International Journal of Current Science Research and Review
ISSN: 2581-8341
Volume 07 Issue 10 October 2024
DOI: 10.47191/ijcsrr/V7-i10-33, Impact Factor: 7.943
IJCSRR @ 2024
www.ijcsrr.org

Evaluating the Impact of Mini-Competition on Pharmaceutical Procurement: Challenges, Risks, and Regulatory Implications in Indonesia

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ABSTRACT: This study evaluates the impact of the mini-competition method in pharmaceutical procurement in Indonesia, focusing on its challenges, risks, and regulatory implications. Mini-competition, a procurement method designed to promote competitive pricing in e-purchasing, has been introduced to streamline the procurement process, especially for essential goods such as pharmaceuticals. However, this method faces legal and practical challenges, including risks of fraud, reduced competition, collusion, and issues concerning product quality and innovation. The legal framework governing mini competition, including Presidential Regulation No. 12 of 2021, is analyzed to identify potential weaknesses in ensuring transparency and accountability.
The research also includes a case study of pharmaceutical product procurement, highlighting the significant price reductions resulting from mini competition but revealing adverse effects on industry sustainability. The analysis of the cost structure of pharmaceutical companies shows that continued price reductions may force companies to cease operations due to unprofitability. Drawing on international case studies, this study concludes that while mini competition can lower procurement costs, it also poses significant risks to product quality, innovation, and market competition. Traditional tender methods are proposed as a more balanced and sustainable approach for pharmaceutical procurement, emphasizing the need for transparent and comprehensive evaluation criteria.

KEYWORDS: Market Competition, Mini Competition, Pharmaceutical Procurement, Procurement Regulations, Transparency and Accountability.

1. INTRODUCTION

The procurement of pharmaceutical products, particularly medicines, is a crucial aspect of the government's efforts to protect public health, especially during global health emergencies. The proper use of medications is one of the most effective health interventions for preventing the spread of infectious diseases. Therefore, the process of pharmaceutical procurement must be carried out efficiently, swiftly, and in compliance with applicable regulations to ensure maximum protection for the population.
One procurement method recently implemented in Indonesia is mini-competition, which is part of e-purchasing. This method involves limited competition among several suppliers to provide the best quality products or services at competitive prices within a short timeframe. This method is expected to accelerate the procurement process, especially in urgent situations like pharmaceutical procurement. However, the implementation of mini competition is not without legal challenges that require thorough analysis.
In the context of Indonesian law, the procurement of goods and services concerning national and strategic needs, such as pharmaceutical procurement, is regulated by several laws. According to Article 50 paragraph (5) of Presidential Regulation No. 12 of 2021, which amends Presidential Regulation No. 16 of 2018 on Government Procurement of Goods/Services, the procurement of goods/services concerning national needs must be carried out through e-purchasing. Additionally, Article 18 of the Government Goods/Services Procurement Policy Institute Regulation No. 9 of 2021 on Online Stores and Electronic Catalogs in Government Procurement stipulates that electronic purchasing can be conducted through Price Negotiation, Mini-Competition, or Competitive Catalogue methods.
While mini competition offers significant potential in terms of efficiency and effectiveness, there are legal risks that need to be addressed. Potential issues include fraud, reduction of healthy competition, and challenges in ensuring transparency and accountability. This study will conduct a legal analysis of the application of mini competition in the procurement of pharmaceutical products, focusing on how this method can be implemented legally and in accordance with existing regulations.

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The study will also strengthen the legal analysis with a literature review of previous research and relevant case studies. For example, research by Sanchez-Graells (2018) highlights the importance of maintaining healthy competition in public procurement to prevent collusion [1]. Similarly, Albano, Spagnolo, and Zanza (2009) indicate that without proper regulation, mini competition could reduce the number of competitors and increase the risk of collusion [2]. Furthermore, Vaidya et al. (2006) emphasize the importance of organizational and managerial factors in the successful implementation of e-purchasing [3].

This research will evaluate the legal aspects of implementing mini competition in the procurement of medicines and other pharmaceutical products and will examine case studies to provide a practical understanding of how this method can be effectively and legally implemented. The findings are expected to provide comprehensive recommendations for the government and other stakeholders in choosing and applying the most appropriate procurement method to meet public health needs.

