Law Protection for Procurement Officers: Legal Protection against the Procurement Instrument of Goods and Services

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Abstract: Procurement of Goods and Services or it can be said in terms of procurement, is a compliance mechanism to the needs of goods and services which generally occurred in the scope of government and within the scope of the Limited Liability Company / State Owned Enterprise / Enterprise, a subsidiary of state enterprises, or companies affiliated with SOEs. The process of implementing the Procurement of Goods and Services is regulated in Presidential Regulation No. 4 of 2015 which regulates the Procurement of Government Services. In the process of Procurement of Goods and Services, covers the process of Planning, Budgeting, Preparation, Documentation, Licensing, and Implementation. Related to the parties in the process of procurement of goods and services including Providers of Goods Services, Users of Goods and Services, and Instrument of Procurement of Goods and Services, in this case is the Procurement Committee, Commitment Officer, Procurement Official and Supervisor of Procurement Implementation. Each party in the procurement of goods and services has their main duties and functions, and in carrying out their main duties and functions, they are required to have careful planning and refer to the applicable procurement rules, and are prohibited from committing criminal acts of corruption, collusion and nepotism that lead to state losses. With the enormous responsibilities and obligations of the implementers of these goods and services, it is certain that the procurement of goods and services can not be underestimated. In this case, besides being demanded by good planning and implementation, it is also required to be careful and careful in implementing the procurement of goods and services, so that if there are errors either administratively or falsely at the time of execution that affect the losses of the state then, the procurement instrument will be the party the most responsible. This research focuses on the form of legal protection against the procurement instrument of goods and services when viewed from the aspect of the implementation of procurement activities both administratively and operationally, as well as addressing various phenomena occurring in the process of procurement involving the instrument of procurement activities of goods and services.

Keywords: Instrument of Procurement, Law Protection, Procurement

1. Introduction

Based on data compiled from the Institute for Procurement Policy of goods and services (in Indonesia called “Lembaga Kebijakan Pengadaan barang dan jasaPemerintah” or LKPP) states that the government budget always increases, even for the year 2018 spending of goods for the government reached Rp 1,200 trillion. Furthermore, the government budget has increased by almost 300% in the last 10 years. Based on data collected from the Ministry of Finance of the Republic of Indonesia, in the budget for APBN 2018 of Rp 2,270.7 trillion, Rp 1,454.5 trillion is central government expenditure while the rest is used for village funds. From Rp 1,454.5 trillion, Rp 847.4 is used for Ministry and Institution expenditure. While for capital expenditure, this year reached Rp 204 trillion or about 24.1% of central government expenditure. So if accumulated, the total of this year either the central government or local government will spend approximately approximately Rp 750 trillion. This shows that almost 30% of APBN is used for
procurement of goods and services, which proves that the procurement of goods and services has a very important role, especially in moving the wheels of the economy, creating employment and creating a healthy competition climate in Indonesia.

The large portion of the government procurement budget for Indonesia state budget (in Indonesia called APBN) in 2018 requires good planning and perfect execution so that the absorption rate of the procurement budget of goods and services to the state budget can run optimally, in line with the principle of procurement of government goods and services, which include:

a. **Efficient**, which means the procurement of goods/services must use limited funds and resources to achieve the goals set in a short time and can be accounted for. Effective in this case is not only seen in terms of getting cheap goods, but also considering in terms of age of goods, the availability of care on the goods and consideration of the operational costs of goods if the goods are used with high time intensity.

b. **Effective**, in this case can effectively be interpreted as obtaining goods with the best quality and benefits with available resources. In this case the benefits can be quality, timely delivery, quantity is met, able to synergize with other goods/services and the realization of the optimal impact on the overall achievement of policies or programs of procurement of goods and services.

c. **Open and Competitive**, in this case the procurement of goods and services shall be open to all providers of goods and services that meet the requirements and performed through fair competition among providers of goods/services equivalent and meet the requirements and criteria that have been established and meet the standard procedures clear and transparent. This means that all providers of goods and services, as long as they meet the requirements that have been determined, have the same opportunity in the implementation of procurement of goods and services.

d. **Transparent**, in this case transparent means the availability and disclosure of information to all prospective participants of goods and services through various information media. Transparent also means, related to the implementation of procurement of goods and services must be accountable for the use of funds and the implementation also can be accounted for.

e. **Fair / Non-discriminatory**, The intent of fair and non-discriminatory treatment is equal treatment to all prospective providers of goods and services interested so that there is a healthy competition and does not lead to provide benefits to certain parties with or for any reason.

f. **Accountable**, is a form of responsibility for the implementation of procurement of goods/services to the parties concerned and accountability to the community based on prevailing norms.

