



PREVENTION OF FRAUD IN GOVERNMENT PROCUREMENT OF GOODS AND SERVICES WITH E-CATALOG IMPLEMENTATION

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ABSTRACT

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Supporting government functionality requires extreme attention, especially to provide services to the society in which the government is responsible of . The efficiency and effectiveness of government services to the society can be done extensively by acquiring favor from the other government agency or any third party offering their services. However this could be obtained by procuring goods and services. The procurement of goods and services is a procurement activity conducted by the government agency using the national budget. The procurement is carried out in public to ensure there is no collusive action to arbitrarily earn the procurement, resulting in losses to the government and society. However, there are many collusive actions carried out throughout the procurement process in Indonesia. The government develops E-Catalog for procurement of goods and services to mitigate those collusive actions. The research will try to analyze the effectiveness of the E-Catalog to prevent any fraud on the procurement of goods and services process. The results of this study indicate that the procurement of goods and services electronically is designed to manage the procurement of goods and services in a more transparent, effective and efficient manner, using the Electronic Procurement Service (LPSE), but the regulation is still not specific, both in terms of substance and technicality, so it feels not yet effective.

Keywords : Fraud, Procurement, E-Catalog, Government

INTRODUCTION

Clean, accountable, and transparent governance is one of the demands of bureaucratic reform in Indonesia. This system is expected to support solid and responsible development management. It can also support the implementation of decisions that avoid transactional politics in governance, thus achieving prosperity for all citizens.¹

Welfare state concept implemented in Indonesia mandates that the government's primary responsibility is to ensure the broadest possible prosperity for its citizens.² In carrying out this responsibility, the government is responsible for providing all the people's needs, both in the form of goods and services, to support governance.

Fulfillment of logistics, equipment, and professional services that can support the optimization of government agencies' work in providing services to the public can be assisted by the procurement of related goods and services needed.³ The definition of procurement of goods and services within the legal corridor in Indonesia can be found in Article 1 Number 1 of Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2016 concerning Government Procurement of Goods and Services (" **Perpres 12/2021** ") which stipulates that "procurement of goods and services is the procurement of goods/services by Ministries/Institutions/Regional Apparatuses funded by the

¹Wahyudi Kumorotomo, *Public Bureaucracy Accountability* , Pustaka Pelajar, Yogyakarta, 2008, p. 12.

²Adrian Sutedi, *Licensing Law in the Public Service Sector* , Sinar Grafika, Jakarta, 2010, p. 2.

³Sahya Anggara, *Public Policy* , Pustaka Setia, Bandung, 2014, p. 39

State Revenue and Expenditure Budget (" APBN ") or Regional Revenue and Expenditure Budget (" APBD ")."

Yohanes Sogar Simamora, in his dissertation, argues that the government has an obligation to meet the needs of its citizens in various forms, whether through goods, services, or adequate infrastructure development. ⁴Procurement of goods and services is essentially carried out to obtain the goods and services desired by users, using specific methods and processes to achieve the agreed quality and quantity between the parties.⁵

Basically, there are several methods or ways of selecting winners for government procurement of goods and services which can be done in the following ways:⁶

1. **Public Auction** , a method of selecting suppliers of goods or services conducted openly with widespread announcements through the mass media and official bulletin boards. This allows interested and qualified business members to participate by meeting the specified requirements.
2. **Limited Auction** , a limited auction can be held if the number of goods or services providers who are believed to be capable of carrying out the work is limited. The type of work is also quite complex. A limited auction is conducted by announcing widely through the mass media and official bulletin boards by listing the goods or services providers who are believed to be capable, in order to provide an opportunity for other goods/service providers who meet the qualifications.
3. **Direct Selection** is the selection of goods or service providers that is carried out by comparing as many offers as possible, at least 3 (three) offers from goods or service providers that have passed prequalification, then negotiations are carried out both technically and costly, and must be announced at least through an official notice board. Direct selection can be carried out if the general auction method or limited auction is considered inefficient in terms of auction costs.
4. **Direct Appointment** : This method can be implemented under certain circumstances and special conditions for one goods or service provider. The selection of a goods or service provider can be carried out through negotiations, both technical and cost, to obtain a reasonable and technically justifiable price.
5. **Self-management** is the implementation of work that is planned, carried out, and supervised independently using one's own labor, tools, or piecework wages. Self-management can be carried out by users of goods or services, government agencies, community groups, or non-governmental organizations receiving grants.

