

## **Procurement Challenges in Universities: A Snapshot and Legal Reform Approaches to Resolution**

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### **Abstract**

Procurement is not limited to the scope of goods but also extends to services. Therefore, it is essential to both quality goods and services. However, it cannot be denied that universities face various obstacles in terms of procuring goods and services, leading to several challenges. The problems addressed in this research are: (1) What are the issues faced in the procurement of goods and services at universities? (2) What is the problem-solving model for procurement of goods and services at universities? This research utilizes a qualitative approach, with a sociological juridical research method, or non-doctrinal research.

### **Keywords**

*University Procurement; Procurement Compliance; Legal Framework; Institutional Procurement Management; Procurement Reform.*

## Introduction

The state's investment in higher education has been growing annually, alongside an expansion in the scope of government procurement program.<sup>1</sup> The procurement of goods and services plays a crucial role in the development of universities, not just in Indonesia but globally, including at Semarang State University. However, various issues can arise in the procurement of goods and services, and these challenges can occur at any time and place. This presents a shared challenge in organizing activities that are both safe and comfortable. A conflict can escalate into a dispute or legal case if the aggrieved party expresses dissatisfaction or concern, either directly to the responsible party or to another entity. Public procurement is essential in supporting the economic infrastructure of universities, particularly in Indonesia, where most public universities are funded by the state budget. Efficient procurement ensures sufficient educational and research facilities, fosters local economic growth, and enhances accountability in the use of public funds.

The word “dispute” is a noun with three meanings: Something that causes a difference of opinion, quarrel, dispute, contention, dispute and case (in court). Unlike arbitration, which is binding and has the power of execution, the legal product of a mediation process is the agreement of the parties in the form of an agreement, so the product of mediation does not have the power of execution.

Conventional dispute resolution is carried out through the courts (litigation route), but subsequent developments have led to out-of-court dispute resolution due to dissatisfaction with dispute resolution efforts through the courts.<sup>2</sup>

According to Article 1313 of the Civil Code, an agreement is an act in which one or more parties bind themselves to one or more other parties. On the other hand, Abdul Kadir Muhammad defines an

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<sup>1</sup> Tongwen, Yue, and Yi, Hou. “A study of university procurement performance based on big data on government procurement.” *Academic Journal of Business & Management* 5.4 (2023): 77-86.

<sup>2</sup> Sudjana, Sudjana. “Efektivitas dan Efisiensi Penyelesaian Sengketa Kekayaan Intelektual melalui Arbitrase dan Mediasi berdasarkan Undang-Undang Nomor 30 Tahun 1999.” *Ajudikasi: Jurnal Ilmu Hukum* 2.1 (2018): 81-96.

agreement as a mutual commitment between two or more parties to carry out a specific matter within the scope of property.

According to Sutedi, the procurement of goods and services encompasses the entire process, starting from initial planning, preparation, and licensing, to the determination of the auction winner, as well as the implementation stage and administrative procedures. This includes the procurement of goods, work, or services such as technical consulting, financial consulting, legal consulting, and other related services.<sup>3</sup>

The process of procuring goods and services broadly consists of two stages: the selection stage where a provider is selected, and the contract administration stage where the parties agree in writing on their respective rights and obligations in order to produce or provide the desired goods or services. Contract administration is a very important stage but receives relatively less attention than the selection process. As a result, problems can arise during contract implementation, potentially leading to contract disputes that may cause losses to one or both parties.

The legislation in Indonesia allows the parties involved in a dispute to resolve it through alternative dispute resolution mechanisms outside the judicial process, in accordance with Indonesia's cultural emphasis on deliberation.<sup>4</sup>

Procurement problems Issues can arise both before a contract is signed, during the selection process (ex-ante screening), and after the contract is signed, during the implementation phase (ex post adaptation). While most challenges occur during the contract implementation phase, some problems stem from a selection process that fails to adhere to established procedures. Generally, public procurement contract issues in Indonesia, which often lead to disputes between providers and buyers, revolve around three main factors:

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<sup>3</sup> Nurchana, Arindra Rossita Arum. *Efektivitas e-procurement dalam pengadaan barang/jasa (Studi terhadap Penerapan E-Procurement dalam Pengadaan Barang/Jasa di Kabupaten Bojonegoro)*. Diss. Brawijaya University (2014): 355-359.

