



**Islamic Compensation Concept:
The Consumer Dispute Settlement Pattern in Indonesia**

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Abstract: This article aims to explain the compensation concept in Islamic Law by emphasizing consumer law on the development of consumer dispute settlement patterns in Indonesia. In constructing a consumer dispute settlement pattern in demanding compensation to the produces as stipulated in the Law of the Republic of Indonesia Number 8 the Year 1999 concerning Consumer Protection Act, to be able to realize the providing Islamic compensation pattern that becomes the basis of the consumer dispute settlement pattern in Indonesia in the future. This research is a juridical normative with a legal approach and conceptual approach as well as a socio-legal approach. The research analysis used the descriptive qualitative analysis method. The results of this study indicate that the importance of the compensation concept in Islamic law is inseparable from observing the development diversification of goods and services products from the existence of free trade dynamics currently that is so advantageous to the consumers, although the tendency to be disadvantaged is also getting bigger. Losses that were experienced by consumers due to the weak position of consumers in various factors compared to produces. While the birth of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection Act as the formality legal of consumer protection law in Indonesia will not rule out the possibility of other regulations in the field of consumer protection. So the alternatives development in providing consumer protection is crucial to be able to provide consumer protection that brings benefits and supports the national economy.

Keywords: Islamic, compensation, consumer dispute settlement

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Abstrak: Artikel ini bertujuan untuk menjelaskan konsep ganti rugi dalam Hukum Islam dengan memberikan penekanan hukum konsumen pada pengembangan pola penyelesaian sengketa konsumen di Indonesia. Dalam membangun pola penyelesaian sengketa konsumen dalam menuntut ganti rugi terhadap pelaku usaha yang termaktub dalam Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, untuk dapat mewujudkan pola pemberian ganti rugi Islami yang menjadi dasar pola penyelesaian sengketa konsumen di Indonesia di masa yang akan datang. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan undang-undang dan pendekatan konseptual serta pendekatan sosiologi hukum. Analisis penelitian menggunakan metode analisis deskriptif kualitatif. Hasil penelitian menunjukkan bahwa pentingnya konsep ganti rugi dalam hukum Islam tidak terlepas dari menilik perkembangan diversifikasi produk barang dan jasa dari adanya dinamika perdagangan bebas saat ini sangat menguntungkan konsumen, meskipun kecenderungan untuk dirugikan juga semakin besar. Kerugian yang di alami konsumen akibat kedudukan konsumen yang lemah oleh berbagai faktor dibandingkan pelaku usaha. Sementara lahirnya Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen sebagai legalitas formalitas hukum perlindungan konsumen di Indonesia tidak akan menutup kemungkinan adanya pengaturan lainnya dalam bidang perlindungan konsumen. Sehingga pengembangan alternatif-alternatif dalam memberikan perlindungan konsumen sangat penting untuk dapat memberikan perlindungan konsumen yang membawa kemaslahatan dan menunjang perekonomian nasional. Legalitas formalitas hukum perlindungan konsumen di Indonesia tidak akan menutup kemungkinan adanya pengaturan lainnya dalam bidang perlindungan konsumen. Sehingga pengembangan alternatif-alternatif dalam memberikan perlindungan konsumen sangat penting untuk dapat memberikan perlindungan konsumen yang membawa kemaslahatan dan menunjang perekonomian nasional.

Kata Kunci: Islami, ganti rugi, penyelesaian sengketa konsumen

Introduction

The growth of the national economy and the dynamics of free trade, supported by the advancement of telecommunications technology and informatics knowledge, currently have implications for the increasingly diverse goods and service products that are marketed by producers.¹ The free trade

¹ The intended produces is every party that is involved in the process of making and/ or the final distributor of the product of business activity in the economic field, either an individual

dynamics in the globalization era² because the boundaries of a country will become blurred, but then there is a link between the national economy and the international economy that will be even tighter.³

This indication is also supported by Indonesia's participation in free trade that formally legal marked by the ratification of the Agreement Establishing the World Trade Organization (WTO) through the Law Number 7 of 1994. The signing of WTO as an intergovernmental or world organization that oversees the goods and services trades. Start from January 1, 1995, WTO has officially replaced the General Agreement of Tariff and Trade (GATT). If you do not want to be stigmatized as the anti of World Trade Organization (WTO), than the government or the signatory country are bound to implement the WTO's decisions.⁴

