

# CONSUMER PROTECTION AS AN INSTRUMENT FOR FULFILLING HUMAN RIGHTS IN THE ECONOMIC SECTOR AND ITS CONSTITUTIONALIZING EFFORTS IN THE 1945 CONSTITUTION

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## *Abstract*

*Humans are ipso facto consumers who are entitled to their rights that must be protected under contract and law. Consumers, as human beings, have human rights that must be protected, respected, fulfilled, and promoted by the state. There is a vital intersection between consumer rights and human rights. The right to a decent standard of living is a human right to food, clothing, and housing. Fulfillment of human rights can be pursued by adequate protection of consumer rights. The effectiveness of protecting consumer rights can be realized by rooting them in the constitution to allow them to become fundamental rights and empower public authorities in fulfilling, respecting, implementing, and enforcing them so that the goal of consumer protection is achieved in maintaining human dignity and status where this is a value of humanization, liberation, and transcendence from the perspective of prophetic law. The research is expected to offer a recommendation for the government and the People's Consultative Assembly (MPR) amidst the urgency of constitutionalizing consumer rights in the Constitution to support the recognition of consumer rights as universal human rights.*

*Manusia, warganegara ipso facto konsumen. Manusia sebagai konsumen memiliki hak-hak yang harus dilindungi tidak hanya oleh kontrak akan tetapi hukum. Konsumen sebagai manusia memiliki hak asasi yang harus dilindungi, dihormati, dipenuhi dan dimajukan oleh negara. Terdapat keteririsan yang kuat antara hak-hak konsumen dengan hak asasi manusia. Hak atas standar hidup yang layak merupakan hak asasi manusia di bidang yang mencakup pangan, sandang dan perumahan. Pemenuhan HAM ini dapat diusahakan dengan perlindungan hak-hak konsumen yang efektif. Efektivitas perlindungan hak-hak konsumen dapat diwujudkan dengan mengakarkannya dalam konstitusi sehingga menjadi hak fundamental dan dapat memberdayakan otoritas publik dalam pemenuhan, penghormatan, pelaksanaan dan penegakannya, sehingga tujuan perlindungan konsumen tercapai dalam menjaga harkat dan martabat manusia di mana hal tersebut merupakan nilai humanisasi, liberasi dan transendensi dalam perspektif ilmu hukum profetik. Penelitian diharapkan menjadi rekomendasi bagi pemerintah dan Majelis Permusyawaratan Rakyat (MPR) terkait urgensi konstitusionalisasi perlindungan hak-hak konsumen dalam UUD sebagai upaya mendukung pengakuan hak-hak konsumen sebagai hak asasi manusia yang bersifat universal.*

*Keywords: Consumer Protection, Constitutionalizing, Human Rights, Prophetic Law*

## Introduction

Consumer rights represent the nature of consumer protection law. An imbalance of bargaining power between consumers and producers leads to the exploitation of consumers. Consumer protection includes consumer rights and privileges and how they should be granted while dealing with several issues such as consumer welfare and living standard improvement to also better consumers' political and social welfare. The main objective of consumer protection laws is to empower consumers to enable them to enjoy these rights. Consumer rights are becoming increasingly important worldwide. The government has passed many laws to ensure that end users of products and services are entitled to the same rights as manufacturers and service providers. However, a country's Constitution will enhance adequate protection of consumer rights.

In addition to consumers with their entitlement to rights, in their position as human beings, consumers also have human rights as natural rights attached to them. Two international conventions on human rights include the International Covenant on Civil and Political Rights (henceforth referred to as ICCPR) and the International Covenant on Social, Economic, and Cultural Rights (henceforth referred to as ICESCR). Implementing KIHSP will free people from fear due to the arbitrariness of political power. In contrast, implementing KIHESB will free people from hunger and other feelings of need. The effectiveness of the IHESB

implementation frees people, especially people with low incomes, from economic, social, and cultural oppression and exploitation. Based on this, it becomes clear that the focus of KIHESB is to realize an adequate and dignified standard of living for humans. The target is to achieve an adequate and dignified life for humans, in line with the goals of Sharia and Islamic law.<sup>1</sup>

Regarding the above, for the unitary state of the Republic of Indonesia, the protection of human rights is an obligation which is one of the meta-juridical values in the constitutional norm<sup>2</sup> which is expressly stated in Article 28 I paragraph (4) of the 1945 Constitution that protection, promotion, enforcement, and the fulfillment of human rights is the responsibility of the state, especially the government. This is in line with Article 71 of Law Number 39 of 1999 concerning Human Rights, which states that the government is obligated to respect, protect, uphold, and promote the human rights stipulated in this law, other laws and regulations, and international law on human rights.

The government's responsibilities in the field of human rights above should be carried out through implementation steps in the legal, political, social, economic, and cultural fields. Failure to fulfill the state's obligations creates state responsibility. In addition to implementing the human rights above, the state must also ensure the fulfillment of consumer rights, often called livelihood rights. These rights are fundamental and related to buying goods or taking services. The right to choose, the right to be heard, the right to consumer information, the right to a fair hearing, the right to compensation, the right to education, the right to a clean environment, and the right to access essential goods and services fall into the scope of consumer rights worldwide.

In essence, there is no dichotomy between citizens and consumers because every citizen as a consumer and a member of civil society has obligations and responsibilities and a set of rights. That is, citizens hold 2 (two) rights human rights and consumer rights acting as weapons towards advanced and dignified social development. As a right, adequate consumer rights protection can instrument the fulfillment and promotion of human rights in the Indonesian economy. Making adequate consumer rights protection requires its roots in the constitution which can lead to the realization of 3 (three) prophetic legal values encompassing humanization, liberation, and transcendence, apart from the instrumentation of

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1 JASSERAUDA, *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.ctvkc67tg.8>.

2 Artidjo Alkořtar, *Pengadilan HAM, Indonesia, Dan Peradaban* (Yogyakarta: PUSHAM UII, 2004), 40.

fulfilling human rights itself.

