

## ***Fact Sheet<sup>1</sup>***

### **The Management and Uptake of Blacklisted Firms Data by Civil Society**

Knowledge Management Division, Indonesia Corruption Watch

#### **Introduction**

Public procurement is essential to development. Fair and equitable development may also lead to better, improved public services. For this reason, substantial budget is typically allocated for public procurement.

In 2020, the government of Indonesia appropriated [Rp1,207.1 trillion or 52 percent of the total State Revenue and Expenditure Budget \(APBN\)](#). This number increased by around 16 percent or [Rp1,214 trillion in 2021](#). The significant amount evidenced the government's priority on public procurement of goods, construction works, and services.

Problems arise, however, when the substantial budget lacks government oversight. According to the Corruption Eradication Commission (KPK) data, the KPK prosecuted a total of 1,144 cases from 2004 to 31 March 2021. Of that, 21 percent are public procurement cases.

Other than the KPK, Indonesia Corruption Watch data indicate the same issue. According to ICW's annual study on corruption cases investigated and prosecuted by law enforcement authorities (the Indonesian Police, the Attorney General's Office, and the KPK), from 2016 to 2019, [corruption in the public procurement sector accounts for around 40 percent of the total 1,783 corruption cases](#).

By types of perpetrator, [arrest and prosecution are mostly made](#) against state civil apparatus and private firms as suppliers of goods/services. This is an important finding, as these actors are always present and interact in public contracting.

Criminal punishment against private firms that are allegedly involved in corruption practices has not been consistently directed at corporations, as suggested by the findings from ICW's studies [in 2018](#) and [2019](#) on criminal prosecution against corruption cases. During those years, there were only 11 corporations that law enforcement authorities determined as suspects in corruption cases.

Currently, the authorities' focus is limited on individuals, without considering the involvement of corporations that may also be benefitting from the crime. In fact, corporations play an important role in contributing to the quality of a project's output. It is important that law enforcement authorities and other competent institutions expose allegedly corrupt corporations.

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<sup>1</sup> Developed by ICW's Knowledge Management Division, 29 September 2021

The National Procurement Policy Agency (NPPA) has developed a platform to track and identify fraudulent firms, namely by publishing the names of blacklisted firms on [inaproc.id/daftar-hitam](http://inaproc.id/daftar-hitam) website. Blacklisting is the 'stick' that the government uses to encourage compliance among private firms. According to [the NPPA's 2017 data](#), the list contained 228 private firms with 166 of those, or 72 percent, in the construction business.

The data imply that many violations are committed by construction sector firms. They also support the hypothesis that awarding a public project to an unqualified firm would lead to poor output, i.e., poor quality, or even non-functioning public facilities and infrastructure.

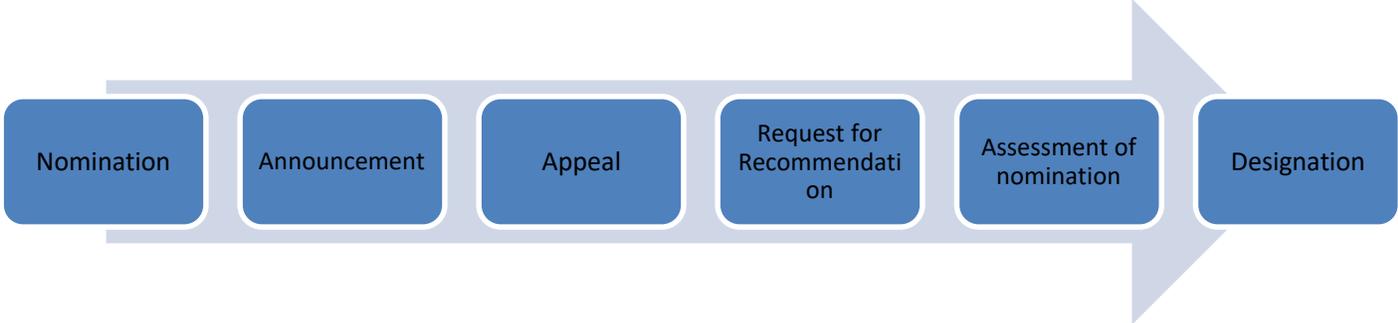
The question then is how we can work with and analyze the available data/information to make sure that only credible vendors and suppliers, with strong track record, are awarded public contracts. In the event that a project is awarded to a less-credible firm, an oversight and reporting mechanism needs to be in place as safeguard.

The need for data and oversight process motivates ICW to develop this fact sheet that demonstrates one way of using the Blacklisted Firms data. This document is expected to help authorities make improvements and minimize the possibility of unqualified firms to be awarded contracts, thus leading to quality public services, facilities, and infrastructure that are genuinely beneficial for the society.