E-Catalog is a method for electronic procurement of goods and services. E-Catalog is a procurement system implementation based on Presidential Decree Number 80 of 2003 (" **Keppres 80/2003** ") which stipulates that it is possible for every government agency to carry out the procurement process for goods and services directly. E-Catalog is present to accommodate the implementation of Presidential Decree 80/2003 which is vulnerable to sabotage in the form of collusion between the procurement committee and providers of goods and services which would be detrimental to the state.⁷

⁴Yohanes Sogar Simamora, *Principles of Contract Law in Procurement of Goods and Services by the Government* , Dissertation in the Doctoral Program, Airlangga University, Surabaya, 2005, p. 1.

⁵Adrian Sutedi, *Legal Aspects of Procurement of Goods and Services and Various Problems* , Sinar Grafika, Jakarta, 2010, p. 3

⁶ M. Arsyad Suriadi, *Analysis of Electronic Procurement of Goods and Services (E-Procurement) at the Kendari City LPSE*, UHO Economic Journal, Vol. 1, No. 1, 2016, pp. 1-11

⁷Witanto, *Dimensions of State Losses in Contractual Relations (A Review of Contract Risks in Government Agency Goods/Services Procurement Projects)* , Mandar Maju, Bandung, 2012, p. 13.

Presidential Regulation 12/2021 also supports the use of e-Catalogs. Presidential Regulation 12/2021 introduces the concept of e-Catalogs in the electronic procurement of goods and services, also known as *e-procurement*. *E-procurement* is hereinafter known as LPSE, or Electronic Procurement Services. LPSE is under the auspices of the Government Goods and Services Provision Policy Agency ("LKPP").

The introduction of *e-procurement* minimizes direct contact between goods or services providers and the procurement committee. This allows the procurement process to proceed without collusion, saving time and costs, and ensuring accountability for the results. It also increases the transparency of the procurement process. This will also reduce fraud in government procurement awards.

Fraud is an unlawful act that benefits the perpetrator and harms others.⁸ *Fraud* committed during the procurement of goods and/or services can also result in a decline in the quality of the goods and/or services, inconsistencies in financial reporting, and a loss of public trust in the government. This fraud can occur due to a lack of oversight and internal control of the government's procurement process.

The inadequate accountability system and lack of transparency in the procurement process of goods and services are also accompanied by an ineffective prevention process to prevent fraud. Hutagaol and Kasmual argue that in the practice of procurement of goods and services, collusion, corruption, and nepotism are still often found, namely by increasing the original value of the project from its actual value and by violating procedures established by laws and regulations or by procuring fictitious goods and services that were never actually needed just to disburse the budget.⁹

In the author's opinion, electronic procurement of goods/services actually offers more advantages than manual procurement for both users and providers. However, often instruments that are good in theory, but in practice are different. Procurement of goods and services still has weaknesses and obstacles in its implementation, for example, a lack of financial support, some agencies and service providers are more comfortable with conventional systems, a lack of support from top management, a lack of skills and knowledge about electronic procurement of goods/services, and security guarantees.

Therefore, in this case, the author will examine how to implement e-catalogs as a method to prevent fraud in the government procurement of goods and services.

METHOD

This research will be conducted based on the principles of *socio-legal research*. *Socio-legal* research examines the perceptions and behavior of legal subjects in light of real-world events.¹⁰ This research will also be supported by conceptual approaches to facilitate the analysis of related issues. The first approach is *the Conceptual Approach*, where the problem will be analyzed based on the views and doctrines developed within the legal sciences. The next approach is *the Statute Approach*, where the problem discussed will be examined based on applicable laws and regulations. The final approach, *the Analytical Approach*, is used to conceptually understand the meaning contained in the terms used in the laws and regulations,

⁸ Karyono, *Forensic Fraud*, Andi, Yogyakarta, 2013, p. 67.

