

Constitutionalization of Consumer Protection from the Perspective of Human Rights Law and Islamic Prophetic Law

(Konstitusionalisasi Pelindungan Konsumen dalam Perspektif Hukum Hak Asasi Manusia dan Hukum Profetik Islam)

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ABSTRACT: People are ipso facto consumers. People, as humans beings and consumers, own the rights that must be protected by the law. The rights must also be protected, respected, fulfilled, and advanced by the state. However, the current consumer protection in Indonesia is still weak and ineffective as evidenced by many complaints from consumers to the National Consumer Protection Agency (BPKN). This is also due to the weak legal instruments of consumer protection that need to be incorporated into the state's constitution. The study aimed to analyze the urgency of constitutionalizing consumer protection from the perspective of human rights and prophetic Islamic law. This study found that (1) constitutionalization of consumer protection from human rights perspective can guarantee the fulfillment of the right to life as the fundamental human right and can act as the instrumentation of the fulfillment of right to decent and safe standard of living, and (2) from the perspective of prophetic law, the constitutionalization of consumer protection can empower public authorities to fulfill, respect, implement, and enforce consumer protection, thereby humanizing and liberating consumers from unfair and fraudulent trade.

ABSTRAK: Manusia, warganegara ipso facto konsumen. Manusia sebagai konsumen memiliki hak yang harus dilindungi oleh hukum. Konsumen sebagai manusia memiliki hak asasi yang harus dilindungi, dihormati, dipenuhi dan dimajukan oleh negara. Namun perlindungan konsumen saat ini belum efektif dan lemah, buktinya banyak pengaduan konsumen pada Badan Perlindungan Konsumen Nasional (BPKN). Ini juga disebabkan oleh instrumen hukum perlindungan konsumen yang lemah sehingga perlu pengakaran dalam konstitusi negara. Berdasarkan hal ini, bertujuan penelitian untuk menganalisis urgensi konstitusionalisasi perlindungan konsumen perspektif hak asasi manusia dan hukum profetik Islam. Metode penelitian yang digunakan adalah penelitian hukum doktrinal dengan pendekatan konseptual dan perundang-undangan. Data yang digunakan adalah data sekunder yaitu bahan hukum primer, sekunder dan tersier yang didapat melalui studi pustaka dan penelusuran secara online (internet searching), surfing dan downloading, selanjutnya dianalisis secara deskriptif kualitatif. Adapun hasil penelitian ini meliputi: (1) konstitusionalisasi perlindungan konsumen perspektif hak asasi manusia dapat menjamin terpenuhinya hak untuk hidup sebagai hak dasar manusia, dan dapat menjadi instrumentasi atas pemenuhan hak atas standar hidup yang layak; dan (2) dalam perspektif hukum profetik, konstitusionalisasi perlindungan konsumen dapat memberdayakan otoritas publik dalam pemenuhan, penghormatan, pelaksanaan dan penegakan perlindungan konsumen, sehingga mewujudkan humanisasi dan liberasi konsumen dari perdagangan yang tidak adil dan curang.

Keywords:

constitutionalization;
consumer protection;
human rights law;
islamic;
prophetic law

Kata Kunci:

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1. Introduction

The legal basis of consumer protection in Indonesia is Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law). Since its promulgation until present time (2023) the Consumer Protection Law is being drafted for changes. The implementation of consumer protection in Indonesia institutionally experiences dynamics that are not oriented toward consumer protection itself.¹ This can be proven by the ups and downs of institutions mandated to carry out consumer protection and there is no clear blueprint related to consumer protection. The institutional ups and downs are the transfer of authority to implement consumer protection from district and/or city of regional governments to provincial regional authorities in line with the promulgation of Law Number 23 of 2014 concerning Regional Government,² which in the appendix of DD (Division of Central and Regional Government Affairs in the Trade sector) stated that the implementation of consumer protection is the authority of the province. The implication is that there is a wide gap between consumers and their protective institutions. Consumers feel alone in dealing with business actors. This is a paradox of consumer protection itself which is defined as all efforts to guarantee legal certainty for consumer protection.

Consumer protection is the protection of rights. Consumer rights are the characteristic of consumer protection law. However, the imbalance in bargaining power between consumers and producers leads to exploitation of consumers. This can be proven by the number of complaints from consumers received by the National Consumer Protection Agency (BPKN), namely as many as 924.³ This indicates the weak protection of consumer rights even though the rights have been granted by laws and regulations.

One of the vital key points of consumer protection is the strong recognition of the rights of consumers. Such recognition can only be granted by the basic law (constitution) of a state to encourage the authorities to take more serious actions with regard to respecting, protecting, and empowering the rights. Speaking of which, it is necessary to examine more deeply the urgency of relying the consumer rights protection on the basic laws of the Indonesian state, namely the constitution or the 1945 Constitution of the Republic of Indonesia (the "1945 Constitution"), bearing in mind that this 1945 Constitution is also an economic constitution.

This kind of idea has actually been carried out by many experts, like Margus Kingesepp who wrote *The Constitutional Approach to Basic Consumer Rights*. Drawing on comparisons in Estonia, Margus stated that although some legal scholars suggested that consumer rights had the potential to become a lenient human right, he thought it was quite justified. In its catalog of fundamental rights and freedoms, the Estonian Constitution does not mention consumer rights. However, legal practice allows the Constitutional Court to create new rights, freedoms, and obligations arising from the meaning of the Constitution. Therefore, Margus analyzed that consumer rights could be raised to the constitutional level as the basic rights. However, Margus further argued that there was no immediate need to recognize consumer rights among the fundamental constitutional rights in Estonia.⁴

Iris Benöhr and Hans-W. Micklitz in their book entitled *Consumer Protection and Human Rights* stated that until recently, consumer protection and basic rights were treated as separate areas of law.⁵ However, over the

1 <https://www.antaranews.com/berita/974592/bpkn-pelindungan-konsumen-di-indonesia-masih-lemah>, diakses tanggal 06 Juni 2023

2 Johannes Gunawan, Bernadette M Waluyo, dan A Dwi Rachmanto, "Alih Kelola Badan Penyelesaian Sengketa Konsumen (BPSK) Dari Kabupaten/Kota ke Provinsi Berdasarkan UU No. 23 Tahun 2014 Tentang Pemerintahan Daerah," vol. 1, 2019.

3 https://bpkn.go.id/statistik_pengaduan diakses pada tanggal 14 November 2022. Yayasan Lembaga Konsumen Indonesia pada tahun 2019 menerima 563 aduan konsumen. Pada Januari-Desember 2021 Direktorat Jenderal Perlindungan Konsumen dan Tertib Niaga Kementerian Perdagangan melaporkan rekapitulasi pengaduan berdasarkan sektor: (1) obat makanan 4 pengaduan, (2) elektronik/kendaraan 11 pengaduan, (3) jasa keuangan 75 pengaduan, (4) e-commerce 6.914 pengaduan, (5) perumahan 16 pengaduan, (6) telekomunikasi 7 pengaduan, (7) transportasi 73 pengaduan, dan (8) lain-lain sebanyak 140 pengaduan. Info grafik laporan pelayanan pengaduan konsumen, diakses dari <https://www.instagram.com/p/CTTeYZXpeVQ/>, pada tanggal 23 September 2021.

4 Margus Kingesepp, "The Constitutional Approach to Basic Consumer Rights," *Juridica International* 19, no. 49 (2012): 235–40.