According to Presidential Regulation number 4 of 2015, the parties to the procurement of goods and services include:

a) Budget users, or officials who have authority to use the Ministry/Institution/regional work unit.

b) Authorized Budget User, is an official assigned by the Budget User to use the Indonesia state budgetor to be determined by the Regional Head to use regional budget.

c) The Committed Officer is the Officer in charge of the procurement of Goods/Services.

d) The Procurement Services Unit is a ministry/agency/local government/institutional organization that functions to implement procurement of goods/services that are permanent, able to stand alone or attached to an existing unit.

e) Procurement Officers are designated personnel for direct procurement, direct appointment and E-purchasing.

f) Committee/Official Receiving Officer is the Committee/Official set by Budget Official/Proxy of Budget User in charge of inspecting and receiving the work result.

g) The Internal Government Internal Supervisor or Internal Supervisor at other institutions is called governmental regulatory apparatus (in Indonesia called Aparat Pengawas Intern Pemerintah or APIP...
) is an apparatus that conducts supervision through Audit, Review, Evaluation, Monitoring and other oversight activities on the organization of duties and functions of the organization.

h) Provider of goods / services is a business entity or individual who provides goods / construction work / consulting services / other services.

Presidential regulation number 4 of 2015 which is the fourth change over Presidential Regulation Number 54 Year 2010 more to highlight in terms of authority and the implementation of Procurement of goods and services, rather than looking in terms of legal protection of executors of goods and services in this case is from points a - point g, as mentioned above. Being a fact that there is a sense of insecurity, concerns experienced by the providers of goods and services, because often law enforcement in this case both the police and prosecutors to call and examination of the organizers or executors of goods and services at the time of the procurement of goods and services. The existence of reports from third parties, the providers of goods and services even from the people who feel the loss due to the implementation of goods and services, as well as the existence of procedural deviations and violations of law in the procurement of goods and services. One example of a form of concern for the absence of legal protection of the implementer / procurement officers is as contained in one of the Mass Media entitled "Fearful of Criminalizing Procurement Committee Tabalog Backward" The concerns of the procurement actors are justified, especially in view of data from ICW / Indonesia Corruption Watch, mentioning that throughout 2017 there were 84 Cases from the Procurement Sector of goods totaling 576 cases of corruption handled. This figure shows that the high number of goods and services procurement sector, so that by law enforcement apparatus in this case is Police, Attorney and Corruption Eradication Commission (in Indonesian called “Komisi Pemberantasan Korupsi” or KPK) many highlight on activity of procurement of goods and services.

This is actually in line with the emergence of concerns from the procurement Officers of goods and services. It is undeniable that the legal vacuum in Presidential regulation 4 of 2015 in the form of legal protection or at least emerging tricks from the government to be able to at least provide legal protection to the procurement officers activities is still not seen much. There is an assumption that a little mistake will be directly acted upon as a corrupt practice of procurement of goods and services, which is not necessarily the case. Minor errors that have no direct impact on the results, the quality of procurement of goods and services, and still consider aspects of the procurement of goods and services such as transparency and accountability, are often considered or even leading to violations that lead to calling by the Police, Attorney and Corruption Eradication Commission. This makes or even the reluctance and concern of the procurement officers activities, but not necessarily leads to the practice of corruption, collusion, and nepotism. Therefore based on the above background, it can be formulated the issues raised in this study are: What is the form of legal protection for Procurement Officers? and What is the Urgency of Unification of the establishment of a Law on Procurement, in particular, which regulates the Legal Protection for Procurement Officers?

