

Analysis of Unfair Business Competition Cases and Selling Losses (Case Study of PT Conch South Kalimantan Cement)

Evin Sofianti^{a}, Siti Nuraini^b, Intan Syahril^c, Herdyana Rifandi^d*

^{a,b,c,d}Computerized Accounting, Prasetya Mandiri Polytechnic, Bogor, Indonesia

**Corresponding author e-mail: tobingerin@gmail.com*

A B S T R A C T

The intense rivalry for market share among businesses is a defining feature of Indonesia's cement industry. One of the behaviors is selling at a loss, which is detrimental to the long-term viability of the business. Analysis of the effects of PT Conch South Kalimantan Cement's sell-loss strategy on the Indonesian cement market is the goal of this study. based on an analysis of Indonesian applicable laws. Case studies, legal analysis, and normative juridical procedures are all used in this study. Literature reviews and legal data searches on official websites were used to gather data. According to the study's findings, PT Conch South Kalimantan Cement has been shown to engage in cement sales activities that result in losses for the South Kalimantan region. ensure that the cement sector has fair and robust competition. The Prohibition of Monopolistic Practices and Unfair Business Competition rules are broken by this activity. Selling at a loss has several negative effects, including lowering cement prices in the market, preventing new players from entering the market, and jeopardizing the stability of the cement sector. Therefore, in order to foster fair and healthy competition in the cement sector, the rule prohibiting the practice of selling at a loss must be vigorously enforced.

Keywords: *Cement Industry, Selling Loss, Business Competition, Competition Law, Law Enforcement*

INTRODUCTION

Business competition is one of the important pillars in maintaining a healthy and sustainable economic climate (Bella Anggraeni, 2024). Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition is the main legal basis in Indonesia in regulating and supervising business practices that have the potential to damage market competition (Putra, 2023) (Imron, 2024). Although regulations have been set, unfair competition practices, including predatory pricing, are still a serious challenge in various sectors, including the cement industry (Basir, 2017).

The development of national infrastructure is strategically supported by the cement industry. However, as the example of PT Conch South Kalimantan Cement shown, intense competition in this industry frequently leads to activities that are contrary to the norms of fair competition. The Business Competition Supervisory Commission (ICC) looked into PT Conch's purported practice of selling losses, which was said to have harmed the equilibrium of the cement market in South Kalimantan (case number 03/KPPU-L/2020). (Mustaming, 2015) (Imron, 2024). The movement of the market share of the cement industry can be seen from the following figure:

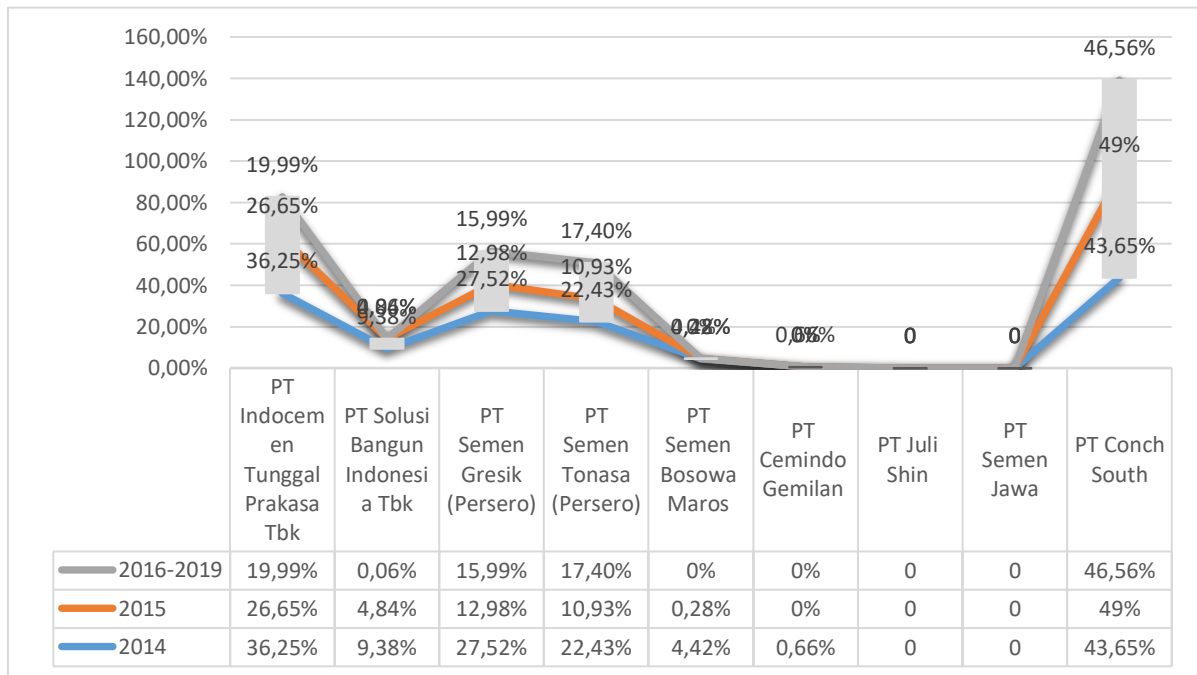


Figure 1 Percentage of Market Share Movement

Source: Data processed (Sari, 2022)

The phenomenon seen in the graph is a violation of the prohibition of monopoly practices and unfair business competition, especially selling and losing transactions in Indonesia which are still widely encountered (Wahyu Buana Putra, 2023). One example of allegedly committing a practice of selling at a loss in the cement industry occurred in the case decision Number 03/KPPU-L/2020 (Putra, 2023).

