CONSUMERISM IN HISTORICAL PERSPECTIVE AND ITS PROSPECTS IN INDONESIAN LEGAL DEVELOPMENT

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ABSTRAK

Dilihat dari perspektif historis, berbeda dengan di Amerika Serikat, gerakan konsumerisme di Indonesia belum berjalan lama dan belum berakar di masyarakat. Sekalipun demikian, penulis artikel ini yakin bahwa imbas dari globalisasi akan "memaksa" Pemerintah mulai mengakomodasi hak-hak konsumen ke dalam peraturan perundang-undangan yang relevan. Intervensi global dalam pembangunan hukum di Indonesia tersebut setidaknya akan mempercepat proses tadi, terutama mengingat keterkaitan yang erat antara hak-hak konsumen dan hak-hak asasi manusia. Dalam konteks inilah, dapat diperikirakan kehadiran Undang-Undang tentang Perlindungan Konsumen akan segera menjadi kenyataan.

I. INTRODUCTION

When I started to write this article, I remembered a wise saying of Victor Hugo. He said that there is one thing stronger than all the armies in the world and that is an idea whose time has come. We may say now, that such an idea is consumerism.

Nowadays protection of the interests of consumers has become a subject of major economic, social, political, and legal significance, especially in the United States and in most of the West European countries. According to David A. Rice, this phenomenon was started throughout the 1960s and into the 1970s.[1] Since then, a spate of books, articles, speeches, legislative hearings and reports on consumer problems has been published. The number of legislative products, public law-enforcement, private individual and class action litigation regarding consumer transaction disputes has substantially increased.

The focus of contemporary consumer protection movement (consumerism[2]) parallels that of other consumer movements of the mid-twentieth century. This movement began to attract international attention

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[1] David A. Rice, *Consumer Transactions*, Boston: Little, Brown and Company, 1975, p. 2.

[2] To some extent, people think that "consumerism" has the same meaning with "consumption of goods or services". The inclination of spending money for buying everything without considering whether it is appropriate and urgent or not, could be called as consumerism. Afterwards, this term refers to the belief that a strong economy is based on a high rate of production and consumption. The original meaning of "consumerism" actually is the movement protecting the rights and interests of consumers.

only about 30 years ago, preeisely after the International Organization of Consumers Union was established on April 1, 1960. In Indonesia, the consumer protection movement can be regarded as the echo of that development. Yayasan Lembaga Konsumen Indonesia (YLKI), the institution, which is generally regarded as the pioneer of consumer advocacy in Indonesia, was founded on May 11, 1973. We may say that the YLKI is quite responsive because this non-governmental organization came out earlier than the 1978 UN Resolution No.2111 concerning consumer protection.

Although the YLKI emerged only in 1973, we cannot say that before that there were no policies from our government to protect consumers' rights. Some legislative products, even those dating from the colonialization period, had already mentioned several principles of consumer rights. Naturally, neither in quantity nor quality were these regulations powerful enough to attain a satisfactory result compared to the progress achieved in developed countries, such as the United States. However, the mere existence of those regulations is not sufficient to capture the full attention of the public to consumers' rights. Consumer movement is a massive action that demands the serious political will of all people involved to realize those rights.

In order to know further about consumer protection, this article will briefly describe the development of consumerism in Indonesia. For comparison, we need to have a grasp of the consumerism background in the United States, because the development of this movement mostly took place in that country. Afterwards, we will take a look at the prospects of Indonesian consumerism in the framework of our current legal development.

II. CONSUMERISM IN THE UNITED STATES

The history of consumerism in the United States is quite complicated. David A. Rice distinguishes its history into three parts, namely: (1) regulation of feudal market transactions, (2) legal tradition of caveat emptor, (3) twentieth-century judicial limitation of caveat emptor, (4) development of public regulation, and (5) contemporary developments in public regulation.[3]

The starting point of the American feudal market transactions was triggered in England, before it was brought into North America by the first inhabitants. Ancient markets were subject to ecclesiastical oversight and as early as 1256, direct governmental regulation of the market was instituted in

[3] *Ibid.*, pp. 3-10.

