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Normative Reconstruction of Blacklists in Government Procurement as an Instrument for Building Legal Awareness and Preventing the Practice of 'Flag Borrowing'

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Abstract

Background: Government procurement of goods and services is a strategic instrument in state financial management that must be implemented based on the rule of law, fair competition, and integrity. However, flag-borrowing practices (manifested in bid rigging, the use of falsified documents, and contract management by parties outside the official corporate structure) reveal distortions in the legal identity of business entities within the procurement system.
Objective: This article examines the alignment between the conception and practice of blacklists and the principle of the rule of law, and formulates a normative reconstruction based on responsive regulation to sustainably prevent flag-borrowing practices.
Methods: This study employs a normative juridical method using statutory and conceptual approaches, enriched by a socio-legal perspective through a case study of the Ministry of Law and Human Rights.
Results: The analysis shows that the absence of a limitation period, the lack of an explicit obligation for proportionality review, and issues of enforcement temporality create disharmony between the objective of regulatory guidance and the principle of legal certainty.
Conclusion: The reconstruction of blacklists should be directed toward five pillars: affirmation of a system-integrity orientation, temporal limitation of sanctions, proportionality review, beneficial ownership transparency, and a compliance-based rehabilitation mechanism. Through this approach, blacklists can be repositioned as a responsive, constitutional, and effective legal guidance instrument for preventing flag-borrowing practices in Indonesian public procurement.

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INTRODUCTION

Government Procurement of Goods/Services (*PBJP*) plays an important role in state administration because it serves as the government's main instrument for managing and distributing the state budget to meet public needs. Through procurement, the government not only builds infrastructure and provides public services but also implements policy priorities to realize public welfare (America et al., 2024). Therefore, procurement cannot be viewed merely as a technical and bureaucratic administrative process, but as part of the state's responsibility to manage public finances transparently, accountably, and responsibly. The principle of fair legal certainty, as regulated in Article 28D paragraph (1) of the 1945 Constitution, requires every budget-management process, including procurement, to be carried out based on clear, rational, and legally accountable rules (Suherman & Syaifullah., 2025). Moreover, from the perspective of the modern rule of law, budget management through procurement is also related to the protection of the social and economic rights of communities that depend on the effectiveness of government spending (Apriandhini & Jaelani, 2022).

The principle of legality in modern administrative law is no longer understood merely as the existence of written rules but also as a limitation on the use of discretion so that administrative authority is not exercised arbitrarily. Within the framework of the rule of law (*rechtsstaat*), the validity of administrative action is determined not only by the existence of a formal legal basis but also by its conformity with the principles of proportionality, accountability, transparency, and protection of the parties' rights (Djelepov, 2024). Accordingly, the public procurement system must be implemented based on transparency, efficiency, fair competition, and integrity as part of the oversight mechanism for the use of administrative authority (America et al., 2024). These principles function not only as procedural rules but also as instruments to protect the public interest from potential irregularities, conflicts of interest, and market distortions that may harm state finances (Morais & Santos, 2024).

Nevertheless, public procurement practices continue to face various integrity problems. The Organization for Economic Co-operation and Development (OECD) identifies public procurement as one of the sectors with a high risk of corruption and manipulation of competition due to the large value of contracts, the complexity of procedures, and the intensive interaction between government officials and business actors (Lisciandra & Millemaci, 2022). These risks do not always take the form of criminal corruption but also appear in manipulative practices that gradually weaken the principles of fair competition and administrative accountability. Several studies in Indonesia show that weak institutional oversight and integrity in procurement affect the low effectiveness of state-finance protection (Suardi et al., 2024). This condition indicates that strengthening procurement governance requires not only adequate regulation but also an oversight system capable of consistently maintaining the integrity of the procurement process.

One practice that is still frequently found in Indonesian procurement is the practice of "flag borrowing," namely the use of another company's identity or qualifications to satisfy administrative requirements in the supplier-selection process. Formally, this practice may be viewed as an administrative violation of qualification requirements (*LKPP*). Substantively, however, it creates artificial competition and undermines a healthy market structure. From the perspective of competition law, manipulation of supplier identity disrupts business competition and opens space for bid-rigging that damages the integrity of the procurement market (Lisciandra & Millemaci, 2022). Market integrity in public procurement is an important element in maintaining a healthy and efficient business-competition system; therefore, the practice of "flag borrowing" cannot be regarded merely as an ordinary administrative violation.

From the perspective of state administrative law, flag borrowing creates serious problems in terms of legal accountability because the company formally listed in the contract often differs from the party that performs the work (Sunoto & Berlianty, 2024). This situation creates uncertainty regarding the legal subject responsible for contract performance, thereby weakening accountability and making the application of administrative sanctions more difficult. In addition, the practice also reveals weaknesses in the procurement oversight system, which has not fully ensured consistency between legal norms and field practices (Bosio et al., 2022). This situation shows that administrative oversight in public procurement still faces serious challenges in maintaining consistency between legal principles and institutional implementation.

As a form of administrative control, Indonesia's procurement system recognizes blacklist sanctions against business actors who commit violations. This sanction is designed as a guidance instrument to maintain the integrity of the procurement system and encourage business actors' compliance with applicable rules. However, inclusion in a blacklist has major consequences because it can limit a company's participation in government procurement for a certain period and affect the reputation and economic rights of the business actor (Sudarsono., 2024). From the perspective of the rule of law, administrative sanctions that have serious impacts must be applied carefully and must continue to guarantee the protection of economic rights and fair legal procedures (Valantieje, 2026; Weyembergh & Joncheray, 2016). Thus, blacklisting is not only related to administrative enforcement but also concerns the protection of business actors' constitutional rights within the public procurement system.

