harms the state's finances, is obliged to compensate for the loss. The claim for compensation is made by the head of the state ministry/institution/head of the regional work unit, as soon as it is known that a loss has occurred in the work environment".

The management of state finances in the procurement of goods and services has 2 responsibilities, namely individual responsibilities and position responsibilities (Darmansyah, 2015). The role of this financial organizer is very important in financial management. The authority of an official in terms of leadership should always be careful to take a policy stance within the authority of budget control (Labolo, 2016).

The implementation of e-procurement is seen from a legal point of view that state finances can be said to be one of the ways to prevent irregularities and misappropriation of state finances.

Financial organizers as the management of state finances always adhere to the principles and always comply with all applicable rules. The rules for administering state finances are regulated in various regulations. However, the protection of financial providers still requires important handling. The government in this case as much as possible regulates the financial misappropriation administratively and distributes it in its place.

Protection of state financial management due to internal and external pressures related to the management of government goods and services can be realized by managing financial funds from KKN with an electronic goods/service procurement system. The law on state finances needs to be revised again by adding articles that contain protection for financial managers.

### **III. E-Procurement Legal Effectiveness In Terms Of Law Number 19 Of 2016 Concerning Amendments To Law Number 11 Of 2008 Concerning Information And Electronic Transactions.**

The importance of e-procurement in the procurement of goods and services after the government stated that it issued legislation explicitly according to presidential instructions no. 3 of 2003 concerning national strategic policies where in Appendix I it is stated that the procurement of goods/services electronically can be used on a government website that is part of

the economic program of policy actions and the efficiency of state budget spending (Supraba & Bandiyono, 2018). To increase efficiency in state spending, there are four agencies, namely the Ministry of National Development Planning, the Ministry of State Secretariat, the Ministry of Communications and Information Technology and the Coordinating Ministry for the Economy.

On November 25 of 2016, the government issued Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning information and electronic transactions. The birth of the ITE Law is a milestone in the legal umbrella for information and electronic issues. In addition, there are problems that arise with the use of technology such as electronic transactions, copyrights, disputes and others. The ITE Law is here to provide a legal basis for the implementation of electronic procurement of goods/services.

The government in this case as the organizer of the procurement of goods/services electronically. It is different again for officials, in this case the government, who is in the contractual context of making commitments in signing contracts. This ITE Law is presumed liability because it is impossible for consumers to prove the fault of the system.

As an e-procurement manager, the government gets data from the company after it is checked and matched with the original. That's because there are still some processes that use the manual system. Then the data is scanned and sorted according to the data entered and uploaded to the e-procurement system. Companies in terms of being users of goods/services are required to also send original documents or data to the auction committee. The original data or documents intended are:

- a) Insurance issued by commercial banks such as down payment guarantees, performance guarantees, and bid guarantees.
- b) Prices, types of goods/services that are included in the offer letter.
- c) A draft containing a work plan document and several personnel to support the work to be auctioned.
- d) Shows current individual tax payments or corporate taxes, and ;
- e) Attach several documents that may be deemed necessary to complete the auction process

e-procurement pays attention to several aspects that are needed, namely (Adrian, 2010):

- a) Security aspect
- b) Aspect of confidentiality
- c) Integrity aspect
- d) Availability aspect
- e) Non reduction.

Aspects that guarantee security and ensure the confidentiality of data and information consist of three things, namely confidentially, integrity, and availability or also in short CIA. In this aspect, when a leak occurs in the case of the auction, it can result in the cancellation of the procurement. Security and confidentiality can be implemented in various ways, one of which is using cryptography technology (Haryadi & Ladjamuddin, 2017).

Aspects of integrity, aspects that ensure that the real data that has been sent cannot be changed without the permission of the authorized parties. In this aspect, it is very important to reduce violations that cause the e-procurement to not run properly. Judging from several ways to guarantee this technically, such as by using digital signatures, hash functions, and message authentication codes.