5 Iris Benöhr dan Hans-W. Micklitz, *Consumer Protection and Human Rights* (United Kingdom: Oxford University Press, 2013); Iris Benöhr dan Hans-W. Micklitz, "Consumer Protection and Human Rights," in *Research Handbooks in International Law* (United State of America: Edward Elgar Publishing Limited, 2010), 1–476, <https://doi.org/10.4337/9781785361685>.

last decade, consumer protection has been increasingly discussed in the context of human rights, also because of its inclusion in the European Union Charter of Fundamental Rights as a prominent EU objective. They explored the conceptualization of consumer protection as a human right. In addition, they analyzed how EU consumer laws and policies were likely to be influenced by recent innovations in international law and by established constitutional rights.

Hugh Collins in his article entitled *Private Law, Fundamental Rights, and the Rule of Law* stated that the core idea of the definition of the phrase “constitutionalization of private law” is that contract, tort, or property law must be designed or developed by judges in such a way as to harmonize all areas of private law with constitutional rights. This implies that while private law does not necessarily duplicate constitutional rights exactly, it must not contradict or subvert constitutional rights. The relevant basic rights are those that can be found in constitutions or rights laws or international human rights treaties that govern the actions of certain courts that must decide civil law disputes. Because civil law is the law of the states in the United States, in most cases, the directly relevant constitution must be the state constitution containing the law of rights.⁶

Based on the results of the previous research, there is a significant difference with the findings in this study, namely the importance of initiating or including consumer protection in the basic law of the state or the constitution, so that it becomes a constitutional fundamental right in the constitution. The urgency of constitutionalizing consumer protection is based on human rights law and Islamic prophetic law. Human rights are used as a perspective due to an intersection with consumer rights so it gives rise to the idea of making consumers a human right and due to the beginning of legal protection originating from natural law theory. Natural law as a rule that is “universal, eternal, and applies absolutely” in modern life as it is today, is still alive with evidence that more and more people are discussing the issue of Human Rights.⁷ Human Rights are the substance of natural law which is a universal principle.⁸ The use of Islamic prophetic law as a perspective is part of the natural laws above, especially those with irrational views which argue that laws that apply universally and eternally originate directly from God.

This paper is presented in two parts. In the first part, this article discusses the urgency of constitutionalizing the consumer protection in the 1945 Constitution of the Republic of Indonesia from a human rights perspective. The second part will elaborate the constitutional urgency of consumer protection from the perspective of Islamic prophetic law.

2. Research Methods

This research applied the type of normative legal research or the method of doctrinal legal research in Soetandyo Wignjosebroto.⁹ This normative legal research is a legal research method that seeks to analyze and discuss legal issues using a legal framework built on statutory regulation¹⁰ and concepts and principles in the science of law.¹¹

The approach method used was the conceptual approach and the statutory approach. Conceptual approach is an approach that provides an point of view analysis on problem-solving in this study seen from legal concepts. This approach departs from the developed views and doctrines in the science of law. This approach is important because an understanding of such views/doctrines can be the basis for building legal arguments in this study. A conceptual approach is used to parse the meaning and concept of constitutionalizing consumer protection in the 1945 Constitution of the Republic of Indonesia in terms of Human Rights and Islamic prophetic law. Based on this explanation, it is hoped that the constitutionalization of consumer protection is in accordance with the proper conception of a constitutional state.

The statutory approach, is an approach used to explore and inventory consumer protection regulations and doctrines in relevant legal materials, either in the 1945 Constitution of the Republic of Indonesia or in Law No.

6 Hugh Collins, “Private Law, Fundamental Rights, and and the Rule of Law,” *West Virginia Law Review* 121, no. 1 (2018), <https://doi.org/https://doi.org/10.1093/acprof:oso/9780198729327.001.0001>.

7 Marwan Mas, *Pengantar Ilmu Hukum* (Jakarta: Galia Indonesia, 2004), 116..

8 Mas, *Pengantar Ilmu Hukum*.

9 Soetandyo Wignjosebroto, *Hukum: Paradigma, Metode, Dan Masalahnya*, ed. oleh Ifdhal Kasim et al. (Jakarta: Elsam dan Huma, 2002), 147–60.

10 Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2010).

11 Amiruddin dan Zainal Asikin, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Press, 2018).

8 of 1999 concerning Consumer Protection, Law No. 23 of 2014 concerning Regional Government and Law No. 39 of 1999 concerning Human Rights.

The laws and regulations above are the main legal materials in this study. There are also other legal materials for analysis purpose, namely secondary and tertiary legal materials consisting of scientific books, scientific journals, proceedings, papers, internet sources, and legal dictionaries that specifically discuss the system and procedures for the constitutionalization of consumer protection.

All of the legal sources above were then analyzed using prescriptive analysis techniques. This technique can be said to be a combination of descriptive and predictive analysis techniques. Descriptive analysis describes the current situation of consumer protection, while predictive analysis provides predictions based on the current situation to describe what will happen to consumer protection in the future. Hence, prescriptive analysis is to answer the question of what must be done regarding consumer protection after looking at the current existing conditions, which serves to provide directions, solutions, and suggestions related to consumer protection in the future in the form of the urgency of constitutionalization of consumer protection in the 1945 Constitution of the Republic of Indonesia.

3. Discussion

With regard to the problems studied, there are two findings and discussions.

3.1 The Urgency of Constitutionalization of Consumer Protection in the 1945 Constitution of the Republic of Indonesia from Human Rights Perspective

There are two arguments about the urgency of constitutionalization of consumer protection in the 1945 Constitution of the Republic of Indonesia from Human Rights perspective. First, the intersection of human rights and consumer rights can be seen in several ways, including the right to life, which can be understood to include consumer rights as legal subjects and citizens (sourced from laws), and consumer rights as legal subjects bound by contractual relationship law with business actors.¹² All of these rights have been summarized in consumer rights that must be protected by the Consumer Protection Law. According to Érico Rodrigues de Melo there are various philosophical and legal arguments supporting the need for consumer protection to guarantee human dignity. Consumer rights are human rights and must be defended. The adoption of the unanimity of the United Nations Guidelines for Consumer Protection raises international concern about this topic. In relation to the universality aspect of Human Rights, Érico Rodrigues de Melo thought that it is important to awaken the Kantian idea that human rights are not related to society or culture, but are intrinsic to humans. Consumer rights fit in well with this idea because they are guided by general principles that apply to everyone, regardless of their country, language, or culture. This is especially the case during the globalization era, characterized by mass production and global markets.¹³

Consumer rights become important in this situation, from which human rights are actually more than just fundamental freedoms. Humans can lose their right to life if there is no protection for their personal safety in consuming products (goods/services). The basic human right to life should be supported by other rights such as the right to comfort, the right to safety, the right to vote, the right to education, the right to be heard, the right to be protected and other rights to be granted by law. All supporting rights for fulfilling, promoting, respecting, and protecting the basic human right to life are consumer rights. This is an urgent matter because humans have the right to live and have the right to their journey of life. Therefore, it becomes rational if the concept of human rights is important to expand, bearing in mind that currently there is a very rapid development of human life.

Second, protecting consumer rights can be an effective means of fulfilling human rights in the economic, social, and cultural sectors. As Ewelina Cała-Wacinkiewicz said, consumer protection issues can be placed as the sub-category of the Human Rights defense system.¹⁴ Economic, social, and cultural rights are a set of human

12 Janus Sidabalok, *Hukum Perlindungan Konsumen* (Bandung: Citra Aditya Bakti, 2006), 253.

13 Érico Rodrigues de Melo, "Consumer Rights as Human Rights : Legal and Philosophical Considerations," *Revista RyD República y Derecho* 5, no. 5 (2020): 1–26.