The rapid of those economic developments cause many products both goods and services are circulating in the market. The next development is also the process of modern era trade transactions with digitalization or it is well known as an e commerce has placed the produces and consumers to be able to transact very easily, where the sale and the exchange of products or services including the information about products of goods or services that is carried out through computer networks including the internet according to the interests⁵ of

or a business entity which is a form of a legal entity or not a legal entity that established and domiciled or conducting business activities inside and outside the law territory of the Republic of Indonesia started from the producer as the final product maker and seller that consisting of importers, agents, big sellers, distributors, wholesalers and retailers. Holijah, *Tanggung Mutlak Ascetisisme Responsif Subjektif Pelaku Usaha: Konsep Radikal Berbasis Paradigma Hukum Baru sebagai Alternatif Upaya Perlindungan Konsumen terhadap Kerugian Akibat Produk Barang Cacat Tersembunyi di Indonesia*, Disertasi, Palembang: PDIH Sriwijaya University, 2015, p. 94. Hisyam Ahyani et.al., "Building the Value of Rahmatan lil 'Alamin for Indonesian Economic Development at 4.0 Era from the Perspective of Philosophy and Islamic Economic Law," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 16, No. 1 (2021), p. 111-139. Ricco Andreas, et.al., "Islamic Perspective in Consumers Protecting of E-Commerce Transactions in Indonesia," *Ikonomika: Jurnal Ekonomi dan Bisnis Islam* 4, No. 1 (2019), p. 60-70.

²Keniche Ohmae, stated that the current globalization at the 21st century has caused the borders of the nation state has been reduced which he referred to as, "the end of the nation state". Keniche Ohmae, *The End of Nation State, the Rise of Regional Economics*, New York: The Free Press, 1995, p. 1-5.

³In the legal definition, generally what it is meant by interests is a demand that expected to be fulfilled. The interest basically contains authority that guaranteed and protected by law in their implementation. Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, 1986, p. 40.

⁴Holijah, *Tanggung Mutlak Ascetisisme Responsif Subjektif Pelaku Usaha...*, p. 4.

⁵Arfian Setiantoro, et.al., "Urgensi Perlindungan Hukum Konsumen dan Penyelesaian Sengketa E-Commerce di Era Masyarakat Ekonomi ASEAN," *Jurnal RechtsVinding* 7, No. 1, (2018), p. 2. Rimanto, et.al., "Consumer Protection as Implementation Instrument Islamic Business Ethics," *Riyah: Jurnal Sosial dan Keagamaan* 6, No. 2 (2021), p. 217-227.

each parties.

The growth and the development of these goods and services industry clearly have positive and negative impacts. The negative impact experienced by consumers who are humans, where every human being is a consumer who cannot be separated from human activity itself to meet the needs of their life as a final consumer. On one side, consumers are free to be able to choose the certain products or services from produces according to their interests and abilities. On the produces side, productivity is demanded higher and efficiency in meeting the business targets is to get profits. The position of the produces on both sides will have bad implications to the consumers. One of the impacts of the produces condition is related on the quality of the goods or services products that are produced to meet the needs of life as a final consumer.

These final consumers⁶ are the parties who feel the worst effect and be harmed due to the use of the products of goods or services from the produces. This is due to the losses⁶ suffered by consumers of goods products are often the result of produces behavior, so they need to be regulated in order to not to give losses to the consumers that become the public losses because these are related to the losses to the humans in general that will harm the country.

The compensation claims for losses that experienced by consumers resulting from the use of the products are based on the basis of lawsuits in breach of contract or breach of law. The relationship of produces and consumers are (1) Consumers who have a contractual relationship with produces; (2) Consumers who do not have a contractual relationship with produces.⁷ However, apart from these two forms of civil relations, the consumers who are harmed by produces are entitled to get compensation both large and small scale. It is also inseparable as a form of product liability from produces who are absolutely responsible or have the strict liability on the products and services that marketed.

The form of compensation in Article 19 paragraph (2) of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection Act as the legal umbrella for consumer protection in Indonesia includes:

⁶Consumer is any person or legal entity that uses and / or gets goods and / or services from business actors that are not for sale, Holijah, *Tanggung Mutlak Mutlak Ascetisisme Responsif Subjektif Pelaku Usaha...*, p. 99

⁷Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia*, Bandung: Citra Aditia Bakti, 2010, p. 101. Hotman and Wiwik Handayani, "Perlindungan Konsumen Perspektif Hukum Ekonomi Syariah," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 1, No. 1 (2021). H. A. Khumedi Ja'far, "Perlindungan Konsumen dalam Perspektif Hukum Bisnis Islam," *Asas* 6, No. 1 (2014).