⁹ Miftah Toha, *Indonesian Government Bureaucracy in the Reform Era*, Kencana Prenada Media Group, Jakarta, 2009, p. 25

¹⁰ Peter Mahmud Marzuki, *Legal Research*, Kencana, Jakarta, 2019, p. 43.

as well as to understand their implementation in legal practice in the field.¹¹

DISCUSSION

1. Use of E-Catalogs in the Government Procurement of Goods/Services

Basically, Presidential Decree 12/2021 regulates the objectives of procurement of goods/services, namely:¹²

1. Obtaining goods/services that match the price paid and are measured in terms of quality, quantity, time, cost, location and supplier;
2. Increasing the use of domestic products;
3. Strengthening the participation of micro, small and cooperative businesses;
4. Increase the participation of domestic trade actors;
5. Supporting the implementation of research results and the use of goods/services;
6. Increase creative industry participation;
7. Achieving economic equality and expanding business opportunities; and
8. Improving sustainable purchasing practices.

The plan to purchase goods/services from government agencies is part of contractual law, but because it involves the state as the owner of the work (*bouwheer*) and resources from the APBN/APBD, it is practically inseparable from the administrative law aspect as a reference for the work of the apparatus involved in the procurement process. The use of large funds is often the basis for the practice of corruption, collusion and nepotism between procurement entities, so that in some cases it is impossible to separate it from the criminal law aspect, if in the process there is a financial mismanagement that is detrimental to the state .¹³

Considering that the budget used to finance the procurement of goods/services comes from state funds (APBN/APBD) and the procurement activities are carried out for the public interest (community) in the development process, the implementation of procurement of goods/services is regulated more specifically in a statutory regulation in addition to generally remaining subject to the law of agreements regulated in Book III of the Civil Code .¹⁴

Essentially, the procurement of goods and services is a user's effort to obtain and implement the desired goods and services. E-procurement uses specific methods and processes to reach agreements on price, time, and other terms. ¹⁵Several parties are involved in the procurement of goods and services: the buyer or user and the seller or supplier of goods and services. In procurement, the user is the unit that requests or employs the supplier to provide or manufacture goods or to perform specific work.

Users of goods and services can be bodies/organizations or individuals. Users of goods and services classified as organizations are Government Agencies (Central Government, Provincial Government, Regional Government, City Government), Business Organizations (BUMN, BUMD, Private) and Community Organizations.⁴⁰ For those classified as

¹¹ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research*, Bayumedia Publishing, Malang, 2007, p. 300

¹² Agus Yusuf Arianto, *Practical Guide to Government Procurement of Goods/Services*, Jenggala Pustaka Utama, Surabaya, 2013, p. 2

¹³ Samsul Ramli, *Mandatory Reading Book for Government Goods/Services Procurement Expert Certification*, Visimedia, Jakarta, 2014, p. 328.

¹⁴ LKPP, *Module 1 Introduction to Procurement of Goods/Services in Indonesia*, LKPP, Surabaya, 2010, p. 37.

¹⁵ Yanuar E. Restianto, *Paper: Implementation of e-Procurement in Government/Regional Government Work Units*, Jenderal Soedirman University, Purwokerto, 2011, p. 10

individuals, they are individuals or people who need goods and services. In this study, the author focuses on the purchase of goods and services with government agencies as consumers of goods and services.¹⁶

A goods and services provider is a party that supplies or produces goods or performs work or services based on user requests, formal orders, or work contracts. Suppliers of goods and services can be business organizations or individuals. Suppliers engaged in the provision of goods are known as suppliers or vendors, those engaged in contract services are called contractors, and those engaged in consulting services are called consultants.¹⁷

Thus, it can be concluded that the procurement process involves three parties: the user, the committee, and the supplier of goods and services. For sales contracts for goods/services in the private sector, financing does not come from public funds, so the buyer and contractor are only bound by the contract law contained in Book III of the Civil Code. For purchases of goods/services for government agencies, in addition to the legal aspects of the agreement, they are also technically bound by administrative law within the government.

