

An Analysis of Legal Protection for Consumers in Relation to Predatory Pricing Practices by PT Conch South Kalimantan Cement: A Case Study of Supreme Court Decision No. 951 K/Pdt.Sus-KPPU/2021

Hana Muthiah¹, I Made Kantikha², Wasis Susetio³, Helvis⁴

^{1,2,3,4}Universitas Esa Unggul, Jakarta, Indonesia

Email: thiaaa1602@gmail.com

Abstract

This study analyzes the legal protection afforded to consumers in relation to predatory pricing practices carried out by PT Conch South Kalimantan Cement, as examined in Supreme Court Decision No. 951 K/Pdt.Sus-KPPU/2021. Predatory pricing as an unfair pricing strategy not only disrupts fair business competition but also creates long-term negative effects for consumers, including reduced market choices, the risk of monopolization, and the loss of their rights to fair prices, product quality, and sustainable supply. The research employs a normative juridical method with a case approach, drawing upon judicial decisions, Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, and relevant consumer protection regulations. The findings indicate that PT Conch's conduct meets the legal criteria for predatory pricing, resulting in adverse impacts on market dynamics and consumer welfare. The Supreme Court's ruling upholds KPPU's findings and underscores the role of competition law enforcement as an indirect mechanism for consumer protection. This study concludes that safeguarding consumers from predatory pricing requires not only price monitoring but also consistent enforcement of competition law to ensure a healthy, competitive market structure that supports the fulfillment of consumer rights.

Keywords: *Consumer Protection, Predatory Pricing, Unfair Competition, KPPU, Supreme Court Decision.*



A. INTRODUCTION

Business competition is widely recognized as a principal engine of national economic activity because, under competitive market conditions, consumers are more likely to enjoy fair prices, a wider range of product choices, and continuous improvements in the quality of goods and services (Fletcher et al., 2023; Pandey, 2023). In an ideal setting, rivalry among undertakings disciplines market behavior: firms must innovate, control costs, and respond to consumer preferences in order to survive. The competitive process is also inherently dynamic and uncertain, and achieving a durable position in the market is rarely straightforward (Gulati & Puri, 2022; Hancock et al., 2022; Spann et al., 2024).

Precisely because dominance is difficult to obtain and even more difficult to preserve, business actors may be tempted to pursue strategies that secure market power at any cost, including conduct that undermines the competitive process itself (Amalia et al., 2024; Heidary et al., 2022). This tension between the societal benefits

promised by competition and the private incentives to neutralize competitors—lies at the core of modern competition policy and enforcement (Li et al., 2023; Qizhi, 2024; Vickers, 2025).

Among the many forms of anti-competitive conduct, predatory pricing remains one of the most debated and practically challenging. In its basic formulation, predatory pricing refers to a strategy of setting prices at very low levels—sometimes below cost—for a period of time with the objective of driving competitors out of the market or deterring entry, after which the firm can raise prices, restrict output, reduce quality, or otherwise exploit its strengthened market position. Although low prices are normally celebrated as the most visible benefit of competition, predatory pricing demonstrates that low prices can also function as a weapon, not merely as a reflection of efficiency (Hutchinson & Treščáková, 2022; Leslie, 2023a; Zaid et al., 2022). This dual character makes predatory pricing especially difficult to regulate: enforcement must avoid chilling legitimate price competition, yet it must also protect markets from manipulative conduct that ultimately harms the very consumers who appear to benefit in the short run. The long-term risk is structural. When rivals are eliminated and market discipline weakens, consumers may face fewer alternatives, reduced innovation, supply vulnerability, and price increases that are more difficult to contest because competitive constraints have been removed (GROCHOWSKI et al., 2022; Leslie, 2023b; MacKay & Weinstein, 2022).

In Indonesia, these concerns are addressed within the framework of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Bahasa: *Undang-Undang Nomor 5 Tahun 1999*). The law reflects a normative commitment to safeguarding healthy competition as a foundational condition for an orderly market economy. Importantly, the regulatory logic is not confined to the protection of competitors; rather, it aims to protect the competitive process for the broader public interest. In this sense, the prohibition of predatory pricing under Law No. 5 of 1999 can be understood as having a consumer-protective function, even when the legal mechanism operates indirectly through the preservation of market structure.

When market structure deteriorates due to monopoly or single-firm dominance, consumers may lose the practical ability to exercise choice and may no longer be able to obtain fair price–quality trade-offs because the market ceases to function as a contestable arena. Effective enforcement against predatory pricing is not merely about resolving disputes among undertakings; it is also about preventing consumer harm that can materialize after competitors have been weakened and alternatives have disappeared (Kamraju, 2025; Kurlillah et al., 2024; Puisto & Alavi, 2025).

This interrelationship between competition enforcement and consumer welfare becomes particularly salient in sectors that are fundamental to economic and social development, including construction materials. Cement, for example, is closely tied to infrastructure expansion, housing provision, and industrial growth; distortions in cement markets can therefore have wide spillover effects beyond the immediate

commercial sphere (Fathimah et al., 2024; Ghifari et al., 2025; Mandrescu, 2022). Price suppression that destabilizes competitors may look beneficial in the short term, but if it precipitates exit and reduces supply diversity, the resulting market concentration can translate into higher vulnerability to unilateral conduct, reduced service reliability, and diminished incentives to maintain quality. For consumers—whether individual buyers, small contractors, or downstream industries—the harm is not limited to eventual price increases; it may also include the loss of bargaining power, constraints in sourcing, and exposure to supply disruptions when alternative providers can no longer operate sustainably (Adam, 2023; Hasbullah, 2022; Marten, 2025).