Many research results share similar ideas to what is discussed in this article. Alif Noor and Dwi Wulandari investigated the constitutionality of the protection of personal consumer data. They concluded in their report entitled *The Constitutional Framework for the Protection of Personal Data on Fintech Lending Transactions in Indonesia* that the constitutional basis of personal data protection lies in the existence of personal information as a fundamental right inherent in humans and guaranteed by the 1945 Constitution of the Republic of Indonesia (henceforth referred to as the 1945 Constitution) and other legislative regulations more like human rights law and ITE law.<sup>3</sup>

Hugh Collins in his article entitled *Private Law, Fundamental Rights, and the Rule of Law* states that the phrase “constitutionalization of private law” represents the core idea that the law of contract, fault, or property should be designed or developed by the judge in such a way that harmonizes all areas of private right with the constitutional right. This indicates that while private law does not have to duplicate constitutional rights accurately, it should not contradict or undermine constitutional rights. Relevant fundamental rights are mentioned in the constitution, law of rights, or international human rights treaties that regulate certain court actions that must resolve civil law disputes. Since civil law is the state law in the United States, in most cases, the directly relevant constitution must be the state constitution that contains laws on rights.<sup>4</sup>

Afrizal, Zaintun, and Sudanto, in their research related to consumer protection in the framework of human rights, concluded that legal protection is closely related to the concept of the rule of law because the birth of this concept is the goal of recognition and protection of the human rights. Legal protection is the protection of dignity and value and recognition of human rights held by legal subjects in the state of law based on the provisions of the law applicable in that state.<sup>5</sup> Ruwanthika Ariyaratna also researched related consumer rights analyses within the human rights framework. The study found that enhancing consumer rights as a human right would positively impact consumer protection. Most human rights, including the right to privacy, information, and rectification, are human rights and will enhance the protection provided to consumers against

3 AfifNoor and Dwi Wulandari, “Landasan Konstitusional Perlindungan Data Pribadi Pada Transaksi Fintech Lending Di Indonesia,” *Jurnal Ilmiah Dunia Hukum* 5, no. 77 (2021): 99, <https://doi.org/10.35973/jidh.v0i0.1993>.

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

5 Asrizal Saiin and Zaitun Sudanto, “Legal Protection of of Consumer in The Human Rights,” *Bilancia* 16, no. 1 (2022): 510–11.

serious violations of their rights.<sup>6</sup>

Jamila Shu'ara, in her research on consumer education, as a startup mining Human Rights concluded that consumer education programs should be improved in every industry sector. Governments should establish mobile consumer complaint centres across the country at departmental and senate levels to encourage consumers to search whenever their rights are prone to violations, and government agencies and public agencies, corporate bodies, and individuals are more responsible for threats to consumer security (human rights violations against consumers).<sup>7</sup>

Mojisola Eseyin, in her research, concluded that the concept of human rights touches every aspect of human life. Consumer rights can be appropriate in the field of human rights. The sooner consumers become aware of it as a human right, the easier it is for them to exercise their rights, not just based on contracts and violations.<sup>8</sup> Érico Rodrigues de Melo also concluded that various philosophical and legal arguments support consumers' need to protect human dignity. Consumer rights are human rights and must be upheld as such. UN Consumer Protection Guidelines' unanimous agreement expresses international concerns.<sup>9</sup>

The above study focuses on two fundamental things: constitutionalizing private law and analyzing the link between consumer protection and human rights. It should be acknowledged that the results of the above studies are the policy of urgent argumentation of writing related to the constitutionalization of the protection of consumer rights as the initial stage for accepting consumers' rights as human rights. However, the above studies did not set the prophetic law as the basis for analysis, thereby highlighting a clear and distinctive point between those previous studies and this study. In the Indonesian context, the idea of constitutionalization of consumer rights protection is still rare if it cannot be said that it does not exist at all, so it is important to be discarded on this occasion.

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6 Ruwanthika Ariyaratna, "Consumer Rights in the Context of Human Rights: A Legal Analysis," *KDU Law Journal General Sir John Kotelawala Defence University* 02, no. 01 (2022): 25–40, <http://www.rebe.rau.ro/RePEc/rau/cliuei/SP14/CLI-SP14-A9>.

7 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 (2021): 1–8, <https://doi.org/10.58314/78980>.

8 Mojisola Eseyin and Chukwunyer Wisdom Chukwuemeka, "Articulating Consumer 's Rights as Human Rights in Nigeria," *Journal of Law, Policy and Globalization* 72 (2018): 124–32.

9 Érico Rodrigues de Melo, "Consumer Rights as Human Rights : Legal and Philosophical Considerations," *Revista RyD República y Derecho* 5 (2020): 1–26.

### Research Methods

To prepare a research project with the title that has been drawn up above, legal research methods are used. On the aspects of the type of research, normative or doctrinal legal research is used, that is, a scientific research procedure to discern truth based on scientific logic from its normative side. Such a type of research law is by its objects being studied. As regards, the approach used is legislative and conceptual. The legislative approach is carried out by pronouncing all the laws and regulations relating to the link with the legal issues of this research. In contrast, the conceptual approach is derived from the views and doctrines that develop within the legal science relevant to the legal issue of research. The data required for doctrinal research is secondary data obtained indirectly from books and other documents. The secondary data consists of three (three) law sources: primary, secondary, and tertiary materials. The three legal documents mentioned above were sourced from literature reviews and web searches, including reading, downloading, and browsing, and were analyzed descriptively.

### Discussion

#### Human Rights Vis a Vis Consumer Rights

Rights have been defined as something to which a just claim, legal guarantee, or moral principle entitles a person.<sup>10</sup> It also means the powers, privileges, or immunities conferred upon a person by law, legally enforceable claims that another person will or will not perform certain acts, recognized and protected interests,<sup>11</sup> the breach of which is wrong.<sup>12</sup>

Rights have been interpreted in a judicial sense to mean correlated with duties because no obligations means no rights. However, there may be obligations without rights.<sup>13</sup> For a duty to create a right, it must be a duty to act or hold back. For example, our obligation may be to love our neighbour, but he is not entitled to our love. Human rights are as old as humanity, and their origins, scope, and more profound meaning cannot be explained in isolation from human history. Human rights are natural rights given to men and women because they are human beings created by God in his image. They are inherent rights that arise from human nature as social beings and are recognized and protected in a civilized legal order.

10 B.A Garner, *Black's Law Dictionary*, 8th editio. (St Paul Minnesota: West Publishing Co, 2004), p. 7347.

11 Joseph Clarence Verhelle, "Roscoe Pound and His Theory of Social Interests" (Loyola University Chicago, 1958).

12 B.A Garner, *Black's Law Dictionary*. Rex Martin, *A System of Rights* (United Kingdom: Oxford University Press, 1993), 24.