**Regulations**

In public procurement sector, there are 5 (five) types of penalty that can be imposed to a firm that breaches public contracting regulations – including blacklist designation. The [NPPA Regulation Number 17 of 2018 \(NPPA Regulation 17/2018\)](#), Article 3, specifies the types of violations that may amount to blacklisting.

The process of blacklisting consists of several phases, from nomination to the listing in the National List of Blacklisted Firms. It is possible that a firm suspected of violating procurement rules is not designated in the list. This, however, indicates potential negligence, perhaps even a deliberate attempt, of procurement committees to favor the firm for a public procurement project. The following chart illustrates the stages of blacklisting according to Article 8 of NPPA Regulation 17/2018:



Aside from the tiered process, another characteristic of the listing is that the designation is temporary. Blacklisting applies for no more than 2 (two) years, after which the NPPA must de-list firms that have met this threshold. The following table elaborates the types of violation, the authorities involved in blacklisting and their power at a given stage, and duration of penalty.

No	Violation <sup>2</sup>	Duration <sup>3</sup>	Competent Authorities <sup>4</sup>
1	Submitting fraudulent/manipulated documents or statements to meet Tender Requirements;	2 years	Bidder selection working group / Procurement Officer/ Procurement Agent
2	Indicated involvement in bidder collusion for price fixing;	2 years	Bidder selection working group / Procurement Officer / Procurement Agent
3	Indicated involvement in Corruption, Collusion, and/or Nepotism practices in bidder selection;	2 years	Bidder selection working group / Procurement Officer / Procurement Agent
4	Withdrawal from bidding for reasons that the Procurement Officer/ Procurement Committee/ Procurement Agents find unjustifiable.	1 year	Bidder selection working group / Procurement Officer / Procurement Agent
5	Withdrawal from bidding or failure to sign catalogue contract;	1 year	NA
6	Withdrawal of tender winner after receiving the official award announcement ( <i>Surat Penunjukan Penyedia Barang/Jasa</i> , SPPBJ) and before contract signing for reasons that the Procurement Official finds unjustifiable.	1 year	Procurement Official or Budget User/Proxy of Budget User who concurrently acts as the Procurement Official
7	Failure to perform a contract, to complete a project, or to have the contract unilaterally terminated by the Procurement Official due to the supplier's fault; or	1 year	Procurement Official or Budget User/Proxy of Budget User who concurrently acts as the Procurement Official

<sup>2</sup> Article 3, NPPA Regulation 17/2018

<sup>3</sup> Article 6, NPPA Regulation 17/2018

<sup>4</sup> Article 7, NPPA Regulation 17/2018

8	Failure to fulfill due responsibilities during maintenance period.	1 year	Procurement Official or Budget User/Proxy of Budget User who concurrently acts as the Procurement Official
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**The subjects<sup>5</sup>**

The following operators may be subject to blacklist designation for committing the above types of violations:

1. A firm’s head office;
2. A firm’s branch or representative office;
3. A holding company; or
4. A subsidiary.

Before the discussing how the penalty is applied in a real-life scenario, it is important to understand the distinction between a branch office and a subsidiary. A [branch office](#) is the office that administers the affairs of a company, situated in a different location or an office that structurally reports to a head office. Meanwhile, a [subsidiary](#) is a company owned by another party, directly or indirectly, through one or more companies.

In the event of blacklisting, if the penalty is imposed to the *head office* level, the penalty then applies to the entire branch/representative offices of that company. If the penalty is imposed to a specific *branch/representative office*, the penalty applies to all branch/representative offices in other locations and to the company’s head office.

Meanwhile, a blacklist penalty that is imposed to a holding company does not apply to the subsidiaries. Similarly, when a subsidiary is blacklisted, the penalty does not apply to its holding company.

**The issue**

Corporations with poor track record, or are serving criminal sentences, may still be awarded with contracts in the future. There are two things that can explain their awarding: *first*, the procurement committee neglects to nominate poorly performing suppliers to be listed; *second*, the procurement committee fails to verify the suppliers’ track record.

These potential lapses of judgment may in turn result in poor infrastructure quality as a supplier’s work output. In some cases, they may even cause losses to the state and damage public service quality.

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<sup>5</sup> Article 5, NPPA Regulation 17/2018

There is [1 \(one\) case example](#) concerning blacklisting to highlight based on ICW's monitoring. On January 2019, a company formerly established as PT Duta Graha Indah (PT DGI) – later changed into PT Nusa Konstruksi Enjiniring (PT NKE) – was found guilty of corruption in a construction project of Hospital for Infectious Diseases and Tourism of Universitas Udayana, fiscal year 2009-2010.<sup>6</sup>

According to the regulation, due to the company's conviction, PT NKE should be nominated by the procurement committee to be designated in the Blacklist with penalty duration of 2 (two) years. Consequently, PT NKE should not be able to bid in any project until January 2021.