<sup>4</sup> Pratama, Riski Syandri. "Layanan Penyelesaian Sengketa Kontrak Pengadaan Barang/Jasa Pemerintah (LPS LKPP) sebagai Alternatif Penyelesaian Sengketa Kontrak Pengadaan Barang/Jasa Pemerintah." *Jurnal Pengadaan Barang Dan Jasa* 2.1 (2023): 1-13.

1. Incomplete contract documentation;
2. Ambiguous or multi-interpreted contract provisions;
3. Unforeseen or hard-to-predict circumstances.

Alternative Dispute Resolution is an out-of-court dispute resolution based on an agreement between the disputing parties. Alternative dispute resolution in the Indonesian legal system according to Law No. 30 of 1999 is recognized by several typologies: Mediation, Conciliation and Arbitration. We know that disputes that occur between humans are very broad in dimension and scope. In principle, the law requires that the dispute resolution process should not be carried out by vigilantism (*eigenrichting*).

Optimal procurement contracts require contract adaptation schemes and mechanisms that provide incentives for parties to maximize net benefits while minimizing opportunistic and exploitative behavior. Another effort to minimize the occurrence of non-optimal contracts is to improve the understanding and ability of the parties involved so that it can help reduce the gaps that may exist in the contract.<sup>5</sup>

A similar study was conducted by Changalima in the *Journal of Applied Research in Higher Education*, titled *Challenges facing procurement and supply professions in Tanzania: higher education students' perceptions*. The findings revealed several issues in Tanzania's procurement system, particularly concerning buyers. These include poor or inadequate specifications, insufficient planning and misalignment between demand and budget, non-compliance with procurement procedures and regulations, lack of innovation in public procurement, reliance on non-competitive procurement methods, and insufficient collaboration between user departments and procurement staff.<sup>6</sup>

A similar study was conducted by Albab in the *Accounting and Business Information Systems Journal*, titled *Analysis of the Implementation of Public Procurement of Goods/Services (Study on the Regional Procurement Service Unit of the Ministry of Finance of the*

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<sup>5</sup> Suryo, Robin A., and Ulfa, Agita M. "Teori kontrak dan implikasinya terhadap regulasi pengadaan barang/jasa pemerintah." *Jurnal pengadaan* 3.3 (2013): 1-21.

<sup>6</sup> Changalima, Ismail Abdi, et al. "Challenges facing procurement and supply professions in Tanzania: higher education students' perceptions." *Journal of Applied Research in Higher Education* 15.5 (2023): 1407-1419.

Special Region of Yogyakarta Province). The study discovered that the implementation of goods and services procurement at the Regional Procurement Service Unit (ULPD) of the Ministry of Finance in the Special Region of Yogyakarta Province has not been fully optimal. The factors hindering optimal procurement include issues related to organizational structure, human resources, challenges during the preparation stage, and inadequate legal protection.<sup>7</sup>

Based on several studies as described above, none of them discuss procurement challenges in universities, making this research important. Given the number of disputes in the procurement of goods and services in Indonesia, these disputes should be viewed as problems in procurement that must be addressed immediately. Therefore, the problems formulated in this study are:

1. How can the Portrait of Goods and Services Procurement Problems in the University be described?
2. How can the Model for Resolving Procurement Problems in Indonesia be described?

## Method

Research on the Portrait of Problems in the Procurement of Goods and Services at the University and its resolution model uses a qualitative approach with a juridical sociological type of research or non-doctrinal research. This refers to research that seeks to provide a snapshot of the problems that often occur in the procurement process of goods and services in higher education. Additionally, this research will analyze the legal aspects related to these problems and propose improvements or legal reforms to overcome the challenges. In short, this research aims to understand the procurement problems in universities and find appropriate legal solutions. As a consequence of the qualitative approach, researchers rely on first-hand information as primary data in the field with utilize interviews, focus groups, surveys, and observations method. Secondary data from statistics research published in reputable

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<sup>7</sup> Albab, Muhammad Ulil, and Halim, Abdul. "Analisis pelaksanaan pengadaan barang/jasa pemerintah (studi pada unit layanan pengadaan daerah Kementerian Keuangan Provinsi Daerah Istimewa Yogyakarta)." *ABIS: Accounting and Business Information Systems Journal* 5.4 (2020): 1-26.

journal and legal regulation documents are used to complete the analysis. Data from the field was analyzed using the Principles of Goods/Services Procurement with legal analysis technique. Procurement of goods and services is an activity carried out to meet the needs of ministries/institutions/agencies by acquiring goods and services budgeted from revenue, which can later be used to support the performance and performance of the agency.