14 Jamila Shu'ara, "Consumer Education as a Strategy for Sustaining Human Rights and National Security in Nigeria," *American Journal of Research in Business and Social Sciences* 1, no. 2 (15 September 2021): 1–8, <https://doi.org/10.58314/78980>.

rights that guarantee a decent life for mankind. Living with dignity means that everyone has the right to develop, fulfill their potential, and have access to opportunities for success and happiness. Included in these human rights are the right to food, the right to clean water and sanitation, the right to adequate housing, the right to education, the right to health, the right to work, and the right to social security.¹⁵ Unfortunately, when people are unable to fulfill their basic needs to live in a dignified manner¹⁶, this phenomenon is often seen as an unfortunate fate rather than human rights which must be met fairly.¹⁷

The right to a decent standard of living for humans and their families has a very fundamental position to realize continuous improvement of living conditions for the humans. This is the goal of human rights in the economic field.¹⁸ What is a decent standard of living? There is no definition of it, but what is emphasized is that it includes “food, clothing and housing, and for continuous improvement of life”.¹⁹ This is essentially interpreted as a decent standard of living that guarantees the dignity of the human person.

The decent standard of living above also includes the fulfillment of basic needs in the form of food and clean water, proper housing, health care, and social security. Humans can live well when economic, social, and cultural rights are properly fulfilled. Therefore, the state has an obligation to take strategic steps to realize these rights. The rights to food, clothing, and shelter mentioned above will be fulfilled when four key factors are met, namely availability, accessibility, adequacy, and sustainability. This can be realized with the existence of strong laws for consumer protection so that it is effective because it can guarantee the fulfillment of consumer rights to obtain security, comfort, and safety in consuming products.

Safety, comfort, and safety in consuming these products in order to create the physical health of consumers really depend on whether they: (a) eat enough food, which not only helps them get rid of hunger, but also gives them the nutrition and energy needed to live a healthy, safe and harmless life, (b) have proper clothing/clothing to cover and protect their bodies, and (c) own housing that gives them security, peace of mind and self-respect.²⁰

Without the above three rights being guaranteed, the inherent dignity of the human person will be threatened and all other human rights will be almost meaningless for someone who does not have them all. These three rights are basic rights for survival which are absolutely necessary for the continuation of human life.²¹ In general comment 12, the Economic, Social, and Cultural Committee confirmed that:²²

“the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all.”

Starting from General Comment 12 above, the Economic, Social, and Cultural Committee views three obligations of the State, namely the obligation to respect, protect and fulfill. The obligation to fulfill includes the obligation to facilitate and the obligation to provide. The obligation to respect requires member states to take measures that prevent access to adequate food, and the obligation to respect requires measures to ensure that

15 <https://www.amnesty.id/standar-hidup-layak/>, diakses pada tanggal 18 April 2023

16 Marieke Frederickx dan Ilse Cornelis Berenice Storms, “Implementing The Right to a Decent Living Standard in Belgium: The Use of The Redi Tool,” *Journal of Social Intervention: Theory and Practice* 31, no. 3 (2022): 21–36, <https://doi.org/https://doi.org/10.54431/jsi.694>.

17 Narasimha D. Rao dan Jihoon Min, “Decent Living Standards: Material Prerequisites for Human Wellbeing,” *Social Indicators Research* 138, no. 1 (23 Juli 2018): 225–44, <https://doi.org/10.1007/s11205-017-1650-0>.

18 Thomas Mertens, *A Philosophical Introduction to Human Rights* (United Kingdom: Cambridge University Press, 2020), 215, <https://doi.org/10.1017/9781108236287>.

19 Lihat juga Pasal 25 Deklarasi Universal Hak Asasi Manusia menyatakan bahwa standar hidup yang layak termasuk makanan, pakaian, perumahan dan perawatan medis dan layanan sosial yang diperlukan, serta hak atas perlindungan pada saat menganggur, sakit, cacat, menjanda, usia tua atau lanjut usia atau kurangnya penghidupan bagi orang lain karena keadaan di luar kendalinya

20 Office of The United nations High Commioner For Human Rights, *The Right to Adequate Housing. Development*, vol. 57 (New York: Office of the United Nations High Commissioner for Human Rights United Nations, 2009).

21 Henry Shue, *Basic Rights, Subsistence, Aluence, and U.S. Foreign Policy. 40th Anniv* (New Jersey: Princeton University Press, 2020), 24–25. 5

22 Komentar Umum 12, paragraf 4. *Internasional Convenant on Social, Economic, and Cultural Rights*

companies or individuals do not deprive individuals of access to adequate food resources. The obligation of the state to respect human rights can also be realized by: (a) not interfering with individual citizens to exercise their rights, (b) the state recognizing the right to a decent living as a human right, (c) the state not taking actions that prevent human access to life appropriate, (d) The state not carrying out, defending or allowing the practice of forced/arbitrary eviction of individuals/groups (related to the right to housing), (e) The state respecting the right of the people to build a place to live alone and regulate their environment so that it suits their culture, skills and needs and expectations (regarding the right to housing).

The obligation to protect consists of (a) guarantees by the state that individual rights are safe from violations by third parties (individuals or other entities), (b) the availability of sanctions imposed by the state for violations committed by third parties against the rights of other individuals, (c) including ensuring the existence of regulations that protect individual rights. The obligation to fulfill consists of (a) state intervention (positive concrete actions/steps) that must be maximized with existing resources, (b) active steps by the state in mobilizing resources to fulfill individual state rights, (c) state guaranteeing individuals who cannot be fulfilled alone. The obligation to fulfill (facilitation) means that States must proactively carry out various activities to improve access to and use of resources and facilities to ensure their livelihoods, including food security and security.²³

This food safety was the trigger for the emergence of the consumer protection movement in the 1970s, which was caused by mass production and market failures that could threaten the security, safety, and convenience of consumers. This is not only related to consumer rights *an sich*, but is closely correlated with human rights which recognize that everyone has the right to a social order in which their rights and freedoms can be realized in full. The realization of human rights to a decent standard of living can be fulfilled by the safe production and distribution of products (goods and services). This can be realized by constitutionalization of consumer protection, and strong and effective protection of consumer rights.

The constitutionalization of protecting consumer rights above can be a powerful legal tool to realize the objectives of consumer protection itself as stated in the Consumer Protection Law, namely to:

- a. increase awareness, ability, and independence of consumers in protecting themselves.
- b. elevate the dignity of consumers by protecting them from negative excesses in consuming products and/or services.
- c. grow consumer empowerment in choosing, determining, and demanding their rights as consumers.
- d. create a consumer protection system that contains legal certainty and the availability of information and access to information.
- e. improve the quality of goods and/or services that guarantee business actors to maintain the production of goods and/or services, health, comfort, security, and consumer safety.
- f. increase the awareness of business actors on the importance of consumer protection in order to foster an attitude of honesty and responsibility in doing business.

In addition to achieving the consumer protection objectives mentioned above, this also protects human dignity as a virtuous creature of God Almighty, in addition to realizing human rights to an honorable position called human dignity.

The urgency of constitutionalization of protecting consumer rights in the constitution is to make public authorities more empowered in respecting, fulfilling, and protecting these rights because they obtain the highest legal legitimacy so that the protection of consumer rights is more effective. Therefore, the constitutionalization of consumer protection rights is an important step to enhance the consumer protection and welfare. By being recognized constitutionally, consumer rights can be more secure and easier to protect by law and government. It can also encourage the development of better public policies and regulations to protect consumer rights so that consumer protection is effective.

