

At present, the economy and trade development have created positive and negative impacts for Indonesian consumers, especially the loss caused by hidden defect goods of product. This progress needs law instruments as a means of protecting, anticipating, and settling any challenges. Therefore, it is necessary to create: the philosophical basis of consumer protection towards the loss as the result of hidden defect goods of product based on liability of fault principles and without fault principles /strict liability, the urgent of strict liability principle of produces towards the loss as the result of hidden defect goods of product based on the Law of the Republic of Indonesia Number 8-1999 on Consumer Protection, and the concept of radical law in arranges the strict liability principle in the frame of law system of consumer protection in Indonesia. In the future, it needs concrete theory, values, principles, and norm of law based on Pancasila, the Constitution 1945 that need amendment of the Law of the Republic of Indonesia Number 8-1999 and its length by forming the law about the strict liability of produces to the loss as the result of hidden defect goods of product.

The Law of Strict Liability for Produces



Dr. Holijah, S.H., M.H.

The Law of Strict Liability for Produces in Indonesia

Strict Liability of Produces



Dr. Holijah, S.H., M.H. is a Business Law lecturer in the Faculty of Sharia and Law at Raden Fatah State Islamic University Palembang - Indonesia. She is an alumna of Doctoral Degree of Faculty of Law Science Universitas Sriwijaya (2015). She wrote in several national and international journals and attended professional training at home and abroad.



Holijah, S.H., M.H.



Dr. Holijah, S.H., M.H.

The Law of Strict Liability for Produces in Indonesia

FOR AUTHOR USE ONLY

FOR AUTHOR USE ONLY

Dr. Holijah, S.H., M.H.

The Law of Strict Liability for Produces in Indonesia

Strict Liability of Produces

FOR AUTHOR USE ONLY

LAP LAMBERT Academic Publishing

Imprint

Any brand names and product names mentioned in this book are subject to trademark, brand or patent protection and are trademarks or registered trademarks of their respective holders. The use of brand names, product names, common names, trade names, product descriptions etc. even without a particular marking in this work is in no way to be construed to mean that such names may be regarded as unrestricted in respect of trademark and brand protection legislation and could thus be used by anyone.

Cover image: www.ingimage.com

Publisher:

LAP LAMBERT Academic Publishing

is a trademark of

International Book Market Service Ltd., member of OmniScriptum Publishing Group

17 Meldrum Street, Beau Bassin 71504, Mauritius

Printed at: see last page

ISBN: 978-620-3-57440-1

Copyright © Dr. Holijah, S.H., M.H.

Copyright © 2021 International Book Market Service Ltd., member of OmniScriptum Publishing Group

FOR AUTHOR USE ONLY

The Law of Strict Liability for Produces in Indonesia

By

Dr. HOLIJAH, S.H., M.H

FOR AUTHOR USE ONLY

AUTHOR PREFACE

Alhamdulillahirobil'alamin, the author gives thanks to Allah SWT, the Lord of the Universe who has given His blessings and graces, so that the author can complete the writing of this dissertation research entitled "THE STRICT LIABILITY OF SUBJECTIVE RESPONSIVE *ASCETICISM* OF PRODUCES: Radical Concept Based on New Law Paradigm as Alternative Efforts to Protect Consumers Toward Losses Due to Hidden Defective Products in Indonesia". This dissertation research is a final project which is one of the requirements for obtaining a Doctor of Law degree, Faculty of Law, Sriwijaya University.

Furthermore, the author express the contents of this dissertation into a writing concept of a book in the form of a dissertation summary, of which several sections are edited. The summary which is the content of the results of the dissertation research on the same title which is one of the requirements for obtaining a Doctorate Degree (Dr) in Law at the Faculty of Law, Sriwijaya University is maintained at the Open Academic Session led by the Dean of the Faculty of Law, Sriwijaya University on Thursday, date 22, January, 2015, at 09.00 WIB. in the Doctoral Meeting Room, Faculty of Law, Sriwijaya University. For this reason, the writer wishes based on the title of the dissertation, it becomes the book title, "The Law of Strict Liability for Produces in Indonesia".

Then, in this scientific paper tries to provide an overview of the existence of opportunities for the application and development of the strict liability of produces toward produces' products that contain defects, especially products with hidden defects to claim compensation through the development of the tort law whose basis for prosecution is based on default, negligence and an element of error, which consumers feel does not provide a balance of justice. The cause is that currently consumers cannot do much to protect themselves from the risk of serious loss or damage due to defective product caused by the increasing complexity of the product, because it is driven by sophisticated production processes, the growth of mass production, the more advanced the marketing system in the era of globalization and free trade today. For this reason, it is necessary to develop the tort law-risk of produces as a theory and concept of product liability in Indonesia that become a new legal paradigm for the protection of Indonesian consumers in the future.

With all the humility of the writer, on this occasion she would like to express her deepest gratitude to the highly educated Prof. Dr. Joni Emirzon, SH., M.Hum as the Promoter who has provided guidance, direction to be able to complete the writing of this research and study well, and is highly educated Dr. Muhammad Syaifuddin, SH., M.Hum as Co.Promotor who has provided patient guidance to writers who are full of limitations. May Allah SWT always bestow His mercy on you and your family.

Furthermore, the author with all humility expresses her appreciation and gratitude to all parties who have contributed either directly or indirectly, individuals or institutions, so that they can deliver the author at the completion stage of writing a

dissertation and completing studies in the Doctor of Law Program at Faculty of Law, Sriwijaya University, namely to:

1. Prof. Dr. Hj. Badia Parizade, S.E., M.B.A., as the Rector of Sriwijaya University along with the Vice Chancellor and her staffs who have received and provided opportunities for writers to attend the education of the Doctor of Law Program in the Faculty of Law, Sriwijaya University.
2. Prof. Amzulian Rifai, S.H., LL.M., Ph.D., as the Dean of the Faculty of Law, Sriwijaya University and as a lecturer of material at the Sriwijaya Law Faculty of Law Doctoral Program who has provided his knowledge and expertise to writers, as well as a nurturing and caring attitude which motivates the writer to always be enthusiastic in learning and hasten the completion of dissertation and study writing.
3. Prof. Dr. H. Joni Emirzon, S.H., M. Hum., as the Head of the Doctor of Law Program at the Faculty of Law, Sriwijaya University and also as a Promoter and lecturer of material at the Doctor of Law Program at the Faculty of Law, Sriwijaya University as well as a Professor who has recommended together with Dr. Muhammad Sayfuddin, S.H., M.Hum., To be able to attend the 2011 Sriwijaya University Law Faculty Doctor of Law Program. Thank you so much for all your help, sincerity, attention, direction and guidance. The author prays that all of this will become the deeds of worship for you and your family with Allah SWT.
4. Dr. Febrian, S.H., MS., as the Head of the Master's Study Program at the Faculty of Law, Sriwijaya University and as a lecturer in the subject matter of the Doctor of Law Science Program at the Faculty of Law, Sriwijaya University who has provided his knowledge and expertise, thus delivering the author to be able to complete the study.
5. Dr. Muhammad Syaifuddin, S.H., M.Hum., as Co. Promoters and lecturers of the material for the Doctoral Program of Law, Faculty of Law, Sriwijaya University who with great patience, skill in guiding and motivating the author to be able to complete the writing of this dissertation with all the maximum available capabilities, thus delivering the author to be able to complete the writing of the dissertation and further studies which will become writer's motivation to develop science well in the future. Hopefully all this goodness will become the deeds of worship for you and your family.
6. Dr. Zen Zanibar MZ, SH., M.H., as a lecturer teaching material at the Doctor of Law Program at the Faculty of Law, Sriwijaya University and as a writer examiner starting from the proposal stage to the final dissertation exam. Thank you for all the sciences, guidance, parental attention given to the author, so that it can deliver the author to complete the writing of a dissertation and study.
7. Dr. Happy Warsito, S.H., M.Sc., as a lecturer in the subject matter of the Law Faculty Doctor of Law and examiner, starting from the qualification stage to the final dissertation exam, which has provided his knowledge and expertise and always motivates with great care to deliver the author to complete the writing of a dissertation and study.

8. Dr. Firman Muntaqo, S.H., M.Hum., as a lecturer of material in the Doctoral Program of Law, Faculty of Law, Sriwijaya University and at the same time as a writer examiner starting from the qualification exam stage to the end of the dissertation exam which has provided science and guidance and direction in strengthening the weight of the quality of this dissertation writing, so as to deliver the author to be able to complete the dissertation writing and studies.
9. Dr. Ridwan, S.H., M. Hum., as a lecturer at the Doctor of Law Program at the Faculty of Law, Sriwijaya University and as a writer examiner starting from the stage of research progress to the final dissertation exam which has provided knowledge and guided and provided valuable input for writers in completing the dissertation writing which led the author to complete the study.
10. The entire board of examiners for this dissertation's open examination who are honorable and highly educated, Prof. Dr. I Gede AB Wiranata, S.H., M.H., (External examiner), Prof. Dr. Amzulian Rifai, S.H., LL.M., Ph.D., Dr. Zen Zanibar, MZ, S.H., M.H., Dr. Happy Warsito, S.H., M.Sc., Dr. Firman Muntaqo, S.H., M.Hum., Dr. Ridwan, S.H., M. Hum., Prof. Dr. Joni Emirzon, S.H., M.Hum (Promoter) dan Dr. Muhammad Syaifuddin, S.H., M.Hum (Co. Promoter).
11. Prof. Dr. I Gede AB Wiranata, S.H., M.H., as an external examiner at the stage of the proposal examination, final dissertation examination, open dissertation examination, which although long distances always provide motivation for the completion of the dissertation writing to the author, thus delivering the author to complete the study. Thank you for all the kindness and attention that has been given to the author, may God always protect you and your family.
12. The entire staff of lecturers who teach the subject of Doctoral Program in Law, Faculty of Law, Sriwijaya University who have provided their knowledge and all administrative staff at the Doctor of Law Program at the Faculty of Law, Sriwijaya University who always assist writers in the process of completing dissertation writing and completing studies.
13. Prof. Dr. H. Aflatun Mukhtar, MA, as Rector of UIN Raden Fatah Palembang. Thank you very much for the opportunity given to the author to be able to continue his education in the Doctor of Law Program at the Faculty of Law, Sriwijaya University.
14. Prof. Dr. Romli, M.Ag, as Dean of the Sharia Faculty of UIN Raden Fatah Palembang, previously held by Prof. Dr. Duski Ibrahim. M.Ag., who has provided the opportunity and motivation to continue the author education in the Doctor of Law program at the Faculty of Law, Sriwijaya University.
15. Ir. H. Alex Noerdin, as the Governor of South Sumatra who has provided educational assistance to the author through the Regional Partnership Program education funds, so that the author can complete her studies.
16. Sharia Faculty Lecturer colleagues of UIN Raden Fatah Palembang and employees, who have encouraged the author while studying at the Doctor of Law Program at the Faculty of Law, Sriwijaya University.

17. My fellow students, especially the 2011 batch of Doctoral Program in Law, Faculty of Law, Sriwijaya University who cannot be mentioned one by one, thank you for your friendship and attention. I hope the togetherness so far will continue.
18. I would like to express my gratitude to H. Ariansyah B. Dali, S.H., MH as Judge of the Central Jakarta High Court, H. M. Daud Ahmad, S.H., M.H., as High Judge of Palembang, Drs. Sutriatno, M.M., as the Head of Administration. Ditj. Consumer Protection Ministry of Trade of the Republic of Indonesia., Eko Purnomo, S.Kom., M.T., as Head of Sub. Sector of Standard Infrastructure Development - Center for Standardization of the Ministry of Industry, Sri Sularsi, S.H., as the Head of Complaints and Law at the South Jakarta Branch of the Indonesian Consumers Foundation, who has participated in providing advice and data needed in an effort to finalize this dissertation.
19. Both of my parents, the late mother of Ibunda Hj. Zakiyah, whose advice is a torch of encouragement in living and living, ayahanda Ismail A. Hamid, AMa.Pd whose passion is a torch for self-confidence in life. My two in-laws, the late of ayahanda Subarie and ibunda Manuya, are grateful for their prayers and support. My beloved husband, Drs. M. Rizal, M.H., thanks for the opportunity, prayer, enthusiasm, material support and understanding, so that it really helps the author to complete the writing of a dissertation and study summary. My two children, Badru Zaman Muhammad, both of you are the spirit and strength to keep fighting, never give up in learning and improving themselves in this life and life. My dear brothers, Rusdiana, Yusuf Zais, SKM and their wife, Nurleman Zais, SPd., Along with my wife, Mursalin Zais, SE and wife, Gogor Mustawa Zais, SE, Ibunda Hasanah who has accompanied my father and sisters-in-law and relatives in Koming and Pagar Alam.
20. The publisher who has given the opportunity to publish a summary of my dissertation and also to Yuli Asmala Kurnia, S.Pd., M.A., who has helped a lot in the publication of this book.

Akhirulkalam, I hope Allah SWT will reward all of the goodness of this dissertation, also for all the examiners of this dissertation and all those who have provided assistance, encouragement and prayers for the smooth running of this dissertation. Furthermore, despite the many imperfections of this dissertation, the writer still hopes that this dissertation will be useful and can help other researchers to develop further research.

Palembang, Februari 2021
Author,

Holijah

TABLE OF CONTENTS

TITLE PAGE	i
AUTHOR PREFACE.....	ii
TABLE OF CONTENTS.....	vi
LIST OF CHARTS	xi
LIST OF TABLES	xi
SUMMARY	
A. Background.....	1
B. Research of the Problem.....	14
C. Research Objectives and Benefits.....	14
1. Research Objectives.....	14
2. Research Benefits	15
D. Theoretical Frameworks.....	17
1. <i>Grand Theory</i>	17
a. Theory of Justice.....	17
b. The Theory of Purpose and Function of the State (Strengthened by The Welfare Law State Theory).....	19
2. <i>Middle Range Theory</i>	21
a. Legal Protection Theory (Strengthened by Legal Theory of Means of Changing Society).....	21
b. Legal System Theory.....	23
3. <i>Applied Theory</i>	25
a. Theory of Tort Law in Defective Products (Strengthened by the Values and Principles of economic law).....	25
b. Product Liability Theory (Strengthened by The Strict Liability Theory).....	28
E. Research Originality.....	32
F. Research Methods	34
1. Research Types.....	34
2. Research Approach.....	35
3. Types and Sources of Legal Materials.....	39
4. Collection and Classification of Research Materials.....	41
5. Processing Research Materials	42
6. The Analyze of Research Materials	43
7. Interpretation and Construction of Research Materials with Conclusions Determination	43
G. The Philosophical Basis of Consumer Protection Demands Compensation Because of Hidden Defect Goods of Product from Tort of Produces Based on The Principle of Liability for Negligence and Strict Liability Principle.....	45
1. The Philosophy of Consumer Protection toward Losses Due to Hidden Defect Goods of Product	47
a. The Philosophical Value of Consumer Protection toward Losses Due to Hidden Defective Products	

in Demanding Compensation.....	47
1) The Value of Humanity in the Philosophy of Consumer Protection Demanding Compensation Due to Hidden Defect Goods of Product.....	47
2) The Value of Justice and Virtue in the Philosophy of Consumers Protection in Demanding Compensation Due to Hidden Defect Goods of Product	48
3) Value of Legal Certainty in the Philosophy of Consumers Protection in Demanding Compensation Due to Hidden Defective Products.....	49
2. Principles of Economic Law and Consumers Protection Law toward Consumers Protection of Hidden Defect Goods of Product.....	50
a. The Synergy of Legal Principles to Protect Consumers Based on Tort on Negligence Liability Principle.....	52
1) Interpretation of Legal Synergy of the Meaning of the Principle of Balance with the Principle of Justice	52
2) Interpretation of Legal Synergy of the Meaning of the Principle of Accuracy with the Principle of Security and Consumer Safety	53
b. The Synergy of Legal Principles to Protect Consumers Based on Tort on Strict Liability Principle.....	54
1) Interpretation of the Legal Synergy of the Meaning of the Principle of Honesty with the Principle of Benefit.....	54
2) Interpretation of Legal Synergy of the Meaning of the Principle of Accountability with the Principle of Legal Certainty	55
3. The Principle of Liability for the Tort of Produces Due to Hidden Defect Goods of Product.....	57
a. The Tort of Produces in the Hidden Defect Goods of Product Liability Based on Negligence.....	57
b. The Tort of Produces in the Hidden Defect Goods of Product Liability Based on the Strict Liability.....	58
H. The Urgency of the Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product Based on Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.....	59
1. The Importance Meaning of the Strict Liability Principle of Produces Due to Hidden Defect Goods of Product from the Consumers' Perspectives.....	59
a. Avoiding Potential Risks from the Produces' Products.....	59
b. Guarantee form in the form of Compensation for Loss Due to Producers' Products.....	60
c. Avoiding Chained Claims Processes in the Processes of Consumer Dispute Settlement.....	60
2. The Importance Meaning of the Strict Liability Principle of	

Produces Due to Hidden Defective Products from the Produces' Perspectives.....	62
a. The means to Force for Liability of Product Quality from Produces.....	62
b. Protecting the Rights of Honest Produces.....	63
3. The Complexity of the Existence of the Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.....	65
a. The Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product Based on General Legal Norms.....	65
b. The Strict Liability Principle of Produces toward Losses Due to Hidden Defective Products Based on Blurred Legal Norms.....	66
c. The Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product Based on Contradictory Legal Norms.....	69
4. Implications of Concretization Problems of Legal Norms of the Application of the Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Products.....	72
a. Implications of Legal Norms of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection toward Radical Concepts of the Strict Liability of Produces Due to Losses of Hidden Defect Goods of Product.....	72
b. Legal Implications of General, Blurred, and Contradictory Legal Norms of the Strict Liability Principle of Produces for toward Losses Due to Hidden Defect Goods of Product.....	73
I. Radical Concept of Regulating the Strict Liability Principles for Toward Losses Due to Hidden Defect Goods of Product Based on the New Legal Paradigm in the Indonesian Consumer Protection Law System in the Future.....	74
1. The Development of the Legal Concept of Tort Law-The Risk of Subjective Responsive <i>Asceticism</i> of Produces as a Radical Concept of the Strict Liability of Produces of Hidden Defect Goods of Product.....	76
a. The ideals of Pancasila Law as a Philosophical Basis for the Development of a Radical Concept of the Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product.....	85
b. Socio-Cultural Principles in the Development of a Legal System of the the Strict Liability of Hidden Defective Products of Produces.....	87
2. Pancasila and the 1945 Constitution of the Republic of Indonesia as the Basis for Harmonization of Regulating Principles of the Strict Liability Principles of Hidden Defect Goods of Product.....	89

a.	Value Harmonization in the Development of Radical Concepts of the Strict Liability Principles of Hidden Defect Goods of Product of Produces.....	89
b.	Harmonization of Legal Rules in Formation the Laws of the Strict Liability Principle of Hidden Defect Goods of Products of Produces.....	90
3.	Regulation Comparison of the Strict Liability of Produces Toward Losses Due to Hidden Defect Goods of Product.....	92
a.	Legal Expectations Taken from the Regulation Derived of the Strict Liability Principle of Produces of Hidden Defect Goods of Products for Indonesia.....	92
b.	Relevance, Correlation of Picked Legal Expectations to Support the Application of the Strict Liability Principles of Produces of Hidden Defect Goods of Products.....	93
4.	Supporting Factors of the Implementation of the Strict Liability Principle of Hidden Defect Goods of Products.....	96
a.	Internal Factors Supporting the Implementation of the Strict Liability of Hidden Defect Goods of Product.....	96
b.	External Factors Supporting the Implementation of the Strict Liability Principle of Hidden Defect Goods of Products.....	97
c.	The generalization concerning the Implementation Completion the Strict Liability Principle of Hidden Defect Goods of Product.....	97
5.	Realization of the Legal Principles Formation of the Development of Radical Concepts of the Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Product.....	100
a.	Correlation of Legal Principles and Legal Rules in the Development of the Strict Liability of Produces.....	100
b.	Formulation of Basic Legal Principles of the Development of Radical Concepts of the Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Product in the Future.....	101
6.	Normative concretization of the Strict Liability principles of Produces from Losses Due to Hidden Defec Goods of Product within the framework of the Consumer Protection Legal System in Indonesia.....	102
7.	Research Implications.....	126
a.	Philosophical Implications	126
b.	Theoretical Implications.....	127
1)	Development of the Theory Strict Liability of Subjective Responsive <i>Asceticism</i> of Produces.....	127
2)	Postulates Theory of the Strict Liability of Subjective Responsive <i>Asceticism</i> of Produces	130
3)	The Essence of the Meaning of the Strict Liability of Subjective Responsive <i>Asceticism</i> Theory of Produces.....	132
4)	The Function of the Strict Liability of Subjective Responsive <i>Asceticism</i> Theory of Produces.....	132
5)	The Scope of the Strict Liability of Subjective Responsive	

Asceticism Theory of Produces.....	133
6) The Plot of Theory Development of the Strict Liability of Subjective Responsive <i>Asceticism</i> Theory of Produces.....	133
8. Practice Implications	134
a. Completion and Formation of Positive Laws of the Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Product.....	134
b. Arrangement of the Easy Access of Options for consumer dispute Settlement processes of Hidden Defect Goods of Product.....	135
c. Preparation of Smart Consumers through Consumers Education of Hidden Defect Goods of Product.....	143
d. Preparation of Regional Market Mechanism Supervision Strategies for the Protection of Indonesian Goods and Consumers in the ASEAN Trade Area and Global Countries.....	143
9. Comparison of Legal Concepts of the Strict Liability and Subjective Responsive Asceticism of Produces and the Law of Produces' Liability Currently	145
J. Closing.....	146
1. Conclusion	146
2. Suggestions and Recommendations	147
a) Suggestion	147
b) Recommendations	149
K. REFERENCES.....	152
AUTHOR'S CV	162

LIST OF CHARTS

No :	CONCERNING	Page
1	The Framework of Complexity of Regulating the Radical Concept of the Strict Liability of Produces Based on New Legal Paradigm as an Alternative to Consumer Protection Efforts toward Toward Losses Due to Hidden Defect Goods of Product in Indonesia	13
2	The Theoretical Framework That Underlies the Radical Concept of Strict Liability of produces based on the New Legal Paradigm as an Alternative To Consumer Protection Efforts toward Loss because of Hidden Defect Goods of Product in Indonesia	31
3	Establishment of a Small Claim Court for Small-Scale Consumer Dispute Settlement in Indonesia	142

LIST OF TABLES

No:	CONCERNING	Page
1	Previous Research Results, Flow and Substance, Current Research Findings	32
2	Consumer Complaint Data in YLKI in 2012	45
3	Amendments Concretization to the Implicit Article of the Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection	103
3.	Implications of Legal Normative of the Long-Term Strict Liability of Subjective Responsive <i>Asceticism</i> of Produces in the Act of the Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Product in the future	107
4	Explanation of the Normative Implications concerning the Law of the Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Product in the future	108
5	The Values and Principles Comparison in Law Number 8 1999 concerning Consumer Protection with the Legal Concept of the Strict Liability of Subjective Responsive <i>Asceticism</i> of Produces	145

A. Background

Consumer protection is a consequence of the globalization era and free trade with advances in technology and industry. The main key to consumer protection is between consumers and produces who need each other. The development of industrial products on one side and the other side requires protection toward consumers.

The Constitution of the Republic of Indonesia Number 8 in 1999 concerning Consumer Protection, stated that the purpose of consumer protection is to realize the balance of protection of the interest of consumers and produces,¹ to create a healthy economy to achieve the philosophy of national development based on *Pancasila* and *Undang-Undang Dasar 1945* in Indonesia during the economic democracy era² which is by Indonesian Economic System in Article 33 *Undang-Undang Dasar 1945* the Republic of Indonesia as the main article and completeness in Article 27 paragraph (2), Article 28 H and Article 34 *Undang-Undang Dasar 1945* the Republic of Indonesia (Indonesian Constitution 1945) which makes justice is as the main objective because justice is the point of refusal, process and goal and by the Opening of the 4th Paragraph of *Undang-Undang Dasar 1945* of the Republic of Indonesia.

Development³ in the economic sector, especially in industry field and national trade without being balanced with development in the law field realized

¹ In the legal definition, generally what the meaning of interest is a demand that is expected to be done. Interest essentially contains power guaranteed and protected by law in its implementation. Sudikno Mertokusumo, 1986, *Mengenal Hukum: Suatu Pengantar*, Liberty, Yogyakarta, p. 40

² In the General Explanation of Law No. 8 in 1999 about Consumer Protection, formulate it by referring to the philosophy of national development that national development includes the development of law and provides protection to consumers is to build a fully Indonesian human being based on the philosophy of the Republic of Indonesia, namely the basis of state *Pancasila* and the 1945 Constitution of the Republic of Indonesia., Janus Sidabalok, 2006, *Hukum Perlindungan Konsumen di Indonesia* PT. Citra Aditya Bakti, Bandung, p. 309.

³ Development is an effort to transform society from a condition to a better condition. This opinion was expressed by Wardiman Djojonegoro, when he was the keynote speaker at the 3rd Congress of ISKI (Indonesian Communication Scholars Association) in Yogyakarta., Yahya M. Abdul Azis, Ed., 1998, *Visi Global Antisipasi Indonesia Memasuki Abad ke-21*, Pustaka Pelajar, Yogyakarta. Meanwhile, national development is an effort to improve the quality of people and people in Indonesia that is carried out sustainably based on national capabilities by utilizing science and technology, as well as paying attention to the challenge of global development., *Tap. MPR No. IV / MPR / 1999*.

or not it turns out to bring other consequences and can harm the society⁴, although the law⁵ is not a goal but as a means to achieve goals⁶. The growth and development in the industry on one side have a positive impact, including the availability of sufficient needs, better quality, and there is an alternative option for consumers to fulfill their needs. However, on the other sides, there is a negative impact, namely the impact of using technology itself as well as produces that affect the consumers' community⁷.

This symptom was also supported by Indonesia's participation in free trade which was formally marked by the ratification of the Agreement Establishing the World Trade Organization (WTO) through Law No. 7 in 1994. The implications of Indonesia's participation in free trade have had consequences, among others, of increasingly diverse products (product diversification). Product diversification benefits consumers because consumers' needs for desired goods can fulfill and the freedom to choose different types and quality of the product by the wishes and capabilities of consumers. On the other hand, consumers become the object of business activity to reap the maximum profit so that there is a gap in the existence of information and consumer responsiveness⁸. Another negative result of free trade is to add to the gap between developed and periphery countries⁹. The negative impact of free trade is also supported by the current globalization era

⁴ The existence of the law according to Fitzgerald is aimed at integrating, coordinating and protecting various interests in society., J.P. Fitzgerald, in Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Image of Aditya Bakti, Bandung, p. 100. 53.

⁵ The law, according to Harold J. Berman is "one of the deepest concerns of all civilized everywhere" which is the deepest problem for civilized human beings everywhere, while Dennis Liyod mentions, that the law is "one of the great civilizing force in human society.,Abdurrahman, 1979, *Aneka Masalah Hukum dalam Pembangunan di Indonesia*, Alumni, Bandung, p. 35

⁶ Sudikno Mertokusumo, 2003, *Mengenal Hukum*, Fifth Printing, Liberty, Yogyakarta, pp. 40 and 77., Law does not only serve as a regulation but also as a system of guidelines for the behavior of life, namely as a unity consisting of elements that interact and cooperate in achieving its goals., Salviona Tri P., *Positivisme Hukum dan Legalitas Hukum*, published in the book *Beberapa Persoalan dalam Ilmu Hukum Kontemporer*, Ed. Jimly Asshiddiqie, 2003, Center for The Study of Constitutional Law Faculty of Law, University of Indonesia, Jakarta, p. 193. Law as a means of achieving national goals / ideals, namely as much as the maximum for the prosperity of the people., Firman Muntaqo, 2012, *Win-Win Solution sebagai Prinsip Pemanfaatan Tanah dalam Investasi Bidang Perkebunan yang Mensejahterakan Rakyat*, Lecture Materials Doctoral Program Law Graduate Program Sriwijaya University, Palembang, p. 3.

⁷ Janus Sidabalok, 2006, *Op. Cit.*, p. 2.

⁸ Celina Tri Siwi Kristiyanti, 2008, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, p. 4.

⁹ Celina Tri Siwi Kristiyanti, 2008, *Ibid.*, p. 5.

¹⁰and which is marked if the world becomes borderless world¹¹, consequently providing opportunities as well as challenges for all countries¹².

The facts about the development and economic development, especially about products in the globalization era¹³ and free trade above shows that although the free dynamics of the market economy to be developed and intervention is still needed. The intervention of the country is in the form of regulation that will be very influential in the process of economic development and control of the free market itself.

Controlling and providing legal devices or frameworks related to all economic transactions are one of the roles of the government in economic development is as a supervisor/referee. This supervision and legal device are very important, because it will provide legal certainty of economy, security, and justice¹⁴. A country is required to expand responsibility to the socio-economic problems facing the people. Consumer loss is actually a public loss in the sense of also a loss to the country, because every human being is a consumer in a country indirectly so that consumer losses due to the actions of producers cause country

¹⁰ Abid al Jabiri, stated the understanding that globalization is the elimination of the borders of countries and nations in the economic field and let all issues related to economic issues move freely in the world without any obstacles covering all corners of the world., Abdul Manan, 2006 *Aspek-Aspek Pengubah Hukum*, Kencana Prenada Media, Jakarta, p. 57-58.

¹¹ Keniche Ohmae, stated that the current globalization in the 21st adab has caused the boundaries of the nation state has been reduced what he called, "the end of a nation state"., Keniche Ohmae, 1995, *The End of Nation-State, the Rise of Regional Economics*, The Free Press, New York, pp. 1-5., in Ridwan, 2011 *Hukum yang Kosmopolitan Abad 21: Dalam Perlindungan dan Penegakan Hak Asasi Manusia*, Badan Penerbit Universitas Diponegoro, Semarang, p. 23

¹² A change faced by humans, in which the human-inhabited world has transformed into a global village with a single economy economic system" The word moves from trade countries to a single economy. One Economy one market place"., John Naisbitt, 1990, *Megatren 2000*, Pan Books, Sidgwick & Jackson, Published Ingreat Britain Ltd. p. 2.

¹³ Definition of globalization itself is not really an easy matter, even until now there is no universal definition agreed to put the meaning of globalization., Ahmad Erani Yustika and Ahmad Yani, 2003, *Hukum Arbitrase*, Cet. 3rd, PT. Raja Grafindo Persada, Jakarta, p. 1., Globalization is now a new manifestation of the development of the most advanced capitalism namely neoliberals (neoliberals) ruler of the world economic system., Hendrik Budi Untung, 2010, *Hukum Investasi*, Sinar Grafika, Jakarta, p. V-VI., Neoliberalism contains a set of economic policies referring to the thinking of the capitalist economic father Adam Smith., Mansour Fakhri, 2003, *Babas dari Neoliberalisme*, INSIST Press, Yogyakarta, p. 54.

¹⁴ The rules are necessary for the business, such as protecting the workforce, consumers, as well as the environment. Then the rules relating to the exchange rate system, international trade traffic, or those relating to honest competition, are also part of the government's frequently defined., Stiglitz in Edy SuandiHamid and MB. Hendrie Anto, 2000, *Ekonomi Indonesia Memasuki Milenium II*, UII Press, Yogyakarta, p. 82-83

losses which will affect the country's economy in general. However, there is a tendency of government attitude that protect the interest of industry as an essential factor in the development of a developing country, so that consumers desperately need advocacy assistance, efforts to resolve disputes indemnity properly, and protection efforts to anticipate the dangers of harm caused by-products that harm consumers¹⁵, because the main consumer protection problem is actually protecting the interest of every human being, in general, that must be protected by the country.

The significance of consumer protection is through the regulation of consumer rights in Indonesia¹⁶. In line with the importance of protecting various consumer interests, it needs to be protected from consumer rights as included in United Nations (*Perserikatan Bangsa-Bangsa /PBB*) No. 39/248 in 1985 on Consumer Protection, namely:

1. Protection of consumers from problems to their health, safety, and security;
2. Promotion and protection of social-economic interests of consumers;
3. The availability of adequate information for consumers to provide their ability and to make the right choice according to their personal desires and needs;
4. Consumer education;
5. Availability of effective indemnity efforts;
6. The freedom to create such consumer organizations or organizations to give their opinions in decision-making processes that concern their interests¹⁷.

¹⁵ 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*, Volume 14 No. 1, January 2014, Law Faculty Jenderal Soedirman University, Purwokerto Central Java, p. 175-187.

¹⁶ AA Dani Saliswijaya, 2004, 2004, *Himpunan Peraturan Tentang Class Action*, PT. Gramedia Pusaka Utama, Jakarta, p. 93., Matters relating to consumers, such as: (1) Consumers are any person who obtains goods or services used for a particular purpose; (2) Consumers shall include any person who obtains goods/services for use with the particular purpose of making other goods/services for trading (commercial purposes); (3) The end consumer shall be any natural person who obtains and uses goods and/or services to fulfil his/her personal, family and/or household needs and not to be re-traded., Az. Nasution, 1995, *Konsumen dan Hukum*, Pusaka Sinar Harapan, Jakarta. p. 25

¹⁷ Abdul Halim Barkatullah, 2011, *Hak-Hak Konsumen*, Nusamedia, Bandung, p. 32-33.

The content of the 1985 United Nations Resolution above was also in line with the role of the Consumer Institution Foundation established on May 11, 1973, namely:

1. Protect consumers;
2. Maintaining the dignity of produces;
3. Helping the government succeed in national development¹⁸

The negative impact of free trade in the globalization era requires Indonesia to be able to capture or describe the hidden messages of the free trade era. The negative consequences of free trade have shown that the need for a new legal paradigm, especially economic law in today's development is urgent¹⁹. Indonesia is required to establish national law that must be able to play a role in streamlining legal traffic at the international level²⁰, one of which is through the development and application of new legal paradigms in terms of protection. Hidden defect goods of product is a form of damage to products called defective product.

There is a fact that there are provisions either derived from the legal culture of other nations or international conventions that can be utilized in the framework of modernization of national law in which adopting the *Anglo Saxon* legal system that offers class action and legal standing²¹. Therefore, if the law and justice of the people want other then based on Article 5 paragraph (1) of the Law

¹⁸Yusuf Shofie, 2008, *Kapita Selekta Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, Bandung, p. 120.

¹⁹Economic Law is legislation related to economic life and is public, is public because the legislation that is private with economic life has been accommodated in the Civil Law and Trade Law., Sumantoro, 1986, *Hukum Ekonomi*, University of Indonesia Press, Jakarta, p. 343., According to Sunaryati Hartono, economic law is all rules and legal thinking on ways of improving and developing economic life and ways of retrieving economic development results fairly and evenly by human rights. , Sunaryati Hartono was a quote from Sanusi Bintang and Dahlan, 2000, *Pokok-Pokok Ekonomi dan Bisnis*, Citra Aditya Bakti, Bandung, p. 3.

²⁰J. Widiyantoro, *Product Liability dan Perlindungan Konsumen diIndonesia*, Justitia Et Pax, Juli-Agustus 1998, p. 5.

²¹ Law of the Republic of Indonesia Number 32 the year 1999 concerning Environmental Protection and Management, Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry and The Republic of Indonesia Law Number 8 Year 1999 concerning Consumer Protection, in which adopted the *Anglo Saxon* legal system which offers class action and legal standing. Holijah, 2011, *Hak Gugat Organisasi Penggugat dalam Gugatan Perwakilan Kelompok sebagai Upaya Perlindungan Konsumen* , PPs UNSRI, Palembang, p. Viii

of the Republic of Indonesia Number 48 the Year 2009 about the Power of Justice which states "Judges and Constitutional Judges must dig, follow and understand the legal values that live in a society".

In line with the thought of the radical concept of applying the principle of strict liability needs to be regulated and the realization of legal responsibility of the product responsibilities of produces or called product liability, so that the law can be used as a means to achieve the state's goal to protect consumer rights as the rights of all human beings. Inflicting harm on consumers means also inflicting public harm on them for violating the public interest of all human beings. Consumer protection is part of the overall development that a cause the State cannot avoid the obligation to protect consumers, although seen from the consumer relationship individually is a civil relationship.

The existence of the public interest that must be protected, causing the actions and consequences of the actions of produces in providing products that affect the economic welfare of the community and this country raises the public responsibility of produces in addition to civil liability to consumers individually. Based on the principles of responsibility in general, the principles of liability in law can be distinguished as follows

1. Liability based on fault, a common principle in the field of civil law and criminal law, which states that a person will be able to be held accountable in general if there is an element of wrongdoing;
2. Presumption of liability, the principle that the defendant is always held responsible until he can prove his innocence, meaning that the burden of proof is on the defendant;
3. Presumption of nonliability is known only in a very limited scope of consumer transactions and is no longer applied absolutely and leads to the principle of liability with restrictions on indemnity money;
4. Strict liability, the principle of liability that determines fault is not a decisive factor;
5. Limitation of liability, the principle of liability that is usually combined with other principles of liability²².