13 B.A Garner, *Black's Law Dictionary*.

According to Janus Sidabalok, human rights originate from 3 (three) things. First, it originates from human nature as God's creation, in which humans have several rights to defend their humanity; these rights are referred to as human rights. Both rights are born from the law, namely rights granted by state law to humans in their position as citizens. This right is called legal rights or rights in a juridical sense. Third, rights are born from a legal relationship between a person and another through a contract or an agreement.<sup>14</sup>

Human rights by Law Number 39 of 1999 concerning Human Rights are defined as a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the sake of honour and protection of human dignity. *Violations* of human rights are defined as any action by a person or group of people, including state officials, whether it is intentional or unintentional, or as negligence, limiting and revoking the human rights of a person or group of people guaranteed by law, and not getting, or fearing that they will not obtain a fair and correct legal settlement, based on the applicable legal mechanism.

Al-Qur'an, as the constitution of Islam, views human creation as dignified (Q.S. 17:70). During the pilgrimage of Wada' in the desert of Arafah, in his Sermon, the Prophet warned that blood, property, and honour are forbidden (may not be violated). This is a form of recognition of human rights values in Islam. This is undoubtedly older than the Universal Declaration of Human Rights (UDHR) (Declaration of Human Rights) made by the United Nations (U.N.) on December 10, 1948, which contains the main points of human rights and fundamental freedoms. The declaration mentioned above has yet to be implemented in the field, so the international community considers it necessary to translate these fundamental rights and freedoms into legally binding international instruments. For this reason, 2 (two) human rights conventions were issued, namely the International Covenant on Civil and Political Rights (ICCPR), as the first generation<sup>15</sup> of human rights and the International Covenant on Social, Economic, and Cultural Rights (ICESCR) as the second and third generations of human rights are called solidarity rights.<sup>16</sup> The rights concerned include the

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

15 Rosa Freedman, "Third Generation Rights: Is There Toom For Hybrid Constructs within International Human Rights Law?," *Cambridge International Law Journal* 2, no. 4 (2013): 935–59, <https://doi.org/10.7574/cjicl.02.04.134>.

16 Spasimir Domaradzki, Margaryta Khvostova, and David Pupovac, "Karel Vasak's Generations of Rights and the Contemporary Human Rights Discourse," *Human Rights Review* 20, no. 4 (2019): 423–43, <https://doi.org/10.1007/s12142-019-00565-x>.

right to development, the right to peace, the right to own natural resources, the right to a good environment, and the right to own cultural heritage. The rights of groups such as immigrants, indigenous peoples, and minority groups must be protected by the state. The rights of these groups gave rise to a re-theorization of human rights which places group rights as human rights in the third generation of rights. Claims on culture, tradition, language, religion, ethnicity, locality, or race are intimate elements in contemporary human rights thought processes.<sup>17</sup>

The International Covenant on Civil and Political Rights stipulates several civil and political rights encompassing<sup>18</sup> (1) the right to self-determination (Article 1), (2) equal rights between men and women (Article 3), (3) the right to life (Article 6), (4) freedom from torture, or other cruel, inhuman or degrading treatment or punishment (Article 7), (5) the right to freedom and security of person (Article 9), (6) the right to a system of detention (Article 10), (7) freedom from imprisonment on the grounds of inability to fulfil contractual obligations, (8) the right to freedom of movement and choice of place of residence (Article 12), (9) freedom of foreigners from arbitrary expulsion (Article 13) (10) right to a fair trial and due process of law (Article 14), (11) freedom from retroactive criminal law (Article 15), (12) right to recognition as a person before the law (Article 16), (13) the right to freedom or privacy (Article 17), (14) the right to freedom of thought, conscience and religion (Article 18), (15) the right to freedom of opinion and expression (Article 19), (16) Prohibition of propaganda for war and incitement to hatred (Article 20), (17) Right to peaceful assembly (Article 21), (18) Right to associate (Article 22), (19) Right to freedom of association (Article 22), (20) the right to marry and form a family (Article 23), (21) children's rights (Article 24) (22) political rights (Article 25) (23) the right to equal standing before the law (Article 26), (24) the rights of ethnic, religious and linguistic minorities (Article 27)<sup>19</sup>.

17 Marie-BeÂneÂdicte Dembour and Richard A.Wilson Jane K.Cowan, ed., *Culture and Rights Anthropological Perspectives*, vol. 21 (United Kingdom: Cambridge University Press, 2001), 8-11.

18 Mashood A Baderin, *Hukum Internasional Hak Asasi Manusia & Hukum Islam* (Jakarta: Komisi Nasional Hak Asasi Manusia, 2010). h. xiv. Pan Mohamad Faiz, "The Protection of Civil and Political Rights by the Constitutional Court of Indonesia," *Indonesia Law Review* 6, no. 2 (2016): 158, <https://doi.org/10.15742/ilrev.v6n2.230>.

19 Jeroen Temperman, "The International Covenant on Civil and Political Rights and the 'Right to Be Protected against Incitement,'" *Journal of Law, Religion and State* 7, no. 1 (2019): 89-103, <https://doi.org/10.1163/22124810-00701005>.

The International Covenant on Social, Economic, and Cultural Rights stipulates human rights in the socio-economic and cultural fields, including<sup>20</sup> (a) the right to work (Article 6), (b) the right to enjoy just and favourable working conditions (Article 7), (c) labour union rights (Article 8), (d) right to social security and social insurance (Article 9), (e) family rights (Article 10), (f) right to an adequate standard of living (Article 11), (g) the right to enjoy the highest standard of physical and mental health (Article 12), (h) the right to education (Articles 12 to 14), (i) the right to cultural life and the benefits of scientific progress (Article 15)<sup>21</sup>.

There is no universally accepted definition of a consumer. The Black's Law Dictionary defines a "consumer" as a person who buys goods or services for personal reason, family, or household use, without any intention of resale, or a natural person using the product for personal, non-business purposes.<sup>22</sup> O'Grady defines "consumers" as the final or ultimate users of all goods and services produced in an economy.<sup>23</sup> Tarr defines a 'consumer' as any person, natural or legal, to whom goods, services or credit are supplied or sought to be supplied by others during the business being carried out by him.<sup>24</sup> Schiffman and Kanut, make a distinction between personal consumers and organizational consumers.<sup>25</sup> Personal consumers buy goods and services for their use or their household needs; in this case, the goods or services they buy must be consumed as end users or estimates. Organizational consumers, on the other hand, refer to private organizations, which must buy products or services to pursue the organization's goals.