E-Procurement is not only related to the purchasing process but also includes electronic negotiations and decision-making on contracts with suppliers. The purchasing process is simplified by electronic handling of operations-related tasks, while strategic tasks can be given a more important role in the process. New tasks related to this purchasing strategy include contract management with existing and new suppliers and the creation of new market structures by actively consolidating the supply side. Meanwhile, a *procurement system* is a software system for electronic purchasing, namely the procurement of goods and services.

e-procurement websites allow qualified and registered users to search for buyers or sellers of goods and services. Depending on the approach, buyers or sellers can set prices or invite bids. Transactions can be initiated and terminated. Ongoing purchases can fulfill customer requests for quantity discounts or special offers. *E-procurement software* enables the automation of some purchasing and sales processes. Participating companies expect to control inventories more effectively, reduce purchasing agent costs, and improve manufacturing cycles. *E-procurement* is expected to integrate with the trend toward computerized¹⁸ *supply chain management*.

The government has established Electronic Procurement Service Centers (" LPSE "). These service centers manage everything related to the electronic process for government procurement of goods and services. It is hoped that all agencies in Indonesia will implement LPSE in the future . Electronic Procurement Services (LPSE) were actually first developed by the Bappenas Goods/Services Procurement Policy Development Center in 2006 in accordance with instructions in Presidential Instruction Number 5 of 2004. The legal basis underlying the birth of this service is :

1. Presidential Decree Number 80 of 2003 concerning Guidelines for the Implementation of Public Procurement of Goods and Services;
2. Presidential Instruction Number 5 of 2003 concerning the Economic Policy Package Prior to and After the End of the Cooperation Program with the International Monetary Fund ("IMF");
3. Presidential Instruction Number 5 of 2004 concerning the Acceleration of Corruption Eradication;
4. Presidential Regulation Number 8 of 2006 concerning the Fourth Amendment to

¹⁶ Aminuddin Ilmar, *Administrative Law*, Kharisma Putra Utama, Jakarta, 2014, p. 139.

¹⁷ Widi Hartono, *Legal Aspects and Project Administration*, KPPI, Surakarta, 2011, p. 2.

¹⁸ Fadli Arif, *Government Procurement of Goods/Services Through E-Purchasing*, Socialization of the Implementation of the e-Drug Catalog, Bandung, 2014, p. 12.

- Presidential Decree Number 8 of 2003 (concerning Guidelines for the Implementation of Government Procurement of Goods and Services); and
5. Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2016 concerning Government Procurement of Goods and Services.

The LPSE implementation takes the form of an electronic goods/services procurement website, known as e-procurement. E-procurement also serves to facilitate the electronic auction process. Previous lessons learned in the procurement auction process demonstrate that good transparency can influence healthy competition among auction participants. E-procurement, which is guaranteed to increase transparency, can foster healthy competition among business actors participating in the auction.

This way, optimization and efficiency of state spending can be realized immediately. Even during the pandemic, users can still purchase goods and services needed by the government. All processes utilize only information and communication technology facilities, as well as the application system and electronic procurement services provided by the National Procurement Agency (LPSE) of the Government Goods/Services Procurement Policy Agency (LKPP).

Other selection methods will be implemented gradually in accordance with the development of electronic procurement systems and applications and the legal framework that supports them. To expand e - procurement access to all government agencies, LKPP provides the opportunity for departments, ministries, LPND (Non-Departmental Government Institutions) of provincial, district, city governments, and other government agencies to establish LPSE in their respective agencies. These LPSEs have the same function as the National LPSE but serve their respective agencies. In establishing Regional/Departmental LPSEs, LKPP will provide guidance, technical instructions, training, and the LPSE Application. The LPSE Application is an e-procurement application developed by LKPP for use by government agencies throughout Indonesia.

Goods providers or partner companies that will participate in auctions at government agencies must initially register electronically by visiting the LPSE administrator at each agency. Companies that register for *e - procurement* must send copies of documents to verify the validity of the company. For non-construction goods/services providers, the documents that must be sent are as follows:

1. Business license;
2. Tax ID number;
3. Registered Certificate from the Directorate General of Taxes;
4. Taxable Employer Confirmation Letter;
5. Company domicile certificate;
6. Main Director's ID card or ID card according to the composition of the Board of Directors;
7. The Company's Deed of Establishment, consisting of the front cover of the Deed and articles explaining the composition of the board of directors and commissioners; and
8. The latest company deed consisting of the front cover of the company deed and articles explaining the composition of the board of directors and commissioners.