## **Result and Discussion**

### **A. Portrait of Goods and Services Procurement Issues at the University**

The objective of infrastructure development is to provide services related to building construction through a structured procurement system. However, deviations from the established procedures and provisions for public procurement of goods and services are among the most frequent issues identified by the Corruption Eradication Commission. Transparency in government procurement plays a crucial role, as a lack of transparency is closely linked to the occurrence of corruption in procurement activities.<sup>8</sup> This can be viewed from the initial stage of procurement to the final stage of the procedure for implementing public procurement of goods/services. These deviations can occur due to negligence and competence of the implementation and procurement participants. But not infrequently these deviations are also deliberate actions by implementers and/or procurement participants with the aim of benefiting and enriching themselves or others as their partners. The process of procuring goods/services often becomes an obstacle to low absorption of the budget.<sup>9</sup>

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<sup>8</sup> Ahmad, Hawa, et al. "Transparency level of the electronic procurement system in Malaysia." *Journal of Financial Reporting and Accounting* 21.3 (2023): 592-606.

<sup>9</sup> Nurchayati, Nurchayati, et al. "ANALYSIS OF THE FACTORS CAUSING TO BUDGET DISBURSEMENT AT THE END OF THE BUDGET YEAR (STUDY AT UNIVERSITAS NEGERI SEMARANG)." *Dinamika Akuntansi Keuangan dan Perbankan* 11.2 (2022): 167-180.

Transparency is required at every stage. It is necessary in the procurement process to ensure accountability, efficiency and integrity, especially in the management of public funds at universities. With transparency, every stage of procurement can be monitored, thus preventing irregularities such as corruption or collusion, and increasing public trust in the institution. Institutional quality positively and significantly moderates the relationship between electronic procurement practices and procurement performance.<sup>10</sup> Additionally, it encourages healthy competition among goods and services providers, ensuring that the procurement process produces the best quality at a competitive price. When all parties have fair access to information, the procurement process becomes more inclusive and compliant with applicable regulations, reducing the risk of disputes and creating a more professional and efficient environment.

This action results in leakage along with a huge waste of state money, causing the implementation of public procurement of goods and/or services, which is one of the factors in the implementation of state development are not optimal. If left unaddressed, these issues can trigger disputes between universities and providers, potentially disrupting operations. Some forms of irregularities in the procurement of government goods and/or services at each stage are as follows:<sup>11</sup>

***a) Procurement Planning Stage***

Procurement in construction typically begins with the selection of suitable service providers by the government through tenders, appointments, or direct procurement.<sup>12</sup> Deviations in the procurement planning stage occur in terms of inflating funds. Symptoms of inflation can be viewed from the unrealistic price per unit and the swelling of the amount of the APBN/APBD budget, leading to waste and/or leakage in the budget. This results in the

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<sup>10</sup> Charnor, Isaac Tetteh, et al. "Electronic procurement practices and procurement performance: the role of institutional quality." *International Journal of Procurement Management* 21.1 (2024): 95-113.

<sup>11</sup> Wijanarko, Dwi Seno, et al. *Persoalan Hukum Dalam Pengadaan Barang & Jasa* (Yogyakarta: Penerbit Pata, 2023): 134.

<sup>12</sup> Muskibah, Muskibah, et al. "Force Majeure During COVID-19 Outbreaks: Case of the Cancellation and Termination of Government Construction Contracts." *JILS* 8 (2023): 129-158.

state being disadvantaged by unrealistic budget allocations or exceeding the appropriate budget allocation. Among the various evaluation criteria examined, distribution requirement planning emerged as the most critical factor, necessitating immediate strategic prioritization to enhance overall service effectiveness.<sup>13</sup>

Other deviations that can be found include unrealistic plans, especially in terms of implementation time. The timeline is set so short that only entrepreneurs who have prepared in advance are able to carry out the work. These entrepreneurs often resort to bribing the committee to gain access to tender and work information before other participants. Additionally, goods and/or services may be purchased without regard to actual, substantive needs.