With this constitutionalization, consumer rights can be upheld effectively, which are the right to (a) comfort, security, and safety in consuming, food, clothing, and housing and (b) the right to choose and obtain social insurance, food, clothing and housing in accordance with exchange rates, conditions, and promised guarantees (c) the right to correct and honest information regarding social insurance, clothing, food, and shelter (d) the right

23 Komentor Umum 12, paragraf 15. *Internasional Convenant on Social, Economic, and Cultural Rights*

to have opinions and complaints heard about the access to social insurance and the consumption of clothing, food, and housing (e) the right to receive advocacy, protection, and efforts to resolve disputes appropriately arising from the use of social insurance and the consumption of clothing, food, and housing, (f) the right to be treated or served properly and honestly and not discriminatory based on ethnicity, religion, culture, region, education, rich, poor and other social status in accessing social insurance, clothing, food and housing (g) the right to obtain compensation and reimbursement if social insurance, clothing, food, and housing services are not as it should be. Speaking of which, human rights to a decent standard of living can only be partially achieved through effective protection of consumer rights,²⁴ namely all efforts that guarantee legal certainty to provide protection to consumers.

In addition to effective protection of consumer rights, it can be a means of fulfilling, promoting, and respecting human rights in the economic field. Human rights and consumer rights also have the same spirit, namely equality, justice, development, and most importantly, protection. They all apply to everyone regardless of the differences, therefore must be equally protected. Even in some aspects, between consumer rights and human rights, there is a meeting of similar rights, namely the right to obtain compensation, the right to privacy and dignity, the right to fight discrimination, and the right to safety and security, making consumer rights considered as part of efforts to fulfill the human rights.

According to Sinai Deutch, consumer protection has become very important since World War II. Likewise, the concept of human rights becomes increasingly dominant. Substantial examination and human rights procedures support the argument that there is a tendency to broaden the definition of Human Rights and include consumer rights in the definition. In a consumer-oriented society, the protection of individual consumers is seen as part of maintaining human dignity, especially for big business organizations, monopolies, cartels, and multinational companies. Therefore, well-accepted human rights doctrines, such as the emphasis on the prosperity, honor, and dignity of the person, can serve as a basis to recognize consumer rights as human rights. Examination of several basic international and national documents shows that it is time to recognize consumer rights as human rights.²⁵

If effective protection of consumer rights can be a perfect means of fulfilling the right to a decent standard of living as the human rights in the economic field, then the maxim in Islam states that “*ma la yatimmul wajib illa bihi fahuwa wajib* - something that is obligatory, which is imperfect except with that something, then that something is also obligatory”. Respecting, protecting, and fulfilling Human Rights is mandatory and constitutional. Effective protection of consumer rights can be a perfect intermediary for respecting, protecting, and fulfilling these Human Rights, so protecting consumer rights is also legally obligatory to be constitutionalized in the 1945 Constitution because it can make the protection of consumer rights effective.

Constitutionalization derives from the word constitution²⁶ which has been defined as the fundamental and organic law of a nation or state that establishes government institutions and apparatus, defines the scope of the government’s sovereign power, and guarantees individual civil rights and civil liberties.²⁷ Therefore, constitutional rights are guaranteed by the Constitution. The guarantee of constitutional rights is the highest guarantee and cannot be revoked by the executive or legislature unless the constitution is amended,²⁸ which once again is not an easy task.

24 Kingisepp, “The Constitutional Approach to Basic Consumer Rights,” 2012, 50.

25 Sinai Deutch, “Are Consumer Rights Human Rights?,” *Osgoode Hall Law Journal* 32, no. 3 (2012): 336–53, <https://doi.org/https://doi.org/10.1017/CBO9781139003452.021>.

26 Graham Maddox, “A Note on the Meaning of ‘Constitution,’” *American Political Science Review* 76, no. 4 (1 Desember 1982): 805–9, <https://doi.org/10.1017/S0003055400189622>.

27 Blerton Sinani, “Constitution As the Highest Legal-Political Act,” *A Critical-Legal Overview of the Concept of Constitution* 10 (2019): 2441–63; Stefan Voigt, “Implicit Constitutional Change-Changing the Meaning of the Constitution without Changing the Text of the Document,” *European Journal of Law and Economics* 7, no. 3 (1999): 197–224, <https://doi.org/https://doi.org/10.1023/A:1008724612813>.

28 H M Sahat Radot Siburian, “Constitution Formulation and Amendment in Indonesian and American Legal System: A Comparative Study,” *Journal of Law and Legal Reform* 3, no. 1 (31 Januari 2022): 39–66, <https://doi.org/10.15294/jllr.v3i1.49536>; A.G Eze, “Consumer Rights as Constitutional Rights-A Comparative Analysis of Some Selected Jurisdiction,” *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 2 (2011): 187.

Constitutionalization is the process of establishing constitutional provisions.²⁹ This understanding is in line with the meaning of Bagir Manan's constitutionalism which essentially limits state power on the one hand and protects the rights of citizens on the other.³⁰ Constitutional rights are guaranteed by the Constitution.³¹ Constitutional rights are the main condition for a civilized existence. What is meant by constitutionalization of the protection of consumer rights here is consumer rights as constitutional fundamental rights in the 1954 Constitution of the Republic of Indonesia explicitly so that they become fundamental rights in the intended constitution. This right cannot be changed to the extent that the Constitution itself cannot be changed. These rights are based on the existence of individual freedom for the maximum development and well-being of a person. These rights cannot be violated or revoked by hierarchically lower laws. This places consumer rights not only into law but into the 1945 Constitution of the Republic of Indonesia.

Regarding consumers, the Black's Law Dictionary defines consumer as a person who buys goods or services for personal, family, or household use, without any intention of resale; a natural person using the product for personal, non-business purposes.³² Meanwhile, O'Grady defined "consumers" as final or end users of all goods and services produced in an economy.³³ Meanwhile, Schiffman and Kanut made a distinction between personal consumers and organizational consumers.³⁴ Personal consumers are people who buy goods and services for their own use or their household needs and in this case, the goods or services they buy must be consumed as end users or estimates. Organizational consumers refer to private organizations that have to buy products or services in order to pursue the goals of that organization.

The United Nations (UN) has guidelines for consumer protection,³⁵ although they do not have legal consequences, they are a set of basic goals that are recognized internationally.³⁶ It can also be seen as an effort to accept universal rights and is additional support for accepting consumer rights as human rights.³⁷ Even though the above UN Guidelines are not legally binding, their influence is very broad, and therefore it is the most influential international instrument for consumer protection. The guidelines have been used as the inspiration and model for many countries around the world to develop their own national consumer protection systems.³⁸ Many countries have even incorporated high levels of consumer protection into their national constitutions. This shows the importance of protecting consumer rights to be included in the Constitution.

UN Consumer Protection Resolution No. 39/248 above outlines several consumer interests that must be protected, including (a) consumer protection against threats to consumer health and safety; b) promoting and protecting the social interests of consumers; (c) consumer education; (d) availability of effective compensation; and (e) the freedom to form relevant organizations and enabling them to express their opinions in the decision-making process.³⁹

29 Martin Loughlin, "What is Constitutionalisation?," in *The Twilight of Constitutionalism?*, ed. oleh Petra Dobner dan Martin Loughlin (Oxford University Press Oxford, 2010), 47, <https://doi.org/10.1093/acprof:oso/9780199585007.003.0003>.

30 Cited from Rahayu Prasetyaningih, "Konstitusionalisasi Hukum Privat: Beberapa Pandangan yang Berkembang dalam Pengkajian Ilmu Hukum," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 1, no. 2 (2014): 367–85, <https://doi.org/10.22304/pjih.v1n2.a9>.