Government agencies, as users of goods in the e-procurement process, appoint an administrator to manage agency data. Once registered, the system grants the Government Agency Administrator access to the e - Government Procurement System (SePP) and access to the provided menus. The Agency Administrator can manage, add, modify, and delete data for

Organizational Units, Work Units, Commitment Making Officials, and Procurement Committees. The stages are as follows:¹⁹

1. Government agencies fill out the Government Agency registration form provided by SePP in the Government Agency Management System (SMI) module;
2. Government agencies send the files required by the SePP administrator;
3. After the SePP Administrator has seen and checked the contents of the Government Agency registration form and the authenticity of the files, the Administrator has the right to approve the registration, or reject (delete) the registration data according to the provisions that have been determined;
4. If approved, the government agency will receive an approval email, allowing them to establish the necessary organizational structure. However, if not approved, the government agency can re-register until the applicable requirements are met.

2. The Function of Supervisory Institutions in Preventing Fraud in the Procurement Process of Goods/Services

The Government Goods/Services Procurement Policy Institute (" **LKPP** ") began as a work unit called the Center for Public Goods/Services Procurement Policy Development (" **PPKPB** ") as part of an echelon II work unit. The LKPP, which was established in 2005, has the responsibility to formulate policies and regulations for government goods/services procurement, provide technical guidance and advocacy related to the implementation of government goods/services procurement, and provide facilities for the implementation of certification exams for government goods/services procurement experts.²⁰

In practice, the LKPP is an institution that holds the status of a Non-Ministerial Government Institution (" **LPNK** ") and is directly responsible to the President of the Republic of Indonesia. ²¹The LKPP coordinates with the Minister of State for National Development Planning/Head of Bappenas.

Article 1 Paragraph 1 of Presidential Regulation Number 106 of 2007 concerning the Government Goods/Services Procurement Policy Agency stipulates that "The Government Goods/Services Procurement Policy Agency, hereinafter referred to as LKPP, is a non-departmental government agency which is under and responsible to the President."

The purpose of establishing the LKPP is to oversee the government procurement process to prevent fraud and collusion in procurement, both from the users and tender participants. The LKPP also functions to improve the government procurement system, particularly in electronic procurement, or *e-procurement*.²²

As previously explained, the LKPP works and reports directly to the President of the Republic of Indonesia and coordinates with the Minister of State for National Development Planning/Head of Bappenas. Its duties and functions are as follows:

1. LKPP is tasked with implementing the development, formulation and determination of Government Goods/Services Procurement policies.
2. LKPP has several functions as follows:

¹⁹ Hardjowijono, *Basic Principles of Public Procurement of Goods/Services in Indonesia*, Indonesia Procurement Watch, Jakarta, 2010 p. 15.

²⁰ Susan Andriyani, *Analysis of the Effectiveness of Law in the Implementation of Electronic Procurement of Goods and Services (E-Procurement) and the Role of Supervisory Institutions in Government Procurement of Goods and Services*, Thesis in the Postgraduate Program, Faculty of Law, University of Indonesia, 2012, p. 69.

²¹ R. Serfianto DP, and Iswi Hariyani, *The Secret to Winning Goods/Services Tenders*, Pustaka Yustisia, Yogyakarta, 2011, p. 1.

²² Arum Arindra Rossita, *Effectiveness of E-Procurement in Procurement of Goods/Services in Bojonegoro Regency*, Brawijaya University, Malang, 2014, p. 20

- a. Preparation and formulation of strategies and determination of policies and standard procedures in the field of government procurement of goods/services, including procurement of business entities in the context of government cooperation with business entities.
- b. Preparation and formulation of strategies and determination of policies for developing human resources in the field of government procurement of goods/services;
- c. Monitoring and evaluation of its implementation;
- d. Development and guidance of information systems and supervision of the implementation of electronic procurement of government goods/services;
- e. Provision of technical guidance, advocacy and legal opinions;
- f. Development and provision of administrative support to all organizational units in LKPP; and
- g. Supervision of the implementation of LKPP duties.

Regarding the E-Catalog, LKPP has responsibilities mandated by Article 110 of Presidential Decree 12 of 2021, namely:

1. In the context of e-purchasing, the electronic catalog system (E-Catalog) must at least contain technical information and prices for goods/services;
2. The electronic catalog system as referred to in paragraph (1) is organized by LKPP; and
3. The goods/services listed in the electronic catalog are determined by the Head of LKPP.