Problems arise when the implementation of blacklists reveals tension between the objective of guidance and the repressive nature of administrative sanctions. A case study at the Ministry of Law, which was formerly part of the Ministry of Law and Human Rights before institutional separation from the Ministry of Immigration and Corrections, shows a very long-time lag between the Audit Board of Indonesia (BPK) findings in 2012 and the imposition of a blacklist in 2025. This condition raises questions about the effectiveness of regulation and the rationality of the preventive objective of the administrative sanction imposed. In modern administrative enforcement theory, temporal proximity between the violation and the sanction is an important factor for creating deterrence, maintaining compliance, and preserving the legitimacy of government action as regulator (Buckenmaier et al., 2021; Nazareth & Choi, 2025). In addition to the time-lag issue, the application of blacklists also raises the issue of administrative retroactivity when the regulatory basis used to impose sanctions differs from the rules in force when the violation occurred. The principles of legal certainty and protection of legitimate expectations require that legal consequences not be applied retroactively without a clear legal basis (Yavetskyi, 2025).

In this context, responsive regulation theory offers an alternative perspective for building a more adaptive, gradual, and compliance-oriented administrative enforcement system (Fiene, 2023). Through this approach, severe sanctions such as blacklisting should be positioned as a last resort (*ultimum remedium*), not as a reactive response to external oversight pressure. The principle of the material rule of law requires a balance between regulatory effectiveness and protection of the rights of legal subjects so that administrative action retains constitutional legitimacy (Sousa, 2025). However, previous studies have tended to treat blacklists merely as a technical instrument of administrative enforcement without further discussing issues of temporality, regulatory retroactivity, and proportionality review in relation to the protection of business actors' economic rights. Moreover, the relationship between flag-borrowing practices and the distortion of the legal identity of business entities in the procurement system has not been deeply analyzed. This condition indicates a research gap that integrates normative-constitutional aspects with the dynamics of institutional implementation in public procurement.

Based on these problems, this study raises the main question of whether the conception and practice of blacklisting in the Government Procurement of Goods/ Services system are aligned with the principles of the rule of law and the paradigm of responsive regulation. This study also questions what normative reconstruction model can balance legal certainty, proportionality, and the effectiveness of preventing flag-borrowing practices in a sustainable manner. Accordingly, this study aims to critically analyze the implementation of blacklists from the perspective of the material rule of law and to formulate a regulatory model that is more adaptive, proportional, and oriented toward guiding business actors' compliance. The research gap addressed by this study is threefold: (1) existing Indonesian administrative law scholarship has not systematically examined the constitutional implications of sanction temporality and retroactivity in the blacklist context; (2) no prior empirical study has documented the structural gap between normative blacklist design and longitudinal enforcement practice over a multi-decade period in a single institution; and (3) the analytical connection between flag-borrowing practices and the design failures of current blacklist regulation has not been constructed within a unified constitutional-responsive regulation framework.

This study provides theoretical and normative contributions through the reconstruction of the blacklist concept from the perspective of the material rule of law and responsive regulation. The novelty of this study is explicitly threefold: first, it is the first study to systematically integrate the problems of sanction temporality, administrative retroactivity, and absence of proportionality review within a unified constitutional-administrative analytical framework in the context of Indonesian public procurement; second, it empirically demonstrates, through a longitudinal case study (2012–2025), that implementation gaps are structural rather than merely technical; and third, it proposes a five-pillar normative reconstruction model that repositions blacklists as a compliance-guidance instrument rather than a repressive administrative mechanism. The novelty of this study lies in its effort to connect flag-borrowing practices, protection of business actors' economic rights, the principle of proportionality, and the problems of temporality and retroactivity of administrative sanctions within an integrated analytical framework. This study also offers a new approach that positions blacklists not merely as a repressive administrative instrument but as part of a sustainable compliance-guidance system in government procurement. Through this approach, this study is expected to strengthen the development of public procurement policies that are more just, accountable, and aligned with the principles of the modern rule of law.

METHOD

This research was a normative juridical study. This approach was selected because the central focus of the study was to examine the legal construction and normative gaps in the blacklist regulation framework within the Government Procurement of Goods/ Services (*PBJP*) system in Indonesia. A normative juridical method was appropriate when the research objective was to critically analyze and reconstruct existing legal norms, doctrines, and regulatory instruments rather than to gather empirical behavioral data (Chandra et al., 2022). The statutory approach was used to analyze the normative construction of blacklist sanctions in the Government Procurement of Goods/ Services system based on applicable laws and regulations (Chandra et al., 2022), while the conceptual approach was used to position blacklists within the framework of administrative-sanction theory and rule-of-law principles, particularly legality, legal certainty, and proportionality (Utari & Saputri, 2024). This study viewed blacklist sanctions as administrative actions with a quasi-penal character because they directly affected the economic rights and reputation of business actors; therefore, their application had to observe strict procedural protection (Blachnio-Parzych, 2023). The responsive regulation perspective was used to assess whether blacklisting had been applied as an *ultimum remedium* in the administrative enforcement system of government procurement. In the Indonesian context, the application of responsive regulation to public procurement was particularly relevant given the fragmented institutional architecture of oversight, involving *LKPP*, Inspectorates, BPK, and Ministries, which created structural conditions for inconsistent enforcement and delayed sanctions. The case study of the Ministry of Law and Human Rights (2012–2025) provided a concrete empirical illustration of how these institutional dynamics operated in practice, highlighting the gap between the normative design of blacklists and their actual enforcement trajectory.