Against this background, the case involving PT Conch South Kalimantan Cement provides a concrete and instructive basis for examining predatory pricing not only as a competition law issue but also as a consumer protection concern. The Indonesian Competition Commission (Komisi Pengawas Persaingan Usaha, KPPU) found that PT Conch engaged in unreasonable pricing in cement sales in South Kalimantan and surrounding areas, creating pressure on other business actors and raising the risk that alternative supply would become unsustainable for consumers.

The dispute culminated in the Supreme Court's Decision No. 951 K/Pdt.Sus-KPPU/2021, which affirmed the trajectory of competition law enforcement in Indonesia and strengthened the institutional credibility of KPPU's findings. While the case is often read primarily through the lens of market conduct and competitive effects, it also invites a deeper question: to what extent does the enforcement of predatory pricing prohibitions translate into meaningful protection for consumers, particularly when the legal reasoning and remedies are framed in the language of competition law rather than consumer rights?

This question highlights a broader conceptual and practical gap. In many jurisdictions, the relationship between competition law and consumer protection is acknowledged, yet the doctrinal pathways connecting them are not always articulated with clarity in judicial reasoning. Competition cases commonly address market power, barriers to entry, and competitor exclusion, whereas consumer harm may be assumed rather than demonstrated, or treated as a downstream consequence that will be resolved automatically once market structure is restored. However, the assumption that competition enforcement straightforwardly produces consumer welfare outcomes is not always warranted. The effectiveness of legal protection for consumers depends on multiple factors: the substantive standards applied to identify predatory pricing, the evidentiary thresholds used to assess below-cost pricing and intent, the interpretation of "unreasonable" or "unfair" pricing behavior, the institutional capacity of enforcement agencies, and the nature of remedies imposed and monitored. Where a case has progressed to judicial review and is affirmed by the highest court, the reasoning in the judgment can shape future enforcement by clarifying—or obscuring—the standards and policy objectives that guide institutional practice.

This study is situated at the intersection of competition law enforcement and consumer legal protection in the specific context of predatory pricing. The PT Conch

case is employed as a focal point to explore how KPPU conceptualizes and evaluates predatory pricing conduct and how this assessment is reflected, endorsed, or refined through judicial consideration in Supreme Court Decision No. 951 K/Pdt.Sus-KPPU/2021. The analysis is directed toward two closely related inquiries. First, it examines the considerations and reasoning adopted by KPPU in resolving the dispute, with attention to how the commission identifies the relevant market context, interprets the pricing behavior at issue, and connects the conduct to anti-competitive effects. Second, it evaluates the extent and nature of legal protection available to consumers in response to predatory pricing, focusing on whether the legal framework and enforcement outcomes provide effective guarantees against the negative consequences of market dominance, including diminished choice, weakened quality incentives, and vulnerability to future price exploitation.

The contribution of this research is twofold. Theoretically, it seeks to enrich the literature on Indonesian competition law by articulating consumer protection as an integral dimension of predatory pricing enforcement under Law No. 5 of 1999. Rather than treating consumers as passive beneficiaries of market correction, this study positions consumer interests as a normative reference point that should inform the interpretation of unfair competition conduct and the design of remedies. In doing so, it offers a framework for reading competition law decisions in a way that clarifies how consumer welfare is protected, either explicitly or implicitly, through institutional reasoning and judicial affirmation. Practically, the study aims to provide insights for regulators, legal practitioners, and policy stakeholders regarding the operationalization of consumer-oriented objectives in competition enforcement. By examining the PT Conch decision path from KPPU's findings to Supreme Court confirmation, the study identifies how legal standards are applied in practice, how evidentiary issues and economic reasoning are handled, and what implications these have for ensuring that consumers are protected not only in principle but also in tangible market outcomes.

Predatory pricing cases test a legal system's ability to distinguish aggressive but legitimate competition from strategic conduct that sacrifices short-term profitability to secure long-term monopoly power. The Indonesian experience, as illustrated by the PT Conch South Kalimantan Cement case and the Supreme Court's Decision No. 951 K/Pdt.Sus-KPPU/2021, underscores that enforcement is not merely a matter of condemning unlawful conduct; it is also a matter of preserving the conditions under which consumers can exercise real choice and obtain fair value over time. By providing a comprehensive analysis of KPPU's considerations and the resulting consumer protection implications, this study seeks to clarify the extent to which Indonesia's competition law framework can deliver effective consumer safeguards against the adverse effects of market dominance arising from predatory pricing strategies.

B. METHOD

This article adopts a normative or doctrinal legal research design. Normative legal research is library-based research that examines legal norms by analyzing statutes, judicial decisions, and other authoritative legal materials, rather than relying on empirical field data. This design is appropriate because the study focuses on interpreting the legal framework governing predatory pricing and assessing how that framework operates through institutional reasoning and judicial review to protect consumer interests in the context of unfair business competition.

Two complementary approaches are applied, namely a statute approach and a case approach. Under the statute approach, the analysis examines Indonesia's principal regulatory instruments relevant to predatory pricing and consumer protection, particularly Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition and Law No. 8 of 1999 on Consumer Protection. These statutes are analyzed to identify the normative basis for prohibiting predatory pricing, the policy objectives of competition regulation, and the extent to which consumer interests are protected directly or indirectly through the maintenance of competitive market structures.

