

## THE GOVERNMENT GOODS AND SERVICES PROCUREMENT IN THE 5.0'S SOCIETY ERA: SHARIA ECONOMIC LAW PERSPECTIVE

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**Abstract:** This study aim to analyzing the government goods and services procurement in the 5.0's society with *Sharia* economic law perspective. This research used normative juridical method based secondary data. Data analyzed by qualitative analysis methods. The results of the study conclude that Presidential Regulation Number 16 of 2018, LKPP Regulation Number 11 of 2018 and Presidential Regulation Number 17 of 2023 as a constitutional basis for adaptation the 5.0. Society Era in the government goods and services procurement was accordance with the *Al-Qur'an*, *Al-Hadith*, and the *mu'amalah* principles which include: The Law of Origin in *Muamalah* is *Mubah* (permissible), realizing Benefit, eliminating Competitive Prices, Eliminating Unethical Interventions Prohibited, Avoiding Exploitation, Honest and Trustful. Apart from that, it is also in accordance with *Sharia* Economic Law which contains the *ikhtiyari* principle (voluntary); trustworthiness (keep promises); *Luzum* principle (unchanged); the mutual benefit principle; *taswiyah* principle (equality); transparency principle; ability principle; *taysir* principle (convenience); the good faith principle; lawful cause; the *al-Hurriyah* principle (freedom to contract), but still does not consider the principle of *ikhtiyati* (prudence).

**Keywords:** Government goods and services procurement, The 5.0's Society Era and Sharia Economic Law

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### Introduction

The presence of the 5.0's society era on January 21 2019 as a solution the Industrial Revolution 4.0 which was feared would degrade humanity (Bahrin, 2016), has now become a new discourse in the civilization of human life, nation and state. This era initiated by the Japanese government (Nastiti, et al. 2020), is a clear concept (Fukayama, 2018). Furthermore, The 5.0's Society era is a human-centered era that can balance economic progress with solving social problems using a system that integrates advances in cyberspace technology: big data, the internet of things (IoT), artificial intelligence, robots, drones, sensors , 3D print, public key infrastructure (PKI), sharing, on demand, mobile, edge, cloud, 5G, virtual reality (VR), augmented reality (AR) and mixed reality (MR) and physical (Hendarsyah, 2019). In Mahmudi's explanation (2019) he said 5.0's society is an information society built on the 4.0's society, which aims to create a prosperous society that is centered on humans.

Although 5.0 society originated in Japan, its goal is not just for the welfare of one country. The developed frameworks and technologies will contribute to solving the challenges of societies around the world. In fact, the concept of society 5.0 is in accordance with the philosophy of the nation and ideology of the Republic of Indonesia, namely *Pancasila* which is the *Grundnorm* (basic norm) for all the life of the Indonesian nation. *Pancasila* is the nation's philosophy and forms the basis for the formation of laws. In *Pancasila* there is a philosophical basis for consensus deliberation and social justice as the main pillars of all laws and regulations,

including the President Regulation Number 16 of 2021 concerning procurement of government goods and services, LKPP Regulation Number 11 of 2018 concerning Electronic Catalogs and Presidential Regulation Number 17 of 2023 concerning the Acceleration of Digital Transformation in the Sector of Government Goods/Services Procurement.

The government goods and services procurement is an important motor in driving the development of a country in order to improve the welfare of its people. In Indonesia, The government goods and services procurement is the embodiment of the fourth paragraph of the Preamble of 1945 Constitution, namely ".....advancing public welfare, ....." (Sudjatmoko, 2018 : 286). The provisions of *Sharia* economic law say that the principle of *muamalah* must be able to maintain good relations among fellow believers, and *muamalah* activities must not harm other parties and the method used must not contain an element of sleaze. Regarding the procurement of goods and services, even though it is not specifically contained in the *muamalah* chapter, this is related to the *muamalah* activities themselves. In essence, everything that is done must be able to benefit everyone, including the procurement of goods and services.

In the course of the 4.0's Industrial Revolution towards the 5.0's Society, Antara.com (2022) recorded nationally, based on data from the Corruption Eradication Commission (KPK), goods and services procurement (PBJ) is the second most corruption case as a case against the KPK in 2021. Throughout 2016 to 2020 it was 49.1% or 1,093 cases out of 2,227 cases handled by law enforcement, related to PBJ. According to ICW (2022), the state losses incurred reached IDR 5.3 trillion. Jamila Lestyowati (2018) in her research concluded several obstacles in implementing electronic catalogs. Not all goods and services needed by the work unit are contained in the electronic catalog. There are still other costs beyond the prices listed in the catalog. In some situations, the price offered in the electronic catalog is higher than in other places. Most procurement officials admit that they have found it easy to carry out e-purchasing, but they have experienced some unpleasant experiences. This is the idea that underlies research at the Proceeding International Seminar on Islamic Studies, by setting the title: "The Government Goods And Services Procurement In The 5.0's Society Era: Sharia Economic Law Perspective".

