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Effectiveness of Law in Supervision of ... (Jhon Evan William Genhart Panjaitan & Andri Winjaya Laksana)

Effectiveness of Law in Supervision of Goods and Services in the Police Body

Jhon Evan William Genhart Panjaitan¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: <u>jhonevanwilliamgenhartpanjaitan.std@unissula.ac.id</u>
²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: andriwinjayalaksana@unissula.ac.id

Abstract. Procurement in the body of goods and services of the Indonesian National Police is currently carried out electronically since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions has been given broad legal space. Eprocurement as an information system is a synergy between data, data processing machines (which usually include computers, application programs, and networks) and humans to produce information. Procurement of goods/services electronically is basically aimed. This study uses a normative legal approach method, with analytical descriptive research specifications. Secondary data comes from primary legal materials, secondary law, and tertiary law, as well as legal expert sources. Data collection through a mixed method between field data and literature. Data processing is carried out qualitatively, then conclusions are drawn using the inductive method. Research problems are analyzed using the Theory of Legal Protection, Theory of Legal Systems and Theory of Legal Certainty. The results of this study indicate that: the effectiveness of the law on procurement of goods and services in the National Police in terms of the effectiveness of its legislation by referring to the organizational perspective on government procurement of goods and services and the role of supervisory institutions on government procurement of goods and services. The data collection method was carried out by literature study with legal materials, namely laws and regulations. The analysis used was qualitative analysis seen from an empirical perspective which was used to analyze data obtained from the literature study.

Keywords: Effectiveness; Procurement; Services.

1. Introduction

In organizing national life, the government is required to advance general welfare with social justice for all Indonesian people. To realize this, the

government is obliged to provide the needs of the people in various forms of goods, services, and infrastructure development1. In addition, the government, in organizing government, also needs goods and services, for that it is necessary to procure goods and services.¹

Procurement of goods and services begins with the transaction of purchasing/selling goods in the market directly (cash), then develops into a purchase with a payment term, by making accountability documents (buyer and seller), and finally through procurement through an auction process. In the process, procurement of goods and services involves several related parties so that there needs to be ethics, norms, and principles of procurement of goods and services to be able to regulate or be used as a basis for determining policies for procurement of goods and services.²

Procurement of goods and services is essentially an effort by the user to obtain or realize the desired goods and services by using certain methods and processes in order to reach an agreement on price, time and other agreements. 2. In order for the nature or essence of procurement of goods and services to be carried out as well as possible, both parties, namely the user and the provider, must always adhere to the philosophy of procurement of goods and services, submit to the ethics and norms of procurement of goods and services that apply, follow the principles, methods and processes of procurement of goods and services that are standard.

A good procurement system for goods and services is a procurement system for goods and services that is able to implement the principles of good governance,

electronic procurement which is hereinafter abbreviated as e-procurement as an auction system in the procurement of goods and services by the government using internet-based technology, information and communication facilities. With e-procurement, the auction process can take place effectively, efficiently, openly, competitively, transparently, fairly/non-discriminatory, and accountably so that it is expected to reflect openness/transparency and also minimize fraudulent practices in the auction of procurement of goods and services that result in losses to state finances. In Indonesia, the implementation of e-procurement is

encouraging efficiency and effectiveness of public spending, as well as structuring the behavior of the three pillars (government, private sector and community) in implementing good governance. In the current era of reform, the government is trying to realize an open and democratic government. One way is by improving and optimizing public services to the community through policies/regulations that are effective, efficient, and reflect openness/transparency considering

¹ Yohanes Sogar Simamora, Dissertation: Principles of Contract Law in Procurement of Goods and Services by the Government. Postgraduate Program, Airlangga University, Surabaya, 2005, page 1.

²Adrian Sutedi, Legal Aspects of Procurement of Goods and Services and Various Problems. Jakarta: Sinar Grafika, 2010, page 3.

regulated through Presidential Regulation Number 8 of 2006 concerning the Fourth Amendment to Presidential Decree Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services. E-Procurement has been implemented since 2007 with the establishment of the Government Goods/Services Procurement Policy Institute (LKPP)5. E-Procurement is a government procurement process for goods/services that is carried out electronically based on the web/internet by utilizing communication and information technology facilities that include electronic public auctions.