The Business Competition Supervisory Commission (ICC) received a report from PT Conch South Kalimantan Cement as a reported party, alleging that the company had violated

Article 20 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition by selling cement in the South Kalimantan region at a loss or by setting a low selling price. Law Number 5 of 1999, which prohibits monopoly practices and unfair business competition, strengthens this by granting the Business Competition Supervisory Commission (ICC) the power to directly inspect business actors if there is a suspicion of a violation of the law, even in the absence of a report (Dan et al., 2024). This action affects the economic sector's unfair business competitiveness. A violation of Article 20 of Law Number 5 of 1999, which prohibits monopoly practices and unfair business competition, is alleged in this case (Puruhito, 2023) which states:

"It is forbidden for business actors to supply goods and/or services by setting a very low price or selling them at a loss in order to eliminate or shut down their competitors' businesses in the relevant market, which could lead to unfair competition and/or monopolistic practices."

Based on this, business actors should be based on applicable regulations, it happens so that every business actor able to compete in a healthy way. Therefore, the author wants to research a case regarding unfair business competition and selling losses carried out by PT Conch South Kalimantan Cement with the title "Analysis of Case Decision Number 03/Kppu-L/2020 Regarding Unfair Business Competition and Selling Losses Practices According to Applicable Legal Aspects (Case Study of PT Conch South Kalimantan Cement)."

RESEARCH METHODS

This research looks at different laws and regulations using a normative legal perspective, theories, and regulations connected to the topics of discussion. The normative legal approach is carried out to collect secondary information in the form of tertiary, secondary, and basic legal resources. This strategy seeks to analyze written legal norms that are relevant to the research problem. This research relies on two main techniques in data collection, namely literature study and online legal data tracing. Literature studies are carried out by collecting relevant literature materials, such as books, scientific journals, and legal articles. On the other hand, online legal data searches are carried out through various online legal platforms, one of which is case decision number 03/KPPU-L/2020.

GRAND THEORY

Competition Law Theory

This theory is the result of the development of various economic ideas and business competition law. Early thoughts on free market competition (Smith, 1776), which then developed through the contribution of legal and economic experts who practiced similar things (Bork, 1993). Enforcement of business competition law is basically an act of empowerment for consumers, business actors, and competitors themselves. Here, empowerment entails defense. During the empowerment process, it must be prevented from becoming weaker due to its inability to challenge the powerful. As a result, the concept of community empowerment in Indonesia is essentially predicated on safeguarding and discriminating against the weak. This view is

growing in popularity as a result of the conversation about equity and growth brought about by healthy corporate rivalry (Kartasasmita, 1996). Isolating or avoiding social engagement is not the same as protecting, as this will essentially ignore the weak and dwarf the little. Protecting should be understood as an endeavor to prevent imbalanced competitiveness and strong exploitation of the vulnerable (Maryanto, Mei 2017). Theoretically, there are two types of commercial competition: fair competition and unfair competition (Zertia, 2020).

This theory underlies the importance of regulation to ensure healthy business competition, protect consumers, and prevent dominance by large business actors over small businesses. In the case of predatory pricing, this theory highlights the strategy of setting prices below the cost of production to get rid of competitors, create monopolies, and limit consumer choice. Regulations such as Article 20 of Law No. 5 of 1999 aim to prevent this practice. Because Indonesia's Business Competition Law seeks to establish a robust and competitive market in order to promote efficiency, innovation, and consumer protection, competition law theory is relevant to the case of PT Conch South Kalimantan Cement. This complies with the requirements of Article 33, paragraphs (3) and (4) of the Republic of Indonesia's 1945 Constitution. The following hypothesis is put out in light of the explanation above:

H1: By using a predatory pricing strategy and setting prices below production costs, PT Conch South Kalimantan Cement violated Article 20 of Law No. 5 of 1999.

H2: The structure of the cement market in South Kalimantan has been adversely affected by PT Conch's predatory pricing practices, which have driven out competitors and prevented the introduction of new business operators.

Predatory Pricing Theory

In the context of business rivalry, selling at a loss is a tactic used by business actors that typically hold a dominating position in the market or who, as an incumbent business actor, establish prices that are long-term economically harmful. This tactic may lead to the extermination of rivals from the relevant market and/or prevent other business operators from joining it (Mada, IDGR, 2013). The following step is typically to boost it once more and optimize profits after successfully removing its rivals and postponing the arrival of new business actors (Fikri Hidayatullah & Zahara, 2023).

The Case Study of PT Conch South Kalimantan Cement and the Theory of Selling Loss Practice are closely associated since it has been demonstrated that the company sells Portland Composite Cement (PCC) for less than production, even though the cost of goods sold (COGS) suggests a predatory pricing approach. Because PT Conch South Kalimantan Cement has sound financial standing, they can absorb losses when prices are exploitative. PT Conch South Kalimantan Cement appears to be planning to eliminate rivals in the South Kalimantan market in order to achieve predatory price goals.