Consumers around the world are granted various rights. John F. Kennedy<sup>26</sup> in 1962 proposed four legal ideals of consumer protection which he called rights:<sup>27</sup> the right to a safe product, the right to demand information about a product or

20 Miriam Cohen and Martin Olivier Dagenais, "The Implementation of Economic, Social and Cultural Rights in Canada: Between Utopia and Reality," *Constitutional Review* 7, no. 1 (2021): 26–52, <https://doi.org/10.31078/consrev712>.

21 Matthias Petel and Norman Vander Putten, "Economic, Social and Cultural Rights and Their Dependence on the Economic Growth Paradigm: Evidence from the ICESCR System," *Netherlands Quarterly of Human Rights* 39, no. 1 (2021): 53–72, <https://doi.org/10.1177/0924051921994753>.

22 B.A Garner, *Black's Law Dictionary*. 316.

23 M James O'Grady, "Consumer Remedies," *The Canadian Bar Review* 60, no. 4 (1982).

24 AA Tarr, "Consumer Protection Legislation and the Market Place," *Otago Law Review* 5, no. 3 (1983): 1117–19, <https://doi.org/10.1080/00213624.1981.11503958>.

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

26 Gretchen Larsen and Rob Lawson, "Consumer Rights: An Assessment of Justice," *Journal of Business Ethics* 112, no. 3 (2013): 515–28, <https://doi.org/10.1007/s10551-012-1275-9>.

27 Kai Purnhagen adn Peter Rott, ed., *Varieties of European Economic Law and Regulation*

service, the right to a competitive market and the right to compensation against producers or distributors. Consumer rights came after the second generation of rights as a reaction to a postmodern global world beset by scientific evolution. International Consumers proposes eight consumer rights.<sup>28</sup> These include the right to safe products, the right to demand and receive information, the right to be heard, the right to choose, the right to consumer education, the right to compensation, the right to satisfy basic needs and the right to a healthy environment.<sup>29</sup>

According to United Nations (UN) resolution No. 39/248 concerning Consumer Protection, several consumer interests are formulated and must be protected, including (a) consumer protection from hazards to consumer health and safety, (b) promotion and protection of consumers of social interests, (c) consumer education, (d) the availability of effective compensation, and (e) the freedom to form relevant organizations and allow these organizations to voice their opinions in decision-making processes concerning their interests.<sup>30</sup> In ASEAN, consumer rights consist of (a) the right to basic needs, (b) the right to safety, (c) the right to be informed, (d) the right to choose, (e) the right to be heard, (f) the right to compensation, (g) the right to education, (h) the right to a healthy environment.<sup>31</sup> Meanwhile in Indonesia, environmental rights are not used as consumer rights because they exclude intellectual property rights (IPR) and other management areas.

Law Number 8 of 1999 concerning Consumer Protection introduces several consumer rights, namely: (a) the right to convenience, security and safety, (b) the right to choose, (c) the right to correct information, (d) the right to be heard, (e) the right to get advocacy, (f) the right to get consumer guidance and education, (g) the right to be treated or served correctly and honestly and not to be discriminated, (h) the right to receive compensation, (i) the right to be regulated in the provisions of other laws and regulations.

There is an encounter between consumer rights as human beings and human rights as consumers. The meeting point occurs in the realm of the right to safety, the right to obtain information and education, the right to a healthy environment,

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(Switzerland: Springer International Publishing, 2014), 540.

28 <https://www.consumersinternational.org/>, diakses pada tanggal 3 Maret 2023

29 Ahmadi Miru dan Sutarman Yodo, *Hukum Perlindungan Konsumen* (Jakarta: PT Rajagrafindo Persada, 2004), 39.

30 Gunawan Widjaja & Ahmad Yani, *Hukum Tentang Perlindungan Konsumen* (Jakarta: Gramedia Pustaka Utama, 2003), 27-28.

31 ASEAN Secretariat, *Handbook on ASEAN Consumer Protection Laws and Regulations*, Second Edi. (Jakarta: The ASEAN Secretariat Community Relations Division (CRD), 2021), p. 5-8

as well as the right to get a decent standard of living.

### Consumer Protection as an Instrumentation for Fulfilling Human Rights in the Economic Sector

The theory of legal protection originally came from the theory of natural law. Natural law, in principle, comes from God (irrational) and comes from human ratios.<sup>32</sup> Natural law as a rule that is “universal, eternal and applies absolutely” in modern life as it is today still exists with the evidence that more and more people are discussing the issue of Human Rights (HR).<sup>33</sup> Human rights are the substance of natural law that constitutes a universal principle.<sup>34</sup> Humans born as creatures of God Almighty naturally get fundamental rights, namely freedom, the right to live, the right to be protected, and others.

Based on the above, the existence of this power is precise to protect natural rights from threatening dangers. The law in this context is made by the state, whose duty is to protect these rights.<sup>35</sup> Immanuel Kant emphasized the position of law as a protector of human rights and the freedom rights of its citizens. For Kant, humans are rational beings and have free will; the state must uphold them. Prosperity and happiness of the people is the goal of the state and law. Therefore, the state must not hinder these fundamental rights.<sup>36</sup>

The above is in line with the Preamble of the 1945 Constitution, which determines the goals of Indonesia:

To protect the entire Indonesian nation and all of Indonesia's bloodshed and promote public welfare, educate the nation's life, and participate in a world order based on freedom, eternal peace, and social justice.

In Satjipto Rahardjo's view, legal protection protects human rights that other people may harm. This protection is given to the community so they can

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32 Lili Rasjidi dan Ira Thania Rasjidi, *Dasar Dasar Filsafat Dan Teori Hukum*, Cetakan ke. (Bandung: Citra Aditya Bakti, 2007), hlm. 48. Salisbury, Dante, Piere Dubois, Marsilius Padua, Johannes Haus, and others. Meanwhile, the foundations of natural law teachings that originate from human reason are, for example, Hugo de Groot, Christian Thomasius, Immanuel Kant, Fichte, Hegel, and Rudolf Stammler. According to Friedmann, the history of natural law is the history of humanity in its attempt to find absolute justice apart from the failures it has experienced.

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

34 Marwan Mas.

35 & Markus Y. Hage Bernard L.Tanya, Yoan N. Simanjuntak, *Teori Hukum. Strategi Tertib Manusia Lintas Ruang Generasi* (Yogyakarta: Genta Publishing, 2010), 73-74.

36 Bernard L.Tanya, Yoan N. Simanjuntak., 75.

enjoy all the rights granted by law.<sup>37</sup> Legal protection for Satjipto Rahardjo is an effort to coordinate and integrate the various interests that exist in society to prevent collisions between these interests so that the rights granted by law can be exercised peacefully.<sup>38</sup> Organizing these interests is done by limiting and, at the same time protecting these interests. In the traffic of interests, protection against them can only be done by limiting the interests themselves.