The research data were obtained through examination of laws and regulations governing blacklists in government procurement, review of the National Blacklist webpage of the Government Procurement Policy Agency (*LKPP*), and a case study of follow-up actions on Audit Board of Indonesia (*BPK*) findings from 2012 to 2025 at the Ministry of Law. The socio-legal perspective was used to identify the gap between normative design and institutional practice in the application of blacklist sanctions. The legal analysis procedures in this study proceeded through three systematic stages: (1) doctrinal analysis, which mapped the normative content of applicable procurement regulations to establish the legal construction of blacklist sanctions; (2) regulatory evaluation, which assessed the conformity of blacklist provisions with constitutional norms including legality, legal certainty, and proportionality; and (3) teleological interpretation, which examined whether the regulatory objectives of blacklist sanctions (guidance, deterrence, and integrity preservation) were achievable under the current normative design in a proportional and constitutionally legitimate manner. The primary and secondary legal materials obtained were then processed and qualitatively analyzed through systematic and teleological interpretation to understand the relationship between legal norms, regulatory objectives, and the implementation practices of administrative sanctions in government procurement.

RESULTS AND DISCUSSION

Results

Normative Construction of Blacklists in the Procurement System

The research findings show that blacklist sanctions in Indonesia's procurement system are normatively constructed as administrative sanctions aimed at maintaining system integrity and encouraging business actors' compliance. Blacklist regulation is dispersed across various government procurement regulations, ranging from Presidential Regulations on Government Procurement of Goods/Services to technical regulations issued by the Government Procurement

Policy Agency. Within this normative construction, blacklisting is applied to business actors who commit certain violations, such as breach of contract, document falsification, withdrawal without valid reasons, and the practice of "flag borrowing." In administrative-law doctrine, administrative sanctions are distinguished from criminal sanctions because their orientation is not retaliatory, but rather focused on the restoration of legal order and the prevention of future violations (Adisti, 2023). However, developments in administrative law show that this distinction is not always clear, especially when administrative sanctions have significant effects on the economic rights and business continuity of legal subjects.

In Indonesia, the real impacts of blacklisting are significant: a blacklisted business actor cannot participate in any government procurement tender nationwide during the sanction period. This effectively eliminates the primary revenue source for companies predominantly engaged in government projects, with *direct* consequences for employees, subcontractors, and dependent supply chains. Data from the LKPP National Blacklist indicate that hundreds of business actors have been blacklisted in recent years, with sanction durations ranging from one to two years. For small and medium enterprises (SME) heavily dependent on government contracts, such sanctions can lead to business closure, a consequence disproportionate to violations that may be administrative in nature rather than systemic (Kurniawan et al., 2023).

International literature over the last decade emphasizes that the boundary between administrative and penal sanctions becomes blurred when the sanction has existential consequences for business entities (Surbakti et al., 2025). In the context of public procurement, a national prohibition from participating in tenders for one to two years is not merely corrective but may directly affect business continuity, reputation, market access, and suppliers' contractual relations. These impacts place blacklisting in the category of administrative sanctions with a quasi-penal character that requires stricter procedural protections, including the right to be heard and guarantees of proportionality (Caranta, 2026).

From the perspective of Indonesian state administrative law, legality and proportionality are the foundations for the exercise of administrative authority (Rusmianto & Sara, 2022). Proportionality requires a balance between the objective of protecting the integrity of the procurement system and the restriction of business actors' economic rights (Encinas, 2021; Rusmianto & Sara, 2022). Comparative administrative-law literature emphasizes that proportionality review is the main control mechanism to prevent the abuse of administrative authority that significantly affects the rights of legal subjects (Sari, 2025). Without such review, administrative sanctions risk becoming repressive instruments that lose constitutional legitimacy. Based on a search on https://jdih.lkpp.go.id, data on regulations concerning the imposition of blacklist sanctions were obtained and divided into five periods.

Table 1. Procurement Regulations and Guidelines for Blacklist Sanctions (2010–present)

Period	Regulatory Regime for Government Procurement of Goods/Services/Status	Guidelines for Imposing Blacklist Sanctions/Status
2010 – 2012	- Presidential Regulation Number 54 Year 2010 on Government Procurement of Goods/Services - Presidential Regulation Number 35 Year 2011 on Amendment to Presidential Regulation Number 54 Year 2010 (No longer in force)	Regulation of the Head of LKPP Number 7 Year 2011 on Technical Operational Guidelines for Blacklists (No longer in force)
2012–2018	- Presidential Regulation No. 70 Year 2012 on Second Amendment to Presidential Regulation Number 54 Year 2010 - Presidential Regulation Number 172 Year 2014 on Third Amendment to Presidential Regulation Number 54 Year 2010 - Presidential Regulation Number 4 Year 2015 on Fourth Amendment to Presidential Regulation Number 54 Year	Regulation of the Head of LKPP Number 18 Year 2014 on Blacklists in Government Procurement of Goods/Services (No longer in force)

Period	Regulatory Regime for Government Procurement of Goods/Services/Status	Guidelines for Imposing Blacklist Sanctions/Status
	2010 (No longer in force)	
2018–2021	Presidential Regulation Number 16 of 2018 on Government Procurement of Goods/Services	LKPP Regulation Number 17 Year 2018 on Blacklist Sanctions in Procurement of Goods/Services (No longer in force)
2021–2025	Presidential Regulation Number 12 of 2021 concerning Amendment to Presidential Regulation Number 16 of 2018	LKPP Regulation Number 4 of 2021 on Guidance for Business Actors in Government Procurement of Goods/Services
2025–present	Presidential Regulation Number 46 of 2025 concerning the Second Amendment to Presidential Regulation Number 16 of 2018	

The findings also show that blacklists have a quasi-penal character because they directly affect the economic rights and reputation of business actors. Inclusion in a blacklist prevents business actors from participating in government procurement for a specified period. Accordingly, this administrative sanction functions not only as a guidance instrument but also as a significant restriction on economic rights.