England in the form of the assizes of bread and ale.[4] More generally, local customary courts punished breaches of the standards of fair price, honest measure and good quality as public wrongs. Later with the establishment of local fairs as the first organized markets of feudal England, there came into being the merchant's courts — those of piepoudre or "dusty feet" — to hear and provide swift justice in matters concerning local fair transactions.[5]

From the beginning, public law developed faster than private law. Offences of market town and local fairs were treated as public rather than private wrongs. This trend could be seen from the Statute of Apprentices of 1563, along with the ever widening grants of patents and monopolies. The express purpose of this trend was to curb fraud and establish standards of quality and dealing, while central public regulation of trade grew increasingly pervasive.

Although the development of private law might be considered too slow, however it continued to grow. The first private case between Chandler and Lopus was held in 1603.[6] The decision of this case stated that the seller's bare declaration that a valueless rock was a bezoar stone was not sufficient, without proof of intent to make a warranty and knowledge of untruth, to sustain an action in a case for deceit. It was not until late in the eighteenth century that English judicial decisions clearly recognized that a misrepresentation of fact in a transaction of sale might be actionable in either contract or tort.[7]

The gradual progress of consumer protection in English feudal market transactions took place in North America. Although some actions to promote consumers' rights had been initiated, consumerism was not popular yet. The philosophy of seller-buyer relations was still pro-seller, so called "caveat emptor" or "let the buyer beware."[8]

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[4] Hamilton, "The Ancient Maxim Caveat Emptor," *Yale Law Journal*, 30/1931, pp. 1163-1178.

[5] David A. Rice, *Op. Cit.*, p. 3.

[6] In Indonesia, that year was the beginning of the Dutch colonialization period, initiated by the establishment of the VOC.

[7] David A. Rice, *Op. Cit.*

[8] According to Black's Law Dictionary, this maxim summarizes their rule that a purchaser must examine, judge, and test for himself. Nowadays, this maxim is more applicable to judicial sales, auctions, and the like, than to sales of consumer goods where strict liability, warranty, and other consumer protection law protect the consumer-buyer. The complete maxim is "Caveat emptor, qui ignorare non debuit good jus alienum emit," meaning "Let a purchaser beware, who ought not to be ignorant that he is purchasing the rights of another." *See*, H.C. Black, *Black's Law Dictionary*, Ed. 6, St. Paul: West Publishing Co., 1990, p. 222.

The atmosphere of the above-mentioned maxim was totally supported by Adam Smith's *The Wealth of Nations*. This book, published in England in 1776, strengthened the belief of individualism and the principle of *laissez-faire*. The spirit was also expressed in the Declaration of Independence in America. Both legislative and judicial authorities were reluctant to regulate or to involve themselves in the affairs and dealings of parties in economic transactions.

This spirit or principle was maintained by many courts' decisions. One of the most popular ones was found in an 1864 opinion of the Illinois Supreme Court in the case of Miller v. Craig, sustaining the defense of "puffing" or "seller's talk" in an action for deceit. The opinion said:[9]

> The appellant, in endeavoring to effect a trade with appellee, used no more artifice than is usual and allowable when a party wishes to dispose of property . . . He has a right to exalt the value of his own property to the highest point of his antagonist's credulity may bear, and depreciate that of the opposing party. This is the daily practice, and no one has ever suggested that such beautiful assertions or highly exaggerated descriptions amounted to fraudulent misrepresentation.

In 1872, Congress proved its first interest in consumer problems when it enacted a law to protect consumers from frauds involving the use of the US mails.[10]

At the turn of the nineteenth century, the caveat emptor legal tradition began to be limited. The public became gradually more and more aware of the injustice of this concept. It means this concept was increasingly rejected. This condition was spurred mostly by the new emphasis on production and the development of rail transportation which resulted in an increase in both the availability and the variety of consumer goods. This led to changes in methods and patterns for distributions of goods. Producers of goods became more remote from ultimate purchasers (end-consumers) and advertising of goods became more common. So, consumers had more choices than before; and intelligent consumers might hope that the sellers'market began to undergo a dramatic change to the buyers' market.