²² Shidarta, 2000, *Hukum Perlindungan Konsumen*, Grasindo, Jakarta, p. 59.

The five principles of liability above, the selection and determination of the system of accountability and proof cannot be separated from various rational and wise considerations by the circumstances and development of the society that follows. This is an effort to ensure the rights of consumers and produces.

Alternatives to initiating legal responsibilities in consumer protection are indispensable. One of the international legal institutions that need to be considered in revising and establishing national economic law is the application of the principle of strict liability, which does not base blame on produces with the burden of proof on consumers²³. Although the discourse on the necessity of the concept of law the application of the principle of strict liability, it is not easy. However, there are already several laws in Indonesia that have expressly applied the principle of strict liability there are three (3) namely the Law of the Republic of Indonesia Number 32 the Year 2009 on Environmental Protection and Management, The Law of the Republic of Indonesia Number 5 the Year 1983 on The Exclusive Economic Zone of Indonesia and the Law of the Republic of Indonesia Number 10 the Year 1997 on Nuclear.

Philosophically, there is a fundamental difference between product liability based on the principle of strict liability and product liability based on fault. The philosophy of law is carried out through several Articles of the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection. The principle of strict liability does not establish errors as factors that determine and use the reverse evidentiary system, while the principle of responsibility based on errors, the main factor is the existence of errors and the burden of proof is on consumers (plaintiffs) that will be urgently burdensome because of the weak position of consumers. It should be (*das sollen*) produces and consumers have the same legal position at the same level in harmony and harmony, in the context of national development to realize the development of Indonesian people completely based on the philosophy of the Republic of Indonesia as the background of the

²³ C.J Miller, 1986, **Comparative Product Liability**, The British Institute of International and Comparative Law, p. 31

objectives of the implementation of consumer protection²⁴, for the fulfillment of consumer rights to safety, even health and clean environment of products of produces instead of obtaining hidden defect goods of product that harm consumers.

The level of practice and reality (*das sein*) is not easy to do, often between the interests of produces and consumers there is a conflict to apply strict liability or liability based non fault, especially due to the existence of hidden defect goods of products that have been fatal to consumers as a result of the attitude of businesses in reaping the maximum profit at the expense of consumers to obtain their rights as consumers. The concept of stricts liability for hidden defect goods of product in the Indonesian legal system is contained in Article 1504 of the Civil Code (*Burgerlijke Wetboek/KUHPerdata*)²⁵.

The rationale of the discourse of the radical concept of the application of strict liability asceticism²⁶ responsive subjective produces based on the principle of strict liability as the liability of produces (product liability), especially the hidden defect goods of product in this research development is through the Doctrine Of Tort (*PMH*) in consumer cases that are generally present in Article 1365 *KUH Perdata*. Until now there is no legal theory that becomes a reference for the application of the principle of strict liability in Indonesia, especially the

²⁴ According to point a to g UUPK, the background of consumer protection is based on motives that can be explained as follows: (1) Realizing economic democracy; (2) Encourage diversification of goods and/or services products as a means of improving the welfare of the wider community in the era of globalization and ensuring its availability; (3) Economic globalization shall still ensure the improvement of the welfare of the wider community as well as the certainty of quality, quantity and security of goods and/or services; (4) Increasing the dignity and dignity of consumers through the law (UUPK) to realize the balance of protection of consumers and businesses in a healthy economy., Yusuf Shofie, 2008, *Kapita Selekta Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, Bandung, p. 2006

²⁵ Article 1504 of the Civil Code reads: "The seller is obliged to bear against hidden defects in the product sold, which makes the product unable for the intended use, or thus reduces the use of it so that, if the buyer knows the defect, he/she will not buy the product at all, or will not buy it other than at a lower price"., R. Subekti and R. Tjitrosudibio, 2009, *Kitab Undang-Undang Hukum Perdata* Cet. Tenth, PT. Dian Rakyat, Jakarta, p. 374.

²⁶ Asceticism derived from the Greek word *asketikos* means the party that performs, Purnadi Purbacaraka and Soerjono Soekanto, 1985, Ikhtiar Antinomi: *Aliran Filsafat sebagai Landasan Filsafat Hukum*, CV. Rajawali, Jakarta, p. 25.

strict liability of produces to losses due to hidden defect of goods of product. This effort is made to expedite the legal process at the international level²⁷.

With the existence of the principle of strict liability of produces/strict product liability has not been applied in general in the Indonesian legal system, it is necessary to do regularization²⁸. Although Indonesia adheres to the Continental European legal system, in other dimensions also adopts the legal system known in the *Anglo Saxon* legal system, the recognition of religious law especially Islamic Law²⁹ and the recognition to put customary law³⁰ in formulating the national legal system, including in the discourse of the establishment of legal strict liability of produces due to the loss of hidden defect goods of product in the future.

The two main causes in the United States were the first application of the principle of strict liability, which was then followed by another court namely the *Spince Vs Three Rivers Builders and Mansory Supply Inc.* 1959 United States case³¹. The second case is the case of *Greenman v Yuba Power Product Inc.*, in

²⁷ J. Widijantoro, **Op. Cit.**, p. 5.

²⁸ According to The Dictionary of Indonesian Language, the meaning of regularization is "ordinary, prevalent, orderly and symmetrical.", Ministry of Education and Culture, 1997, **Kamus Besar Bahasa Indonesia**, Balai Pustaka, Jakarta p. 827.

²⁹ In Islamic Law there is a term known as Hak Khiyar (Hak Opsi), namely "the right to choose or make a choice between two things for the buyer and the seller, whether the sale and purchase agreement will be continued or canceled". M. Abdul Mujeib (et.al), 1994, **Kamus Istilah Fiqih**, PT. Firdaus Library, Cet. 1st, Jakarta, p. 162. Regarding the product of hidden defects including the type khimar 'disgrace, namely "the right to cancel or hold a trade for both parties who have a deal if there is a defect in the object sold and the defect is not known to the owner when the contract takes place, Abdul Rahman Ghazaly, et al, 2010, **Fiqh Muamalat**, Kencana Prenada Media Group, Jakarta, p. 100

³⁰ The habits of Indonesian people who tend to view external factors greatly influence and weaken the ability of the community to overcome its problems in overcoming local problems., Yusuf Shofie, 2003, **Penyelesaian Sengketa Konsumen menurut UUPK**, Citra Aditya Bakti, Jakarta, p. 22., While the court has limitations in solving local problems that are not known in customs. Traditional culture that emphasizes community, kinship, harmony, encourages the resolution of non-formal disputes, which is perceived to be more efficient and effectiveness that equally strongly encourages the resolution of business disputes through formal channels (courts)., Erman Rajagukguk, **Budaya Hukum dan Penyelesaian Sengketa di Luar Pengadilan**, PPs-UII, Vol. 2 N0.4, October 2000, Yogyakarta, p.7., Daniel S.Lev. Institute of Justice and Legal Culture, in Daniel S.Lev, 1990, **Hukum dan Politik di Indonesia**, Cet I, LP3ES, pp. 164-166.

³¹ The Supreme Court of Michigan, ruled that the owner of the house that collapsed due to the cracking of the beam obtained/obtained compensation from the maker of the beams without having to prove the contents of the contract and prove the fault of the manufacturer or any party., D.L. Dann, 1972, **Strict Liability In the USA**, in *Aviation Product and Grounding Liability Symposium*, The Royal Acronautical Society, London, p. 15., H. E Saifullah, **Responsibility of the Most Beautiful Manufacturer due to the Law resulting from Products on the Free Market**,

which the plaintiff suffered an injury when a product in the form of a combination power tool proved defective and caused injury to the consumer³². There are several cases of consumer lawsuits in Indonesia, which there have been insistence from the consumerism³³ movement and the Indonesian Consumer Institute Foundation (YLKI)³⁴ which can be used as an example of the existence of strict liability, among which several cases can apply the principle of strict liability of produces among others: The first case, the case of LPG gas cylinder explosion type 3 kg, milk containing melamine and food products made from melamine circulating in Indonesia and cosmetic cases containing mercury³⁵

The Second Case, from the Health Legal Aid Institute, reported PT Megarsari Makmur to the Greater Jakarta Metropolitan Police on June 11, 2006. The victim was a housekeeper who experienced dizziness, nausea, and vomiting due to poisoning, after inhaling air that had just been sprayed with the mosquito repellent HIT³⁶. Other cases, including the existence of expired foods³⁷ are now

Husni Syawali and Neni Sri Imaniyati (Editor), *Hukum Perlindungan konsumen*, Mandar Maju, Bandung, 2000, p. 54.

³² Innocentius Samsul, 2004, *Konsumen: Kemungkinan Penerapan Tanggung Jawab Mutlak*, Faculty of Law Post Graduate University of Indonesia, Jakarta, p. 108.

³³ The term consumerism is not an understanding that teaches people to be consumptive. Consumerism is a movement that fights for the upheld of consumer rights, Shidarta, 2004, *Hukum Perlindungan Konsumen*, Gramedia Widiasarana Indonesia, Jakarta, p. 29.

³⁴ Yayasan Lembaga Konsumen Indonesia (YLKI) which is popularly seen as a pioneer of consumer advocacy in Indonesia was established in that period, namely May 11, 1973. This movement in Indonesia is quite responsive to the situation, even preceding the Resolution of the United Nations Economic and Social Council (ECOSOC) No. 2111 of 1978 on Consumer Protection.

³⁵ In the case of the explosion of LPG gas cylinders 3 kg from 2008 to July 2010 reached 52 cases, with the total death toll reached 30 people and 113 injured and other losses in the form of damaged houses, burned houses and damaged vehicles Yudha Nadian Nur and Dwi Wahyuniarti Prabowo, *Penerapan Prinsip Tanggung Jawab Mutlak (Strict Liability) dalam Rangka Perlindungan Konsumen*, Buletin Litbang Perdagangan, Vol. 5 No. 2, December 2011, pp. 185-188.

³⁶ PT Megarsari Makmur whose promotion as a potent and cheap anti-mosquito drug turned out to be very dangerous because not only using propoxur but also dichlovos (a chlorine derivative substance that has been banned for decades in the world) is declared to be withdrawn from circulation due to the use of active substances propoxur and dichlovos that can cause health problems to humans, while those in the factory will be destroyed, namely HIT type 2.1 A (spray type) and HIT 17 L (liquid refill), <http://idazahro.blogspot.com/2012/11/case-about-consumer-protection.html>, retrieved August 22, 2013.

³⁷ Cases due to consuming bread that is not worthy of consumption are: A total of 87 students of Puntuk Doro State Elementary School Two Pelaosan Subdistrict, Magetan Regency, East Java Tuesday (26/02/08) afternoon experienced poisoning after consuming expired bread., www.Indosiar.com was accessed on September 11, 201.

widely circulated both in the form of parcels and expired products, as well as the use of formaldehyde and borax in fish. In Cengkareng area, West Java has also been found and arrested waste meat processors³⁸. Drug and Food Control Agency (BPOM) of Republic of Indonesia No. KH.00.01.432.6147 dated November 26, 2008 stated that there are 27 types of dangerous products that are problematic, 21 types are not registered BPOM RI, 3 more types of fictitious³⁹.

The act in the field of consumer protection, definitively there is no understanding of defective products including hidden defective products and the absolute responsibility of produces, but implicitly can be interpreted from the contents of Article 19 paragraph (1) of the Law of the Republic of Indonesia Number 8 Year 199 concerning Consumer Protection, "Producers are responsible for providing compensation for damage, pollution, and/or loss of consumers due to consumer goods and/or services produced or traded". Article 28⁴⁰, which may be withdrawn a meaning that is the liability of the product in the Consumer Protection Act is to use the burden of reverse proof, hereinafter contained in Article 9 paragraph (1) letter (f), "prohibits any business to offer, manufacture, advertise an item and/or service incorrectly and/or as if the products do not contain hidden defects". Article 11 letter (b) regulates produces in the event of sales made through sales or auctions, prohibited from tricking or misleading consumers by stating such goods and/or services as if they do not contain hidden defects. Consumers who suffer consumer losses due to hidden defect goods of product may subsequently demand compensation and Article 4 letter (h), which states that consumers are entitled to compensation, compensation, and replacement if the products and/or services received are not by the agreement or as appropriate.

The existence of Article 19, Article 28, Article 9 paragraph (1) letter (f), Article 11 letter (b), Article 4 letter (h) of the Law of the Republic of Indonesia

³⁸ <http://id.scribd.com/doc/18545014/makalah-perlindungan-konsumen>, was accessed on February, 2, 2013

³⁹ Sumater Ekspres, on November, 27, 2008, pp. 1-4.

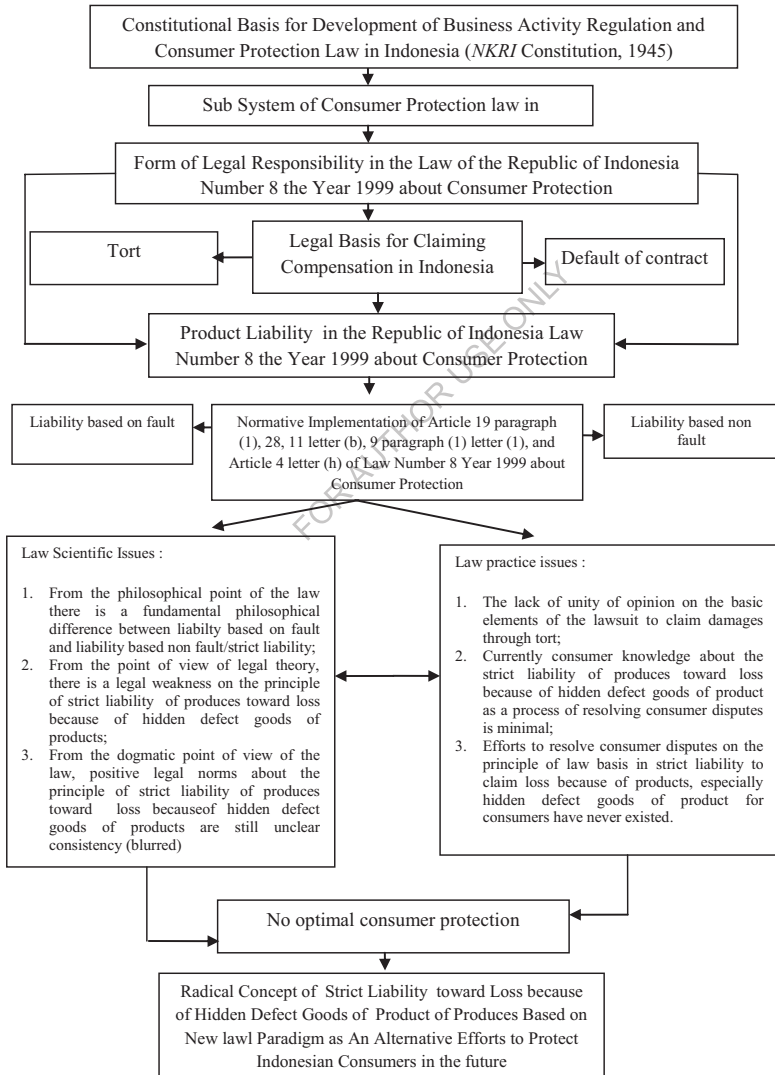
⁴⁰ The sound of Article 28 of Law Number 8 the Year 1999 concerning Consumer Protection, "the proof of the lack of "element of error" in the claim for compensation referred to Article 19, Article 22 and Article 23 is the burden and responsibility of produces"

Number 8 the year 1999 concerning Consumer Protection, is seen the arrangement of the strict liability of the product liability of produces, especially new hidden goods products implicitly not yet clearly normatively contained in the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection and also contained in several different articles. This causes the norms of the principle of liability to be unclear consistency.

FOR AUTHOR USE ONLY

Draf 1

The Framework of Complexity of Regulating the Radical Concept of the Strict Liability of Produces Based on New Legal Paradigm as an Alternative to Consumer Protection Efforts toward Toward Losses Due to Hidden Defect Goods of Product in Indonesia



B. Research of the Problem

Based on the background above, the problems that will be examined in this research as follows:

1. What is the philosophical basis of consumer protection to claim compensation due to hidden defect goods of product from tort of produces based on the liability based on fault principle and liability based non fault principle /strict liability ?
2. What is the urgency of the principle of strict liability of produces toward loss because of hidden defect goods of product as an effort to protect consumers in Indonesia based on the law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection?
3. What is the radical concept of setting in strict liability principle of produces toward loss because of hidden defect goods of product based on a new legal paradigm within the framework of Indonesia's consumer protection legal system in the future?

C. Research Objectives and Benefits

1. Research Objectives

The purpose of this research, in general, is to find out the problems of responsive discourse asceticism subjective produces and specifically by looking for answers to problems in this research, namely:

- a. To find the philosophical basis and law principle of consumer protection from hidden defect goods of product toward loss because of tort based on liability based on fault principle and liability based non fault principle /strict liability;
- b. To obtain and explain about the urgency and existence of strict liability principle of produces toward loss because of hidden defect goods of product as an effort to protect consumers in Indonesia in the globalization era based on the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection;

- c. To formulate legal theories, values, principles, and legal norms as the basis for arrangement laws on the strict liability of produces toward loss because of hidden defect goods of product based on the new legal paradigm as an alternative to future Indonesian consumer protection efforts.

2. Research Benefits

Based on the objectives of the above research, it is expected that the results of this research will provide benefits, namely:

a. Theoretical Utilitys

Theoretically, the benefits of research are expected to contribute in the form of law thinking in the philosophical, theoretical, conceptual, and dogmatic level for the development of Business Law in general, and especially about the strict liability of produces toward loss because of hidden defect goods of product as an effort to protect consumers in Indonesia.

b. Practical Utilitys

The existence of a juridical approach is developed from the doctrine of tort in product liability with strict liability principle that underlies the basic demands of product liability and becomes a source of further regulation, especially the regulation of the strict liability of produces toward loss because of hidden defect goods of product in Indonesia.

The utilitys in question are beneficial for the parties:

1. The Government of the Republic of Indonesia as the regulator, in this case, the relevant Departments, among others: the Ministry of Law and Human Rights, the Ministry of Industry, the Ministry of Trade and other relevant Ministries, can further be considered in the making and taking of better management policies regarding the implementation of produces liability in its product liability ;
2. The legislature, the House of Representatives of the Republic of Indonesia at the time will formulate principles and will become legal norms in the form of proposed legislation, repeal,

improvement, and addition of certain articles for the development of the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection;

3. Producers, prospective producers and consumers in trade transactions, can be fair to create a business climate atmosphere that supports each other because of the protection and law certainty in the trade field;
4. The government and law enforcement to be able to apply the principle of strict liability asceticism responsive subjective producers in facing free trade era, especially in ASEAN to be able to provide protection of consumers and Indonesian producers who apply liability by not require the fault as a main factor of liability of producers by accepting the exceptions determined in valid laws, in appropriateness, Indonesia business ethics and force majeure;
5. For consumers there are efforts to resolve consumer disputes through court institutions that provide a sense of justice for consumers and producers hidden defect goods of product;
6. The wider community:
 - a. For the public in general, namely in terms of the increasingly open opportunities to raise awareness of consumer law with the presence of information in obtaining its rights as consumers, with the choice of resolving consumer protection disputes through the application of the principle of strict liability;
 - b. Nongovernmental Organizations engaged in consumer protection, namely in terms of the increasingly open information to convey the alternatives of consumer protection in advocacy, compensation, and efforts to resolve consumer protection disputes appropriately consumer protection, especially the application of absolute

responsibility of produces from hidden defect goods of product, to achieve social welfare for all citizens.

c. Other Utilitys

Through this research can be used as the basis of reference in analyzing, evaluating, and finding solutions to consumer dispute cases from the development of consumer protection efforts in Indonesia in the settlement of claiming for compensation for hidden defect goods of product between produces and consumers with all aspects of the law and will foster the spirit of further research.

D. Theoretical Framework

1. Grand Theory

a. Theory of Justice

The idea of justice is a product of society, which varies depending on the condition of the community⁴¹. The characteristics or character inherent injustice is fair, legal, lawful, impartial, equal rights, worthy, morally reasonable, and morally correct⁴².

The characteristic of fairness can be seen from Aristotle's concept of justice, that justice is worthiness in human actions that emphasize balance or proportion, which is known as "fairness in human action"⁴³. In the country everything must be directed to noble ideals, in the form of goodness and goodness must be seen through justice and truth, so that the achievement of harmony and harmony⁴⁴. Justice can only be understood if it is positioned as a will to be achieved through the law, the person who ignores the law is unfair because all

⁴¹ The fact that there are values generally accepted by certain people does not contradict the subjective and relative character of the justification., Jimly Asshiddiqie and M. Ali Safa'at, 2006, *Teori Hans Kelsen tentang Hukum*, Kon-Press, Jakarta, p. 18

⁴² Bahder Johan Nasution, 2011, *Negara Hukum dan Hak Asasi Manusia*, Mandar Maju, Bandung, p. 98

⁴³ *Ibid.*, p. 97-98

⁴⁴ Plato's concept of justice emphasized harmony and harmony. When it comes to the law, justice is at the core of the principle of legal protection, because law and law must reflect a sense of justice., J. H. Rapar, 1991, *Filsafat Politik Plato*, Rajawali Press, Jakarta, p. 85

things based on the law can be considered as fair⁴⁵, "*lex injustano nest lex*", and namely unfair law is not the law⁴⁶.

According to Aristotle's theory of justice, "it is a common standard to correct every result of an act, regardless of who did it". Corrective justice is tasked with rebuilding equality⁴⁷." With the discourse on the application of the principle of strict liability of produces because of loss of products of defects hidden from the development of the doctrine of tort in the liability of the product, it is not intended to close the possibility of the opportunity of produces to escape from such responsibilities. If produces can prove the losses experienced by consumers from hidden defect goods of product is not because of the actions from produces.

Furthermore, according to John Rawls as the developer of the theory of justice, justice is equality that produces pure procedural justice. Justice is applied not to the output, but to the system, whatever the outcome of the procedure is considered definitively fair⁴⁸.

According to John Rawls' theory of substantive justice, applying the law means seeking intrinsic justice, and in carrying out substantive justice it must be supported by a sense of social justice, justice containing rights and obligations acceptable to the general public⁴⁹. John Rawls's theory of substantive justice illustrates that in the economic conditions of an unbalanced society, the law must pay attention to the "most disadvantaged" communities, as the principle of justice is to realize socioeconomic balance in society⁵⁰.

⁴⁵ Aristoteteles, states that the word fairly contains more than one meaning. Fair can bearti according to the law and what is comparable, namely the right one., S. Tasrif, 1987, *Bunga Rampai Filsafat Hukum*, Abardin, Jakarta, p. 97.

⁴⁶ Rudolf Heimenson and Tourtoulon, are just as disinganve that justice is inherent in the purpose of the law., in Bahder Johan Nasution, 2011, *Op. Cit.*, p. 98-99.

⁴⁷ Darji Darmodiharjo and Shidarta, 1999, *Pokok-pokok Filsafat Umum*, PT. Gramedia Pustaka Utama, Jakarta, p. 115., Bernard L. Tanya, et al., 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Yogyakarta, p. 45., Later, Bahder Johan Nasution, 2011, *Op. Cit.*, p. 101.

⁴⁸ Karen Leback, 1986, *Six Theories of Justice*, Augsburg Publishing House, Indianapolis, Translator Yudi Santoso, *Teori-teori keadilan*, Nusa Media, Bandung, p. 59.

⁴⁹ Morris Ginsberg, 2003, *Justice in Society*, Pondok Pendidikan, Yogyakarta, p. Vii-Viii.

⁵⁰ John Rawls in Muhammad Syaifuddin, 2008, *Perlindungan Hukum Hak Masyarakat Kurang dan Tidak Mampu atas Pelayanan Kesehatan Rumah Sakit Swasta*

The concept of justice Aristotle and John Rawls is adjusted to the concept of justice according to the view of *Pancasila*. Basically, the concept of *Pancasila* justice is social justice that gives attention to the welfare of society⁵¹. In line with the point of view of Islamic Law, which affirms the concept of philosophy justice Islamic law is the concept of *maqasid at-tasyri ' or maqasid al-syariah* from Imam Al-Haramain Al-Juwaini, which asserts that Islamic Law is prescribed to realize and maintain the benefit of mankind to realize good while avoiding evil or withdrawing benefits and rejecting *mudhorat*⁵². This *maslahat* theory is the same as the theory of social justice in law philosophy terms⁵³. However, understanding the concept of *Pancasila* justice as a philosophical system must be fully understood from the association of the five principles of *Pancasila*.

The connection of *Pancasila* with the regulation of law according to the concept of justice applied in the discourse of the application of strict liability of produces because of hidden defect goods of product is justice for every human being in a decent (reciprocal) especially in the weak by not reducing justice on other parties who are stronger (lucky), moral, providing legal certainty to achieve social justice and harmony brings good and true to the lives of all human beings.

b. The Theory of Purpose and Function of the State (Strengthened by The Welfare Law State Theory)

The purpose of the State there is a general and certain nature. The general purpose of a State, in general, is in the constitution of the State. The general purpose of the Republic of Indonesia is contained in the IV of the beginning of *Undang-Undang*

Badan Hukum Perseroan Terbatas, Dissertations, PDIH-Universitas Brawijaya, Malang, p. 21.

⁵¹ The concept of justice in *Pancasila* is formulated in the principle of just and civilized humanity. The meaning of justice in the social justice principle for all Indonesian people is mutual cooperation, balance between rights and obligations, having a social function of property rights and simple life. Indeed, the first principle of *Pancasila* is the concept of real justice. Notonagoro suggests that the One True God is the prime causa. Recognition and belief in God almighty is practiced by the Indonesian nation, for almost all Indonesians.,Notonagoro, 1959, *Pancasila Dasar Filsafat Negara*, Bina Aksara, Jakarta, p. 8.

⁵² This concept is also known as *Maslahat Theory*.The scholars conceptualize a fairly popular rule, "where there is *maslahat*, there is the law of Allah".,Muhammad Sa'id Ramdan al-Buti, 1977, *Dawabit al-Maslahah fi as-Syariah al-Islamiyah*, Mu'assasah ar-Risalah, Beirut, p.12.

⁵³ Masdar F. Mas'udi, *Meletakkan Kembali Maslahat Sebagai Acuan Syari'ah*, Journal of Science and Culture Ulumul Qur'anNo.3, Vol. VI Th. 1995, p. 97.

Dasar Republic of Indonesia year 1945. According to W. Friedman in the 1970 stated functions as follows:

1. As a State as the provider;
2. As regulator;
3. As an entrepreneur;
4. As the State as umpire⁵⁴.

The functions of State are carried out by the government derived from the power owned by the State to achieve the objectives and that is not owned by other forms of life association that is not State⁵⁵. As for the state functions referred to in the research, these are:

1. As the main executor of State objectives has been agreed by the people through the constitution;
2. Creating order by protecting law certainty in every policy making (legislator) and its implementation by law enforcement;
3. Serving all the needs of the people based on justice in creating prosperity in every aspect of life.

The linkage of the theory of State objectives and functions with the discourse on the application of the principle of strict liability of produces toward loss because of hidden defect goods of product is in achieving the philosophy of the purpose of the existence of consumer protection by the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection in the form of realizing the whole Indonesian people based on the philosophy of the Republic of Indonesia. Related to the purpose and the function to realize welfare, it is also important to explain the Theory of State Law of Welfare. The concept of the State of Indonesian law as a modern State of the law has characteristics or characteristics of Country of Welfare State, namely:

⁵⁴ Ignancy Sach, 1995, Searching for New Development Strategic Chelenges of Social Summit, in **Economic and Political Weekly**, Volume XXX, p. 93

⁵⁵ There are two kinds of characteristics of the state as a form of life association that is not owned by other forms of non-state life association, namely (1) the State has higher power than other forms of non-state life association; (2) The state has a higher position than non-state forms of association.,Hotma P.Sibuea, 2010, *Asas Negara Hukum Peraturan Kebijakan dan Asas-asas Umum Pemerintahan yang baik* S, Erlangga, Jakarta, p. 3.

1. The State prioritizes the interests of the people (welfare State);
2. The State intervenes in all fields of people's lives;
3. The State adheres to an economic system that is more led by the central government, not the liberal economy;
4. The State administers the public interest;
5. The State guarantees security in a broad sense in all areas of people's lives⁵⁶.

Based on the perspective of the theory of law, the concept of Country of Law of Indonesia shows as the concept of the welfare State (welfarestaat) Indonesia is the State of The Welfare Law of *Pancasila* in the perspective of the State of material law (State law in a broad sense), whose task is not only to maintain security and order alone but also play an active role in the welfare of its people. Countries that will enter the welfare State stage demand intervention through the establishment of laws that protect the weak will be stronger⁵⁷.

Based on the theory of the purpose and function of the State and the theory of the State welfare law *pancasila* has to do with this theory of justice to provide justice to consumers, namely the State is obliged through its purpose and function to realize the welfare of its people through legislation.

2. Middle Range Theory

a. Legal Protection Theory (Strengthened by Legal Theory of Means of Changing Society

The theory of legal protection is used as a theoretical basis for analyzing, finding, developing laws that protect consumers' right to use the law as a means of integrating and coordinating the interests of the state, consumers, and produces. Philipus M. Hadjon mentioned the government's actions about legal protection for the people, consisting of preventive legal protection and repressive legal protection⁵⁸.

⁵⁶ Bachsan Mustafa, 1988, *Pokok-Pokok Hukum Administrasi Negara*, Alumni, Bandung, p. 114.

⁵⁷ Karen S. Fishmen, 1986, *An Overview of Consumer Reporting Service*, Volume Commissions, Human Rights Quaterly Vol. 17, p. 155.

⁵⁸ Philipus M. Hadjon, 1987, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-Prinsipnya, Penerapannya, oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Adminstrasi Negara*, Bina Ilmu Surabaya, p. 2.

According to Fitzgerald, who explained Salmond's theory of legal protection, that the law aims to integrate and coordinate various interests in society because of interest, protection of certain interests can only be done by limiting various interests on the other people⁵⁹. Taking into substance of Fitzgerald and Salmond's Legal Protection Theory, the law protects the interests of consumers' right to indemnity due to the presence of hidden defect goods of products by regulating and limiting the interests of produces in the form of commercial interests. Then, based on Hadjon Legal Protection Theory, the law of strict liability of produces because of the loss of hidden defective products is to protect the right of consumers to obtain compensation because of hidden defect goods of product as subjective conditions that must be created for the continuity of consumer existence, to have a balanced position, both individually and structurally as an effort to protect consumers in Indonesia

This theory of legal protection is strengthened by legal theory as a tool to change society "law as a tool of social engineering", meaning: "a tool of social engineering or social engineering by law is a law as a tool to change society, in the sense that the law may be used as a tool by agents of change⁶⁰". The law is the subject of the law, which must give direction to development in other sectors. As the subject of development, the law becomes a tool of social engineering⁶¹.

Roscoe Pound's theory is about law as a tool of social engineering, enabling the law to organize change⁶², through organizing existing interests in society, to achieve a proportionate balance⁶³. Roscoe Pound theory in Indonesia was introduced by Mochtar Kusumaatmadja by making legal theory as a means of

⁵⁹ Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, p. 53.

⁶⁰ Soerjono Seokanto, 1979, *Kegunaan Sosiologi Hukum bagi kalangan Hukum*, Alumni, Bandung, p.104-107.

⁶¹ Sunaryati Hartono in Elly Erawati dkk (editor), 2011, *Beberapa Pemikiran tentang Pembangunan Sistem Hukum Nasional Indonesia: Liber Amicorum untuk Prof. Dr. CFG. Sunaryati Hartono*, PT. Citra Aditya Bakti, Bandung, p. 24-25.

⁶² Bernard L. Tanya, dkk., 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Jakarta, p. 155

⁶³ Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti , Bandung, dalam Bernard L. Tanya, dkk, *Ibid*.

community renewal, which came to be known as The Theory of Development Law⁶⁴.

Social engineering theory can be used as the basis of the theory in discussing the establishment of laws of strict liability of produces because of loss of hidden defect goods of product. The realization of the basic written form of produces activities of goods products in the form of rights and obligations as a tool to change the system and behavior of business activities.

b. Legal System Theory

The legal system in its actual operation is a complex organism, which views the law as a system consisting of substance, structure, and legal culture that is internally based on basic norms and externally the work of the system is inseparable from society as its basis⁶⁵, which can be seen from Friedmann's statement mentioning the functioning of the legal system is, "...to distribute and maintain an allocation of values that society feels to be right. This allocation, invested with a sense of rightness, is what is commonly referred to as justice⁶⁶", which means distributing and maintaining values that are judged right by a society that refer to justice. The final purpose of the legal system is the realization of justice in society.

Meanwhile, the legal system according to Friedman, is "A legal system in actual operation is a complex organism in which structure, substance, and culture interact⁶⁷", meaning that the legal system in its operation consists of three (3) components that interact with each other, namely structure, substance and culture. The structure of the law is "...is its skeletal framework; it is the permanent shape, the institutional body of the system, the thought, origin bounds that keep the

⁶⁴ Mochtar Kusumaatmadja, 1976, *Hukum, Masyarakat dan Pembinaan Hukum Nasional, Suatu Uraian tentang Landasan Pikiran, Pola dan Mekanisme Pembaharuan Hukum di Indonesia*, Lembaga Penelitian Hukum dan Kriminologi Fakultas Hukum Universitas Padjajaran, Binacipta, Bandung, p. 9-10.

⁶⁵ Muhammad Syaifuddin, 2008, *Perlindungan Hukum Hak Masyarakat Kurang dan Tidak Mampu Atas pelayanan Kesehatan Rumah Sakit Swasta Berbadan Hukum Perseroan Terbatas*, Disertasi, PDIH Universitas Brawijaya, Malang, p. 22.

⁶⁶ Lawrence M. Friedman, 1975, *The Legal System A Social Science Perspective*, Russel Sage Foundation, New York, p. 17-18

⁶⁷ Lawrence M. Friedman, 1975, *Ibid.*, p. 16.

process flowing within bounds⁶⁸”, hence the legal structure is institutionally created by the legal system. Then the substance of the law is "... composed of substantive rules about how institutions should behave⁶⁹", in the form of substantive rule of law and the rule of law on how institutions (created by substantive rule of law) behave. The next component is the legal culture. The culture of the law is "...legal culture refers, then, to those parts of general culture—custom, opinions, ways of doing and thinking – that bend social forces toward or away from the law and in particular ways⁷⁰", is a habit, a view, a way of behaving and thinking, which moves people to obey or not obey the law.

The legal system if hart's view has the hallmarks of a system, namely:

A Legal system is a union of "primary rules" and "secondary rules". Primary rules are the norm of behavior, secondary rules are norms about that norm—how to decide whether they are valid, how to enforce them, etc. Both primary and secondary rules, of course, are the output of the legal system. They are ways of describing the behavior of the legal system seen in the cross-section⁷¹.

A certain characteristic of the legal system, according to H.L.A. Hart, is a double set of rules. A legal system is a double set of primary rules and secondary rules, where primary rules are norms of behavior, and secondary regulations are norms of behavioral norms, such as how to decide whether all norms of behavior are valid, how to enforce them, and others.

The internal relationship between various elements in a system according to Raz is based on basic norms as a source of value and guidance, and externally the relationship between the legal system and what lies outside the legal system, because the law is part of its social environment, so that the law cannot be separated from society as its working base⁷². The same was said by Conterrell, unity in law as a practical matter entails two things. It entails predictably consistent internal relationships of the element (rules, principles, concepts, etc)

⁶⁸ **Ibid**, p. 10

⁶⁹ **Ibid**.

⁷⁰ **Ibid**., p. 15

⁷¹ H.L.A. Hart, 1961, **The Concept of law**, Oxford University Press, London, p. 91-92.

⁷² Josep Raz dalam Muhammad Syaifuddin, 2008, **Op. Cit.**, p. 26.

within a legal system. Equality entails predictably consistent external relationships between the system and what lies outside it⁷³. Contterrell, mentioned that to form the law as a unity requires an internal relationship that can predict consistently between the elements that exist in the legal system (norms, principles, concepts, and others). Consistent and predictable external can predict relationships between those in the system and those outside the system. The elements in the legal system are unity, in which there can be no contradiction, either vertically or horizontally⁷⁴.

Regarding the theory of the legal system in Indonesia, it can be seen from the opinion of Mochtar Kusumaatmadja, who stated that the legal system is composed of several subsystems as its components that are interconnected and interacting, namely principles and methods, institutional law, and processes embodiment of methods in reality⁷⁵. Mochtar Kusumaatmadja's opinion of the legal system is no different than that expressed by Sudikno Mertokusumo about the legal system, which substantially supports Friedmann's opinion⁷⁶.

