

## CHALLENGES AND OPPORTUNITIES IN GOVERNMENT PROCUREMENT LAW IN THE DIGITAL ERA

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### ABSTRACT

*Procurement of government goods and services is one of the important activities that must be carried out by the government to meet its needs in carrying out its duties and functions. Government procurement of goods and services also plays a role in spurring economic growth and improving community welfare. The aim of this research is to analyze the legal challenges and opportunities for government procurement of goods and services in the digital era. This research uses normative juridical research methods. The data collection technique used in this research is literature study. The data analysis technique used in this research is qualitative analysis. The research results show that the digital era has brought changes and new challenges in the procurement of government goods and services, including cyber security, unclear regulations and competitive inequality. Meanwhile, legal opportunities for government procurement of goods and services in the digital era include efficiency and effectiveness, transparency and accountability, and increased participation.*

### KEYWORDS

*Challenges, Opportunities, Procurement Law, Goods and Services, Government*



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### INTRODUCTION

Procurement of goods/services in essence is the effort of the user party to obtain or realize the needed goods/services, utilizing specific methods and processes to reach agreements on specifications, prices, timing, and other arrangements (Kurnia, 2023). Procurement of goods and services can also be conducted by the government, as stated in Article 1 of Presidential Regulation Number 16 of 2018 as amended by Presidential Regulation Number 12 of 2021. Government Procurement of Goods/Services is the activity of procuring goods/services by

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Ministries/Agencies/Regional Devices funded by the State Budget/Regional Budget, from the process of identifying needs to the handover of work results (Wahyudi, 2022).

Government procurement of goods and services plays a central role in carrying out governmental tasks and functions. The success of the government in meeting its needs through procurement not only ensures operational smoothness but also has significant impacts on economic growth and societal welfare. The government procurement process involves a number of complex activities, including selecting providers of goods or services, contract negotiations, and risk management. Therefore, government procurement of goods and services faces challenges and opportunities, especially in the digital era.

The digital era refers to a period where information can be easily and rapidly obtained and disseminated using digital technology. This includes rapid technological advancements and progress towards digitalization in various aspects of life. This era is marked by the ability to communicate closely despite distances and rapid access to specific information, even in real-time. The digital era also signifies globalization, where all humans are interconnected through the internet, enabling various activities such as shopping, communication, and online gaming to be easily conducted (Habibah, 2021).

Previous research by (Muskibah & Hidayah, 2020) examined the application of the principle of freedom of contract in standard government procurement contracts in Indonesia. The research found that standard/adhesion contracts contradict the principle of freedom of contract, and it is known that freedom of contract exists in standard government procurement contracts in the pre-contract stage. In the contractual and post-contract stages, freedom of contract is only an implementation of legal provisions. Therefore, this research recommends the need for changes in provisions regarding the rights and obligations of parties in the pre-contract, contractual, and post-contract stages.

Another study by (Nainggolan & Sipahutar, 2022) examined government procurement training based on Presidential Regulation number 12 of 2021. The research findings showed that government procurement training is highly needed by procurement managers, where procurement managers at Ministries/Agencies/Local Governments must have certificates of expertise in procurement. This training will have a significant impact when theoretical learning is combined with applicable practices, and it should also be accompanied by discussions so that participants can answer exam questions well in certification exams.

The novelty of this research lies in its object of study, namely the legal challenges and opportunities of government procurement of goods and services that have not been previously researched. The implications of this research can help develop regulatory frameworks that are more responsive to technological and business environment changes. Additionally, understanding the opportunities for efficiency, transparency, and participation offered by the digital era can help formulate new theories and concepts in the field of public administration law. The aim of this research is to analyze the legal challenges and opportunities of government procurement of goods and services in the digital era.

## RESEARCH METHOD

This research employs a normative juridical research method. The normative juridical research method is a juridical approach conducted based on primary legal materials by examining theories, concepts, and legislation related to the conducted research (Rohman, 2021). The data collection technique used in this research is literature review. The literature review data collection technique is a method of collecting data by examining theories, opinions, and main points found in written sources such as books, journals, encyclopedias, and other documents. Literature reviews rely on research materials from libraries and other literary sources as data sources (Syafitri & Nuryono, 2020). The data analysis technique used in this research is qualitative analysis. Qualitative analysis is conducted by analyzing and interpreting the collected data to produce relevant conclusions with the research objectives.