The problems to be discussed in this study are formulated in the form of normative qualitative questions: How is the legality of the procurement of goods and services based on society 5.0 according to the perspective of sharia economic law?

## Literature Review

### *The 5.0's Society Theory*

The Japanese government defines the 5.0's society is a human-centered society which can balance economic progress with solving social problems using a system that integrates cyber and physical worlds (COJG 2019). According to Fukuyama (2018: 47) that society 5.0 proposed by the Japanese government is a clear concept. It was drawn up in the fifth Science and Technology Basic Plan by the Science, Technology and Innovation Council, and approved by Cabinet decision in January 2016.

In the 5.0 society, the new value created through innovation will eliminate regional, age, gender and language disparities and enable the provision of products and services that are well adapted to the diverse needs of individuals and groups. In this way, it is possible to reach a society that can increase economic development, one of which is driven by the procurement of goods and services, both in the private sector and in the public sector, while finding solutions to social problems. However, there will be difficulties or obstacles to this achievement, Japan is ready to face it directly with the aim of becoming the first in the world as a country facing problems to present a model of future society (COJG 2019). The 5.0 society blueprint explains the sustainable development goals designed by Nakanishi and Kitano (2018: 14) according to

Fukuyama (2018 : 50) there are technologies in the form of big data, IoT, artificial intelligence, robots, drones, sensors, 3D prints, public key infrastructure (PKI), sharing, on demand, mobile, edge, cloud, 5G, virtual reality (VR), augmented reality (AR) and mixed reality (MR).

Fukuyama (2018: 50) says that the purpose of 5.0 society to create a society in which humans enjoy life to the fullest. Economic growth and technological development exist for that purpose and not for the prosperity of a few. Although 5.0 society originated in Japan, its goal is not just for the welfare of one country. The developed frameworks and technologies will contribute to solving the challenges of societies around the world.

#### *Pancasila Law Theory*

Pancasila law theory is a synthesis the convergence of developmental law theory, progressive law theory and integrative law theory, all of which are based on living law in society and are based on primordial values of the Indonesian nation itself, namely, the values *Pancasila* is a peculiar part of social life and at the same time a volunteer (Farida, 2020: 228). Pancasila Legal Theory is a legal theory based on *Pancasila* values as its ontological, epistemological and even axiological basis. Law as a product (legal structure) must be based on legal principles. According to (Kusumaatmaja, 2009: 137), the *Pancasila* law principles include:

1. The principle of divinity, mandates that there should be no legal products that contradict, reject or are hostile to religion or belief in God Almighty.
2. The principle of humanity, mandates that the law must protect citizens and uphold human dignity.
3. The principle of unity and unity or nationality, that Indonesian law must be a law that unites national life by respecting the diversity and richness of the nation's culture.
4. The principle of democracy, based on the relationship between law and power, power must obey the law and not the other way around. A democratic system must be based on deliberative values, wisdom and wisdom.
5. The principle of social justice, that all citizens have equal rights and obligations before the law.

Pancasila becomes very axiomatic and also scientific in terms of the collective agreement of the Indonesian nation. The five Pancasila precepts form a series of ideological, philosophical systems that have scientific logic as the main legal basis that places them as a grundnorm, so that they are the source of all sources of law (Prijadi, 2011: 33), including in this case the rules and regulations governing the procurement of goods and services. government.

#### *Government Goods and Service Procurement Theory*

Government procurement of goods/services according to Presidential Regulation No. 16 of 2018 is the activity of procuring goods/services by Ministries/Institutions/Regional Apparatuses financed by the state revenue budget (APBN)/ regional income budget (APBN)APBD whose process starts from identification of needs, up to the handover of the work. Procurement of goods/services begins with identification of needs, which is basically a general procurement planning activity. Article 69 of Presidential Regulation Number 16 of 2018 explains that the procurement of goods/services is carried out electronically using an information system consisting of an Electronic Procurement System (SPSE). In order to organize a goods/services procurement service system electronically, operational technical provisions are regulated by LKPP Regulation Number 11 of 2018 concerning Electronic Catalogs, Presidential Regulation Number 17 of 2023 concerning Acceleration of Digital Transformation in the Sector of Procurement of Goods/Services The Government is obliged to comply with the conditions as specified in the Law Number 19 of 2016 concerning Information and Electronic Transactions.