The case approach is employed to analyze Supreme Court Decision No. 951 K/Pdt.Sus-KPPU/2021 as the central case study. This decision is examined to understand how predatory pricing allegations are assessed in practice, how KPPU's findings and legal reasoning are evaluated through judicial scrutiny, and how the court's reasoning contributes to doctrinal clarity regarding the relationship between competition law enforcement and consumer protection. Particular attention is given to the court's legal considerations, the interpretive linkage between the factual context and applicable legal norms, and the implications of the decision for future enforcement and consumer-oriented legal safeguards.

Legal materials are collected through documentary research using libraries, official publications, academic databases, and other reputable online sources. The materials are organized into primary, secondary, and tertiary legal materials. Primary legal materials consist of binding sources that form the core of the analysis, including Law No. 5 of 1999 and Supreme Court Decision No. 951 K/Pdt.Sus-KPPU/2021. Secondary legal materials include scholarly books, peer-reviewed journal articles, research reports, and academic commentaries in the fields of competition law and consumer protection, which are used to support interpretation and critical evaluation of the primary sources. Tertiary legal materials, such as legal dictionaries, encyclopedias, and other reference works, are used to clarify terminology, define key concepts, and ensure doctrinal precision.

The analysis is conducted qualitatively through systematic legal interpretation and conceptual reasoning. Statutory provisions and judicial considerations are interpreted to determine their meaning, scope, and internal coherence, as well as their alignment with the objectives of preventing monopolistic practices and protecting the public interest (Ariska, 2024; Martin, 2024; Putra et al., 2023). The study also employs theoretical perspectives to structure the analysis. First, the theory of legal protection is used to explain law's role in safeguarding rights, particularly consumer rights,

through both preventive mechanisms, such as clear norms, supervision, and regulatory constraints, and repressive mechanisms, such as sanctions, dispute resolution, and remedies after violations occur. Second, the theory of anti-monopoly and unfair competition law is used to situate predatory pricing within the broader rationale of maintaining efficient and fair markets, emphasizing that competition enforcement aims not merely to protect competitors but to preserve the competitive process for the benefit of consumers and society at large. By integrating these approaches and theoretical perspectives, the article provides a comprehensive assessment of how Indonesian law addresses predatory pricing and the extent to which enforcement outcomes offer effective legal protection for consumers.

C. RESULT AND DISCUSSION

1. Predatory Pricing in Anti-Monopoly Law and Unfair Business Competition

Predatory pricing, often described in Indonesian scholarship as “jual rugi,” is generally understood as a competitive strategy in which an undertaking sets the price of goods or services at an exceptionally low level for a sufficiently sustained period with the objective of eliminating competitors operating in the same relevant sector (Hakim, p. 428). The significance of this practice in competition law does not lie merely in the existence of low prices, because low prices may also be the result of efficiency or legitimate commercial rivalry.

The legal concern arises when pricing behavior is deployed as an exclusionary instrument intended to restructure the market in favor of the pricing firm by weakening, disciplining, or expelling rivals. In this sense, predatory pricing is best conceptualized as long-term oriented conduct with an exploitative logic. It is “exploitative” not in the immediate sense of charging high prices, but in the strategic sense that short-term losses are accepted to create or maintain monopoly power and to enable future exploitation once competitive constraints have diminished.

From the perspective of anti-monopoly and unfair competition law, predatory pricing is typically identified through a combination of economic and intent-based indicators. A central marker is pricing at an abnormally low level that is not economically rational under ordinary commercial purposes. In doctrinal and economic discussions, such pricing is often operationalized through a comparison between the selling price and cost benchmarks, commonly the average variable cost or, in some formulations, total production cost. When an undertaking consistently prices below average variable cost, the conduct becomes difficult to justify as normal competition because variable costs represent costs that must be covered to avoid incremental losses on each additional unit sold (Murniati, 2023; Zaid, 2022).

Sustained pricing below that threshold may therefore indicate that the firm is willing to incur losses beyond what would be expected from legitimate promotional activity, temporary inventory clearance, or routine competitive discounting. Even when the price is not strictly below average variable cost, persistently setting prices below economically justifiable levels can still raise concerns if the overall pattern suggests a strategy aimed at excluding competitors rather than competing on merit.

Cost benchmarks alone are not sufficient to establish predatory pricing because competition policy must avoid condemning aggressive price competition that benefits consumers. Accordingly, an additional characteristic is the presence of an anti-competitive purpose or exclusionary rationale. Low pricing is not framed as a reasonable market entry strategy, a time-limited promotion, or a reflection of superior efficiency, but as a targeted effort to force rivals to exit the market or to deter potential entrants. The relevance of intent here is not merely subjective; it can be inferred from objective circumstances such as the duration of below-cost pricing, the selective targeting of particular regions or customer segments where competitors are present, and the absence of plausible efficiency-based explanations. Where the pricing firm can maintain abnormally low prices despite repeated losses, the inference that the conduct is exclusionary becomes stronger, especially if competitors lack comparable financial capacity (Anggraini et al., 2025; Puruhito & Anisah, 2024; Rahmalia, 2023).

Another key attribute is the capacity to sustain short-term losses. Predatory pricing is typically feasible only for undertakings with substantial financial resources, strong capital backing, or a dominant position that allows cross-subsidization. This capacity dimension matters because predation is rarely a one-off event; it often requires maintaining low prices long enough for rivals, especially smaller or less capitalized firms, to deplete their resources and either exit or significantly scale back. The practical effect is a structural asymmetry: a large firm may absorb short-term losses as a strategic investment, while rivals face immediate liquidity constraints. This is precisely why predatory pricing is treated as a form of unfair competition rather than merely a hard bargain. It exploits unequal endurance and transforms financial strength into a mechanism for excluding competition, not by outperforming rivals on efficiency or innovation, but by imposing losses that rivals cannot withstand.