Based on the theory of legal system developed by Lawrenca M. Fridemann, H.L.Hart, Roger Contterrell, Josep Raz, Mochtar Kusumaatmadja and Sudikno Mertokusumo above, the legal system of consumer protection in the field of strict liability of produces because of loss of hidden defect good of product, consists of the structure, substance and legal culture based *Pancasila* and *Undang-Undang Dasar* of the Republic of Indonesia Year 1945.

3. Applied Theory

a. Theory of Tort Law in Defective Products (Strengthened by the Values and Principles of Economic Law

Every claim of legal responsibility must have a basis, which is what causes a person to be (obliged) to be responsible. In terms of civil relations, produces with consumers there are two groups of consumers from the point of attachment

⁷³ Roger Contterrell, 1992, **Jurisprudence: A Criticial Intoduction to Legal Philosophy**, University of Pennnsylvania Press, Philadelphia, p. 10

⁷⁴ Muhammad Syaifuddin, 2008, **Op. Cit.**, p. 25.

⁷⁵ Mochtar Kusumaatmadja, 1986, **Pembinaan Hukum dalam Kerangka Pembangunan Nasional**, Binacipta, Bandung, p. 11.

⁷⁶ Sudikno Mertokusumo, 1991, **Mengenal Hukum Suatu Pengantar**. Liberty, Yogyakarta, p. 102.

between produces and consumers, namely the lack of legal relationship between produces and consumers:

1. Consumers who have contractual relationships with produces;
2. Consumers who do not have a contractual relationship with produces⁷⁷.

According to Stern and Evoldi, the issue of liability with the consequences of defective products is categorized into (1) defaults and/or into (2) the issue of tort, each with its specificity⁷⁸. As for the basis of lawsuits for unlawful acts, the specificity between produces and consumers does not require a contractual relationship first, this particularity in the era of free trade and globalization is now felt to provide more legal protection to demand compensation than to postulate the basis of the claims of default that began from the existence of contractual relationships first because all consumers can be protected from the use of hidden defect goods of a product that have been sold by produces.

The theory of tort⁷⁹ is generally based on Article 1365 KUHPerdata. This article does not mention the meaning of the act of violating it and what the criteria are. This indicates the understanding of tort that follow the development of the law and society. The requirement to claim damages, such losses must be the result of tort. On the narrow teaching of tort only if it violates the law, whose elements:

1. The existence of tort;
2. Losses;
3. The causality relationship between tort law and losses;

⁷⁷ Janus Sidabalok, 2006, **Op. Cit.**, p. 101.

⁷⁸ Louis W. Stern and Thomas L. Evoldi, 1984, **Legal Aspects of Marketing Strategy: Antitrust and Consumer Protection Issues**, Prentice-Hall Inc, Englewood Cliffs, New Jersey, USA, hlm. 92., dalam Janus Sidabalok, 2006, **Loc. Cit.**, p. 102.

⁷⁹ Tort Law (*Onrechtmatige daad*), regulated in Book III title 3 Article 1365-1380 KUHPerdata, including associations arising from the law), Racmat Setiawan, 1991, **Tinjauan Elementer Perbuatan Melanggar Hukum**, Binacipta, Bandung, p. 5., R. Wirjono Prodjodikoro, using the term tort., R. Wirjono Prodjodikoro, 1996, **Asas-asas Hukum Perdata**, Fifth Print, Sumur, Bandung, p. 45., Sardiman Kartohadiporodjo, proposed the term against the law., Soediman Kartohadiporodjo, 1967, **Pengantar Tata Hukum di Indonesia**, Fifth Printing, PT. Pembangunan, Jakarta, p. 100., Then Utrecht uses terms of acts contrary to the principles of law for tort., E. Utrecht, 1957, **Pengantar dalam Hukum Indonesia**, Fourth Printing, PT. Penerbit dan Balai Buku, Jakarta, p. 255.

4. There was an fault.

The next development, according to Regout's formulation, is that "whoever commits an tort incurs harm; he/she is obliged to replace it"⁸⁰. This tort is further as broad teaching since 1919 of tort, the elements of which are as follows:

1. Acts that violate applicable laws;
2. Violate the rights of others;
3. Contrary to the legal obligations of the
4. Contrary to good decency;
5. Contrary to the cautious attitude that should be done in society towards themselves or other objects⁸¹.

According to narrow teachings, the act of breaking the law places error as a stand-alone condition. In the broad teaching is not placed the sense of error, because a person who violates good decency or against the attitude of the heart must be guilty, or a person is said to be innocent, then indeed a person does not violate good decency or caution.

Then, the theory of tort to claim damages is supported also by the theory of risk. According to risk theory, the liability for one's loss is emphasized to others non fault on the person⁸². Risk is used as opposed to fault, to designate accountability events without fault. Traynor stated strict liability without fault as the risk or loss distribution theory⁸³, which places the liability to produces as a risk, where the risks faced by consumers can be carried together, as part of the cost of business activities, including impact on the price of the product.

Responsive asceticism subjective produces as a product liability that applies the ideal principle of strict liability by *Pancasila, Undang-Undang Dasar* the Republic of Indonesia Year 1945 (Indonesian Constitution 1945) and by the

⁸⁰ J.M. van Dunne dan van der Burght, 1988, *Perbuatan Melawan Hukum*, terjemahan KPH Hapsoro Jayaningprang, Dewan Kerja Sama Ilmu Hukum Belanda dengan Indonesia-Proyek Hukum Perdata, Ujung Pandang, p. 110-111.

⁸¹ Munir Fuady, 2005, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, PT. Citra Aditya Bakti, Bandung, p. 11

⁸² Rachmat Setiawan, *Op. Cit.*, p. 31

⁸³ Andrew Carl Spacone, 1985, *The Emergence of Strivt Liability Polycy's Product Prespective and Other Consideration, Including Senate 100*, Journal of Products Libillity, Volume 8, p. 24.

development of the needs of Indonesian produces and consumers who want to be built in the future is a reflection of the values and principles of economic law to achieve social justice by dismantling structural injustices.

The values and principles of economic law become rational logical establishment of consumer protection legal arrangements based on the strict liability of subjective responsive asceticism produces in the current and future era of globalization and free trade. According to Sri Redjeki Hartono, from the breadth of economic legal principles that contain values that can be functioned to protect various aspects of economic life in economic activities including in shaping the rule of law of consumer protection of hidden defect goods of productin Indonesia⁸⁴.

The main principles of Indonesia's growing economic law underlie the principles of economic law that are developing today in Indonesia. It means that in the legal norms that will be built in strict liability asceticism responsive subjective produces are also in the wake of the values, the principles of economic law that synergize with the legal principles of the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection as law in the field of consumer protection in Indonesia.

b. Product Liability Theory (Strengthened by The Strict Liability Theory)

Product liability is a free translation in Indonesian which is popularly called product liability. According to Hursh, product liability "product liability is the liability of manufacturer, processor or non-manufacturing seller for injury to the personal property of a buyer and third party, caused by a product that has been sold⁸⁵", which means the liability of the product is the liability of the product manufacturer, processor or party involved in the production process including the seller for injuries suffered by the buyer and third parties due to the product that has been sold. Furthermore, according to Coie, product liability as "the liability of

⁸⁴ The principle of economic law is (1) the principle of balance; (2) the principle of public supervision; (3) the principle of state interference with economic activities., Sri Redjeki Hartono, 2000, *Kapita Selekta Hukum Ekonomi*, Mandar Maju, Bandung, p, 39-40.

⁸⁵ Diederick-Verschoor, Smilarities and Differences between Air and Space Law, Primarily in the Field of Private International Law, dalam *Academy of International Law*, no year, p. 378.

the manufacturer or others in the chain of distribution of a product to a person injured by the use of the product⁸⁶", meaning that the responsibility of the product is the liability of the product manufacturer or other party in the product distribution chain for the injury of a person due to the use of a product. Agnes M. Toar, defines product liability as "the liability of the manufacturers for the products it brings into circulation, which cause losses due to defects in the product⁸⁷."

Defective products, according to Natalie O'Connor, "product liability, these were designed to protect the consumer from faulty or defective goods by imposing strict liability upon manufacturers⁸⁸", that the responsibility of this product is designed to protect consumers from damaged or defective goods by imposing strict liability on produces.

Understanding product liability in this research is the legal responsibility of produces for products that have been sold that give rise to the responsibility of indemnity from produces. The liability of the produces is the liability for the damage or malfunction of the product itself and the liability of defective products lays in the defect of the product that result in a person, other person, or other product⁸⁹.

Regarding the hidden defects of produces, can occur:

1. Defects in the products of produces are known by businesses and/or;
2. Defects in the products of produces are not known by businesses;
3. Defects in the products of produces are not known by consumers.

The criteria for defects in this product determine how far the responsibility must be carried by produces. However, as long as the defect of the product is not

⁸⁶ Perkins Coie, 1991, **Product Liability in the United States**, Library of Congress, Washington DC, p. 76

⁸⁷ Agnes M. Toar, *Tanggung Jawab Produk dan Sejarah Perkembangannya di Beberapa Negara*, Makalah Penataran Hukum Perikatan, Ujung Pandang, 17-29 July 1989, p. 1-2

⁸⁸ Natalie O'Connor, Consumer Protection Under The Trade Practices Act: A Time For Change, dalam Inocentius Samsul (Editor), 2001, **Hukum Perlindungan Konsumen**, Pascasarjana FH-UI, Jakarta, p. 94.

⁸⁹ Az. Nasution, 2001, **Hukum Perlindungan Konsumen Suatu Pengantar**, Cet. Ke-II, Diadit Media, Yogyakarta, p. 248.

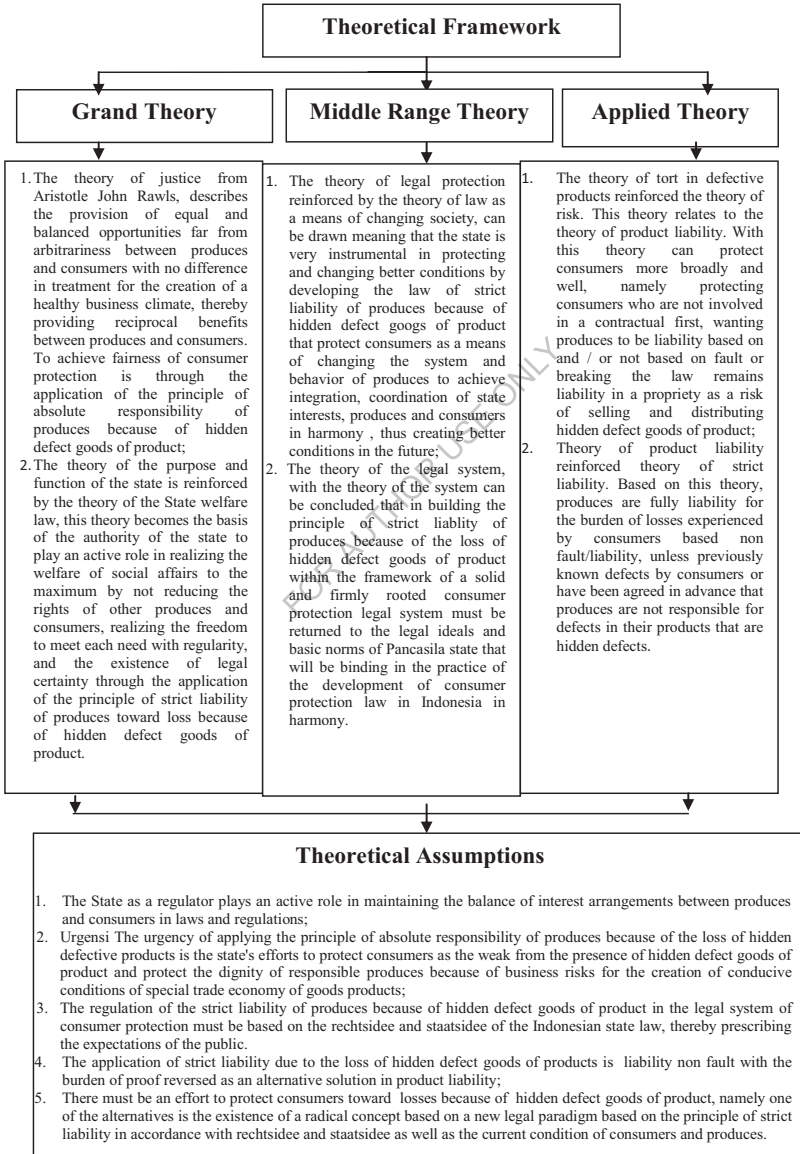
known by the consumer. The theory of product liability is strengthened by the theory of strict liability/liability based non fault. Yusuf Shofie's theory of strict liability, "an act can be punished based on dangerous behavior that is detrimental (harmful conduct), without questioning whether or not the fault (mens rea) is either intentional (opzet; intention), as well as negligence (culpa; negligence)⁹⁰". Furthermore, Traynor affirmed the application of strict liability in place of liability based on fault.

FOR AUTHOR USE ONLY

⁹⁰ Yusuf Shofie, 2011, *Tanggung Jawab Pidana Korporasi dalam Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, Bandung, p. 33-34.

Draft 2

The Theoretical Framework That Underlies the Radical Concept of Strict Liability of produces based on the New Legal Paradigm as an Alternative To Consumer Protection Efforts toward Loss because of Hidden Defect Goods of Product in Indonesia



E. Research Originality

The dissertation discussed specifically scientific research in the field of strict liability of produces as new legal paradigm alternative efforts to protect consumers toward loss because of hidden defect goods of product in Indonesia until now has not been found. This originality is summarized in table 1.

Table I

Previous Research Results, Flow and Substance, Current Research Findings

No	Researchers, title of research	Discussion, Substance ,and Previous Research Findings	discussion, Substance and Current Research Finding
1	Johanes Gunawan," <i>Fungsi Lembaga Hukum Pertanggungjawaban Produk dalam Upaya Perlindungan Konsumen di Indonesia</i> ",(Disertasi)	Law of the Republic of Indonesia Number 8 the Year 1999 concerning Consumer Protection, adheres to the strict liability (doctrine of strict liability) from the point of view of civil law with the transfer of the burden of proof (shifting the burden of proof) "element of error" in businesses, meaning that the "element of error" is suspected to the business (presumption of fault).	This study analyzes more deeply the development of the doctrine of unlawful acts of Article 1365 <i>KUHPerdata</i> by modifying it with product liability that apply the principle of strict liability of the existence of hidden defective products from produces.

2	<p>Inocentius Samsul, <i>"Perlindungan Konsumen: Kemungkinan Penerapan Tanggung Jawab Mutlak", (Disertasi).</i></p>	<p>Article 19 jo. Article 23 of Law No. 8 of 1999 on Consumer Protection has not applied the principle of strict liability but has been based on modification to the principle of liability based on fault, namely the principle of presumption of negligence in which the perpetrator has been considered guilty and does not need to be proven guilty and the presumption of liability principle with the burden of proof is reversed, thus there is progress from the previous system of liability but has not fully adhered to the principle of strict liability.</p>	<p>This study focuses on hidden defective goods products, analyzing the Consumer Protection Law implicitly applying the strict liability of produces to losses because of hidden defect goods of product with elements of error not as a decisive factor, which is referred to from Article 19 paragraph (1), Article 9 paragraph (1) letter (f), Article 11 letter (b), Article 4 letter (h) then Article 28 of the Consumer Protection Act. This research forms a theory in finding the basis of legal development of strict liability of produces specifically on the strict liability of produces of hidden defect goods of product.</p>
3	<p>Anto Ismu Budiarto," <i>"Kajian terhadap Tanggung Jawab Produsen sebagai Upaya Perlindungan Hukum bagi Konsumen Pangan Produk Rekayasa Genetika dalam Rangka Pembangunan Ekonomi Indonesia", (Disertasi).</i></p>	<p>There needs to be legal certainty on the food of genetically engineered products by labeling and determining the threshold of genetically engineered products. This is due to the unbalanced position of producers and consumers, the difficulty of consumers proving losses on food genetically engineered products consumed, so the need to apply the principle of strict liability.</p>	<p>This study analyzes the need to determine the criteria of hidden defect goods of product that can be submitted through formal lines or non-formal lines. The application of strict liability carried out by showing the existence of tort and losses that have been experienced by consumers, without proving any fault and the relationship between fault and losses experienced by</p>

			consumers.
4	Yusuf Shofie, <i>“Tanggung Jawab Pidana Korporasi dalam Tindak Pidana Perlindungan Konsumen: Analisis tentang Perkara- Perkara Tindak Pidana Perlindungan Konsumen”</i> , <i>(Disertasi)</i> .	This research focused on corporate criminals in terms of their regulation and practices, not on behavior formulated in various consumer protection crimes in Indonesia. The Consumer Protection Act shall apply corporate criminal liability for violations of consumer protection crimes in Article 1 number 3 jo. Section 61 of the Consumer Protection Act.	This study analyzes the behavior and consequences formulated by civil law as the basis for claims for consumer protection in Indonesia in terms of its arrangements and practices. Especially the behavior and consequences of business behavior from the existence of hidden defective products that normatively exist in Article 1 number 2, Article 1 number 3 jo. Section 19 of the Consumer Protection Act.

F. Research Methods

1. Type of Research

By using Bernard Arief Sidharta's thought, the legal research on, "STRICT LIABILITY ASCETISME RESPONSIVE SUBJECTIVE PRODUCES: Radical Concepts Based on The New Legal Paradigm as an Alternative Efforts to Protect Consumers toward Loss because of Hidden Defect Goods of Product in Indonesia", is legal research based on hermeneutic⁹¹ paradigmatic based on the philosophy and the nature of legal science.

⁹¹ Hermeneutic approach aka imperative approach assumes paradigmatically that every form and product of behavior with legal production, both in abstracto and in concreto that will always be determined by the interpretation made and perceived by the actors who are involved in the process, which will give meaningful diversity to the facts that are being studied as objects., Soetandyo Wignosoebroto, 2002, *Hukum: Paradigma, Metode dan Dinamika Masalahnya*, ELSAM-HUMA, Jakarta, hlm. 104., The then, hermeneutic studies or paradigmatics reject universalism in the science of law, especially those that are in the opposite form to human objects and society, instead relativism is recognized. Hermeneutic approach or paradigm in science opens the opportunity for legal reviewers to not only engage in the interests of exclusive professions

Hermeneutic paradigmatic is done through a methodological approach to learn from people, namely reviewing the law by observation and examining the meanings of the law from the perspective of users or seekers of justice⁹². Legal hermeneutic research was selected, intended to explain legal norms and emerging societal facts, although this hermeneutic paradigmatic research remained legal research, while the function of other discipline perspectives was only a science aid (hulpwetenschap) with the result of the research was fixed at a normative conclusion.

2. Research Approach

With the type of research was selected and the research problems were discussed from this research belongs to the category of hermeneutic paradigm⁹³, then, the main approach of legal research was the normative approach / dogmatic law (legal dogmatic approach) that served to review the positive laws, which means to collect, exposed, systemized, analyzed and assessed positive legal norms of the nature of the strict liability of produces to loss because of hidden defect goods of product from consumer protection efforts within the framework of the consumer protection legal system in Indonesia.

This legal research intended to gain a deeper understanding of the legal symptoms of the discourse of strict liability of produces because of loss of hidden defect goods of product aimed at producing arguments, new theories or concepts gave an inscription on what should be considered of these symptoms, then this scientific activity was based on the interdisciplinary perspective of some relevant disciplines and there was no a particular non-legal discipline, to clarify something

alone., Otje Salaman and Anton F. Susanto, 2004, *Teori Hukum: Mengingat, Mengumpulkan dan Membuka Kembali*. PT. Refika Aditama, Bandung, p. 81-82.

⁹² Otje Salaman dan Anton F. Susanto, 2004, *Ibid.*, p. 82.

⁹³ The paradigm according to the Oxford English Dictionary, "paradigm" or paradigm is "example or pattern". In the scientific community the paradigm is understood as something more conceptual and significant, although not something taboo to argue, Then according to Liek Wilardjo, "ordering belief frame work", when talking about paradigms are basic assumptions that scientists believe and determine the way he perceives the symptoms he studies that can include a code of ethics, as well as a worldview that affects the way scientists think and behavior in science. Or in other words is a framework of belief and commitment of intellectuals., Otje Salman, and Anton F. Susanto, 2004, *Op. Cit.*, p. 67.

unclear to be clearer, "bringing the unclear into clarity"⁹⁴ because there was a reciprocal process between the rules and the facts⁹⁵.

Other relevant approaches as complementary and supporting approaches in understanding and explaining legal issues examined in this research are as follows:

a. Legal Philosophy Approach

This approach serves to examine the existence and development of conflicting values in the strict liability of produces to loss because of hidden defect goods of product from produces and how the legal functions in resolving them. Then, it is found legal principles that underlie legal norms and protect consumers from the presence of hidden defect goods of product.

b. Comparative Approach

This legal comparison approach is used to compare with each other the legal settings of various legal communities⁹⁶, is intended to compare the legal system, political, economic, socio-cultural, and psychological motives behind it⁹⁷. Then, it is obtained information about the differences and similarities between the laws of various nations⁹⁸.

The comparison of laws in some countries can provide materials about legal factors and non-legal factors can be developed or eliminated in the development and improvement of the legal system of consumer protection in Indonesia in the future, especially in the application of strict liability of produces toward loss of hidden defect goods of product.

⁹⁴ James Robinson in Jazim Hamidi, 2005, *Teori Penemuan Hukum Baru dengan Interpretasi Teks*, UII Press, Yogyakarta, p. 45., In accordance with the purpose of hermeneutic study of law, namely (1) legal hermeneutics can be understood as a method of interpretation of legal texts or methods of understanding of a normative text; (2) The hermeneutics of the law also have a great influence or relevance to the theory of legal discovery in the form of a reciprocal process between rules and facts, but the study of the law with the hermeneutic approach of the law is not intended to completely replace other approaches., Ibid., pp. 49 and 51

⁹⁵ This framework of understanding is called hermeneutic spiral circle., Bernard Arif Sidharta, 2009, *Meuwissen tentang Pengembangan Hukum, Ilmu Hukum, Struktur, dan Filsafat Hukum*, PT. Refika Aditama Bandung, p. 196

⁹⁶ L.J. van Apeldoorn, *Inleiding tot de Studie van het Nederkanse Recht*, translated by Oetarid Sadino, 2011, *Pengantar Ilmu Hukum*, PT. Pradya Paramita, Jakarta, p. 412.

⁹⁷ Sorjono Soekanto, 1989, *Perbandingan Hukum*, PT. Citra Aditya Bakti, Bandung, p. 80.

⁹⁸ Oetarid Sadino, 2011, *Op. Cit.*, p. 422.

c. Legal Historical Approach

This approach is useful for knowing the symptoms of a particular law and for the identification of the stages of legal development. This approach to legal history can be narrowed to the history of legislation⁹⁹, including factors that influence the development of the law¹⁰⁰ in the activity of people's time totality¹⁰¹.

The legal history approach is used to add legal material in understanding the development of consumer protection, especially from changes in the marketing strategy of a product and affects legislation from time to time in the application of strict liability of produces to the products and the liability of produces are inseparable from non-legal factors, such as socio-cultural, economic and political and the results of legal developments in the past¹⁰², especially the principle of strict liability of produces to loss because of hidden defect goods of product.

d. Sociological Approach

The sociological approach of law is necessary to know the law from the normative side but also the reality as the law in daily life¹⁰³. It means providing knowledge of what the law is for a particular event and how to carry out the rule of law in society¹⁰⁴. These societal symptoms can be explained by legal assistance and the rule of law can be explained by societal factors¹⁰⁵. The function of legal sociology approach is indispensable at the time of law development (rechtsbeoefening), the activity of forming, implementing, applying, finding, studying, interpreting the positive rule of law¹⁰⁶, which is understood within the

⁹⁹ Soerjono Soekanto dan Sri Mammudji, 1986, *Penelitian Hukum Normatif: Suatu Tujuan Singkat*, Rajawali Pers, Jakarta, p. 89-92.

¹⁰⁰ Bambang Sunggono, 1988, *Metodologi Penelitian Hukum*, PT. RajaGrafindo Persada, Jakarta, p. 102.

¹⁰¹ Emeritus John Gilissen dan Emeritus Frits Gorle, 1991, *Historische Inleiding tot het Recht*, Kluwer Rechtswetenschappen-Anwerpent, Belgium, yang diterjemahkan oleh Freddy Tengker, 2007, *Sejarah Hukum Suatu Pengantar*, PT. Refika Adiatama, Bandung, p. 11.

¹⁰² Soerjono Soekanto, 1983, *Pengantar Sejarah Hukum*, Alumni, Bandung, p. 39-40.

¹⁰³ Satjiptp Rahardjo, 2006, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, p. 332.

¹⁰⁴ *Ibid.*

¹⁰⁵ B. Arief Sidharta (Penerjemah), 2009, *Op. Cit.*, p. 6

¹⁰⁶ Bernard Arief Sidharta, 2000, *Refleksi Struktur Ilmu Hukum*, Mandar Maju, Bandung, p. 39.

framework of the prevailing consumer protection legal system, so that it can be realized in the projection of the reality of daily concrete life in the future.

e. Conceptual Approach

The function of the conceptual approach is necessary to know the views of the doctrines that develop in the science of law¹⁰⁷. The conceptual approach is very necessary for the development of product responsibilities of goods from produces by applying strict liability through the doctrine of unlawful acts and are generally contained in Article 1365 of Code Civil (*Burgerlijk Wetboek /KUHPerdata*) adopted by Continental Europe with the civil law system and development in Indonesia regarding the fulfillment of elements of tort in demanding losses from consumers who suffer losses from the existence of defective products, especially hidden defect goods of product.

Then to determine how the concept applied in a country, it has previously applied strict liability toward products from produces. Thus obtained the understanding of the law, legal concepts, and legal principles are based on achieving the strict liability of produces toward loss because of hidden defect goods of product in Indonesia in the future.

f. Legal Policy Approach

The purpose of a legal political approach is as an effort to adjust the development of the law from changes in the legal structure and legal functions influenced by politics¹⁰⁸.

With this legal political approach, it will be used to develop the concept of consumer protection through the application of strict liability of produces toward loss because of hidden defect goods of product. The efforts made are by the discovery of law (*rechtsvinding*) and law *rechtvorming* with the affirmation of the functions of legal institutions based on values in society by the historical context, situation, and conditions and what the community needs to the law that is practical-functional by teleological-constructive decomposition so that the

¹⁰⁷ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Prenada Media Group, Jakarta, p. 95.

¹⁰⁸ Moh. Mahfud MD, 2011, *Politik Hukum di Indonesia*, PT. RajaGrafindo Persada, Jakarta, p. 20

resulting and implementing legal products can be adhered to by the community¹⁰⁹, and it can be enabled.

3. Types and Sources of Legal Materials

The legal materials in this study are normative-prescriptive and are supported and equipped with societal facts¹¹⁰. Reviewing legal issues related to the substance of the positive legal regulation (*ius constitutum*) which is consumer protection through the application of strict liability asceticism responsive subjective produces to loss because of hidden defect goods of product in Indonesia and is required legal materials that can be classified as primary legal materials, secondary legal materials and tertiary legal materials¹¹¹, as follows:

- a. Primary legal materials or basic research materials, namely legal materials bind directly and consist of :
 1. The basic norm or method, namely Pancasila;
 2. The basic regulation, namely the Undang-Undang Dasar Republic of Indonesia Year 1945 (Indonesian Constitution 1945);
 3. *Kitab Undang-undang Hukum Perdata/KUH Perdata* (Burgerlijke Wetboek/ Code Civil) Stb. 1847 No. 23;
 4. *KuHDagang* (Wetboek van Koophandel voor Indonesie) Stb. 187-23;
 5. Laws, including:
 - a. Law of the Republic Undang-Undang Republik Indonesia of Indonesia Number 8 the year 1999 concerning Consumer Protection;
 - b. Law of the Republic of Indonesia Number 48 the year 2009 concerning the Basic Provisions of Judicial Power;
 - c. Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies;

¹⁰⁹ Imam Syaukani dan A. Ahsin Thohari, 2004, *Dasar-Dasar Politik Hukum*, PT. RajaGrafindo Persada, Jakarta, p. 42-43

¹¹⁰ Muhammad Syaifuddin, 2008, *Loc. Cit.*, p. 49

¹¹¹ Soerjono Soekanto, 1986, *Pengantar Penelitian hukum*, UI Press, Jakarta, p. 52

- d. Law of the Republic of Indonesia Number 7 the year 1996 concerning Food;
 - e. Law of the Republic of Indonesia Number 23 of 1992 concerning Health;
 - f. Law of the Republic of Indonesia Number 49 the year 2009 concerning The General Judiciary;
 - g. Law of the Republic of Indonesia Number 32 the year 2009 concerning Environmental Protection and Management;
 - h. Law of the Republic of Indonesia Number 8 of 1983 concerning Indonesia's Exclusive Economic Zone;
 - i. Law of the Republic of Indonesia Number 10 of 1997 concerning Nuclear Power;
 - j. Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Laws and Regulations;
- 6. Regulation of Mahkamah Agung Republik Indonesia Republic of Indonesia Number 01 the Year 2006 concerning Procedures for Filing Objections to the Decision of the Consumer Dispute Resolution Agency;
 - 7. Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/KEP/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency;
- b. Secondary legal materials related to legal research as a complement, namely legal materials provide guidance and explanation of primary legal materials consisting of draft laws, literature, papers, articles, research results, scientific works, journals, and other journals related to this research¹¹²;

¹¹² According to Ronny Hanitjo Soemitro, personal documents or opinions from legal experts are included in secondary legal material as long as they are relevant to the object of legal research being studied., Ronny Hanitjo Soemitro, 1988, *Metodelogi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta, p. 24.

c. Tertier legal material is legal material that provides instructions and explanations to primary legal materials and secondary legal materials consisting of materials taken from mass media such as magazines, newspapers, legal dictionaries and Indonesian dictionary¹¹³, internet and so on and contains additional information needed in this research.

Realizing consumer protection can be done by comprehending the relationship of civil law from the legal aspects of consumer protection in the liability of products from produces. The meaning of the existence of empirical-descriptive societal facts is as a material to study the constraints in the process of legal protection (*ius operatum*) consumer rights to the strict liability of produces to loss because of hidden defect goods of products and efforts to solve it.

Empirical-descriptive societal facts were obtained through purposive sampling informants¹¹⁴, meaning samples were selected based on certain considerations according to the purpose of the study¹¹⁵. At the end of this research, it is expected that there will values and principles for the development of product liability of produces in the future (*ius constituendum*) through the legal politicization process.

4. Collection and Classification of Research Materials

The collection of normative-prescriptive legal materials was done by tracing, collecting, and studying documents either conventionally or using information technology, such as the Internet and so on. Then, the collection of empirical-descriptive information was done by classifying informants and conducted in-depth interviews and several informants had been selected by using purposive sampling, based on their authority, experience, and knowledge in the field of consumer protection, especially regarding the application of product

¹¹³ Soerjono Soekanto dan Sri Mmamudji, 1986, *Op. Cit.*, p. 14-15.

¹¹⁴ According to Benyamin F. Crabtree dan William L. Millerd, “**informant who have special knowledge, status, or acces to observation denied the researcher are referred to as “key informant”**”. Benyamin F. Crabtree dan William L. Millerd, 1992, **Doing Qualitatif Research: Research Methods for Primary Cases**, SAGE Publication, Newbury Park London, New Delhi, p. 52

¹¹⁵ Ida Bagoes Mantra dan Kasto, Penentuan Sampel”, dalam Masri Singarimbun dan Sofian Efendi, 1984, *Metode Penelitian Survai*, LP3ES, Jakarta, p. 122

responsibilities with strict liability. Based on the above, the informant selected in this scientific research consists of:

- a. 1 (one) staff member of the Ministry of Trade, namely the Head of Administration Directorate General of Consumer Protection of the Ministry of Trade of the Republic of Indonesia;
- b. 1 (one) staff at the Ministry of Industry, namely Head Sub Division of Infrastructure Development-Standardization Center of the Ministry of Industry;
- c. 1 (one) staff member of the Supervisory Commission for Business Competition of the Republic of Indonesia, namely the Head of Public Relations and Law Bureau;
- d. 1 (one) High Judge of Central Jakarta;
- e. 1 (one) Palembang High Judge;
- f. 1 (one) staff at Yayasan Lembaga Konsumen Indonesia (YLKI), namely Complaints and Law YLKI South Jakarta.

The purpose of this sampling was determined by consideration to obtain legal materials in the process of analyzing and answer the problem of the principle of strict liability of produces toward loss of hidden defect goods of product in the future.

5. Processing of Research Materials

The processing of normative-prescriptive legal materials was based on the stages of Van Heocke's thought and was followed by Bernard Arief Sidharta consisting of structuring, describing, and systemic legal data¹¹⁶.

Furthermore, regarding the empirical-descriptive societal facts were processed by classifying based on the same character, then categorized by grouping similar legal materials based on respective categories, which would be found connections between the various categories. To be further systematized was by connecting in a similarity in one group or different groups so that at the stage

¹¹⁶ M. Van Hoecke, 1984, Aard en Methode van de Rechtswetwenschap, In Bernard Arief Shidharta, **Op. Cit.**, p. 149.

processed through interpretation or interpretation to make things clear¹¹⁷. Then, the description process intended to compile transcripts of interviews and was aimed to find patterns in finding important issues¹¹⁸.

6. The Analyze of Research Materials

Analysis of normative-prescriptive legal materials used normative methods. The results of the legal data analysis of normative-prescriptive interrogated with empirical-descriptive societal facts and were analyzed by using qualitative¹¹⁹ analysis methods, namely a way of analysis produced descriptive-analytical data, it means what was stated by the informant either orally or in writing, and real behavior was then researched and studied as something whole¹²⁰.

7. Interpretation and Construction of Research Materials with Conclusions Determination

The effort to obtain the final meaning relevant to the current situation and conditions in answering the problem was by interpreting legal materials of normative-prescriptive by using purposive interpretation, namely a contextual interpretation, it means the process interpreters pay attention to important factors from the relevant context in the form of text, origin, historical background, previous interpreters, social changes in society, as well as economic and political views¹²¹. The use of theories, concepts in interpreting normative-prescriptive legal materials and empirical-descriptive legal materials was to produce structure and systematize new legal findings that form the basis of conclusions and developers of new theories and concepts¹²².

¹¹⁷ Interpretation of the law is needed to explain legal documents. Legal interpretation is related to its substance which requires legal language to measure *subtilitas intelligendi* and *subtilitas explicandi*., E. Sumaryono, 1999, *Hermeneutik Sebuah Metode Filsafat*, Kanisius, Yogyakarta, p. 23.

¹¹⁸ Sudarwan Darwin, 2002, *Menjadi Peneliti Kualitatif*, Pustak Setia, Bandung, p. 2009.

¹¹⁹ Muhammad Syaifuddin, 2008, *Op.Cit.*, p. 57.

¹²⁰ Soerjono Soekanto, 1996, *Pengantar Penelitian Hukum*, UI-Press, Jakarta, p. 250.

¹²¹ This method of interpretation will produce a final meaning that is relevant to the current situation and conditions., Muhammad Syaifuddin, 2009, *Loc. Cit.*

¹²² M. van Hoecke, dalam Bernard Arief Sidharta, 2000, *Op. Cit.*, p. 154-155.

This research also used the method of interpretation of reasoning (redenering, reasoning, and argumentation) to fill legal vacancies, and inaccuracies in the law, especially consumer protection laws. The method of interpretation was argumentum a contrario, and it means the interpretation or explanation of the law based on the opposite understanding of concrete events faced with events regulated in the law. Then, rechtsverfijning or narrowing of the law is the formulation of exceptions to the legislation because the scope is too common or too broad, so it is narrowed to be applied to certain concrete events¹²³.

Conclusions were made by a combination of deductive ways for normative-prescriptive legal data then interacted with inductive societal facts for empirical-descriptive legal materials. A combination of deductive and inductive rationale produces evaluative prescriptive conclusions. This combination of deductive and inductive methods is called the abduct method.

The combination of deductive and inductive method thinking produces abduct method is initiated by deductive legal reasoning through the application of legal theories and concepts in analyzing prescriptive normative research materials and are interpreted and constructed with the results of inductive societal fact analysis that is empirical-descriptive. Besides, it aimed at producing, structure, and systematizes new legal findings in the drawing of conclusions and suggestions for improvement related to product responsibilities with the application of the strict liability of produces to loss because of hidden defective products. This method was to achieve the development of the theory and concept of consumer protection through the principle of strict liability of produces to loss because of hidden defect goods of products in Indonesia in the future (ius constituendum).