## RESULT AND DISCUSSION

The government is making numerous efforts to enhance national development, which is defined as a collective effort between the people and the state to improve towards a better condition. Despite being a conscious effort by society to improve its well-being, national development has not yet been effectively realized in daily life. Development tends to be temporary and unsustainable, reaching a certain point without continuity. Consequently, various economic, social, and environmental issues arise (Yoriska, 2020).

These issues increasingly urge every country and its society to reconsider their national development concepts. One way the government can enhance national development is through procurement of goods and services. According to Kamal, (2020), the role of Government Goods/Services Procurement is significant in implementing national development to improve public services and develop the national and regional economy. Meanwhile, as stated by Pane, (2017), procurement of goods and services for government purposes is one instrument to stimulate economic activity, aiming to enhance national economy for the welfare of society. This is because procurement of goods and services, especially in the public sector, is closely linked to national budget management. Based on these facts, optimal procurement of goods and services by the government can assist in the implementation of national development.

In the policy of Presidential Regulation number 12 of 2021 concerning Amendments to Presidential Regulation number 16 of 2018 concerning government procurement of goods/services, article 1 explains that Government Goods/Services Procurement, hereinafter referred to as PBJ, refers to procurement activities conducted by Ministries/Regional Apparatus Organizations. These activities are funded by the State Budget/Regional Budget, and involve processes from identifying needs to handing over the work results. Currently, procurement of goods and services is undergoing transformation alongside the development of the digital era.

The digital era encompasses the use of digital technology, where operations no longer rely solely on manual human efforts but focus more on automation with computational systems. Continuous advancements in digital technology create a

new dimension, the virtual space, which eliminates barriers of distance and time in communication (Setiawan, 2020). The significant changes brought by the digital era affect various aspects of life, including government procurement processes. Over time, procurement methods that previously relied on manual systems have evolved with the adoption of electronic procurement through online connectivity. Law no. 12 of 2021 explains that there is electronic procurement service, namely information technology management services to facilitate the implementation of electronic procurement of goods/services. The change in procurement systems brings both challenges and opportunities in government procurement of goods and services. One major challenge in government procurement of goods and services involves cybersecurity aspects, regulatory ambiguity, and lack of participation in competition.

Cybersecurity attacks are a natural consequence of information technology advancements in this era. According to research by (Laksana & Mulyani, 2024), cybercrime includes various types of attacks that need to be understood. One of them is malware attacks, where malicious software is deployed into computer systems to damage or steal data. Another type of attack is phishing, where perpetrators attempt to obtain personal data by deceiving users through fake emails or websites, a common occurrence as well. Another serious threat is Distributed Denial of Service (DDoS) attacks, involving attackers trying to make a target site inaccessible by sending massive internet traffic to it. Additionally, emphasis on cybersecurity in procurement of goods and services adopting digital technology allows for increased risks related to potential data leaks, hacking attempts, and other rising cyber threats.

According to Yuniarti et al, (2023), the impact of weaknesses in cybersecurity exploited by cybercriminals associated with procurement contexts can have significant consequences, such as:

1. Financial losses: Weaknesses in cybersecurity can open opportunities for cyberattacks and fraud. Such attacks can lead to significant financial losses for both the government and service providers. Cybercriminals who successfully breach security systems can steal financial information, access accounts, or cause financial losses through fraudulent transactions. The consequences may include public fund losses, recovery costs, and detrimental economic impacts.
2. Loss of trust: Weak cybersecurity can raise concerns and doubts among the public regarding the government's integrity in procurement processes. If sensitive data or crucial information is exposed, it can lead to loss of trust in the government's ability to protect information provided by citizens. Loss of trust can have long-term impacts on the relationship between the government and the public, as well as the reputation of related institutions.
3. Disruption of procurement processes: Cyberattacks can cause serious disruptions to the procurement process. These disruptions may include communication system breakdowns, vital data damage or theft, or even procurement process manipulation. This not only slows down procurement of goods and services but also hinders the delivery of goods and services needed by the government or the public. The impacts may include delays in strategic

projects, uncertainties in public service provision, and economic losses due to procurement process instability.