In order to eliminate rivals and gain market dominance, powerful business actors briefly implement the sell-loss strategy, according to this idea. The price is increased to maximize profits after a competition is eliminated. Microeconomics and market behavior form its foundation, with notable contributions from their seminal investigation of predatory pricing

practices (Areeda, 1975). Other components of this theory are commonly related with economic perspectives influenced by (Keynes, 1936) with contemporary ideas that emphasize corporate rivalry (Mada, 2013). The sale of PCC cement by PT Conch at prices significantly lower than the Cost of Goods Sold (CoGS) is an example of this, and it has an impact on the structure of market competition. This explanation leads to the following hypothesis:

H3: Innovation and healthy competition are directly hampered in the cement business of South Kalimantan by PT Conch's predatory pricing practice.

H4: Especially in key industries like the cement business, the practice of selling at a loss has not been completely stopped by current competition laws.

RESULTS AND DISCUSSION

Is it established that PT Conch South Kalimantan Cement engaged in unfair business competition by breaking Law Article 20 Number 05 of 1999?

This case started when PT Conch South Kalimantan Cement was accused of violating Article 20 of Law Number 5 of 1999 in the selling of cement in the South Kalimantan region. The report was sent to the ICC (Business Competition Supervisory Commission). PT Conch South Kalimantan Cement's factory is located at Saradang Village RT 02, Haruai District, Tabalong Regency, South Kalimantan Province, Indonesia 71572, and its office is located at The Suite Tower, 19th Floor, Jalan Boulevard Pantai Indah Kapuk Number 1 OFS Plot, Block OO Number 1, North Jakarta, DKI Jakarta Province, Indonesia. This company is a business entity established based on Deed Number 05 dated August 15, 2011 made by Hizmelina, S.H. Notary in Jakarta and domiciled in North Jakarta. In its capacity as a cement manufacturer and distributor, PT Conch South Kalimantan Cement operates in several Kalimantan regions, with the exception of West Kalimantan Province (Perkara, 2020).

PT Conch South Kalimantan Cement is accused of violating Law Number 5 of 1999's Article 20 on the Prohibition of Monopoly Practices and Unfair Business Competition. (Sutanto, 2023). Law Number 5 of 1999's Article 20 provisions say:

"In order to avoid monopolistic practices and/or unfair business competition, business actors are not allowed to supply goods and/or services by selling at a loss or setting a very low price with the intention of eliminating or shutting down the business of their competitors in the relevant market."

Business actors who carry out strategies in selling products below production prices and have the main goal of controlling the market and setting low prices below production prices, so that they can kill competitors. This is a form of selling loss practice that we usually know as *predatory pricing* (Fakultas, 2023). The main reason for *predatory pricing* is to be able to sell at a larger volume and at a higher price; that is, a combination of a higher price and a larger quantity (Barnett et al., 2007). Ordinary Portland Cement (OPC) and Portland Composite Cement (PCC) are the two types of cement that PT Conch South Kalimantan Cement typically makes.

Limited sales were made by PT Conch South Kalimantan Cement at the beginning of 2014 to

conduct market research. In this case, the most widely found product on the market is *the Portland Composite Cement (PCC)* type, because in 2015, PT Conch South Kalimantan Cement produced 853,543 tons, while Ordinary *Portland Cement (OPC)* only produced 9,827 tons. So that the product in question is *a Portland Composite Cement (PCC)* type cement product. (Perkara, 2020).

PT Conch's financial statements in 2015 showed significant losses. By using a sales strategy at a much cheaper price, namely selling PCC type cement in South Kalimantan, it is the main cause of losses experienced by PT Conch. With a very low selling price, this indicates a practice of selling without making a profit. The entry of PT Conch enters the cement business in Kalimantan has created very fierce competition. As a result, several other cement companies experienced a decrease in the number of customers (Farhandi Himawan & Anna Maria Tri Anggraini, 2023).

PT Conch South Kalimantan Cement markets its cement in 3 (three) forms, namely bulk, 50 kg/sack (fifty kilograms per sack) and 40 kg/sack (forty kilograms per sack). The packaging of 50 kg/sack at PT Conch South Kalimantan Cement is IDR 43,000, and the packaging of 40 kg/sack is IDR 34,000. PT Conch South Kalimantan Cement under the name Semen Conch sells with a packaging of 40kg/sack which is offered at a price of only IDR 34,300, much cheaper than the Three-Wheeled local cement which is sold at a price of IDR 39,800 per sack which has the same size. The difference between the two cements is Rp5,500. This is strengthened because Semen Conch uses a *predatory pricing* strategy as an effort to get rid of competitors, one of which is Semen Tarjun Indocement. After successfully getting rid of Semen Tarjun Indocement for a while, PT Conch then gradually increased the price of its cement. This has been the case for several years, the price of Conch cement has always been higher compared to Tarjun Cement. Nevertheless, PT Conch was able to achieve huge profits thanks to production efficiency and the right marketing strategy. Business competition carried out in an unlawful way can also be observed in the manner in which business actors compete with one another, specifically by breaking the terms of relevant laws or established rules (Endah Widyastuti & Fitriah Faisal, 2023).