2. LITERATURE REVIEW

The procurement of pharmaceutical products is a critical step in safeguarding public health, especially for Hajj pilgrims in Indonesia. To enhance transparency and efficiency in the procurement process, the mini-competition method in e-purchasing has been proposed. Although this method appears promising, literature suggests that mini competitions may not always be effective and can present significant challenges, both from regulatory and practical implementation perspectives.

2.1 Regulations on Goods and Services Procurement in Indonesia

Government procurement of goods and services is essentially an effort by the government to obtain desired goods and services in accordance with applicable norms and ethics, as well as based on standardized procurement methods and processes (Arifin, 2014) [4]. The regulations on government procurement of goods and services in Indonesia are governed by Presidential Regulation No. 12 of 2021, which is an amendment to Presidential Regulation No. 16 of 2018 concerning Government Procurement of Goods/Services. According to Article 38 of Presidential Regulation 12/2021, the methods for selecting suppliers of goods/construction works/other services include e-purchasing, direct procurement, direct appointment, quick tender, and tender.

The most commonly used procurement method is tender, indicating that both institutions and companies are quite familiar with the tender process. However, Article 38, paragraph (7) of Presidential Regulation 12/2021 states: “Tender as referred to in paragraph (1) letter e shall be carried out in cases where the selection method as referred to in paragraph (1) letters a to d cannot be used.” This means that the tender method can only be employed if the other methods cannot be used for the procurement of the related goods/services. E-purchasing can be applied to goods/services listed in the electronic catalog or online store. The items that can be included in the electronic catalog are determined by the relevant ministry, in this case, the Ministry of Health. This is in accordance with the regulation issued by the Ministry of Health, as stated in Article 4, paragraph (1) of the Minister of Health Regulation of the Republic of Indonesia No. 5 of 2019 concerning the Planning and Procurement of Medicines Based on the Electronic Catalog, which states [5]: “The procurement of medicines by government and private institutions as referred to in Article 2 for the Health Insurance program shall be carried out through E-purchasing based on the Electronic Catalog.”

Tender is a traditional procurement method commonly used to acquire suppliers offering the best quality and price through fair competition. Although the process is time-consuming and administratively complex, tenders ensure transparency and equal opportunities for all suppliers, including SMEs. Participants compete not only on price but also on quality, which is evaluated based on track record, qualifications, and compliance with legal and social standards (Bintang, 2024) [6].

Mini-competition, as one of the methods in e-purchasing, is regulated by LKPP Decree No. 122 of 2022. This method is conducted between two or more suppliers in an electronic catalog to obtain the best price. There are three types of mini-competitions: Products, Specifications, and Construction Works (LKPP Decree, 2022) [7]. Although newly implemented, this method aims to create more competitive procurement, but it carries risks of fraudulent practices such as collusion. Unfair business competition, including collusion, can occur in the procurement process, whether horizontally or vertically (Simamora, 2021) [8]. Collusion involves agreements to manipulate procurement outcomes and hinder other competitors, which is illegal (Mantovani, 2023) [9].

Price fixing is a form of cartel where businesses collude to coordinate prices, production, and market areas, potentially leading to monopoly practices (Supervisory Commission Regulation, 2010) [10]. Predatory pricing, or selling below cost, is a strategy of setting prices below production costs to eliminate competitors. Article 20 of Law No. 5 of 1999 states that this practice is prohibited as it can lead to monopolistic practices and unfair business competition. The assessment of predatory pricing is conducted by examining

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whether prices are set below short-run marginal costs, which generally is unprofitable without long-term profit prospects (Rezmia, 2017 [11]; Areeda, 1975) [12].

2.2 Shutdown Point Theory in Company Decision Making

The Shutdown Point theory in microeconomics is an essential concept that helps companies determine when to temporarily cease operations to minimize losses. According to Nicholson and Snyder (2017) in "Microeconomic Theory: Basic Principles and Extensions," the shutdown point occurs when the selling price of a product equals the minimum average variable cost [13]. At this point, the company cannot cover its fixed or variable costs, so continuing operations would only increase losses.