2. Discussion

2.1 Concept of Legal Protection

According to Indonesian Act No. 39/1999 on Human Rights, protection is a defense of Human Rights. Because Every human being has the same Rights and Obligations, then every human being also has the same right to protection. Another definition of protection is contained in Government Regulation No. 2 of 2002 concerning the Procedures for the Protection of Witnesses and Victims, which is a form of service that must be carried out by law enforcement or security apparatus to provide security, whether physical or mental, to victims and witnesses, from threats, harassment, terror, and violence from any party provided at the stage of investigation, investigation, prosecution and for inspection in court proceedings. According to Soedikno Mertokusumo, Legal protection is the Guarantee of Rights and Duties for human beings in order to fulfill their own interests as well as in relationships with other human beings. While the form of protection Law covers 2 things namely:
a. Preventive Legal Protection is a form of legal protection where the public is given an opportunity to file an objection or opinion before a government decision gets a definitive form.

b. Repressive Legal Protection is a form of legal protection whereby it is directed more in dispute resolution.

2.2 Legal Protection for the Implementation Procurement

The concept of legal protection of procurement of goods and services should be more focused on establishing a unification of procurement arrangements. With the existence of a legal protection against the parties involved in the procurement of goods and services, it will directly create a sense of justice, order, legal certainty and legal benefits. In the case of order, according to Julianda B Manalu, order is defined that all parties belonging to the procurement process of goods and services have worked in accordance with applicable regulations, and vice versa, that the parties concerned may contribute according to their respective obligations. The concept of legal protection of procurement of goods and services should be more focused on establishing a unification of procurement arrangements. With the existence of a legal protection against the parties involved in the procurement of goods and services, it will directly create a sense of justice, order, legal certainty and legal benefits. In the case of order, according to Julianda B Manalu, order is defined that all parties belonging to the procurement process of goods and services have worked in accordance with applicable regulations, and vice versa, that the parties concerned may contribute according to their respective obligations.

Legal protection for the procurement officers, not apart from the concept of complaint as regulated in the Presidential Regulation. The existence of a call by law enforcement officers either the Police or the Attorney to the executor of the Procurement of goods and services, related to the complaints of the public, or related parties, indicating the existence of procedural deviations and violations of law in the procurement process of Goods and Services. In Presidential Regulation No. 4 of 2015, there has been regulation on complaints mechanisms against indications of procedural deviations, indications of corruption or unfair competition. The complaint is addressed to the relevant governmental regulatory apparatus (in Indonesia called Aparat Pengawas Intern Pemerintah or APIP )M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency, with the relevant evidence relating to the complaint material. governmental regulatory apparatus M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency, follow up the complaint, and follow-up on complaints made by APIP is reported to the Minister / Head of Institution / Head of Region / or Institutional Leaders, and may be reported to the authorized institution with the approval of the Minister / Head of Institution / Head of Region / Head of Institution, in case it is believed there are indications of corruption that will harm the state, with copies to Government Procurement Policy Agency or Agency of finance and development auditors ( in Indonesian called “Badan Pemeriksa Keuangan dan Pembangunan” or BPKP). The authorized agency may follow up the complaint once the contract is signed and there is an indication of a state loss. Based on the above provisions, not necessarily law enforcement officers may conduct an examination of any indications of procedural deviations, corruption, colution, and nepotism that lead to the state losses in the procurement of stems and Services or the existence of indications of unfair competition. Calling made by law enforcement officers, will certainly cause a "concern" for the procurement of goods and services. Although there is no indication of corruption or other criminal acts, it still gives a sense of apprehension to the procurement officers activities, because every time the police and prosecutors can call and examine the procurement procurement officers. In the Presidential regulation Number 4 of 2015 including the Presidential Regulation Number 54 of 2010, it is not stipulated in detail about the Complaint material against any indication of violation. The meaning of the material here is to mention only "Indications of Procedural Diversion, corruption, colution, and nepotism", in this case the definition of procedural deviation is significant, although in fact it should include the relevant evidence in filing complaints. Again, that the wide range of "Indications of Procedural Diversity" provides "space" for communities or providers of goods and services to be able to report to the appropriate authorities, and does not rule out
the possibility of law enforcement apparatus, to "freely" conduct examination of the Procurement Officers, based on lapran reports made, again raises a question whether the community or providers of goods and services know exactly how the procurement procedure of goods and services implemented, resulting in a winner procurement. If a complaint from the public or providers and the service is based on an assumption or a perception, armed with minimal knowledge of the procurement procedures of goods and services, this will certainly be a concern for the procurement officers.