Normatively, Regulation of the Government Procurement Policy Agency (LKPP) Number 4 of 2021 positions blacklists within the framework of business-actor guidance. However, the regulatory design does not explicitly provide a limitation period for imposing sanctions or an explicit obligation to conduct a proportionality review before determination. This normative gap may create ambiguity between the guidance orientation and the repressive administrative character, particularly in cases where the time lag between the violation and the imposition of sanctions is substantial (Chopard & Obidzinski, 2021; Morelli et al., 2025). In the doctrine of legal certainty, the absence of enforcement time limits can undermine legal certainty and violate the protection of legitimate expectations (Constantin-Vorovenci, 2022; Raitio, 2016).

From the perspective of modern regulation, an effective administrative-sanction design cannot rely solely on the threat of prohibition but must also consider the dynamics of compliance and the behavior of business actors (Friehe & Mungan, 2019; Jiang et al., 2025). Responsive regulation theory places severe sanctions at the top of the enforcement pyramid, to be used only after guidance, persuasion, and administrative correction have proven ineffective (Mascini, 2013). Recent literature on adaptive regulation shows that a staged approach improves long-term compliance compared with a directly repressive approach (Fiene, 2023).

Thus, the normative construction of blacklists in Indonesia's procurement system still requires strengthening in three main aspects: (1) affirmation of the principle of administrative non-retroactivity as part of legal certainty; (2) clear regulation of limitation periods to maintain the preventive rationality of sanctions; and (3) an explicit obligation to conduct a proportionality review before sanctions are imposed. Without such strengthening, blacklists risk losing both their normative legitimacy and their regulatory effectiveness as a legal-guidance instrument for preventing flag-borrowing practices.

Implementation of Blacklists and the Case Study of the Ministry of Law and Human Rights, 2012–2025

At the national level, data from the *LKPP* National Blacklist as of 2024 indicate that more than 2,800 business entities have been, or are currently, subject to blacklist sanctions in Indonesia's government procurement system. Document falsification and failure to complete contractual obligations are the two most frequently cited violations. The Government Financial and Development Supervisory Body (*BPKP*) reported that in 2022, procurement irregularities identified through audits resulted in potential state financial losses exceeding IDR 5.3 trillion. While disaggregated national statistics specifically attributable to flag-borrowing practices have not yet been published separately by *LKPP*, the OECD's identification of Indonesia as a jurisdiction with elevated bid-rigging risk (America et al., 2024) suggests that identity-manipulation practices constitute a structurally significant subset of procurement violations. Based on an examination of the *LKPP* National Blacklist webpage, the application of blacklists in government procurement practice is generally imposed for administrative violations related to breach of contract, document falsification, supplier withdrawal, and submission of false data. However, this study finds that the institutional implementation of blacklists has not fully demonstrated consistency between the objective of guidance and the effectiveness of administrative enforcement.

The case study at the Ministry of Law shows follow-up to Audit Board of Indonesia (*BPK*) findings from 2012, which only resulted in the imposition of blacklists in 2025. A time lag of more than a decade indicates a problem of temporality in the enforcement of administrative sanctions in government procurement. In practice, delayed sanctions weaken the preventive purpose and deterrent effect of blacklists because the link between the violation and the sanction becomes increasingly distant.

In addition, this study identifies the issue of administrative retroactivity, as the regulatory basis used when imposing sanctions differs from the regulatory regime in force when the violation occurred. This condition raises concerns related to legal certainty and the protection of business actors' legitimate expectations. From a socio-legal perspective, this demonstrates a gap between the normative design of blacklists and the institutional implementation practices of government procurement.

To provide an empirical overview of the application of blacklist sanctions in government procurement of goods and services, this study uses data on the publication of blacklisted suppliers at the former Ministry of Law and Human Rights for the 2012–2025 period. The data show variations in the types of violations committed by suppliers, ranging from document falsification and collusion among suppliers to failure to complete work in accordance with the contract. In addition to reflecting the repressive function of administrative sanctions in maintaining procurement integrity, these data also reveal the most dominant tendencies of violations in government procurement practice. The recapitulation of blacklist publications is presented in the table 2.

Table 2. Recapitulation of Blacklist Publication at the Ministry of Law and Human Rights

No.	Supplier Initials	Type of Violation	Publication Period	Duration	Status	BPK Finding (Yes/No)
1.	CV.CCM	Document falsification	19 June 2012 – 18 June 2014	2 Years	Completed	No
2.	CV.D	Negligence/Breach of Contract	11 July 2014 – 9 July 2016	2 Years	Completed	No
3.	CV. MB	Collusion among suppliers	18 December 2014 – 16 December 2016	2 Years	Completed	No
4.	CV.PP	Collusion among suppliers	18 December 2014 – 16 December 2016	2 Years	Completed	No
5.	CV.KP	Failure to complete work according to the contract	7 February 2018 – 5 February 2020	2 Years	Completed	No
6.	PT.HBL	Failure to complete work according to the contract	7 February 2018 – 5 February 2020	2 Years	Completed	No
7.	CV.PT	Contract termination due to supplier fault	16 December 2021 – 15 December 2022	1 Year	Completed	No
8.	CV.C	Contract termination due to supplier fault	19 September 2022 – 18 September 2023	1 Year	Completed	No

No.	Supplier Initials	Type of Violation	Publication Period	Duration	Status	BPK Finding (Yes/No)
9.	PT.ASK	Document/false statement	6 February 2025 – 5 February 2027	2 Years	Published	Yes (2012)
10.	PT.RSU	Failure to complete work	4 June 2025 – 3 June 2025	1 Year	Published	No
11.	PT.VP	Document/false statement	24 June 2025 – 3 June 2027	2 Years	Published	Yes (2012)
12.	CV.M	Failure to complete work	29 December 2025 – 28 December 2026	1 Year	Published	No

Discussion

Blacklists as Rule-of-Law Instruments in Government Procurement

This temporal analysis, conducted through a systematic reading of blacklist publication data from 2012 to 2025, demonstrates that implementation problems are not merely technical but structural. The table indicates two temporally distinct enforcement regimes. During the 2012–2018 period, sanctions were imposed relatively close to the time of violation, with all sanctions lasting two years. This pattern aligns with the principle of deterrence, namely the temporal proximity between violation and sanction, which can effectively shape compliant behavior (Friehe & Mungan, 2019; Jiang et al., 2025).