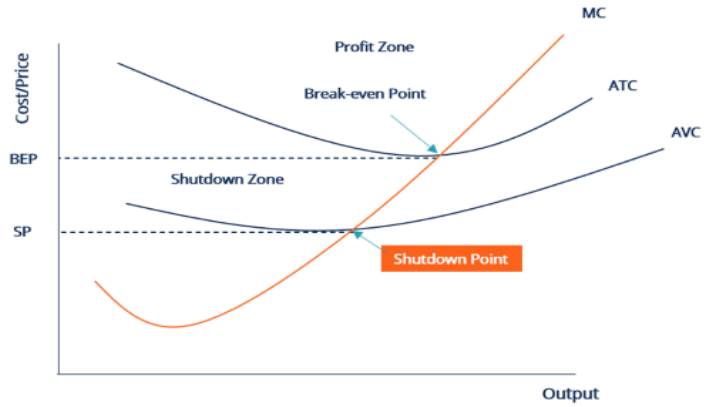

Figure I. Shutdown Point Diagram

The following image illustrates the concept of the Shutdown Point [14], where the point indicates when a company should cease operations if the selling price cannot cover the minimum variable costs. If the product's selling price is lower than the minimum average variable cost, the company should shut down rather than continue production, which would only exacerbate losses.

In the short run, if the selling price remains higher than the minimum average variable cost, the company might continue operating while waiting for market conditions to improve. However, if no positive changes occur in the long run, the company may have to exit the market. This principle emphasizes the importance of rational decision-making in minimizing losses and maintaining long-term operational sustainability.

2.3 Empirical Studies and Implementation Challenges

Sanchez-Graells (2018) highlights the importance of enforcing competition laws to prevent collusion in public procurement. Without strong policy support, mini-competitions are vulnerable to manipulation and collusion, reducing transparency and efficiency [1]. Schapper, Ronchi, & Gilbert (2006) similarly argue that without adequate infrastructure and reforms, mini-competitions may not achieve transparency and efficiency, with persistent challenges like corruption. They note the lack of clear international best practices for public procurement management, highlighting tensions between public expectations, management needs, and political pressures [15]. Rychłowska-Musiał (2020) warns that price wars as a form of mini-competition can create a lose-lose situation, reducing company benefits and harming weaker competitors, further weakening their strategic position. Dominant firms should consider delaying investments and negotiating with weaker competitors to avoid greater losses [16]. Liao et al. (2018) found that market competition in healthcare does not always improve quality, as lower mortality rates for stroke patients were observed in less competitive markets [17]. Labaj et al. (2018) further indicate that market liberalization can create imbalances, especially in transitioning economies, stressing the need for regulatory policies [18]. Changalima et al. (2024) suggest that effective supplier selection and monitoring can enhance efficiency, but weak implementation may exacerbate competition issues [19]. Albano et al. (2009) identify that joint bidding can create efficiencies but also risk reducing the number of competitors or facilitating collusion [2]. Quesada et al. (2010) found that e-procurement in the United States improves procurement performance by enhancing information gathering and supplier contacts [20]. However, Dash and Meredith (2010) warn that inappropriate competition in specialized healthcare services can increase costs and reduce quality [21]. Calipinar and Soysal (2012) show that e-procurement in hospital pharmacies in Turkey can save costs and time while reducing potential errors [22]. Mavidis and Folinas (2022) identify challenges in

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e-procurement 3.0 and 4.0, including data security issues and 'lock-in' risks with proprietary technology [23]. Singh and Chan (2022) found that e-procurement in Malaysia supports supply chain efficiency and sustainability goals [24].

In Indonesia, Nurchana et al. (2012) reveal that e-procurement implementation has been ineffective and shows signs of collusion [25]. Dhiona Ayu Nani and Syaiful Ali (2018) emphasize the importance of clear strategies and institutional support in improving procurement accountability and transparency [26]. While mini competitions offer benefits, many studies highlight significant weaknesses, such as risks of manipulation and inefficiencies in pharmaceutical product procurement through this method. The Shutdown Point theory is also relevant in decision-making to temporarily halt operations to minimize losses.