Procurement of goods and services electronically (e-Procurement) is the procurement of goods/services carried out using information technology and electronic transactions in accordance with statutory provisions. E-procurement offers opportunities for improvements in costs and productivity. E-procurement is the most effective way to improve management, both directly and indirectly in the procurement of purchasing sources. E-procurement provides the benefit of increasing the key to success in increasing competitiveness in the future. E-procurement is one form of e-government initiative. In a number of countries, e-procurement is used as a starter mover of e-government. Through e-procurement as part of government, the delivery of public services by government agencies to the public is carried out electronically.

E-procurement also provides up-to-date information about the results of procurement implementation that occur at the same time that can be known with certainty. The system for procuring government goods/services electronically was developed by LKPP. LKPP establishes an information system architecture that supports the implementation of electronic procurement of government goods/services. For this reason, LKPP builds and manages the National Procurement Portal. Procurement of government goods/services electronically can be done by e-Tendering or e-Purchasing in accordance with the electronic catalog (e-catalog) which contains information in the form of lists, types, technical specifications, Domestic Component Level, domestic products, Indonesian National Standard (SNI) products, green industry products, country of origin, prices, Providers, and other information related to goods/services. Electronic Catalogs consist of national electronic catalogs, sectoral electronic catalogs and local electronic catalogs. Electronic catalogs include goods, construction work and/or other services as described in the Regulation of the Government Goods/Services Procurement Policy Agency (LKPP) Number 11 of 2018 concerning Electronic Catalogs.

Based on the Decree of the Deputy for Monitoring Evaluation and Development of Information Systems No. 7 of 2015 concerning terms and conditions for online procurement of goods, the flow of purchasing goods online uses electronic catalogs, starting from ordering, agreeing, sending and receiving as well as paying for the procurement of goods and services. Lestyowati (2018: 676) says there are 7 (seven) principles in the procurement of government goods and services, both offline and online, namely:

1. Efficient.  
The Efforts made to obtain goods/services with predetermined specifications. The smaller the effort required, it can be said that the procurement process is more efficient.
2. Effective  
How far the goods/services obtained from the procurement process can reach the specifications that have been set.
3. Transparent  
The process of procuring goods/services can be known by the wider community. The process in question includes the legal basis, provisions, procedures, mechanisms, rules of the game, goods/services specifications, and all matters related to how the goods/services procurement process is carried out.
4. Opened  
The procurement of goods/services can be participated in by all providers of goods/services that meet the requirements/criteria set out in accordance with applicable regulations. Every qualified provider can easily get information about the clear procedure for participating in the auction/selection.
5. Compete  
The process of procuring goods can create a climate or atmosphere of healthy competition among providers of goods/services, no interventions that can disrupt market mechanisms, so as to attract as many goods/services providers as possible to participate

in the auction/selection which in turn can be expected to be able to obtain goods/services with maximum quality.

6. Fair

The procurement process can provide equal treatment to all prospective providers of goods/services. Especially Small, Medium Enterprises and Small Cooperatives and prioritizing the procurement of domestic products.

7. Accountable

The accordance with the rules and regulations related to the procurement of goods/services so that they can be accounted for.

## Method

This research uses the type of normative juridical research, namely research that is focused on examining the application of the rules or norms in positive law (Ibrahim, 2006: 95). Normative research is generally based on secondary data which consists of three parts, namely: primary legal materials, secondary legal materials and tertiary legal materials. The secondary data includes laws and regulations, official documents, library books, scientific works, articles, doctrines, *wikipedia*, *hadiths* and *al-quran*, as well as other documents related to government procurement of goods and services (Soekanto & Sri, 2011: 13). The data collection method is carried out using library research or literature study, which is a way of collecting data by tracing and documenting legal materials intended to analyze research problems.

Data analysis in this study is a qualitative analysis to answer the problem. After the legal material is collected, the legal material is analyzed to obtain conclusions, the form of the legal material analysis technique is Content Analysis, indicating an integrative analytical method and conceptually tends to be directed to find, identify, process, and analyze legal material to understand the meaning, significance and its relevance.