31 Adam A Chilton dan Mila Versteeg, "Do Constitutional Rights Make a Difference?," *American Journal of Political Science* 60, no. 3 (2016): 575–89, <https://doi.org/https://doi.org/10.1111/ajps.12239>.

32 B.A Garner, *Black's Law Dictionary*, 8th editio (St Paul Minnesota: West Publishing Co, 2004), 316. 6

33 M James O'Grady, "Consumer Remedies," *The Canadian Bar Review* 60, no. 4 (1982): 549–84.

34 Schiffman and Kanut in Smith Sharma, "District Consumer Forum- : Social -Economic Protection to Consumer," *Journal of Emerging Technologies and Innovative Research (JETIR)* 7, no. 5 (2020): 297–311.

35 United Nations guidelines for consumer protection, <https://unctad.org/topic/competition-and-consumer-protection/un-guidelines-for-consumer-protection>

36 Eze, "Consumer Rights as Constitutional Rights-A Comparative Analysis of Some Selected Jurisdiction," 191.

37 Asbjørn Eide dan Allan Rosas, "Economic, Social and Cultural Rights: A Universal Challenge," in *Economic, Social and Cultural Rights*, Second Rev (London: Brill | Nijhoff, 2001), 77, https://doi.org/10.1163/9789047433866_005.

38 United Nations Conference for Trade and Development, 'Implementation Report on the United Nations Guidelines on Consumer Protection (1985–2013)', E/1999/INF/2/Add.2, available at: http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf.

39 United Nations General Assembly Resolution 39/248 of 16 April 1985 on Guidelines for the Consumers Protection. Gunawan Widjaja dan Ahmad Yani, *Hukum Tentang Perlindungan Konsumen* (Jakarta: Gramedia Pustaka Utama, 2003), 27–28.

The consumer interests above are the consumer rights themselves, slightly different from the rights above, the consumer rights introduced by ASEAN are: (a) right to basic needs; (b) right to security; (c) right to information; (d) right to make informed decisions; (e) right to be heard; (f) right to compensation; (g) right to education; and (h) right to a healthy environment.⁴⁰ In contrast, Indonesia's environmental rights clearly exclude intellectual property rights (IPR) and other management-related rights, so they are not used as consumer rights.

Meanwhile, Indonesia, which is a member of ASEAN, recognizes several consumer rights regulated in Law Number 8 of 1999 concerning Consumer Protection, namely: (a) the right to comfort, security, and safety; (b) the right to vote; (c) the right to correct information; (d) the right to be heard; (e) the right to receive advocacy; (f) the right to consumer guidance and education; (g) the right to be treated or served properly and honestly and not be treated discriminatorily; (h) the right to receive compensation; and (i) the rights regulated in the provisions of other laws and regulations.

Even though there are differences regarding the variety of consumer rights above, consumer rights are recognized. The constitutionalization of these consumer rights in the basic law of a country is a reflection of an understanding of the fundamental responsibility of the state to protect consumers. The state is responsible to its citizens not only for economic efficiency but also for social justice and safeguarding the interests of consumers from fraudulent economic practices.⁴¹

It is also a step towards stronger recognition and stricter enforcement of consumer rights around the world. The constitutionalization of consumer rights makes these rights acquire legal significance so that they will be closely monitored by the parties. Therefore, companies will be more careful and consistent in acting wisely and socially responsible because any violations will violate consumer rights which will eventually cause losses and trigger massive violations of collective rights. Because prevention is better than cure, consumer rights must be related to constitutional rights and human rights for their recognition, protection, fulfillment, and promotion.

The Consumer Protection Law in its considerations refers to Article 33 of the 1945 Constitution of the Republic of Indonesia Chapter XIV of the National Economy and Social Welfare. The welfare paradigm is in the Preamble of the 1945 Constitution which is then elaborated in Article 33 and Article 34. Substantially Article 33 talks about the National Economy, while Article 34 talks specifically about Social Welfare. Meanwhile, Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia has not been used as a reference by the Consumer Protection Law, even though the article mandates that everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law. Article 28 D paragraph (1) above was not made because the Consumer Protection Law was ratified first, while 28 D paragraph (1) was the result of the second amendment to the 1945 Constitution of the Republic of Indonesia in 2000.

Chapter XIV of the 1945 Constitution of the Republic of Indonesia concerning the National Economy and Social Welfare, is a derivative of the welfare paradigm in its preamble, thus the concept of a welfare state has been adopted by Indonesia. Bagir Manan explained that the achievement of social welfare is not solely the responsibility of society, but is the responsibility of the state or government. Article 33 of the 1945 Constitution of the Republic of Indonesia requires the government to take an active part in trying to achieve a welfare state.⁴² Legally formal constitutionalization of consumer rights in the 1945 Constitution of the Republic of Indonesia is a real elaboration of the contents of the 1945 Constitution of the Republic of Indonesia which characterizes the welfare state. This is because apart from being a political constitution, the 1945 Constitution of the Republic of Indonesia is also an economic constitution. It is also a powerful deterrent (*al-daf'u alam min raf'ih* -prevention is better than eliminating it) for manufacturers and product providers from the practice of imposing substandard harmful products of all kinds on defenseless consumers.

The constitutionalization of consumer protection in Indonesia can be carried out in one of two models, namely: by explicitly mentioning consumer rights in the 1945 Constitution of the Republic of Indonesia and by

40 ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations*, Second Ed (Jakarta: The ASEAN Secretariat Community Relations Division (CRD), 2021), 5–8.

41 Dong Zhou, Jinyu Zhu, dan Yihan Guo, "Does Internet Connect to Social Justice Perception in China?," *Frontiers in Psychology* 13, no. June (2022): 1–12, <https://doi.org/10.3389/fpsyg.2022.917039>. Stefan Wrbka, *European Consumer Access to Justice, European Consumer Access to Justice Revisited* (United Kingdom: Cambridge University Press, 2014), hlm. 281-282

42 Bagir Manan, *Perubahan Dan Perkembangan Konstitusi Suatu Negara* (Bandung: Mandar Maju, 1995), hlm. 55

the reverse model of the first. The following is the explanation. First is a model that explicitly states consumer rights in the 1945 Constitution of the Republic of Indonesia, such as Thailand, Portugal, and Spain. The 1978 Spanish Constitution amended 2011 Article 51 paragraph (1) in the Principles of Governing Economic and Social Policy states that the competent authorities must ensure the protection of consumers and users through effective measures, safeguarding safety, health, and legitimate economic interests. Then in paragraph (2) the competent authority must provide facilities to provide information and educate consumers, promote their organizations, and facilitate meetings of consumer organizations.⁴³

The above constitution then became the basis for issuing a law to enact important actions in enhancing the protection of the economic interests of consumers on July 24, 1984.⁴⁴ Currently, the enforcement of consumer protection laws in Spain is still centered on the courts caused by the inability of consumer associations to resolve conflicts at the Business to Consumer (B2C) contract level. Access to court is relatively inexpensive (no court fees nor litigation costs under 2000 Euros, plus free litigation at a certain threshold) which makes this model of enforcement attractive. Even though it is tedious and a long process, it is seen as the most efficient mechanism for resolving B2C disputes.⁴⁵