Overall, while some studies highlight the benefits of mini-competitions and e-procurement, many others emphasize significant weaknesses in these methods. Mini-competitions in e-purchasing for pharmaceutical product procurement are vulnerable to manipulation and collusion, may lead to inefficiencies and infrastructure duplication, and may not effectively improve the quality of healthcare services. Therefore, more structured and comprehensive procurement strategies are needed to ensure a transparent, accountable, and efficient procurement process, such as more structured tender use. The Shutdown Point theory also provides important guidance for companies in decision-making to temporarily halt operations to minimize losses and maintain long-term sustainability.

3. RESEARCH METHODOLOGY

This study employs a legal analysis approach to evaluate the implementation of the mini-competition method in the procurement of pharmaceutical products in Indonesia. This approach is chosen to understand how regulations and policies are applied in practice and to identify potential legal challenges. Additionally, one specific case study is analyzed financially to provide a concrete example of the economic impact of this procurement method. Legal data is collected through document studies, including relevant regulations and policies, as well as interviews with legal experts or authorities. The legal analysis focuses on the application of Presidential Regulation No. 12 of 2021 and other related regulations and evaluates the legal implications of implementing the mini-competition method.

For the case study, financial data is obtained from the financial reports of companies involved in pharmaceutical product procurement and other relevant documents. The financial analysis is conducted by calculating metrics such as Break-even Point (BEP) and Shutdown Point to assess the cost efficiency of using the mini-competition method.

The results of the legal and financial analyses are integrated to provide conclusions on the effectiveness and implications of using the mini-competition method in pharmaceutical product procurement. These conclusions are expected to provide valuable recommendations for the government and other stakeholders.

4. FINDING AND DISCUSSION

4.1 Legal Analysis

The introduction of mini-competition in e-purchasing within Indonesia presents various challenges and risks, particularly in the context of highly competitive pricing strategies. According to W.E. Deming (1994), an overly aggressive focus on price reduction in procurement can deteriorate the relationship between suppliers and customers, compromise product quality, and hinder innovation [27]. This concern is particularly relevant in the pharmaceutical industry, where innovation relies heavily on research and development (R&D). When competition is centered on lowering costs to the extreme, companies may reduce investment in R&D, which is crucial for the development of new and innovative pharmaceutical products (DiMasi, 2016) [28].

Furthermore, the pressure to minimize production costs can lead to a decrease in product quality. Suppliers may be incentivized to cut corners in order to secure contracts, which could negatively impact the safety and efficacy of products like vaccines (Dunne, 2013) [29]. This issue is compounded by the risk of supply chain instability; continuous price reductions may undermine the ability of suppliers to maintain long-term relationships with high-quality raw material providers, ultimately leading to supply disruptions (Pauwels, 2014) [30].

The potential for anti-competitive practices, such as price fixing and predatory pricing, is another significant concern. In a scenario where mini competition is used, there is a risk that companies could engage in collusion to manipulate the outcome, which could lead to market consolidation. This would likely result in a few large companies dominating the market, reducing competition, and creating monopolies or oligopolies, which would be detrimental to consumers and the healthcare system overall (Schweitzer, 2011) [31].

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International experiences with competitive tendering in pharmaceutical procurement provide valuable insights. For instance, in India, the use of competitive tendering focused on the lowest price has led to serious quality issues, including the distribution of ineffective or even dangerous drugs (Chaudhuri, 2014) [32]. In Europe, widespread implementation of mini competition for generic drug procurement has driven costs down but at the expense of quality and supply stability. This has resulted in some companies exiting the market, thereby reducing competition and increasing the risk of monopolistic practices (Simoens, 2006) [33]. In the United States, similar concerns have arisen regarding the impact of mini competition on long-term innovation and market consolidation, with large pharmaceutical companies increasingly dominating the market (Feldman, 2016) [34]. In South Africa, competitive tendering has also led to significant problems related to product quality and safety, as the focus on low prices often results in the procurement of medical supplies that do not meet required quality standards, ultimately affecting healthcare services (Schneller, 2006) [35].

Given these challenges, the use of traditional tender methods may be more appropriate for the procurement of pharmaceutical products. Unlike mini-competition, tendering allows for a more balanced approach that not only encourages healthy competition but also emphasizes quality and sustainability. The tender process provides an opportunity for thorough evaluation and facilitates two-way communication between the procurer and suppliers, which is crucial in ensuring the integrity of the procurement process and the quality of the pharmaceutical products provided to the public.