The classical understanding of predatory pricing also recognizes a two-stage dynamic. The first stage is the predation phase, in which prices are pushed down to damage competition and to weaken rival viability. The second stage is the recoupment phase, in which the predator seeks to recover earlier losses and earn supra-competitive profits after competitive pressure has been removed. Recoupment is essential to the internal logic of predatory pricing because, absent the ability to raise prices later, persistent loss-making conduct would be irrational. Consequently, the evaluation of predatory pricing necessarily engages the concept of market power. Undertakings without sufficient market power cannot easily recoup losses because consumers can switch to other suppliers or new entrants can rapidly discipline any attempt to raise prices. When an undertaking holds a sizeable market share or controls strategic distribution channels, it becomes more plausible that it can later increase prices, reduce output, or weaken product quality without losing customers (Zaid, 2022). Market power therefore serves both as an enabling condition for predation and as an explanatory factor linking short-term pricing conduct to long-term consumer harm.

The adverse effects of predatory pricing extend beyond competitors and directly implicate consumer welfare through market structure degradation. In the

short term, consumers may experience lower prices, which can create a misleading appearance of consumer benefit. In the longer term, however, once rivals have been excluded and the market becomes more concentrated, consumers may face higher prices, fewer product choices, and weaker incentives for firms to innovate or maintain quality. The reduction of competitive constraints can also produce supply-side vulnerabilities, then alternative suppliers exit, the market becomes dependent on fewer sources of supply, increasing the risk of shortages, reduced service levels, and diminished bargaining power for buyers. Thus, predatory pricing is harmful not because low prices are inherently problematic, but because the strategy can undermine the competitive process that is necessary for sustainable consumer benefits over time.

Indonesian scholarship also emphasizes broader systemic harms associated with weak enforcement and inconsistent supervision. As noted in the literature, non-compliant undertakings may gain unfair advantages over firms that follow regulatory obligations, thereby distorting competitive neutrality and creating conditions that can eventually disadvantage consumers through higher prices, lower quality, and reduced choice (Wibowo et al., p. 119). Moreover, uncertainty and inconsistency in competition supervision can erode trust in legal institutions among both businesses and consumers. This institutional dimension matters because effective competition law depends not only on the content of rules but also on the credibility and predictability of enforcement. When enforcement is perceived as uncertain, investment decisions may be distorted, compliance incentives weakened, and market entry discouraged. Over time, these effects can inhibit economic growth and reduce the dynamism of competition that competition law is designed to promote.

Given these potential harms, predatory pricing is treated as a prohibited form of unfair business competition because it threatens the integrity of market mechanisms and, ultimately, consumer welfare. Under the Indonesian regime, legal consequences may take the form of administrative measures imposed by KPPU, alongside potential civil implications depending on the broader legal context. Administrative sanctions commonly include orders to cease the prohibited conduct and to adjust pricing policies to comply with competition norms. In doctrinal accounts, KPPU may also order compensation mechanisms or impose fines, with reference to statutory limits, and may require compliance reporting as a mechanism to ensure that corrective measures are implemented (Hakim, p. 431). These remedies are significant because they reveal an enforcement philosophy that seeks not only to punish past conduct but also to restore competitive conditions and prevent recurrence. Cease-and-desist orders and mandated changes to pricing policy aim to stop exclusionary strategies in real time, while compliance obligations and reporting requirements serve as monitoring tools to sustain lawful market behavior after adjudication.

From a consumer protection standpoint, the effectiveness of these legal consequences depends on whether they achieve structural and behavioral correction. If enforcement measures succeed in preventing competitor exclusion and maintaining

alternative supply, consumers are more likely to retain meaningful choice and obtain fair prices over time. Conversely, if remedies are limited to formal sanctions without addressing the mechanisms that enable predation, such as persistent cross-subsidization or exclusionary distribution practices, consumer protection may remain only indirect and incomplete. Therefore, an assessment of predatory pricing within anti-monopoly and unfair competition law should not end with the identification of below-cost pricing or exclusionary intent; it should also evaluate whether the remedial response is capable of preserving market contestability and ensuring that consumers experience durable benefits rather than temporary price reductions followed by long-term harm.

2. KPPU's Considerations in Resolving Disputes Related to Predatory Pricing Practices

In resolving the dispute concerning allegations of predatory pricing committed by PT Conch South Kalimantan Cement, the Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha, KPPU*) applied a structured analytical framework which was later affirmed by the Supreme Court through Decision No. 951 K/Pdt.Sus-KPPU/2021. The reasoning adopted by KPPU demonstrates that the assessment of predatory pricing under Indonesian competition law is not limited to the identification of low prices, but is instead grounded in a broader examination of market definition, pricing rationality, competitive intent, and the structural impact of the conduct. The Supreme Court's confirmation of KPPU's decision further strengthens the legitimacy of this approach and signals the development of a consistent doctrinal standard for addressing predatory pricing under Article 20 of Law No. 5 of 1999.