But, this change was not able to go far enough. The era of industrialism had just begun and consumers had to pay very highly for its impact. Environmental damages, such as air and water pollution spread out everywhere. Industrialists found every possible opportunity to decrease the costs of production, including salaries for employees. On the other hand,

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[9] David A. Rice, *Op. Cit.*, p. 4.
[10] Arch. W. Troelstrup, *The Consumer in American Society: Personal and Family Finance*, Ed. 5, New York: McGraw-Hill, 1974, p. 560.

they tried to sell the products as expensively as they could. Some industrialists who produced the same goods or services, might create a cartel and dictate the market. They could set up the form of contract so called "standard contract." Consumers were given just two choices, take the contract or leave it! But, if they rejected, they failed to find other better alternatives.

In that era, the principle of the privity of contract[11] was strongly applicable. Justice Cardozo was the first man who tried to strike down this principle. In the case of McPherson v. Buick Motor Co. in 1916, he extended the right to sue for injuries or damages to third party beneficiaries and even innocent bystanders, although there was no contractual relationships between the parties.

Also in the field of standard contract, there was a significant development. In 1960s there were several court decisions giving more rights to consumers. Two landmark decisions were made in the cases of Henningsen v. Bloomfield Motors, Inc. (1960), and Unico v. Owen (1967).

During the first half of the twentieth century, the development of public regulation on consumer protection also emerged. The landmark decision in this area was taken by Justice Holmes in Lochner v. New York (1905). He wrote:[12]

> This case is decided upon an economic theory which a large part of the country does not entertain . . . But a constitution is not intended to embody a particular economic theory, whether for paternalism and the organic relation of the citizen to the State or of *laissez faire*. It is made for people of fundamentally differing views, and the accident of finding certain opinions natural and familiar or novel and shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

One year after the decision came out, Congress enacted the first act of food and drug. This law appeared as a response to the increasing pressure brought to a head by the publication of "The Jungle." This novel written by Upton Sinclair tells us about the scandal involving the sale of formaldehyde-treated meat to the US Army. According to Rice, this act was not successful. It was largely unenforced and then seriously weakened by another decision

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[11] This principle means that connection or relationship which exits between two or more contracting parties. It was traditionally essential to the maintenance of an action on any contract that there should subsist such privity between the plaintiff and defendant in respect of the matter sued on. However, the absence of privity as a defense in actions for damages in contract and tort actions is generally no longer viable with the enactment acceptance by states of doctrine of strict liability.

[12] David A. Rice., *Op. Cit.*, p. 6.

of the Supreme Court. It was not strengthened until 1938 after the successors to the mantle of Sinclair and another major tragedy again shocked and outraged the public and public officials with a horror series of the food and drug industries' practices.[13]

In 1916, actually there was a court decision that supported consumer rights. The decision in the case of McPherson v. Buick Motor Company was the first to strike down the barriers that the requirement of privity of contract posed to recovery of loss caused by the negligence of manufacturers with whom consumers had not directly dealt.

Five years before the landmark decision of the McPherson v. Buick Motor Company, little consumer protection legislation was actually enacted, and it was only at the state government level. It was about advertising abuses and dishonest sales practices, and soon it became a model state law. Eventually, almost all states enacted the statute in its original or modified form.

By adopting many states' false advertising statutes, Congress established a federal law (the Federal Trade Commission Act) in 1914, and an agency that became the basis for national policing of advertising practices. The agency called the Federal Trade Commission (FTC) is sufficiently independent to administer the law.