Procurement in the Indonesian National Police is currently carried out electronically since the enactment of Law Number 11 of 2008 concerning Electronic Information and Transactions has been given broad legal space. E-procurement as an information system is a synergy between data, data processing machines (which usually include computers, application programs, and networks) and humans to produce information. Electronic procurement of goods/services is basically aimed at:⁴

Increasing transparency and accountability;5

- 1) Improving market access and healthy business competition;
- 2) Improve the efficiency level of the procurement process;
- 3) Supports monitoring and audit processes.
- 4) Fulfilling the need for real-time information access. concrete) or paper-based transactions, namely not purely conducting electronic trade like e-commerce, so

that the community has the right to obtain guarantees of access to public information/freedom of information, as stated in Law Number 14 of 2008 concerning Openness of Public Information, where one of the objectives of openness of public information is to realize good state administration, namely transparent, effective and efficient, accountable and can be accounted for.³.

This law also states that everyone has the right to obtain public information in accordance with the provisions of this law.4 Transparency means a condition that provides greater opportunities for the public to access information on government processes, while efficiency is various steps to shorten the bureaucratic process in terms of public services. The government as the state administrator should carry out its duties proportionally to the maximum in order to achieve good governance, so that a clean government can be realized. Departing from the above, come

³The legal basis for the establishment of LKPP is Presidential Regulation Number 106 of 2007 concerning Financial Institutions Procurement Policy

⁴LKPP, http://www.lkpp.go.id/v2/content.php?mid=8474545499 downloaded on February 10, 2025

⁵ Baiq Dewi Yustisia, Procurement of Goods by the Government through E-Procurement,Http://Adln.Lib.Unair.Ac.Id/.3

that the legal rules of the agreement still apply.7

Regarding e-procurement, President Prabowo Subianto specifically asked the Minister of Economy, Minister of Finance, and Minister of State for National Development Planning/Head of Bappenas to study and test the implementation of the e-procurement system so that it can be applied in all government agencies so that it can prevent various leaks and waste in the use of state finances.8 The target is that by 2025, at least 75% of all K/L spending and 40% of Regional Government spending (Province/District/City) used for procurement of goods/services must use the Electronic Procurement System (SPSE) through the Electronic Procurement Service (LPSE).⁶.

Corruption, Collusion and Nepotism. Procurement of goods and services in the Polri sector is a very significant amount which if properly controlled, will result in significant savings10. One of the efforts to prevent corruption in the field of Polri procurement of goods/services is by issuing Presidential Regulation Number 54 of 2010 as an improvement of Presidential Decree Number 80 of 2003 concerning government procurement of goods/services by the Polri Goods/Services Procurement Policy Institute (LKPP). Article 111 of Presidential Regulation No. 54 of 2010 regulates the establishment of Electronic Procurement Services (LPSE) to facilitate the Procurement Service Unit (ULP) in implementing Polri procurement of goods and services.

The implementation of e-procurement is included in one of the national programs to realize a clean and corruption-free Polri. Where later through this program all government agencies, both central and regional, must implement e-procurement in the procurement of goods/services. E-procurement offers the widest possible opportunity for improvements in costs and productivity. Therefore, e-procurement is one of the most effective ways to improve management, both directly and indirectly, in finding purchasing sources. As a result, e-procurement will increase the key to success in increasing competitiveness in the future.

2. Research Methods

The research approach method is a sociological legal research method, which is a research approach that emphasizes the legal aspect (statutory regulations) regarding the main problem to be discussed, linked to the reality in the field or studying the positive law of a research object and observing the practices that occur in the field. This research is descriptive, that is, it describes precisely the characteristics of an individual, constraint, symptom, or certain group, or to

⁶Attachment to Presidential Instruction of the Republic of Indonesia No. 17 of 2011 concerning Action to Prevent and Eradicat Corruption in 2012

determine the spread of a symptom with other symptoms in society. And also describes precisely and clearly the characteristics of a condition, a symptom or to determine whether or not there is a relationship between a symptom.

3. Results and Discussion

3.1. Effectiveness of Law on Procurement of Goods and Services in the Police

Viewed from the effectiveness of the legislation. The effectiveness of a legislation can be seen from various factors, namely66:

- 1) Knowledge of the substance (content) of legislation.
- 2) Ways to acquire this knowledge.
- 3) Institutions related to the scope of legislation within its people.
- 4) How is the process of birth of a law that should not be born?

in a hurry for instant (temporary) interests, which is termed sweep legislation, which is of poor quality and does not suit the needs of the community.