Table 3. Analysis of Temporal Patterns in Blacklist Publication Based on Regulatory Periods (2012–2025)

Period	Applicable Regulatory Regime	Number of Cases	General Characteristics	Temporal Pattern	Analytical Notes
2012–2014	Presidential Regulation 54/2010 (and its amendments)	3	Dominant two-year duration; contractual violations	Relatively close to the time of violation	Enforcement pattern based on contractual discipline
2015–2018	Presidential Regulation 54/2010 (further amendments)	3	Fixed two-year duration; default	Temporality remains proportional	Consistent duration but without explicit proportionality parameters
2019–2020	Transition to Presidential Regulation 16/2018	0	---	No publication	Regulatory transition period
2021–2024	Presidential Regulation 16/2018 in conjunction with Presidential Regulation 12/2021; LKPP Regulation 4/2021	4	Variation in duration of one to two years emerges	Relatively close	Duration differentiation begins, but without explicit evaluative parameters
2025	Presidential Regulation 16/2018 jo. Presidential Regulation 12/2021; PerLKPP 4/2021	2	Cases based on the 2012 BPK Audit Report (LHP)	Approximately 13-year gap	Temporal anomaly and potential retroactivity issue

Conversely, the post-2021 period shows variations in sanction duration (one to two years) and, most significantly, the imposition of sanctions in 2025 for BPK audit findings from 2012, with an approximately 13-year delay. This temporal gap represents the most striking anomaly in the entire data set. Regulatory-enforcement literature indicates that extreme delays in the imposition of sanctions may reduce their deterrent effect and even weaken the legitimacy of the supervisory authority (Bergman, 2026; Malik, 2014). In this context, blacklists no longer function as preventive instruments but as retrospective administrative corrections.

In the context of public procurement, the effectiveness of sanctions is determined not only by the severity of punishment but also by the certainty and consistency of their application (Bergman, 2026). If sanctions are imposed after a prolonged interval, the objective of guidance becomes blurred. Business actors that have experienced changes in management, ownership structure, or business model during that period may no longer reflect the condition at the time the violation occurred. Consequently, delayed sanctions may lose their corrective relevance and proportionality. A comparative analysis of blacklist practices in other jurisdictions highlights the normative gaps in Indonesia's current framework. In the European Union, Article 57 of Directive 2014/24/EU establishes a maximum exclusion period of three years for non-convictional administrative violations, grounded in the principle of proportionality, and mandates "self-cleaning" mechanisms enabling excluded operators to demonstrate remedial measures. In the United States, the Federal Acquisition Regulation (FAR) Part 9.4 provides for "suspension and debarment" procedures with statutory time limits, mandatory notice, and the opportunity to respond. In South Korea, the Act on Contracts to Which the State Is a Party establishes a maximum debarment period of two years with graduated enforcement thresholds based on violation severity. By contrast, Indonesia's LKPP Regulation No. 4 of 2021 does not specify an explicit administrative limitation period, does not mandate a procedural proportionality review, and does not provide a formal self-cleaning or rehabilitation mechanism, gaps that this study directly addresses.

The next problem apparent from Table 3 is the issue of administrative retroactivity. If the 2025 blacklist determination applies a regulatory regime different from the one in effect in 2012, serious questions arise regarding legal certainty. In comparative public-law literature, the principle of non-retroactivity is considered an inherent component of legal certainty, protecting legal subjects from the retroactive expansion of legal consequences (Nikolaevna, 2023). Without an explicit limitation period in procurement regulations, the scope for administrative discretion becomes very broad, potentially creating normative uncertainty.

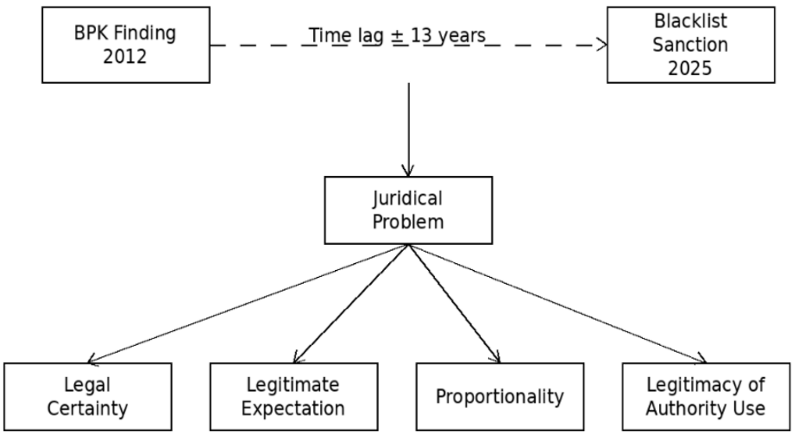

Figure 1. Analysis of Blacklist Sanctions with a Long Temporal Gap and Changed Applicable Regulations

In the case study of the Ministry of Law and Human Rights, internal discourse regarding the applicable legal basis, whether the 2012 regulation or the latest regulation should be used, reflects a tension between legal certainty and demands for public accountability. This tension indicates that the regulatory design of blacklists has not fully anticipated the problem of temporality in administrative enforcement. From the perspective of the material rule of law, the absence of clear temporal limits on administrative authority may conflict with the principle of protecting business actors' legitimate expectations (Yavetskyi, 2025).