This, however, was not the case. Using opentender.net platform, ICW found that PT NKE was never found in the Active or Non-Active Blacklisted Companies of the NPPA. Meanwhile, court ruling Number 81/Pid.Sus/Tipikor/2018/PN.Jkt.Pst<sup>7</sup> states that the judges of the case gave an additional punishment of prohibiting the defendant (PT NKE) from participating in any public tender for 6 (six) months<sup>8</sup>. PT NKE, therefore, has met the blacklisting criteria. However, the procurement committee has failed to follow-up and nominate the company in the blacklist.

The absence of follow-up on the part of the procurement committee created a leeway that PT NKE has been taking advantage of to continue participating in public contracting. ICW's monitoring through opentender.net found that, in 2020 alone, PT NKE was awarded 4 (four) procurement projects with a total contract value of [Rp471 billion](#).

### **How ICW Uses the Data**

ICW's opentender.net platform has been available since 2012. As a monitoring tool, the website creates access to citizens to oversee the procurement of goods/services by government agencies. The data contained in the Blacklist are useful as comparative information in data analysis and in helping relevant parties to decide tender winners.

The Blacklist has 12 information items that are grouped into two categories, namely information regarding the supplier and information on the violation(s). All of the information are available to the public:

1. Suppliers' information
  - a. Name of supplier.
  - b. Taxpayer's ID
  - c. Address

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<sup>6</sup> Kompas.com, "Perjalanan Kasus PT NKE, Korporasi Pertama yang Divonis Korupsi", accessed from <https://nasional.kompas.com/read/2019/01/04/06115311/perjalanan-kasus-pt-nke-korporasi-pertama-yang-divonis-korupsi?page=all> on 30 June 2021 at 18:30 WIB.

<sup>7</sup> Court Ruling on Corruption Cases, [https://putusan3.mahkamahagung.go.id/direktori/download\\_file/4c673ec7740af320312d36a57a7d381a/pdf/73741772167f041d8099ac66fac54733](https://putusan3.mahkamahagung.go.id/direktori/download_file/4c673ec7740af320312d36a57a7d381a/pdf/73741772167f041d8099ac66fac54733)

<sup>8</sup> Ruling Number 81/Pid.Sus/Tipikor/2018/PN.Jkt.Pst, pg. 289

- d. Province
- e. District
- 2. Violation(s)
  - a. Blacklist Designation Letter.
  - b. Violation(s)
  - c. Name of buyer (ministry/institution/regional government)
  - d. Name of working unit
  - e. Duration of penalty
  - f. Date of listing
  - g. Listing status.

From our analysis on the types of information items that are currently available, we identify a gap of 3 (three) information items that we believe are important to also be disclosed. First, information on the title of procurement package. While this information is publicly accessible, it is only available in the individual website of a government agency. We hope that the synchronized Blacklist data in opentender.net will integrate the titles of procurement packages in cases of violations.

The second information item is on type of work of the supplier. This information is important to map the types of work (construction, goods, consulting services, and other services) and identify where violations most potentially occur. By understanding where the highest risk is, policy makers can better anticipate potential breaches in the future.

Third, information on suppliers' qualification. This information is useful to identify the number of suppliers based on their qualification. We will be able to map, for example, the frequency of smaller firms that violate procurement rules and draw up recommendations for improvements.

ICW then processed and analyzed the 12 information items into 5 (five) main segments to be included in the opentender.net website as dashboard. The goal is to create an accessible information and enable procurement committees to learn of suppliers' track record. We used the following items in our analysis:

1. Name of supplier and taxpayer's ID

This item can be summarized to highlight 3 (three) information: a) the number of suppliers designated in the Blacklist every year; b) suppliers that have been designated more than once; and c) title of procurement packages where violation occurs.

2. Province

Geographical information can be used to produce a summary of geographical distribution of designated suppliers in the Blacklist.

3. Violation and date of listing

This item can be summarized to provide 3 (three) information: a) number of each type of violation committed by each supplier; b) type of violation and date/time of listing, and c) top ten violations.

4. Name of buyer

This item can be summarized to provide 2 (two) information: a) government agencies that actively nominate firms for listing and b). agencies that are still working with firms that have been or are being listed in the Blacklist.

5. Date of listing

This information can be used to provide a summary on the duration of listing of each supplier.