Another example is the 1982 Portuguese Constitution entitled Economic, Social, and Cultural Rights and Duties. Consumer rights are regulated in Article 60 which includes the rights to health, safety, protection of economic interests, fair advertising, and the right of consumer associations to be heard.⁴⁶ The consumer protection system in Portugal is sufficient and effective. Most of the provisions are European law and often even Portuguese legislators establish favorable regulatory regimes to strengthen consumer protections. The main advantage of consumer protection in Portugal is its law enforcement which provides quality, cheap, and fast service.⁴⁷ Finally, the 2017 Thai Constitution regulates consumer protection in Chapter 3 concerning the Rights and Liberties of The Thai People. Article 40, Article 46, and Article 61 are articles related to protection. Article 61 states that the state must provide efficient steps or mechanisms to protect and secure consumer rights in various aspects, which include, among others, knowledge of correct information, security, fair contract settlement, or other profitable aspects to the consumers.⁴⁸ The implication of the constitutionalization of consumer protection in Thailand is that the public authority that handles consumer protection is strong because it is directly under the control of the Prime Minister and Thai consumers are the only ones at the empowered level in ASEAN.⁴⁹

Second, the model which only states “the government is obliged to protect the interests of consumers” in Article 33 of the 1945 Constitution of the Republic of Indonesia either in paragraph (1) so that it reads “the economy is structured as a joint venture based on the principle of kinship and consumer protection”, or in paragraph (4), so that reads “The national economy is organized based on the principles of economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, independence, and by maintaining balance and unity of the national economy and protecting consumer rights”.

43 Spanish Constitution, <https://www.eui.eu/projects/internationalartheritagelaw/documents/nationallegislation/spain/spanishconstitution1978.pdf>, diakses pada tanggal 24 Januari 2022

44 A.G Eze, “Consumer Rights as Constitutional Rights-A Comparative Analysis of Some Selected Jurisdiction,” *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 2, no. 0 (2011): 4–8., hlm. 195. Margus Kingisepp, “The Constitutional Approach to Basic Consumer Rights,” *JURIDICA INTERNATIONAL* 19, no. 49 (2012): 235–40., hlm. 54

45 María Teresa Alonso Pérez, Francisco de Elizalde Ibarbia, dan Regina Garcimartín Montero, “An Interdisciplinary View of Enforcement and Effectiveness of Spanish Consumer Law,” in *Enforcement and Effectiveness of Consumer Law*, ed. oleh Hans-W. Micklitz and Geneviève Saumier (Switzerland: Springer International Publishing, 2018), 591–612.

46 Constitution of the Portuguese Republic Seventh Revision [2005], <https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf>, diakses pada tanggal 24 Januari 2022

47 António Pinto Monteiro, Maria Raquel Guimarães and Sandra Passinhas, “Enforcement and Effectiveness of Consumer Law in Portugal: Filling the Gap Between the Law on the Books and the Law in Action,” in *Enforcement and Effectiveness of Consumer Law*, ed. Hans-W. Micklitz and Geneviève Saumier (Switzerland: Springer International Publishing, 2018), hlm. 476–477

48 Constitution of the Kingdom of Thailand (B.E. 2560 (2017)). Published in the Government Gazette, Vol. 134, Part 40 a, Page 1, dated 6th April B.E. 2560.

49 The ASEAN Secretariat, “Pilot Project ASEAN Consumer Empowerment Index 2020” (Jakarta, 2020).

Further arrangements for the protection of consumer rights are delegated to law as did Poland and Lithuania. The Lithuanian Constitution of 1992 Chapter IV the National Economy and Labor, in Article 46 The Lithuanian economy must be based on the right of private property, freedom of individual economic activity, and initiative. The state must support economic efforts and initiatives that benefit society. The state must regulate economic activity so that it serves the general welfare of the people. This law prohibits production and market monopoly and protects the freedom of fair competition. The state must protect the interests of consumers.⁵⁰ The impact of the constitutionalization of consumer rights in Lithuania is that it was able to increase consumer protection within the country.⁵¹ Furthermore, the 1997 Constitution of the Republic of Poland 2009 Amendments in the Economic Social and Cultural Freedoms and Rights section, Article 76, states that competent authorities must protect consumers, customers, and tenants from activities that threaten their health, privacy, and safety, as well as from dishonest market practices. The scope of consumer protection is further determined by law.⁵² The constitutionalization of consumer protection in Poland obliges the state to protect consumers and is the basis for the Polish Constitutional Court in examining legal compliance with the principles of consumer protection. This constitutionalization aims to make consumer policy less susceptible to short-term economic considerations and unfair market practices.⁵³ Overall, the consumer protection law enforcement system in Poland is comprehensive and contains many positive aspects which are continuously being improved.⁵⁴

The constitutionalization of consumer protection above has an impact on the position of the Consumer Protection Law. The Consumer Protection Law does not only have the position as an umbrella act in consumer protection in Indonesia but also has the position as an organic law that can strengthen the position of the Consumer Protection Law as an umbrella act because the power of organic law is half of the constitution. Organic law is the law whose substance is a direct elaboration of regulatory delegations which are explicitly mentioned in the 1945 Constitution of the Republic of Indonesia.⁵⁵ The position of Consumer Protection Law as an organic law and umbrella act is a strong legal basis for efforts to implement consumer protection, due to the presence of social material. precise and broad provisions in the constitution have determined the line of progressive social policy development.⁵⁶

Based on the urgency of the constitutionalization of consumer protection above, it is important to make the fifth amendment to the 1945 Constitution of the Republic of Indonesia. Amendment to the 1945 Constitution of the Republic of Indonesia is a must in order to meet and respond to community needs according to the dynamic development of society. It is this dynamism of people's life that the Constitution must respond to as an effort to balance the needs of the people and the protection of the state. With the dynamic response of the Constitution to the demands of the times, the Constitution will be easy to meet the needs of society.⁵⁷

50 The Constitution of the Republic of Lithuania (Adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992), <https://www.lrs.lt/home/Konstitucija/Constitution.htm>, diakses pada tanggal 24 Januari 2022

51 A.G Eze, "Consumer Rights as Constitutional Rights-A Comparative Analysis of Some Selected Jurisdiction.", hlm. 196

52 Public authorities shall protect consumers, customers, hirers, or lessees against activities threatening their health, privacy, and safety, as well as against dishonest market practices. The scope of such protection shall be specified by statute. The Constitution of the Republic of Poland of 2nd April 1997, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> diakses pada tanggal 24 Januari 2022

53 A.G Eze, "Consumer Rights as Constitutional Rights-A Comparative Analysis of Some Selected Jurisdiction.", hlm. 195

54 Monika Namysłowska and Agnieszka Jabłonowska, "Enforcement and Effectiveness of Consumer Law in Poland," in *Enforcement and Effectiveness of Consumer Law*, ed. H.-W. Micklitz and G. Saumier (Switzerland: Springer International Publishing, 2018), hlm. 454-455

55 Maria Farida et al., "Kompendium Perundang Undangan" (Jakarta, 2008), hlm. 2

56 B. Banaszak and Bogusław Banaszak Wrocław, "Constitutionalisation of Social Human Rights, Necessity or Luxury?," *Persona y derecho: Revista de fundamentación de las Instituciones Jurídicas y de Derechos Humanos* 66, No. 66 (2012): 17-28., hlm. 27

57 Muwaffiq Jufri, "Urgensi Amandemen Kelima pada Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Terkait Hak dan Kebebasan Beragama," *Jurnal HAM* 12, no. 1 (2021): 123, <https://doi.org/10.30641/ham.2021.12.123-140>.