Meanwhile, *consumer protection* is all efforts that guarantee legal certainty to protect consumers.<sup>39</sup> Consumer protection is protecting their rights. Consumer rights are legal rights within the framework of a contractual relationship. In Indonesia, consumer protection is in Law Number 8 of 1999 concerning Consumer Protection. Consumer rights granted by law can be proven by not requiring a contractual relationship or “non-conditional agreement”<sup>40</sup> as the basis for carrying out a lawsuit if a business actor violates their rights because there is a doctrine of product liability<sup>41</sup> or strict liability, professional liability,<sup>42</sup> which serve as the grounds for suing business actors despite the absence of a contractual relationship.<sup>43</sup>

The second generation of human rights is economic rights, which contain two rights whose fulfilment can be pursued through practical efforts to protect consumer rights. Because the protection of consumer rights exists in the economic field, the same as the second generation of human rights. These rights are the right to social security and insurance and a decent standard of

37 Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2012)..., 53.

38 Rahardjo..., 54.

39 Muhammad Mufti Mubarak, “The Mapping of Electronic Commerce Issues and Consumer Protection Policy in Indonesia,” *Journal of Economics, Business, & Accountancy Ventura* 24, no. 3 (2022): 431, <https://doi.org/10.14414/jebav.v24i2.2690>.

40 Shidarta, *Hukum Perlindungan Konsumen Indonesia* (Jakarta: Grasindo, 2000).

41 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 and V Panchbhai, “Product Liability Law in India—a Critique,” *Journal of Positive School Psychology* 2022, no. 4 (2021): 561–67, <http://journalppw.com>.

42 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>.

43 Holijah Holijah, “Strict Liability Principle: Consumer Protection from Hidden Defective Products in Indonesia,” *Srimijaya 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>.

living. This form of social protection ensures that all people can meet their basic needs for a decent life.

The human right to a standard of living adequate for man and his family, including food, clothing, and housing, and to the continuous improvement of living conditions, underscores the overall aim of economic rights in general terms, namely the realization of a standard of living adequate for life man. There is no firm definition of “decent standard of living,” but it is emphasized that this includes “food, clothing and housing” and continuous improvement of life.”<sup>44</sup> This is interpreted as a decent standard of living that guarantees the dignity of the human person.

Food, clothing, and housing are unquestionably basic needs in human life, without which human life is inconceivable. A person’s physical well-being depends on, among other things, whether he has (a) adequate food, not only to free him from hunger but also to provide him with the nutrition and energy needed for a healthy, safe, and harmless life, (b) clothing/clothing appropriate to cover and protect his body and (c) housing that gives him security, peace of mind, and dignity. With the guarantee of these three rights, the inherent dignity of humans will be protected, and all other human rights will have almost no meaning for someone who does not have all three. These three are fundamental livelihood rights that are necessary for human survival.<sup>45</sup>

In general comments 12, the Economic, Social, and Cultural Committee confirmed that:<sup>46</sup>

The right to adequate food cannot be separated from human dignity. It cannot be separated from the fulfilment of other human rights listed in the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic, and Cultural Rights. It also needs to be separated from social justice, which requires making economic, environmental, and social policies at the national and international levels. It aims to eradicate poverty and fulfil human rights for all human beings.

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44 See also Article 25 of the Universal Declaration of Human Rights, which stipulates that an adequate standard of living includes food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, illness, disability, widowhood, reaching old age or experience a shortage of other means of livelihood due to circumstances beyond their control.

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

46 Komentaar Umum 12, paragraf 4. *Internasional Conovenant on Social, Economic, and Cultural Rights*.

Starting from this General Comment 12, the Economic, Social, and Cultural Committee takes the view of a triad of state obligations, namely the obligation to respect, protect, and fulfil. The obligation to fulfil includes the obligation to facilitate and provide. The obligation to respect requires state parties to take steps that prevent access to adequate food, and the obligation to respect requires steps to ensure that companies or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means that the state must proactively carry out various activities to strengthen people's access to and utilization of resources and facilities that guarantee their livelihood, including food security.<sup>47</sup>

The consumer protection laws that emerged in the 1970s were a reaction to the problems created by mass production and market failures. Human rights law recognizes that everyone has the right to a social order in which his rights and freedoms can be fully realized. The realization of human rights is very much determined by the safe production and distribution of products (goods and services). Thus, the right to a decent standard of living, including safe food, safe clothing, and shelter, is closely correlated and can be fulfilled with adequate protection of consumer rights.

The right to clothing, food and housing as the scope of a decent standard of living can be fulfilled if (a) the right to comfort, security and safety in consuming, food, clothing and shelter (b) the right to choose, get social insurance, food, clothing and housing in accordance with the exchange rate, conditions and promised guarantees (c) the right to correct and honest information about social insurance guarantees, clothing, food and housing (d) the right to have their opinions and complaints heard on access to social insurance and consumption of clothing, food and shelter (e) the right to obtain advocacy, protection and efforts to resolve disputes appropriately arising from the use of social insurance and consumption of clothing, food and shelter, (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 shelter (g) the right to obtain compensation, compensation and/or reimbursement if social insurance services, clothing, food and the board is not as it should be, fulfilled too. The right to social insurance and an adequate standard of living can only be partially achieved through effective protection of consumer rights,<sup>48</sup> namely all efforts that guarantee legal certainty to protect consumers.

<sup>47</sup> Ibid.

<sup>48</sup> Margus Kingisepp, "The Constitutional Approach to Basic Consumer Rights," *Juridica International* 19, No. 49 (2012): 235–240., 50.

Fulfilment, promotion, and respect for human rights depend on the availability of production and distribution of goods and services that are safe, quality maintained, and easily accessible, and this can be fulfilled by adequate protection of consumer rights. In addition, human and consumer rights share the same spirit and soul, namely equality, justice, development, and, most importantly, protection. Both of these rights apply to everyone regardless of differences, hence trying to protect the powerless and vulnerable. Some similar rights are the right to compensation, the right to privacy and dignity, the right against discrimination, and the right to safety and security, making consumer rights considered part of efforts to fulfil human rights.