In addition to temporality, fragmentation of authority constitutes a significant implementation challenge. The process of determining blacklists involves coordination among the Procurement Working Unit, the Inspectorate, the Legal Bureau, and LKPP. Administrative-governance literature demonstrates that institutional structural complexity often becomes a source of delay and inconsistency in the enforcement of administrative sanctions (Young et al., 2024). When authority is dispersed without clear coordination parameters and time limits, the sanctioning process becomes highly dependent on internal bureaucratic dynamics.

From a socio-legal perspective, the reading of Table 3 reveals a gap between norms and practice. Regulation positions blacklists as guidance instruments, yet temporal anomalies suggest that their implementation more closely resembles an administrative response to external audit pressure rather than part of a systematic staged regulatory design. This condition reinforces the criticism that blacklists have not been fully operationalized within the responsive-regulation paradigm.

Within the framework of responsive regulation, severe sanctions such as blacklists should be placed at the top of the enforcement pyramid (Gibbs et al., 2025; Mascini, 2013). This implies that before imposing a national prohibition on participation in goods/services procurement competitions, regulators need to document the stages of guidance, warnings, or corrective mechanisms undertaken. However, Table 1 does not show a systematically documented staged escalation pattern; instead, it presents variations in duration and significant temporal anomalies. Without a clear escalation architecture, blacklists risk becoming reactive and formalistic instruments.

Furthermore, from the perspective of administrative legitimacy, consistency and transparency of procedures are key factors in maintaining public trust in regulators (Decker et al., 2025; Ruder & Woods, 2019). When the sanctioning process lacks clear time limits and is not accompanied by an explicit proportionality review, its normative legitimacy may be questioned. Trust in the procurement system depends not only on the existence of sanctions but also on the perception that such sanctions are imposed fairly, timely, and according to rational parameters.

Thus, the analysis of Table 3 highlights three central issues: (1) extreme temporality and potential administrative retroactivity; (2) the absence of a clear limitation period; and (3) the weakness of a staged enforcement design based on responsive regulation. These three issues confirm that the problem of blacklist implementation is not merely a technical administrative matter but touches on the limits of the constitutional legitimacy of state authority in restricting the economic rights of business actors.

Reconstructing Blacklists within the Responsive Regulation Paradigm

Constitutional Analysis: Proportionality, Non-Retroactivity, and Procedural Protection

Within the rule-of-law framework, as affirmed in Article 1, paragraph (3) of the 1945 Constitution, every governmental action must be subject to law and must not be carried out arbitrarily. This principle is reinforced by Article 28D, paragraph (1) of the 1945 Constitution, which guarantees the right to recognition, guarantees, protection, and fair legal certainty. This constitutional guarantee is not merely a declarative norm but serves as a normative parameter for testing the legitimacy of the state's exercise of administrative authority (Silva, 2024). In the context of blacklist sanctions, which directly affect business actors' economic access and reputation, this constitutional standard is highly relevant because it concerns the restriction of constitutional rights in the economic and business sphere.

From the perspective of modern constitutional law, restrictions on rights by the state must comply with the principle of proportionality (Anđelković, 2017; Silva, 2024). Recent literature in constitutional and administrative law emphasizes that proportionality consists of three main elements: a legitimate aim, necessity, and balancing (Silva, 2024). In the context of blacklists, the objective of safeguarding the integrity of the procurement system is clearly legitimate because it relates to the protection of state finances and the public interest. Constitutional issues arise, however, in the elements of necessity and balancing when sanctions are imposed after a significant time lag, as in the case study of the Ministry of Law and Human Rights.

The imposition of a blacklist more than a decade after the finding of a violation raises the question of whether the sanction still meets the criterion of regulatory necessity. International literature on administrative penalties shows that delays in imposing sanctions can reduce their preventive rationality and weaken their function in shaping compliance (Putri et al., 2025). If deterrence is no longer temporally relevant, the restriction of business actors' economic rights is difficult to justify under the necessity test. At the balancing stage, restrictions on economic rights with significant impacts must be compared with real and actual public benefits (Putri et al., 2025; Urbina, 2019). If those benefits are merely symbolic or retrospective, substantive proportionality may be questioned.

The next issue is administrative retroactivity. Although the principle of non-retroactivity is explicitly regulated in criminal law, contemporary public-law literature extends its application to quasi-penal administrative sanctions (Todts, 2026). When administrative sanctions have existential impacts on business actors, their constitutional protection standards cannot be separated from the principle of protection against retroactive application of norms. Legal certainty requires legal subjects to be able to predict legal consequences based on the norms in force when the event occurred (Shcherbanyuk & Bzova, 2023). In the context of blacklists, the use of regulations different from the regime in force at the time of violation may violate this principle, especially when the legal consequences become more severe or qualitatively different. Comparative literature in European Union law places the protection of legitimate expectations as an integral part of the principle of legal certainty (Yavetskyi, 2025). This concept affirms that the state may not suddenly change legal consequences to the detriment of legal subjects without a clear and predictable normative basis. Thus, the application of blacklists must consider the balance between demands for public accountability and the protection of business actors' legitimate legal expectations.

Furthermore, constitutional analysis cannot be separated from the dimension of procedural fairness. In modern administrative literature, transparency of reasons, the opportunity to be heard, and access to objection mechanisms are fundamental elements of the legitimacy of administrative sanctions (Zhou, 2026). Without such procedural guarantees, the restriction of economic rights through blacklists risks being perceived as a repressive action that is inconsistent with the principle of the rule of law. Lawful administrative enforcement requires not only a formal legal basis but also fair and transparent procedures.