This analysis shows that hypothesis 1 (By using a predatory pricing strategy and setting prices below production costs, PT Conch South Kalimantan Cement violated Article 20 of Law No. 5 of 1999) is proven.

Does the practice of selling losses carried out by PT Conch South Kalimantan Cement affect the competition of the cement industry in Kalimantan? And what is the decision of case No.3/KPPU-L/2020 related to this practice?

The actions of PT Conch South Kalimantan Cement in South Kalimantan which sells cement below production costs are feared to create a loss-making practice that results in unfair business competition. The entry of PT Conch South Kalimantan Cement has changed the market structure geographically in South Kalimantan (Sari, 2022).

Based on the cement industry sector in South Kalimantan, there are 9 (Nine) business actors who carry out cement trading activities, namely:

1. PT Indocement Tunggal Prakarsa Tbk, engaged in the production and sales of cement which is famous under the brand name "Semen Tiga Wheela";
2. PT Semen Gresik, engaged in the production and sales of cement which is famous under the brand name "Semen Gresik (SG)";
3. PT Semen Tonasa is engaged in the production and sales of cement which is famous under the brand name "Tonasa";
4. PT Solusi Bangun Persada is engaged in the production and sales of cement which is famous under the brand name "Semen Holcim";
5. PT Semen Bosowa is engaged in the production and sales of cement which is famous under the brand name "Semen Bosowa";
6. PT Cemindo Gemilang is engaged in the production and sales of cement which is famous under the brand name "Semen Merah Putih";
7. PT Jui Shin is engaged in the production and sales of cement which is famous under the brand name "Semen Garuda";
8. PT Semen Jawa is engaged in the production and sales of cement which is famous under the brand name "Semen SCG";
9. PT Conch South Cement is engaged in the production and sales of cement which is famous under the brand name "Semen Conch";

The occurrence of a significant decrease in revenue from 2014-2019 for cement business actors in South Kalimantan resulted in a decrease in the percentage in the region, here are the specifications of the decrease:

1. PT Indocement Tunggal Prakasa Tbk, in 2014 experienced a decrease of 36.25% (thirty-six point twenty-five percent), in 2015 to 26.65% (twenty-six point sixty-five percent), and in 2019 decreased by 19.99% (nineteen point ninety-nine percent);
2. PT Solusi Bangun Indonesia Tbk, in 2014 experienced a decrease from the beginning of 9.38% (nine point thirty-eight percent) in 2015 to 4.84% (four point eighty-four percent) The decline in market share continued to occur in the following year so that in 2019 it was only 0.06% (zero point zero six percent), starting in 2020 it no longer sells cement products in the South Kalimantan region.
3. PT Semen Gresik (Persero) in 2014 experienced a decrease of 27.52% (twenty point fifty-two percent), in 2015 to 12.98% (twelve point ninety-eight percent), in 2019 it decreased by 15.99% (fifteen point ninety-nine percent).
4. PT semen Tonasa (Persero) in 2014 experienced a decrease of 22.43% (twenty-two point forty-three percent), in 2015 there was a decrease of 10.93% (ten point ninety-three percent), in 2019 there was a decrease of 17.40% (seventeen point forty percent);
5. PT Semen Bosowa Maros in 2014 experienced a decrease of 4.42% (four point forty-two percent), in 2015 it experienced a decrease of 0.28% (zero point twenty-eight percent) and in 2019 exited the cement sales market in the South Kalimantan region;

6. PT Cemindo Gemilang in 2015 experienced a decrease of 0.66% (zero point sixty-six percent) and only lasted 1 (one) year so that in 2016 PT Cemindo Gemilang exited the sales market in the South Kalimantan region;
7. PT Juli Shin sells Portland *Composite Cement* (PCC) which only lasted from 2015 to 2017 in the South Kalimantan region;
8. PT Semen Jawa sells the same type of cement as PT Juli Shin, namely *Portland Composite Cement* (PCC) which only lasted from 2016 to 2017 in the South Kalimantan region. While;
9. PT Conch South Kalimantan Cement in January 2015 experienced a significant increase, from 43.65% (forty-three point sixty-five percent) where it just started marketing its products, to 49% (forty-nine percent) in 2018 to 2019 PT Conch South Kalimantan Cement's market share continued to maintain at 46.56% (forty-six point fifty-six percent) (Sari, 2022).

It is evident from this data that that PT Conch South Kalimantan Cement has experienced a significant increase from 2014-2019. Meanwhile, the majority of the cement industry in South Kalimantan has declined since the entry of PT Conch South Kalimantan Cement in the region (Wahyu Buana Putra et al., 2023).

Based on these findings, the Business Competition Supervisory Commission (ICC) determined that, by selling Semen Conch at a loss from 2015 to 2019, PT Conch South Kalimantan Cement had breached Article 20 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition. so that, in comparison to other businesses, PT Conch South Kalimantan Cement can acquire a sizable market share in about four years. Naturally, this has an impact on South Kalimantan's cement industry's level of competition (Sari, 2022).