1. Refund or;
2. Replacement of goods and/or services of similar type or equivalent value, or;
3. Health care and/or;
4. Provision of compensation in accordance with applicable laws and regulations.

Then, the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection Act provides subjective compensation rather than objective loss.⁸ In Islamic law, the idea of compensation from the beginning has been mentioned by Quran and Prophet's Hadith, and then the scholars formulated various *fiqh* rules relating to compensation or *dhaman*. In determining compensation, the most important elements are *darar* or loss on the victim, other than that, in certain cases the doubling of compensation can be carried out according to the conditions of the offender.⁹

The development of these products diversification of goods and services is very profitable for consumers, although the tendency to get losses is also getting bigger. Meanwhile, the causes of consumers in a harmed position among others are the knowledge lacking of the production process and the introduction of raw materials and the weakness ability of bargaining power economically.¹⁰ Consumers really need advocacy assistance, the efforts of compensation dispute settlement properly and the protection efforts to anticipate the danger tendency of losses due to goods and services that endanger consumers.¹¹

For this reason, the importance of consumer protection in order to the consumers can protect themselves when they suffer losses from the use of products of goods and services from produces. The state is required to expand its liability to the socio-economic problems faced by many people; because of the absence of consumer protection is part of the symptom that a country loses

⁸ Subjective loss is the loss that really suffered by a person who is harmed/the real loss suffered, not including objective loss namely a possible loss or a loss that has not occurred yet. Holijah, *Tanggung Mutlak Ascetisisme Responsif Subjektif Pelaku Usaha...*, p. 111.

⁹ Hasbi Ash-Shiddiqie, *Pengantar Fiqh Mu'amalah*, Jakarta: Bulan Bintang, 1974, p. 68.

¹⁰ Janus Sidabalok, *Hukum Perlindungan Konsumen...*, p. 4.

¹¹ Holijah, "Pengintegrasian Urgensi dan Eksistensi Tanggung Jawab Mutak Produk Barang Cacat Tersembunyi Pelaku Usaha dalam Undang-Undang Perlindungan Konsumen di Era Globalisasi," *Jurnal Dinamika Hukum* 14, No. 1, (2014), p. 175-187.

in the free trade.¹²

The relationship between business actors and consumers is broad and complex relationship. It's means that the relationship between produces and consumers creates an relationship individually as a specific legal relations that gives rise to a legal protection toward consumer rights not only based on one legal aspect, but also by a system of legal instruments that have ability in providing legal protection simultaneously and comprehensively.

Actually, between consumers and produces are need each other. The development of industrial products on the one party and on the other party requires the protection toward consumers. The Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection Act as the legal umbrella of consumer protection in Indonesia, states that, the purpose of consumer protection is to realize the balance of the protection of the interests of consumers and produces.¹³

The Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection Act as a legal umbrella that provides legal instruments in consumer disputes settlement that stipulated in Article 45¹⁴which contains normative arrangements for consumers" dispute settlement which is a good policy in an effort to empower consumers, namely arrangements regarding special bodies appointed to resolve consumer disputes.

Theoretically in Indonesia, the consumer dispute settlement in demanding compensation can be done through institutions (a) the general judiciary particularly through the district court and (b) Consumer dispute settlement agency. The pattern of consumer dispute settlement in The Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection Act can be seen from some data, among others are in Palembang District Court there were several consumer dispute cases, namely in 2017 there were 12 cases, in 2018 there were 34 cases and in 2019 there were 22 cases in Consumer Dispute Resolution Agency (*Badan Penyelesaian Sengketa Konsumen/BPSK*)

¹²Jagnes Delors, "The Future of Free Trade in Europe and The World," *Fordham International Law Journal* 18 (1995), p. 723.

¹³Holijah, *Tanggung Mutlak Ascetisisme Responsif Subjektif Pelaku Usaha....*, p. 1.

¹⁴The Article 45 of Consumer Protection Act stated that, "(1) every consumer that harmed by the produces may sue the business actor through an institution that has duty to resolve the disputes between consumers and business actors or through the courts which is in general court environment. (2) The settlement of consumer disputes can be reached through the courts or outside of the court based on the voluntary choice of both parties who are having dispute. (3) The disputes settlement 37 outside the court as refers to in paragraph (2) does not eliminate criminal liability as regulated in the Act (4). If the effort of consumer dispute settlement has been chosen in outside of court, then a claim through the court can only be taken if the effort is declared unsuccessful by one of the parties or by the parties who are having dispute.