The effectiveness of legislation can be seen from 2 (two) perspectives, namely67:

- 1) Organizational perspective, namely a perspective that views legislation as an "institution" when viewed from its characteristics.
- 2) Individual perspective or obedience, which focuses more on the individual aspect

or individuals, where their social life is regulated by legislation.

In this writing, the author focuses on research from an organizational perspective. Some issues to be studied are:

- When did it arise?urgent need to draft legislation certain.
- 2) When did it arise?the moment when changes to legislation are needed In what areas of life is this legislation needed and why is there a need for it?
- 3) Which parties have the initiative to draft or create this legislation?
- 4) Which groups are pressure groups in society.

The laws and regulations that we wish to review regarding e-procurement are as

follows:7

1) Presidential Regulation Number 54 of 2010 concerning Procurement of Goods/Services

Government.

- 2) Law Number 17 of 2003 concerning State Finance.
- 3) Law Number 11 of 2008 concerning Electronic Information and Transactions.
- 4) Constitution Number 14 Year 2008 about OpennessPublic Information.

3.2. Effectiveness of E-Procurement Law Reviewed from Presidential Regulation Number 54 of 2010

Procurement of goods and services by the government has been around for a long time, even the regulations have been changed several times. The changes to the existing regulations are intended to make the implementation of government procurement of goods and services more perfect and reduce deviations that can harm state finances. The latest regulation related to government procurement of goods/services is Presidential Regulation Number 54 of 2010. In Presidential Regulation No. 54 of 2010, procurement of goods/services is specifically regulated in articles 104 to 112. Regulations on e-procurement are considered urgent because they are based on the current phenomenon in society where many procurement processes for goods and services are indicated by corruption, collusion and nepotism (KKN) practices. Procurement is a very important issue in eradicating KKN in Indonesia because when viewed from the corruption assessment indicators issued by Transparency International in the Corruption Perceptions Index (CPI)68, in 2011 out of 183 countries surveyed, Indonesia was ranked 100th with a score of 3.0, up from regions and BUMN in Indonesia that procure goods and services through e-procurement. Currently, the number of agencies that have implemented e-procurement in Indonesia until April 19, 2012 has reached 681 agencies, including Ministries/Institutions, BUMN, Provinces, Regencies, Cities, and Universities. Since 2008 until April 2012, the number of procurement packages auctioned through the national e-Procurement system was 46,183 packages, of which in 2012 reached 13,554 packages. The ceiling auctioned from 2008 to 2012 reached Rp 99.6 trillion with providers of goods/services that have been registered online in the national e-Procurement system reaching 216,295 providers70.

PProcurement of goods and services is vulnerable to leaks. It is common knowledge that in the process, procurement of goods and services is vulnerable

⁷Prof. Dr. Achmad Ali, SH, MH Revealing Legal Theory and Judicial Theory Including Interpretation of Law (Legisprudence). Jakarta: Kencana Prenada Media Group, 2009. Pages 378-379

to corruption. Whoever has connections with insiders and can provide a large enough commission will be the winner. The existence of physical contact during the auction or tender process increases the opportunity for collusion between government officials and third parties. Minimizing physical contact is one effort to minimize collusion. Therefore, e-procurement is seen as a solution.

In addition to saving government budget, other benefits of e-procurement for agencies/institutions implementing e-procurement are that it can make the interaction process between users and service providers, as well as the community run more easily and accelerate the procurement process. No less important, the implementation of e-procurement automatically improves the control system against various deviations and violations of the rules. Changes in this process are taken by utilizing advances in information technology as a medium of interaction between the two parties.

The goodness and benefits of e-procurement will not be achieved if it is not supported by reliable and competent Human Resources (HR) and has high integrity. The HR referred to in this case is the procurement committee for goods and services which in Presidential Regulation Number 54 of 2010 is implemented by the ULP and Procurement Officer. Before the ULP and Procurement Officer were formed, procurement management was controlled by the Pimpro, which caused the implementing agency to have no power whatsoever and was vulnerable to internal and external pressure. The poor performance of the procurement committee was also caused by the absence of an incentive mechanism for those who had achievements, especially for the auction committees who had seriously practiced an effective and efficient auction process. Perhaps what happened was the opposite, committing corruption was much more profitable for the auction committee and the responsible officials than the incentives received if they carried out a clean tender. Thus, the weakness of administrative and legal sanctions given to the parties involved in collusion has unknowingly resulted in a bad procurement system.