As mentioned before, in 1872 Congress evidenced its first interest in consumer problem by enacting the law of the US mails. Since then, legislation and executive action in the name of consumer protection has produced a sprawling, uncoordinated maze of laws and agencies, frequently working at cross purposes and usually cursed by a too-little-too-late timidity. Thus consumer interests have not been really served.[14]

In the era of 1960s, there were various significant happenings regarding consumer protection. The late President John. F. Kennedy emphasized his special "consumer message" to Congress in 1962. He said:[15]

> The march of technology has increased the difficulties of the consumer along with his opportunity. . . . Rational choice between and among [products] would require the skills of the amateur electrician, mechanic, chemist, toxicologist, dietician, and mathematician. . . . Marketing is increasingly impersonal. Consumer choice is influenced by mass advertising utilizing highly developed arts of persuasion. The consumer typically cannot know whether drug preparations meet minimum standards

[13] *Ibid.*

[14] Arch. W. Troelstrup, *Op. Cit.*

[15] Message from the President of the United States Relative to Consumers' Protection and Interest Program, 87th Cong., 2d Sess, House of Representatives, Doc. No. 364, Washington D.C., March 15, 1962.

of safety, quality, and efficacy. He usually does not know how much he pays for credit, whether one prepared food has more nutritional value than another; whether the performance of a product will in fact meet his needs; or whether the "large economy size" is really a bargain. Additional legislative and administrative action is required, however, if the Federal government is to meet its responsibility to consumer in the exercise of their rights.

These rights include: (1) the right to safety — to be protected against the marketing of goods that are hazardous to health or life; (2) the right to be informed — to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, and other practices, and to be given the facts needed to make informed choices; (3) the right to choose — to be assured, wherever possible, access to a variety of products and services at competitive prices. And in those industries in which competition is not workable and government regulation is substituted, there should be assurance of satisfactory quality and service at fair price; (4) the right to be heard — to be assured that consumer interests will receive full and sympathetic consideration in the formulation of Government policy, and fair and expeditious treatment in administrative tribunals.

The Kennedy's message became the basis for the enactment of several significant new consumer laws and of amendments to other laws already on the books, such as Fair Packaging and Labeling Act, Consumer Credit Protection Act, Wholesome Meat Act, Fire Safety Act, Hazardous Products Commission Act, and Flammable Fabrics Act.

Although the FTC has done many things, it is not sufficient to meet all consumers' needs. That is why Congress established several other agencies, such as the Interstate Commerce Commission (affecting railroad rates) and the Federal Power Commission (in setting gas rates). Nowadays there are approximately 50 federal agencies and bureaus performing some 200 or 300 functions affecting the consumer. Among the federal agencies directly concerned with consumer affairs, for example, are the Federal Housing Administration, the Federal Power Commission, the Food and Drug Administration, the Interstate Commerce Commission, the National Bureau of Standards, the National Commission on Consumer Finance, the National Highway Safety Bureau, the National Transportation and Safety Board, the Office of Consumer Services, the President's Committee on Consumer Interests, and the Securities and Exchange Commission.

On February 5, 1964, President Johnson sent another historic message to Congress in which he reiterated the four consumer rights proclaimed by President Kennedy. Two years afterwards, President Johnson transmitted a message to Congress requesting effective laws on lending charges and packaging practices. Congress passed legislation on these matters in 1967 and 1968.

On February 6, 1968, President Johnson presented the fourth of these messages on the American consumer, enumerating the steps taken to achieve present progress and setting forth a new program for 1968. President Johnson said that this was not a partisan program or a business program or a labor program. It was a "program for all of us — all 200 million Americans."[16]

President Nixon sent a message to Congress in October 1969 on the protection of interests of consumers in which he stated that "consumerism . . . is a healthy development that is here to stay." The consumers' rights he enumerated includes:

1. The right to make intelligent choice among products and services.
2. The right to accurate information.
3. The right to expect that seller has considered the health and safety of the buyer.
4. The right to register his dissatisfaction, and have his complaint heard and weighed.

The progress of consumer rights in the United Stated stimulated consumer movement in other countries to declare additional protection for consumer. In the fall of 1969, the Congress of the International Co-operative Alliance in London adopted an international declaration of consumers' rights which affirms that consumers have a right to:

1. A reasonable standard of nutrition, clothing, and housing.
2. Adequate standards of safety and a healthy environment free from pollution.
3. Access to relevant information on goods and services and to education on consumer topics.
4. Influence in economic life and democratic participation in its control.