3.2 The Urgency of Constitutionalization of Consumer Protection from the Perspective of Islamic Prophetic Law

Consumer protection is formulated in the philosophy of national development, which is the development of whole human beings based on the philosophy of the Republic of Indonesia, Pancasila. Human development is a process of improving aspects of human life.⁵⁸ Human development refers to the process of “expanding choices for society”. This expansion includes choices that enable people to live longer and healthier lives, are better educated, and have a better standard of living. In this regard, the United Nations (UN) sets targets that must be implemented by the nations of the world. The three targets include improving the economy and welfare, social development, and environmental improvement.⁵⁹

Consumer protection is aimed at realizing economic improvements and the welfare of the consumers themselves. Consumer welfare is related to efficient transactions and cost savings and social aspects related to market security and consumer health. Consumer protection also relates to consumer interactions with companies in an effort to ensure a balance of power by providing consumers with the information they need to make rational choices. The goal is to achieve consumer welfare by increasing consumer position in market transactions.⁶⁰ This becomes the rational basis for protecting consumers and creating a good economic structure capable of contributing to human welfare⁶¹. Human welfare, which is *ipso facto* a consumer, is also a reflection of the fulfillment of human rights to a decent standard of living.

Consumer protection in Islam is known as “*himayat al-mustalik*”. Protection (*al-Himayah*) according to Arabic means monitoring, supervising, and maintaining. *Al-himayah* referred to here is protecting consumers by providing a complete sense of security, namely: securing their life, their assets, and the environment in which they live or providing a sense of security for everything they face.⁶² The discussion of *himayat al-mustalik* in Islamic law is specifically included in classical *fiqh*. Even Muslim jurists do not mention this term in their writings, but that does not mean that it is not discussed in Islamic law. Chapters on guarantees, contracts, fraud, uncertainty,⁶³ hoarding, fraud, and concealment of defects⁶⁴ are often discussed, especially in *muamalat fiqh*. There is no specific chapter in classical *fiqh* that discusses consumer protection specifically. The reason is that because the principles of Islamic law are applied practically, the purpose of consumer protection will automatically be fulfilled and there is no need for special regulations on it.⁶⁵

Consumer protection essentially protects their rights. Consumer rights are legal rights within the framework of a contractual relationship. Consumer rights granted by law can be proven by not requiring a contractual relationship “non-conditional agreement”⁶⁶ as the basis for carrying out a lawsuit if their rights are violated by a

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- 58 Mohammad Bhakti Setiawan dan Abdul Hakim, “Indeks Pembangunan Manusia Manusia,” *Jurnal Economica*, 9(1), 18-26 9(1) (2008): 18–26., hlm. 18
- 59 Azril Azahari, “Pembangunan Sumber Daya Manusia dan Indeks Pembangunan Manusia Sektor Pertanian,” *Jurnal Ekonomi dan Bisnis Indonesia* 15, no. 1 (2000): 56–69., hlm. 58-59
- 60 K J Cseres, “Controversies of the Consumer Welfare Standard,” *The Competition Law Review* 3, no. 2 (2007): 121–73., hlm. 121-122
- 61 Sakinah Shaik Ahmad Yusoff, “Perlindungan Pengguna Di Malaysia: Falsafah Dan Politik,” in *Undang-Undang Komersil Dan Pengguna* (Kuala Lumpur: Dewan Bahasa&Pustaka, 2007), hlm. 190
- 62 Ahmad Dahlan Salleh, “Consumer Rights Protection from Islamic Overview,” *International Journal of Academic Research in Business& Social Sciences* 13, no. 1 (2023): 1632–40, <https://doi.org/10.6007/IJARBS/v13-i1/16306>.
- 63 Muhammad Akbar Khan, “Consumer Protection in Islamic Law (Shariah): An Overview,” *Al-Adwa* 31, no. 45 (2016): 77–100.
- 64 Muhammad Akbar Khan, “The Islamic Law of Torts and Product Liability (an Analysis),” *Pakistan Journal of Islamic Research (PJIR)* 19, no. 1 (2018): 15–35, Pramod Kumar Shrivastava and Shilpa Bahl Khan, Ferojuddin M A, Manisha Singh, “Concept of Caveat Venditor and its Application in Healthcare and Education Sector,” *Turkish Online Journal of Qualitative Inquiry* 13, no. 1 (2022): 217–25.
- 65 Kishwar Khan dan Sarwat Aftab, “Consumer Protection in Islam: The Case of Pakistan,” *Australian Economic Papers* 39, no. 4 (2000): 483–503, <https://doi.org/10.1111/1467-8454.00106>.
- 66 Shidarta, *Hukum perlindungan konsumen Indonesia* (Jakarta: Grasindo, 2000).

business actor. Because there is a doctrine of product liability⁶⁷ or strict liability,⁶⁸ professional liability⁶⁹ which is the reason for suing business actors even though there is no contractual relationship.

As explained in the previous section, without the right to a decent life, the inherent dignity of humans will be threatened. In terms of dignity, the position of humans is higher and more honorable than other creatures. Fulfillment of human rights to a decent standard of living can also be said to be part of the humanization effort itself. If this is agreed upon, then there is compatibility with the three prophetic legal values in Islam, namely: liberation, humanization, and transcendence.

Etymologically, prophetic comes from the English word which means: (1) of or maintaining to a prophet: prophetic inspiration of the nature of or containing prophecy: prophetic writings; (3) having the function or power of a prophet, as a person; (4) predictive; ominous; prophetic signs warning.⁷⁰

Humanization, liberation, and transcendence are derived from the historical mission of Islam as contained in the Qur'an, especially Surat al-Imran, which contains that '*You (Muslims) are the best people born for humans, (because you) order (do) which is good, and forbids from what is wrong, and believes in Allah*' (Qur'an 03: 110).⁷¹ According to Kuntowijoyo, there are three values contained in the verse above which are prophetic pillars. Humanization is transformed from the spirit of *amar makruf* (upholding goodness), the value of liberation is transformed from the spirit of *nahi munkar* (preventing evil), and the value of transcendence is transformed from the spirit of faith in Allah (*tukminuna billah*).⁷²

Constitutionalization of consumer rights is an effort to carry out law or *rechtsboefening* in a practical dimension, which is the formation of laws needed in order to control, anticipate and at the same time overcome the conditions of the era which *Ranggawarsita* called *Kalatidha*, namely an era full of anxiety and worry, and an era without certainty.⁷³ This is also reflected in the current economic activity in the era of market globalization. In this way, constitutionalization is a constitutional effort to humanize humans (humanization/*amar makruf*), and liberation (liberation/*nahi munkar*) for consumers in a strong and basic way.

The constitutionalization of consumer rights in the 1945 Constitution of the Republic of Indonesia is the carrier of prophetic law which ontologically bases the law on the value of humanization, humanizing humans, and strengthening human existence as creatures and servants of God (theo-anthropocentric). This can be seen from the objective of consumer protection, which is to increase the dignity of consumers by avoiding a negative approach to the use of goods and/or services. Humanization is a process of empowerment.⁷⁴ Empowerment is something that should be done because it is part of the realm of divinity and humanity. In the divine realm, empowerment is clearly seen from orders to build concern for others, especially powerless people. There is the humanitarian area which means every human being who has power has a social obligation to empower other human beings who are in a state of disability, especially in the economic field.

67 Hamzah, "The importance of product liability insurance in Indonesia: A preliminary analysis," *Journal of Legal, Ethical and Regulatory Issues* 23, no. 2 (2020): 1–7. Prof Ashutosh dan V Panchbhai, "Product Liability Law in India-a Critique," *Journal of Positive School Psychology* 2022, no. 4 (2021): 561–67.