Yogyakarta in 2015 there were 58 cases, in 2016 there were 8 cases, in 2017 there were 14 cases and in 2018 there were 6 cases.¹⁵

Thus, in this paper it will discuss further about how the principle of compensation in Islamic Law that become a reference in consumer disputes settlement in Indonesia in the future, so that both produces and consumers get maximum legal protection. This research is a juridical normative with a legal approach and conceptual approach as well as a socio-legal approach.¹⁶ The research analysis used the descriptive qualitative analysis method.

Compensation in Islamic Law

Compensation due to breach of contract or due to Tort Law (*Perbuatan Melawan Hukum/PMH*) is one of the compensation form that must be given to realize justice for consumers. Initially the relationship between business actors and consumers is a civil relation, although it is possible to get enter to the realm of public law because it causes the widespread losses to society. Compensation in legal terms often referred to legal remedy which is defined as a way of fulfillment or compensation rights based on a court decision given to the suffering losses party as the result of the other parties" actions that is done due to negligence or intentional mistakes.¹⁷

Islamic law uses many terms to instead of the term compensation. Compensation as a result of civil engagement uses the term *dhaman*. While the compensation for the matters which relating to criminal (*jarimah*) among others are *'uqubah*, *diyath*, *arusy* and others. On the progress of *dhaman*, namely compensation as a result of civil act (*al-'aqd*) becomes *dhaman al-'aqdi*, while those that occur as a result which in legal term of the Unlawful Act (onrechtmatige daad/tort law) are called *dhaman' udwan*.¹⁸

The meaning of *dhaman* term in the Islamic law treasury is quite varied, both linguistically meaning and terminologically meaning. *Dhaman* term in linguistically is defined as the compensation or dependents. While in terminologically citing from Asmuni mth is the dependent of someone to fulfill a right which relating on wealth in the form of material, physical as well as feeling like a reputation.¹⁹

¹⁵ Holijah, *Tanggung Mutlak Ascetisisme Responsif Subjektif Pelaku Usaha...*, p. 196.

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2014. Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Praktik*, Depok: Rajawali Press, 2018.

¹⁷ J.T.C Simorangkir, et.al., *Kamus Hukum*, Jakarta: Aksara Baru, 1980, p. 289.

¹⁸ Abd. Salam, *Ganti Rugi Menurut Hukum Perdata dan Hukum Islam*, Paper, Magetan: Magetan Religious Court, p, 3.

¹⁹ A. Rahmad Asmuni, *Ilmu Fiqh 3*. Jakarta: Directorate of Waqf Empowerment Directorate General of Islamic Community Guidance, 2007, p. 125.

The diversity of terms used as a substitute for the term compensation in the book of classical Jurisprudence is adjusted to the "urf of the local fiqh community and the act that violated. The conformity can be seen like compensation or ransom due to violations of murder which is called *diyat*, atau *uqolah*. The compensation as the result of the destruction of goods, often use the term *dhaman* and the compensation for the loss of goods as the result of *ghasb* is termed *al-badl*. If a lost item can only be replaced by money is called *al-qimat* and others.²⁰

Therefore, there is no specific term for compensation in Islamic law. From various propositions both Qur'an and Hadith, then the scholars formulated various fiqh rules which relating to *dhaman* or compensation and some are calling it the term *mas'uliyah madaniyah*. Although in its later development, especially in the current era, the jurists often use the term *masuliyah* (liability). This is due to the influence of works about the Western law.²¹

In Islamic law the term responsibility that associated with the concept of compensation is divided into two:

1. *Dhaman al'akad* namely a civil responsibility to provide compensation which originating from the breach of contract;
2. *Dhaman al-'udwan* namely civil liability to provide compensation sourced from harmful act (*al-fi'l adh-dharr*) or in Indonesian civil law terms is called Tort Law.²²

Dhaman, which is discussed in Jurisprudence books, involves three main problems:

1. Guarantee for someone's debt;
2. Guarantee in the procurement of goods;
3. Guarantee in presenting someone in a certain place in the court at a predetermined time and place.²³

There are several factors that can be made as a cause of the existence of

²⁰ Abd.Salam, *Ganti Rugi Menurut Hukum Perdata dan Hukum Islam*, Paper, Magetan: Magetan Religious Court, p. 111.

²¹ Mahmud Fahd Ahmad al-Amuri, *Al-Wa'd Al-Mulzim fi Syiyagh at-Tamwil Al-Masharif Al-Islamy*, Yordan: Kuliyyah As-Syar'ah wa Ad-Dirasah Islamiyah Jami'ah Yordan, 2004, p. 23.