III. CONSUMERISM IN INDONESIA

Referring to the development of consumerism movement in the United Stated, there is no doubt that we must learn a lot from its progress. Although there are many obstacles, the current conditions of consumers' rights in that country are better than the rights in our country. As mentioned by Erna Witoelar, the former Head of the International Organization of Consumers Union (IOCU), Indonesia has been lagging behind in the consumer protection awareness. Not only if it is compared to such developed

[16] Arch. W. Troelstrup, *Op. Cit.*, p. 24.

countries, as the United States, England, and the Netherlands, but also when compared to developing countries like Malaysia, the Philippines, Thailand, and Singapore.[17]

From historical perspective, consumerism has become more popular in Indonesian only since 25 years ago, when the Yayasan Lembaga Konsumen Indonesia (YLKI) was established.[18] This foundation was founded by a group of people who were concerned about consumers' interests. This small group, led by Lasmidjah Hardi, was originally formed with the purpose to promote Indonesian products. In order to achieve this goal, they held a fair, called Pekan Swa Karya. The result of this activity gave them the idea to establish the YLKI, one of the leading non-governmental organizations in Indonesia afterwards.

According to the philosophy of the establishment of this private institution, it would work together with both the government and producers. YLKI tried to keep this philosophy, and at the beginning it proved this principle by holding several promotion fairs, such as Pekan Promosi Swakarya I and II. Based on this good cooperation, Kartiona Sujono Prawirabisma, an activist of the YLKI, performed the YLKI's motto, that is "To protect consumers, to maintain producers' prestige, and to help the government."

In its development, this foundation fails to keep its neutrality. It becomes more and more unpopular with both producers and government officers. The members of the YLKI frequently team up together with other non-governmental organizations to criticize the government policies and producers' leading position.

The working areas of the YLKI tend to be larger and larger. "Consumer protection" can mean everything related to consumers' needs, including human rights and labors' claims, the very sensitive issues that are still viewed as not yet quite acceptable for this country. People tend to say that the YLKI always comes forward to support consumers because it deems that consumers are always right.

This phenomenon is very understandable. The YLKI is an independent institution and its consumer testing is undertaken without government subsidy. So, the YLKI can recruit technical personnel to give impartial assessments of products bought on the open market. That is why many

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[17] "Tertinggal Perlindungan bagi Konsumen di Indonesia," *Kompas daily*, September 5, 1994, p. 8.

[18] On the Notarial deed No. 26 of the Notary G.H.S Lumban Tobing, it was stated that the date of the YLKI's establishment is on May 11, 1973.

testing publications of the YLKI give the impression as not to maintain producers' prestige and help the government anymore.

On many occasions, the YLKI urges the government to enact the Consumer Protection Law, to ban monopoly, cartel, trust, and other unfair business practices. It also takes many cases regarding the infringements of consumers' rights to lawsuits. Some of them are the class-action damages claims. These actions increasingly make the YLKI an "opponent" in face of producers and the government. In many cases, our government sides too much with producers who have committed public wrongs, especially when they are the owners of state-owned companies.

Ministry of Trade (before it was unified into the Ministry of Industry) and Law Faculty of the University of Indonesia drew up an academic draft of the Consumer Protection Act in 1992. This draft has been discussed among scholars and activists, including the YLKI members. It has already been submitted to the State Secretary, but the Secretary handed it to the Ministry of Justice. The Ministry was reluctant to accept this draft, and ask the other ministries to handle it. But unfortunately, no ministry is willing to be bothered with it.

So far, we have only heard that the House of Representatives has a plan to discuss the Consumer Protection Act put forward since 10 years ago. It is still very doubtful whether the House will make a new version of the bill or just pass the previous draft.

Anyway, the existence of the YLKI has stirred up the awareness of many Indonesian consumers, especially those coming from the lower-middle class. The YLKI is the most important agent of the consumer protection development in Indonesia in the last 20 years.