Article 20 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition was fulfilled by PT Conch South Kalimantan Cement as a reporting party in Case Decision No.3/KPPU-L/2020 (Prahmana & Wiradiputra, 2022), that is:

1. Elements of Business Actors

According to Mariam Darus Badrul Zaman defines business actors by taking over the meaning used by Dutch literature, namely "all individuals who use goods and services in a concrete and real way" (Ayu Rizkia & Rahmawati, 2021). Then, based on Article 1 number 5 of Law Number 05 of 1999 concerning business actors as follows:

"Any person or business entity, whether a legal or non-legal entity, that is founded, domiciled, or conducts business within the Republic of Indonesia's jurisdiction—either independently or in concert through an agreement—that engages in a variety of economic business activities is considered a business actor." (UU Nomor 5 Tahun 1999, 1999).

PT Conch South Kalimantan Cement in this case is stated to have fulfilled the elements in the business actor Article 1 number 5 of Law Number 05 of 1999.

2. Supplier Elements

Based on Article 15 paragraph (1) of Law Number 05 of 1999 concerning the definition of suppliers, which can be explained as follows:

" The definition of supplying include the provision of products and services in the context of purchasing, selling, and leasing." (UU Nomor 5 Tahun 1999, 1999).

Based on this understanding, PT Conch South Kalimantan Cement is a company engaged in the cement industry that focuses on unlimited production and sales in the South Kalimantan region, which includes the distribution of *Portland Composite Cement* (PCC), and *Ordinary Portland Cement* (OPC). So that this element has been fulfilled.

3. Elements of Goods and/or Services

Based on Article 1 number 16 of Law Number 05 of 1999 concerning the definition of goods, which can be explained as follows:

"Anything that may be exchanged, used, or utilized by customers or business actors is considered a good, whether it be moveable or immovable." (UU Nomor 5 Tahun 1999, 1999).

The definition of service based on Article 1 number 17 of Law Number 05 of 1999, can be explained as follows:

"Any work or accomplishment that is traded in the community for usage by customers or business actors is considered a service." (UU Nomor 5 Tahun 1999, 1999).

Based on this, the elements of actors and/or services of PT Conch South Kalimantan Cement have been fulfilled. This happens because PT Conch South Kalimantan Cement produces *Portland Composite Cement* (PCC), this is a tangible object and can be traded, used, or utilized by consumers or business actors.

4. Elements of Selling Loss or Setting Very Low Prices

Based on Article 20 of Law Number 5 of 1999, the guidelines for selling losses are explained as follows:

"Selling at a loss is the selling price set by business actors below the cost of production." (UU Nomor 5 Tahun 1999, 1999).

In 2016 PT Conch South Kalimantan Cement continued to sell *Portland Composite Cement* (PCC), at a price lower than the cost of goods sold and the price offered by its competitors in South Kalimantan. This practice shows a strong indication that PT Conch South Kalimantan Cement is carrying out the practice of selling at a loss and violating legislation Number 5 of 2019 concerning unfair business competition.

5. Elements of Getting Rid of or Killing Competitors' Businesses

Based on Commission Regulation Number 6 of 2011 concerning shutting down competitors' businesses, it is explained as follows:

"Displacing or eliminating rival companies from the relevant market or closing a firm. The significance of a rival's or other business actors' operations in the same market." (UU Nomor 5 Tahun 1999, 1999).

Based on the cement market share in the South Kalimantan region, there are 5 (five) business actors that are increasingly concentrated or eliminated by PT Conch South Kalimantan Cement due to the sale of *Portland Composite Cement* (PCC) at a loss, which is carried out by PT Conch South Kalimantan Cement.

6. Market Elements Concerned

Based on Article 1 number 10 of Law Number 5 of 1999 concerning the market concerned, it states:

"Markets pertaining to business actors' access to specific marketing areas for identical or comparable goods and services, or the replacement of specific goods and services, or both." (UU Nomor 5 Tahun 1999, 1999).

Ordinary Portland Cement (OPC) and Portland Composite Cement (PCC) are the two (two) product types that PT Conch South Kalimantan Cement generally markets. PCC dominates the cement production in the South Kalimantan region, and PT Conch South Kalimantan Cement is suspected of breaking Law Number 5 In 1999, article 20.

7. Elements Resulting in Monopoly Practices and/or Unfair Business Competition

The term monopoly is often used to describe a position. What is meant by position is the position of the seller who has exclusive control and control over the goods or services (Sirumapea et al., 2022). Based on Article 1 number 2 of Law Number 5 of 1999 concerning monopoly practices is as follows:

"Economic power concentration by one or a few business actors that leads to control over the production and/or marketing of specific goods and/or services, resulting in unfair competition among businesses and potentially harming the public interest." (UU Nomor 5 Tahun 1999, 1999).

Based on Article 1 number 6 of Law Number 5 of 1999 concerning monopolistic unfair business competition, it is explained as follows:

"Competition between commercial actors in the production and/or marketing of goods and/or services that are conducted dishonestly, illegally, or that impede commercial competition." (UU Nomor 5 Tahun 1999, 1999).

PT Conch South Kalimantan Cement's pricing triggers stiff market competition, prompting other companies to lower prices, potentially detrimental if not carefully managed. This fierce and risky competition creates an unhealthy business climate in the market. This fulfills the elements of unfair business competition practices in this case.