### Constitutionalizing of Consumer Rights as a Fundamental Right in the 1945 Constitution from the Perspective of Islamic Prophetic Law

The word “constitution”<sup>49</sup> has been defined as the fundamental and organic law of a nation or state which establishes the institutions and apparatus of the government, defines the scope of the government’s sovereign powers, and guarantees individual civil rights and civil liberties.<sup>50</sup> Therefore, constitutional rights are guaranteed by the Constitution. The guarantee of constitutional rights is the highest and can only be revoked by the executive or legislature if the constitution is amended,<sup>51</sup> which, once again, is not an easy task.

Constitutionalizing is the process of establishing constitutional provisions.

<sup>52</sup> This understanding is in line with the meaning of constitutionalism, defined

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

50 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/10.1023/A:1008724612813>.

51 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 (2022): 39–66, <https://doi.org/10.15294/jllr.v3i1.49536>.

52 Jo Shaw and Igor Štiks, “The Constitutionalisation of Cities and the Future of Global Society,” *Identities* 00, no. 00 (2021): 1–17, <https://doi.org/10.1080/1070289X.2021.1970981>. GARRETT WALLACE BROWN, “The Constitutionalization of What?,” *Global Constitutionalism* 1, no. 2 (2012): 201–28, <https://doi.org/10.1017/s2045381712000056>. Martin Loughlin, “What Is Constitutionalisation?,” in *The Twilight of Constitutionalism?*, ed. Petra Dobner and Martin Loughlin (New York: Oxford University Press, 2010), 47.

by Bagir Manan,<sup>53</sup> which is essentially a limitation of the powers that exist in the state on the one hand and guarantees of citizens' rights on the other hand. *Constitutional rights* are rights guaranteed by the Constitution.<sup>54</sup> Constitutional guarantees for rights are supreme and cannot be overridden by the executive or legislature unless the constitution is amended.<sup>55</sup> Constitutional rights are the primary condition for a civilized existence.

Constitutionalizing the protection of consumer rights is to make them strictly constitutional in the 1954 Constitution 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. The Constitution enshrines these rights to protect individuals from the arbitrary and oppressive exercise of government power and the arbitrariness of economic actors. These rights cannot be violated or revoked by hierarchically lower laws. This places consumer rights on a pedestal above the ordinary laws of the country.

The urgency of rooting consumer rights protection 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, constitutionalizing consumer protection rights is essential in enhancing 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 adequate.

With adequate protection of consumer rights, human rights to a decent standard of living are fulfilled. Adequate consumer protection is an instrument for fulfilling the right to a decent standard of living. If this last right is constitutional, then the intermediary for fulfilling it must also be constitutional because, in the treasury of Islamic law, there is a maxim that states that "ma la yatimmul wajib illa bihi fahuwa wajib-anything that is obligatory is imperfect except with that

53 Quoted from Rahayu Praseaningsih, "Konstusionalisasi Hukum Privat : Beberapa Pandangan Yang Berkembang Dalam Pengkajian Ilmu Hukum," *Padjadjaran Jurnal Ilmu Hukum*, 1, No. 2 (2014): 367–385.

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

55 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., 187.

something, then something is legal.” obligatory too.” Respecting, protecting, and fulfilling human rights is mandatory and constitutional; adequate protection of consumer rights can be a perfect intermediary for the respect, protection, and fulfilment of these human rights, then the protection of consumer rights is also legally obligated to be constitutionalized in the 1945 Constitution because it can make the protection of consumer rights effective consumer rights.

The constitutionalizing of consumer rights reflects an understanding of the fundamental responsibility of the state to protect consumers. The state is responsible to its citizens for economic efficiency and social justice<sup>56</sup> and for safeguarding the interests of consumers from fraudulent economic practices. A decent standard of living describes the level of welfare of every citizen who is ipso facto a consumer. Consumer protection is formulated in the philosophy of national development, namely the development of whole human beings, based on the philosophy of the Republic of Indonesia, namely Pancasila. Human development is a process of improving aspects of human life.<sup>57</sup> Human development refers to the process of “expanding choices for society.” This expansion includes choices that enable people to live longer and healthier lives, be better educated, and have a better standard of living. The United Nations (UN) sets targets for the world’s nations to implement. The three targets include improving the economy and welfare, social development, and environmental improvement.<sup>58</sup>

Consumer protection is aimed at realizing economic improvements and consumer welfare itself. Consumer welfare is related to efficient transactions, cost savings, and social aspects related to market security and consumer health. Consumer protection also relates to consumer interactions with companies 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.<sup>59</sup> This becomes the

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56 Dong Zhou, Jinyu Zhu, and 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 Wrba, *European Consumer Access to Justice, European Consumer Access to Justice Revisited* (United Kingdom: Cambridge University Press, 2014), 281-282.

57 Mohammad Bhakti Setiawan and Abdul Hakim, “Indeks Pembangunan Manusia Manusia,” *Jurnal Economia*, 9(1), 18-26 9(1) (2008): 18–26, [Uny.ac.id](http://Uny.ac.id), 18.

58 Azril Azahari, “Pembangunan Sumber Daya Manusia Dan Indeks Pembangunan Manusia Sektor Pertanian,” *Jurnal Ekonomi Dan Bisnis Indonesia* 15, no. 1 (2000): 56–69., 58-59.

59 K J Cseres, “Controversies of the Consumer Welfare Standard,” *The Competition Law*

rational basis for protecting consumers and creating an excellent economic structure contributing to human welfare.<sup>60</sup> Human welfare, which is ipso facto a consumer, also reflects the fulfilment of human rights to a decent standard of living.

The United Nations has guidelines for consumer protection.<sup>61</sup> Although they do not have legal consequences, they are a set of primary goals that are recognized internationally.<sup>62</sup> It can also be seen as an effort to accept universal rights and is additional support for accepting consumer rights as human rights.<sup>63</sup> Although the above UN Guidelines are not legally binding, their influence is far-reaching and, therefore, the most influential international instrument for consumer protection. The guidelines have been used as inspiration and a model for many countries worldwide to develop their national consumer protection systems.<sup>64</sup> Many countries have even incorporated high levels of consumer protection into their national constitutions. This shows the importance of protecting consumer rights so that they must be included in the Constitution.

It is also a move towards more substantial recognition and stricter enforcement of consumer rights worldwide, as the recent pandemic has exposed the dangers of exploiting consumer vulnerabilities. The more stringent recognition and enforcement are by including consumer rights in the constitution so that these rights will acquire legal significance and 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 and human rights for recognition, protection, fulfilment, and promotion.

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*Review* 3, no. 2 (2007): 121–73., 121-122.