IV. THE PROSPECT OF CONSUMERISM RELATED TO THE INDONESIAN LEGAL DEVELOPMENT

Nowadays, the spirit of consumerism has been accepted and supported internationally. In 1978 the United Nations passed its Resolution No. 2111, and seven year later it proceeded Resolution No. 39/248 regarding Guidelines for Consumer Protection. This movement also has a reputable organization called the International Organization of Consumers Union (IOCU) whose more than 203 members (at the end of 1995) spread out in more than 80 countries. In 1996 this organization changed its name to Consumers International (CI). On March 15, every year, this organization celebrates "consumer day" and decides a central theme to gain more attention for consumers' interests.

The members of CI can utilize this organization's networks such as in the field of information exchange and joint testing. Some networks that can be used by the CI members are as follows: International Baby Food Action Network (IBFAN), Health Action International (HAI), Action for Rational Drugs in Asia (ARDA), Pesticide Action Network (PAN), Food Irradiation Network (FIN), Action Group Halt Advertising and Sales Tobacco (AGHAST), No MSG Please, Consumer Educators Network (CEN), Consumer Interpol, Consumer Information and Documentation Center (CIDOC), Book Publisher Network (Book-Link), and International Toxic Waste Action Network (ITWAN).[19]

In addition, consumers will have more opportunities to be heard. Revolutionary progress in communication technology gives much help to consumers to assert and proclaim their needs in easier, cheaper, and more effective ways. Consumerism incidents in one place can be observed very easily from other remote places because of television net- works, and even internets. It means the influences of consumerism are getting more and more felt..

Globalization, especially in politics and economy, contributes a lot to the popularity of consumerism. In this era, consumers of a certain country belong to those of other countries as well. Producers will not only pay attention to consumers' needs in several developed countries, but also in every developing country where they sell their products. They do not want to discriminate consumers because the current international producers are willing to standardize their products. Getting quality standard from the International Standard Organization (ISO), for instance, is very highly recommended now.

Economic globalization means global competition, and also expresses the wishes of global consumers. The former State Minister of Population and Environment, Emil Salim, said that global consumers are defined by some indicators, i.e., (1) global production, (2) financial globalization, (3) globalization in trading, and (4) globalization in technology.[20] The indicators of the global consumers mentioned by Emil Salim are very interesting. We can use those indicators to explain the prospect of consumerism in Indonesia related to the national legal development as follows.

Firstly, it is global production. It means that the contents of a certain product will not only come from one country, but also from various countries. To build the "Toyota" cars in Indonesia, for illustration, the

[19] C. Tantry D. & Sularsi, *Gerakan Organisasi Konsumen*, Jakarta: YLKI & The Asia Foundation, 1995, pp. 5--9.

[20] "Gerakan Konsumen Global Tidak Bisa Dihentikan," *Kompas daily*, April 6, 1994, p. 8.

Indonesian assembler can import the components from Japan, Malaysia, Singapore, or Australia depending upon in which country the costs can be reduced at the most competitive rate. In legal optic, this situation makes the positions of the parties very interesting. Consumer may charge the "Toyota" manufacture with infringing its product liability, but afterwards, the indicted party (Toyota) will involve another party from whom it imports the component. The effect is that the disputes of consumerism will take on more international dimension in coming years.

Secondly, it is financial globalization. Money has not just one flag anymore. It is like water which goes to every place where investors can take benefits. Many big and international enterprises come to the third world and invest their capitals. They set up their ventures based on their philosophy of business which sometimes is not compatible with the society interests of the home country. But, as multinational companies, they are very influential and have a lot of access to the decision-makers. Consumers will have more obstacles in dealing with such multinational companies than with small and national enterprises. Surely, we may say that as multinational companies, they will make any effort to maintain their good images, and it means that they will always take consumers' needs into account. To some extent that statement is probably right, but a good image can be created in many ways. Especially if those companies are able to influence the mass media, they can bring the public opinions to their own necessities.