¹²³ Sudikno Mertokusumo, 2009, *Penemuan Hukum Sebuah Pengantar*, Liberty, Yogyakarta, p. 56-72.

G. The Philosophical Basis of Consumer Protection Demands Compensation Because of Hidden Defect Goods of Product from Tort of Produces Based on The Principle of Liability for Negligence and Strict Liability Principle

Based on Article 4 letter (d) and letter (e) of the Law of the Republic of Indonesia Number 8 of 1999 about Consumer Protection, that consumers are entitled to hear complaints and opinions, get compensation for compensation, and get consumer protection advocacy. The right of consumers is the spirit of consumers to complain about products that harm consumers.

The courage of consumers to complain and even sue into the legal realm should continue to be built and is supported by produces and the government to be obliged to hear, respond, and follow up consumer complaints so that consumer normative rights can be fulfilled. According to YLKI data in 2012, the number of complaints cases did not include complaints via email, social networks Facebook, Twitter, or YLKI ¹²⁴website, which table as follows:

Table 2:
Consumer Complaint Data in YLKI in 2012

month	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Des	Total
number of cases per month	23	70	75	46	57	57	59	45	38	68	45	37	620

Source: Warta Konsumen, **Konsumen dan Keberanian Mengadu**, 01/XXX1X/2013 edition , Jakarta, p. 18.

The vulnerability to violations of consumer rights also occurred in Indonesia. Weak consumer position is caused by:

- a. Existing legal devices have not been able to provide a sense of security;
- b. Inadequate legislation to directly protect the interests of consumers;

¹²⁴ An increase in the number of complaints received by the Consumers 'Foundation (YLKI), which is due to complaints from Indonesian consumer habit starting to improve and it can also be interpreted as a deterioration in the quality of business services to consumers and consumers' critical attitudes to complain about their problems., **Ibid.**, 18.

- c. Law enforcement that is perceived to be less assertive;
- d. How to think of some of the producers who are solely profit-oriented¹²⁵.

This weak consumer position must be protected by law based on one of the nature and purpose of the law is to provide legal protection to the community¹²⁶. Protection to the community must be realized in the form of legal certainty that becomes the right of consumers¹²⁷. Consumer rights are based on Article 4 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, as follows:

- a. The right to comfort, security, and safety in consuming goods and/or services;
- b. The right to choose and obtain goods and/or services by the exchange rate and the conditions and guarantees promised;
- c. The right to correct, clear and honest information about the conditions and guarantees of products and/or services;
- d. The right to be heard or complained about the products/and or services used;
- e. The right to appropriate advocacy, protection, and efforts to resolve consumer protection disputes;
- f. The right to foster an education of consumers;
- g. The right to be treated or served correctly and honestly and non-discriminatorily;
- h. The right to compensation, indemnity, and/or replacement, if the goods and/or services received is not by the agreement or not as appropriate;
- i. Rights stipulated in other laws and regulations.

¹²⁵ Abdul Halim Barakatullah, 2010, *Hak-Hak Konsumen*, Nusa Media, Bandung, p. 16.

¹²⁶ Shidarta, 2004, *Hukum Perlindungan Konsumen*, Gramedia Widiasarana Indonesia, Jakarta, p. 112

¹²⁷ Edmon Makarim, 2003, *Kompilasi Hukum Telematika*, PT, RajaGrafindo Persada, Jakarta, p. 316

Furthermore, further discussion on the question of consumer protection is the philosophical basis of consumer protection because of tort of produces based on liability for negligence and strict liability.

1. The Philosophy of Consumer Protection toward Losses Due to Hidden Defect Goods of Product

Improving the welfare of the community must be guaranteed, although the national market is increasingly wide open with the current economic globalization¹²⁸. The guarantee is reflected in the certainty about the quality, health, safety of products obtained by consumers in the market. The existence of UUPK is not intended to be anti-business, but rather is a form of appreciation for consumer rights as universal¹²⁹.

The existence of the rule of law that protects consumers is not intended to close business, but rather intended by the existence of rules on consumer protection can encourage a healthy business climate through the delivery of quality products.

a. The Philosophical Value of Consumer Protection toward Losses Due to Hidden Defective Products in Demanding Compensation

1) The Value of Humanity in the Philosophy of Consumer Protection Demanding Compensation for Hidden Defect Goods of Product

Protecting consumers as a result of losses because of hidden defect goods of product is the same as protecting humans in general because humans are all consumers. In human nature, the human order consists of the body and soul which is associated with human nature as individual beings and social beings. Humans are always a unity and also a creature of God so that human problems have a very central position¹³⁰.

¹²⁸ The terms globalization and modernization became popular since the industrial revolution in England which took place in 1760-1830, and the political revolution in France in 1789-1794. If viewed from its history, globalization and modernization are social changes that have brought progress in the fields of economy, technology and politics., Basrowi, 2005, *Pengantar Sosiologi*, Ghalia Indonesia, Jakarta, p. 170.

¹²⁹ Yusuf Shofie, 2002, *Pelaku Usaha, Konsumen, dan Tindak Pidana Korporasi*, Ghalia Indonesia, Jakarta, p. 12.

¹³⁰ Kaelan, 2002, *Filsafat Pancasila: Pandangan Hidup Bangsa Indonesia, Paradigma*, Yogyakarta, hlm. p. 88-89.

The concurrency of human values in the protection of consumers of hidden defect goods of product is also a realization of protection from human rights, especially regarding the protection of security, comfort, and safety of products and information rights. Every consumer has the right to protection from the quality and information of products produced and circulated by produces. In the end, the creation of consumer rights protection of quality products and easy access to information the process becomes a human right and is recognized and protected in the relationship between consumers and produces.

2) The Value of Justice and Virtue in the Philosophy of Consumers Protection in Demanding Compensation Due to Hidden Defect Goods of Product

Considering the dangers of hidden defect goods of product cause injustice, especially consumers who directly bear the impact of losses and need to be done is necessary to be clear how the relationship between produces and consumers¹³¹. Efforts to understand the value of justice demanded by consumers because of hidden products are by looking at material losses or threats of harm to the lives of consumers caused by imperfect products, among others caused by a lack of sense of responsibility from produces to protect consumers or ensure safety, health and security and even the environment of the products produced.

The absence of product criteria of hidden defects is potentially detrimental to consumers both material and immaterial and result in unprotected consumer rights, but also the rights of produces. An effort to avoid the possibility of the presence of defective or dangerous products including hidden defective products is to set a minimum standard that must be maintained in producing feasible a product and safe to use, then called standardization¹³².

The common thread can be drawn from the value of fairness in the philosophical protection of consumers of hidden defect goods of products, that it is fair for consumers if the losses experienced can be met from the existence of compensation and fairness for produce if it has been proven to have protected

¹³¹ Consumers who have a contractual relationship with business actors can protect their interests based on the contents of the contract agreement, but this is not the case with consumers who are not contractually bound with the produces., Janus Sidabalok, 2006, *Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, Bandung, p. 68-69.

¹³² Janus Sidabalok, 2006, *Op. Cit.*, p. 19

consumer rights by the prevailing laws and ethics of doing business and can release the liability of the obligation to compensate consumers which is also a virtue¹³³. With the value of virtues carried out by these produces, if associated with the business world will greatly benefit for produces, namely by the presence of consumer confidence in the products produced, circulated in the market and has implications for the business development of these produces.

3) The Value of Legal Certainty in the Philosophy of Consumers Protection in Demanding Compensation Due to Hidden Defective Products

The law without certainty will lose meaning because it can no longer be used as a code of conduct for everyone, "*incertum jus incertum est*", where there is no legal certainty¹³⁴, where there is no law. Legal certainty is "*sicherheit des rechts selbst*", it means certainty about the law itself¹³⁵.

The basics of consumer protection of hidden defect goods of product above must have the value of legal certainty by the implementation of consumer protection law of hidden defective products into a legal trademark in Indonesia. The measure of truth and for the achievement of legal objectives demands peace, tranquility, welfare, and order in society and legal certainty must be a guarantee of general welfare and guarantee of justice for the community¹³⁶.

Legal efforts can be made to achieve legal certainty of consumer protection of hidden defect goods of product from produces is to implement it in the law. The importance of legal certainty by article 28 D paragraph (1) *Undang-Undang Dasar* of the Republic of Indonesia Year 1945 (Indonesian Constitution 1945), so that the value of legal certainty in the philosophical protection of consumers of hidden defect goods of product to protect consumers of defective products hidden from losses both material and immaterial losses can really be protected.

¹³³ Virtue is something that brings goodness (salvation, profit, etc.); good deeds; kind., Departemen Pendidikan dan Kebudayaan, 1991, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, p. 80

¹³⁴ Sudikno Mertokusumo dalam Salim Hs, 2010, *Perkembangan Teori Dalam Ilmu Hukum*, PT RajaGrafindo Persada, Jakarta, p. 82

¹³⁵ *Ibid.*

¹³⁶ http://iismardeli30aia.wordpress.com/2013/12/01/kepastian-hukum/diakses_tanggal_17_June_2014,time:10.10_Wib.

2. Principles of Economic Law and Consumers Protection Law toward Consumers Protection of Hidden Defect Goods of Product

Based on the principles¹³⁷ in the Law of the Republic of Indonesia, Number 8 of 1999 concerning Consumer Protection and the nature of the protection of consumer law in providing legal protection for the convention from the actions of produces and harm consumers is to achieve the dignity and awareness of consumers and indirectly encourage produces in the implementation of business activities carried out with a sense of responsibility¹³⁸. Consumer protection in Indonesia is inseparable from the influence of Indonesia's participation in free trade provides great consequences in the economic sector.

The condition of Indonesian consumers because of free trade is currently a concern for economic legal instruments in Indonesia¹³⁹. The field of economic law studies is very broad because it can accommodate two aspects of law as well as a comprehensive study of public law and civil law. In the breadth of legal principles, it can be accommodated from economic law to become the legal principles of certain parts of the law and contain values to protect various aspects of human life in economic activities in a broad sense, namely:

1. The principle of balance and importance;
2. Principle of public supervision;
3. The principle of State interference with economic activities¹⁴⁰.

Economic law is in fact is always able to develop according to the needs and contain universal legal norms and nodes of the principles of international trade law and there are not contrary to internationa customs¹⁴¹. Therefore, the principles of economic law above develop underlie the principles of economic law that develop while in Indonesia, namely (1) the principle of openness; (2) the

¹³⁷ Principles are definitions and values that become benchmarks for thinking about something., The Liang Gie, 1977, *Teori-teori Keadilan*, Super, Jakarta, p. 9.

¹³⁸ Erman Rajagukguk, Pentingnya Hukum Perlindungan Konsumen dalam Era Perdagangan dalam Husni Syawali dan Neni Sri Imaniyati, 2000, *Hukum Perlindungan Konsumen*, Mandar Maju, Bandung, p. 7.

¹³⁹ *Ibid.*, p. 2.

¹⁴⁰ Redjeki Hartono, 2000, *Kapita Selekta Hukum Ekonomi*, Mandar Maju, Bandung, p. 39-40.

¹⁴¹ Sri Redjeki Hartono, 2000, *Ibid.*, p. 41-42.

principle of accountability; (3) the principle of equal treatment; (4) the principle of balance; (5) the principle of protection; (6) the principle of observance; (7) the principle of professionalism; (8) the principle of honesty¹⁴². This principle can be used in developing a form of consumer legal protection in demanding compensation from the existence of hidden defect goods of product because of tort of produces both produced and circulated in the market, namely:

1. The principle of openness is the principle to open up in the relationship between produces and consumers, in the form of correct information, clearly by the promised conditions, by the agreed exchange rate and receive complaints and consumer opinions regarding products;
2. The principle of accountability, namely the principle determines that produces can account for the actions and consequences of any economic activities ranging from the process and circulation of products of produces that have caused losses must be accounted for to consumers;
3. The principle of equal treatment, namely the principle of not discriminating or discriminating against all consumers correctly both between domestic consumers and foreign consumers and consumers from one foreign country and consumers from other foreign countries;
4. The principle of balance, namely the principle wants harmony in the equality of position between produces and consumers both in achieving each interest to be achieved and in the process of dispute resolution;
5. The principle of protection, there must be legal protection both to consumers and to produces from actions and can harm each party in the legal relationship between consumers and produces;

¹⁴² Joni Emirzon, 2000, *Hukum Jasa Penilai dari Perspektif Good Corporate Governance*, Disertasi Doktor UNDIP, Semarang, p. 655.

6. The principle of accuracy, which is the principle that requires the existence of thoroughness without exception from every product produced and circulated by produces for the convenience, safety, and security of every consumer;
7. The principle of professionalism, this principle is very necessary so that produces in producing products must be by the provisions of the qualification of the products as well as in the process of distribution in the market, and produces must have professionalism in carrying out their work, namely by each field of science;
8. The principle of honesty, this principle is important to know the suitability of the condition of products from produces as promised and also in determining the amount and form of compensation can be demanded by consumers if consumers experience losses.

The eight principles of development of the above economic legal principles recently will be synergized with the principles of consumer protection in the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection to find the principle of consumer protection of hidden defect goods of product in demanding compensation from the tort actions of produces from the existence of responsibilities based on fault and strict liability.

a. The Synergy of Legal Principles to Protect Consumers Based on Tort on Negligence Liability Principle

1) Interpretation of Legal Synergy of the Meaning of the Principle of Balance with the Principle of Justice

Following the basic meaning of the balance of economic law development in consumer protection efforts, then this principle is synergized with the principle of fairness in consumer protection law, then the balance of relations between produces and consumers have a fair, if both produces and consumers fulfill their respective rights in fulfilling their respective interests.

Produces have the right to get as much commercial advantage as possible, but should not rule out the interests of consumers not to get hidden defect goods of product and can harm the life, physical, material, and even the

environment. It is fair if the produces as the party produces and distributes hidden defect goods of product to be strict liability because the person most likely to be responsible is the produces and is balanced. If the consumer has been harmed because of the product of hidden defects, it does not have to prove there is or is not an unlawful act such losses because the produces know better how the product of goods produced and circulated.

The synergy of balance and fairness principles obtains the results of good faith principles and must be from consumer protection efforts. In other words, it is balanced and fair, if produces strive as widely as possible to gain commercial advantage in the effort to advance the business and vice versa is balanced and fair; consumers demand the good faith of produces on the quality of the products.

2) Interpretation of Legal Synergy of the Meaning of the Principle of Accuracy with the Principle of Security and Consumer Safety

Humanely, each produces as a human being has emotions and purposeful behaviors, based on certain expectations or motives. Emotions are not only active but also point to free human behavior, which is not minimized¹⁴³. But on the other hand freedom, there is a self-awareness to choose, which means that freedom is not something established and dense (massive) and can be relied on as a solid backrest because it is very fragile and vulnerable and threatened by objects as objects that end in pride¹⁴⁴.

Based on this human nature, there is already a self-awareness to act carefully to meet the interests of consumers by providing security, safety to produces in the absence of defective goods products. However, because it is encouraged to get a big profit in the business activities carried out, causing produces to reduce and perhaps even eliminate human nature as a responsible produces to consumers of products. The result of this principle synergy is to produce the principle of prudence that in the future can be used in the

¹⁴³ Sartre dalam Zainal Abidin, 2006, *Filsafat Manusia: Memahami Manusia Melalui Filsafat*, PT. Remaja Rosdakarya, Bandung, p. 186.

¹⁴⁴ *Ibid.*, hlm. 186-189.

establishment of the rule of law of legal liability because of the tort conduct of produces.

b. The Synergy of Legal Principles to Protect Consumers Based on Tort on Strict Liability Principle

1) Interpretation of the Legal Synergy of the Meaning of the Principle of Honesty with the Principle of Benefit

The results of the act also determine the ethical quality of the act¹⁴⁵. Regarding honesty in business activities, there are three scopes of business activities that can be pointed out unequivocally and the business will not be able to a long time and succeed if it is not based on honesty

The problem of honesty has a long impact because it will form people's guesses about the existence of produces. Honesty is indispensable as a business ethic. Ethics is a moral philosophy, critical and rational reflection¹⁴⁶.

Thus, the importance of the meaning of honesty in doing business is very impactful and has broad benefits. The benefit of protecting consumers is the interests of the produces as a whole. Produces that do not follow the norms, rules, and ethics in the form of hidden defect goods of product will get a bad image in the eyes of consumers. Therefore, it is very relevant to the synergy of the principle of honesty with the principle of the benefits of consumer protection law.

The principle of honesty is from the development of the principle of economic law recently, and principle is important to know the suitability of the condition of products of produces as promised by produces and also in determining the amount and form of compensation can be demanded by consumers if consumers suffer losses. While the principle of benefits in consumer protection law is intended to mandate that all efforts in organizing consumer

¹⁴⁵ Muhammad Erwin dan Amrullah Arpan, 2007, *Filsafat Hukum: Renungan untuk Mencerahkan Kehidupan Manusia di bawah Sinar Keadilan*, UNSRI, Palembang, p. 45.

¹⁴⁶ Ethics is a moral philosophy and is a good and true way of life judging by social, cultural, and religious, Agus Arijanto, 2011, *Etika Bisnis bagi Pelaku Bisnis*, PT. Rajawali Pers, Jakarta, p. 8.

protection and must provide maximum benefits for consumers and produces as a whole. The principle of benefit the benchmark is an empirical benefit¹⁴⁷.

The synergy of these two principles requires that produces must have good intentions to comply with the norms, ethics of doing business to produce the quality of products that are not defective, and provide clear information, because consumers feel the impact¹⁴⁸ in the end so that with the honesty of the produces will protect the consumers.

In line with Ariansyah's opinion, The High Judge of the High Court of Central Jakarta said, " generally, the liability of the product has been investigated in court is in the field of criminal law and the basis of the prosecution is responsibility based on negligence¹⁴⁹ ". The result of the synergy of honesty and benefits principle is to bring up the principle of product quality assurance in consumer protection efforts, especially to minimize the negative impact of the existence of hidden defect goods of product and it can harm consumers.

2) Interpretation of Legal Synergy of the Meaning of the Principle of Accountability with the Principle of Legal Certainty

Based on the principle of accountability of economic law, it means that produces can account for every action and the consequences of their business activities ranging from the process to the circulation of products, if it causes losses to consumers. Furthermore, the principle of legal certainty in the Law of the Republic of Indonesia Number 8 the year 1999 concerning Consumer Protection, that both produces and consumers obey the law and obtain justice in the implementation of consumer protection, as well as the State guarantees legal certainty. This is a form of liability that must be carried by produces for their business activities, "daring to produce and circulate means daring to be responsible for the quality of its products", as conveyed by Sutriatno¹⁵⁰.

¹⁴⁷ Darji Darmodiharjo dan Shidarta, 1999, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*, PT. Gramedia Pustaka Utama, Jakarta, p. 99

¹⁴⁸ Sri Redjeki Hartono, 2000, *Op. Cit.*, p.78

¹⁴⁹ The results of an interview in the office of The High Judge of Central Jakarta Ariansyah B. Dali on Tuesday, November 19, 2013, at 15.00 WIB.

¹⁵⁰ The results of an interview in the workspace with Sutriatno Head of TU Directorate General of Consumer Protection of the Ministry of Trade of the Republic of Indonesia, on November 20, 2013, Wednesday, At 15.00 WIB

This form of the synergy of accounting principles and legal certainty is the principle of accountability of produces. The result of basic synergy derived from the current principle of Economic Law used in consumer protection efforts with the principles of Consumer Protection Law in the Law of the Republic of Indonesia Number 8 the Year 1999 on Consumer Protection which boils down to the importance of the principle of happiness. Thus, the legal principles of consumer protection of defective products hidden because of tort based on the liability of fault and strict liability in the future:

1. The principle of good faith, means to protect consumers who are aligned and harmonious in the equality of position between produces and consumers with the intention of produces always comply with the rules and does not violate the ethics of doing business in fulfilling the interests of produces and consumers through products produced and circulated by produces in the market;
2. The principle of prudence, means that produces must be full of accuracy and thoroughness from every stage of business activities carried out by the provisions of law, ethical and moral in doing business, ranging from the production process to distribution as a form of protection of the interests of consumer security and safety;
3. The principle of product quality assurance means that produces must provide certainty about the quality of products produced and marketed with honesty in the implementation of business from produces to benefit business progress and consumer confidence in the products and not to abuse the weak state of the consumer in the efforts of produces to provide satisfaction to consumers through quality assurance by the standards of the quality type of products;
4. The principle of accountability of produces, means that the State must provide legal certainty to produces and consumers with the obligation of produces to take full liability for all risks of products and have been produced and circulated in the market through strict

liability as an effort to provide better conditions for both consumers and produces in enforcing legal protection for consumers;

5. The principle of happiness, intended to mandate that all forms of consumer protection efforts are intended as an effort to achieve the objectives of consumer protection in a good direction and mutual benefit with good faith, prudence, the guarantee of the quality of products and the accountability of produces who provide tangible benefits for consumers and produces with the fulfillment of reasonable expectations between consumers and produces from the existence of equality of their respective rights that provide self-kindness and do not do harm to good. Human beings belong to the universe.

3. The Principle of Liability for the Tort of Produces Due to Hidden Defect Goods of Product

a. The Tort of Produces in the Hidden Defect Goods of Product Liability Based on Negligence

The element of tort in the liability of the product based on negligence consists of willfulness and lack of caution. The liability of produces in product liability is based on (1) violating the guarantee (default); (2) liability for negligence; (3) Strict Liability Regarding this negligence, in Article 1365 of the Civil Code, the negligence is stated as a general understanding, which includes intentional or negligence¹⁵¹. Intentionally shows the intention of produces to cause the existence of hidden defects from products sold or distributed in the market. On the other hand, the meaning of lack of caution is related to negligence and the impact of the existence of hidden defect goods of products.

The basics of tort of produces in the liability of hidden defect goods of product based on are negligence, as follows:

1. There are mistakes caused by produces because it does not fulfill standards of conduct of normal and reasonable standard as

¹⁵¹ Rachmat Setiawan, 1991, 1991, *Tinjauan Elementer Perbuatan Melanggar Hukum*, Binacipta, Bandung, p. 19.

- produces in the form of acts and are not careful and negligent in the obligation to maintain the interests of consumers (duty of care);
2. In prosecuting produces based on tort based on negligence must be proven by consumers is the fault of produces;
 3. Evidentiary system in demanding compensation because of products of defective hidden from tort of produces based on existing in consumers/plaintiffs.

b. The Tort of Produces in the Hidden Defect Goods of Product Liability Based on the Strict Liability

The next legal responsibility can be applied from the tort actions of produces in the liability of hidden defect goods of product called liability without negligence/strict liability. The cause of the strict liability of the produces of hidden defect goods of product is because of the liability of losses for damage or malfunction, or not following the purpose or reduced benefits of the product itself as a form of the obligation of produces to consumer satisfaction. This is a form of responsibility that must be carried by produces for their business activities, "daring to produce and circulate means daring to take liability for the quality of its products", as conveyed by Sutriatno¹⁵².

The basis of indemnity payment (liability without fault) is to not have to prove negligence by the plaintiff¹⁵³. This shows that in strict liability the system of proof is reversed. The problem of the reverse evidentiary system in civil law is not explicitly known, because the system of proof is generally on the side of the claim. The burden of reverse proof is used in proving difficult cases to prove in the civil field, and of course, can also be applied in the field of consumer protection and that is difficult to prove because it also includes the field of civil

¹⁵² The results of an interview in the workspace with Sutriatno Head of TU Directorate General of Consumer Protection of the Ministry of Trade of the Republic of Indonesia, on November 20, 2013, Wednesday, at 15.00 WIB.

¹⁵³ Because the seller's primary obligation is to hand over the goods and bear (Article 1474 of the Civil Code) in the sense of ensuring peaceful enjoyment and guaranteeing from hidden defects. This is a consequence given from the seller to the buyer.,Subekti, 1984. *Aneka Perjanjian*, Sixth Print, Alumni, Bandung, p. 17.

law. The theoretical basis is to use the doctrine of *res ipsa loquitur* (doctrine favors sacrifice)¹⁵⁴

The common thread of the basic tort of produces in the liability of hidden defect goods of product based on the strict liability of produces are:

1. There is an obligation of produces for the satisfaction of consumers to be responsible for losses because of damage or malfunction, or not following the purpose or reduced benefits of products produced and circulated by produces in the market;
2. In filing claims for indemnity consumers simply show the existence of real losses that have been happened because of the product defects;
3. Proof of the truth of losses caused by hidden defect goods of product exist in produces/defendants.

H. The Urgency of the Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product Based on Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection

By paying attention to the main objective of the strict liability as a form of product liability is to ensure a sense of justice,¹⁵⁵ so that the legal consequence or the effect of a product that result losses for consumers are borne by the person or party who has the liability to bear the loss.

1. The Importance Meaning of the Strict Liability Principle of Produces Due to Hidden Defect Goods of Product from the Consumers' Perspectives

a. Avoiding Potential Risks from the Produces' Products

Efforts to provide consumer protection are important and urgent matters to be found the solutions right away, considering the increasing of complex problems relating to consumer protection, especially in the era of globalization

¹⁵⁴ Munir Fuady, 2005, *Perbuatan Melawan Hukum: Pendekatan Kontemporer*, PT. Citra Aditya Bakti, Bandung, p. 99

¹⁵⁵The existence of justice aspect (*fairness*) such as equality before the law between produces and consumers, This is indispensable for the standard of the government attitude in the problem of the hidden defective product, absence of fair standards and what becomes unfair is a huge problem faced by developing countries and the absence of these standards in long-term become the main cause of the loss of government legitimacy., Erman Rajaguguk, January 4th, 1997, *The Role of Law in Development in the Globalization Era: Implications for Legal Education in Indonesia*, UI Professor Inauguration Speech, in the book of *Nyanyian Sunyi Kemerdekaan Erman Rajaguguk (Tetes-tetes Pemikiran 1971-2006)*, 2006, UI Faculty of Law, Institute of Law and Economic Studies, Jakarta, p. 160.

and welcoming free trade today. The plurality of consumers in Indonesia, which are very varied in strata and are unlimited in number, caused marketing activities are made as effective as possible to reach multiple consumers.

Through the strict liability principle of produces as a form of product liability of produces products can be selected as an alternative to minimize harmful risks in a series of business activities of the produces, including hidden defect goods of product.

b. Guarantee form in the form of Compensation for Loss Due to Producers' Products

Indonesia should be ready to face imported products as well as the negative effects of defective products, especially hidden defect goods of product. Consumers will be truly protected if consumer rights can be fulfilled by both the government and produces to protect consumer losses from several aspects as the efforts for protection against losses due to hidden defect goods of product.

By consumer protection through the application of the strict liability principle for losses due to hidden defect goods of product is in order to there is a guarantee of legal consequences or legal effect of a product that results in losses for consumers to be borne by the person or party who has a moral responsibility to bear the loss.¹⁵⁶ This is in line with John Rawls's Substantive Justice Theory to provide the disadvantaged party, namely the aggrieved party is none other than the consumer.

c. Avoiding Chained Claims Processes in the Processes of Consumer Dispute Settlement

Based on research result from YLKI, the United Nations (UN), Including The International Organization of Consumer's Union (*IOCU*), that consumers are somewhat reluctant to use law enforcement tools and judicial institutions in defending their interests because the not easy to use legal tools as well as the high cost of court proceedings.¹⁵⁷ Consumer disputes are disputes

¹⁵⁶ Inocentius samsul, 2004, **Op. Cit.**, hlm. 11.

¹⁵⁷ The results of interviews conducted with Jakarta consumers show the following composition of 28 people over the age of 28, consisting of four men and seven women among others 8 persons who high school graduates and above, two of them undergraduate education and

between consumers and produces (whether in public law or private law) about a specific product consumed by consumers, and or services offered by producers / produces.¹⁵⁸

One of the breakthroughs in the principle of product liability in the field of consumer protection is to protect consumers namely by applying the principle of strict liability of produces against losses due to hidden defective products, consumers do not have to prove the fault of the produces but produces who have to prove it, it is known as a reversal burden of proof. This reversal burden of proof is important to apply because it is unfair if consumers who have suffered losses must prove the four elements of Article 1365 of the Civil Code.

Claims for damages from hidden defective products done for a claim for compensation following the general provisions of civil law, then the consumer must be able to prove the existence of mistake or their losses that caused by the produces or in other words, they are not using the reversal burden of proof. As for the prosecution process, the proof must be carried out in sequence starting from retailers, wholesalers, distributors, agents, and finally to producers.

Chaining charges do not apply under the principle of strict liability. The prosecution process is based on the principle of absolute responsibility, carried out by consumers only by demanding the last produces from which the consumer got the hidden defect goods of product, furthermore by the reversal burden of proof then the last produces who is required to be able to prove whether the losses suffered by consumers are the liability of his or other produces and so on from all parties involved in the production and distribution process. However, produces are the party most responsible for losses suffered by consumers, unless the losses are caused by the consumers themselves.

three person with junior high school education. Talking about rights, generally, they doubt how to get an effective right, because it is too troublesome to only demand problems that are of little value. Regarding transactions in a very large amount, but it turns out to be detrimental to consumers, they generally say they will sue., N.H.T. Siahaan, 2005, *Hukum Perlindungan Konsumen dan Tanggung Jawab Produk*, Pantai Rei, Jakarta, p. 43-44.

¹⁵⁸ Az. Naution, 2000, *Hukum Perlindungan Konsumen Suatu Pengantar*, Daya Widya, Jakarta, p. 46-47.

2. The Importance Meaning of the Strict Liability Principle of Produces Due to Hidden Defect Goods of Product from the Produces' Perspectives

a. The means to Force for Liability of Product Quality from Produces

Considering the existence of the demand of respect for human rights which hitting on the industry and trade which demands and obliges produces for their products not to cause harm to health, safety, security and even the environment of consumers because of the human right to obtain goods that are not defective, then to prevent negative aspects of industrialization and encourage competition for Indonesian products in international and domestic markets.

Standardization has a crucial and strategic role in maintaining the quality of the products produced and those circulating in the market. Even though there is already a specification in the form of affixing the SNI mark, it still requires supervision from the Ministry of Industry and the Ministry of Trade. Standards used to determine a particular product, among others, are based on product quality standards formulated with the team and product quality standards that are compiled based on the needs of the consumer.¹⁵⁹

The reality in the market is that not all goods products produced and circulated by produces have already labeled SNI or have met SNI standards, what happens then is the presence of dangerous products, including hidden defect goods of product. By taking into account the level of development in Indonesia that has entered the industrial economy, which is marked by the development of industry and technology in the trade and industrial development sector.

The existence of the principle of strict liability of produces as a form of product liability of produces in efforts to protect consumers is very appropriate to the state of development in developing countries including Indonesia which is pursuing its development through the level of unification, industrialization and the nation. Welfare must be achieved simultaneously (concurrently) which causes a weak consumer position. Other than that, the existence of the strict liability principle will foster a prudent attitude from produces in producing before

¹⁵⁹ Elaborated from the answers to questions delivered to Eko Hari Purnomo, as the Head of Sub Division of Standard Infrastructure Development, Standardization Center, BPPI & MI Ministry of Industry sent via email on December 19th, 2013, at 20:30 WIB.

distributing their products to the market, so that consumers will not be disappointed and hesitate to buy and use domestic products which will automatically support the existence of the trade industry nationwide and increase the competitiveness of local products and foreign products.

b. Protecting the Rights of Honest Producers

The target of success in the era of globalization, one of which is in the business world, must be able to create moral and ethical business activities.

The desire for a special regulation issued in order to protect the interests of consumers must not reflect the imbalance in power between producers and consumers. Otherwise, regulation on consumer protection would conflict with the philosophy of national development. In other words, the obligation to be careful belongs not only to producers, but also to consumers, so that the obligation to be careful is not only borne by producers based on merit, but also the obligation of consumers as prevention of losses.

Protecting honest producers can be realized through the application of the principle of strict liability of producers against losses due to hidden defective products, namely by using a reverse proof system. In the system of proof reversed from the principle of strict liability of producers for losses due to products with hidden defects, there are consequences, namely:

1. If the producer can prove that there is no obligation that the producer has violated;
2. Can prove that there is an agreement between the producer and the consumer regarding the condition of the producer's product.

If the two reasons above are fulfilled, then it is sufficient to have a valid reason according to law to release the liability for compensation from the consumer, and the compensation claim that the consumer demands will not be granted. Every country has a limit, then, the release of product liability by producers, due to consumer interference, must be reviewed on a case-by-case basis

so that produces cannot easily discharge their product liability.¹⁶⁰ In the future, the reasons for the release of the produces' liability for losses due to products produced and already circulating in the market for consumer protection, including products with hidden defects, are if:

1. The said product is proven not intended for trading and circulation in the market;
2. It is proven that the product is defective and known to the consumer;
3. Produces are proven not to have committed any illegal acts;
4. There are legal reasons for the abuse of the situation, such as fulfilling government regulatory obligations and fulfilling the obligation to qualify goods and so on;
5. It is proven that consumers cannot lose in terms of the condition of the goods being circulated both technically and naturally on the said products or force majeure;
6. It is proven that the losses experienced by consumers are the result of the actions of the consumers themselves.

The final objectives of applying the strict liability principle for losses due to hidden defective products that are following current conditions in Indonesia are:

1. The principle of strict liability which is sufficient to provide evidence of losses due to hidden defect goods of product experienced by consumers;
2. Continue to provide opportunities for produces to defend themselves to free themselves in the form of reasons for the release of produces' legal liability, including force majeure from the said products through reverse proof; and
3. The losses that can be sued by consumers are limited to only subjective losses from consumers due to real hidden defects that

¹⁶⁰Nurhayati Abbas, 1996, **Consumer Protection Law and some of its Aspects**, Paper Presented in the National Seminar on Consumer Protection Law, Collaboration between the ELIPS Project and the Faculty of Law, Hasanuddin University, Ujung Pandang, p. 31.

have been experienced by consumers, to protect honest produces from fraudulent consumers.

3. The Complexity of the Existence of the Strict Liability of Produces from Losses Due to Products of Hidden Defect Goods of Product in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection

a. The Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product Products Based on General Legal Norms

The significance of regulating consumer rights in Indonesia through Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is part of the implementation as a welfare state. At present, there is no specific law regulating the strict liability of produces for losses due to hidden defective products. However, Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection as an umbrella law in the field of consumer protection can implicitly be interpreted from several articles in Law Number 8 of 1999 concerning Consumer Protection. The article is Article 19 paragraph (1) of the UUPK, which stipulates that "Produce are responsible for providing consumer compensation for damage, pollution, and/or consumer losses as result from consuming goods and/or services produced or traded".

Article 19 paragraph (1) is a general legal norm if it's considered the substance. To see implicitly the strict liability of produces for losses due to a hidden defective product is on the word of produces who responsible and/or provides compensation for the damage, because definitively the word responsible and the word damage are very general in meaning, therefore it must be carried out a legal discovery (*rechtvinding*) through the legal construction method, namely the legal construction of narrowing/concreting the law (*rechtsverfijning*) with the aim of concretizing / narrowing a legal rule that is too abstract, passive, and very general so that it can be applied to a particular event.¹⁶¹

¹⁶¹ In the legal construction method, there are 4 (four) methods used by judges when making legal discoveries, namely: (1) *Argumentum Per Analogian* (analogy) is a method of legal discovery in which the judges look for a more general essence of a legal event or legal action, both those that have been regulated by law and those that do not yet exist; (2) *Argumentum a*

Then, this article 19 paragraph (1) can also be interpreted that the produces is responsible for providing compensation, which means the produces' responsibility is due to an illegal act. In a product liability claim based on a claim for an unlawful act, the basis of the claim is based on fault and not based on fault. This means that the sentence of produces is responsible for providing compensation can be based on error or there must not be an error, because the basis of claims for the unlawful act in product liability is based on fault and not based on fault (strict liability).

Furthermore, the word of damage from article 19 paragraph (1) of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, can be interpreted that produces are responsible for losses due to all forms of damage suffered by consumers so that the legal construction of the narrowing can be linked to what is meant by "defective product", which means that the hidden defects as part of the defective product.

b. The Strict Liability Principle of Produces toward Losses Due to Hidden Defective Products Based on Blurred Legal Norms

The clause regarding the product liability principle of produces in the Consumer Protection Law is placed in a collection of provisions regarding the obligations of produces which are in Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. Consumers who experience losses due to hidden defective products can subsequently claim a compensation as also in Article 4 of the letter (h) which states that consumers are entitled to get compensation, indemnity and replacement, if the goods and/or services received

Contrario namely where the judge makes a legal discovery with the consideration that if the law determines certain things for a certain event, it means that the regulation is limited to that particular event and for events outside it applies the opposite; (3) The narrowing / concreting of law (*rechtsverfijning*) aims to concretize / narrow a rule of law that is too abstract, passive, and very general so that it can be applied to a particular event; (4) Legal fiction is a legal method that presents new facts, so that a new personification appears before us., Ahmad Rifai, 2011, *Penemuan Hukum oleh Hakim dalam Prespektif hukum Progresif*, Second printing, Sinar Grafika, Jakarta, p. 74-85.

are not following the agreement or as it should be,¹⁶² as well as by referring to Article 28 the burden of proof lies on the produces.