***b) Committee Formation Stage***

The deviation that occurred at this stage is the implementation of the committee's work in a closed and unfair manner. This results from the committee no longer maintaining an honest, open and trustworthy nature. As a result, the principles of clean government, such as transparency and accountability, cannot be upheld.

***c) Participant Prequalification Stage***

The problems found at this stage include the partner's documents not meeting the requirements (not supported by accurate data), yet being approved by the committee in the prequalification stage. Certification data may be falsified, or there may be letters of assignment without the necessary supporting documents. These issues can typically be identified, as the committee may approve the bidders under certain pretexts.

***d) Stage of Tender Document Preparation***

The problem found at this stage includes technical specifications that are tailored to favor a particular product. A common case is the purchase of goods with certain specifications

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<sup>13</sup> Efrianda, Devi Ajeng, and Saesario, Anggar Jati. "Analysis of Digital Supply Chain Management in E-procurement Service Usage Using Decision Making Trial Method and Evaluation Laboratory in National Public Procurement Agency." *Scientific Journal of Informatics* 10.2 (2023): 83-92.

designed so that one of the providers can provide the goods with the same specifications without an auction process. Additionally, issues problems were also found in the evaluation criteria of the tender document where unnecessary additions were made. These added criteria were implemented to limit participation from outside the designated group area, effectively restricting competition.

***e) Tender Announcement Stage***

The problem found at this stage is that the announcement period is too short. This often results in the limited number of participants, primarily those closely connected to the project, who are ready to engage in the tender. Conversely, entrepreneurs who are not familiar with the project's personnel are excluded from participating in the tender, effectively reducing competition and fairness in the procurement process.

***f) Tender Document Retrieval Stage***

The problem found at this stage is that the tender documents submitted are incomplete or inconsistent (partial). During the refinement process, there are concept documents and final documents. To prevent outside participants (those not part of the collusion group) from entering the tender, only concept documents are provided to them. As a result, many bidders are disqualified for failing to meet the evaluation criteria, while only a select group of participants, who are part of the collusion, successfully advanced.

Additionally, there are issues with the distribution of defective documents. This often begins with the selection of hidden places and announcements and the failure to post them in strategic areas. As a result, only partners who are familiar with the committee or those previously appointed had access to the tender documents, limiting the participants and excluding others who are unaware of the process.

***g) Announcement Stage of the Winner Candidate***

The problem found at this stage includes the relocation of the submission of bid documents which is intended to dispose of bids. The relocation of the submission of bidding documents is carried out by the committee in the context of tender

arrangements. It is intended to exclude participants who did not belong to their KKN group. On the other hand, partners who belonged to their group are notified prior to bid submission. The group that arrived earlier is the one indicated to have committed fraud with the committee. In conducting the relocation, the committee has made a scenario in such a way that non-group participants will arrive late.

Another problem found includes the submission of false documents in order to bring down business opponents, partners who commit fraud in participating in bidding activities will take illegal actions by entering false documents on behalf of other bidders.

#### ***b) Contract Signing Stage***

The problems found at this stage include the systemic signing of collusive contracts. These contracts appear well-organized and complete on the surface, but upon closer examination, significant irregularities become evident. There is often no guarantee for implementation, no assurance for the withdrawal of advance payments, and no clear mobilization schedule—or if one exists, it is inaccurate. As a result, these fictitious contracts contain numerous deficiencies in supporting documents, increasing the risk of financial mismanagement and fraud.