## Result and Discussion

The 5.0's society concept is a universal problem-solving concept that integrates technological advances with society, focusing on humans for the purpose of increasing human happiness, prosperity and well-being. This concept is in accordance with the noble ideals of the Indonesian nation as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution, namely promoting public welfare, one of which is carried out through the procurement of goods and services by the government. The concept of the 5.0 society also synergy with the philosophy of *Pancasila* as a peculiar of social life, voluntary and as the *grundnorm* of all laws and regulations in Indonesia, including regulations governing the adaptation of humane technological advances in the procurement of goods and services. Issuance of Presidential Regulation Number 16 of 2018 about Government Goods and Services Procurement and LKPP Regulation Number 11 of 2018 about Electronic Catalogs, as well as Presidential Regulation Number 17 of 2023 about Acceleration of Digital Transformation in the Sector of Procurement of Goods/Services is a concrete manifestation of the adaptation the industrial revolution 4.0 towards society 5.0.

Al-Qur'an as the oldest law source in the world, is not taboo with the paradigm shift from industry 4.0 to society 5.0, in an era where human freedom is highly appreciated, it is required to find a new interpretation mechanism that is able to present a religious understanding that is not always 'dogmatic', but also dynamic, time-sensitive and at a certain level also 'humanist' (Ikhwan, 2016). *Hadith* narrated by *Ibnu Majah* No. 220 relevant concepts are used as a basis for realizing the idea of society 5.0 through adapting technology, creating happiness and prosperity, and placing humans in a central position. The idea of the 5.0's society is not impossible to realize in Indonesia (Destria, et. al., 2022: 843).

Procurement of government goods/services as stipulated in Presidential Regulation Number 16 of 2018, LKPP Regulation Number 11 of 2018, Presidential Regulation Number 17 of 2023 is in accordance with the Koran, al-Hadith and has fulfilled the basic concept of muamalah, namely:

1. The original law in *muamalah* is *mubah* (permissible)  
In QS. Yunus: 59, *Allah SWT* says: "Say, Tell me about the sustenance that Allah sent down to you, then you make some of it unclean and (some of it) halal. Say, Has *Allah* given permission to you (about this) or are you just making it up against Allah?" This verse indicates that Allah gives freedom and flexibility in *muamalah* activities, besides that sharia is also able to accommodate modern transactions that are developing as demands for technological advances in the era of the 5.0's society.
2. Manifest Benefit  
*Allah SWT* did not send down *sharia*, except with the aim of realizing the welfare of His servant's life, did not intend to burden and narrow the space for human life (Syafe'i, 2006: 43). Government procurement of goods/services is not aimed at producing goods/services that are only profit oriented, but this is to support the economy and community services in Indonesia so that the benefit of society is guaranteed.
3. Setting Competitive Prices  
In implementing government procurement of goods/services to set competitive prices based on local Self-Estimated Prices (HPS), which are obtained based on survey results prior to the implementation of the Procurement. HPS is prepared by taking into account profits and overhead costs which are considered reasonable and/or a maximum of 15%. This is in accordance with Fathurrahman Azhari's opinion that normal profits range from 5 to 10 percent of the price of goods (Azhari, 2015: 56).
4. Abandoning Prohibited Interventions  
The Messenger of Allah forbade riding transactions that are being carried out by other people, we are not allowed to intervene in contracts or buying and selling that are being carried out by other people. Rasulullah said: "A person may not buy and sell on the sale and purchase that is being carried out by his brother".
5. Honest and Trustworthy  
Honesty is the main provision to achieve blessings. The Messenger of Allah gave special appreciation to honest people, "A trustworthy and honest trader will be included with the Prophets, siddiqin (honest people) and martyrs".
6. Avoid Exploitation  
In QS. Al A'raf: 85, *Allah SWT* says: "and do not reduce for humans the items of measure and weight". Muamalah aims to maintain the value of justice, avoid elements of persecution and take advantage of opportunities in agreements (Basyir, 2000: 15-16).

So that government procurement of goods/services can be carried out competitively based on the principles of goods/services procurement namely efficient, effective, transparent, open, competitive, fair or non-discriminatory, accountable to all parties, the results can be accounted for both physically, financially and its benefits for the smooth running of government tasks and community services in the 5.0's society era, it is necessary to have procedures that are in accordance with the principles and principles of *Sharia* Economic Law so that it is easy to apply the legal principles of the procurement of goods/services as stipulated in Presidential Regulation Number 16 of 2018, LKPP Regulation Number 11 of 2018 concerning Electronic Catalogs, Presidential Regulation Number 17 of 2023.