Article 4 letter (h) and Article 28 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, there is a word of norm which has a blurred legal norm meaning or unclear legal norms. Article 4 letter (h) adduces the provision of compensation if the goods and/or services received are not in accordance with the agreement or not as it should be, however the formulation of the article does not explain what is meant by the article because in the Elucidation of Article 4 letter (h) it is only written quite clear words.

The analysis is carried out using the principles of principles of good statutory formation in Article 5 of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislation, if not, then the contents of the article do not meet the Principle of Clarity of Formulation.¹⁶³ With this legal basis, then the method of interpretation or the existing legal discovery methods, so that the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection can be applied to the principle of strict liability of produces.

Article 4 letter (h) shows that the legislators do not provide a clear explanation, both in the general provisions and in the explanation section, it is only written as "quite clear". There must be clarity, through the method of grammatical interpretation (grammatical), namely the method of interpretation based on the sound of the provisions of the law, guided by the meaning of words in relation to one another in sentences used by law by using the meaning of words according to grammar or according to custom, that is, the meaning in everyday use, then the word not as it should be is not as stated in the agreement and can also not be what it is according to the consumer. It means that Article 4 letter (h) can be interpreted that the compensation is given to goods/products that do not

¹⁶² Article 4 letter (h) of Law Number 8 of 1999 concerning Consumer Protection states that consumers are entitled to compensation, indemnity, and replacement if the goods and/or services received are not in accordance with the agreement or as it should be.

¹⁶³ In forming legislation, it must be carried out based on the principles of the formation of good laws and regulations, which include: a. clarity of purpose; b. appropriate forming institutions or officials; c. suitability between types, hierarchy, and content; d. can be implemented; e. efficiency and usability; f. clarity of formulation; and g. openness.

match the quality stated in the agreement, but compensation is also given to consumers who are not bound by an agreement if it turns out that the goods/products of the produces are hidden defective products.

Regarding Article 28 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, which reads "The proof toward the existence of an error element or not in the claim of compensation as referred to in Article 19, Article 22, and Article 23 is the liability of the produces". As for Article 22, "The proof toward the existence of error element or not in criminal cases as referred to in Article paragraph (4), Article 20,¹⁶⁴ and Article 21¹⁶⁵ is a burden on the responsibility of the produces without closing the possibility for the judges to prove it". Article 23 reads, "produces who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the consumer dispute settlement agency or submit to a judicial body at the consumer's domicile. The linkage to the article in Article 28 also shows that there is obscurity or unclear, so based on the interpretation of a *contrario*.¹⁶⁶

Paying attention to the substance of the article in this Article 28 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection¹⁶⁷, Philosophically, to get compensation for consumer losses from products of goods of a produces, it must be proven that there is an error with a

¹⁶⁴ As stated in Article 20 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, "the advertising produces is responsible for the advertisements that are produced and the consequences caused by the advertisement".

¹⁶⁵ It reads Article 21 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, (1) The importer of goods is responsible for producing imported goods if the importer of the goods is not carried out by an agent or representative of a foreign producer; (2) The service importer is responsible for providing such foreign services not to be performed by agents or representatives of foreign service providers.

¹⁶⁶ Interpretation A *contrario* (according to denial), which is a way of interpreting a law based on contradicting the understanding between the problem at hand and the problem regulated in an article of law., C.S.T Kansil, 1986, *Pengantar Ilmu Hukum dan Tata hukum Indonesia*, Balai Pustaka, Jakarta, p. 66-69.

¹⁶⁷ It reads Article 28 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, The proof toward the existence of "an error element" in the claim for compensation as referred to in Article 19, Article 22, and Article 23 is a burden and responsibility of the produces".

reversal burden of proof, that is, the produces must prove that there is an fault or there is no mistake.

c. The Strict Liability Principle of Produces toward Losses Due to Hidden Defect Goods of Product Based on Contradictory Legal Norms

Taking into account the objective of the application of the principle of strict liability, to protect consumers from injustice, the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection has stipulated restrictions on produces in carrying out their business activities. Prohibitions on the existence of hidden defective products as in Article 9 paragraph (1) letter (f) and Article 11 letter (b) of Law Number 8 Year 1999 concerning Consumer Protection which contains words as if it is very contradictory to the Preamble of the Law, Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

Through the method of legal discovery in the form of legal hermeneutics to see the existence of contradictory legal norms from the application of the principle of strict liability of produces for losses of hidden defect goods of product implicit in Article 9 paragraph (1) letter (f) and Article 11 letter (b) Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. The essence of legal hermeneutics lies in the consideration of the legal triangle, which is a method of interpreting legal texts that do not merely look at the text, but also the context of the law is born and how the contextualization or application of the law is in the present and the future.¹⁶⁸

Through the legal hermeneutic method, it can be seen that there are contradictory legal norms in Article 9 paragraph (1) letter (f) and Article 11 letter (b) of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection which contains actions prohibited for produces. This can be started from the history and development of the UUPK itself in the Indonesian legal system¹⁶⁹ as well as the demand for the development of protection for consumers

¹⁶⁸ Ahmad Rifai, 2011, *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*, Cetakan Kedua, Sinar Grafika, Jakarta, p. 89.

¹⁶⁹ The term of national law is often used in everyday life to denote the system of norms that apply or are enforced in Indonesia. Talking about the national legal system means discussing

in society from potential risks of the business activities of business actors starting from the production process to distribution, which puts consumers in a weak position which produces tend to exploit. The development of modern industry has brought with it a number of risks that occur every day, which cannot be avoided from an economic point of view.¹⁷⁰

Then in the preamble to the letter (c) of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, "the increase of national market open as a result of the process of economic globalization must continue to ensure the improvement of community welfare as well as the certainty of the quality, quantity, and safety of goods/or services that they obtained in the market". Based on the preamble to the letter (c) of Law Number 8 of 1999 concerning Consumer Protection, it clearly states that there is a definite guarantee for the quality, quantity, and safety of goods and/or services for consumers.

In line with the national development goals to achieve prosperity and prosperity which is the joint liability of every component of the nation, including produces. The business world must be able to produce various products that can improve the welfare of the wider community, including through quality assurance that guarantees safety, security, and health of consumers for goods circulated in the market, it is very contradictory if later in the legal norms of Article 9 paragraph (1) letter (f) and Article 11 letter (b) of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection do not guarantee certainty about the quality of products of produces circulating in the market. It can clearly be seen from the substance of Article 9 paragraph (1) letter (f) and Article 11 letter (b) of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

The substance of Article 9 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection has the result that violations of this

the systemic laws that apply in Indonesia. Systemically, it means that law is seen as one unit, whose elements, sub-systems, or elements are interrelated, influence each other and strengthen or weaken one another which cannot be separated., Ilham Bisri, 2004, *Sistem Hukum Indonesia*, PT.RajaGrafindo Persada, Jakarta, p. 6.

¹⁷⁰ Koesnadi Hardjasoemantri, 1992, *Hukum Tata Lingkungan*, Gajah Mada University Press, Yogyakarta, p. 358.

prohibition qualify as illegal acts. The purpose of this arrangement is to strive for a trade order to create a healthy business climate.¹⁷¹

The essence of Article 9 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection to provide more protection for consumers by opening a wider scope flexibly from prohibited actions for business actors should suffice with the sentence, that "Producers are prohibited to offer, promote, advertise a product/service incorrectly". With a representation of the correctness of the goods traded by producers to ensure that the products sold and bought in the community are carried out in a way that does not violate the law, such as misleading practices when offering, promoting, advertising, trading or distributing goods and/or services fake, or the result of a piracy activity,¹⁷² of course, including the existence of hidden defect goods of product that have harmed consumers.

Article 11 letter (b) is about the prohibition against producers aimed at business behavior and ways of selling made by producers who do not allow hidden defective products by deceiving or misleading consumers. In other words, the correct representation of a product is very important to avoid losses due to misrepresentation due to incorrect information that only highlights the advantages of the product being promoted.

Actions to affirm that the producers have violated their obligations as producers, which specifically exists in Article 9 paragraph (1) letter (f) and Article 11 letter (b) is to provide compensation for consumers losses from an act violating the producers' law in fulfill the obligation not to commit acts prohibited in Article 9 paragraph (1) and Article 11 letter (b) of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. One alternative is to initiate a legal concept applying the strict liability principle of producers for losses due to hidden defect goods of product.

¹⁷¹ Nurmadjito, 2000, Kesiapan Perangkat Peraturan Perundang-undangan tentang Perlindungan Konsumen di Indonesia dalam Husni Syawali dan Neni Sri Imaniyati, 2000, **Op. Cit.**, p. 18.

¹⁷² **Ibid.**, p. 18.

4. Implications of Concretization Problems of Legal Norms of the Application of the Strict Liability Principle of Produces for toward Losses Due to Hidden Defect Goods of Product

a. Implications of Legal Norms of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection against Radical Concepts of Strict Liability Principles of Produces Due to Losses of Hidden Defect Goods of Product

Every act of government in a rule of law must be based on the law because in a state of law there is a *wetmatigheid van bestuur* principle or legality principle. The rule of law requires that the highest power in the state is the law. Law as a rule of law (*rechtsregel*) is a form of law with legal norms as the substance of legal rules. The form of law referred to in this research is a written statutory regulation that contains legal norms (*rechtsnorm*) which functions to assist the law in its application (*toepasingsgebied*).¹⁷³

The rule of law as a form of law is distinguished from the notion of a legal norm as a substance; however, these two terms are sometimes used simultaneously, while the two are different. Legal rules contain legal norms that serve to assist the law in its application (*toepasingsgebied*).¹⁷⁴

Based on the functions of the legal rules and legal norms above, in the field of consumer protection, the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is a legal rule, while the articles in the UUPK are legal norms of the Law of the Republic of Indonesia number 8 of 1999 concerning Consumer Protection. The legal norms contained in the articles of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection have become the guiding stars in developing legal norms of the strict liability principle for the loss of hidden defect goods of products in the future.

¹⁷³ Febrian, 2004, *Hirarki Aturan Hukum di Indonesia*, Dissertation, Airlangga University Postgraduate Program, Surabaya, p. 57.

¹⁷⁴ N.E. Algra dan van Duyvendijk, 1983, *Mula Hukum*, Translation of JCT Simorangkir and Boerhanoeddin, SB, Binacipta, Jakarta, p. 324.

b. Legal Implications of General, Blurred and Contradictory Legal Norms of the Strict Liability Principle of Produces for Toward Losses Due to Hidden Defect Goods of Product

The existence of consumer protection is an inseparable part of healthy business activities. In healthy business activities, there is a balance of legal protection between consumers and produces.

The formation of legal provisions or legal reforms is needed not only by renewing the substance of the law but renewing the orientation and values that underlie the legal rules, meaning that legal reform must be interpreted as adopting new legal values as a result of changes in the values of community life. The new legal values then become a philosophical basis for the newly legal substance.¹⁷⁵

As for the articles that are referred to for the application of the strict liability principle of produces for losses due to hidden defect goods of product in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, namely Article 19 paragraph (1) Article 28, Article 9 paragraph (1) letter (f), Article 11 letter (b) and Article 4 letter (h) can be implicitly referenced. Article 19 paragraph (1) contains general legal norms, Article 28 and Article 4 letter (h) which contains obscure legal norms and Article 9 paragraph (1) letter (f) and Article 11 letter (b) which contains contradictory legal norms which all from Article 19 paragraph (1), Article 28, Article 4 letter (h), Article 9 paragraph (1) letter (f) and Article 11 letter (b) of Law of the Republic of Indonesia Number 8 of 1999 concerning Protection, this results in norms The implicit law of the strict liability principle of produces for losses due to hidden defect goods of product has implications for juridical uncertainty regarding the strict liability principle of produces for losses due to hidden defect goods of product.

Due to the absence of written legal certainty, where legal certainty in writing has become a legal trademark in Indonesia, the consumers disputes settlement due to the losses of hidden defect goods of product will not provide justice for consumers and will not be able to provide benefits in providing legal

¹⁷⁵ Peter Mahmud Marzuki Without years, *Pembaharuan Hukum Ekonomi Indonesia*, Airlangga University, Surabaya, page. 3 in Ahamdi Miru, 2011, *Prinsip-prinsip Perlindungan bagi Konsumen di Indonesia*, Sinar Grafika, Jakarta, p. 5.

protection towards consumers, so that maximum consumer protection will not be realized. The existence of implicit legal norms which are used as a reference for the strict liability principle of produces for losses due to hidden defect goods of product in Article 19 paragraph (1), Article 28, Article 4 letter (h), Article 9 paragraph (1) letter (f) and Article 11 letter (b) of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, also does not reflect its consistency, spreads into several articles separate from the articles regulating the responsibilities of produces which can also cause problems in legal certainty from the application of the strict liability principle as a form of product liability of the produces.

I. Radical Concept of Regulating the Strict Liability Principles of Produces for Toward Losses Due to Hidden Defect Goods of Product Based on the New Legal Paradigm in the Indonesian Consumer Protection Law System in the Future

The radical concept of applying the strict liability principle as a form of product liability by produces for losses due to hidden defect goods of products should already be part of consumer rights, which are regulated in Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection. This is based on the background of the birth of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection which aims to achieve a balance of protection of the interests of consumers and produces as an effort to create a healthy economy.

In realizing the creation of a healthy economy with balanced protection of the interests of consumers, produces, and government from the radical concept of regulating the strict liability principles of produces toward losses due to hidden defect goods of product, it is necessary to protect consumers through fundamental changes requiring consumer protection efforts, especially defective products include hidden defective products, namely:

1. Changes in demands for consecutive settlement of consumers from public lawsuits (generally criminal and administrative lawsuits) to

civil lawsuits (combining civil charges and/or combining them with criminal charges;

2. Changes in the basis of claims for compensation claims in resolving consumer disputes from being based on claims of default and tort law which in general in Article 1365 of the Civil Code towards the development of the strict liability principles that does not base fault as a determining factor for product liability of produces;
3. Reversed proof system changes with restrictions;
4. Changes in the pattern of relations in the consumers disputes settlement in Indonesia, from the pattern of private relationships between produces and consumers to patterns of public relations between produces, consumers and consumers;
5. Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection does not provide integrated and comprehensive protection for consumers, especially consumers of these defective products. For this reason, several articles of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection must be amended as a short-term effort and for the long term is to form a special law concerning the strict liability of produces for losses due to hidden defect goods of product in Indonesia.

Weaknesses of regulation of legal norms applying the strict liability principle of produces for losses due to hidden defect goods of product at this time will further weaken the position of consumers compared to produces, one of which is caused by legal instruments that have not been able to provide a sense of security, laws and regulations that existing ones are inadequate to directly protect consumers, including law enforcement, which is less firm, while produces have a purely profit-oriented way of thinking.¹⁷⁶ For this reason, efforts are needed to regulate the strict liability principle of produces for losses due to hidden defect

¹⁷⁶Abdul Halim Barkatullah, 2010, *Op. Cit.*, p. 15.

goods of product in the future that are responsive in accordance with the needs and developments of consumers and produces in Indonesia.

1. The Development of Legal Concept of Tort Law-The Risk of Subjective Responsive Asceticism of Produces as Radical Concepts of Strict Liability Principle of Produces for Hidden Defect Goods of Product

The existence of consumer protection law as an open and dynamic system is one of the possibilities for a new law that contains comprehensive legal provisions to protect consumers today, which is the strict liability principle of produces from losses due to hidden defect goods of product based on a new legal paradigm in the products liability as an alternative to protecting consumers.

The radical alternative concept of consumer protection through the application of strict liability is based on the new legal paradigm as a form of product liability through the development of strict liability principle of produces toward losses due to hidden defect goods of product as a form of consumer protection. This research is a development of the Doctrine of Tort Law from Article 1365 of the Civil Code which is strengthened by the risk responsibility of produces.

Theoretically law for Indonesia, the concept of tort law-risk of these produces must also be subjective responsive asceticism as a radical concept of the strict liability principle of produces toward losses due to hidden defect goods of product in the future which uses the concept of the Tort Law Doctrine and the Concept of Produces' Risk, with the qualifications are the unlawful acts that harm consumers as regulated in Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, in the form of:

1. Produces violation of consumer rights and/or;
2. Do not perform the produces obligations and/or violate decency or;
3. Has committed an act contrary to propriety and;
4. Violating business ethics, namely habits that apply in the business world in terms of producing a product and circulating the product on the market.

*Ascetism*¹⁷⁷ is usually associated with sacrifice, obedience, discipline, and so on.¹⁷⁸ Asceticism generally states that humans must deny all their will or desires. In the early period of the church, a person who practiced self-discipline (strict) practiced many taboos and lived a simple life called an *ascetic*. This label of religious perfection for *ascetic* self-training is found in Jainism¹⁷⁹ and several groups of Buddhism and Hinduism.¹⁸⁰

The antinomy of asceticism is hedonism according to Aristippus that the goal of life should be to pursue physical pleasures without considering the consequences.¹⁸¹ But the enjoyment of life is only achieved if there is inner peace (*ataraxia*), so that man has to limit his life's desires.¹⁸² In Buddhism, humans who have too much desire (*trishna*) will no longer know the truth (*awidya*).¹⁸³

The ascetic concept focuses more on worship, does a lot of charity for things related to the afterlife. Based on the nature of asceticism, then what is desired is that humans must be able to control themselves so as not to seek pleasure excessively by eliminating the pleasures of others.

Asceticism developed from religious ideology. Religion teaches to serve God who governs all human life.¹⁸⁴ This means that in all human activities, humans are required to do good to themselves, other individuals, other living things, and the universe as a form of human devotion to God.

¹⁷⁷ *Asceticism* comes from the word *asceticos* in Greek, which means the party who did it. Purnadi Purbacaraka and Soerjono Soekanto, 1985, *Ikhtiar Antinomi: Aliran Filsafat sebagai Landasan Filsafat Hukum*, CV. Rajawali, Jakarta, p. 25.

¹⁷⁸ Purnadi Purbacaraka and Soerjono Soekanto, 1985, *Ibid.*, p. 25.

¹⁷⁹ *Jainisme* (Sanskerta language: जैनधर्म - Jainadharma, Tamil language: ஈடுமொழி - Samaṇam) is a dharmic religion.. Jaina means conquest. Jaina religion means the religion of conquest. Jaina religion was born earlier than Buddhism and was built by Nataputta Vardhamana, who lived in 559-527 BC who received the nickname Mahavira which means great hero., <http://id.wikipedia.org/wiki/Jainisme>, accessed on October 14th, 2014, at 14: 59 WIB.

¹⁸⁰ *Ascetic* in Greek, means ascetic or athlete, Simon Blackburn, **Dictionary of Philosophy**, Translated from The Oxford Dictionary of Philosophy, Pustaka Pelajar, Yogyakarta, p. 62.

¹⁸¹ Epicurus, stated that the best life is without pain and relieving the feeling of aches or disturbances as a result of pleasure, *Ibid.*

¹⁸² Teguh Prasetyo and Abdul Halim Barkatullah, 2013, *Filsafat, Teori dan Ilmu Hukum*, Rajawali Pers, Jakarta, p. 32.

¹⁸³ *Ibid.*

¹⁸⁴ Purnadi Purbacaraka dan Soerjono Soekanto, 1985, *Loc.Cit.*, p. 52.

Based on Islamic history, asceticism is known as the *zuhd* guidance which was born before the guidance of Sufism. Sufism is a further development of a group of *zahids* on the veranda of the Medina Mosque who have ascetic obedience.¹⁸⁵ The ascetic concept in Islam, known as *zuhud*, focuses more on the reality of Islamic implementation in the practice that emphasizes praiseworthy behavior, popular figures are Al-Basri and Rabi'ah Al-Adawiyah.¹⁸⁶

Zuhd, appeared in the first century at the beginning of the third century of Hijriah which was present as a reaction to the luxurious life of the caliph and his family and state officials as a result of the wealth obtained after Islam spread to Syria, Egypt, Mesopotamia and Persia.¹⁸⁷ *Zuhd* followers who are called *zahid* presume Allah not as God who must be feared for His torment, but as a place to find peace of mind by avoiding sins.¹⁸⁸

The deepest intention of this *asceticism* is how human morality can return to the essentially human nature of the human being to be able to serve God sincerely by avoiding actions that bring harm to other humans as a form of devotion to God. The importance of the principle of *asceticism* in consumer protection, especially consumers of hidden defect goods of product, is needed to raise awareness of produces to have the moral to be responsible for the consequences of products produced and circulated in the market so that it can be used as motivation for the realization of complete Indonesian human development.

The concept of *asceticism* that develops from values in the concept of religion is needed to foster a moral attitude in business activities of the economic sector of produces, to bring benefits from products produced and circulated by produces in the market for users or those who get these products. The existence of the value of *asceticism* must be balanced with the value of hedonism, this means

¹⁸⁵ Samsul Munir Amin, 2012, *Ilmu Tasawuf*, Impirint Bumi Aksara, Jakarta, p. 87.

¹⁸⁶ Samsul Munir Amin, 2012, *Ibid.*, p. 124.

¹⁸⁷ A Sufi is *al-zuhd*, which is a state of leaving the world and living material things, Harun Nasution, 2004, *Filsafat dan Misisisme dalam Islam*, Bulan Bintang, Jakarta, p.55.

¹⁸⁸ *Ibid.*, p. 57.

that humans in achieving the pleasures of life must be achieved by not eliminating the pleasures of others.

The need for *asceticism* in protecting consumers of hidden defective products is also intended to have a legal relationship with morals.¹⁸⁹ Theologians and philosophers to legalize morals¹⁹⁰ by devoting to transcendental thinking as a means of showing the truth.¹⁹¹ Humans in general want the harmony of personal and interpersonal life including spiritual and physical aspects which become values that will later become concepts of what is desired.

The position of this asceticism concept should be emphasized as behavior that becomes business morality, functioned to shape the character of produces who will have good mental attitudes and behavior towards themselves, others, God, and even the environment, so that it becomes the morality of Indonesian product produces. This means that in their business activities, the produces have the freedom to obtain the maximum financial benefits, however, they may not produce and distribute products that are detrimental to consumers, because this will eliminate the pleasure or enjoyment of users or those who receive them.

With *asceticism* in the principle of strict liability of produces for losses due to hidden defective products is intended to show that produces as parties that produce and/or market hidden defect goods of product are fully responsible to consumers regardless of whether or not there is any fault of the produces as long as the hidden defect goods of product have caused losses to consumers. The liability of produces from the losses of hidden defect goods of product is also a form of sacrifice by produces to provide satisfaction to consumers which is also based on compliance not only with liability towards fellow humans but a form of obedience as a creature created by God to provide goodness for other humans. in this universe.

¹⁸⁹ Anthon F. Susuanto, 2007, *Hukum: Dari Consilience Menuju Paradigma Hukum Konstruktif-Transgrif*, PT. Refika Aditama, Jakarta, p. 66-67.

¹⁹⁰ Ethics, studying human behavior and actions that are carried out consciously, speech, and human conscience is seen from the point of view of good and bad. Ethics teaches about morals or morals, Soetrono and SRDm Rita Hanafie, 2007, *Filsafat Ilmu dan Metodologi Penelitian*, Andi Yogyakarta, p. 56.

¹⁹¹ *Ibid.*, p. 69.

Subjective responsive asceticism is meant that without eliminating the opportunity for produces to get the maximum profit from their business activities, these benefits are obtained in the right way without having to harm consumers by the presence of hidden defect goods of product that harm consumers. produces as the party most likely to cause consumer losses, then produces must comply/obey to bear the consequences of such losses and comply with applicable legal rules, ethics in doing business in producing and distributing goods.

On the other hand, the possibility of defective products will still exist, so consumers must still have good faith towards produces to seek compensation for the losses they experience. The goodwill of consumers towards produces in demanding compensation for losses is adjusted to losses that have actually been experienced by consumers by providing opportunities for produces to prove that the losses were not caused by the actions of the consumers themselves.

The implication of the produces' strict liability for losses due to hidden defective products is based on the produces' illegal act. Then it becomes a risk for produces to bear consumer losses as a form of compliance with the existence of hidden defect goods of product as an effort to avoid potential risks from business activities of the produces.

Produces still have the opportunity to prove that the losses suffered by consumers are due to the consumer's own actions and also there is still the force majeure for produces as self-defense of produces, so that there are strict restrictions regarding compensation, namely losses that have actually been experienced by consumers or in other words, the consumer's subjective loss is in accordance with the conditions of Indonesian trade which are heading towards the industrialization stage. In other words, the most important thing is that consumers have experienced losses due to defective products and the problem of the form of losses from consumers is not an important issue in consumer protection.¹⁹²

The philosophy of consumer protection and the development of the legal objectives itself has shifted, there is also a desire for the purpose of implementing

¹⁹² Peter Cane, 1986, **Economic Loss and Product Liability, in Comparative Product Liability**, The British Institute of International and Comparative Law, p. 67-68.

the strict liability principle including strict liability for the existence of these hidden defective products, not only to get justice and legal certainty but especially in order to create justice with the concept of social justice. Regarding this social justice, according to Notohamidjojo, that "social justice demands that humans live properly in society. Each must be given the opportunity according to human worth(*menselijke waardigheid*)".¹⁹³ This means that in the field of consumer protection it is proper to apply the principle of strict liability because the losses suffered by consumers are due to the use of produces' products.

Producers are the most likely party to be held responsible for consumer losses because the produces is the producer as well as the one who circulates these products and has already benefited from the product, so when consumers experience losses from these products, consumers should get an appropriate compensation based on the applicable provisions as a form of balance between produces and consumers.

The radical concept of the strict liability principle which was initiated from the doctrine of tort law and risks of produces is in line with Salmond and Fitzgerald's Legal Protection Theory, which understands that the law protects the interests of certain parties by integrating, coordinating, and limiting the interests of other parties,¹⁹⁴ especially requiring the law to provide benefits to the most disadvantaged groups of society as justice in accordance with the socio-economic balance in society.¹⁹⁵ Then with the strict liability principle, it is also intended that produces be careful and responsible for their products, this attitude is in line with the function of law as a means of changing society, namely changing the behavior of actors as a theory of legal protection for Roscou Pound which was introduced

¹⁹³ Notohamidjojo, 1973, *Rahasia Hukum*, BPK Gunung Mulia, Jakarta, p. 13.

¹⁹⁴ J.P Fitzgerald dalam Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, p. 53.

¹⁹⁵ John Rawl dalam Muhammad Syaifuddin, 2008, *Perlindungan Hukum Hak Masyarakat Kurang dan Tidak Mampu atas Pelayanan Kesehatan Rumah Sakit Swasta Berbadan Hukum Perseroan Terbatas*, Dissertation, Doctoral Program in Legal Studies, Interest in Economic Law, Universitas Brawijaya, Faculty of Law, Postgraduate Program in Law, Malang, p. 267.

by Mochtar Kusumaatmadja, "law is a tool of social engineering",¹⁹⁶ making law a means to change society for the better.

The legal function for the better change in the strict liability principle of produces can be seen from the basis of the payment of compensation (liability without fault) is that there is no need to prove the fault of the plaintiff.¹⁹⁷ Although there is an opinion that the terms of guilt other than the three conditions of a tort as an independent condition have been relinquished, due to the development of industrialization which results in greater risks and more complicated cause-and-effect relationships. These conditions are (1) there is a tort law; (2) there is a loss; (2) there is a causality relationship. However, there is also an opinion that the word error in a tort does not mean it is eliminated, but its use is synonymous with a tort,¹⁹⁸ then it can be concluded that the strict liability principle is *lex specialis* in a lawsuit about tort law in general based on Article 1365 of the Civil Code,¹⁹⁹ so that there is liability borne by produces, in the form of liability for the application of legal norms, appropriateness, and upholding business ethics, namely habits that apply in the business world.

Paying attention to the basis of demands for strict liability due to the existence of hidden defective products developed from the Doctrine of Unlawful Acts as the qualification is an tort of the Republic of Indonesia Law Number 8 of 1999 concerning Consumer Protection which harms consumers is by violating the provisions of the Republic Act Indonesia Number 8 of 1999 concerning Consumer Protection. It is also supported by a proof system in the strict liability

¹⁹⁶ Roscoe Pound dalam Bernard L Tanya, dkk., 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Jakarta, p. 155.

¹⁹⁷ Because the main obligation of the seller is to deliver the goods and bear (Article 1474 of the Civil Code) in the sense of guaranteeing peaceful enjoyment and guaranteeing from hidden defects. This is a consequence passed from the seller to the buyer., Subekti, 1984. *Aneka Perjanjian*, Sixth edition, Alumni, Bandung, p. 17.

¹⁹⁸ J.M. van Dunne and van der Burght, 1998, *Perbuatan melawan Hukum*, Translation of KPH Hapsoro Jayaningprang, Dutch Legal Cooperation Council with Indonesia, Civil Law Project, Ujungpandang, p. 107-108.

¹⁹⁹ In the old formulation regarding the elements of an unlawful act, the terms of guilt stand alone, whereas in the new formulation in 1919 it is not, because whoever acts against decency because of violating a careful attitude must be guilty, or in other words, if not guilty, he will not do violates decency or caution. In other words, that the word error is not eliminated, but its use is synonymous with an lawful act., J.M. van Dunne and van der Burght, 1998, *Perbuatan Melawan Hukum*, Translation of KPH Hapsoro Jayaningprang, *Ibid*.

principle which implements a reversed proof system, even though this is actually not known explicitly in civil law, because the system of proof generally lies with the party who is suing. However, the provisions of the principle of the burden of proof are not always appropriate to be imposed on every case, because in addition to this principle there are more stringent special provisions as in Article 533 of the Civil Code,²⁰⁰ Article 535 of the Civil Code²⁰¹ and Article 1244 of the Civil Code.²⁰²

The theoretical basis is to use the *res ipsa loquitor* doctrine (the doctrine that favors the victim).²⁰³ The doctrine of *res ipsa loquitor* is used as the basis for the burden of proof reversed, because consumers are victims and as victims, of course, produces are more able (suspicion) to prove and as the party responsible for illegal or tort committed by produces for quality assurance of products that are produced and circulated in the market.

An allegation against produces is a form of obligation to prove the alleged unlawful act which can be derived from the constitutions and the judge's conclusions on important facts that are consistent with the existence of the unlawful act. This shows that if the provisions of the material laws have determined for themselves which party is obliged to provide the burden of proof, then it fully refers to the article of the law which self-determines mandatory evidence must be applied in certain cases.²⁰⁴ This means that after the enactment of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, a reversal burden of proof can be applied as has been regulated in the

²⁰⁰ The content of Article 533 of the Civil Code, good faith must be presumed to exist in every position holder; whoever accuses him of bad faith must prove the accusation., R. Subekti and R. Tjitrosudibio, 2009, Indonesian Civil Code, PT. Pradnya Paramita, Jakarta, p. 164.

²⁰¹ The content of Article 535 of the Civil Code, Each holder of a position who has started holding it for another person, as long as it is not proven otherwise, must be deemed to continue that position on the basis of and with the right., R. Subekti and R. Tjitrosudibio, 2009, **Ibid.**

²⁰² The content of Article 1244 of the Civil Code, If there is a reason for that, the debtor must be punished with compensation for costs, losses and interest if he cannot prove that the agreement was not or was not carried out at the right time, due to an unforeseen thing, and could not be accounted for him, all of that if bad faith was not on his part., **Ibid.**, p. 324.

²⁰³ Munir Fuady, 2005, **Op. Cit.**, p. 99.

²⁰⁴ Teguh Samudra, 1992, *Hukum Pembuktian dalam Acara Perdata*. Alumni, Bandung, p. 24.

consumer protection material law, namely Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

The basic facts of the prosecution of the strict liability principle of produces for losses due to hidden defect goods of product developed from the Doctrine of Tort after 1919. This is because since 1919 Hoge Raad began to interpret acts violating the law in a broad sense in the case of Lindenbaum Vs. Cohen by saying that a tort must be interpreted as doing or not acting contrary to the four elements of tort after 1919.²⁰⁵ The considerations that can be used in the application of the strict liability principle are fulfilling the interests of consumers in avoiding proving the elements of produces' mistakes and strengthening the position of consumers who do not know and supervise products as produces which cause the produces have sufficient ability to protect themselves and the risk of injury from defective products, especially hidden defect goods of product.

Furthermore, the existence of a reversed proof system in Article 28 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is a progressive step towards the existence of an accountability system in the field of consumer protection that applies the strict liability principle. In other words, what determines that the victim, in this case the consumer, of a tort does not need to prove the existence of an tort or an error, it is enough to provide the facts that have occurred and to draw the conclusion that the produces has committed the tort. This means it is enough by showing that there is an event that causes harm to consumers and the produces are burdened with the burden of proof that he has not committed an tort or a mistake.

Noticing the potential risks that are possible from the productivity and effectiveness of business activities of produces in the era of globalization and free trade which are supported by current developments in technology and information, the strict liability principle should also be applied in the field of consumer protection. Then, based on several definitions of the strict liability principle of produces as previously explained, it appears that in the strict liability

²⁰⁵ Setiawan, *Empat Kriteria Perbuatan Melawan Hukum dan Perkembangan dalam Yurisprudensi*, Varia Judiciary No. 16 Year II (January 1987), p. 176.

principle of produces as a form of product liability. The focus is on the condition of the products which creates the liability of the produces, so to initiate the strict liability principle of produces toward losses due to hidden defect goods of product through the development of the Doctrine of Tort after 1919 from the general elements of Article 1365 of the Civil Code and the legal concept of risk for produces from legal liability based on the risks of produces.

The development of the strict liability principle of produces from developing the doctrine of tort which is generally contained in Article 1365 of the Civil Code with the legal concept of perpetrator risk which is subjective responsive *asceticism* of this produces is intended to protect all consumers who have suffered losses from defective products, especially hidden defect goods of product by not seeing how the consumer gets the product, whether directly or indirectly. This means that consumers who previously had no relationship with the produces but later experienced a loss from the product also have the right to claim absolute compensation toward the produces for the product.

Based on the legal concept of violating the law and the risk of produces, then the theoretical idealization of law allows consumers to claim absolute compensation as an act of the tort and the risk of produces from products produced and circulated on the market. However, as long as the produces is unable to prove that the loss suffered by the consumer is not the result of an tort of the produces but because of the consumers' act and accepting the produces' force majeure as an exception and other exceptions which are recognized in the business world and based on statutory provisions with there are still strict restrictions, as an effort to keep the economy growing in Indonesia.

a. The Ideals of Pancasila Law as a Philosophical Basis for the Development of Radical Concepts of the Strict Liability Principle of Produces for Toward Losses Due to Hidden Defect Goods of Product

Pancasila as the legal ideals of the Indonesian nation, this also means that the legal ideals of the strict liability principle of produces toward losses due to hidden defect goods of product must be legal ideals that are based on the values of

Pancasila. This effort is a preventive step by referring to the importance of implementing the strict liability principle of produces, namely:

1. Avoid potential risks from the products of produces;
2. A form of guarantee for compensation for products of produces;
3. Avoid the chain claim process in the consumer dispute settlement process;
4. As a means of being responsible for the quality of products of produces;
5. Protecting the rights of honest produces.

Then, based on the Pancasila principles, whose meaning is explained by Notonagoro, that each Pancasila precept as a legal ideal has the qualifications of the other four principles.²⁰⁶ The content of the meaning of the Pancasila principles is one unified whole, each principle cannot stand alone apart from the other precepts.²⁰⁷

The content of the meaning of the Pancasila precepts is one unified whole, each precept cannot stand alone with other precepts. The radical concept of the strict liability principle of produces toward losses due to hidden defect goods of product which is built from the concept of the tort of produces in Pancasila, in particular, is in the second principle of Pancasila, namely:

1. Recognizing and placing Indonesian consumers as God's creatures whose pride and dignity must be protected in fulfilling the necessities of life as human beings as a result of the tort of produces in the form of hidden defect goods of product that are harmful;
2. Produces in carrying out business/business activities must be based on a sense of liability as a risk from produces to protect consumers by providing assurance of product quality to consumers that do not endanger the lives of consumers who use the products they produce.

²⁰⁶ Notonagoro, 1982, *Beberapa Hal Mengenai Falsafah Pancasila*, Rajawali Pers, Jakarta, p. 58.

²⁰⁷ Kaelan, 2002, *Filsafat Pancasila: Pandangan Hidup Bangsa Indonesia*, Paradigma, Yogyakarta, p. 67.