Because it is certainly the duty of Procurement Officers to be able to meet the procurement targets of procurement process in a timely manner, because if not on time too, will again harm the procurement executor, judged in terms of budget absorption levels are not appropriate, and lead to losses and society too, for not being fulfilled in a timely manner, again here will be a concern from the procurement procurement officers, one side must face complaints, which legally or in the article is not spelled out exactly about what can be used as an offense complaints, one side is pursuing the budget absorption target in order to realize a procurement of goods and services that are transparent, accountable / accountable and meet the needs of the community. It is this that becomes a polemic or the concerns of executing the procurement of goods and services, of course the Government which provides a large portion of the budget in the posture of state budget, giving little attention to the executor of procurement of goods and services in order to achieve all targets.

Some related research on procurement of goods and services states that, in the absence of a law that specifically regulates the procurement of goods and services, it makes it weaker in terms of legal protection against the procurement of goods and services. For example, as written in the Journal of Julianda B Manalu, from the Head of Legal Sub-Division of the Secretariat of the City Council of Sabussalam who sees that the legal domain of the procurement of goods and services actually leads to the Criminal Law, compared to the Law of State Administration or Civil Law, whereas the legal consequences occurs in the procurement of goods and services generally lead to State Losses. As outlined in its journal in the Journal of Laws (Ocean of Justice) Volume 12, Number 2 - July-December 2017, only a small fraction of the violations and in the implementation of Procurement of Goods and Services entered the domain of Civil / Administration. Implementation of the procurement of goods and services in criminal law, a delict is caused by two causes, namely Dolus (deliberate) and Culpa (negligence), where the act caused by negligence or intentional, may be subject to criminal / sanction penalties. In the implementation of procurement of goods and services that become indications of criminal act in the implementation of procurement of goods and services, which are:

a. Falsification of Documents / Letters( art 263 /d art 276 Indonesian Criminal Code or KUHP).
b. Corruption (based on act number 20 of 2011)

The form of legal protection for the procurement of goods and services should be more directed towards legal protection in terms of the State Administration and the Civil Administration, since the procurement of goods and services is more in the domain of civil law and State Administration Law, although in practice there are legal consequences which lead to Criminal law domain. As an example of legal protection is:

[1]. With the enforcement in terms of transparency and information disclosure and Strengthening the use of E-Procurement not only for Government Agencies, but also for State-Owned Enterprises, and Subsidiaries of State-Owned Enterprises, as well as companies affiliated with the Government. Transparency is a very crucial thing related to the implementation of procurement of goods and services, with the transparency, whether in budget, implementation, planning and execution, at least can assist the executor of procurement of goods and services in the implementation, especially reducing the report report related indication of implementation violation procurement of goods and services. Transparency and Liability of Use of E-Procurement shall be protected and its use shall be required by a Law. It is good that the Act is a special law on procurement of goods and services. So it does not lead to multiple interpretations. E-Procurement is one of the media that is very helpful in
the implementation of goods and services because it can increase public trust. With the E-proc, the procurement of goods and services can be monitored directly, not only by executors, but also by providers of goods and services, so that fraud in procurement will clearly be minimized. The use of E-Proc has actually been accommodated on a legal basis, but still not strong, because it's only the Presidential Instruction.

[2]. The establishment of a special law regulating the Unification of procurement of Goods and Services in Indonesia, currently Procurement of Goods and Services still refers to Presidential regulation Number 4 of 2015. Position of Presidential Regulation under the Act based on hierarchy of Laws and Regulations, has not provided legal protection.

[3]. Information Disclosure on Procurement Procedures of Goods and Services, this is indeed the case, but it can provide an educative side to the public regarding the procurement procedures of goods and services. With the educative side, the public can understand the procedure of procurement of goods and services, one side can reduce the existence of reports from the public about the indication of procurement of goods and services, but not necessarily the community complaints is, the community already know the procedures that have been implemented whether it has been appropriate or not.