### **B. Goods and Services Procurement Problem Solving Model**

The resolution of problems with the Goods and Services Procurement contract falls within the realm of civil matters and can be addressed through both litigation and non-litigation.<sup>14</sup> Over time, Presidential Regulation No. 16/2018 was issued, which has become a regulative discourse in public procurement activities to this date. In the presidential regulation, it is explained that dispute resolution can be resolved through courts and contract dispute resolution services, or

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<sup>14</sup> Pratama, *Op.cit.* 7.

arbitration.<sup>15</sup> The implementation of this mechanism is regarded as an effective solution to address existing challenges. It enhances procurement performance and serves as a robust tool to evaluate procurement practices, ultimately improving development outcomes while incorporating the concept of value for money.<sup>16</sup> Among universities, there is still a lack of understanding of the intricacies of goods and services procurement. Therefore, it is important that the community is involved in monitoring or actively participating in the procurement process.<sup>17</sup>

In the settlement of disputes both in litigation and non-litigation as mentioned earlier, there are institutions authorized in the settlement. The institutions that are currently authorized to participate in handling public procurement disputes are the Public Procurement Policy Agency as a provider of contract dispute resolution services, arbitration institutions, and courts.<sup>18</sup>

#### ***a) Litigation Path Dispute Resolution Model***

Litigation refers to the process of resolving disputes through the courts or judicial system.<sup>19</sup> When a legal conflict arises, the involved parties bring their case to a judicial forum, requesting an official resolution through a judicial determination made by either a judge or a jury who will examine the evidence and make a binding decision about the dispute.<sup>20</sup>

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<sup>15</sup> PUTRA, KRISHNA DARARI HAMONGAN. *Penyelesaian Sengketa Kontrak dalam Pengadaan Barang/Jasa Pemerintah*. Diss. Universitas Airlangga, 2019.

<sup>16</sup> Cook, Bryan, et al. "Evaluating procurement performance: an integrated procurement maturity model for assessing development effectiveness and value for money." *International Journal of Procurement Management* 21.3 (2024): 324-348.

<sup>17</sup> Prakasa, Satria Unggul Wicaksana, et al. "Public Procurement Nexus Social for Mitigate the Corruption: Lesson from Indonesia." *Lex Scientia Law Review* 7.2 (2023): 413-448.

<sup>18</sup> *Ibid.*

<sup>19</sup> Arista, Panji Windu, and Handayati, Nur. "Settlement Of Goods/Services Procurement Contract Disputes." *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 7.1 (2024): 98-116..

<sup>20</sup> Lathif, Azharuddin, and Habibaty, Diana Mutia. "Disparitas Penyelesaian Sengketa Jalur Litigasi Pada Polis Asuransi Syariah Dan Putusan Pengadilan." *Jurnal Legislasi Indonesia* 16.1 (2019): 76-88.

Article 6 paragraph (1) of Law Number 30 Year 1999 on arbitration and alternative dispute resolution states:

*“Civil disputes or disagreements can be resolved by the parties through alternative dispute resolution based on good faith by overriding litigation settlement in the District Court”.*

From these provisions, it can be concluded that litigation is the resolution of disputes pursued through examination in court. Some of the main aspects of litigation include:<sup>21</sup>

1) *Filing and Response*

The legal proceedings are initiated when a plaintiff files a formal lawsuit or legal complaint against a defendant. Subsequently, the defendant is required to submit an official response addressing the allegations presented in the original lawsuit.

2) *Trial*

If an out-of-court settlement is not reached, the case proceeds to trial. During the trial, the judge or jury hears arguments from both parties, examines the presented evidence, and delivers a verdict based on the relevant laws.

3) *Court Decision*

The judge or jury delivers a final and binding decision, which determines the winning party and outlines the actions that the losing party must take.

Litigation settlement of disputes or problems is generally chosen by the disputing parties due to the failure to obtain results, agreements, or dispute resolution through non-litigation channels, or in other words, litigation is the last resort if the disputing parties cannot resolve their problems amicably. In the process, all stages in the examination of disputes through the court, starting from registration, appointment of a panel of judges, determination of a hearing schedule, summons to the parties to attend the trial, examination of evidence to the decision will be recorded very

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<sup>21</sup> Nurlani, Meirina. “Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia.” *Jurnal Kepastian Hukum Dan Keadilan* 3.1 (2022): 27-32.

clearly and in detail in the official trial documents which will then be published in the decision directory on the Supreme Court website.<sup>22</sup>

If a dispute occurs, the settlement is based on the contents of the cooperation agreement that the parties have signed. The form of dispute resolution in the goods/services procurement agreement states that if a dispute arises between the two parties—whether related to implementation or the interpretation of any article in the agreement—both parties agree to resolve the dispute through deliberation to the greatest extent possible.<sup>23</sup>