Furthermore, the content of the meaning of the fifth principles of Pancasila to guide the legal concept of the doctrine of the tort of produces in initiating the strict liability principle of produces toward losses due to hidden defect goods of product are:

1. Recognizing and placing the essence of every Indonesian produces as a creature of God who has the right to receive protection which is the right of his interests and needs in accordance with the pride and dignity of the obligations that have been fulfilled;
2. Produces must bear the liability to be legally and morally responsible as a risk to consumers who suffer losses from hidden defect goods of product that are produced and circulated in the market. Produces as parties who have a higher position in creating social justice in living together with other members of society as human beings of God in a balanced relationship between Produces and consumers.

The final hope from the radical concept of the strict liability principle of produces for losses due to hidden defect goods of product is that it can be functioned as a means of supporting modernization and comprehensive development.

b. Socio-Cultural Principles in the Development of a Legal System of the Strict Liability of Hidden Defect Goods of Product of Produces

Law is system, so the approach taken is a systems approach, not a power approach. Building a radical concept of developing the strict liability principle of produces toward hidden defect goods of product in the consumer protection legal system that noticing the principles of Indonesian socio-culture based on Pancasila and the 1945 Constitution of the Republic of Indonesia is absolutely done. As for what is meant by the system in this research, is a unit composed of elements/sub-systems that are interrelated and move dynamically to achieve a goal by consistent openness.

Legal development is not only limited to the formation of regulations, norms, or methods but systematic and holistic legal development. According to Freidman in the Legal System theory, there are three main things in a legal

system, namely the structure, substance, and legal culture. These three things are a system in which lawmakers must pay attention to the relationship of one element to another.²⁰⁸

Based on the three elements of Lawrence M Friedman's legal system, it can be seen that legal culture plays a very important role in being able to direct the development of the legal system to be built. The existence of legal culture regards to perceptions, values, ideas, and community expectations of the law.

The issue of legal culture is actually much more complex because the conceptually legal culture is a matter that exists outside the law. These questions are a set of values (value system), what orientation people think and dream about the law in a broad sense. Furthermore, this value system becomes the basis for policy formulation and is then followed by law-making as juridical signs and code of conduct in everyday life, which are expected to reflect the noble values possessed by the nation concerned.²⁰⁹

On the other hand, courts have limitations in resolving local problems that are not recognized in custom. The traditional culture that emphasizes community, kinship, harmony, encourages informal dispute resolution which is felt to be more efficient and effective, as strong as encouraging the resolution of business dispute problems through formal channels (courts).²¹⁰ Judges are demanded to make more and more new breakthroughs voicing a sense of consumer justice so that the culture of consumers who are reluctant to go to court even though they have suffered enough losses does not happen again.

²⁰⁸ Joni Emirzon, 2007, *Emirzon, Joni, 2007, Hukum Usaha Jasa Penilai dari Perspektif Good Corporate Governance*. Dissertation, Diponegoro University Postgraduate Program, Semarang, p. 601.

²⁰⁹ Solly Lubis, 2000, *Politik dan Hukum di Era Reformasi*, Mandar Maju, Bandung.

²¹⁰ Erman Rajagukguk, *Budaya Hukum dan Penyelesaian Sengketa di Luar Pengadilan*, Journal of Master of Law, PPs-U II, Vol. 2 N0.4, October 2000, Yogyakarta, p.7., Daniel S.Lev. *Lembaga Peradilan dan Budaya Hukum*, in Daniel S.Lev, 1990, *Hukum dan Politik Indonesia*, 1st ed, LP3ES., p. 164-166.

2 Pancasila and the 1945 Constitution of the Republic of Indonesia as the Basis for Harmonization of Regulating Principles of the Strict Liability Principle of Hidden Defect Goods of Product

a. Value Harmonization in the Development of Radical Concepts of the Strict Liability Principle of Hidden Defect Goods of Products of Produces

Harmonization is a system of harmony dan congeniality in achieving a goal. The value contains the meaning of a code or standard that is maintained throughout time or, more broadly, organizes a system of action. Value is something good, meaning that value can be constructed in a variety of objects. There are four basic building blocks of value (the constructive element that makes something valuable). Two elements come from the object, namely the element of use or benefit (utility) and the element of importance. While two other elements come from the subject, namely elements of need and elements of assessment, interpretation, and appreciation (estimation).²¹¹

Notonagoro argues that the values of Pancasila are classified as spiritual values but spiritual values that acknowledge the existence of material and vital values. The values contained in Precepts I to V Principles of Pancasila are the aspirations, hopes, and desires of the Indonesian people which will be realized in life that will provide a pattern (patron) for the attitudes, behavior, and actions of the Indonesian people.²¹²

A value contains ambitions, hopes, desires, and musts. Talking about value is means talking about the ideal things which are the ambitions, dreams, desires, and musts. Talking about value means talking about *das sollen* not *das sein*, but the two are closely related or closely related. This means that *das sollen* must be transformed into *das sein*, the ideal becomes real, which means normative must be realized with daily actions that are facts.²¹³

²¹¹ Thomas Aquinas, who used Aristotle's term quoted by Sutrisno, defines value as a good thing. That is, values can be constructed to various objects., Mudji Sutrisno and Hendar Putranto, 2004, *Menafsir Keindonesian, Hermeneutika Pascakolonial, Soal Identitas*, Kanisius, Jakarta, p. 26.

²¹² Kaelan, 2002, *Op. Cit.*, p. 124-131

²¹³ Kaelan, 2002, *Ibid.*, p. 124.

Efforts to realize justice for balanced produces and consumers must be following the human dignity in accordance with the Pancasila philosophy and the values in the Preamble to the 1945 Constitution of the Republic of Indonesia, so as a rule of law to achieve it must be based on regulations. As for the main source of value for the formation of regulations on the strict liability principle of produces toward losses due to hidden defect goods of product as an effort to protect consumers in Indonesia are the Second Precept, "A just and civiled humanity", Fourth Precepts, "Democracy, led by wisdom of the representatives of the people", and the Fifth Precept, Social justice for all Indonesian people". Then Article 33 of the 1945 Constitution of the Republic of Indonesia as the main article for the elaboration of the second, fourth and fifth principles in the context of consumer protection in Indonesia, as listed in Aline IV of the Preamble of the 1945 Constitution of the Republic of Indonesia.

b. Harmonization of Legal Rules in the Formation of Laws on the Strict Liability Principle for Produces Hidden-Defect Goods of Product

The establishment of a legal rule of the strict liability of produces toward losses due to hidden defect goods of product will not be separated from the legal rules that govern how or technical arrangement of a predetermined rule. This is important as a standard reference or guideline. Currently, the guidelines for the formation of legal rules are regulated in Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Laws and Regulations. Law of the Republic of Indonesia Number 12 of 2011 which was born to fulfill the orders of Article 22 A of the 1945 Constitution of the Republic of Indonesia,²¹⁴ and Article 6 of the Decree of the People's Consultative Assembly No. 111 / MPR /

²¹⁴ Article 22 A reads the second amendment to the 1945 Constitution of the Republic of Indonesia, "Further provisions regarding the procedures for the formation of laws are regulated by law".

2000 concerning Legal Sources and Order of Legislation²¹⁵ to fulfill the principles of forming good laws and regulations.²¹⁶

Fulfilling the principles of forming good laws and regulations is in order to create harmonious regulations. The achievement of harmonious regulations is based on the formation of laws and regulations which is based on Pancasila and the 1945 Constitution of the Republic of Indonesia and is also aimed at realizing legal development.

Harmonization of law is carried out in the implementation of synchronization when the process of forming legal rules to solve problems there is no specific legal rule that regulates the strict liability principle of produces toward losses due to hidden defect goods of products during the process of establishing legal rules. Synchronization can be done in two ways, namely:

1. Not contradicting the principles of higher legislation;
2. Still within the scope justified by the principles and legal norms in force.²¹⁷

With the application of the rule of law of the strict liability principle of produces due to hidden defect goods of product, hereinafter it is necessary to harmonize both vertically and horizontally with the philosophical, sociological, economic, and legal values of Indonesian consumers as well as by considering the socio-culture of Indonesia.

²¹⁵ MPR Decree No.III / MPR / 2000, the order of laws and regulations includes: UUD, UU / Government Regulation In Lieu of Law, Government Regulation, Presidential Regulation, Presidential Decree / Presidential Instruction, Regional Regulation. The statutory hierarchy system is a tiered, lower legal rule, it cannot conflict with higher legal rules and so on.

²¹⁶ In the Indonesian realm, the principles for the proper formation of laws and regulations consist of (1) the ideals of Indonesian law; (2) the principle of the state based on law; (3) the principle of governance based on a constitutional system; (4) other principles., Maria Farida, 1998, *Ilmu Perundang-Undangan (Dasar-dasar dan Pembentukannya)*, Kanisius, Yogyakarta, p. 196-197.

²¹⁷ Yuliandri, 2011, *Asas-asas Pembentukan Peraturan Perundang-undangan yang Baik: Gagasan pembentukan Undang-Undang Berkelanjutan*, PT. RajaGrafindo Persada, Jakarta, p. 221.

3. Regulation Comparison of the Strict Liability Principle of Produces Toward Losses Due to Hidden Defect Goods of Product

a. Legal Expectations Taken from the Regulation of the Strict Liability Principle of Produces of Hidden Defect Goods of Products for Indonesia

Tracing many countries that have previously introduced the implementation of the Strict Liability Principle, especially the United States as a pioneer of the Strict Liability Principle and Japan which represents a country that has adopted the Strict Liability Principle of produces as a form of product liability. In East Asia which is advanced in trade and industry field in the current era of globalization, it is very possible for Indonesia to be able to apply the Strict Liability Principle of produces for losses due to hidden defect goods of product in the future.

Furthermore, by noticing the application of Strict Liability Principle of produces in the United States and Japan, it shows that basically it is to place consumers in their function as legal subjects not as legal objects. These two countries do not make consumers as an object of exploitation to seek profit solely from produces by ignoring consumer interests, so as to strengthen the position of consumers as economic actors just like produces.

The significance of consumers' rights arrangement in Indonesia is through the constitution. Legal instruments that support consumers to get compensation for the products of produces, as a form of product liability, are based on error and breaches of guarantee which have not been able to provide a sense of justice for consumers. This has also happened in the United States and Japan so that the alternative of consumer protection efforts, especially defective products include hidden defective products is through the application of the strict liability principle of produces as an alternative that can be chosen. In this current era of globalization and free trade, every country is required to produce products that can provide satisfaction to consumers. The expansion of the product market from countries that want to market and distribute the products produced has required each country to have legal instruments that can support product guarantees for consumers, which generally have the significance of regulation

through law as a form of legal certainty that can provide certainty guarantees of consequences due to defective product include hidden defective products so that the legal consequences of hidden defective products are borne by the party who responsible for bearing consumer losses.

The party who takes liability for bearing consumer losses is the produces. In the United States and Japan, there are differences regarding who the produces are. The United States stipulates that what is meant by a produces are the producers of the products with the sellers of the products as in Restatement (Second) of Tort, while in Japan what is meant by produces are the producers of the products as stipulated in the Product Liability Act 1994. In this research in the future, the ones who include as produces are all parties involved in the production and distribution process of products, both individuals and business entities, including product producers and sellers.

There is a change in the basis of product liability demands that apply the strict liability principle historically must be supported by all parties involved in the consumer protection process, from the government, consumers, and produces, although to be able to apply it there will be pros and cons which are strongly influenced by the philosophy, socio-culture, and economy of the country. This means that for the developing Indonesian nation, the existence of new laws including the strict liability principle of produces as a form of product liability must be adjusted to the philosophy, socio-culture, and economy in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia to suit the conditions of the Indonesia nation so that it will be effective in its application.

b. Relevance, Correlation of Picked Legal Expectations to Support the Application of the Strict Liability Principle of Produces of Hidden Defect Goods of Product

By noticing the legal expectations of the United States and Japan which become supporter for the application of the strict liability principle of produces toward losses due to hidden defect goods of product in Indonesia is that there is relevance to the application of the strict liability principle of produces in Indonesia from the legal expectations that are drawn that seen from a

philosophical, economic, and socio-cultural perspective between Indonesia, the United States, and Japan. From a philosophical perspective, it is that the application of the strict liability principle of produces as a form of product liability of produces including liability for hidden defect goods of products of produces is that to protect consumers by placing consumers as economic actors who are equal in position to produces. For the United States, the philosophy of consumer protection is to protect consumers by protecting the public interest. Indonesia with its consumer protection philosophy, that protecting consumers is the same as protecting the nation, meanwhile Japan is seen from its consumer protection philosophy, which is zero defects and continuous improvement.

As for the relevance from an economic perspective to the application of the strict liability principle of produces of hidden defect goods of product in Indonesia, namely by looking at the legal expectations drawn from the United States, Japan, and Indonesia. The relevance of this economic perspective is that the market economy in trade must be balanced with strengthening the role of the state for the realization of public welfare. The United States with a capitalist economic system was the largest economy from 1890 whose rules were in favor of industrialists. The United States industry involves many components of goods from other countries. A capitalist economic system that entrusts the integrity and competence of the existing business community from the products produced and circulated on the market. Japan with a family-socio-socialist economic system, the economic activities carried out are for the welfare of the community by implementing efficiency in business, focusing on consumer satisfaction by carrying out continuous innovation that will bring profit and reduce operating costs. For Japanese people, consumers are king. Indonesia with economic democracy, for the Indonesian people, development is as the practice of Pancasila that wishes the development of the nation's economy must adequate to manifest the balance and equality in achieving common prosperity in social justice for the Indonesian nation. The national economy currently is getting into industrialization which starting from an agricultural country like Japan, expanding the marketing of a product to other countries. The state can provide the satisfaction of the quality of

products produced and circulated by produces in the market which become the products liability of produces in order to dominate the market.

The application of the strict liability principle in the United States and Japan and its relevance to socio-cultural life in Indonesia, is that the United States shows in its socio-cultural life that highly upholds freedom, so it is very liberal in various fields of life, but still provides limits as long as it does not violate law. The socio-cultural life in the United States that upholds the professionalism from each of its citizens' professions, the high concern for fellow human beings, dispute settlement through litigation, and insurance culture in American society is a very dominant supporting factor in the idea of the importance of applying the strict liability principle toward products from produces. In Japan, their socio-cultural life is very much influenced from the point of view of Japanese society who regarding humans as part of a social network, upholding the philosophy of ancestral culture, and religion which is implicated as behavior in the nation's economic activities.

Consumer dispute settlement tends to go through the informal path by win-win solutions. For Indonesia itself, the relevance of the supporting factors for the application of the strict liability principle is that the nature of the Indonesian people in their relationships with each other is due to the nature of the community, tends to avoid complications and in economic transactions, there is a habit that the losses suffered in economic transactions are the responsibility of the party most likely to pay the loss.

Noticing the supporting factors of the application of the strict liability principle of produces toward losses due to products of produces from the relevance of its application in the United States, Japan and the expectations of the possibility to be implemented in Indonesia, therefore, the existence of a discourse on the application of the strict liability principle in Indonesia that is offered, there will be a philosophically, economically and socio-culture correlation to be able to apply the strict liability of subjective responsive asceticism of this produces is solely for the realization of the protection of Indonesian consumer rights for

security, safety, health and the environment because there is an increasing flow of products produced, and circulating in the jurisdiction of Indonesia.

The traffic of product in the era of globalization and free trade with all technological advances makes the position of consumers very susceptible to being harmed. It is very urgent to supervise the products produced and circulating in Indonesia. Although, the possibility of applying the strict liability principle of subjective responsive asceticism of produces will have pros and cons as well as the beginning of the application of the strict liability principle in the United States and Japan. However, paying attention to the main objective of the application of the principle is to protect consumers to get what is their right by not neglecting the interests of produces to get profits from their business activities.

4. Supporting Factors of the Implementation of the Strict Liability

Principle of Hidden Defect Goods of Product

According to Bentham and Savigny, the formation of law is strongly influenced by two factors, namely the political system that controls legal activity (external factors) and social interests which are the object of the regulation (internal factors).²¹⁸ As for the supporting factors of the application of the strict liability principle of hidden defect goods of product, are:

a. Internal Factors Supporting the Application of the Strict Liability

Principle of Hidden Defective Products

Internal factors of the enactment of a legal product can be seen in the review consideration and general explanation as well as in the formulation of articles or the combination of the three. In economic research, there are several internal factors.²¹⁹ Some of the internal factors that are meant can be used to see the internal factors that support the importance of implementing the strict liability

²¹⁸ Lawrence M. Friedman, 1959, Law in a Changing Society, Stven & Sons Limited, London, p. 269-270., in Inocentius Samsul, 2004, **Op. Cit.**, p. 125.

²¹⁹ In Indonesia, the internal factor in the enactment of laws is a philosophical and sociological reason for the formation of laws. The Internal factors include (1) achieving national development goals; (2) replace outdated statutory provisions; (3) responding to community needs; (4) fulfilling the desire to have modern law; (4) creating a conducive investment climate; (5) responding to the challenges of the globalization era; (6) fulfillment of foreign debt or grant requirements; (6) fulfillment of international treaty obligations; (7) provide support for power., **Ibid.**, p. 26.

principle of hidden defect goods of product as an effort to protect consumers in Indonesia, including:

1. The existence of the Republic of Indonesia Law Number 8 Year 1999 regarding Consumer Protection;
2. To achieve consumer protection objectives;
3. Changing and adding to the provisions of paragraphs in the Article on the strict liability of produces in the Law of the Republic of Indonesia of 1999 concerning Consumer Protection;
4. Responding to consumer needs;
5. The need for modern law as a response to the challenges of the globalization era.

b. External Factors Supporting the Implementation of the Strict Liability Principle of Hidden Defect Goods of Product

According to Inocentius Samsul that the external factors of law that affect the process of forming the strict liability principle of produces, among others are modification of the *laissez faire* principle, collectivism, the concept of a welfare state, and academic support, as well as the existence of the idea that the law (common law) must be responsive to the public needs.²²⁰ Based on the research results, the external factors supporting the application of the strict liability principle of produces toward losses due to hidden defect goods of product are:

1. Legal politics in making laws and regulations;
2. Development of marketing strategy changes of produces' products;
3. The existence of the obligation to fulfill international agreements;
4. Deef pocket theory.

c. The Generalization concerning the Imlementation Completion the Strict Liability Principle of Hidden Defect Goods of Product

Paying attention to cases of product liability settlement such as the case of design flaws from Uniroyal as a car tire manufacturer in the United States, then

²²⁰Inocentius Samsul. 2004, **Op. Cit.**, hlm. 93.

the case of recall and compensation for Mitsubishi Corp Japan (MMC) cars due to the wheels, regulators, and car clutches that were not functioning properly.

In Indonesia itself, the process of product liability settlement of produces, among others, can be seen from the Palembang District Court Decision No.1310 / Pid.B / 2009 / PN.PLG concerning the Distribution of Cosmetics without Marketing Permits, then the Palembang High Court Decision No. 339 / Pid / 2009 / PT.PLG concerning the Circulation of Pharmaceutical Preparations in the Form of Traditional Medicines in the Form of Herb Not Fulfilling the Standard and/or Requirements, and the Supreme Court Decision No. 1325 K / Pid.Sus / 2010 concerning the Circulation of Pharmaceutical Sedian in the Form of Traditional Medicines in the Form of Herb Not Fulfilling the Standard and/or Requirements, as well as the case for the settlement of the South Jakarta Branch of the Indonesian Consumers Foundation regarding the Switching of Washing Machine Units.

The process of product liability settlement of produces in cases of design defects in tire products from Uniroyal in the United States and the process of product liability settlement of Japanese Mitsubishi Corp (MMC) car products, as well as product liability of Honda Thailand R&D Co, show that the three cases have implemented the strict liability principle of produces of hidden defect goods of product.

The product liability from the case above is shown from what the United States Uniroyal Company had done which had paid compensation to consumers in the form of \$ 17,000,000: \$ 5,500,000 for actual compensation and 11,500,000 for compensation for product damage as a form of the company strict liability. The same thing can be seen from the process of the strict liability settlement carried out by the MMC car company due to defects in the wheels, clutches, and car regulators that cannot be used properly by recalling the production of cars produced in 2000-2004. The efforts done by the MMC car company, with the existence of recall and compensation are to correct defects in production which are carried out as a form of compensation for consumers. The efforts made by the MMC car company are a form of the company's strict liability from the existence

of hidden defect goods of product, to then be responsible for providing security and safety toward obligations as produces to ensure consumer satisfaction. Likewise, Honda Thailanda R&D Co. recalls PCX 125 products with engine codes from NC125DE 000001 to NC125DE 0014250.

As for the process of product liability settlement in Indonesia which is illustrated by several court decisions which are used as examples, including in Decision No. 1310 / Pid.B / 2009 / PN.PLG, Decision No. 339 / Pid / 2009 / PT.PLG, and Supreme Court Decision No. 1325 K / Pid. Sus / 2010, all decisions from this example have not applied the strict liability principle of produces due to losses due to hidden defect goods of product. Court decisions in these cases indicate that the basis for the settlement demands is based solely on criminal charges for infringement of a product while regarding consumer protection efforts which is in the form of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection are not used as the basis for claims for demanding compensation toward produces.

The settlement of consumer dispute cases in Indonesia must be revised so that there are no violations of the public interest by produces and even the government itself can become the plaintiff as an effort to protect the irresponsible consumers, as Article 46 paragraph (1) letter d of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection,²²¹ In the future, it needs to be revised namely without limitation, have to wait for large material losses and/or not a small number of victims because the result of hidden defective products is very dangerous to consumers. Although it is possible that at first the product is not classified as a dangerous product, but with a hidden defect, it will become a dangerous product. The government as an extension of its citizens, in this case consumers, must be able to protect consumers in accordance with Philipus M Hadjon's Theory of Legal Protection that the government in relation to legal protections for the people can be carried out (a) preventive legal protection and (b) repressive legal protections, which intended to resolve disputes.²²²

²²¹ **Ibid.**

²²² Philipus M. Hadjon, 1987, **Op. Cit.**, p. 2.

Then in line with the Welfare Law State Theory which requires intervention in all fields of public life and also in accordance with W. Friedman's State Function Theory. Currently, in Indonesia, there should be alternatives as an effort to provide consumer protection that can change the behavior of all parties involved in consumer protection efforts, especially consumer protection from losses due to hidden defect goods of product.

The process of consumer disputes settlement which based on the charges of mistakes with public lawsuits, especially this criminal charges, is not only customary in the settlement process based on criminal charges, but also because the process of proving the elements of a criminal act is easier to do as conveyed by Central Jakarta High Judge,²²³ and so also according to the Palembang High Judge.²²⁴ However, in its current development, criminal penalties for produces who commit the unlawful acts have not been felt to provide a sense of justice for the community.

Therefore in the future, efforts can be made through the strict liability principle of produces from the existence losses due to hidden defective products with the law of strict liability of subjective responsive asceticism produces.

5. Realization of the Legal Principles Formation of the Development of Radical Concepts of the Strict Liability Principles of Produces toward Losses Due to Hidden Defect Goods of Products...

a. Correlation of Legal Principles and Legal Rules in the Development of the Strict Liability of Produces

The design of the national economic legal structure must be guided by the legal ideals and basic values as outlined in the 1945 Constitution of the Republic of Indonesia. To understand the problems mentioned above is returned to what is meant by principle. The legal principle is a legal principle in legal science, so that the legal principle should not be considered as concrete legal norms²²⁵ which must

²²³ The results of the researcher interview with Ariansyah B. Darli as the High Judge of Central Jakarta in the office on Tuesday, November 19th, 2013 at 15.30 WIB.

²²⁴ The results of the researcher interview with H.M Daud Ahmad as the High Judge of Palembang which was conducted in the office on Monday, June 17th, 2014 at 10.45 WIB.

²²⁵ The Liang Gie, **Loc. Cit.**

be viewed as a general basis or guide for the applicable law,²²⁶ it is mean that a legal principle is formulated abstractly and generally, it must be concretized into a positive legal norm if it wants to be used in practice.²²⁷

Legal principles constitute the basic principles that become the starting point for the legal system development in order to find a rational logic or the basis for the birth of the background of thought which becomes the motivation and purpose for the birth of the rules which function to guide legislators in the process of law formation.

b. Formulation of Basic Legal Principles Development of Radical Concepts of Strict Liability of Producers toward Losses Due to Hidden Defect Goods of Product in the Future

The strict liability principle of producers toward losses due to hidden defect goods of product in the future can be used as one of the hopes of becoming a consumer protection legal system that can maintain a business climate in order to remain conducive. This hope can be used to maintain economic stability by having principles and objectives in accordance with the principles of economic law currently developing in Indonesia, namely (1) the principle of openness; (2) the principle of accountability; (3) the principle of equal treatment; (4) the principle of balance; (5) Protection principle; (6) the principle of accuracy; (7) the principle of professionalism; (8) The principle of honesty.²²⁸

Then, by paying attention to and elaborating on the basic ideas as conceptualized in the normative idea of consumer protection regulation in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, then the existence of legal principles for the implementation of consumer protection as contained in Article 2 of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, namely:

²²⁶ Based on the opinion of Elkema Hommes quoted by Sudikno Mertokusumo, 1997, in his book *Mengenal Hukum*, Liberty, Yogyakarta, p. 32.

²²⁷ Muhammad Syaifuddin, 2008, *Perlindungan Hukum Hak Masyarakat Kurang dan Tidak Mampu atas Pelayanan Kesehatan Rumah Sakit Swasta Berbadan Hukum Perseroan Terbatas*, Dissertation, Doctoral Program in Legal Studies with an Interest in Economic Law, Universitas Brawijaya, Faculty of Law, Postgraduate Program in Law, Malang, p. 66.

²²⁸ Joni Emirzon, 2007, *Op. Cit.*, p. 655.

1. The principle of benefit is intended to secure that all efforts in carrying out consumer protection must provide maximum benefit for the benefit of consumers and produces as a whole;
2. The principle of justice is intended so that the participation of all people can be realized maximally and provide opportunities for consumers and produces to obtain their rights and carry out their obligations fairly;
3. The principle of balance is intended to provide a balance between the interests of consumers, produces and the government in material and spiritual terms;
4. The principle of security and consumer safety is intended to provide a guarantee for security and safety to consumers in the use and use of goods and/or services consumed or used;
5. The principle of legal certainty is intended so that produces and consumers obey the law and obtain justice in carrying out consumer protection and the state guarantees legal certainty.

The linkages of the legal principles that exist in the Consumer Protection Act with the basic idea of the formation of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, can be used in establishing the legal strict liability principles.

6. Normative Concretization of the Strict Liability Principle of Produces from Losses Due to Hidden Defect Goods of Product within the Framework of The Consumer Protection Legal System in Indonesia

Legal certainty in the application of the strict liability principle of produces from losses due to hidden defect goods of product in the future is by positivity in a special law, namely the Act on Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Product.

Furthermore, regarding the norms of the application of the strict liability principle of produces for losses due to hidden defect goods of products which are only implicit in the Law of the Republic of Indonesia Number 8 of 1999

concerning Consumer Protection, the researcher offers an alternative normative implication. The short-term normative implication offer from researchers is to amend the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection which can be seen in the table below:

Table 3
The Amendments Concretization to the Implicit Article of Strict Liability Principle of Produces from Losses Due to Hidden Defect Goods of Product in Law Number 8 of 1999 concerning Consumers Protection

No	The amended article	Problem	Researcher Recommendations <i>(Ius (Constituendum))</i>
1.	<p style="text-align: center;">Chapter I General requirements article 1</p> <p>1. On number (2):</p> <p>Consumers are every user of goods and/or services available in society, whether for the benefit of themselves, their families, other people, or other living creatures, and are not traded.</p> <p>2. On numbers (3) Produces are any individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, either individually or collectively through an agreement to carry out business activities in various economic fields.</p> <p>3. In number (4): Goods are any objects tangible</p>	<p>The definition of consumers in Article 1 point (2) is too narrow</p> <p>The Improvement of editorial language and the order of produces</p> <p>The definition of goods</p>	<p>Consumers are any person or legal entity that uses and/or obtains goods and/or services of produces that are not for trading.</p> <p>Produces is any party involved in the process of making and/or final product distributor of business activity in the economic sector either as an individual or a business entity in the form of a legal entity or not a legal entity established and domiciled or carrying out business activities inside and outside the jurisdiction of the Republic of Indonesia, and starting from, the producer as the final product maker and seller consisting of importers, agents, wholesalers, distributors, <i>grosir</i>, and retailers.</p> <p>In product liability, strict</p>

	<p>and intangible, movable or immovable, consumable or non-consumable, which can be traded, serve, used or utilized by consumers.</p>	<p>in Article 1 point (4) is too broad and disproportionate; therefore it is necessary to add additional articles to differentiate between the meaning of goods and goods products and the article on the meaning of hidden defective products to determine the form of liability of the produces.</p>	<p>liability lies with the processed product (product), so that: (1) what is meant is a product, that is, every item, both tangible and intangible, both movable and immovable, can be spent or cannot be spent, which can be traded, served, used or utilized by consumers in the form of raw materials which have been through chemical processes or their derivatives or processed products which are made and added to their use or value in a production process before being commercialized.</p> <p>(2) What is meant by hidden defective products is any item whose value and use has been added by the produces through a production process before being traded which contains defects resulting in not being fulfilled the purpose of manufacture or as it should be or having reduced its function or not fulfilling the requirement, cannot be used - consumers safety requirements that are not known by the consumers or from the beginning the produces is not agreed to. The produces are not responsible for defective products that have been sold for defects in the products of the produces, whether the defect is known and/or unknown to the produces which causes the consumer to sue strict liability for the losses suffered.</p>
--	---	--	---

FOR AUTHOR USE ONLY

<p>2.</p> <p>3</p> <p>4</p>	<p style="text-align: center;">Chapter III Rights and Obligations of the Consumers</p> <p>In Article 4 letter (h): The consumers' rights to get compensation, damages and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as it should be.</p> <p style="text-align: center;">Chapter IV Prohibited actions for Producers</p> <p>- In Article 9 paragraph (1) letter (f): Producers are prohibited from offering, promoting, advertising goods and/or services properly, and/or as if these goods do not contain hidden defects.</p> <p>- In Article 11 letter (b): Producers, in the event that sales are made through sales or auction, are prohibited from deceiving / misleading consumers by stating that the goods and / or services do not contain hidden defects.</p> <p style="text-align: center;">Chapter VI Responsibilities of Producers Article 19</p> <p>(1) Producers are responsible for providing compensation for damage, pollution and / or loss to consumers due to consuming goods and / or services that are produced or traded;</p>	<p>This article is less specific. Does not contain compensation for hidden defective products.</p> <p>Does not contain descriptions of hidden defective products and words seem to contain multiple interpretations</p> <p>It is necessary to simplify the language and not include words as if</p> <p>The form of damage has not been regulated, does not contain the word "goods product" does not contain the basis for the claim to determine the form of liability of the produces. Need to add a verse.</p>	<p>The right of consumers to get compensation that is actually suffered or truthfully suffered for goods and/or services and/or products that are not in accordance with what the consumer intended.</p> <p>Producers are prohibited from offering, promoting, advertising goods and/or products and/or services that contain hidden defects</p> <p>Entrepreneurs are prohibited from selling goods and or services as well as goods / or services that are carried out by auction or sale with hidden defects.</p> <p>Producers are responsible for providing compensation for hidden damage and/or defects, contamination and/or consumer losses due to consuming, obtaining goods and/or products of goods and/or services produced or traded, by filing a produces' liability claim based on: a. Product liability and/or in the form of; errors,</p>
-----------------------------	---	---	---

	<p>(2) Compensation as referred to in paragraph (1) in the form of refunds or replacement of goods and/or services of similar or equivalent value, or health care and/or giving compensation in accordance with the provisions of the applicable laws and regulations;</p> <p>(3) The compensation is given within a period of 7 (seven) days after the transaction date;</p> <p>(4)The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error;</p> <p>(5) The provisions referred to in paragraph (1) and paragraph (2) are not applicable if the producer can prove that the error is the fault of the consumer</p>	<p>The form of loss is restricted; the producer should be responsible for all losses that have actually been experienced by consumers.</p> <p>It is necessary to review the time limit for fulfilling the loss experienced by consumers.</p> <p>It needs a judicial review regarding the legal liability of producer not only limited to private law but also public law can even be applied both simultaneously.</p> <p>An editorial review is needed regarding the reversal burden of proof system in demanding losses from consumers.</p>	<p>violating the warranty and product liability principles;</p> <p>b. The nature of the legal relationship between consumers and producer that is direct and/or indirect in the form of default deeds and/or the unlawful act.</p> <p>Compensation as referred to in paragraph (1) is in the form of refunds and/or replacement of goods and/or products of goods and/or services of similar or equivalent value and/or health care and/or giving compensation in accordance with the provisions of statutory regulations.</p> <p>The provision of all losses that have been experienced by consumers is carried out within a grace period of 14 (fourteen) days after the consumer experiences the loss.</p> <p>The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal prosecution and other public laws based on further evidence regarding the existence of an element of error and/or not an element of error.</p> <p>Provisions regarding the exemption of compensation as referred to in paragraph (1) and paragraph (2) from consumers are through the reversal burden of the proof system from</p>
--	--	--	--

5	<p>In Article 28: Proof of whether there is an element of error in a claim for compensation in Article 19, Article 22 and Article 23 is a burden and produces liability.</p>	<p>Article 28 is an adjustment to Article 19, so to ensure legal certainty, Article 28 becomes the addition of paragraph 6 (6) of Article 19. It has not been explicitly stated that the form of produces liability is based on the strict liability principle.</p>	<p>produces to prove that the losses suffered by consumers are the result of the unlawful acts by the consumers themselves.</p> <p>Proof of losses that have been experienced by consumers is based on the strict liability principle with the burden of proof on the produces.</p>
---	---	---	---

Furthermore, for the long term in the future, there is a special law regarding the strict liability principle of produces toward losses due to hidden defect goods of product. The special laws that become the research products of these researchers are as follows:

**LAWS OF THE REPUBLIC INDONESIA
CONCERNING
STRICT LIABILITY OF PRODUCES TOWARD LOSSES
DUE TO HIDDEN DEFECT GOODS OF PRODUCT
BY THE GRACE OF GOD ALMIGHTY
PRESIDENT OF THE REPUBLIC OF INDONESIA,**

- Reviewing:
- a. That to realize the objective of a just and prosperous national development in shaping the whole Indonesian people materially and spiritually based on Pancasila and the 1945 Constitution in the era of economic democracy;
 - b. That consumers are both the subjects of development as well as actors of economic activities in addition to produces;

- c. That the increased productivity of goods must be oriented towards the safety, health, safety and environment of consumers;
- d. That That the globalization of economic activities and current technological advances has a positive impact on consumers having many alternative choices of various types of goods needed and desired which with the production of a country can be enjoyed by other countries. However, the negative impact is that inadequate control of quality standards for various types of product needs will harm consumers in the form of hidden defect goods of product;
- e. That to grow and develop the attitude of responsible produces is the existence of legal recognition and certainty based on legal liability in demanding losses from the negative impact of the products produced and circulated by the produces;
- f. That the Consumer Protection Law is not adequate yet and provides a maximum and specific protection for the interests of consumers in the area of produces liability;
- g. That based on the aforementioned considerations, it is necessary to have special laws and regulations to create balanced justice in protecting the interests of consumers and produces in demanding compensation for hidden defective products, for the creation of a healthy economy;
- h. That for this reason it is necessary to establish a law on the strict liability of produces toward losses due to hidden defective products;

Considering: Article 5 Paragraph (1), Article 21, Article 27 Paragraph (1) and Paragraph (2), Article 28 H and Article 33 of the 1945 Constitution of the Republic of Indonesia.

With Approval:
THE HOUSE OF REPRESENTATIVE OF THE REPUBLIC OF
INDONESIA
DECIDING:

Stipulate: LAWS CONCERNING STRICT LIABILITY OF PRODUCES
TOWARD LOSSES DUE TO HIDDEN DEFECT GOODS OF
PRODUCTS

CHAPTER I
GENERAL REQUIREMENTS

Article 1

In these laws what are meant by:

1. Consumer protection is all efforts to protect consumers by providing comprehensive and simultaneous legal certainty for the fulfillment of a balance of protection between consumers and produces, by increasing the dignity of consumers without neglecting the protection of the dignity of produces to create a conducive situation that encourages produces to be responsible for their business activities.
2. Consumers are any person or legal entity that uses and/or obtains goods and/or services of produces that are not for trading.
3. Produces is any party involved in the process of making and/or distributing the final product of a business activity in the economic sector either as an individual or business entity in the form of a legal entity or not a legal entity established and domiciled or carrying out business activities within the jurisdiction of the state The Republic of Indonesia, and those that are not within the jurisdiction of the Republic of Indonesia, start from the producer as the final product maker and seller.
4. Products are any goods, both tangible and intangible, movable or immovable, consumable or non-consumable, which can be traded, used, used, or utilized by consumers in the form of raw materials that have been through chemical

- processes or their derivatives or processed products which are made and added in use or value in a production process before being commercialized.
5. Hidden defect goods of products are any item whose value and use have been added by the produces through a production process before being traded which contains defects that result in not being fulfilled the objectives of manufacture or not being used properly or having reduced its function or do not meet consumer safety requirements that are not known by the consumers or from the beginning there was no agreement that the produces are not responsible for defective products that have been sold for defective products of the produces, whether the defect is known and/or not known by the produces which causes the consumers can claim the strict liability for the losses suffered.
 6. Loss is the disappearance or reduction of profits from the use of the product from other parties which causes responsibility on the party causing the loss, both material and immaterial, which is subjective;
 7. Strict liability of produces is responsible for losses suffered by consumers by not determining mistakes as the determining factor with a reversal burden of proof on produces due to the unlawful act that are legally and morally responsible for their products and cannot release responsibility with legal and moral reasons if there is no and/or unclear legal rules as a risk of product liability from the produces.