[4]. Giving boundary restrictions, about what kind of indication of violation can be continued into the realm of investigation / investigation. This relates to how serious the indication of the violation is. Not all indications of violations should be handled by law enforcement apparatus, or continue into the realm of inquiry or investigation. There should be levels, types of indications that can be resolved in the internal realm of M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency, and which type of indication should involve M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency. Because this will in some degree affect the image of M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency, because this will in some degree affect the image of M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency, and affects the level of public confidence when it comes to the external realm of M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency. However, it remains to be regulated on the duties of the internal examiner M (Ministry) / I (Institution) / A (Agencies) / I (Institute) and / or the Government Procurement Policy Agency, against the indication of the violation, especially regarding to whom the accountability report is aimed at handling the indication of the violation, the point is that the Internal Settlement is actually implemented.

[5]. Provide assurance of certainty and legal protection especially for matters such as:

a) Handling procedures in case of any violation of procurement of goods and services, which fall within the category of Administrative, Civil or Criminal violations. So far, if there is any indication of violation in the procurement of goods and services, the investigation is always "herded" into the criminal realm. If all the handling of indications of violation of procurement of goods and services brought into the criminal realm certainly does not provide justice from the legal side, because of course bring different consequences. In addition, with the existence of strict rules regulating the handling of these violations, will deflect Paradigm embedded in the minds of the procurement executives of goods and services, because so far if there is an indication and inclusion of investigators law enforcement apparatus, always leads to criminal, which of course becomes a concern itself, but not necessarily the indications are criminal sphere.

b) Regarding the authorities to examine, this also needs to be a major concern, it certainly becomes different when examining the indications of violations in the procurement of goods and services, all implemented by Law Enforcement Officials, if the indication is a violation of the Administrative, it applies on the contrary, if the indication of such violation leads to the Criminal domain. Because all this time both from practice and in terms of existing legal regulations, almost all done by law enforcement apparatus.
c) The existence of clear arrangements in the division of authority among relevant agencies authorized in the handling of violations in the implementation of Procurement of goods and Services. For example if any indication of such violation occurs within the scope of an agency under the Ministry, in this case, the handling of the indications of such infringement may be executed within the internal scope of the ministry in charge of that institution / agency first. This means that it is resolved Internally, before it is handled by external parties or in this case is the Law Enforcement Apparatus.

2.3 The Urgency of the Establishment of Law on Procurement of Goods and Services

The Law on Procurement of Goods and Services is indeed very necessary since the procurement of goods and services has a very important role, since the procurement of goods and services is included in activities financed by State’s Budget (or in Indonesia called APBN/ Anggaran Pendapatan dan Belanja Negara or APBD/ Anggaran Pendapatan dan Belanja Daerah) either implemented through Swakelola or through auctions / providers of goods and services, besides looking at the size of the budget portion of government spending on the state budget. Procurement of goods and services also has a benefit especially in moving the wheels of the economy. In addition, the procurement of goods and services is also useful in realizing the welfare of the community, because the implementation of procurement of goods and services in the form of goods and infrastructure support community life. In the Academic Paper of the Bill on Procurement of Goods and Services there are several things that become strategic issues discussed, as quoted in for Procurement Policy of goods and services (in Indonesia called “Lembaga Kebijakan Pengadaan barang dan jasa Pemerintah” or LKPP), which are:

a. The occurrence of Barrier To Entries, namely the existence of Sectoral Sector arrangements and the rules below.

b) Procedures and Requirements Excessive procurement, this is clearly not in line with the original purpose of public service. The built bureaucracy is too complicated to result in adherence to excessive procedures and requirements. This seems to be a disease for the perpetrators of bureaucracy.

c) Providing legal certainty, Improving the Regulation on Procurement of Goods and Services from the Presidential Regulation to Law will provide assurance of legal certainty. Perpres 54 of 2010 Jo Presidential Regulation 35 Year 2011 often clashed with higher legislation. This indicates the absence of synchronization and has not yet accommodated the needs of regulating the selection of goods and service providers for the public good.