From the perspective of the material rule of law, the legitimacy of administrative sanctions is determined not solely by normative authority but by the integration of formal legality, rationality of purpose, and protection of constitutional rights (Astariyani & Hanum, 2024) . Therefore, the problem of temporality revealed in Table 3 cannot be viewed as an ordinary administrative issue but as a constitutional issue concerning the limits of state discretion in restricting citizens' economic rights.

Thus, constitutional analysis shows that the legitimacy of blacklists depends on their conformity with three main principles: (1) proportionality in restricting rights; (2) non-retroactivity and protection of legal certainty; and (3) fair and transparent procedural guarantees. These three principles are not only evaluative parameters but also the normative foundation for reconstructing the blacklist concept so that it aligns with the principle of the rule of law and the responsive-regulation paradigm in the public procurement system.

Reconstruction of Blacklist Regulation as a National Legal-Guidance Instrument for Preventing Flag-Borrowing Practices

Conceptual Reconstruction Model Five Pillars of Blacklist Reform: (1) System-Integrity Orientation blacklists serve procurement system integrity; (2) Temporal Limitation administrative limitation period to preserve deterrent rationality; (3) Proportionality Review mandatory written evaluation prior to blacklist determination; (4) Beneficial-Ownership Transparency ownership verification in SPSE to prevent flag borrowing; and (5) Compliance-Based Rehabilitation structured pathways to transform blacklists into behavioral guidance instruments. These pillars are anchored in Article 28D of the 1945 Constitution and mediated through the responsive-regulation enforcement pyramid. All 12 cases in the 2012–2025 period indicate manipulation of business-entity identity; quantitatively, therefore, 100% of the findings correlate with flag-borrowing practices in blacklist determinations, whether in the form of bid-rigging, use of manipulated documents, or contract failure caused by management by parties outside the official company structure. Thus, the blacklist problem in Indonesia's procurement system cannot be reduced merely to contractual default; it is a problem of legal-identity integrity and distortion of administrative accountability.

Flag borrowing is essentially the manipulation of a business entity's identity to obtain access to public contracts. Bid-rigging creates artificial competition; manipulated documents damage administrative validity; and contract management by parties outside the official structure obscures the line of legal responsibility. From the perspective of state administrative law, this creates dysfunction in the principles of accountability and certainty of legal subject (Hermansyah & Saleh, 2024). From the perspective of competition law, the practice distorts market structure and disrupts the level playing field (America et al., 2024). The OECD explicitly identifies manipulation of company identity as part of bid-rigging patterns in public procurement (Carbone & Jofre, 2024).

Therefore, the reconstruction of blacklists must begin with recognition that they are a strategic instrument in national legal guidance, not merely an administrative punishment mechanism. Legal guidance in this context means shaping compliance behavior and structurally strengthening procurement-system integrity. The concept of guidance cannot be interpreted as tolerance for violations, but as a regulatory design that integrates prevention, correction, and sanction escalation proportionally.

Transformation from a Repressive Paradigm to Responsive Regulation

The command-and-control approach, which emphasizes prohibitions and sanctions, often produces formal compliance without the internalization of integrity values. Contemporary regulatory literature indicates that a purely repressive approach is ineffective in addressing business actors who adapt to regulatory loopholes (Beeres et al., 2022). In contrast, the responsive-regulation paradigm emphasizes staged enforcement through an enforcement pyramid, where persuasion and guidance form the base, and severe sanctions constitute the peak of escalation (Beeres & Klomp, 2021; Kolieb, 2015).

In the context of flag borrowing, this approach is particularly relevant because the practice is often carried out through informal networks and hidden affiliations. Without a staged, risk-based strategy, blacklists function merely as a reaction to violations, rather than as a systemic instrument for prevention.

Regulatory reconstruction should affirm that blacklists serve as the *ultimum remedium* for high-level integrity violations, such as collusion and identity manipulation. For minor administrative infractions, guidance stages must be prioritized. This differentiation strengthens both the rationality and proportionality of sanctions.

Integration of Limitation Periods and Legal Certainty

The temporal analysis in Table 3 shows that, without a limitation period, administrative authority can be exercised over a very long-time span. In the material rule of law, legal certainty serves as the foundation for the legitimacy of the state's exercise of authority. Comparative administrative law literature emphasizes that temporal limitations act as a control mechanism against potential abuses of discretion (Sousa, 2025).

Therefore, blacklist regulation needs to establish a rational time limit for imposing sanctions from the moment a violation is discovered. Such a limitation does not weaken accountability; rather, it strengthens the constitutional legitimacy of the sanctions. Without a time limit, blacklists risk violating the principle of legal certainty and undermining the protection of business actors' legitimate expectations.

Proportionality Review and the Rationality of Discretion

Normative reconstruction must also include an obligation to conduct a written proportionality review before determining a blacklist. The principle of proportionality, as developed in modern constitutional and administrative law, requires evaluating the purpose, necessity, and balance of the impacts of rights restrictions (Friedman & Sangiuliano, 2026; Sieckmann, 2018). In the context of flag borrowing, this review must consider whether the violation is systemic, repeated, and causes significant harm to state finances.

Documenting the proportionality review will strengthen transparency and reduce the potential for arbitrariness. Without such parameters, the variations in sanction durations shown in Table 3 are difficult to justify normatively.

Transparency of Beneficial Ownership and Structural Prevention

One weakness of the procurement system is the unclear beneficial ownership of business entities. The OECD recommends beneficial-ownership transparency as a key instrument for preventing identity manipulation in public procurement (OECD, 2020; Resimić, 2022). Integration of General Legal Administration (*AHU*), taxation, and electronic procurement system data enables the identification of hidden affiliations and flag-borrowing patterns.

Blacklist reconstruction must be accompanied by data-driven preventive reform. Prevention is more effective than retrospective sanctions. With a robust ownership and affiliation verification system, opportunities for identity manipulation can be reduced starting from the selection stage.