A fundamental starting point in KPPU's assessment was the determination of the relevant market. Prior to evaluating whether the pricing behavior constituted an infringement, KPPU defined both the relevant product market and the relevant geographic market. In this case, the product market was identified as Portland Composite Cement, while the geographic market was established as South Kalimantan, where the cement was produced and distributed as the primary operational area of the undertaking. This step is legally significant because predatory pricing cannot be meaningfully assessed without first identifying the competitive boundaries within which pricing conduct occurs. Market definition enables the authority to evaluate market structure, determine the scope of competitive constraints, and examine whether the undertaking possesses the ability to influence market conditions. By defining the relevant market, KPPU ensured that its analysis was contextual and aligned with the economic realities of cement distribution, which is generally sensitive to geographic limitations due to transportation costs and logistical constraints.

Following market definition, KPPU focused on proving the existence of abnormally low pricing behavior, particularly pricing below cost. The Commission found that the selling price applied by PT Conch was consistently below production

costs, indicating below-cost pricing that could not be justified as ordinary commercial conduct. Importantly, KPPU did not treat the pricing conduct as a temporary promotional strategy or a short-term marketing campaign. Instead, the Commission emphasized that the below-cost pricing occurred continuously and systematically, suggesting that the strategy was not motivated by legitimate efficiency considerations but rather by exclusionary objectives. In competition law doctrine, persistent pricing below production costs is commonly regarded as a primary indicator of predatory pricing because it reflects conduct that is economically irrational if undertaken solely for normal profit-oriented business purposes. The finding that PT Conch repeatedly sold cement below cost therefore served as a central evidentiary foundation supporting the allegation of predatory pricing.

KPPU did not rely exclusively on the presence of low prices as the decisive factor. Instead, the Commission applied a contextual method of analysis consistent with the rule of reason approach. This approach requires the authority to assess not only the form of the conduct, but also its purpose, surrounding circumstances, and anti-competitive effects. Under this reasoning, low pricing does not automatically violate Law No. 5 of 1999, because aggressive price competition is often legitimate and beneficial for consumers. The rule of reason framework demands an examination of whether the pricing conduct was accompanied by an exclusionary strategy and whether it produced harmful effects on competitors and market structure. KPPU's reliance on this approach demonstrates a cautious enforcement stance that seeks to avoid over-criminalizing price competition while still enabling intervention when pricing is used as a tool to distort competition.

In applying the rule of reason approach, KPPU further examined the presence of exclusionary intent. The Commission identified indicators suggesting that PT Conch's pricing strategy was aimed at eliminating competitors rather than competing on efficiency. One key factor considered was the substantial decline in competitors' market shares during the period of PT Conch's pricing strategy. The evidence demonstrated that at least one competitor was ultimately forced to exit the market, a pattern that aligns with the classic mechanism of predatory pricing where the predator absorbs short-term losses to weaken rivals that cannot sustain prolonged price wars. The exit of a competitor is particularly relevant in predatory pricing analysis because it signals that the pricing conduct has moved beyond ordinary rivalry and has begun to reshape the market in a manner that reduces competitive pressure. Thus, the Commission treated competitor displacement not merely as a commercial outcome, but as evidence of strategic exclusion.

KPPU's considerations also extended to the broader impact of PT Conch's pricing behavior on the structure of the relevant market. The Commission found that PT Conch's market share increased significantly within a relatively short period of time, indicating an expansion of market power that could not be separated from the pricing strategy applied. This increase in market share was accompanied by a growing concentration of the market, which raised concerns regarding the reduction of competitive dynamics and the potential for dominance to emerge. Additionally,

KPPU noted that the elimination or weakening of competitors could increase barriers to entry for new market participants, as a highly concentrated market controlled by a dominant undertaking tends to discourage entry and restrict the sustainability of alternative suppliers. In competition law terms, such market restructuring is a key indicator of anti-competitive harm because the removal of rivals and the increase of entry barriers undermine market contestability and reduce the ability of consumers to benefit from long-term competition.

The analysis of market structure also highlights the consumer protection implications embedded in KPPU's reasoning. Although consumers may enjoy lower prices during the predation phase, the Commission emphasized that long-term harm may arise once the market becomes less competitive. A concentrated market structure increases the risk of monopoly pricing, reduced product availability, and diminished incentives for quality improvement. Therefore, KPPU's evaluation of structural harm reflects the understanding that predatory pricing is not merely harmful to competitors, but ultimately threatens consumer welfare through reduced choice and weakened competitive discipline. This reasoning aligns with the underlying objective of Law No. 5 of 1999, which is not limited to the protection of business actors but is designed to safeguard public interests and prevent market outcomes that disadvantage consumers.

Based on these findings, KPPU concluded that the conduct of PT Conch fulfilled the elements of Article 20 of Law No. 5 of 1999, which prohibits the setting of extremely low prices with the intention of eliminating competitors in a manner that may result in monopolistic practices or unfair business competition. The Commission's reasoning indicates that the violation was established through cumulative indicators: consistent below-cost pricing, contextual evaluation under the rule of reason, the presence of strategic exclusionary intent, and demonstrable negative impact on market structure. This combination of factors allowed KPPU to justify that the pricing strategy constituted predatory pricing rather than lawful competitive pricing.

As a consequence of the established infringement, KPPU imposed administrative sanctions in the form of a fine on PT Conch South Kalimantan Cement. The Supreme Court, through its cassation review in Decision No. 951 K/Pdt.Sus-KPPU/2021, affirmed KPPU's decision and upheld the enforceability of the imposed sanctions. The Supreme Court's confirmation is legally important because it reinforces KPPU's authority in interpreting and applying Article 20, while also strengthening jurisprudential consistency in predatory pricing enforcement. It further indicates that judicial review supports the use of a rule of reason approach in assessing predatory pricing, thereby ensuring that enforcement remains grounded in contextual economic realities rather than purely formalistic legal interpretation.