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d) Institutional Arrangement as well as Penguataan Position Institution that oversees the Procurement of Goods and Services is for Procurement Policy of goods and services (in Indonesia called “Lembaga Kebijakan Pengadaan barang dan jasa Pemerintah” or LKPP). With the Law for Procurement Policy of goods and services (in Indonesia called “Lembaga Kebijakan Pengadaan barang dan jasa Pemerintah” or LKPP) position will become stronger. For example Commission of Business Competition Supervisor (in Indonesia called “Komisi Pengawas Persaingan usaha” or KPPU) as regulated in Law Number 5 Year 1999 or Commission of Indonesian Broadcasting (in Indonesia called “Komisi Penyiaran Indonesia or KPI) with Broadcasting Act or Commission of Public Election (in Indonesia called “Komisi Pemilihan Umum” or KPU in Election Law.

e) Reform of the Law on the Procurement of Goods and Services in Indonesia. Reforms relate to the filling of the existing legal vacuum in current procurement regulations, and eliminates the concerns of executing procurement activities, ensuring transparency in procedures and mechanisms for procurement of goods and services.

f) Development of Good Governance Principles. Procurement of Goods and Services is actually a form of public service, as regulated in Act Number 25 Year 2009 about Public Service.
There are several reasons why the Law on Procurement of Goods and Services need to be immediately legislated, which are:

a. The achievement of purpose of Procurement of Goods and Services that achieve the objectives and principles of the procurement which are Efficient and Effective, Transparent, Accountable and Clean from Corruption, Collusion and Nepotism.

b. As a follow-up to the actions of the Government of Indonesia which ratifies the UNCAC (United Nations Conventions Against Corruption), by Law No. 7 of 2006 about Ratification of the UNCAC, particularly in article 9 which deals specifically with the Financial and Procurement of Services in the Public Sector.

c. Providing Educational Side to all Parties concerned in the procurement of goods and services knowing for sure and accurate about the procurement process and procedures and services.

d. Minimize the occurrence of corruption, collusion, and nepotism Practice. The Law on Procurement of Goods and Services is both a Preventive and Repressive Action to corruption, collusion, and nepotism practice. Indonesia, which is currently increasing the stretch of the limitation of corruption, collusion, and nepotism practice, needs to be supported by the existence of adequate legislation. Especially sad is, Procurement of Goods and Services provide a "big share" in various cases of corruption that occurred in Indonesia.

e. Guarantee of Legal Protection, especially for the procurement officers in procurement activities, Providers of Goods and Services, Users of Goods and Services especially the community and provide healthy competition climate. This is important given that the procurement of goods and services involves various sectors not only within the government but also within the scope of state-owned enterprises and companies affiliated with the State.

5 things above are just a few of the strong reasons why the Law on Procurement of Goods and Services must be established immediately, as a follow up to UNCAC conventions, and create a Transparent, Effective and Accountable Procurement of Goods and Services and provide benefits to all users who, in terms of this is society.

3. Conclusion

The regulation of procurement of goods and services has a very important role in the implementation of the state, especially to realize the implementation of a clean state of corruption, collusion, and nepotism. The regulation of procurement of goods and services is expected to become a filler in the legal vacuum in some matters relating to the procurement of goods and services resulting in a clear and legal certainty of the procurement process, in line with the principle of procurement transparent, accountable, effective and efficient. In addition, it becomes a guarantee of legal protection, especially for executing the procurement of goods and services, so that executors in carrying out the procurement of goods and services to be calm without sheltered worry about an indication of violations that lead to Criminal. Because of that, it is necessary to have a centralized policy and the notification is informative and transparent with the procedures and mechanisms of procurement of goods and services, and the existence of an Institution / Ministry or Agency which specifically regulates the procurement of goods and services, So that the procurement process becomes more accountable and can increase public confidence. Because in essence Procurement of Goods and Services is a form of Service to the Community.
4. Legislation

Law Number 39 Year 1999 on Human Rights
Law Number 10 Year 2004 on the Establishment of Laws and Regulations
Presidential Regulation Number 4 Year 2015 Concerning the Fourth Amendment of Presidential Regulation Number 54 Year 2010 on Procurement of Government Goods / Services
Presidential Instruction Number 5 Year 2004, Concerning the Acceleration of Corruption Eradication

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