#### ***b) Non-Litigation Dispute Resolution Model***

As referred to in the introductory chapter, alternative dispute resolution (ADR) in the Indonesian legal system is regulated by Law Number 30 of 1999. According to this law, ADR is a mechanism for resolving disputes or differences of opinion through mutually agreed-upon procedures. These out-of-court settlements are carried out using methods such as consultation, negotiation, mediation, conciliation, or expert judgment.<sup>24</sup>

Additionally, the issuance of Government Procurement Policy Agency Regulation Number 18 of 2018 on Government Procurement Contract Dispute Resolution Services aims to enhance the effectiveness of resolving disputes in government procurement. This regulation focuses on the development of dispute resolution services in the areas of mediation, conciliation, and arbitration. This is as regulated by nature in Article 3 paragraph (1).

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<sup>22</sup> Permata, Bintang Puwan. “Penyelenggaraan Clearing House Dalam Rangka Mencegah Potensi Permasalahan Pengadaan Di Lingkungan Mahkamah Agung.” *Jurnal Pengadaan Barang dan Jasa* 2.2 (2023): 65-74.

<sup>23</sup> Siregar, Muhammad Ikhsan, et al. “Penyelesaian Sengketa Akibat Wanprestasi Pihak Penyedia Barang dan Jasa Melalui Elektronik Kepada Pemerintah Perspektif Peraturan Presiden Nomor 16 Tahun 2018 Tentang Pengadaan Barang/Jasa Pemerintah.” *Jurnal Ilmiah Metadata* 3.3 (2021): 1147-1170.

<sup>24</sup> Widya Margaretha, Karelina. “Alternatif Penyelesaian Sengketa Melalui Mediasi Di Indonesia.” *Jurnal Ilmu Hukum* 1.2 (2024): 365-372.

### 1) *Mediation*

Mediation is a dispute resolution process involving a third party who assists the conflicting parties in finding a solution. The rules governing mediation are generally outlined in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, with specific provisions on mediation found in Article 6, paragraphs (3), (4), and (5). Another definition of mediation describes it as a method of dispute resolution in which a neutral third party, the mediator, actively facilitates negotiations between the disputing parties to reach a settlement. However, the mediator does not function as a judge and has no authority to impose a decision.<sup>25</sup>

Mediation at the Contract Dispute Resolution Service lasts for 30 (thirty) days from the time the mediator is appointed and can be extended for a maximum of 10 (ten) days if agreed upon by the parties and if the reasons are submitted to the Secretary of the Service, as outlined in Article 23, paragraphs (1), (2), and (3) of the Government Procurement Policy Agency Regulation Number 18 of 2018. In accordance with the provisions of Article 24, paragraph (1), mediation at the Contract Dispute Resolution Service is typically closed, but it can be conducted openly if the parties agree to it.

Additionally, mediation must be attended by the parties to the dispute and can be accompanied by their Attorney by presenting a Special Power of Attorney in accordance with the provisions of Article 26 paragraph (1) and (2) of the Government Procurement Policy Agency Regulation Number 18/2018. In the event that the mediation reaches an agreement, the parties with the assistance of the mediator shall formulate the agreement into a deed of peace signed by the parties and also the mediator, and the results are then reported by the

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<sup>25</sup> Gatot, Soemartono. "Arbitrase dan Mediasi di Indonesia." *Garmedia Pustaka Utama, Jakarta* (2006).

mediator to the Secretary of the Service in accordance with Article 30.

Article 32 paragraph (1) explains that there are six causes of the termination of mediation, which also apply to the termination of conciliation. Mediation and conciliation for the settlement of procurement contract disputes are considered to have ended if:

- a. The parties sign a deed of peace;
- b. The Mediator or Conciliator declares the Mediation or Conciliation unsuccessful;
- c. One of the parties withdraws from the Mediation or Conciliation process in writing to the Mediator or Conciliator and the other Parties;
- d. Including disputes that are excluded, such as those arising from procurement contracts under investigation by the authorities, as well as disputes that have been or are currently being heard in court and/or other arbitration institutions;
- e. No good faith from one or both Parties; or
- f. Exceeding the time period.