60 Sakinah Shaik Ahmad Yusoff, “Perlindungan Pengguna Di Malaysia: Falsafah Dan Politik,” in *Undang-Undang Komersil Dan Pengguna* (Kuala Lumpur: Dewan Bahasa&Pustaka, 2007), 190.

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

62 A.G Eze, “Consumer Rights as Constitutional Rights-A Comparative Analysis of Some Selected Jurisdiction.”, 191.

63 A.Eide; A.Rosas “Economic Social and Cultural Rights: Universal Challenge” 2nd revised edition, the Hague: Kluwer, 2001,p.77

64 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](http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf).

Countries with consumer rights protection in their constitutions include Lithuania, Portugal, Spain, and Poland in Europe and Thailand in Southeast Asia. Lithuanian Constitution 1992 Chapter IV the National Economy and Labour, Article 46 states that the Lithuanian economy must be based on the right to private property, individual economic activity, and initiative freedom. The state must regulate economic activity to serve the people's general welfare. The law must prohibit production and market monopolies and protect the freedom of fair competition, and the state must defend the interests of consumers.<sup>65</sup> The constitutionalizing of consumer rights in Lithuania has increased consumer protection.<sup>66</sup> The Portuguese Constitution of 1976 in the Title Economic, Social and Cultural Rights and Duties (Economic and Socio-Cultural Rights and Obligations). 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.<sup>67</sup> The consumer protection system in Portugal is sufficient. Most provisions are European law, and Portuguese legislators often establish favourable regulatory regimes to strengthen consumer protection. The main advantage of consumer protection in Portugal is its law enforcement which provides quality, cheap, and fast service.<sup>68</sup>

The 1997 Constitution of the Republic of Poland, 2009 amendment in the Economic Social and Cultural Freedoms and Right section Article 76 states that public authorities must protect consumers, customers, and tenants from activities that threaten their health, privacy, and safety and from dishonest market practices.<sup>69</sup> The constitutionalizing of consumer protection in Poland

65 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>, accessed on 24 January 2022

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

67 Constitution of the Portuguese Republic Seventh Revision [2005], <https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf>, accessed on 24 January 2022

68 Maria Raquel Guimarães, António Pinto Monteiro, 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 Nature Switzerland AG, 2018), 476-477.

69 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 2<sup>nd</sup> April 1997, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, accessed on 24 January 2022.

is the basis for the Polish Constitutional Court in examining legal compliance with consumer protection principles. This constitutionalizing makes consumer policy less susceptible to short-term economic considerations and unfair market practices.<sup>70</sup> Overall, Poland's consumer protection law enforcement system is comprehensive and contains many positive aspects that are continuously being improved.<sup>71</sup>

The Constitution of the Kingdom of Thailand<sup>72</sup> BE 2540 is the first constitution that emphasizes consumer protection by regulating consumer rights in Article 57: "The rights of a person as a consumer must be protected as determined by law." Then in the amended constitution, consumer protection in the 2017 Thai Constitution is regulated in Chapter 3 concerning the Rights and Liberties of The Thai People. Article 40, Article 46, and Article 60 are related to consumer protection. Article 46 states that consumer rights must be protected. A person has the right to unite and form consumer organizations to protect consumer rights. Consumer organizations under paragraph two have the right to unite and form an independent organization to strengthen the protection and security of consumer rights with the support of the state. In this case, the rules and procedures for their formation, power of attorney to represent consumers and financial assistance from the state are regulated by law. Article 60 states that the state must provide efficient steps or mechanisms to protect and secure consumer rights in various aspects, including knowledge of correct information, security, fair contract settlement, or other profitable aspects. The implication of the constitutionalizing of consumer protection in Thailand is the solid public authority that handles consumer protection because it is directly under the control of the Prime Minister, and Thai consumers are the only ones at the empowered level in ASEAN.

Law No. 8 of 1999 on Consumer Protection (UUPK), in its considerations, refers to Article 33 of the 1945 Constitution 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

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

71 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 Nature Switzerland AG, 2018), 454-455.

72 Sareeya Galasintu and Chanakant Loveera, "The Comparative Study on Consumer Protection Laws in Asean," *Kasetsart Journal of Social Sciences* 42, no. 4 (2021): 804-9, <https://doi.org/10.34044/j.kjss.2021.42.4.13>.

Article 33 contains the National Economy, while Article 34 contains Social Welfare. Meanwhile, Article 28 D paragraph (1) of the 1945 Constitution has not been used as a reference by the UUPK 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 UUPK was ratified first, while 28 D paragraph (1) resulted from the second amendment to the 1945 Constitution in 2000.

Chapter XIV of the National Economy and Social Welfare in the 1945 Constitution 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 achieving social welfare is not solely the responsibility of society but is the responsibility of the state or government. Article 33 of the 1945 Constitution requires the government to take an active part in trying to achieve a welfare state. Legally formal constitutionalizing of consumer rights is stipulated in the 1945 Constitution, representing the natural elaboration of the contents of the 1945 Constitution, which characterizes the welfare state.<sup>73</sup> Apart from being a political constitution, the 1945 Constitution is also an economic constitution and a powerful deterrent (*al-daf'u aula 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 defenceless consumers.

The constitutionalizing of consumer protection in Indonesia can be carried out in one of two models: first, by explicitly mentioning consumer rights in the 1945 Constitution, such as in Thailand, Portugal, and Spain, and, second, it can only mention “the government is obliged to protect the interests of consumers” in Article 33 of the 1945 Constitution both 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 it reads the economy nationally organized based on the principles of economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining balance and unity of the national economy and protection of consumer rights. Further arrangements for the protection of consumer rights are delegated to the law, as do Poland and Lithuania.

The constitutionalizing of consumer protection makes the UUPK a direct delegate of the Constitution, so it has a position as an organic law that

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<sup>73</sup> Bagir Manan, *Perubahan Dan Perkembangan Konstitusi Suatu Negara* (Bandung: Mandar Maju, 1995), 55.

can strengthen its position as an umbrella act because its power is half that of the Constitution. Organic laws are laws whose substance directly elaborates the regulatory delegation, which is explicitly mentioned in the 1945 Constitution.<sup>74</sup> This definition is by Soehino, who stated that organic laws were formed to carry out the orders of the 1945 Constitution directly.<sup>75</sup> Abdul Gani Abdullah also defines *organic law* as one that strictly implements the 1945 Constitution.<sup>76</sup> Such a position of the UUPK makes the legitimacy of consumer protection even more substantial because the presence of appropriate and broad social material in the constitution has determined the progressive line of social policy development.<sup>77</sup>

The constitutionalizing of the protection of consumer rights above can be a powerful legal tool to realize the goals of consumer protection itself, namely to: (a) increase awareness, ability, and independence of consumers to protect themselves, (b) elevate the dignity of consumers by avoiding them from the harmful excesses of using goods and services, (c) increase consumer empowerment in choosing, determining, and demanding their rights as consumers, (d) create a consumer protection system that contains elements of legal certainty and information disclosure, and access to information, (e) grow awareness of business actors regarding the importance of consumer protection so that honest and responsible attitudes grow in doing business, (f) Improving the quality of goods and services that ensure business continuity for producing goods and services, health, comfort, security, and safety of consumers.