²² Abd. Salam, *Ganti Rugi Menurut Hukum Perdata dan Hukum Islam*, Paper, Magetan: Magetan Religious Court, p. 13.

²³ Syaikh Abdurahman al-Jazairi, *Fikh 'Ala Madzahibil Arba'ah*, Beirut: Darul Fikr, 1989, Juz 4. p. 133.

compensation (*dhaman*), such as:

1. Not carrying out the contract;
2. Negligent in carrying out the contract, that is, if the contract that was created legally according to the provisions of the law was not carried out by the debtor, or was carried out but not as it should be (there was a negligence), then the error came from the debtor party, either the mistake was due to intentionally not carrying out the contract or a mistake due to negligence. The mistakes in fiqh science are called *at-ta'addi*, which are the attitudes that are contrary to rights and obligations and do not permit by *sharak*.²⁴

Furthermore, all forms of losses that arise in the Islamic Law must be eliminated by way of compensating for the losses. However, in compensation due to breach of contract, the only real loss suffered by the creditor must be replaced. The experts of Islamic Law do not reject the possibility of a replacement for the real loss suffered by the creditor due to the debtor's negligence. However, the compensation is not allowed for losses in the form of expected profit loss because the expected profits are uncertain. At the same time, the real losses, such as the costs incurred to conduct collections due to the debtor's negligence, can be requested for the compensation.²⁵

In the Civil Code, the concept of compensation due to the breach of contract in the form of all costs and fares that are incurred by creditors due to debtor's negligence (*cost/konsten*), real losses that have been experienced by the debtor in the form of damage to the goods belonging to the creditor (*loss/schade*), as well as profits that could be enjoyed by the creditor if the debtor does not do the breach of contract (*interest/interested*). The amount of compensation in the form of reimbursement (*konsten*) and loss (*schade*) is the real loss that can be ascertained in the amount. While the interest (*interesten*) of the amount of the profit that was originally able to be enjoyed requires a prior estimate, the amount is still in rupiah's value of the immaterial losses.

The giving compensation in Civil Law is basically demanding that conditions return to the way they were when the agreement was implemented. As for immaterial losses that can provide a guideline for the fulfillment of immaterial claims in accordance with the opinion of the Supreme Court in Judicial Review Decree No. 650/PK/Pdt/1994 published a guideline which are the contents "Based on Article 1370, 1371, 1372 of the Civil Code of immaterial compensation can only be given in certain matters such as the cases of death, serious injury, and

²⁴ Yasin Ahmad Ibrahim Darokah, *Nadzariyatul Gharar Fi Syari'ah Islamiyah: Dirasat Muqaranah*, Al-Qohirah: Jami'ah Al-Azhar, p. 42.

²⁵ Syamsul Anwar, *Studi Hukum Islam Kontemporer*, Jakarta : RM Books, 2007, p. 195.

humiliation".²⁶

Thus Islamic law only allows for asking a compensation for the real losses suffered, while losses based on the profit that is expected cannot be compensated. In providing compensation for losses that suffered by someone must be free from elements of usury, *gharar* as well as must pay attention to the principles of justice, so that developing treasure must be based on the principles of *muamalah*, namely:

1. Basically, all the forms of *muamalah* are permissible, except as otherwise determined by the Qur'an and the Prophet's Sunnah;
2. *Muamalah* is done on a voluntary basis, without containing coercion;
3. *Muamalah* on the basis of considerations to bring benefits and avoid *mudharat* in people's lives;
4. *Muamalah* is carried out by maintaining the value of justice, avoiding the elements of persecution, and the elements of misuse of circumstances.²⁷

By noticing the concept of Islamic law and its development regarding to Islamic compensation because what is meant by Islamic law in this paper is behavior that is in accordance with the concept of Islamic law. In other words, the Islamic concept that is in accordance with Islamic law in the provision of compensation as referred above is the Islamic concept of giving compensation to the party that has been harmed as a result of the existence of *muamalah*, so it is obligatory to provide compensation if indeed there is a real loss that has been experienced, although for immaterial losses can still be possible with the limits which do not contain usury, *gharar* as well as must pay attention to the principles of justice. It is also intended that the compensation intended above is to return the condition before the loss but still pay attention to the conditions causing the loss.