In addition to HR issues, supervision issues are also very important to note. There are still many procurements carried out in closed rooms. Public involvement in supervising the procurement process is not accommodated in a closed system where the auction regime is still dominated by the auction committee and only a few business actors. The results of the bidding, information on direct appointments and related documents are difficult for the public to access so that at the project implementation level, public supervision mechanisms are difficult to implement. This condition causes the project to become chaotic, deep-rooted collusion and the auction project arisan model becomes a habit to equalize the benefits of business actors and auction committee officials.

Although Presidential Decree Number 54 of 2010 has regulated sanctions for every violation in the process of government procurement of goods and

services71, the existing sanctions are still general and not firm in the imposition of punishment. The existing punishments are only in the form of demands for compensation and inclusion in the blacklist, whereas if observed, the violations are not only administrative violations and civil violations but also criminal violations.

In addition, the legal product of the current procurement of goods and services is still in the form of a Presidential Regulation which can still change if the President is replaced. For this reason, there needs to be a higher regulation, which is consistent and has sanctions for state administration, state financial management needs to be carried out professionally, openly and responsibly in accordance with the basic rules that have been stipulated in the 1945 Constitution. In accordance with the mandate of Article 23C of the 1945 Constitution, Law Number 17 of 2003 concerning State Finance was born. A clear definition to suppress any misappropriation in government procurement of goods and services. The rule or legal product is a law.

The existence of laws governing procurement of goods and services, especially those governing electronic procurement of goods and services (e-procurement) is expected to reduce budget leakage in procurement of goods and services. This is because the law regulates everything from planning, procurement, to project implementation. Thus, the law on electronic procurement of goods and services (e-procurement) is an effort to prevent the possibility of leakage in the procurement of goods and services. The law will also need to include the right of supervision and the right of coercion that refers to the anti-corruption law and not to forget also strict sanctions against perpetrators of violations in the procurement process of goods and services from state finances, namely:72: "All rights and obligations of the state that are valued in money, as well as everything in the form of money or goods that can be owned by the state in connection with the implementation of these rights and obligations".

The scope of state finances includes 73:

- 1) The state's right to collect taxes, issue and distribute and make loans;
- 2) Obligation country For to organize task public servicesstate government and pay third party bills;
- State revenue;
- 4) State expenditure;
- 5) Regional revenue;
- Regional expenditure;
- 7) State/regional assets managed independently or by other parties in the form

of debts, securities, receivables, goods and other rights that can be valued in money, including assets separated in state/regional companies;

- 8) The wealth of other parties controlled by the government in the context of carrying out government duties and/or public interests;
- 9) Wealth of other parties obtained by using facilities provided by the government.

Conceptually, the definition of state finance is actually narrow and depends on the point of view, from the government's point of view, what is meant by state finance is the APBN, while the definition of state finance in a broad sense includes the APBN, APBD, and state finance in all state-owned enterprises74. Government procurement of goods and services is included in state expenditure because in the implementation of its payment it uses funds sourced from the State Revenue and Expenditure Budget (APBN)75. Because it comes from the state budget and the money uses people's money, then the smallest expenditure must be accounted for. The procurement of goods/services sector is the sector that absorbs the largest funds in the distribution of the APBN/APBD outside of subsidies and employee expenses.

According to the Indonesian Procurement Experts Association (IAPI), it was recorded that around 31.2 percent of the APBN allocation was used for goods/services procurement projects, this can be seen from the budget plan data in 2010, where the government allocated a budget of Rp 327 trillion to fulfill the direct spending development plan through the goods and services procurement process76. Given the large budget allocated for goods and services procurement, its management needs to be regulated to avoid budget leaks that will result in state losses. What is meant by state losses is 77:

According to the Audit Board of Indonesia (BPK), what is meant by state losses are 78:

"A reduction in state assets caused by an unlawful act/negligence of a person and/or caused by circumstances beyond the circumstances and beyond human capabilities (force majeure)".