The principles - these principles:

1. The Aqad Principles

*Aqad* in a special sense put forward by fiqh scholars according to Syafe'i (2006: 44) in *Fiqh Muamalah*, namely an agreement that is determined by consent qabul based on syara' provisions which have an impact on the object, namely:

- a. *Al-Huriyah* Principles (freedom to contract)
  - b. *Al-Musawah* Principles (equation)
  - c. *Asas Al-Ada* Principles (justice)
  - d. *Al-Ridho* Principles (willingness)
  - e. *Shidiq* Principles (honesty)
2. The *Aqad* according to Compilation of Sharia Economic Law
- Aqad* is an agreement in an agreement between two parties. Based on the Compilation of *Sharia* Economic Law (KHES), contracts are carried out based on principles:
- a. The ikhtiyari principle (voluntary)  
In Q.S. al-Nisa': 29, Allah SWT says: "O you who believe, do not eat each other's wealth in a vanity way, except by way of trade that applies with your likes and likes." This paragraph states that all transactions in *muamalah* must be carried out on the basis of likes or consent between each party, there should not be pressure, coercion, let alone fraud. If this happens, it can cancel the act or contract (Manan, 2012: 79).
  - b. The trust principle (keep promises)  
In Q.S. al-Isra ' : 34, Allah says: || al- Anfal: 58 : And if you are worried about (occurring) betrayal from a group, then return the agreement to them in an honest way. Verily, Allah does not like treacherous people
  - c. The mutual benefit principle  
This principle is in line with the principle of benefit in an engagement in Islam. Where a contract made by the parties aims to realize the benefit for them and may not cause harm (*mudarat*) or aggravating circumstances (*mashaqqah*).
  - d. The Taswiyah principle (equality)  
Islam requires to act fairly, even those who are disliked are not excluded. The parties in each contract have an equal position, and have equal rights and obligations.
  - e. The transparency principle  
Dewi (2013: 33) says that every contract is carried out with the accountability of the parties openly. Transparency can also mean that there is no deception, all rights and obligations of each party are expressly and clearly disclosed in the contract agreement.
  - f. The ability Principle  
Each contract is carried out according to the ability of the parties, so that it does not become an excessive burden for those concerned.
  - g. The *taysir* principle (convenience)  
Al-Qur'an letter al-Qasas verse: 27 states: "Then I do not want to burden you. And you, God willing, will find me among the good people."
  - h. The good faith principle  
Good faith is also a form of akhlaq al-karimah which must be carried out by the contracting parties in the contract. This is in accordance with the provisions of al-Qur'an letter al-Baqarah verse 188 as follows: "And do not some of you use the property of some of the others in a vanity way and (do not) bring (business) the affairs of the property to the judge , so that you can eat some of the other person's property by (sinning), even though you know it.
  - i. *The al-Hurriyah* principle (freedom to contract)  
Surat al-Baqarah verse 256 says: "There is no compulsion to (enter) religion (Islam)", and chapter al-Maidah verse 1 says: "O you who believe, fulfill those

contracts. This means that there is no compulsion in Islam, especially in the case of muamalah whose real application is in contracts or agreements. Fulfilling the contract is obligatory

## Conclusion

Based on the results of the analysis and discussion above, it can be concluded that first, in general Presidential Regulation Number 16 of 2018 about Government Procurement of Goods and Services and LKPP Regulation Number 11 of 2018 about Electronic Catalogs in general have adapted the paradigm shift of the 4.0's Industry towards the 5.0's Society, this was marked by the issuance of Presidential Regulation Number 17 of 2023 about the Acceleration of Digital Transformation in the Government Procurement of Goods/Services. The three regulations for the government goods and services procurement as a constitutional basis for adaptation to the 5.0's Society Era are in accordance with the *Al-Qur'an*, *al-Hadith*, and the *mu'amalah* principles which include: the law of origin in *mu'amalah* is *mubah* (permitted), realizing benefit, Setting Competitive Prices, Abandoning Prohibited Interventions, Avoiding Exploitation, Being Honest and Trustworthy, Apart from that, it is also in accordance with *Sharia* Economic Law which contains the principle of *ikhtiyari* (voluntary); the trust principle (keep promises); *Luzum* principle (unchanged); the mutual benefit principle; *taswiyah* principle (equality); transparency principle; ability principle; *taysir* principle (convenience); the good faith principle; lawful cause; the *al-Hurriyah* principle (freedom to contract), but the *ikhtiyati* principle (prudence) must be considered in the 5.0's Society Era who are vulnerable to various victims.

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