The Pattern of Providing Compensation in Consumer Disputes Settlement in Islamic Way in Indonesia

The relationship between produces and consumers is a relationship that needs each other; produces need consumers as parties who use products from produces, while consumers are those who need products from produces to fulfill the needs for their life activities. This interdependence relationship opens up the possibility of disputes in the process of this interdependence relationship. The fact

²⁶Rosa Agustina, *Perbuatan Melawan Hukum*, Jakarta: Yustisia, 2011, p. 23.

²⁷Ahmad Azhar Basyir, *Asas-Asas Hukum Muamalat (Hukum Perdata Islam)*, Yogyakarta: UII Press, 2000, p. 15.

is that consumers as the product user party, and both products of goods and services from producers are the weak party compared to the producers. There are many causes for the consumer's position as a weak party, among others are because the consumers bargaining power is economically weaker, the knowledge about products that are used, and others. Many cases that occur showing the weak position of the consumers, for example, the presence of food and beverages containing hazardous substances, counterfeit products, and the application of the standards in agreements that cause losses for consumers, both the losses in small-scale and even large-scale losses.

Indonesia guarantees and protects the interests of consumers for products of goods and services that circulate in the market. The Government of the Republic of Indonesia enacted Law Number 8 of 1999 concerning the Consumer Protection Act contained in the State Gazette of the Republic of Indonesia Number 3821 on April 20, 1999 which is the initial recognition of consumer protection in the form of formal legitimacy and which is become a means and a force of law for the consumers and the responsible of producers.²⁸ This Consumer Protection Act is a legal source of consumer protection that has become the legal umbrella for consumer protection in Indonesia. The birth of Consumer Protection is the beginning and the end of the law that organizing consumer protection, but it remains open to the possibility of the formation of new laws that basically contain the provisions that protect consumers.²⁹

The principles of consumer protection that can be seen from the history of consumer protection in Islam have begun since the Prophet Muhammad PBUH has not been appointed yet as a Prophet, which can be found in business practices carried out by Rasulullah PBUH such as honesty, fairness and integrity of the messenger of Allah SWT.³⁰ After Muhammad PBUH was appointed as a Prophet, consumers got considerable attention to the teachings of Islam, both in Qur'an and Hadith. The fair and truthful Business, according to the Qur'an is a business that holds the principles *la tadzhlimuna wala tuzhlamun*,³¹ so the concept of business in Islam must be based on values and ethics that uphold the honesty and justice.³²

Paying attention to the prohibited business practices as taught by Rasulullah PBUH, shows that the business principles taught by Rasulullah PBUH contain the values of protection of consumer rights in the forms of honesty, justice, and transparency are the foundation of Islamic teachings in doing business.

²⁸ Janus Sidabalok, *Hukum Perlindungan Konsumen*...., p. 48.

²⁹ Janus Sidabalok, *Hukum Perlindungan Konsumen*...., p. 51.

³⁰ Jusmaliani, et.al., *Bisnis Berbasis Syariah*, Jakarta: Bumi Aksara, 2008, p. 49.

³¹ Nurhalis, "Perlindungan Konsumen dalam Perspektif Hukum Islam dan Undang-Undang Nomor 8 Tahun 1999," *Jurnal IUS* 3, No. 2 (2015), p. 526.

³² Zulham, *Hukum Perlindungan Konsumen*, Jakarta: Kencana, 2013, p. 41.

However, at that time, people did not know the terminology of the consumer. Islam has implemented the values and principles of consumer protection on a practical level. The values and principles of consumer protection in this Islamic law is the protection of real consumer rights, whereas in Consumer Protection Act itself, the protection of consumer rights is contained in Article 4 of Consumer Protection Act which contains consumer rights, in the forms of:

1. The right to comfort, security, and safety in consuming goods and services;
2. The right to choose goods and services as well as to get those goods and services in accordance with the exchange rate and conditions as well as guarantees that are promised;
3. The right to true, clear, and honest information about the conditions and guarantees of goods and/or services;
4. The right to be heard their opinions and complaints on goods and /or services that have been used;
5. The right to obtain advocacy, protection, and efforts for consumer protection disputes settlement appropriately;
6. The right to receive coaching and education of consumers;
7. The right to be treated or served properly and honestly as well as does not discriminatory;
8. The right to get compensation and/or replacement of the goods and/or services that are received do not proper with the agreement or are not as they should be;
9. The rights that are regulated in the provisions of the other rules and regulations.