As a result of the price policy set by the actions of PT Conch South Kalimantan Cement in 2015 in implementing a selling price strategy below the cost of goods sold and setting a very low price compared to other business actors where in 2014 to 2019 it had an impact on 5 (five) competing business actors from the relevant market (Wahyu Buana Putra et al., 2023).

Based on the legal analysis of the decision of the Business Competition Supervisory Commission (ICC) No. 03/KPPU-L/2020, in this case PT Conch South Kalimantan Cement is proven to have carried out strategic actions in selling cement below the cost of goods sold since 2015 and set a very low price in 2014-2019 compared to other business actors.

Based on this, there is an impact of a significant increase in market share in South Kalimantan. Namely the reduction of business actors competing from PT Conch South Kalimantan Cement, (Sari, 2022) The following business actors who have left the South Kalimantan region:

- 1) PT Cemindo Gemilang;
- 2) PT Semen Bosowa Maros;

- 3) PT Solusi Bangun Indonesia;
- 4) PT Jui Shin Indonesia; and
- 5) PT Semen Jawa.

Five (five) rival business actors were eliminated and left the South Kalimantan region's market as a result of PT Conch South Kalimantan Cement's sell-loss policy, which also created obstacles for upcoming new business actors. Following the removal of rivals from the market, PT Conch South Kalimantan Cement raised its pricing to compensate for the losses incurred as a result of the practice of selling losses. Therefore, it has been established that PT Conch South Kalimantan Cement violated the Business Competition Law by engaging in monopolistic tactics and unfair business competition (Modul et al., 2022). This analysis shows that hypothesis 2 is proven.

It has been established that PT Conch South Kalimantan Cement has caused unfair business competition practices as a result of this impact. As a result, the Business Competition Supervisory Commission (ICC) determined that PT Conch South Kalimantan Cement had broken Law Number 5 of 1999, specifically Article 20. In addition, a fine of Rp22,352,000,000.00 (twenty-two billion three hundred and fifty-two million rupiah) for violating Article 20 of Law Number 5 of 1999 must be paid to the State Treasury through a government bank using the 425812 (Revenue from Fines for Violations in the Field of Business Competition) as a deposit of fines for violations in the field of business competition of the Business Competition Supervisory Commission (ICC) Work Unit. In this article, the lowest limit of fines imposed is Rp1,000,000,000.00 (one billion rupiah) and the highest is Rp25,000,000,000.00 (twenty-five billion rupiah) with the aim of providing a deterrent effect to business competitors so that they do not commit fraud. A copy of proof of payment of the fine must also be reported to the Business Competition Supervisory Commission, and PT Conch South Kalimantan Cement must make the payment no later than 30 (thirty) days after this decision has strong legal force (Perkara, 2020). This analysis shows that hypothesis 3 and 4 are proven.

IMPLICATION

The study's findings demonstrated that PT Conch South Kalimantan Cement had violated Article 20 of Law Number 5 of 1999, which prohibits monopolistic practices and unfair business competition. The company's action of setting a very low price, also referred to as predatory pricing, suggests a strategy to drive out rivals in the South Kalimantan cement market. Consequences of the Analysis of Case Decision Number 03/KPPU-L/2020 include the following:

The South Kalimantan region's cement industry now faces unfair competition as a result of PT Conch South Kalimantan Cement's actions. In order for the market share in the area to drastically decline. Due to their inability to compete with PT Conch South Kalimantan Cement, five business actors were even compelled to go. This phenomenon not only harms competitors but also undermines the healthy and competitive market structure in the region. The impact

includes the potential for increased cement prices in the future, a reduction in consumer choice, and a decline in innovation and efficiency in the cement industry. Therefore, it is necessary to have strict law enforcement about this practice, in order to foster constructive rivalry among businesses. Furthermore, unfair business competition activities, including the sale of losses resulting from this case, must be rigorously monitored by the Business Competition Supervisory Commission (ICC). So that with a clear policy, it can ensure healthy business competition in the cement industry.

CONCLUSION

In the case of PT Conch South Kalimantan Cement's alleged violations of Article 20 of Law Number 5 of 1999 concerning the Prohibition of Monopoly Practices and Unfair Business Competition (Law No. 5 of 1999), the Business Competition Supervisory Commission (ICC) rendered a decision in case number 03/KPPU-L/2020 (Reported). In the South Kalimantan region, the reported party is accused of engaging in the practice of selling cement at a loss. Because the reporting party had complained about the practice of selling cement at a loss by selling items below the cost of goods sold (COGS) for a specific length of time, there was also an allegation of violation in the case analysis. This is thought to eliminate rivals and control the market, resulting in monopolistic tactics and a violation of Law No. 5 of 1999's Article 20. The Business Competition Supervisory Commission (ICC) Assembly gathers and evaluates a variety of information, including witness statements, market data on cement prices, and financial statements from the Reported Entity. Additionally, these facts demonstrate that the Reported Party did, in fact, engage in the practice of selling at a loss. The practice of reported selling at a loss is viewed negatively, and consumers may suffer as a result, as it will undoubtedly reduce their options and perhaps lead to future price hikes. Small and medium-sized businesses (SMEs) would also find it extremely challenging to compete in the market due to low stated prices. Additionally, monopolistic practices and a lack of innovation in the cement sector will result from this corporate competition.