The consumer protection goals above, and the protection of human dignity are also realized. Human dignity is an honourable position as a righteous creature created by God Almighty. In terms of dignity, the position of humans is higher and more honourable than other creatures. This corresponds to the 3 (three) values of prophetic law: liberation, humanization, and transcendence. Etymologically, prophetic comes from the English word prophetic, which means: (1) of or maintaining to a prophet: prophetic inspiration (from or related to a prophet: prophetic inspiration); of the nature of or containing prophecy: prophetic writings (of the nature or containing prophecy); (3) having the function

74 Maria Farida et al., “Kompedium Perundang Undangan” (Jakarta, 2008), 2.

75 Soehino, *Hukum Tatanegara, Teknik Perundang-Undangan*, (Yogyakarta: Liberty, 1990), 18.

76 Abdul Gani Abdullah, “Pengantar Memahami Undang-Undang Tentang Pembentukan Peraturan Perundang-Undangan,” *Jurnal Legislasi Indonesia* 1, no. 2 (2004): 1–10., 1.

77 B. Banaszak and Boguslaw Banaszak Wroclaw, “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., 27.

or power of a prophet, as a person; (4) predictive; ominous; prophetic signs warning (predictive, fun: prophetic signs, prophetic warnings).<sup>78</sup>

Humanization, liberation, and transcendence are derived from the historical mission of Islam as contained in the Qur'an, especially Surah al-Imran, which means you (Muslims) are the best people born for humans (because you) order (do) what good and prevent from what is wrong and believe in Allah. (QS. 03: 110).<sup>79</sup> According to Kuntowijoyo, three values are contained in the verse above 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*).<sup>80</sup>

The constitutionalizing of rights is an effort to carry out law or *rechtsboefening* in a practical dimension, namely the formation of laws needed to control, anticipate, and at the same time overcome the conditions of the era which Ranggawarsita called Kalatidha, namely the era full of anxiety and worry, as well as the era of uncertainty,<sup>81</sup> which also occurs in current economic activity along with market globalization. This is a constitutional effort to humanize humans (humanization/*amar makruf*) and liberation (liberation/*nabi munkar*) for consumers substantially and fundamentally.

The constitutionalizing of consumer rights in the 1945 Constitution is the carrying of prophetic law, which ontologically bases the law on humanization values, humanizes humans, and strengthens human existence as creatures and servants of God (theo-anthropocentric). This can be seen from the consumer protection objective in point (b). Epistemologically, this is a constitutional effort to apply the law based on liberation, namely a fundamental and constitutional effort to free consumers from economic practices that can interfere with their

78 Kelik Wardiono, *Ilmu Hukum Profetik; Hampiran Basis Epistemologis Paradigmatik* (Surakarta: Muhammadiyah University Press, 2020), 79.

79 Khudzaiyah Dimiyati 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), 25.

80 Kuntowijoyo, *Paradigma Islam: Interpretasi Untuk Aksi* (Bandung: Mizan, 1999), 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 and 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>.

81 M. Syamsudin, *Berhukum Profetik Di Tengah Kalatidha*, Pidato Pengukuhan Guru Besar (Yogyakarta, 2022), 80.

safety and security. Ontologically, this is oriented so that the consumer's life is full of meaning, and his dignity as a servant of God is maintained.

The above humanization, liberation, and transcendence align 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 the justification basis from the second precept, namely, just 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 principle of Belief in the One and Only God. Just and civilized humanity means full respect for human values (dignity, body, rights, honour, needs, self-esteem,<sup>82</sup> and living appropriately as a human being). The basis of just and civilized humanity is nothing other than continuity in life practices and the basis of Belief in One God, especially the right to life (safety of the soul) and the right to safety of people because these three are natural gifts from God Almighty, so it is necessary to receive protection as far as possible from the state.<sup>83</sup>

Humanities (humanity) itself is implicit in civilization and justice. There is only justice and civilization with awareness of human values. Humanity becomes a unified norm in law (legislation, judiciary, execution, 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 it.<sup>84</sup>

### Conclusion

From the descriptions above, it can be concluded that consumers are ipso facto human beings. Consumers have human rights, and humans as consumers have rights legitimized by law; the two are very closely related. In many views,

82 Honour and justice are the two objectives of the Islamic law that exist at the primary level added by the scholars so that the primary goals of Islamic law are seven, namely *hifz al-dûn* (preservation of religion), *hifz al-nafs* (preservation of life), *hifz al-mal* (preservation of property), *hifz al-'aql* (preservation of reason) and *hifz al-nasl* (preservation of offspring). Some scholars add *hifz al-'ird* (preservation of honor) to fulfill the five *maqâshid al-syarî'ah* into six main/primary objectives or necessities. In addition, there are also those who include *al-'adl* (justice). Jasser Auda, *Maqâsid al-Shariah as Philosophy of Islamic Law a Systems Approach*, (London: International Institute of Islamic Thought, 2007), 3-5. Jasser Audah, *Maqashid Al-Shariah A Beginners Guide* (London Washington: THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT, 2014). AUDA, *Maqasid Al-Shariah as Philosophy of Islamic Law A Systems Approach*.

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

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

consumer rights are seen as human rights because they can guarantee the protection of human dignity.

Specifically, effective protection of consumer rights can become an instrument for fulfilling the third generation of human rights, namely the right to economic and social culture, which includes the right to a standard of living. A decent standard of living includes meeting basic needs, including food, clean water, and adequate housing. This can only be met by effective consumer protection.

Based on the above, it is urgent to root the protection of consumer rights in the 1945 Constitution. This rooting makes consumer protection work effectively so that the aim of elevating the dignity of consumers as human beings created by God is realized. This is consistent with the values of prophetic law, namely humanization, liberation, and transcendence.

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