Based on the definition above, state losses can be viewed from several elements:

- 1) Material form (object): money, securities, goods
- Legal subject suffering losses: state/region.
- 3) Causes of state losses: unlawful acts (either intentional or negligent) Size of state losses: the amount is real and definite (in rupiah and goods).
- 4) State losses can be depicted in the following chart.

- 5) Settlement of state losses based on Law No. 1 of 2004 concerning.
- 6) The State Treasury is regulated in articles 59 to article.
- 7) The main material regulated in these provisions is as follows79:
- a. Any state losses caused by unlawful actions

or negligence of a person must be immediately resolved with the provisions of applicable laws. State losses can occur due to violations of the law or negligence of state officials or civil servants who are not treasurers in the implementation of treasury authority.

b. Treasurer, civil servants other than treasurers, or other officials who because of

his actions violate the law or neglect the obligations imposed on him directly harming state finances and he is obliged to compensate for certain losses.

c. Each head of a state ministry/institution/head of work unit can

immediately make a claim for compensation, after learning that the relevant ministry/institution/work unit has suffered losses as a result of the actions of any party.

To determine whether there is a state loss in the procurement of goods and services or not, an audit needs to be conducted by an audit body. In the 1945 Constitution80, it is regulated that the body that has the right to audit the management of state finances is handed over to the Audit Board of Indonesia (BPK). If the BPK audit finds any irregularities in the procurement of goods and services that result in state losses, then the relevant agency/institution must resolve the state losses.

Settlement of state/regional losses is regulated in Chapter XI Article 59 to Article 67 of Law Number 1 of 2004 concerning State Treasury. Article 59 of this Law reads:

"Any state/regional loss caused by an unlawful act or negligence of a person must be immediately resolved in accordance with the provisions of applicable laws. Treasurers, civil servants who are not treasurers, or other officials who, due to their actions that violate the law or neglect the obligations imposed on them, directly harm state finances, are required to compensate for the loss. The claim for compensation is made by the head of the state ministry/institution/head of the work unit of the apparatus

State financial organizers have a very vital role in managing state finances, personal responsibility is criminal responsibility where it is related to the functional approach or behavioral approach. Personal responsibility concerns

maladministration in the use of authority or public service81. The focus of job responsibility is the legality of the action. The legality of an official's action must be based on the authority of procedure and substance while the focus of personal responsibility is maladministration. The form of maladministration in the procurement of goods and services is unlawful behavior or actions, using authority for purposes other than the purpose of authority, exceeding authority and negligence or neglect of legal obligations in the provision of public services.

State financial accountability is closely related to accountability resulting from deviations in state financial management, including procurement of goods/services. Electronic procurement from the perspective of state financial law can be said to be one of the government's efforts to prevent deviations in state financial management. In the event of state financial losses in e-procurement, the parties are personally responsible for the losses incurred. If the state loss is indicative of corruption, it will be resolved in accordance with the provisions of the crime of corruption. State losses arising from circumstances beyond human ability (force majeure) cannot be sued.

State administrators as financial managers must always uphold the principles and regulations of state financial management and comply with existing rules and regulations. Legal certainty for financial administrators in state financial management has been made and outlined in various regulations. In addition, the government has also protected financial administrators with various types of education and training. Several things that need to be criticized are the absence of regulations, articles, and regulations governing political pressure and political processes in relation to financial administration in state financial management. In addition, protection for financial administrators related to the effects of maintaining principles and enforcing regulations due to political pressure has also not received significant attention. This must receive significant attention in relation to preventing misappropriation in the procurement of goods and services. The government must also regulate policies related to administrative misappropriation. This is related to the assessment of several financial administrators who are sometimes in the Macroeconomic Stability Program-Policy Action Plan for Increasing State Spending Efficiency, four agencies, namely the Ministry of State Secretariat, the Ministry of PPN/Bappenas, the Ministry of Communication and Information and the Coordinating Ministry for Economic Affairs are required to develop and implement e-procurement. certain conditions must take a stance related to state financial management. To accommodate this, Law Number 17 of 2003 concerning State Finance needs to be revised in substance by adding articles containing protection for state financial managers against pressures, both internal and external, especially those related to the government's procurement of goods and services so that a clean state financial management procedure can be realized from corruption through the eprocurement system.