Thirdly, it is globalization in trading. The world is getting borderless and emerging as one big market. Markets are still the places where prices rise and fall in response to changing demands and supplies. We may assume that individual freedom choice is central to our economic way of life, but the freedom is limited by laws and by social and moral pressures for the protection of the individual and society. The conception of the "individual and society" protection here is not based on an inward look into a certain country. That is why at present there is an international pressure to apply national and international trading policies equally. One country cannot discriminate a foreign enterprise simply because of its nationality. This trend, for example, can be recognized from non-tariff barrier policies administered by the World Trade Organization (WTO). Thus, consumerism is getting broader in concept and sometimes it can be contradictory. We may state that a particular policy is against the interests of Indonesian consumers, but if we look at it from another perspective of global consumers, the concept will be totally different. We can say that both of them are still consumerism conceptions, but which one is the proper basis?

Fourthly, it is globalization in technology. This phenomenon will change the pattern of production. Modern technology shifts conventional technology because of efficiency and effectiveness. Small and domestic business enterprises that cannot adapt to this technology will collapse imminently. The technology will generate mass production, and will continuously be developed. On the one hand, this phenomenon will help people, because the things they need are available everywhere. On the other hand, this phenomenon is not as simple as we imagine. Not every new and developing technology is quite safe. Sometimes, the effect cannot be detected or else it is ignored because of a lack of evidence to stop its use. Consumers realize that they cannot prove the hazard of such a technology even though they can feel its negative impact.

Indonesian legal development is chiefly thought in terms of legal modernization by ways of unification and codification of laws. But, the terms "unification" and "codification" themselves are interpreted in a number of ways. Accordingly, it is very difficult to understand how to unify and codify the existing laws in Indonesia into one system which we now call Indonesian national system of law. To know better about this matter, we can refer to some legal thoughts of Indonesian legal development.

According to Sunarjati Hartono, there are three different "schools" of legal thinking in Indonesia at present.[21]

First, those who identify *adat* (customary) law with our national law. This school says that our national law should grow by itself. All laws which are not in accordance with our adat legal thinking cannot be classified as national law, and should therefore be deemed invalid. The difficulty in putting this theory into practice is that there is not just one Indonesian adat law. There are several adat regions and each of them is based on very different principles.[22] The adherence of adat laws as our national law would therefore increase the plurality of laws already existing in Indonesia, instead of promoting the unification of laws.

If we apply this school of thinking to promote the consumer protection law in Indonesia, we tend to be pessimistic because there is no sufficient evidence that consumer protection law has existed in our adat law. The concept of adat law relies on the customs of native Indonesian societies as primary legal resources. By looking at the historical perspective of consumerism in Indonesia, we know that the awareness of consumer rights

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[21] *See*: C.F.G. Sunarjati Hartono, *In Search of New Legal Principles*, Bandung: Binacipta, 1982, pp. 25–26.

[22] One prominent scholar of Indonesian adat law, van Vollenhoven, distinguishes 19 adat law circles or areas in Indonesia.

has been popularized since the establishment of YLKI in 1973. Such a very short period cannot rapidly change the custom (read: culture or tradition) of Indonesian people in order that they can become fully aware of their fundamental rights as consumers.

Second, those who agree with the old colonial pattern of plurality of laws based on Article 163 of the Netherlands-Indies "Constitution," e.g. that any legal development should follow the Dutch or Continental pattern, founded on the traditional ties between the Indonesian and Dutch/Continental legal systems. Choice of law can only lead to one direction, e.g. in the direction of Western (read: Dutch) law. Nowadays there is a tendency by adopting American or British legal principles, due to the fact that more and more legal documents are currently written in the English language.

This second school of thought is taken up by the majority of prominent legal practitioners in Indonesia. According to this legal thinking, in the era of globalization, it will be time-consuming if we always formulate Indonesian national legal system based on our customs. The needs for modernization, particularly in business activities, are changing very fast. In order to meet these requirements, we must be flexible. We can learn from the experiences of other nations, because some of the legal ideas may be very basic and universal.