To enhance the effectiveness of pharmaceutical product procurement, several strategies can be recommended. These include the adoption of comprehensive evaluation criteria that go beyond pricing to consider quality, safety, technical capabilities, and the track record of suppliers. Additionally, increasing transparency and oversight is essential to prevent corruption and favoritism, with a focus on open disclosure of tender processes, evaluation criteria, and bid results (Ware, 2007) [36]. Encouraging the participation of small and medium enterprises (SMEs) can also foster a healthier competitive environment (McCrudden, 2007) [37]. Finally, a long-term value-based approach should be considered, evaluating not only the immediate costs but also the potential for innovation, sustainability, and the social impact of the procurement (Schweitzer, 2011 [31]; Woodcock, 2008 [38]).

In summary, while mini competition offers some advantages in terms of cost reduction, its application in the procurement of critical health products such as pharmaceutical products should be carefully reconsidered due to the associated risks. A well-structured tender process may provide a more balanced and effective approach, ensuring that both quality and competitiveness are maintained in the procurement process.

4.2 Case Study and Financial Analysis

One of the objectives of implementing mini competition by the government is to obtain the best offers from goods/service providers. This best offer relates to more competitive prices for acquiring a particular good or service. Through mini-competition, providers will strive to offer the lowest price with the appropriate specifications to win the competition. To assess the effectiveness of implementing mini-competition in achieving this goal (obtaining the best price offers), this study has observed a pharmaceutical product where mini-competition was applied in its procurement process.

The observation results show that since procurement was carried out with mini-competition, the product's price has decreased by 20–26% over the last two years. Below are the observations and price sampling results for the pharmaceutical product with two different brands (Brand A and Brand B):

Table I. Observation Results of Pharmaceutical Product Prices in Mini-Competition

Price Sampling Pharmaceutical Product					
No	**Observation Date**	**Brand A**		**Brand B**	
		Price Before VAT (IDR)	**Price After VAT (IDR)**	**Price Before VAT (IDR)**	**Price After VAT (IDR)**
1	End of 2022	225,200	249,972	230,991	256,400
2	Beginning of 2023	225,000	249,750	219,820	244,000
3	End of 2023	212,613	236,000	227,027	252,000
4	Beginning of 2024	198,198	220,000	190,000	210,900
6	Mid-2024	172,973	192,000	171,171	190,000

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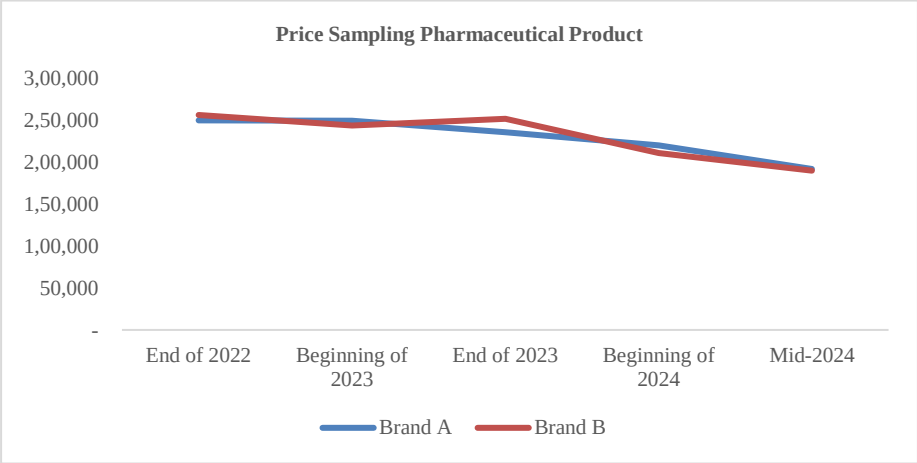

Figure II. Price Sampling Pharmaceutical Product

The price reduction over the last two years (since the implementation of mini-competition) indicates the effectiveness of mini-competition in securing better offers from goods/service providers. The previous section's observation of product prices has shown that mini competition effectively results in price reductions. For the government, this is an effective step to save state budget expenditures. However, for industry players, particularly the pharmaceutical industry in the context of this study, it presents a significant challenge in sustaining profitability amidst a downward trend in selling prices.