REFERENCES

- [1] Al-azhar, K. M. A. (2018). *Vol:III, No:1 Januari Tahun 2018 No:ISSN- 2807-1832. 1.*
- [2] Areeda, P. & Turner, D. F. (1975). Predatory pricing and related practices under section 2 of the Sherman Act. *Harvard Law Review*, 697–733.
- [3] Ayu Rizkia, A., & Rahmawati, S. (2021). Faktor-Faktor Yang Mempengaruhi Anti Monopoli Dan Persaingan Bisnis Tidak Sehat: Globalisasi Ekonomi, Persaingan Usaha, Dan Pelaku Usaha. (Literature Review Etika). *Jurnal Ilmu Manajemen Terapan*, 2(5), 631–643. <https://doi.org/10.31933/jimt.v2i5.572>
- [4] Barnett, W., Saliba, M., & Block, W. (2007). Predatory pricing. *Corporate Ownership and Control*, 4(4 D), 397–402. <https://doi.org/10.22495/cocv4i4c3p4>
- [5] Bella Anggraeni, U. (2024). Menggali Peran Hukum Persaingan Usaha dalam Mendorong Inovasi dan Efisiensi Ekonomi. *Rechtsvacuum: Journal of Legal Studies*, 24–29.
- [6] Bork, R. H. (1993). *The antitrust paradox: A policy at war with itself*. Free Press.

- [7] Basir, B. (2017). Industri Semen Indonesia dalam Perspektif Hukum Islam. . *Hukum Islam*, 72-94.
- [8] Dan, M., Usaha, P., & Sehat, T. (2024). 469-Article Text-1812-1-10-20240216. 6(1), 108–118.
- [9] Endah Widyastuti, & Fitriah Faisal. (2023). Implementasi Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Terhadap Pelaksanaan Tender Pengadaan Barang/Jasa Pemerintah Di Pemerintah Daerah Kabupaten Muna Barat. *Lakidende Law Review*, 2(3), 514–523. <https://doi.org/10.47353/delarev.v2i3.63>
- [10] Enno Selya Agustina, Relys Sandi Ariani, & Nada Hasnadewi. (2023). Analisis Upaya Penegakan Hukum Terhadap Tindakan Kemitraan Dalam Perspektif Persaingan Usaha Tidak Sehat. *Jurnal Studia Legalia*, 4(01), 13–20. <https://doi.org/10.61084/jsl.v4i01.61>
- [11] Fakultas, Y. S. R. (2023). Tinjauan Yuridis Praktik Persaingan Tidak Sehat (Predatory Pricing) Terhadap Kasus Pt. Conch South Kalimantan Cement (Conch) Yasmin. *Ilmiah Wahana Pendidikan*, 3(1), 764. <https://medium.com/@arifwicaksanaa/pengertian-use-case-a7e576e1b6bf>
- [12] Farhandi Himawan, & Anna Maria Tri Anggraini. (2023). Perbandingan Penerapan Predatory Pricing Menurut Hukum Persaingan Usaha Indonesia dan Amerika Serikat. *Reformasi Hukum Trisakti*, 5(3), 847–860. <https://doi.org/10.25105/refor.v5i3.16483>
- [13] Fikri Hidayatullah, M. B., & Zahara, F. (2023). Dampak Pelaksanaan predatory Pricing oleh Pedagang Seafood Mentah Perspektif Teori Sadd Dzari’ah Muhamad Abu Zahrah (Studi Kasus Pasar Pagi Kecamatan Medan Helvetia Kota Medan). *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(1), 305–320. <https://doi.org/10.37680/almanhaj.v5i1.2273>
- [14] Hidayat, M. F. (1999). POLITIK HUKUM PERSAINGAN USAHA DI INDONESIA Muhammad Fajar Hidayat. *Jurnal Cahaya Keadilan*, 5(1), 78–103.
- [15] Imron, M. (2024). TINJAUAN NORMATIF POSISI DOMINAN DALAM UNDANG-UNDANG NOMOR 5 TAHUN 1999 TENTANG LARANGAN PRAKTEK MONOPOLI DAN PERSAINGAN USAHA TIDAK SEHAT PADA STUDI PUTUSAN PERKARA: 03/KPPU-L/2020. *Jurnal Cakrawala Ilmiah*, 1413-1426.
- [16] Kartasasmita, G. (1996). *Pembangunan untuk rakyat: Memadukan pertumbuhan dan pemerataan*. Cidesindo.
- [17] Keynes, J. M. (1936). *The general theory of employment, interest, and money*. Macmillan.
- [18] Komisi Pengawas Persaingan Usaha Indonesia. (2013). *Persaingan Sehat Sebagai Konstitusi Ekonomi*.
- [19] Mada, S. (2013). *Hukum persaingan usaha di Indonesia*. Gramedia Pustaka Utama.
- [20] Mada, IDGR, A. I. (2013). Praktik Jual Rugi (Predatory Pricing) Pelaku Usaha Dalam Perspektif Persaingan Usaha. *JURNAL Ilmu Hukum*, 5, 1–5. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/6275/4767>
- [21] Maryanto (Mei 2017). Penegakan Hukum Persaingan Usaha. In 1. 1.-1.
- [22] Ginanjar Kartasasmita, *DUNIA USAHA, PERSAINGAN USAHA, DAN FUNGSI KPPU* (p. 44). Semarang: UNISSULA PRESS.
- [23] Modul, P., Matakuliah, P., Dan, P., Sosial, R., Metode, D., Study, C., Team, D. A. N., Pada, P., Bimbingan, M., Fakultas, K., Universitas, P., Medan, N., & Pengusul, T. I. M.