CHAPTER II

PRINCIPLES AND PURPOSE

Article 2

Strict liability of produces toward losses due to hidden defect goods of product is based on happiness, good intention, caution, guarantee of product quality, and produces liability.

Article 3

Strict liabilities of produces toward losses due to hidden defect goods of product are aimed to:

- a. Protect consumers who have a weak position and bargaining position compared to producers;
- b. Unifying opinions from the basis of a lawsuit to apply the strict liability principle, so as to facilitate the flow of law at the international level in the field of consumer protection;
- c. To anticipate the negative impact of product diversification in the era of globalization and free trade;
- d. To avoid harm and the existence of a party that is aggrieved in the absence of a party who is responsible for the losses suffered as a result of hidden defect goods of product;
- e. Improving the quality of goods produced and circulated by producers that meet the quality standards of Indonesian products at the same time according to the wishes of the international market or consumer;
- f. Creating a system of accountability for producers that provides convenience and justice for consumers in prosecuting losses and protects producers that already have good intentions in their business activities.

CHAPTER III
RIGHTS AND OBLIGATIONS THE RESULT OF LOSSES
OF HIDDEN DEFECTIVE PRODUCTS

First Part

Consumers' Rights and Obligations the Result of Losses of Hidden Defect

Goods of Product

Article 4

Consumer rights the result of losses of hidden defect goods of product:

- a. The right to obtain consumer dispute settlement based on strict liability with reverse proof;
- b. The right to get compensation for all subjective losses experienced by consumers.

Article 5

Liabilities of consumers the result of losses of hidden defect goods of product:

- a. Follow the process of consumer disputes settlement of hidden defective products in good intention;
- b. Have an honest with the truth about the losses that consumers actually experience.

Second Part

Producers' Rights and Obligations the Result of Losses of Hidden Defective Products

Article 6

The rights of produces the result of losses of hidden defect goods of product:

- a. The right to set legal standards regarding the standardization of hidden defect goods of product;
- b. The right to have the opportunity to prove that the losses suffered by consumers are not due to the actions of produces;
- c. The right to obtain legal protection from consumers who do not have good faith in resolving consumer disputes for hidden defect goods of product.

Article 7

Liabilities of produces to the loss of hidden defect goods of product:

- a. Bear all consumer subjective losses as a risk of their business activities;
- b. Follow and carry out the results of dispute resolution for hidden defective products correctly.

CHAPTER IV

Criteria for Hidden Defect Goods of Products

Article 8

Criteria for hidden defect goods of products that can be sued for compensation from produces:

- a. Contains defects that are attached to the goods and are not known to consumers;
- b. Cannot be used according to function;
- c. Reduced benefits;
- d. Does not meet security requirements;

- e. Causing losses to consumers, both physical and/or life and/or environment and/or property, which is fatal or minor;
- f. No agreement has been made from the produces not to bear consumer compensation if there is a defect in the product produced or circulated by the produces.

CHAPTER V

STRICT LIABILITY OF HIDDEN DEFECT GOODS OF PRODUCT OF PRODUCE

Article 9

- (1) Produce are responsible for all losses that have been experienced by consumers as a result of hidden defect goods of product;
- (2) The compensation provided by the produce to consumers is a subjective loss;
- (3) The responsibility of produce of hidden defective products is carried out through the strict liability principle of subjective responsive asceticism of produce with reversal burden of proof;
- (4) The grace period for consumers to demand compensation is 14 days after the consumer experiences a loss;
- (5) Providing compensation does not eliminate the possibility of public lawsuits;
- (6) The provisions of paragraph (1) do not apply, if the produce can prove that the losses suffered by consumers are not due to the produce's actions, but due to natural conditions and other force majeure.

CHAPTER VI

DEVELOPMENT AND SUPERVISION TOWARD CONSUMERS AND PRODUCE OF HIDDEN DEFECT GOODS OF PRODUCT

First part

Coaching

Article 10

- (1) The government is responsible for the coaching execution of the strict liability implementation of produce toward losses due to hidden defect goods of product;

- (2) Coaching by the government for the implementation of the strict liability of produces toward losses due to hidden defect goods of product is carried out by the Minister and / the Technical Minister concerned in a coordinated manner;
- (3) Coaching for the implementation of the strict liability of produces toward losses due to hidden defect goods of product is carried out in coordination through the Minister and/or the Technical Minister is in an effort to:
 - a. Increasing the consumers' confidence in the equitable consumer dispute settlement process for produces and consumers themselves;
 - b. Increasing the attitude of more caution and liability of produces;
 - c. Increasing good intention between consumers and produces to be responsible for their respective rights and obligations;
 - d. Creating a conducive business climate to the development of the business world so that it is created an economic system that supports the achievement of the goals of national development;
- (4) Further provisions for the coaching implementation of the strict liability of produces toward losses due to hidden defect goods of product.

The Second Part

Supervision

Article 11

- (1) The supervision execution of the strict liability implementation of produces toward losses due to hidden defect goods of product is carried out jointly between the government, the community and related non-governmental organizations;
- (2) The supervision as meant in (1) is for the implementation of the dispute settlement process for consumers of hidden defect goods of product;
- (3) The results of the supervision are disseminated to the wider community;
- (4) The government's follow-up on the results of supervision which deviates from the prevailing laws and regulations and/or is detrimental to consumers, the government through the Minister and the Technical Minister shall take action in accordance with the prevailing laws and regulations.

CHAPTER VII
CONSUMER DISPUTES SETTLEMENT DUE TO HIDDEN DEFECT
GOODS OF PRODUCT

Article 11

- (1) Disputes settlement for compensation due to hidden defective products can be carried out by every consumers and their heirs through the court and/or outside the court and can be directly between the produces and the consumers based on the voluntary choice of the parties involved in the business;
- (2) Filing a compensation lawsuit of disputes for hidden defect goods of product at the court where the consumers are injured;
- (3) The consumer disputes settlement effort is formal path and settlement outside the court does not prevent efforts through the court, if there is no agreement on the outcome of the dispute settlement;
- (4) There is a special court for the consumer disputes settlement with a small scale claim value;
- (5) Further provisions for consumer subjective compensation due to hidden defective products are regulated by a Government Regulation.

CHAPTER VIII
INVESTIGATION

Article 12

- (1) Apart from State Officials of the Republic of Indonesia, certain Civil Servant Officials within government agencies whose scope of duties and responsibilities is in the field of consumer protection for hidden defect goods of product are also given special authority as investigators as referred to in the applicable Criminal Procedure Law.
- (2) Civil Servant Officer Investigators as referred to in paragraph (1) have the authority to:
 - a. conduct examination of the accuracy of reports or information relating to criminal acts in the field of consumer protection;

- b. conduct examination of persons or legal entities suspected of committing criminal offenses in the field of consumer protection for hidden defect goods of product;
 - c. request information and evidence from a person or legal entity in connection with a criminal offense in the field of consumer protection for hidden defective products;
 - d. conduct the books, records, and other documents investigation relating to criminal acts in the field of consumer protection for hidden defective products;
 - e. conduct examinations in certain places where evidence is suspected as well as confiscate products resulting from violations that can be used as evidence in a criminal case in the field of consumer protection for hidden defect goods of product;
 - f. requesting expert assistance in the context of carrying out the task of investigating criminal acts in the field of consumer protection for hidden defect goods of products.
- (3) Civil Servant Investigator as referred to in paragraph (1) shall notify the commencement of the investigation and the investigation results to the State Police Investigator of the Republic of Indonesia.
- (4) Civil Servant Officer Educators as referred to in paragraph (1) shall convey the results of the investigation to the Public Prosecutor through the State Police Investigator of the Republic of Indonesia.

Chapter IX

Legal Sanctions Due to Hidden Defective Products

First part

Civil Sanctions

Article 13

Sanctions in the form of compensation by produces that have caused losses to consumers are only for all losses that have actually been experienced by consumers, both material and immaterial.

The second part
Administrative Sanctions

Article 14

The implementation of administrative sanctions is carried out in stages from light sanctions to the revocation of business licenses by authorized officials in accordance with applicable laws and regulations, but this stage also depends on the dangers arising from hidden defective products.

Part Three

Criminal sanctions

Article 15

Criminal charges against business actors in hidden defect goods of product are:

- (1) Producers who have caused material losses due to hidden defect goods of product can be punished with a maximum of 5 (five) years;
- (2) Producers who have caused physical harm to consumers and even death are returned to the applicable criminal provisions.

CHAPTER X

TRANSITIONAL PROVISIONS

Article 16

All existing provisions regarding laws and regulations that aim to implement strict liability remain valid, as long as they are not specifically regulated and/or do not conflict with this law.

CHAPTER XI

CLOSING

Article 17

This law comes into force after 1 (one) year since its promulgation.

For public cognizance, it is ordered that this law be promulgated in the State Gazette of the Republic of Indonesia.

Legalized in Jakarta
at the date of

PRESIDEN REPUBLIK

INDONESIA

sign
.....

Promulgated in Jakarta
At the date of

STATE MINISTER OF STATE SECRETARY
REPUBLIC OF INDONESIA

sign
.....

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR NUMBER

After the existence of long-term research products offered by researchers, to provide an explanation of the normative implications of research products from a special law concerning the strict liability of produces toward losses due to hidden defect goods of product, it is necessary to explain the long-term research products, as follows:

**NORMATIVE IMPLICATIONS FROM THE DESCRIPTION
ON
CONSTITUTION
ABOUT
STRICT LIABILITY OF PRODUCES TOWARD LOSSES
DUE TO HIDDEN DEFECT GOODS OF PRODUCT**

1. GENERAL DESCRIPTION

Realizing the goals of a just and prosperous national development through the growth and development of the national economy in the field of industry and trade

in the current era of globalization and free trade which has had positive and negative impacts on producers and consumers in particular to form a complete Indonesian human being materially and spiritually.

Consumers have an important role in development as well as actors in economic activities along with producers. Consumers should receive the same strong attention as producers. Consumers and producers are interdependent relationships that influence each other.

Increasing the productivity of goods products from Indonesian producers as a form of demands from the era of globalization, involvement in free trade brings benefits to producers in the form of commercial benefits for the business progress of producers. However, on the other hand, it can put the consumer's position getting weaker if the increase in productivity carried out by producers who apply the principles of economic efficiency and are supported by technological advances in the field of goods production and modern distribution systems do not orientate towards security, safety, health and even the consumer's environment, then this will further weaken consumers to be able to protect from potential risks resulting from business activities of producers for solely commercial benefits.

The existence of a positive impact for consumers from the globalization of economic activity and technological advances with the large selection of various types of goods needed and desired without any further regional boundaries, will not be proportional to the negative impact because there is no proper quality standard for the various types of product needs in the form of there are hidden defect goods of product that can harm consumers both materially and immaterial.

Efforts to protect consumers against the loss of hidden defect goods of product are the recognition and legal certainty of the basis of strict liability in demanding losses which are manifested in statutory regulations that apply the strict liability principle of producers toward losses due to hidden defect goods of product.

The instruments of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection are not sufficiently able to protect consumers from the hidden defective products. Law Number of the Republic of Indonesia 8 of 1999 concerning Consumer Protection as an umbrella law in the field of consumer protection is the basis for strengthening and enforcing the strict liability principle toward losses due to hidden defect goods of product as a development of the strict liability principle in the consumer protection legal system in future.

Henceforth, the strict liability principle of produces toward losses due to hidden defect goods of product is built from the development of tort of Article 1365 of the Civil Code which implements product liability which is not based on error but as a risk that must be borne by produces as a form of full liability for the products produced and circulated in the market as well as a form of obedience to the liability of produces as God's creatures while still providing opportunities for produces to be able to free themselves from compensation with strict requirements.

With the strict liability principle of produces toward losses due to hidden defective products, there will be opportunities to foster a responsible attitude of produces towards all consequences of business activities of produces and will open wider avenues to apply the strict liability principle of produces in other goods in the future.

II. ARTICLE BY ARTICLE

Article

Paragraph (1)

Quite clear

Paragraph (2)

Quite clear

Paragraph (3)

Quite clear

Paragraph (4)

Quite clear

Paragraph (5)

Quite clear

Paragraph (6)

Quite clear

Paragraph (7)

Quite clear

Article 2

The strict liability principle of produces toward losses due to hidden defect goods of product is based on five (5) principles that are in line with the objectives of national development, namely:

1. The principle of happiness is intended to mandate that all forms of consumer protection efforts are intended as an effort to achieve consumer protection goals in a good and mutually beneficial direction with full good faith, prudence, guarantees of product quality and liability of produces. which provides tangible benefits for consumers and produces by fulfilling reasonable expectations between consumers and produces from the existence of an equal right of each which gives self-goodness and does not commit actions that are detrimental to other humans, including the universe;
2. The principle of good faith is intended to produces for consumers who are harmonious and conformable in the equal position between produces and consumers with the intention of produces to always comply with applicable rules and not violate business ethics in fulfilling the respective interests of business actors and consumers through products produced and circulated by produces in the market;
3. The principle of prudence means that produces must be meticulous and persnickety from every stage of business activity, starting from the production process to distribution as a form of protection of the interests of consumer security and safety;

4. The principle of product quality assurance means that produces must provide assurance regarding the quality of products produced and marketed with full honesty in the conduct of the business of produces for the benefit of business progress and consumer confidence in the products of produces and not abuse the weak state of the consumer in the efforts of produces to provide satisfaction to consumers through quality assurance according to the standard for the type of quality of the said product;
5. The principle of accountability of produces means that the state must provide legal certainty to produces and consumers with the obligation of produces to be fully responsible for all risks from products that have been produced and circulated on the market through strict liability as an effort to provide better conditions for both consumers and produces in enforcing legal protection for consumers;

Article 3

Letter a

Quite clear

Letter b

Quite clear

Letter c

Quite clear

Letter d

Quite clear

Letter e

Quite clear

Letter f

Quite clear

Article 4

Letter a

Quite clear

Letter b

Quite clear

Article 5

Letter a

Quite clear

Letter b

Quite clear

Article 6

Letter a

Quite clear

Letter b

Quite clear

Letter c

Quite clear

Article 7

Article a

Quite clear

Article b

Quite clear

Article 8

Criteria for hidden defect goods of product that can be sued for damages by produces based on the strict liability principle of produces toward losses due to hidden defect goods of product are:

Letter a

What is meant by defects that are attached to goods and which are not recognized by consumers, whether they are product defects, design defects or warning defects, are defects that already exist in the goods before they reach the consumer and consumers are not aware of any defects in the products of the produces.

Letter b

What is meant by cannot be used according to its function is that the goods obtained by consumers cannot be used in accordance with the intended purpose of the products of the produces intended by consumers.

Letter d

What is meant by reduced benefits is that the products obtained by consumers from produces are in fact the uses of the goods products are not as optimal as they should be from the functions of the goods products of the produces that consumers want.

Letter e

What is meant by not meeting security requirements is that the products of produces received by consumers are not in accordance with the characteristics of standardized security guarantees of the types of products of these goods or products of produces received by consumers do not meet the minimum standards of proper safety of a product that should be present at every product that is produced and circulated in the market that can endanger the physical, life, property and even the environment of consumers.

Huruf f

Quite clear

Article 9**Paragraph (1)**

Producers are responsible for all losses suffered by consumers, both material and immaterial.

Paragraph (2)

What is meant by losses provided by producers are subjective losses that have actually been experienced by consumers, both material and immaterial.

Paragraph (3)

Quite clear

Paragraph (4)

Quite clear

Paragraph (5)

Quite clear

Paragraph (6)

Quite clear

Article 10

Paragraph (1)

Quite clear

Paragraph (2)

Quite clear

Paragraph (3)

Quite clear

Paragraph (4)

Quite clear

Article 11

Paragraph (1)

Quite clear

Paragraph (2)

Quite clear

Paragraph (3)

Quite clear

Paragraph (4)

The special court for the settlement of small-scale consumer disputes is meant as a judicial institution that is part of the general court under the Supreme Court. The court resolves small-scale civil cases and consumer dispute settlement cases with a maximum claim value of IDR 150,000,000, the procedure is simple, there are only judges and parties who are involved, namely consumers and produces who do not have to be accompanied by lawyers, the longest time for dispute resolution is one (1) months after the case is registered. The decision is final and is not another legal remedy. The procedural law is separate from the general procedural law which comes from HIR / RBg.

Paragraph (5)

Quite clear

Article 12

Quite clear

Article 13

Quite clear

Article 14

Quite clear

Article 15

Quite clear

Article 16

Quite clear

Article 17

Quite clear

ADDITIONAL TO THE STATE GAZETTE OF THE REPUBLIC OF
INDONESIA

7. Research Implications

a. Philosophical Implications

The philosophical implication in research is a form of linkage between legal philosophy and legal science. Philosophy of law is as a science that studies law in a philosophical way that studies law to its essence (its basic content) which is essentially the substance of legal science which is the object of legal philosophy. The relationship between legal philosophy and legal science will have philosophical implications.

The radical concept of the strict liability principle of produces toward losses due to hidden defect goods of product which results in the law of the strict liability for subjective responsive *asceticism* of produces law and will be effective if the substance is in accordance with the value-The value of the Pancasila philosophy. Good law is that there is a match between the forms of law that is regulated with the content that is regulated in that law.

The philosophical implication that is expected from the existence of the strict liability principle for subjective responsive *asceticism* of produces is a change in the behavior of produces and consumers, where consumers and

producers always have good intentions, are full of caution, there is behavior to be responsible for the risks of business activities of produces. manifested by the guarantee of product quality replacement of goods so as to create a sense of security for the protection of the rights of produces and consumers which creates a sense of happiness for the fulfillment of their respective interests without neglecting the rights and interests of other parties as a form of compliance that should be carried out by produces and consumers as God's creatures. For this reason, further discussion will be discussed regarding the excavation, definition, essence and scope and function of each principle (the principle of happiness, the principle of good faith, the principle of prudence, the principle of product quality assurance, the principle of accountability of produces) which is the radical concept of the strict liability principle of produces based on the new legal paradigm as an alternative to protecting consumers of hidden defective products in the future.

b. Theoretical Implications

1) Development of the Theory Strict Liability of Subjective Responsive Asceticism of Produces

Building a theory of the strict liability principle of produces toward losses due to hidden defect goods of product through the development of the tort law-the risks of responsive *asceticism* of produces in carrying out business activities as a form of product liability with an reversal burden of proof that carries out compliance with their responsibilities rests on their compliance as a human being intact.

The development of the legal concept of tort law-the risk of subjective responsive *asceticism* of produces in this study has theoretical implications consistent with the research objectives which will become the concept of the strict liability principle of produces toward losses due to hidden defect goods of product in the future (*ius constituendum*).

The theory development of the concept of subjective responsive *asceticism* risk in initiating the radical concept of the strict liability principle of produces through the development of tort law-the risk of produces toward losses

due to hidden defect goods product, starting from the results of substantive elaboration of Aristotle's Theory of Justice-Juwani has succeeded in developing the theoretical basis of the grand theory. The theoretical basis of this grand theory is in the form of proper (reciprocal) justice related to state order with social welfare, especially for the weak (consumers) without reducing justice to the more fortunate (producers) by fulfilling the consumers' right to get compensation as the result of the existence of hidden defect goods of product without reducing the interests of producers to get benefit from their business activities, so the harmonious social justice that will bring goodness and truth to human life as a whole can be achieved.

The basis of this theory of law of justice then substantively strengthens John Locke's Theory of State Purposes and W. Friedman's Theory of State Function which is later elaborated with the Prosperity Law State Theory, thereby developing further legal theoretical bases. The result of the elaboration of the State Purpose Theory and the State Law Theory of Welfare is that the existence of a law obliges the state to create statutory regulations as a starting point and an urgent basis for the strict liability principle of producers in a new alternative legal paradigm of product liability.

Furthermore, the results of the elaboration of the Legal Protection Theory of Salmond, Fitzgerald and Hadjon with the problems and objects of research have also been able to develop the theoretical basis of the middle theory, namely in the form of preventive and repressive legal protection for consumers' rights to get compensation due to the existence of hidden defect goods of product. The basis of this legal theory is strengthened by Substantive Legal Theory as a Means to Change Society Roscoe Pound and Mochtar Kusumaatmadja with problems and research objects, namely changes in behavior in the minds of producers, not only in Indonesia, but globally to be responsible and careful in producing and circulating goods products that meet the business continuity standards of the producers will also continue.

The basis for this legal theory is further elaborated from the Substantive Law System Theory of L.M. Friedman, HL Hart, Conterrell, and Raz with the core problem of the radical concept of the strict liability principle of produces based on the new legal paradigm as a legal alternative to product liability as an effort to protect consumers from losses due to hidden defect goods of product in Indonesia within the framework of a consumer protection legal system consists of a structure, substance and legal culture based on legal ideals (*rechtsidee*) and basic norms (*staatsidee*) of the Indonesian state that is internally consistent and organizes external relations through developing the identity of Indonesian produces and consumers by maintaining the basic values that are fundamental to the Indonesian nation.

The results of the elaboration of legal theories at the grand theory and middle theory levels will be applied at the applied theory level, namely by developing theories and law concepts of tort law-risk of subjective responsive *asceticism* which substantively must protect the rights of consumers of hidden defect goods of product on the basis of humanity without neglecting the rights of produces to obtain commercial benefits in the business activities they carry out.

Then in legal philosophy, the development of the radical concept of the principle of the strict liability principle of produces toward losses due to hidden defect goods of product from t tort law-risk of subjective responsive *asceticism* as a form of liability of Indonesian hidden defect goods of product in the future which can be explained as follows :

The problem of the object of this legal research is regarding the philosophical basis, urgency and setting concept of the strict liability principle of produces toward losses due to hidden defect goods of product in the future. This problem is then elaborated with theories that are in accordance with the substance of the problem of the object of legal research in which produces are given the widest possible freedom to develop their business by obtaining the maximum possible commercial profit by not overriding the consumer's right to obtain quality products of produces in accordance with the goals desired by consumers so that it

is fair if consumers one day experience a loss due to products with hidden defects then the producers are strict liability for the risks experienced by consumers so that normative and factual concretization of the radical concept of the strict liability principle of produces toward losses due to hidden defective products can be proposed.

Pancasila values become the facilitation in elaborating the theories from the level of grand theory, middle theory, and applied theory in the development of tort law-a risk which results in theory of the strict liability of produces of subjective responsive *asceticism* of these produces. The theory of strict liability of produces of subjective responsive *asceticism* of produces becomes a legal basis of the strict liability of produces.

Ideally, the theory of the strict liability of produces in Indonesia is based on the values of humanity, justice and virtue which are extracted from the culture of kinship and deliberation to reach a consensus, so that the implementation of the strict liability of hidden defective products of produces becomes a virtue in the compensation process that is truly tangible has experienced by consumers in accordance with the Pancasila Ideology and the 1945 Constitution of the Republic of Indonesia.

2) Postulates Theory of the Strict Liability of Subjective Responsive Asceticism of Produces

Postulates of the theory of the strict liability of subjective responsive of produces have a normative evaluative character because in general, the basic claim of the liability suit of produces in the consumer protection sector is liability based on an error with the charges brought forward are criminal charges. This kind of solution, in fact, has not provided a sense of justice for consumers and has several weaknesses and difficulties for consumers that are not in line with the objectives of consumer protection itself.

Observing the difficulties of consumers in proving the existence of mistakes of produces and if it is related to the weak position as well as bargaining position of consumers in general compared to the position and bargaining position of these produces. By not giving up the fact that the birth of the strict liability

principle which originates from the common law legal system, that has philosophical, sociological, juridical, and economic values that are different from the national legal system and economic development, especially in the trade and industry sector in Indonesia today.

The legal concept that will be built in building the radical concept of the strict liability of products based on the new legal paradigm as an alternative effort to consumer protection in the context of renewing the product liability law against losses due to hidden defect goods of product is the legal rule for legal development of tort-the risk of products who are subjective responsive asceticism. This means that in the future the liability of products based on the strict liability of products toward losses due to hidden defect goods of products is driven by the value of human (consumer) goodness and safety as a form of obedience to God within the scope of the legal ideals (*rechtsidee*) of Pancasila and (*staatsidee*) The 1945 Constitution of the Republic of Indonesia, is in line with the condition of products with developments in national economic conditions.

Based on the theoretical basis in this legal research, namely the grand theory, middle theory, and applied theory which is substantively related to the problem of this research, where elaboratively has the ability to form a theory development of strict liability of products toward losses due to defective products hidden as a theory and legal concept of strict liability subjective responsive asceticism of products.

The results of the elaboration of normative and factual concrete interactions of the radical concept of the strict liability principle of products toward losses due to hidden defect goods of product which are theorized in the framework of contemplative which refers to the pragmatic theory of truth,²²⁹ Furthermore, it is adjusted to the ideals of Pancasila law that the end result is a theory of strict liability and subjective responsive asceticism of products in the

²²⁹ The theory of contemplative law is to understand that it is impossible to describe a normative order without to some degree being familiar with the order itself., As for the pragmatic theory of truth, which is to believe that an idea is true if the practical consequences or results of action that embody the idea function or are useful., Muhammad Syaifuddin, 2008, *Op. Cit.*, p. 339.

form of evaluative proposals, namely that the law must protect consumers of hidden defect goods of product on the basis of humanity and social justice and legal certainty without neglecting the rights and interests of produces to get a commercial advantage.

3) The Essence of the Meaning of the Strict Liability of Subjective Responsive Asceticism Theory of Produces

The essence of the theory which is the essence of the meaning of the theory of the strict liability and subjective responsive *asceticism* of produces is a bridge between the philosophy of law as the pinnacle with practical science and other legal sciences. The theory prior to the theory of the strict liability and subjective responsive asceticism of produces as product liability was based on foreign philosophies, namely the theory of default, the theory of fault, and the theory of the strict liability.

The theory of strict liability of subjective responsive *asceticism* of produces is based on principles that in accordance with the ideals of the Pancasila law which underlie the regulation of the strict liability principle of produces toward losses due to hidden defect goods of product. The fundamental or essence of the theory of the strict liability of subjective responsive *asceticism* of produces between consumers and produces is a legal relationship based on the existence of rights and obligations on each party based on equality which is interdependent, not a relationship between the strong and the weak of the unequal legal relationship.

4) The Function of the Strict Liability of Subjective Responsive Asceticism Theory of Produces

The device of the theory of the strict liability of subjective responsive *asceticism* has functioned as a link between the bases of the legal philosophy of the produces' strict liability subjective responsive *asceticism* to become the idealized law. In other words, the function of the produces subjective responsive *asceticism* theory is a means of linking legal philosophy, legal dogmatics and the theory of tort law-the risk of produces in realizing the legal of the strict liability of

produces toward losses due to hidden defect goods of product in the future that will come.

5) The Scope of the Strict Liability of Subjective Responsive Asceticism Theory of Produces

The scope of the strict liability of subjective responsive *asceticism* for this produces' subjective responsive asceticism is to protect consumers from losses due to defective products, especially hidden defect goods of product characterized by:

1. Contains defects that are attached to the goods and are not known by consumers;
2. Cannot be used according to its function;
3. Less benefits;
4. Does not meet security requirements;
5. Causing losses to consumers, such as physical, mental, environmental, fatal or minor assets.

6) Flow of the Theory Development of the Strict Liability Subjective Responsive *Asceticism* of Produces

The theory of the strict liability subjective responsive *asceticism* of produces was initiated to implement strict liability of produces toward losses due to hidden defect goods of product through the development of the Doctrine of Tort after 1919 from the general elements of Article 1365 of the Civil Code. In addition, it is also built from the wisdom of Indonesian customary law and customs which in principle applies the deep pocket theory, meaning that those who have to be responsible are the ones who are most likely to pay, namely those who have more money without letting go of their kinship by promoting deliberation to reach a consensus.

The development of the strict liability subjective responsive *asceticism* of produces is standing within the framework of legal science which culminates in the philosophy of law which traces down the dogmatics of law and positive law. The development of legal principles in the law of strict liability and subjective responsive *asceticism* of produces is the result of the elaboration of the principles of Civil Law, Economic Law, and legal principles in the Law of the Republic of

Indonesia Number 8 of 1999 concerning Consumer Protection based on Pancasila and the Law. -The 1945 Constitution of the Republic of Indonesia results in the principles of good faith, prudence, the guarantee of product products, the liability of produces, and happiness.

As for the position of the strict liability subjective responsive *asceticism* of produces as a theory is above the positive norms and law. The theory of strict liability subjective responsive *asceticism* of produces has the role of explaining, describing something that should be based on legal principles of the strict liability of produces toward losses due to hidden defect goods of product formed in an equal position relationship between consumers and produces.

8. Practice Implications

This legal research has practical implications that are consistent with the benefits of research, namely:

a. Completion and Formation of Positive Laws of the Strict Liability of Produces toward Losses Due to Hidden Defect Goods of Product

In accordance with the normative idea of consumer protection arrangements in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection as an umbrella law in the field of consumer protection, it is to protect consumer rights from the negative consequences of market forces which tend to harm consumers due to the weak position of consumers. Consumer protection refers to the philosophy of Indonesian human development as a whole which is based on Pancasila as the philosophy of the Indonesian Nation.

The absence of a special law and contains implicitly the strict liability of produces toward losses due to hidden defective products in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, while the effect of hidden defective products for consumers is very potential to cause losses to consumers that will be very detrimental to consumers and further weaken the position of consumers. For this reason, it is necessary to improve the articles, especially in Article 19, Article 28, Article 9 paragraph (1) letter (f), 11 letter (b), Article 4 letter (h) of Law of the Republic of Indonesia Number 8 of 1999

concerning Consumers Protection to then explicitly be included the strict liability of produces toward losses due to hidden defective products. For the long term, it is in the form of a special law concerning the strict liability of produces toward losses due to hidden defect goods of product, so that efforts to protect consumers can truly be realized and at the same time be successful both for consumers and for the produces themself.

b. Arrangement of the Easy Access of Options for consumer dispute Settlement processes of Hidden Defect Goods of Product

The arrangement of the settlement of compensation disputes between consumers and produces in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is through the court or outside the court according to the voluntary choice of the consumer agreement. Through the court, it is the court within the general court, and outside the court it is carried out by the Consumer Dispute Settlement Board.

The path of the consumer dispute settlement process for hidden defect good of product is open space for the consumer dispute settlement process through:

1. Formal path

The formal path meant is in the form of court routes and out-of-court routes;

2. Informal Path

The formal path meant is in the form of direct dispute settlement between produces and consumers.

Consumer dispute settlement path must be chosen voluntarily through a formal or informal path in accordance with the sense of justice and equality according to produces or consumers. In addition, it is by looking at the amount of material loss or the threat of danger to consumers' souls from the existence of these hidden defect goods of products.

The absence of a settlement that provides justice to consumers, especially for claims for small scale compensation, requires an institution that has the power to force the disputing parties to fulfill the rights of the injured party.

The institution is a court institution, but the procedure is not formal, such as the process in the general court, which is a quick procedure examination so that a fast, simple, and low-cost court process is created.

Legal protection to demand compensation due to small-scale produces in Indonesia is urgently needed. The importance of a court institution but the procedure is not formal like the general judiciary which is simple, cheap, and fast with judges' decisions that have binding legal force using procedural procedures outside of procedures in handling ordinary civil cases. The litigation path through a small claim court will make it easier for the community to get justice to restore the condition of the injured party to the way it was before the loss suffered. This is in line with the objectives of the small claim court, namely to settle a lawsuit at a fast, low-cost, and avoid complex and formal court proceedings. The litigation path through a small claim court will make the community easier get justice to restore the condition of the injured party to the way it was before the loss suffered. This is in line with the objectives of the small claim court, namely to settle a lawsuit in a fast, inexpensive cost and avoid complex and formal court proceedings.²³⁰

This form in countries with the common law system calls it by the term of a small claim court. Small claim courts have developed in developed countries such as the United States, Canada, England, the Netherlands, Latin America, and even in Asia. According to the Black Law Dictionary, a small claim court is, "court that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, usually claims to collect small accounts or debts. - Also termed small, debt court; conciliation court."²³¹ This shows that a small claim court is a court whose case settlement process is not formal in

²³⁰Christopher J. Wheelan, 1990, *Small Claims Courts-A Comparative Study*, Oxford University Press, New York dalam Efa Laela Fakhria Eksistensi Small Claim Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat, dan Biaya Ringan, p. 11. <http://pustaka.unpad.ac.id/wp-content/uploads/2014/02/Eksistensi-Small-Claim-Court.pdf> accessed on December 13th, 2014, at 19: 34 WIB.

²³¹Bryan A Garner, 2009, *Black Law Dictionary*, Ninth Edition, West Publishing Co, St. Paul, Minnesota, p. 410

adjudicates disputes that have small monetary claims. Small Claim Court also means:

For the courts that provide formalities for people who want to demand a certain amount of money without having to hire a lawyer and the material for the lawsuit is not large, besides that the case examination is not complicated and simple in nature which does not require a lot of money such as filing a case in a general court.²³²

As for the nature of the small claim court²³³, are:

1. Dispute settlement mechanism outside the court mechanism in general;
2. The solution is brief and efficient;
3. The demands are in the form of compensation with a specific calculation.

This small claim court, in some countries, uses the term small claim tribunal or small claim procedure, which is used for small-scale civil cases with a time limit for settlement of one week to one month with a single judge, no need to be accompanied by a lawyer.²³⁴ Through a small claim court of dispute settlement by taking into account the agreement of the parties involved through a litigation process which is carried out with special procedural law to achieve a simple, fast, and low-cost dispute resolution process. The litigation material is up to \$ 5,000 or \$ 10,000 at the discretion of individual courts.

This small claim court civil case (rapid examination) is also contained in the Draft Law on Civil Procedure article 90 B paragraph (1) that the Dispute can be examined and adjudicated. Article 90 B paragraph (2) of the Draft Law on Civil Procedure, the maximum limit for a lawsuit is IDR 50,000. Article 90 C paragraph (1) of the Draft Law on Civil Procedure, contains the length of the case for small claim court/quick procedure examination of a maximum time of 30 (thirty) days since the case is registered and Article 90 paragraph (2) of the Draft

²³² Local Courts Act 2007 s35(2), New South Wales Consolidated Acts, in the results of the Research Team of the Economic Law and Public Policy Studies Center, Faculty of Law UNPAD, Novotel April 3rd, 2013, accessed on December 6th, 2014, at 16: 49 WIB.

²³³ Garner, Bryan A., 2009, **Loc. Cit.**,410.

²³⁴ <http://rivvei.blogspot.com/small-claim-court-pengadilan-cepat.html>, accessed on December 6th, 2014, at 14: 51 WIB.

Law on Civil Procedure, states that all decisions by the expedited procedure cannot be filed for ordinary or extraordinary legal remedies.²³⁵ Until now it is still in the form of a bill and it is not clear to be promulgated, so a more effective form of regulation is through a Supreme Court Regulation (PERMA).²³⁶

One of the countries in ASEAN that has implemented a small claim court is Singapore, which is known as the small court tribunal, namely the Small Claim Tribunals Act Chapter 308. Singapore has alternative consumer protection measures, namely providing a forum for quick and inexpensive dispute settlement only specifically for small lawsuit demands.²³⁷ Small Claims Tribunal, a special court to handle cases under \$ 20,000 Singapore dollar.²³⁸

Indonesia does not yet have an informal court, namely a dispute settlement mechanism through the courts (litigation) with a separate procedure different from ordinary court procedures, because contradictory case examination is an ordinary case examination procedure. However, considering the development of legal needs and the current consumer society, then in the future, especially the process of settling consumer compensation claims due to defective products, there is a need for an institution that has court authority but is informal in nature that specifically handles small-scale civil claims, this means that the nominal loss experienced by consumers does not exceed the costs that must be incurred if taken through formal path either through litigation or non-litigation.