However, if the mediation process fails, in accordance with the provisions of Article 3 paragraph (2) of the Government Procurement Policy Agency Regulation No. 18/2018, the parties may proceed with the dispute resolution process to another resolution model, namely conciliation.<sup>26</sup>

## 2) *Conciliation*

Conciliation is also one of the models in dispute resolution through alternative channels. Settlement through conciliation is carried out through a person or several people or bodies (conciliation commission) as an intermediary called a conciliator by bringing together or providing facilities to the disputing parties to resolve their

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<sup>26</sup> Putra, Op.Cit. 1311.

disputes amicably. The conciliator actively participates in providing solutions to the problems in dispute.<sup>27</sup>

Conciliation is also a means of dispute resolution regulated in Law Number 30 of 1999. Although the Law does not provide a clear definition of conciliation, it is mentioned as one of the alternative dispute resolution methods in the provisions of Article 1 paragraph (10). The definition of conciliation in general is the adjustment and settlement of disputes in an amicable manner, favorably, used in court before trial with a view to preventing court hearings and in disputes before arbitration. However, the conciliator in this case is not authorized to make a decision but only authorized to make recommendations. In Constitutional Court Decision Number 19/PUU-XXI/2023, it is explained that a conciliator is tasked with conciliation and must provide written recommendations to the disputing parties.

In the Contract Dispute Resolution Service, Conciliation is a stage of dispute resolution pursued by the parties to the dispute if the parties have failed to take Mediation. Conciliation to resolve disputes between the parties must invite a third party acting as a neutral conciliator, whose role is to serve as an intermediary between the parties.<sup>28</sup>

According to Oppenheim, conciliation is a way of resolving disputes through the submission of a case to persons whose task is to outline the evidence and—usually after hearing a report from the parties

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<sup>27</sup> Pratama, Op.Cit.13.

<sup>28</sup> Fatkhurakman, Fuad, and Syufaat, Syufaat. "Alternatif Penyelesaian Sengketa (APS)(Perspektif Hukum Positif dan Hukum Islam)." *Jurnal Hukum Ekonomi Syariah* 6.2 (2023): 129-148..

seeking an amicable agreement—make suggestions for resolving the dispute, although they are not binding.<sup>29</sup>

The definition of Conciliation in the Contract Dispute Resolution Service is found in Article 1 point 5 of the Government Procurement Policy Agency Regulation Number 18/2018 which reads:

*“Conciliation is the settlement of procurement contract disputes out of court through a negotiation process between the two parties to reach an agreement assisted by a Conciliator”.*

In this regulation, matters related to the conciliation process are regulated from Article 14 to Article 32.

In terms of the end of a conciliation, as explained earlier, is also the cause for the conclusion of conciliation is also the cause of the end of mediation as stipulated in Article 32 paragraph (1) of the Government Procurement Policy Agency Regulation No. 18/2018.

After a series of dispute resolution processes through conciliation, if no agreement is reached, the disputing parties may proceed to the next stage, namely Arbitration.

### 3) *Arbitration*

The definition of Arbitration in the Contract Dispute Resolution Service is contained in Article 1 point 6 of Institutional Regulation No. 18/2018 which explains that it is an out-of-court settlement of procurement contract disputes conducted by an Arbitrator or Panel of Arbitrators. The appointment of Arbitrators in the Contract Dispute Resolution Service is different from the appointment of arbitrators in Law

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<sup>29</sup> Triana, Nita. “*Alternative Dispute Resolution: Penyelesaian Sengketa Alternatif Dengan Model Mediasi, Arbitrase, Negosiasi dan Konsultasi*.” Kaizen Sarana Edukasi, 2019.

Number 30 of 1999. Arbitrators in the dispute resolution service provided by the Public Procurement Policy Agency (LKPP) are appointed by the Secretary of the Procurement Contract Dispute Resolution Service in accordance with the provisions of Article 1 point 9 of Institutional Regulation Number 18 of 2018. Regulations related to matters relating to the course of the Arbitration process in this Institution Regulation are regulated from Articles 14 – 42.