This downward price trend will impact the business sustainability of industry players. If the price reduction is accompanied by a reduction in cost structure, the industry players might survive, or if the price reduction remains above the profit margin, they might still be able to continue. Conversely, if the price reduction is not accompanied by a reduction in production costs, industry players could suffer losses, which could ultimately lead to the closure of this industry. To project the industry's sustainability due to the downward price trend (resulting from mini competition), this study has obtained the production cost structure of Brand A's pharmaceutical product mentioned in the previous section. Below is the production cost structure of Brand A's pharmaceutical product:

Table II. Cost Structure of Brand A's Pharmaceutical Product

Cost Structure BRAND A				
No	**Description**	**%**	**IDR**	**Type of Cost**
A	**Cost of Goods Solds (HPP)**			
	Raw Material	84.4%	145,945	
	Packaging	0.0%	-	
	Direct Labor	0.0%	-	**Variable Cost**
	FOH	0.0%	25,263	
		99.0%	**171,208**	
B	**Marketing & Sales Cost**			
	General Affair (GA)	15.3%	26,539	
	Research & Development (R&D) Cost	2.4%	4,083	**Fixed Cost**
		17.7%	**30,622**	
C	**Profit Margin**	**-18.0%**	**(31,173)**	

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D	**Distribution Cost**	**1.3%**	**2,316**	**Variable Cost**
	Price Before VAT (IDR)	**100.0%**	**172,973**	
E	**Tax**	**11%**	**19,027**	
F	**Price After VAT (IDR)**	**111.0%**	**192,000**	

From the cost structure data obtained, it is evident that the total variable cost per product is IDR 173,524 (171,208 + 2,316) while the total fixed cost per product is IDR 30,622, resulting in a total cost per product of IDR 204,146 before VAT. Meanwhile, in the Observation Results of Pharmaceutical Product Prices in Mini-Competition table, it is shown that the latest price (2024) to win the mini-competition is IDR 192,000. This indicates that the company is already operating at a loss if it continues to supply this pharmaceutical product (selling price IDR 192,000 < production cost IDR 204,146). Furthermore, when connected with the Shutdown Point theory, industry players should have ceased operations since the total average variable cost (IDR 173,524) is below the selling price before VAT (IDR 172,973). Based on this, it is projected that industry players may potentially stop operations in the future as they cannot generate profits from product sales.

Reflecting on this condition, mini competition has made the industry environment unhealthy. Prices that are too low may lead companies to withdraw from supplying this product, pushing the competition to become unhealthy, and the ongoing losses incurred by companies may eventually cause the industry to cease operations.

5. CONCLUSION

The implementation of the mini-competition method in the procurement of pharmaceutical products in Indonesia faces significant challenges related to competition, quality, and industry sustainability. While it may reduce costs, mini-competition risks lowering product quality and hindering innovation, which could threaten the sustainability of pharmaceutical product supply. The potential for anti-competitive practices such as price fixing and predatory pricing strategies could also lead to market monopolies, harming consumers and reducing flexibility in procurement. International experience shows that an excessive focus on low prices often sacrifices product quality and safety.

Therefore, a more balanced approach, such as traditional tender methods, might be more appropriate for pharmaceutical product procurement. It is crucial for the government to implement comprehensive evaluation criteria, ensure transparency, and prevent corruption to achieve fair, accountable, and sustainable procurement.

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ISSN: 2581-8341
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DOI: 10.47191/ijcsrr/V7-i10-33, Impact Factor: 7.943
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Cite this Article: *Subiakto Soekarno, Desy Kharohmayani, Achmad Billy Zulqiyami, Fredy Chandra, Nenden Indriawati (2024). Evaluating the Impact of Mini-Competition on Pharmaceutical Procurement: Challenges, Risks, and Regulatory Implications in Indonesia. International Journal of Current Science Research and Review, 7(10), 7783-7791, DOI: https://doi.org/10.47191/ijcsrr/V7-i10-33*