The reasoning applied by KPPU, as strengthened by the Supreme Court decision, illustrates that predatory pricing in Indonesian competition law is assessed through a multifactor framework. The decisive elements include persistent pricing below production costs, the application of a contextual rule of reason analysis, the

presence of strategic intent to exclude competitors, significant structural effects such as increased market concentration and entry barriers, and the fulfillment of Article 20's legal elements. This approach reflects an evolving enforcement model that balances the need to preserve aggressive competition with the obligation to prevent market distortions that can lead to monopolistic practices and long-term consumer harm.

3. Legal Protection for Consumers Against Predatory Pricing Practices

Legal protection becomes particularly relevant in predatory pricing cases because such conduct often appears to benefit consumers at the initial stage. During the early phase of predation, consumers may experience significantly lower prices, which can create the perception that the market is functioning competitively and that the pricing firm is merely offering affordable products. This apparent benefit is typically temporary. Predatory pricing may generate substantial consumer harm once competitors are eliminated or weakened, resulting in reduced market alternatives and increased market concentration.

When competitive pressure diminishes, the dominant undertaking may subsequently raise prices to supra-competitive levels, restrict output, or reduce product quality, thereby exploiting consumers who no longer have sufficient options in the market. For this reason, consumer protection in the context of predatory pricing must be understood as a legal necessity aimed at preventing structural market harm that can ultimately undermine consumer welfare. In the Indonesian legal system, such protection is provided through two primary legal regimes, namely competition law enforcement under Law No. 5 of 1999 and consumer protection mechanisms under Law No. 8 of 1999.

Under the competition law framework, Law No. 5 of 1999 explicitly prohibits the practice of setting extremely low prices with the intention of eliminating competitors, as such conduct may result in monopolistic practices or unfair business competition. Article 20 of the law constitutes the principal legal basis for addressing predatory pricing in Indonesia. The prohibition reflects the legislative understanding that extremely low pricing is not inherently unlawful, but becomes prohibited when it is strategically designed to exclude rivals and ultimately distort market structure.

The Indonesian competition law regime functions as an indirect but fundamental mechanism of consumer protection, because its primary objective is to preserve competitive market conditions that ensure long-term consumer welfare. Enforcement authority is vested in the Indonesian Competition Commission (KPPU), which has the institutional mandate to investigate, adjudicate, and impose administrative sanctions against business actors engaging in predatory pricing practices.

In the PT Conch South Kalimantan Cement case, KPPU determined that the undertaking had engaged in predatory pricing through persistent below-cost pricing strategies that were not justified by ordinary commercial rationality. As a consequence, KPPU imposed administrative sanctions, including an administrative

fine and an order to cease the predatory pricing conduct. This enforcement action is significant from the perspective of consumer protection because it aims to stop exclusionary conduct before it results in irreversible market concentration. The legal effect of KPPU's decision was further reinforced when the ruling was upheld by the Commercial Court and ultimately affirmed by the Supreme Court through Decision No. 951 K/Pdt.Sus-KPPU/2021.

The Supreme Court's confirmation carries important normative implications, as it strengthens legal certainty by affirming that predatory pricing constitutes a violation of competition law and must be terminated through enforceable sanctions. This judicial endorsement also indicates that the Indonesian legal system recognizes the long-term risks posed by predatory pricing, particularly the risk that a dominant firm may exploit market power after competitors have been driven out. Therefore, the KPPU decision and its judicial affirmation operate as a preventive safeguard intended to prevent the emergence of cement market monopoly in South Kalimantan and to protect consumers from future price exploitation.

Consumer protection in predatory pricing cases is also supported by Law No. 8 of 1999 on Consumer Protection. This regime provides more direct recognition of consumer rights, particularly as stipulated in Article 4, which affirms that consumers are entitled to obtain goods and services at fair prices, receive accurate information, and participate in a healthy and transparent market environment. Although predatory pricing is traditionally categorized as a competition law violation, its long-term effects directly undermine these consumer rights by reducing market choice and enabling price manipulation. Consumer protection law provides an additional normative basis for understanding predatory pricing not merely as an inter-business dispute, but as conduct that may eventually violate consumer interests.

Several provisions of Law No. 8 of 1999 are relevant in this context. Articles 8 and 17 prohibit business practices that mislead or harm consumers, including conduct that indirectly manipulates market conditions through unfair competition mechanisms. While these provisions are not always applied explicitly in competition law cases, they reinforce the legal principle that business actors must not engage in conduct that results in consumer disadvantage, whether through deceptive marketing, unfair contractual terms, or pricing manipulation. Furthermore, Article 19 establishes the obligation of business actors to provide compensation for losses suffered by consumers due to unlawful conduct.

This provision may allow consumers or injured parties to seek civil remedies when predatory pricing results in measurable harm, such as inflated prices following market monopolization, restricted supply, or reduced quality of goods. Legal remedies under the consumer protection framework may be pursued through individual lawsuits, collective claims such as class actions, dispute settlement before the Consumer Dispute Settlement Body (BPSK), or litigation in the District Court. These mechanisms illustrate that Indonesian law provides consumers not only with indirect protection through market regulation, but also with direct avenues to pursue accountability and compensation where consumer harm can be demonstrated.