The Government Goods/Services Procurement Policy Agency is responsible for the implementation of the E- Catalog system in the context of procuring goods/services through the E-Purchasing system. The implementation of the E -Catalog in the E-Purchasing system is carried out by LKPP by selecting government goods/services providers before providing the best offer and is deemed to meet the requirements to display the goods/services offer in the E-Catalog column on the LKPP website page .

To support the principles of government procurement of goods and services in accordance with the provisions, in the process of procurement of goods and services, there are several parties involved in the supervisory function, namely:

1. Leaders of relevant government agencies

In this case, the agency leadership carries out preventive supervision and repressive supervision by:

- a. Establish policies and technical instructions (juknis) for the implementation of procurement of goods and services;
- b. Creating a management control system for the procurement of goods and services;
- c. Creating a monitoring system for the implementation of procurement of goods and services;
- d. Requires users of goods/services and procurement committees/officials to document every procurement process for goods and services, and store it as a means of accountability.

2. Use of Goods and Services

As a party interested in the procurement of goods and services in the administration of government in accordance with its main duties and functions, users of goods and services can carry out preventive supervision, namely by:

- a. Prepare a work plan that describes the activities that must be carried out, the

- form of work relationships and the targets that must be achieved ;
- b. Prepare written procedures for implementing activities so that they can be understood and implemented, especially those related to procurement of goods/services ;
- c. Carrying out recording and reporting on the results of procurement of goods and services ;
- d. Storing and maintaining records, reports and other documents related to the procurement of goods and services ;
- e. Carry out supervision and inspection of the implementation of work that has been and is being carried out by goods and service providers, if necessary, can order third parties to do so, such as consulting firms, accounting firms and BPKP .

3. Internal Audit Unit

An internal audit unit is a unit within an agency that is independent of other units and directly responsible to the agency's leadership. In accordance with its function, the Internal Audit Unit conducts oversight in the procurement of goods and services by:²³

- a. Conduct direct supervision of activities/projects being implemented
- b. Conducting inspections of the procurement process for goods and services in accordance with its duties and functions
- c. Accommodating and following up on public complaints related to problems/deviations in the implementation of procurement of goods and services.
- d. Submitting incidental periodic reports to the relevant agency leadership.

4. Public

The public is the final point of contact for all procurement of goods and services related to government administration and public services. To ensure good governance, oversight of the recipients of these services is essential. The public can file a complaint if the following occurs:

- a. There were indications of procedural deviations;
- b. There were indications of corruption, collusion and nepotism in the implementation of procurement;
- c. There is unhealthy competition in selecting the winner of the procurement project.

The Supervisory Institutions for Procurement of Goods and Services include:

- 1. LKPP;
- 2. Audit Board of Indonesia or BPK;
- 3. Business Competition Supervisory Commission or KPPU;
- 4. Corruption Eradication Commission or KPK;
- 5. Government Internal Supervisory Apparatus or APIP;

CONCLUSION

Electronic procurement of goods/services is part of e-business and is used to design an internet-based procurement process that is more transparent, effective and efficient when compared to conventional procurement systems. Electronic Procurement Services (LPSE) are

²³ Philipus M. Hadjon, *Positional Responsibility and Personal Responsibility for Governmental Actions*, Administrative Law and Corruption Workshop, Department of HTN FH Unair Surabaya, 2008, p. 23.

implemented in the form of an electronic procurement site (e-procurement) that facilitates the electronic auction process. Legal regulations are considered ineffective because the regulations are still not specific, both in terms of substance and technicality because there are no regulations that specifically regulate *e-procurement*.

The role of supervisory institutions in preventing fraud in the procurement of goods/services is aimed at ensuring that government procurement of goods/services funded by the APBN and APBD can be implemented effectively and efficiently with the principles of healthy, transparent, open competition and fair treatment for all parties, so that the results can be accounted for both in terms of physical, financial and benefits for the smooth running of government duties and public services. The supervisory institutions consist of the Government Goods/Services Procurement Policy Agency (LKPP), the Audit Board of Indonesia (BPK), the Business Competition Supervisory Commission (KPPU), and the Corruption Eradication Commission (KPK).

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