The consumer rights in Article 4 of this Consumer Protection Act are inseparable from the spirit of the Consumer Protection Act, which contained in the principles of consumer protection that existed in Article 2 of Consumer Protection Act, namely, "Consumer protection based on benefits, justice, balance, security, and consumer safety, as well as legal certainty." By the existence of the principles of consumer protection in this Consumer Protection Act, it is clear that in the relationship between consumers and producers who suffer losses, there is a means to resolve them.

The state protects both produces and consumers to obtain fair and legal dispute settlement, namely the process of dispute settlement between these produces benefits in maintaining consumer security and safety so that the goal of consumer protection is realized, which among them are related to Article 3 of Consumer Protection Act number (6), "improving the quality of goods and/or

services that guarantee the business continuity of production of goods and/or services, health, comfort, security, and consumer safety."

By noticing the meaning of Article 3 number (6) about the importance of product responsibility of produces towards consumers in the form of strict liability. It means that if a produces markets the products of goods or services, then the produces is fully responsible for his product and provides compensation for the losses that are experienced by consumers as long as the produces cannot prove that the losses suffered by those consumers the cause is produced and due to force majeure (*overmacht*) event namely a condition beyond of human power as an exception.

Product liability with the strict liability principle of produces is also related to the forms of compensation liability in Islamic Law, such as:

1. Compensation for Damages (*Dha man Itlaf*);
2. Compensation for Transaction (*Dhaman' Aqdin*);
3. Compensation for Actions (*Dhaman Wadh'u Yadin*);
4. Compensation for Detention (*Dhaman al-Hailulah*);
5. Compensation for Deception (*Dhaman al-Maghrur*).³³

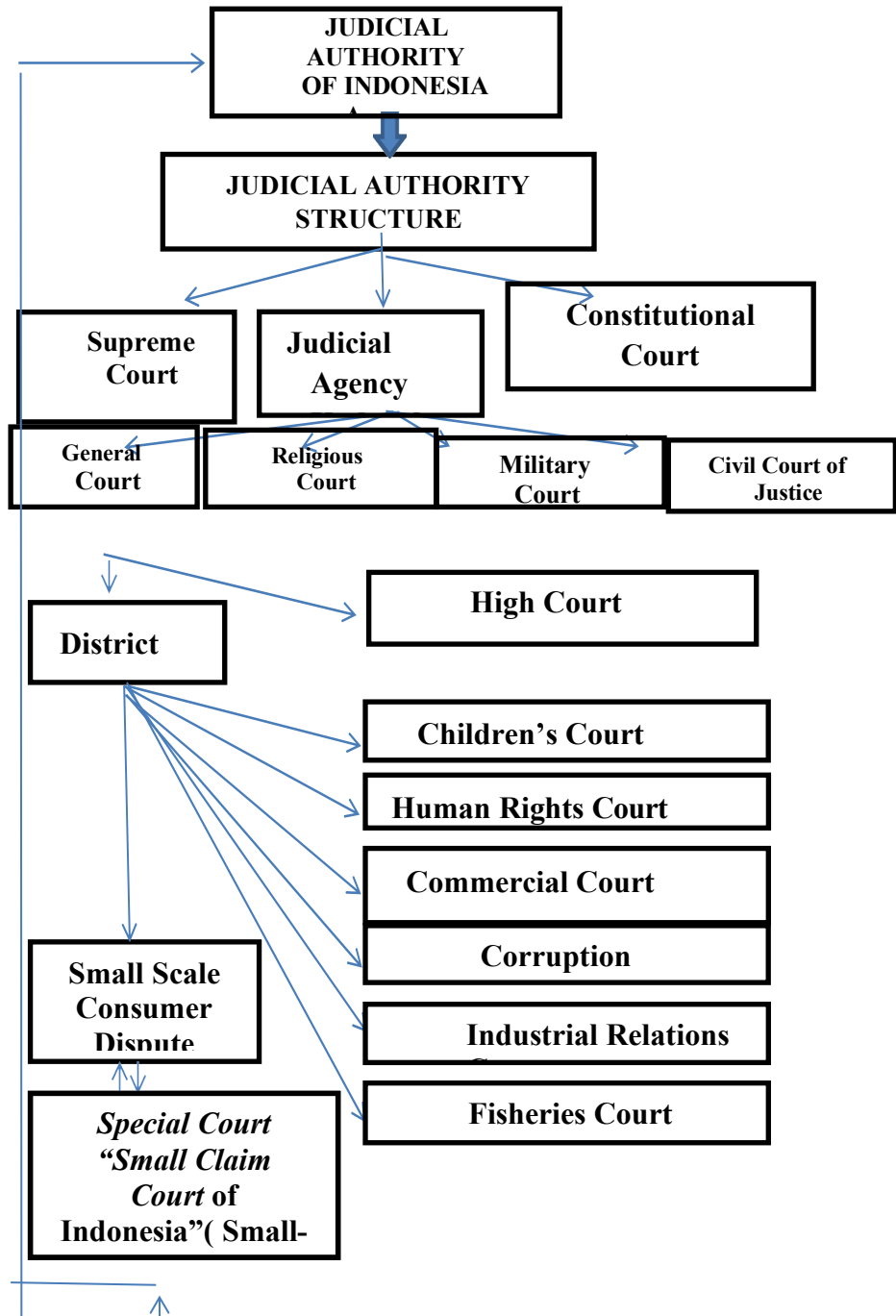
For this reason, in developing a pattern of consumer dispute settlement in Indonesia, one of the alternatives of consumer dispute settlement pattern in demanding compensation to business actors both small and large scale is through a judicial process that become a part of the District Court by establishing a special court for the Consumer Dispute Settlement Court. The form of a chart can be described as follows, which is the chart of the development of research results for the process of small-scale consumer dispute settlement pattern as follows:³⁴