The dual legal regime described above can also be analyzed through the broader framework of preventive and repressive legal protection. Preventive protection refers to legal measures designed to prevent consumer harm before it occurs by maintaining fair market structures and discouraging unlawful business conduct. In predatory pricing cases, preventive protection is primarily achieved through the supervisory and enforcement role of KPPU, which monitors market conduct and prohibits strategies that may lead to monopolization. Preventive protection is also reflected in the publication of KPPU decisions and public dissemination of enforcement outcomes, which function as a deterrent and provide market transparency. By establishing that predatory pricing is unlawful and subject to sanctions, the legal system forces business actors to maintain fair competition and discourages exclusionary strategies that could undermine consumer welfare.

Repressive protection operates after a violation has occurred and focuses on imposing sanctions and providing remedies. In the context of predatory pricing, repressive measures include administrative fines, cease-and-desist orders, and compliance obligations imposed by KPPU. Repressive protection may also take the form of civil liability and compensation claims under consumer protection law, particularly when consumers can demonstrate concrete losses resulting from post-predation market exploitation. The monitoring of pricing behavior after a decision is implemented constitutes an important repressive mechanism, as it ensures that the undertaking does not return to exclusionary conduct or exploit its strengthened market position in a way that harms consumers.

In the PT Conch South Kalimantan Cement case, consumer protection was primarily realized indirectly through the enforcement of Law No. 5 of 1999 by KPPU and the Supreme Court's affirmation of the resulting sanctions. The enforcement process served as a structural safeguard designed to prevent the formation of cement monopoly conditions in South Kalimantan and to preserve market contestability. By halting predatory pricing behavior and confirming its illegality, the legal system sought to maintain fair and competitive pricing dynamics, ensuring that consumers would not become dependent on a single dominant supplier.

Consumers remain entitled to more direct forms of legal protection through Law No. 8 of 1999, including the right to obtain goods at fair prices, the right to transparent market conditions, and the right to seek compensation through civil litigation or collective legal action. These mechanisms reflect that Indonesian law conceptualizes consumer protection in predatory pricing cases as both a matter of market structure preservation and a matter of enforceable consumer rights, ensuring that short-term price benefits do not mask long-term harm caused by monopolistic market domination.

D. CONCLUSION

Based on the findings discussed above, this article concludes that, in the PT Conch South Kalimantan Cement case, KPPU applied a rule of reason approach by comprehensively assessing the constituent elements of Article 20 of Law No. 5 of 1999

and establishing that PT Conch repeatedly and over a prolonged period sold cement below production cost with the strategic purpose of excluding competitors, which in turn produced measurable anti-competitive effects, including a shift in market structure, a significant increase in the dominant firm's market share, and heightened entry barriers for rivals; the determination was grounded in the definition of the relevant market and an integrated evaluation of pricing conduct, business motives, and market consequences, and was subsequently affirmed by the Commercial Court and the Supreme Court through Decision No. 951 K/Pdt.Sus-KPPU/2021, rendering KPPU's sanctions final and binding. The article further finds that consumer protection in this case operates through two interconnected legal regimes: indirect protection through competition law enforcement, namely KPPU's sanctions and market supervision aimed at preventing monopolization and future price exploitation, and direct protection under Law No. 8 of 1999, which recognizes consumers' rights to fair pricing and product choice and enables claims for redress where losses occur; accordingly, KPPU's enforcement and the courts' affirmation function to preserve market contestability and safeguard consumers through both preventive and repressive legal mechanisms.

REFERENCES

1. Adam, R. (2023). Predatory pricing for e-commerce businesses from a business competition law perspective. *Journal of Law and Sustainable Development*, 11(8), e1438–e1438.
2. Amalia, L. T., Widyawati, R. L., Kusuma, A., & Rosyadi, A. N. (2024). Dumping Practices on Market Balance: A Review of Business Competition in E-Commerce. *Journal of Law, Politic and Humanities*, 4(3), 172–179.
3. Anggraini, A. M. T., Sabirin, A., & Himawan, F. (2025). Antitrust in Practice: Case-Based Comparative Analysis of Predatory Pricing Enforcement in Indonesia and the United States. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, 12(3), 1.
4. Ariska, N. A. (2024). Pendekatan Rule of Reason Atas Penetapan Harga Semen (Studi Perkara Putusan PT. Semen Conch South Kalimantan Cement Dalam Penjualan Semen di Wilayah Kalimantan Selatan). *Journal of Islamic Business Law*, 8(4), 102–124.
5. Fathimah, F. K., Rahma, A. S., & Munir, M. M. (2024). Predatory Pricing Practices on E-Commerce from an Islamic Perspective. *International Journal Humanities Perspective*, 1, 19–24.
6. Fletcher, A., Crawford, G. S., Crémer, J., Dinielli, D., Heidhues, P., Luca, M., Salz, T., Schnitzer, M., Morton, F. M. S., & Seim, K. (2023). Consumer protection for online markets and large digital platforms. *Yale J. on Reg.*, 40, 875.
7. Ghifari, N., Murwaji, T., & Harrieti, N. (2025). Legal Construction of Rule of Reason Approach to Predatory Pricing in Digital Business. *Awang Long Law Review*, 7(2), 256–267.