In addition to cybersecurity challenges, other challenges arise such as regulatory ambiguity. Some regulations in government procurement law still lack clear legal foundations, which can hinder the implementation of procurement processes. In particular, the theory of legal certainty is crucial to ensure that any legal-impactful actions or activities in the Government Goods/Services Procurement process, especially those related to construction services, receive legal clarity. This aims to avoid potential issues that could lead to conflicts among involved parties (Siregar et al., n.d.). Additionally, existing procurement regulations are not yet fully responsive to digital technology advancements, thus creating uncertainty and confusion in the application of online procurement systems.

Regulatory ambiguity results in legal uncertainty consequences, where ambiguity in Government Goods/Services Procurement regulations can create doubts and confusion among involved parties, including procurement officials, goods and services providers, and the public. This situation provides opportunities for abuse of power because unclear rules can open the door to unethical actions by procurement officials, such as tender manipulation and potential corruption (Akbar, n.d.). Another impact is inefficient procurement processes. Regulatory ambiguity can slow down procurement processes, leading to increased procurement costs and delayed desired public services. Unclear standards and specifications can also impact the quality of goods and services. Without clarity in the rules, it may be difficult to determine clear standards, resulting in procurement of goods and services that do not meet the desired quality standards. Therefore, regulatory ambiguity can hinder the achievement of the main goals of the procurement process, which is to obtain quality goods and services that meet the needs of the public.

The next challenge is inequality in competition, which arises as a result of Information and Communication Technology (ICT) advancements in government procurement of goods and services. ICT developments create new digital-based businesses that can have advantages in government procurement of goods and services due to broader access to information and technology. However, the practices implemented so far have not moved in line with the desired concept. Both in terms of technology, human resource management, and the emergence of resistance resulting in minimal participation (Adrian et al., 2013).

Weak participation of SMEs and local entrepreneurs in online procurement is caused by several factors. Firstly, the lack of digital infrastructure in remote areas hampers the involvement of local entrepreneurs. Secondly, financial constraints in participating in training and education related to ICT are also limiting factors, and finally, dominance by stronger rulers. Especially the dominance of large entrepreneurs with strong resources and expert teams can facilitate their adaptation to the ICT system. Both financially strong allow them to participate in large tenders, and their extensive networks provide an advantage in the procurement process.

Disparities in access to technology and information in electronic procurement can limit participation, especially for SMEs, and potentially create unhealthy competition. The impact of this unequal competition is limited participation of SMEs and local entrepreneurs in government procurement, potentially lowering the

quality of goods and services due to minimal competition, as well as the potential loss to the state due to fraudulent practices and monopolies.

Challenges in procurement of goods/services are common in the digital era and must be faced. However, the digital era also presents legal opportunities that can be maximized. It involves increasing effectiveness and efficiency, increasing transparency and accountability, and providing support to enhance participation in the procurement process.

The digital era has the potential to improve the efficiency and effectiveness of government procurement of goods and services through the utilization of Information and Communication Technology (ICT), for example, such as the existence of e-procurement platforms with LPSE websites. According to Francesco & Hastuti, (2022), evidence of the use of information technology in government procurement processes is the use of e-procurement. According to Presidential Regulation 54 of 2010, e-procurement is the electronic procurement of goods/services using information technology in accordance with applicable regulations. The benefits of adopting technology in government procurement involve several aspects (Mulyono, 2017) such as:

1. **Process automation:** E-procurement platforms can automate various manual processes in procurement, including tender announcements, document submissions, and bid evaluations. This not only saves time but also reduces costs associated with the Procurement of Goods and Services (PBJ). Open electronic auctions can be attended by more participants, increasing competition and encouraging more competitive pricing.
2. **Increased market access:** E-procurement platforms open opportunities for small and medium-sized enterprises (SMEs) from various locations to participate in government procurement. This significantly increases their chances of obtaining contracts. A transparent and competition-oriented e-procurement system creates a healthy and conducive business environment for all stakeholders.
3. **Data and system integration:** Utilization of e-procurement platforms integrated with other government information systems, such as financial and customs databases, allows the PBJ process to become more integrated and efficient. Data integration helps the government track and analyze PBJ performance, providing a basis for more targeted improvement measures.
4. **Enhanced procurement quality:** E-procurement platforms can be equipped with features that help evaluate bid quality, such as assessment and verification systems. This supports the government in selecting providers of goods and services with the best quality. Electronic systems can also help monitor and evaluate supplier performance, ensuring that goods and services received by the government meet desired quality standards.