To some extent, our government seems to agree with this school of thought. The existence of the ELIPS[23] Project probably can explain this phenomenon. Much Indonesian legislation regarding economic fields has been created or initiated by this project.

The third school of thinking was introduced by Mochtar Kusuma-Atmadja. He advocated that as a tool or means to support national social development (social engineering), our national legal development should not a priori follow the traditional adat legal thinking or the Western one. Based on extensive legal researches and international comparative studies: Indonesians should pragmatically and consciously determine (led by what Indonesians regard as our ultimate social goals), which part of our law may be unified and in what direction, and which part should remain (at least for the time being) within the realm of adat law. All of which should be examined in the light of the state philosophy (Pancasila) and the Constitution of 1945.

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[23] ELIPS is an abbreviation of Economic Law and Improved Procurement System. This project is fully funded by Indonesian government and the U.S. Agency for International Development (USAID). The main purpose of this project is to reform Indonesian economic law.

According to Soetandyo Wignjosoebroto, actually Mochtar is not the only Indonesian scholar introducing this idea. He says that he himself has also discussed this legal thinking in his writing entitled: "Some Notes on the Socio-Legal Research and Training in Indonesian Universities" (1978).[24] But, there is no doubt that Mochtar was the first outstanding and influential Indonesian lawyer who made this idea acceptable in the Guidelines of State Policy (*Garis-garis Besar Haluan Negara*) of 1973.

It can be inferred from these three schools of legal thinking that the last one introduced by Mochtar is the ideal one. It is not easy to adjust the living laws to become legislation, but still it is worth trying. It needs a lot of legal researches, and consequently, the government must allocate a great amount of money to carry out these jobs. When Mochtar became Minister of Justice, he reorganized the National Legal Development Board (*Badan* [previously: *Lembaga*] *Pembinaan Hukum Nasional*). Later, he asked this board to conduct a huge program of legal researches and seminars. The results of this program were published and some of them have been used as legal text-books in many law schools. Unfortunately, the implication of the program is not quite influential in the reform of Indonesian national legal system. At present, almost every sector or unit in the regional and central levels of government can produce certain legislation. Hence, the National Legal Development Board cannot play a very significant role to build the Indonesian national legal system in accordance with Mochtar's idea.

The above-mentioned description also reveals why the government never submit the Bill of Consumer Protection Act to the House of Representatives. As it has been mentioned before in this article, in 1992 Ministry of Trade (before it was unified into the Ministry of Industry) and Law Faculty of the University of Indonesia drew up an academic draft of the Consumer Protection Act. This draft actually was based on some researches conducted by the National Legal Development Board and some of the drafts men were scholars who involved themselves in many programs at this board.

Although the draft had been submitted to the State Secretary and afterwards the Secretary handed it to the Ministry of Justice again, this ministry itself could not handle it. The Ministry of Justice had to give it to another ministry which was engaged in the area of that law. It turned out, unfortunately, no ministry was willing to accept this bill, and therefore it was submitted to the House of Representatives.

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[24] Soetandyo Wignjosoebroto, *Dari Hukum Kolonial ke Hukum Nasional: Dinamika Sosial Politik dalam Perkembangan Hukum di Indonesia*, Jakarta: RajaGrafindo Persada, 1994, p. 233.

But, in the wake of the impact of globalization on the Indonesian legal system, there would be a certain amount of blending or mixing of international and national law. Various areas of national law are internationalizing, or various fields of international law being nationalized. It means, if the principles of consumer protection law have been accepted internationally, this phenomenon automatically will force the national law to adopt these standards. The global issues such as green products, international quality of standards, and buyer's markets, will become more and more popular and powerful for national law, including the Indonesian national legal system.

In the coming decades many consumer rights are will surely be regarded as human rights. This is a reason why nowadays, besides considering our past experiences based on Indonesian historical perspective, we should take the international trends into account, especially in the legal arenas of business and industry. By taking all things into consideration, we might say that the existence of the Consumer Protection Act in Indonesia seems quite promising indeed in the near future.