8. Grochowski, M. F., Jablonowska, A. A., Lagioia, F., & Sartor, G. (2022). Algorithmic price discrimination and consumer protection: a digital arms race? *Technology and Regulation*, 2022, 36–47.
9. Gulati, B., & Puri, V. (2022). Predation or Competition: Demystifying the Dilemma in Platform Markets. *Competition Commission of India Journal on Competition Law and Policy*, 167–194.
10. Hancock, T., Adams, F. G., Breazeale, M., Lueg, J. E., & Shanahan, K. J. (2022). Beware the predatory shopper: exploring social vigilantism and proactivity in the exploitation of online pricing mistakes. *Journal of Consumer Marketing*, 39(7), 744–755.
11. Hasbullah, M. A. (2022). Linking Anti-trust laws with industrial development: Highlighting the prevalence of Anti-trust laws within the Indonesian manufacturing sector. *International Journal of Criminal Justice Sciences*, 17(1), 274–286.
12. Heidary, K., Custers, B., Pluut, H., & van der Rest, J.-P. (2022). A qualitative investigation of company perspectives on online price discrimination. *Computer Law & Security Review*, 46, 105734.
13. Hutchinson, C. S., & Treščáková, D. (2022). The challenges of personalized pricing to competition and personal data protection law. *European Competition Journal*, 18(1), 105–128.
14. Kamraju, M. (2025). Corporate pricing strategies and consumer welfare: Analyzing ethical, economic, and regulatory implications. *ASEAN Journal of Economic and Economic Education*, 4(1), 41–48.
15. Kurlillah, A., Hisan, S., & Tamam, B. (2024). Predatory Pricing in Buying and Selling Imported Products in E-Commerce According to the Perspective of Business Competition Law and Muamalah Fiqh. *Syarah: Jurnal Hukum Islam Dan Ekonomi*, 13(1), 110–134.
16. Leslie, C. R. (2023a). False Analogies to Predatory Pricing. *U. Pa. L. Rev.*, 172, 329.
17. Leslie, C. R. (2023b). Predatory Pricing Algorithms. *NYUL Rev.*, 98, 49.
18. Li, Q., Philipsen, N., & Cauffman, C. (2023). AI-enabled price discrimination as an abuse of dominance: a law and economics analysis. *China-EU Law Journal*, 9(1), 51–72.
19. MacKay, A., & Weinstein, S. N. (2022). Dynamic pricing algorithms, consumer harm, and regulatory response. *Wash. UL Rev.*, 100, 111.
20. Mandrescu, D. (2022). Abusive pricing practices by online platforms: a framework review of Article 102 TFEU for future cases. *Journal of Antitrust Enforcement*, 10(3), 469–517.
21. Marten, R. (2025). A Review of Problems Arising in the Enforcement of Business Competition Laws. *Legal Frontier*, 1(1), 26–33.
22. Martin, S. (2024). Akibat Hukum Penerapan Jual Rugi Sebagai Strategi Penetapan Harga Yang Dilakukan Oleh PT. Conch South Kalimantan Cement Atas Penjualan Semen di Wilayah Kalimantan Selatan (Studi Putusan KPPU Nomor: 03/KPPU-L/2020). *Journal of Private and Economic Law*, 4(1), 184–217.

23. Murniati, R. (2023). The Characteristics of Predatory Pricing Violations According to Competition Laws in Indonesia. *3rd Universitas Lampung International Conference on Social Sciences (ULICoSS 2022)*, 60–68.
24. Pandey, A. R. (2023). Entry Barrier Analysis in Signal Jamming Predatory Pricing. *Dinkum Journal of Economics and Managerial Innovations*, 2(11), 637–644.
25. Puisto, A., & Alavi, H. (2025). Abuse of Dominant Market Position by Predatory Pricing; The Valio Case. *Hasanuddin Law Review*, 1(1), 24–37.
26. Puruhito, M. A. S., & Anisah, S. (2024). The Negative Impact of Predatory Pricing Practice to Fair Competition (The Study of KPPU Decision Number 03/KPPU-L/2020). *Journal of Private and Commercial Law*, 1(1), 66–88.
27. Putra, W. B., Anggriawan, T. P., & Purwanto, A. M. D. C. (2023). Akibat Hukum Praktik Jual Rugi Semen Conch Dalam Persaingan Usaha Industri Semen di Indonesia. *Jurnal Hukum, Politik Dan Ilmu Sosial*, 2(3), 71–88.
28. Qizhi, Z. (2024). Exploration on the protection of consumer rights and interests in big data price discrimination. *International Journal of Frontiers in Sociology*, 6(4).
29. Rahmalia, Y. S. (2023). Tinjauan Yuridis Praktik Persaingan Tidak Sehat (Predatory Pricing) Terhadap Kasus PT. Conch South Kalimantan Cement (Conch). *Jurnal Ilmiah Wahana Pendidikan*, 9(14), 751–764.
30. Spann, M., Bertini, M., Koenigsberg, O., Zeithammer, R., Aparicio, D., Chen, Y., Fantini, F., Jin, G. Z., Morwitz, V., & Popkowski Leszczyc, P. T. L. (2024). Algorithmic pricing: Implications for consumers, managers, and regulators. *NBER Working Paper*, (w32540).
31. Vickers, J. (2025). Competition policy and the consumer welfare standard. *Journal of Antitrust Enforcement*, 13(1), 6–16.
32. Zaid, Z. (2022). The Unicorn Is a Myth No More: A Ratio Decidendi Analysis on First Official Predatory Pricing Case in Indonesia. *Jurnal Penegakan Hukum dan Keadilan*, 3(1), 48–59.
33. Zaid, Z., Gustiyani, R., & Kirana, A. H. (2022). Can An Anti-Dumping Policy Be Substituted for Predatory Pricing? *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 4(2), 179–188.