Implementation of automation through e-procurement platforms has the potential to increase transparency and accountability in government procurement of goods and services, as it is openly accessible to the public. Another advantage in utilizing technology in government procurement of goods and/or services with an e-Procurement system is that the entire workflow process can be recorded and tracked entirely, making it easy to trace if there is any misuse in the government

procurement process later on (Nurlukman, 2017). In this context, increased accountability and integrity can also be achieved by first, reducing bribery and collusion practices through the implementation of e-procurement platforms in the Procurement of Goods and Services.

All procurement process sequences are recorded and documented electronically, facilitating easier and transparent auditing processes. Electronic systems allow for stricter supervision of procurement activities, reducing the chances of unethical behavior. Furthermore, the application of electronic records for audit and monitoring purposes enables procurement processes to be supervised and examined more effectively. Electronic records facilitate inspections by authorities and allow for quick disclosure if there are discrepancies or procedural violations. Thirdly, tracking fund flows in procurement of goods/services efficiently with the assistance of electronic systems helps prevent budget misuse and ensures that funds are used in accordance with applicable rules and policies.

Concrete implementation of e-procurement has positive impacts on government procurement of goods/services, also stimulating public participation. Unlike conventional government procurement implementations, which often create negative perceptions in society due to corrupt practices (Corruption, Collusion, and Nepotism). Practices of misuse, such as giving money to auction executors, and reducing the number of packages to increase the budget, become major problems that need to be addressed (Novitaningrum, 2014). Through technology, these problems can be minimized due to principles of transparency and accountability, and the public can contribute to determining the specifications of goods/services, providing perspectives on the bidding process, and being involved in evaluations.

Public involvement not only promotes transparency and accountability but also supports integrity in government procurement, encouraging more ethical practices. Therefore, efforts are needed to minimize challenges and optimize existing opportunities. In order to reap significant benefits from the utilization of technology and information in the digital era in government procurement of goods and services, the following efforts need to be made:

1. **Enhancing cybersecurity:** The government must increase the level of cybersecurity in government procurement of goods and services systems, involving policies, guidelines, processes, and actions to reduce the risks of violations, intrusions, or electronic data theft. Steps need to be taken to ensure that electronic transactions in government procurement of goods and services are carried out with minimal security risks. This includes implementing cybersecurity policies and actions to protect information system assets from threats such as intrusion or data theft.
2. **Regulatory refinement:** Refinement of government procurement of goods and services regulations needs to be carried out to adapt to digital technology advancements. Regulations governing government procurement of goods and services need to be continuously updated and adjusted to digital technology developments. This aims to ensure that the regulations remain relevant and can support the more effective use of technology in the procurement process.

3. **Human Resource Development:** The government must develop the skills of procurement officials and goods and services providers in using digital technology. Human resource improvement is key, where procurement officials and providers must have sufficient skills and knowledge to maximize the use of digital technology. Training and skill development are essential to ensure effective technology utilization.
4. **Application of principles of transparency, accountability, and participation:** The application of principles of transparency, accountability, and participation in government procurement of goods and services is needed. The procurement process needs to be conducted transparently, with high accountability principles, and involve active participation from the public. This can create public trust and ensure fairness in the government procurement process.

Through the implementation of these efforts, it is hoped that legal opportunities in the government procurement of goods and services process can be maximized, which includes increasing effectiveness and efficiency, as well as accountability and transparency, then stimulating increased public participation. The goal is to reduce challenges such as cybersecurity risks, regulatory uncertainty, and inequality in competition. Collaboration between the government, goods and services providers, and the public is expected to create a procurement system that is not only efficient and transparent but also adaptive to technological developments. Thus, the government can use procurement activities as a strategy to accelerate national development. The hope is that these efforts can provide sustainable positive impacts, address temporary development issues, and improve overall societal welfare.

## CONCLUSION

The digital era has brought significant transformation in government procurement of goods and services, leading to a number of changes and challenges that need to be addressed. One crucial aspect in this context is cybersecurity, which is a primary concern in carrying out the procurement process. Other challenges include regulatory uncertainty and inequality in competition in the digital space. However, alongside these challenges, there are also legal opportunities that can be leveraged in the context of government procurement of goods and services in the digital era. Efficiency and effectiveness are key points, where the use of technology can enhance the procurement process. Furthermore, the existence of digital platforms can provide better transparency and accountability, optimizing procurement governance. Increased participation is also a positive opportunity in the digital era, where more parties can actively engage in the government procurement process.

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