The third party, namely the (CA) Certification Authority, in this case, who is entrusted with being able to provide certainty for the identity of an updated customer or client (Cahyadi, 2009). The assurance provided by this CA itself for the world to develop the CA itself. In Indonesian CA, guidelines for the Minister of Communication and Information Technology have been issued No. 29 of 2006 concerning guidelines for the implementation of CA. Regulation of

the Minister of Communication and Information Technology No. 29 of 2006 concerning Guidelines for the Implementation of CAs and these guidelines explain the organization and management of CAs, the role of the government to provide legal certainty to protect the risk of the CA's actions, as well as the implementation of the CA, and the security of the use of the CA in electronic transactions.

Availability aspect is an aspect that can guarantee the availability of data at any time when needed. You can imagine when the bidding process data is ongoing and it turns out that the system cannot be accessed so that the offer cannot be accepted. And this can be detrimental to other parties.

There are several standards that can be followed which are formal in nature to those that are more practical and operational in nature. Security issues must be taken seriously. Therefore, it is necessary to handle or manage electronic transactions. This handling is to minimize the occurrence of problems or risks that will arise in the future, and it is hoped that the application of this method must be careful in applying it. This security problem is the main problem that can make it difficult for an institution or agency to switch to an e-procurement system.

E-procurement will not always run smoothly, of course there will be obstacles or challenges related to the implementation of procurement. But by not closing the possibility that the name of the problem must be able to find a solution point and be able to track the existence of the problem. The challenges or obstacles that will be encountered by e-procurement are, the initial mode, technical complexity, and online vendor relationships.

The government regulates technically to be able to overcome this problem, namely by issuing a Law that regulates information and electronic transactions, known as the ITE Law. Every ITE problem will always be considered. However, the issue of e-procurement itself is not specifically regulated in this law. But it would be better for the government to be more specific in regulating the procurement process so that it can run safely and can create a clean government and can reduce corrupt practices ( et al., 2020).

#### **IV. E-procurement Is Reviewed From Law Number 14 Of 2008 Concerning Public Information Disclosure.**

In this public information disclosure, the government must be more open so that government administration, in this case, procurement management can be efficient (Nunuk Febrianingsih, 2012). Improvements need to be made in every agency. This improvement aims to create good governance reforms because this procurement is one of the government's activities that is closely related to state financial problems.

This public information disclosure is one of the efforts of the government or public officials to implement the e-procurement system. Moreover, with the issuance of Law no. 14 of 2008 will provide additional information openly to the public, users and providers of government goods/services. This law is reluctant to be accepted by entrepreneurs who procure the goods/services.

Law No. 14 of 2008 concerning the disclosure of public information as one of the implementers of e-procurement that supports an important step. In this Law, public information can be defined as: "Public information is information that is generated, stored, managed, sent, and/or received by a Public Agency related to the organizers and administration of the state and/or the organizers and operations of other Public Bodies. accordance with this Law as well as other information related to the public interest". While what is meant by public



bodies are: "Public bodies are executive, legislative, judicial and other bodies whose main functions and duties are related to state administration, which part or all of the funds are sourced from the state revenue and expenditure budget and/or regional revenue and expenditure budget. , or non-governmental organizations as long as part or all of their funds are sourced from the state revenue and expenditure budget and/or regional revenue and expenditure budget, community donations, and/or abroad.

In carrying out public services, public bodies have and carry out tasks and functions whose funds are sourced from the APBD/APBN. Not all information must be disclosed, for example information that is a business secret, one of the rights of the company, as well as state information and information for personal consumption.

Every person has the right to be able to obtain public information in accordance with the provisions of the Law on the Openness of Public Information and can be accessed by everyone and all groups, especially for the public interest itself related to the management of state financial funds.

Procurement of government goods and services is one of the public servants in accordance with article 5 of the law on public information disclosure, namely Law Number 14 of 2008. The purpose of this law is to make procurement management more transparent, efficient, and effective and accountable. This public information disclosure is expected to be able to realize and support the implementation of e-procurement so that the public can also supervise the management and supervision of government procurement of goods/services.

#### IV. CONCLUSION

The laws and regulations governing the electronic procurement of goods/services have not been effective. Due to the deterrent effect for perpetrators who commit irregularities, it is hoped that more stringent sanctions will be given to violations of the e-procurement fraud process. As well as having strong legal force so that the implementation of e-procurement can be carried out and carried out as well as possible. The government makes various laws and regulations regarding the implementation of the procurement of goods/services electronically in this case in order to get maximum results and run as expected. as well as using other supporting rules.

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