68 Holijah Holijah, "Strict Liability Principle: Consumer Protection from Hidden Defective Products in Indonesia," *Sriwijaya Law Review* 4, no. 1 (2020): 109, <https://doi.org/10.28946/slrev.vol4.iss2.295.pp109-123>. Steven Shavell, "The Mistaken Restriction of Strict Liability to Uncommon Activities," *Journal of Legal Analysis* 10 (2018): 1–45, <https://doi.org/10.1093/jla/lay004>. Johannes Gunawan, "Kontroversi Strict Liability Dalam Hukum Perlindungan Konsumen," *Veritas et Justitia* 4, no. 2 (2018): 274–303, <https://doi.org/10.25123/vej.3082>.

69 Herbert M. Kritzer, "Lawyers' professional liability: comparative perspectives," *International Journal of the Legal Profession* 24, no. 2 (2017): 73–89, <https://doi.org/10.1080/09695958.2016.1223673>.

70 Kelik Wardiono, *Ilmu Hukum Profetik; Hampiran Basis Epistemologis Paradigmatik* (Surakarta: Muhammadiyah University Press, 2020).

71 Khudzaifah Dimyati et al., "MORALITY AND LAW: Critics upon H.L.A Hart's Moral Paradigm Epistemology Basis Based on Prophetic Paradigm," *Jurnal Dinamika Hukum* 17, no. 1 (2017), hlm. 25

72 Kuntowijoyo, *Paradigma Islam: Interpretasi Untuk Aksi* (Bandung: Mizan, 1999), hlm. 288-299. M. Syamsudin, ed., *Ilmu Hukum Profetik : Gagasan Awal Landasan Kefilsafatan Dan Kemungkinan Pengembangannya Di Era Postmodern* (FH UI Press, 2013), hlm. 16. Mustafa Lutfi dan Asrul Ibrahim Nur, "Reconstruction of norm in selection system of Constitutional Court judge candidates from the perspective of the paradigm of Prophetic Law," *Legality : Jurnal Ilmiah Hukum* 30, no. 1 (2022): 116–30, <https://doi.org/10.22219/ljih.v30i1.20744>.

73 M. Syamsudin, *Berhukum Profetik Di Tengah Kalatidha*, Pidato Pengukuhan Guru Besar (Yogyakarta, 2022), hlm. 5

74 Syahrani, *Humanisasi Dalam Administrasi Dan Manajemen Pendidikan* (Yogyakarta: Global Press, 2017), hlm. 1

The above is in line with the objectives of consumer implementation as outlined in the Academic Paper of the Consumer Protection Draft Law, namely to increase consumer empowerment in selecting, establishing, and enforcing consumer rights.⁷⁵ In Islam, the state has to create a consumer-friendly environment in the marketplace and regulate trade in the best interest of society. The state has full authority to interfere in business affairs so that it runs smoothly and in accordance with the principles of social justice.⁷⁶

Epistemologically, the constitutionalization of consumer rights in the 1945 Constitution of the Republic of Indonesia is a constitutional effort to pass laws based on liberation, namely a fundamental and constitutional effort to free consumers from economic practices that can interfere with their safety and security. Safety and security is the principle of consumer protection that aims to ensure the safety and security of consumers and the use and enjoyment of products in circulation, the ultimate goal of which is to realize the right to life of the consumers. As for ontologically, this is oriented so that the consumer's life is full of meaning, and their dignity as a servant of God is maintained. Based on this, material losses (*al-khasarah al-madiyah*) both in the form of financial and non-financial assets, and loss of humanity (*al-khasarah al-inasiyah*) in the form of the bodies and souls of consumers,⁷⁷ can be maximally prevented.

The above humanization, liberation, and transcendence are in line with the basic philosophy of the Indonesian state, Pancasila. The values of humanization, liberation, and transcendence which are the main pillars of prophetic law, derive their justification from the second precept, namely 'Just and Civilized Humanity'. This precept shows that regardless of a person's background, religion, ethnicity, race, or gender, the Indonesian people respect and appreciate everyone according to their dignity and humanity. The value of liberation can be equated with the fifth precept, social justice for all Indonesian people. The value of transcendence can be equated with the first precept, 'Belief in the One and Only God'. Just and civilized humanity has the meaning of full respect for human values (dignity, body, rights, honor,⁷⁸ needs, self-esteem, and living properly as a human being). The basis of just and civilized humanity is nothing other than continuity in life practice and the basis of Belief in the One and Only God, especially the right to life (safety of the soul), and the right to safety of people because these three are real gifts from God Almighty, so it is necessary to get protection as far as possible from the state.⁷⁹

Humanity itself is implicit in civilization and justice. There is no justice and civilization without awareness of human values. Humanity becomes a unified norm in the world of law (legislation, judiciary, execution, and/or legal substance, legal structure, and legal culture). Because humanity has the moral substance of God, it must become an ideal benchmark and have a normative character that guides and requires. Honor and justice in Islam are the primary goals of Islamic law which were added by the scholars so that the primary goals of Islamic law (*maqasid sharia*) are seven, namely preserving religion, preserving life, preserving wealth, preserving reason, and preserving offspring.⁸⁰

Referring to the description above, the prophetic law views that protecting consumer rights is urgent to be included in the 1945 Constitution of the Republic of Indonesia because it can be a powerful tool for humanizing humans in order to strengthen the existence of these humans as creatures of God who have dignity. In addition,

75 Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, "Hasil Penyelarasan Naskah Akademik Rancangan Undang-Undang Tentang Perlindungan Konsumen" (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, 2020), hlm. 203

76 Muhammad Akbar Khan, "The Role of Islamic State in Consumer Protection," *Pakistan Journal of Islamic Research* 8 (2011): 31–44.

77 Burhanudin Susanto dan Ros Amira Binti Mohd Ruslan, "Legal Renewing of Consumer Protection (Himâyah Al-Mustahlaki) Through Islamic Law Perspective," *Al-'Adalah* 16, no. 2 (2020): 287–310, <https://doi.org/10.24042/adalah.v16i2.4514>.

78 Jasser Auda, *Maqâsid al-Shariah as Philosophy of Islamic Law a Systems Approach*, (London: International Institut of Islamic Thought, 2007), hlm. 3-5. Jasser Audah, *Maqashid Al-Shariah A Beginners Guide* (London Washington: the INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT, 2014). jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law A Systems Approach* (London Washington: the international institute of islamic thought, 2019), <https://doi.org/10.2307/j.ctvk67tg.8>.

79 Sudjito Atmoredjo, *Ideologi Hukum Indonesia: Kajian Tentang Pancasila Dalam Perspektif Ilmu Hukum Dan Dasar Negara Indonesia* (Yogyakarta: Lingkar Media Yogyakarta, 2016), hlm. 51

80 Bernard L. Tanya, Theodorus Yosep Parera dan Samuel F. Lena, *Pancasila Bingkai Hukum Indonesia*, (Yogyakarta: Genta Publishing, 2015), hlm. 51-56

this is a fundamental effort in strengthening consumer protection that can liberate and free consumers from the threatening economic practices of business actors that can endanger the safety and security of themselves and their families.

4. Conclusion

The conclusions from this study include: first, from Human Rights perspective, it is important to constitutionally protect consumer rights in the 1945 Constitution of the Republic of Indonesia in order to guarantee the fulfillment of the right to life as a basic human right and can become an instrument for fulfilling the right to a decent human standard of living, namely the right to food, clothing, and boards that are proper and safe and comfortable for consumption. Second, in the perspective of Islamic prophetic law, this can be a powerful means of protecting (liberating) consumers from unfair and fraudulent trading practices and also maintaining their dignity as human beings created by God Almighty. Based on this conclusion, the People's Consultative Assembly (MPR) and the House of Representatives (DPR) need to include consumer protection values in the discourse on the fifth amendment to the 1945 Constitution of the Republic of Indonesia.

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