- (2022). *Laporan akhir penelitian dasar*. 103, 1–58.
- [24] Mudawaroh, M. (2022). Tinjauan Yuridis Terhadap Dugaan Praktek Monopoli PT. X Melalui Pendekatan Rule of Reason Dihubungkan Dengan Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 9(1), 323–334. <https://doi.org/10.15408/sjsbs.v9i1.25071>
- [25] Muhamad Rizki Sudrajat, Zulfahmi Hanifa, Jacobus Jopie Gilalo, R. Y. A. I. (2023). Persaingan usaha sehat dapat membangun ekosistem bisnis yang berkelanjutan 1. *Karimah Tauhid, Volume 2 Nomor 4 (2023)*, e-ISSN 2963-590X / Sudrajat et Al, 2, 1041–1048.
- [26] Mustaming, M. (2015). Persaingan harga dalam usaha dan peran komisi pengawas persaingan usaha (kppu). *Muamalah*, 71-80.
- [27] Ningsih, A. S. (2019). Implikasi Undang-Undang Nomor 5 Tahun 1999 tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak Sehat pada Pelaku Usaha Mikro Kecil dan Menengah (UMKM). *Jurnal Penelitian Hukum De Jure*, 19(2), 207. <https://doi.org/10.30641/dejure.2019.v19.207-215>
- [28] Novalia Pertiwi, & Annisa Azzahrah Burhan. (2023). Efektifitas Penerapan Program Kepatuhan Persaingan Usaha dalam Pencegahan Persaingan Usaha Tidak Sehat. *Jurnal Studia Legalia*, 4(01), 72–87. <https://doi.org/10.61084/jsl.v4i01.66>
- [29] Perkara, T. D. (2020). *Persaingan was om isi Pengawas Persaingan*.
- [30] Puruhito, M. A. (2023). Dampak Negatif Praktik Predatory Pricing terhadap Persaingan Usaha (Studi Putusan KPPU No. 03/KPPU-L/2020) . (*Doctoral dissertation, Universitas Islam Indonesia*).
- [31] Prahmana, V. D., & Wiradiputra, D. (2022). Predatory Pricing Dalam E-Commerce Menurut Perspektif Hukum Persaingan Usaha. *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 6(3), 9844–9853. <https://doi.org/10.58258/jisip.v6i3.3277>
- [32] Putra, W. B. (2023). Akibat Hukum Praktik Jual Rugi Semen Conch Dalam Persaingan Usaha Industri Semen di Indonesia. *Jurnal Hukum, Politik dan Ilmu Sosial*, 71-88.
- [33] Sari, I. permata. (2022). *Pertanggungjawaban Pelaku Usaha yang Melakukan Jual Rugi Harga Semen yang Menyebabkan Persaingan Usaha Tidak Sehat*. <http://repository.umsu.ac.id/handle/123456789/18625>
- [34] Sirumapea, A., Santoso, I., & Abunawas, A. (2022). Penerapan Unsur Praktek Monopoli dan Persaingan Usaha Tidak Sehat (Studi Kasus Penjualan Tiket Umroh oleh PT. Garuda Indonesia Persero). *JIIP - Jurnal Ilmiah Ilmu Pendidikan*, 5(5), 1353–1360. <https://doi.org/10.54371/jiip.v5i5.564>
- [35] Siswanto, A. (2020). Hukum Anti Monopoli dan Persaingan Usaha Tidak Sehat. *Keadaban*, 1, 22–35.
- [36] Smith, A. (1776). *An inquiry into the nature and causes of the wealth of nations*. Strahan and Cadell
- [37] Sutanto, V. E. (2023). Analisis Pendekatan Rules of Reason dalam Kasus Praktik Predatory Pricing (Studi Kasus Putusan Nomor 03/KPPU-L/2020). *Wajah Hukum*, 7(1), 17. <https://doi.org/10.33087/wjh.v7i1.1001>
- [38] UU Nomor 5 Tahun 1999. (1999). Undang-Undang Nomor Tahun 1999 Tentang Larangan Praktek Monopoli dan Persaingan Usaha Tidak. *Pemerintah Republik Indonesia*, 1, 1–5. https://jdih.esdm.go.id/peraturan/UU_no_5_th_1999.pdf

- [39] Zertia, Z. (2020). PRAKTEK MONOPOLI DALAM PENENTUAN HARGA GAS INDUSTRI DI WILAYAH MEDAN, SUMATERA UTARA OLEH PT. PERUSAHAAN GAS NEGARA TBK. BERDASARKAN HUKUM PERSAINGAN USAHA . *Reformasi Hukum Trisaksi*, 2.