Transparency of public information and efficiency of government administration are the focus of improvement in every government agency. This is to support the creation of bureaucratic reform and good and clean governance. Procurement of government goods/services is one of the crucial activities in government agencies because it uses a large budget and is prone to leakage.

The issuance of Law Number 14 of 2008 provides additional obligations to provide information openly to the public. Moreover, the sanctions applied in this Law are criminal sanctions. Openness of public information on the one hand is an effort to make public officials accountable to the public, but on the other hand it has raised fears, especially with the threat of criminal sanctions. This multilayered supervision has caused reluctance among state spending implementers, namely budget user authorities, payment request testing officials and treasurers to carry out state spending in the procurement of goods and services, the result of which is the difficulty of finding a procurement committee, so that procurement is not carried out on time and tends to be postponed at the end of the budget year.

The implementation of e-procurement is one of the important steps in supporting the implementation of public information disclosure as regulated in Law Number 14 of 2008 concerning Public Information Disclosure (UU KIP). In this law, the definition of public information is as follows:⁸

"Public information is information produced, stored, managed, sent, and/or received by a Public Agency relating to the organization and administration of the state and/or the organization and administration of other Public Agencies in accordance with this Law as well as other information relating to the public interest." Meanwhile, what is meant by a public body is "Public bodies are executive, legislative, judicial and other bodies whose main functions and duties are related to the administration of the state, some or all of whose funds are sourced from the state revenue and expenditure budget and/or regional revenue and expenditure budget, or non-governmental organizations as long as some or all of their funds are sourced from the state revenue and expenditure budget and/or regional revenue and expenditure budget, community donations, and/or from abroad.

In providing public services, public bodies have an obligation to

convey information openly. This means that anyone who carries out tasks and functions with funds sourced from the APBN/APBD and public fund donations must convey information openly to the public except for information that is excluded such as strategic information and business secrets that are the rights of the company, state secret information, intelligence information, and information

⁸Article 1 Paragraph (2) of Law No. 14 of 2008 concerning Transparency of Public Information

of a personal nature.

Public information disclosure is a means to optimize public supervision of the implementation of the state and other public bodies and everything that has an impact on the public interest. The KIP Law states that all public information is open and can be accessed by every user of public information89 and everyone has the right to obtain public information in accordance with the provisions of the KIP Law90.

The presence of the KIP Law further emphasizes the importance of organizing professional, non-discriminatory, open and accountable public services. Procurement of government goods/services is one of the activities carried out by the government in organizing public services, as stated in Article 5 of the KIP Law.

In conventional procurement of goods and services, all processes are still manual and there is a direct face-to-face meeting between government agencies as users of goods/services and prospective partners of goods and services providers. In the semi e-procurement system, both users of goods/services and providers of goods/services enter data for tender purposes to the internet, while the Selection/Qualification Documents, although uploaded by goods/services, still have the possibility of these documents being published manually. This means that some can be uploaded and some can be shared manually. Likewise, providers of goods/services can download or download the document if there is a document uploaded by the user of goods/services. In the full e-procurement system, all processes are done online, both users of goods/services must upload or upload documents related to the tender, and providers of goods/services must download the documents that have been uploaded by users of goods/services. In the three systems above, for the submission of the Goods/Services Provider Bidding Document, only the full eprocurement system requires providers of goods/services to upload to the eprocurement system. Therefore, in a full e-procurement system, sufficient skills and abilities are needed for this online process, as well as accuracy.

The implementation of e-procurement in government agencies is still far from ideal, but with improvements in the regulatory system and incentive socialization, it is hoped that by 2012 all government agencies will be using full e-procurement.

4. Conclusion

implemented properly Supervision can be interpreted as an activity of continuous observation and assessment of an activity object using certain methods, tools, and rules to ensure the conformity of its implementation with the established plans and policies. Supervision of goods and services is supervision carried out on the implementation of procurement of goods and

services whether it is in accordance with the plan, basic principles of procurement, procedures, and applicable rules. The nature of supervision is to prevent as early as possible the occurrence of deviations, waste, and failures, and so that procurement can run efficiently, effectively, economically and orderly. Supervision of procurement of goods and services in government agencies is the responsibility of every leader in a government agency related to procurement. Supervision in the procurement of goods and services must be carried out by government agencies as an effort to realize justice, transparency, and accountability in the context of good governance.

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