³³ Mahmud Fahd Ahmad al-Amuri, *Al-Wa'd Al-Mulzim fi Syiyagh at-Tamwil Al-Masharif Al-Islamy*, Yordan: Kuliyyah As-Syar'ah wa Ad-Dirasah Islamiyah Jami'ah Yordan, 2004, p. 195-234.

³⁴Holijah and M. Rizal, *Konstruksi Ius Constituendum Small Claims Court Perdagangan Bebas Indonesia dalam Upaya Hukum Penyelesaian Sengketa Konsumen Berskala Kecil Era Disrupsi*, Laporan Penelitian, Palembang: LP2M Universitas Islam Negeri Raden Fatah Palembang, 2019, p. 227.

Chart 1

The Legal Construction of Consumer Dispute Settlement in Indonesia



By the existence of consumer dispute settlement pattern as in the legal construction chart of consumer dispute settlement that showed above if the payment cannot be made directly between the produces and the consumers. The existence of this pattern is expected to realize the goal of consumer protection in Islamic law, namely, to realize *mashlahah* (benefit) for humankind. The purpose of consumer protection in Islamic Law is in line with the responsibilities of produces in Islamic Law which has two dimensions, namely the vertical dimension and the horizontal dimension. Both of these dimensions can be identified as follows:

1. The existence of the dimension of monotheism as a characteristic of vertical responsibility to Allah SWT;
2. The existence of *amanah* dimension as khalifah on earth for produces;
3. The available resources are abundant because of the gift of Allah SWT that bestowed on this earth must be used to achieve mutual prosperity between fellow human beings;
4. Must help each other and work together as well as develop and be attached among all humans (stakeholders);
5. Business is a means of worship for produces.³⁵

Thus, the consumer disputes settlement pattern for compensation due to products of goods and/or services from the produces who is Islamic of the consumer dispute settlement pattern in Indonesia are:

1. Compensation that is sued subjective compensation;
2. Resolution through a special court of consumer disputes settlement;
3. Business actors have a strict liability to the consumers;
4. There is no element of usury, *gharar* and be fair.

Conclusion

The era of free trade shows a very close relationship between producers, consumers, and government. The relationship between produces and consumers is an interdependence relationship; likewise, the government has an essential role in maintaining the relationship of the dependence between produces and consumers so that it is realized the consumer's protection which is Islamic, as a basis in establishing patterns of settlement of compensation claims for consumers. One of the rights guaranteed by the state towards consumers is the right to obtain compensation if the produces harms consumers from the use of products of goods and/or services from the produces and also to obtain guarantees of means of dispute settlement paths for consumers who experience losses which

³⁵ Muslich, *Bisnis Syari'ah Perspektif Mu'amalah dan Manajemen*, Yogyakarta: UPP TIM YKPN, 2007, p. 23.

all of them are contained in the Consumer Protection Act. Moreover, the regulation of the right to claim compensation and the path of consumers' dispute settlement as regulated in this Consumer Protection Act is one an alternative that can be used to build patterns of Indonesian consumer disputes settlement in the future in accordance with the Islamic values and principles in protecting consumers, namely (1). Compensation that is sued subjective compensation; (2). Resolution through a special court of consumer disputes settlement; (3). Business actors have a strict liability to the consumers; (4). There is no element of usury, *gharar* and be fair.

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