The Arbitration Implementation Procedure has rules of the game starting from Articles 33 – 42 of the Government Procurement Policy Agency Regulation Number 18 of 2018. In its implementation, Arbitration lasts for a maximum of 90 (Ninety) days after the complete application is received. However, if the request submitted by the disputing party is not resolved during the 90 (Ninety) days, the Procurement Contract Dispute Resolution Service in accordance with the rules in Article 33 paragraph (2) has the obligation to decide the dispute no later than 30 (thirty) working days after the period in Article 33 paragraph (1) has elapsed. Arbitration in the Dispute Resolution Service provided by the Public Procurement Policy Agency is open and attended by the parties who have signed the contract either accompanied or represented by their legal representatives with the condition that they must show a special power of attorney.

After the completion of the entire evidentiary process and the conclusion stage, the arbitration process moves to its final stage, where the arbitrator renders a decision. The arbitrator in the Procurement Contract Dispute Resolution Service has the authority to make a decision based on the regulation on Decision Making stipulated in Article 42 of the Government Procurement Policy Agency Regulation Number 18 of 2018. After the arbitrator determines the decision, it must be signed and delivered to the parties involved in the dispute no later

than seven (7) days. Article 42 paragraph (13) states that if one party fails to voluntarily implement the decision, the opposing party may file a new lawsuit with the chairman of the local District Court. Alternatively, the parties may agree to incorporate the decision into a deed of peace, and its implementation can be requested through the Court to ensure compliance with existing legal procedures.

In the Arbitration implementation arrangements in Institutional Regulation No. 18/2018, there are several explanations that actually raise new questions for parties who want to resolve their disputes through this forum. This regulation does not explain whether the dispute resolution clause through the arbitration forum provided by LKPP must be explicitly included in the contract in order to pursue this forum. Additionally, Article 34 of this regulation explains that the Arbitration forum provided by LKPP is open, while Article 27 of Law Number 30 Year 1999 explains that arbitration is closed. The last deviant explanation is in Article 42 paragraph (13) of this regulation which explains that a new lawsuit can be filed against the arbitration decision. This is contrary to Article 60 of Law Number 30 Year 1999 which clearly explains that Arbitration is final and binding.

Although litigation remains a necessary option, mediation and conciliation should be actively promoted as faster, more cost-effective, and less adversarial alternatives. The effectiveness of ADR can be further enhanced by training mediators and conciliators in procurement-specific issues. Furthermore, it is necessary to strengthen the role of procurement committees, as they play a pivotal role in ensuring the success of public procurement. Their responsibilities must be carried out with the highest standards of transparency, accountability, and integrity. To achieve this, it is essential to establish independent oversight mechanisms that monitor and evaluate their performance at every stage of the procurement process. Additionally, fostering a culture of clean governance within procurement committees through regular training

and strict enforcement of ethical standards can significantly reduce the risk of fraud and corruption. By reinforcing these principles, the procurement process can become more reliable, efficient, and trusted by all stakeholders. Strengthening the role of procurement committees is essential to ensuring transparency, accountability, and integrity in public procurement.

## Conclusion

Procurement of goods and services in higher education faces various challenges, ranging from planning with unrealistic budgets, preparing inappropriate tender documents, to signing contracts. In addition, problems such as unobjective selection of participants, incomplete tender documents, and manipulation in determining the winner can hinder the efficiency and transparency of procurement. If left unaddressed, these issues can lead to disputes between universities and suppliers, potentially disrupting operations. Dispute resolution can be done through litigation or non-litigation (mediation, conciliation, and arbitration) as stipulated in Article 3 paragraph (1) of LKPP Regulation No. 18/2018. Non-litigation mechanisms are regarded as more efficient and cost-effective while also helping to minimize conflict. This mechanism is believed to effectively address the existing problems. Through this research, it produces recommendations for each procurement organizer to comply with all applicable provisions and regulations from the initial stage of procurement. In terms of non-litigation dispute resolution, it can be conducted through Mediation, Conciliation, and Arbitration, as specified in Article 3, paragraph (1) of the Government Procurement Policy Agency Regulation Number 18 of 2018. These methods can proceed smoothly if their implementation complies with the applicable regulations.

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## **Acknowledgment**

The authors extend their gratitude to the Faculty of Law Universitas Negeri Semarang (UNNES).

## **Funding Information**

The authors would like to express their gratitude to Faculty of Law Universitas Negeri Semarang (UNNES) for their generous funding assistance towards this research project.

## **Conflicting Interest Statement**

The authors state that there is no conflict of interest in the research and publication of this article.

## **Publishing Ethical and Originality Statement**

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