Rehabilitation and Compliance Transformation

As an instrument of national legal guidance, blacklists must not stop at mere prohibition. Compliance-based regulation literature shows that learning-oriented and behavior-transformation approaches are more effective in the long term (Fiene, 2023). Therefore, regulation should incorporate compliance-based rehabilitation mechanisms, such as mandatory corporate integrity programs, procurement-ethics training, and independent audits.

This approach strengthens the corrective function of blacklists and prevents the permanent stigmatization of business entities that have acted in good faith to improve themselves.

Synthesis of Reconstruction within the Framework of National Legal Guidance

From an LKPP regulatory reform perspective, the five-pillar reconstruction proposed in this study translates into concrete reform recommendations: (1) amend *LKPP* Regulation No. 4 of 2021 to introduce an explicit administrative limitation period of no more than three years from violation discovery; (2) issue technical guidelines mandating a written proportionality review form prior to blacklist determination; (3) integrate beneficial ownership verification into the SPSE portal as a pre-qualification condition; (4) establish a compliance-based rehabilitation pathway enabling early removal after completion of mandatory integrity programs; and (5) publish disaggregated national blacklist statistics as an annual public accountability report. By integrating the responsive-regulation paradigm, rule-of-law principles, and risk-based prevention strategies, blacklist reconstruction can become an effective and constitutional instrument of national legal guidance. It is no longer understood as an administrative reaction to violations but as part of a regulatory architecture that sustainably shapes the integrity of the procurement system.

This approach enables a balance between legal certainty and regulatory effectiveness. Legal certainty is maintained through limitation periods and non-retroactivity; regulatory effectiveness is strengthened through staged escalation and identity verification; and constitutional legitimacy is guaranteed through proportionality review and procedural protection.

Theoretically, the findings concerning the problem of sanction temporality, potential administrative retroactivity, the absence of limitation periods, and the lack of an explicit proportionality-review obligation show that the design and implementation of blacklists are not yet fully aligned with the construction of the material rule of law, which requires legal certainty, limitation of discretion, and protection of the economic rights of legal subjects. At the same time, enforcement practices that tend to be reactive and unstaged reveal a deviation from the responsive-regulation paradigm, which positions severe sanctions as the peak of escalation after guidance and administrative correction stages have been undertaken. Thus, the empirical findings in the case study do not merely reveal technical weaknesses in implementation but show a structural imbalance between enforcement effectiveness and the constitutional legitimacy of administrative authority. Normative Reconstruction of Blacklists in Government Procurement as an Instrument for Building Legal Awareness and Preventing the Practice of 'Flag Borrowing' must therefore be understood as an integrative effort to harmonize the principles of the material rule of law with the architecture of responsive regulation, so that the instrument can function preventively, proportionally, and sustainably in preventing flag-borrowing practices without sacrificing legal certainty.

The normative consequences of this repositioning require reaffirmation of the constitutional limits on the use of administrative authority, as well as the formulation of a structured regulatory-reform agenda. Within that framework, the following conclusions and recommendations are formulated as an affirmation of this study's findings.

This study contributes to the development of administrative-law theory and practice in public procurement by emphasizing that the problems of temporality, administrative retroactivity, and the absence of proportionality review are not merely procedural issues but matters of the constitutional legitimacy of administrative authority. Theoretically, this article expands the discourse on administrative sanctions by integrating the principles of the material rule of law and the responsive-regulation paradigm in analyzing blacklists as a quasi-penal instrument. Practically, this study offers an operational normative reconstruction model through the regulation of limitation periods, the obligation of proportionality review, and beneficial-ownership verification, which can strengthen the blacklist function as an instrument for building legal awareness and preventing flag-borrowing practices in Indonesia's government procurement system.

CONCLUSION

Based on the normative and socio-legal analysis, this study shows that the conception of blacklists in the government procurement of goods and services system is normatively intended as an instrument for guiding business actors and safeguarding system integrity. However, in practice, particularly based on the case study of the Ministry of Law and Human Rights for the 2012–2025 period, there is tension between the guidance-oriented approach and the repressive administrative character. The absence of a limitation period, issues of temporality in sanction imposition, potential for administrative retroactivity, and lack of an explicit proportionality-review obligation indicate that the regulatory design of blacklists is not yet fully aligned with the principles of the material rule of law.

Constitutional analysis affirms that administrative sanctions with significant impacts on economic rights must comply with the principles of legality, legal certainty, proportionality, and strict procedural protection. When sanctions are imposed after a very long interval without clear evaluative parameters, their preventive rationality and constitutional legitimacy become questionable. In the context of flag-borrowing practices manifested through bid-rigging, document manipulation, and distortion of business-entity identity, blacklists should function as corrective and preventive instruments integrated into a staged regulatory architecture.

Thus, the normative reconstruction needs to be directed toward repositioning them as a responsive, proportional, and constitutional instrument of national legal guidance, rather than merely a reactive administrative punishment mechanism. This study acknowledges limitations in data accessibility: aggregate national statistics specifically attributable to flag-borrowing practices are not yet publicly available in disaggregated form from LKPP. Future research should conduct broader multi-institutional case studies across ministries and regional governments to assess the generalizability of the temporality and retroactivity problems identified in this study. Comparative studies examining blacklist practices in Southeast Asian jurisdictions (particularly Vietnam, Thailand, and the Philippines) would provide valuable regulatory design benchmarks.

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AUTHOR CONTRIBUTION STATEMENT

Anggara Rawijayadi contributed to the conceptualization of the study, development of the research framework, data collection, and preparation of the initial manuscript. Martitah contributed to the theoretical development, normative legal analysis, and supervision of the research process. Ristina Yudhanti contributed to data interpretation, critical review, and refinement of the manuscript. All authors participated in revising the manuscript and approved the final version for publication.

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