The judiciary that is quick procedure examination offered in the research is a synergy between the existing procedural general courts as usual and the *ADR* (Alternative Dispute Resolution) from *BPSK* (Consumer Dispute Settlement Agency) as an out-of-court dispute resolution institution through conciliation, arbitration, and mediation.

The judiciary for these small-scale civil cases, the establishment procedure can:

²³⁵**Ibid.**

²³⁶Efa Laila Fakhriah, Mekanisme *Small Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat dan Biaya Ringan*, Mimbar Hukum Volume 25 Number 2 June 2013, p. 268.

²³⁷<http://lib.law.ugm.ac.id/> accessed on December 5th, 2014, at 15: 45 WIB.

²³⁸<http://www.harianterbit.com/> 2014/Hati-Hati-Belanja-Di-Sim-Lim-Square-Singapura, accessed on December 6th, 2014, at. 5: 50 WIB.

1. Standing alone outside the general judiciary and/or;
2. Be modified as an institution from the general judiciary.

The institution offered is a judicial institution that has the character of a quick procedure to choose, because its form is a court institution, so that it has the power to compel, base the lawsuit normatively, has executive power, but the process is fast, simple, and cheap. Cheap which is meant is the amount of the litigate cost, for example, 1% of the nominal amount of the claim for consumer compensation.

Then, apart from the existence of a court institution that resolves small-scale civil disputes, including the settlement of consumer disputes with relatively small nominal demands is the need for consumer protection efforts through other simple procedures, including efforts to provide a means to accommodate complaints from the consumer community which official from the government, for example, there is a special website for consumers from the District Court that can be accessed at any time and so on. Then, there should also be other simple procedures such as a provision, if within 1 month there are 5 complaints from consumers about a product, then there must be a follow-up investigation for later sanctions, either in the form of administrative sanctions, namely revocation of business licenses if proven the produces has violated the law.

The court institution offered is a concept for Indonesia's future small claim courts. This court institution is part of the general court under the Supreme Court, as stated in Article 38 paragraph (1) of Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, "Apart from the Supreme Court and the judiciary bodies under it and the Constitutional Court there are other bodies whose function is related to judicial authorities ". This article is in line with Article 8 paragraph (1) of Law of the Republic of Indonesia Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts, "In general courts, a special court can be established which is regulated by law". Then according to Article 8 paragraph (1) of the Law on General Courts, the special court in question is a court that has the authority to

examine, hear and decide certain cases which can only be established in one of the judicial bodies under the Supreme Court.

The position of this special court institution is the Indonesian small claim court whose position is part of the general court under the Supreme Court. The special court institution of the small claim court that was built in this study, for now, is a part of the District Court of the General Court under the Supreme Court. The reasons for the position of a new institution that is part of the District Court and not a special court outside the District Court are:

1. Efficiency of the infrastructure utilization from the District Court Institutions that have existed;
2. The judge who completes the process of small-scale claim court of small-scale consumer disputes is also a District Court Judge;
3. State cost savings.

Furthermore, in the future, the author also offers to form a special court for the consumer disputes settlement which is outside the district court and has a Special Legal Procedural. This special court that stands outside the District Court in the future will resolve all small-scale civil cases including claims for compensation due to small-scale hidden defect goods of product.

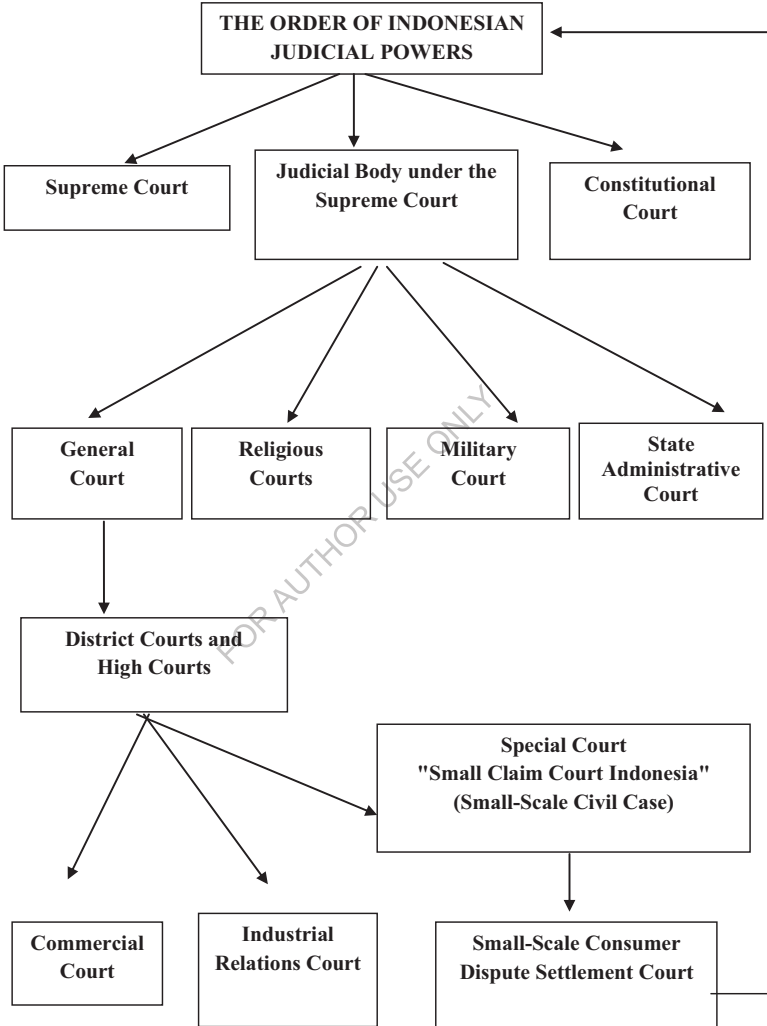
The special court institution, the Indonesian small claim court that become part of the District Court under the Supreme Court, functions as a special court institution for small-scale civil cases whose scope includes the consumer disputes settlement with a maximum claim of Rp. 150,000,000. The procedural law used is the special procedural law regarding the examination of fast procedures for resolving consumer disputes, but before the formation of the special procedural law which is the *lex specialis* of the general civil procedural law which is sourced from HIR (Het Herziene Indonesisch Reglement) / RBG (Reglement Butitegewisten), there is Supreme Court Regulation (PERMA) regarding Special Procedures for Consumer Dispute Settlement. The decision of this special court is final and is not any other remedy.

The maximum nominal limit for civil litigation including consumer disputes of the small-scale hidden defect goods of product, "One Hundred Fifty

Million Rupiahs (Rp. 150,000,000) that the researcher offered was that with the amount of the claim of Rp. 150,000,000 from the plaintiff of the actual loss suffered, if submitted through the procedure through the District Court, the value of the claim would not be comparable. with the costs and time required for processing during the dispute resolution process. There is a fee to pay attorney's fees and a considerable amount of time for the consumer dispute settlement process. This will affect the ineffective enforcement of consumer protection laws and the protection of consumers from dangerous goods. The chart of special court institutions that become Indonesian small claim courts that specifically handle small-scale consumer dispute settlement cases is as follows:

FOR AUTHOR USE ONLY

Chart 3
Establishment of a Small Claim Court for Small-Scale Consumers Dispute Settlement in Indonesia



c. Preparation of Smart Consumers through Consumer Education of Hidden Defect Goods of Product

Consumer protection efforts carried out by the government in providing legal protection, especially as a result of the current development of the national economy in the field of industry and trade, will be less effective if consumers themselves are not aware of being able to protect themselves independently. In addition, consumers cannot fully give up the problem of consumer protection, especially consumers of hidden defect goods of product, solely through the government or even leave it to the awareness of produces to produce and distribute goods that do not cause harm to consumers.

One of the ways to realize consumer protection from losses due to hidden defective products is through efforts to educate consumers both formally and informally as a means to educate consumers independently in protecting themselves from the consequences of hidden defect goods of products. Although this will be more effective, the government will also participate actively through formally, namely (1) including consumer education through the world of formal education such as the existence of consumer protection law courses for tertiary levels and (2) non-formal education in the form of counseling to the wider community as well as through electronic media as well as banners and pamphlets and other written media as a means of educating consumers to obtain informative knowledge in protecting themselves independently, especially from losses due to hidden defective products and the efforts that consumers can make in demanding their rights as consumers who have been harmed by produces.

d. Preparation of Regional Market Mechanism Supervision Strategies for the Protection of Indonesian Goods and Consumers in the ASEAN Trade Area and Global Countries

Currently, Indonesia is required to be able to take policies from the right trade strategy, one of which is AFTA (ASEAN Free Trade Area). The AFTA agreement has been officially enforced, particularly in six (6) ASEAN countries,

namely Brunei Darussalam, Philippines, Indonesia, Malaysia, Singapore, and Thailand.²³⁹

Indonesia must be able to undertake deregulation efforts as a strategy for controlling products entering the Indonesian customs area, as well as protecting consumers and producers of products in Indonesia so that they can avoid losses due to products of produces, especially products of hidden defects that are dangerous. AFTA was established in 1992 in Singapore, as a free trade area in ASEAN for 15 years. The agreement to exempt import duty tariffs can provide benefits for producers to be able to expand their marketing to other ASEAN countries. Producers of products in Indonesia must be competitive to produce and distribute quality products in the ASEAN region in particular and the world globally and be able to seize the domestic market. The tariff exemption of up to 0% import duty that is to be achieved for the ASEAN free trade area without being balanced with regulations that can provide protection for both Indonesian producers and consumers will be very detrimental to the nation.

Seizing the domestic market without neglecting the international market can be done by producing products in the form of processed goods from agriculture, marine, and forestry or making raw materials as the leading sector.²⁴⁰ Indonesian producers are required to be more professional in business activities carried out by advancing quality so that they do not depend on international markets which are sometimes difficult to control.

Some countries currently require a sign of origin that is clearly stated on imported products.²⁴¹ This effort is an effort to protect domestic consumers from losses due to hidden defective products. For Indonesia in the future, to be able to protect consumers in the region and the world globally in the current era of globalization and free trade is by established a special law that regulates the strict

²³⁹ Vietnam entered into force in 2006, Laos and Myanmar in 2008, and Cambodia in 2010., <http://alibielsya.blogspot.com/2014/02/makalah-indonesia-dalam-menghadapi-afta.htm>, accessed on May 12th, 2014, at 07.55 WIB.

²⁴⁰ M. Dawam Rahardjo, 2011, **Nalar Ekonomi Politik Indonesia**, IPB Press, Bogor, p. xxv.

²⁴¹ Erman Rajagukguk dalam Husni Syawali dan Neni Sri Imaniyati, 2000, **Op. Cit.**, p. 4.

liability of produces toward losses due to products of produces, especially losses due to hidden defective products which are based on the law of the strict liability and subjective responsive *asceticism* of produces based on Pancasila, the 1945 Constitution of the Republic of Indonesia and in accordance with the conditions of consumers and produces in Indonesia.

The legal of the strict liability and subjective responsive *asceticism* of produces as a form of products liability in Indonesia to claim compensation toward produces with reverse proof, It is acknowledged that there are exceptions for produces' exemption from claims for compensation based on the provisions of the applicable laws, customs, and ethics in doing business and *force majeure* so that the products produced and distributed in Indonesia are of quality according to the quality standards of these types of products.

9. Comparison of Legal Concepts of the Strict Liability and Subjective Responsive *Asceticism* of Produces and the Law of Produces' Liability Currently

Based on the discussion results of the legal concept formation of the strict liability and subjective responsive *asceticism* of produces from the philosophical, theoretical, and dogmatic side of the law, there are differences in principles of the values and principles of the law of the strict liability of produces currently whis is contained in the Law of the Republic of Indonesia Number 8 of the Year 1999 on Consumer Protection, can be described in the following table:

Table 5

The Values and Principles Comparison in Law Number 8 1999 concerning Consumer Protection with the Legal Concept of the Strict Liability of Subjective Responsive Asceticism of Produces

No	Comparative Aspects	Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (<i>Ius Constitum</i>)	The Legal Concept of the Strict Liability of Subjective Responsive <i>Asceticism</i> of Produces (<i>Ius Constituendum</i>)
1	Values	The implicit value contained in the Law of the Republic of Indonesia Number 8 of	The values contained in the legal concept of the strict liability of subjective

		1999 concerning Consumer Protection is a value in the legal sense in general, namely: 1. Value of Justice; 2. Useful Value; and 3. Value of Legal Certainty	responsive <i>asceticism</i> of produces as the concept of the strict liability of produces toward losses due to hidden defective products in the future are: 1. Human Value; 2. Value of Justice and Virtue; 3. Value of Legal Certainty
2	Principles	The legal principles contained explicitly in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection are: 1. Principle of Benefits; 2. The principle of justice; 3. The principle of balance; 4. Security and Consumer Safety Principles; 5. The Principle of Legal Certainty.	The legal principles contained in the legal concept of the strict liability of subjective responsive <i>asceticism</i> of produces, are: 1. The Principle of Happiness; 2. Good Intention Principle; 3. The Precautionary Principle; 4. Quality Assurance Principle of Products 5. The Principle of Accountability of Produces.

J. Closing

1. Conclusion

Based on the above problems, it can be concluded as follows:

1. The philosophical basis of consumer protection to demand compensation due to hidden defect goods of product from the tort law of produces based on the liability principle on an fault and the liability principle without fault/the strict liability is that produces have the liability to protect consumers from business activities that are conducted by requiring the existing fault and/or not requiring fault as a determining factor of the existence of a produces' liability, including the consequences of danger that threatens from hidden defect goods of product;

2. The urgency of the strict liability principle of produces toward losses due to hidden defect goods of product as an effort to protect consumers in Indonesia based on Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection is that currently consumers cannot do much to protect themselves from the risk of loss which is caused by defects in the products from produces, due to increasingly sophisticated production processes, increasingly complex distribution, diversification of products, mass production, profit-oriented produces, weak bargaining power of consumers, the monitoring mechanism for products on the market has not been going well, low awareness of consumers on their rights, and in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection as an umbrella law for consumer protection, it is not explicitly normative written clearly, but only implicitly in several articles of law consumer protection which regulates the product liability of produces;
3. The radical concept of regulating the strict liability principle of produces toward losses due to hidden defect goods of product which are based on a new legal paradigm of the framework of a consumer protection legal system in the future, it is necessary to concretize the theory, values, principles, and the legal norms the strict liability of subjective responsive *asceticism* of ideal produces that in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia which is normatively contained in written rules to realize consumer protection, especially consumer protection for hidden defect goods of product in Indonesia.

2. Suggestions and Recommendations

a. Suggestion

Based on these conclusions, then it is suggested:

1. It takes courage from the law enforcers to be able to implement changes in the system of produces' liability in consumer dispute

settlement in Indonesia, namely from the concept of liability based on an fault to the concept of liability based on risk and there is an understanding of the elements of tort law after 1919 as well as the criteria of a hidden defect goods of product to meet the compensation for losses experienced by consumers by taking into account the exclusion factors and *forcé majeure* of each consumer dispute settlement process especially the hidden defect goods of product.

2. Lawmakers to immediately follow up on the urgency of the strict liability principle of produces due to hidden defect goods of product toward consumer protection in Indonesia are carried out by being returned to the consumer protection mission, namely protecting consumers is the same as protecting the nation, through:
 1. Completion and Formation of Positive Laws of the strict liability of produces toward losses as the result of the hidden defect goods of product;
 2. Arrangement of easy access to options for the consumer dispute settlement process of hidden defect goods of product;
 3. Preparing smart consumers through consumers' education for hidden defect goods of product;
 4. Preparation of a supervisory strategy for regional market mechanisms for the protection of Indonesian goods and consumers in the ASEAN trade region and the world globally.
3. There is a new paradigm shift in the field of consumer protection, especially consumer protection to losses due toward hidden defect goods of product at the policy, practical and academic levels to apply the strict liability principle of subjective responsive *asceticism* of produces.

b. Recommendation

Based on the conclusions and suggestions from the research results that are in accordance with the researcher's problem, then hereinafter it is recommended to:

1. Include a special article that contains efforts to protect Indonesian consumers as a risk for produces in any written regulation product from the country in the future;
2. Amend the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, especially the implicit reference articles which contain the strict liability principle of produces toward losses due to hidden defect goods of product as a short-term effort to protect consumers of hidden defect goods of product in Indonesia;
3. Realizing the legal of the strict liability of subjective responsive *asceticism* of produces, namely:
 - a. At the policy level, to be followed up by:
 1. Legislative party, who sit in the House of Representatives of the Republic of Indonesia to perfect the implicit articles in the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection as a short-term and long-term step is by forming a special legal rule in the form of a Regulations concerning the Strict Liability of Produces toward Losses due to Hidden Defect Goods of Product, whose formation refers to the Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Laws and regulations, so that there is a change in behavior for law enforcers to implement, for produces there is a change in behavior to be more obliged to protect the interests of consumers and maintaining consumer satisfaction and for consumers, there is a change in behavior so that they are not reluctant to claim their rights as consumers protected by the state;

2. Government party:

- a) President, to establish a legal regulation that contains the strict liability of subjective responsive *asceticism* of produces in the form of a Government Regulation that describes the guarantee of the quality of the products of produces as a form of strict liability for consumer losses of hidden defect goods of product;
- b) Ministry of Industry and Ministry of Trade, to:
 - 1) Renewing and formulating legal regulations in the field of consumer protection which contain the principle of strict liability of produces with subjective responsive *asceticism* of produces, especially in the Regulation of the Minister of Trade, Regulation of the Minister of Industry, and Decree of the Minister of Trade and Decree of the Minister of Industry concerning consumer protection of hidden defect goods of product;
 - 2) Organizing the organizational structure of the Ministry of Industry and the Ministry of Trade in accordance with the authority based on the function of directing and regulating the principles of decentralization in the spirit of Regional Autonomy to form a Special Directorate-General that handles policies and strategies for decentralization of consumer protection through strict liability of produces toward losses due to hidden defect goods of products.
- b. At a practical level:
 1. Economic actors take advantage of the agreement on technical barriers in trade from the WTO / GATT through gradual liberalization of the trade law for products with specific restrictions and requirements in

accordance with the capabilities and conditions of the country as well as Indonesian produces;

2. There are options for consumer disputes settlement in demanding compensation for hidden defect goods of product through formal, informal path and the existence of special court institutions to handle small-scale consumer disputes cases that will become Indonesia's small claim courts in the future.
3. At an academic level, to be able to put forward and apply the principle of strict liability, subjective responsive *asceticism* of produces in settling consumer disputes. Carry out further studies in the field of consumer protection that can apply the principle of strict liability for the products of other produces.

FOR AUTHOR USE ONLY

REFERENCE

BOOKS:

- Abdurrahman, 1979, *Aneka Masalah Hukum dalam Pembangunan di Indonesia*, Alumni, Bandung.
- A Garner, Bryan, 2009, *Blac'k Law Dictionary*, Ninth Edition, West Publishing Co, St. Paul, Minnesota.
- Anto, MB. Hendrie, 2000, **Ekonomi Indonesia Memasuki Milenium II**, UII Press, Yogyakarta.
- Abidin, Zainal 2006, *Filsafat Manusia: Memahami Manusia Melalui Filsafat*, PT. Remaja Rosdakarya, Bandung.
- Amin, Samsul Munir, 2012, *Ilmu Tasawuf*, Impirint Bumi Aksara, Jakarta.
- Asshiddiqie, Jimly dan M. Ali Safa'at, 2006, **Teori Hans Kelsen tentang Hukum**, Kon-Press, Jakarta.
- Algra, N.E., dan van Duyvendijk, 1983, *Mula Hukum*, Terjemahan JCT Simorangkir dan Boerhanoeddin, SB, Binacipta, Jakarta.
- Apeldoorn, L.J. van, *Inleiding tot de Studie van het Nederkandse Recht*, Diterjemahkan oleh Oetarid Sadino, 2011, *Pengantar Ilmu Hukum*, PT. Pradya Paramita, Jakarta.
- Arijanto, Agus 2011, *Etika Bisnis bagi Pelaku Bisnis*, PT. Rajawali Pers, Jakarta.
- Barkatullah, Abdul Halim, 2011, *Hak-Hak Konsumen*, Nusamedia, Bandung.
- Bintang, Sanusi, dan Dahlan, 2000, *Pokok-Pokok Ekonomi dan Bisnis*, Citra Aditya Bakti, Bandung.
- Blackburn, Simon, *Kamus Filsafat*, Diterjemahkan dari The Oxford Dictionary of Philosophy, Pustaka Pelajar, Yogyakarta.
- Bisri, Ilham 2004, *Sistem Hukum Indonesia*, PT.RajaGrafindo Persada, Jakarta.
- Conterrell, Roger 1992, *Jurisprudence: A Critical Intoduction to Legal Philosophy*, University of Pennnysylvania Press, Philadelphia.
- Coie, Perkins, 1991, **Product Liability in the United States**, Library of Congress, Washington DC.

- Crabtree, Benyamin F., dan William L. Millerd, 1992, *Doing Qualitatif Research: Research Methods for Primary Cases*, SAGE Publication, Newbury Park London, New Delhi.
- Cane, Peter, 1986, *Economic Loss and Products Liability, in Comparative Product Liability*, The British Institute of International and Comparative Law.
- Darmodiharjo, Darji, dan Shidarta, 1999, *Pokok-Pokok Filsafat Hukum*, PT. Gramedia Pustaka Utama, Jakarta.
- Dunne J.M. van, dan van der Burght, 1988, *Perbuatan Melawan Hukum*, terjemahan KPH Hapsoro Jayaningprang, Dewan Kerja Sama Ilmu Hukum Belanda dengan Indonesia-Proyek Hukum Perdata, Ujung Pandang.
- Darwin, Sudarwan, 2002, *Menjadi Peneliti Kualitatif*, Pustak Setia, Bandung.
- Darmodiharjo, Darji, dan Shidarta, 1999, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia*, PT. Gramedia Pustaka Utama, Jakarta.
- Erawati, Elly dkk (editor), 2011, *Beberapa Pemikiran tentang Pembangunan Sistem Hukum Nasional Indonesia: Liber Amicorum untuk Prof. Dr. CFG. Sunaryati Hartono*, PT. Citra Aditya Bakti, Bandung.
- Erwin, Muhammad, dan Amrullah Arpan, 2007, *Filsafat Hukum: Renungan untuk Mencerahkan Kehidupan Manusia di bawah Sinar Keadilan*, UNSRI, Palembang.
- Fakih, Mansour, 2003, *Babab dari Neoliberalisme*, INSIST Press, Yogyakarta.
- Friedman, Lawrence M., 1975, *The Legal System A Social Science Perspective*, Russel Sage Foundation, New York.
- Fuady, Munir, 2005, *Perbuatan Melawan Hukum (Pendekatan Kontemporer)*, PT. Citra Aditya Bakti, Bandung.
- Ghazaly, Abdul Rahman. dkk, 2010, *Fiqh Muamalat*, Kencana Prenada Media Group, Jakarta.
- Fitzgerald, J.P, dalam Satjipto Rahardjo, 2000, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung.
- Febrian, 2004, *Hirarki Aturan Hukum di Indonesia*, Disertasi, Program Pascasarjana Universitas Airlangga, Surabaya.

- Farida, Maria, 1998, *Ilmu Perundang-Undangan (Dasar-dasar dan Pembentukannya)*, Kanisius, Yogyakarta.
- Gie, The Liang, 1977, *Teori-teori Keadilan*, Super, Jakarta.
- Gilissen, Emeritus John, dan Emeritus Frits Gorle, 1991, **Historische Inleiding tot het Recht**, Kluwer Rechtswetenschappen-Anwerpent, Belgium, yang diterjemahkan oleh Freddy Tengker, 2007, *Sejarah Hukum Suatu Pengantar*, PT. Refika Adiatama, Bandung.
- Ginsberg, Morris, 2003, *Keadilan dalam Masyarakat*, Pondok Edukasi, Yogyakarta.
- Hartono, Sri Redjeki, 2000, *Kapita Selekta Hukum Ekonomi*, Mandar Maju, Bandung.
- Hadjon, Philipus M. 1987, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-Prinsipnya, Penerapannya, oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara*, Bina Ilmu Surabaya.
- Hs, Salim, 2010, *Perkembangan Teori Dalam Ilmu Hukum*, PT RajaGrafindo Persada, Jakarta.
- Hardjasoemantri, Koesnadi 1992, *Hukum Tata Lingkungan*, Gajah Mada University Press, Yogyakarta.
- Hartono, Sri Redjeki, 2000, *Kapita Selekta Hukum Ekonomi*, Mandar Maju, Bandung.
- Hart, H.L.A., 1961, *The Concept of law*, Oxford University Press, London.
- Kristiyanti, Celina Tri Siwi 2008, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta.
- Kaelan, 2002, *Filsafat Pancasila: Pandangan Hidup Bangsa Indonesia*, Paradigma, Yogyakarta.
- Kansil, C.S.T 1986, **Pengantar Ilmu Hukum dan Tata hukum Indonesia**, Balai Pustaka, Jakarta.
- Kartohadiprodjo, Soediman 1967, *Pengantar Tata Hukum di Indonesia*, Cetakan Kelima, PT. Pembangunan, Jakarta.
- Kusumaatmadja, Mochtar, 1986, *Pembinaan Hukum dalam Kerangka Pembangunan Nasional*, Binacipta, Bandung.

- Leback, Karen 1986, *Six Theories of Justice*, Augsburg Publishing House, Indianapolis.
- Lubis, Solly 2000, *Politik dan Hukum di Era Reformasi*, Mandar Maju, Bandung.
- Lev, Daniel, 1990, *Hukum dan Politik di Indonesia*, Cet I, LP3ES.
- Mertokusumo, Sudikno 1986, *Mengenal Hukum: Suatu Pengantar*, Liberty, Yogyakarta.
- M. Abdul Azis, Yahya, Ed., 1998, *Visi Global Antisipasi Indonesia Memasuki Abad Ke-21*, Pustaka Pelajar, Yogyakarta.
- Manan, Abdul 2006, *Aspek-Aspek Pengubah Hukum*, Kencana Prenada Media, Jakarta.
- Mujeib, M. Abdul, (et.al), 1994, *Kamus Istilah Fiqih*, PT. Pustaka Firdaus, Cet. Ke-1, Jakarta.
- Mustafa, Bachsan 1988, *Pokok-Pokok Hukum Administrasi Negara*, Alumni, Bandung.
- Miller, C.J, 1986, **Comparative Product Liability**, The British Institute of International and Comparative Law.
- MD, Moh. Mahfud, 2011, *Politik Hukum di Indonesia*, PT. RajaGrafindo Persada, Jakarta.
- Makarim, Edmon, 2003, *Kompilasi Hukum Telematika*, PT, RajaGrafindo Persada, Jakarta.
- Marzuki, Peter Mahmud, Tanpa tahun, *Pembaharuan Hukum Ekonomi Indonesia*, Universitas Airlangga, Surabaya.
- Miru, Ahamdi 2011, *Prinsip-prinsip Perlindungan bagi Konsumen di Indonesia*, Sinar Grafika, Jakarta.
- Mertokusumo, Sudikno 1991a, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta.
-, 2009b, *Penemuan Hukum Sebuah Pengantar*, Liberty, Yogyakarta.
- Naisbitt, John, 1990, **Megatren 2000**, Pan Books, Sidgwick & Jackson, Published Ingreat Britain Ltd.

- Nasution, Az., 1995a, *Konsumen dan Hukum*, Pusaka Sinar Harapan, Jakarta.
-2001b, *Hukum Perlindungan Konsumen Suatu Pengantar*, Cet. Ke-II, Diadit Media, Yogyakarta.
- Nasution, Bahder Johan, 2011, *Negara Hukum dan Hak Asasi Manusia*, Mandar Maju, Bandung.
- Notonagoro, 1982, *Beberapa Hal Mengenai Falsafah Pancasila*, Rajawali Pers, Jakarta.
- Nasution, Harun 2004, *Filsafat dan Mitisisme dalam Islam*, Bulan Bintang, Jakarta.
- O'Connor, Natalie, Consumer Protection Under The Trade Practices Act: A Time For Change, dalam Inocentius Samsul (Editor), 2001, *Hukum Perlindungan Konsumen*, Pascasarjana FH-UI, Jakarta.
- Purbacaraka, Purnadi dan Soerjono Soekanto, 1985, *Ikhtiar Antinomi: Aliran Filsafat sebagai Landasan Filsafat Hukum*, CV. Rajawali, Jakarta.
- Prodjodikoro, R. Wirjono, 1996, *Asas-asas Hukum Perdata*, Cetakan Kelima, Sumur, Bandung.
- Rahardjo, Satjipto 2000a, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung.
-, 2006b, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung.
- Ridwan, 2011, *Hukum yang Kosmopolitan Abad 21: Dalam Perlindungan dan Penegakan Hak Asasi Manusia*, Badan Penerbit Universitas Diponegoro, Semarang.
- Rifai, Ahmad, 2011, *Penemuan Hukum oleh Hakim dalam Prespektif hukum Progresif*, Cetakan Kedua, Sinar Grafika, Jakarta.
- Rapar, J. H., 1991, *Filsafat Politik Plato*, Rajawali Press, Jakarta.
- Robinson, James, dalam Jazim Hamidi, 2005, *Teori Penemuan Hukum Baru dengan Interpretasi Teks*, UII Press, Yogyakarta.
- Rahardjo, M. Dawam 2011, *Nalar Ekonomi Politik Indonesia*, IPB Press, Bogor.
- Sidabalok, Janus, 2006, *Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, Bandung.

- Shidarta, 2000, *Hukum Perlindungan Konsumen*, Grasindo, Jakarta.
- Saliswijaya, AA Dani, 2004, *Himpunan Peraturan tentang Class Action*, PT. Gramedia Pusaka Utama, Jakarta.
- Singarimbun, Masri, dan Sofian Efendi, 1984, *Metode Penelitian Survei*, LP3ES, Jakarta.
- Shofie, Yusuf , 2008a, *Kapita Selekta Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, Bandung.
-, 2002b, *Pelaku Usaha, Konsumen, dan Tindak Pidana Korporasi*, Ghalia Indonesia, Jakarta.
-, 2003c, *Penyelesaian Sengketa Konsumen menurut UUPK*, Citra Aditya Bakti, Jakarta.
-, 2011d, *Tanggung Jawab Pidana Korporasi dalam Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, Bandung.
- Subekti R., dan R. Tjitrosudibio, 2009, *Kitab Undang-Undang Hukum Perdata*, Cet. Kesepuluh, PT. Dian Rakyat, Jakarta.
- Sidharta, Bernard Arif, 2009, *Meuwissen tentang Pengembangan Hukum, Ilmu Hukum, Struktur, dan Filsafat Hukum*, PT. Refika Aditama Bandung.
- Soekanto, Soerjono, 1983a, *Pengantar Sejarah Hukum*, Alumni, Bandung.
-, 1986b, *Pengantar Penelitian hukum*, UI Press, Jakarta.
-, 1989c, *Perbandingan Hukum*, PT. Citra Aditya Bakti, Bandung.
- Soekanto, Soerjono, dan Sri Mammudji, 1986, *Penelitian Hukum Normatif: Suatu Tujuan Singkat*, Rajawali Pers, Jakarta.
- Samudra, Teguh, 1992, *Hukum Pembuktian dalam Acara Perdata*, Alumni, Bandung.
- Sunggono, Bambang 1988, *Metodelogi Penelitian Hukum*, PT. RajaGrafindo Persada, Jakarta.
- Sidharta, Bernard Arief, 2000, *Refleksi Struktur Ilmu Hukum*, Mandar Maju, Bandung.
- Sumantoro, 1986, *Hukum Ekonomi*, Univesitas Indonesia Press, Jakarta.

- Saifullah, H. E Tanggung Jawab Produsen terhadap Akibat Hukum yang ditimbulkan dari Produk pada Pasar Bebas, Husni Syawali dan Neni Sri Imaniyati (Penyunting), *Hukum Perlindungan konsumen*, Mandar Maju, Bandung.
- Santos, Yudi, *Teori-Teori Keadilan*, Nusa Media, Bandung.
- Stern Louis W., and Thomas L. Evoldi, 1984, **Legal Aspects of Marketing Strategy: Antitrust and Consumer Protection Issues**, Prentice-Hall Inc, Englewood Cliffs, New Jersey, USA.
- Setiawan, Racmat 1991, *Tinjauan Elementer Perbuatan Melanggar Hukum*, Binacipta, Bandung.
- Soemitro, Ronny Hanitijo, 1988, *Metodelogi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta.
- Sumaryono, E. 1999, *Hermeneutik Sebuah Metode Filsafat*, Kanisius, Yogyakarta.
- Syaukani, Imam, dan A. Ahsin Thohari, 2004, *Dasar-Dasar Politik Hukum*, PT. RajaGrafindo Persada, Jakarta.
- Shidarta, 2004, *Hukum Perlindungan Konsumen*, Gramedia Widiasarana Indonesia, Jakarta.
- Sibuea, Hotma P 2010, *Asas Negara Hukum Peraturan Kebijakan dan Asas-asas Umum Pemerintahan yang baik*, Erlangga, Jakarta.
- Salaman, Otje, dan Anton F. Susanto, 2004, *Teori Hukum: Mengingat, Mengumpulkan dan Membuka Kembali*. PT. Refika Aditama, Bandung.
- Sutrisno, Mudji, dan Hendar Putranto, 2004, *Menafsir Keindonesian, Hermeneutika Pascakolonial, Soal Identitas*, Kanisius, Jakarta.
- Siahaan, N.H.T., 2005, *Hukum Perlindungan Konsumen dan Tanggung Jawab Produk*, Pantai Rei, Jakarta.
- Susuanto, Anthon F., 2007, *Hukum: Dari Consilience Menuju Paradigma Hukum Konstruktif-Transgrif*, PT. Refika Aditama, Jakarta.
- Subekti, 1984. *Aneka Perjanjian*, Cetakan Keenam, Alumni, Bandung.
- Tri P., Salviona **Positivisme Hukum dan Legalitas Hukum**, dimuat dalam buku *Beberapa Persoalan dalam Ilmu Hukum Kontemporer*, Ed. Jimly

Asshiddiqie, 2003, Pusat Studi Hukum Tata Negara Fakultas Hukum Universitas Indonesia, Jakarta.

Tasrif, S. 1987, *Bunga Rampai Filsafat Hukum*, Abardin, Jakarta.

Tanya, Bernard L., dkk., 2010, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Genta Publishing, Jakarta.

Untung, Hendrik Budi 2010, *Hukum Investasi*, Sinar Grafika, Jakarta.

Utrecht, E., 1957, *Pengantar dalam Hukum Indonesia*, Cetakan Keempat, PT Penerbit dan Balai Buku Ikhtiar, Jakarta.

Wignjosoebroto, Soetandyo, 2002, *Hukum: Paradigma, Metode dan Dinamika Masalahnya*, ELSAM-HUMA, Jakarta.

Yustika, Ahmad Erani dan Ahmad Yani, 2003, *Hukum Arbitrase*, Cet. Ke-3, PT. RajaGrafindo Persada, Jakarta.

Yuliandri, 2011, *Asas-asas Pembentukan Peraturan Perundang-undangan yang Baik: Gagasan pembentukan Undang-Undang Berkelanjutan*, PT. RajaGrafindo Persada, Jakarta.

Dissertation, Thesis, Journal, Papers:

Diederick-Verschoor, Similarities and Differences between Air and Space Law, Primarily in the Field of Private International Law, dalam **Academy of International Law**.

Emirzon, Joni, 2000, *Hukum Jasa Penilai dari Perspektif Good Corporate Governance*, Doctoral Dissertation Doctoral Dissertation, Diponegoro University (UNDIP), Semarang.

Firman Muntaqo, 2012, *Win-Win Solution sebagai Prinsip Pemanfaatan Tanah dalam Investasi Bidang Perkebunan yang Mensejahterakan Rakyat*, Lecture Materials for Students of the Doctor of Law Science Program in the Postgraduate Program of Sriwijaya University, Palembang.

Fakhriah, Efa Laila, Mekanisme *Small Court dalam Mewujudkan Tercapainya Peradilan Sederhana, Cepat dan Biaya Ringan*, Mimbar Hukum Volume 25 Nomor 2 Juni 2013.

Fishmen, Karen S. 1986, **An Overview of Consumer Reporting Service**, Volume Commissions, Human Rights Quaterly Vol. 17.

- 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, Volume 14 No. 1, Januari 2014, Faculty of Law, Jenderal Soedirman University, Purwokerto Jawa Tengah.
- Holijah, 2011, *Hak Gugat Organisasi Penggugat dalam Gugatan Perwakilan Kelompok sebagai Upaya Perlindungan Konsumen*, Thesis, PPs Sriwijaya University (UNSRI), Palembang.
- Masdar F. Mas'udi, *Meletakkan Kembali Maslahat Sebagai Acuan Syari'ah*, Journal of Science and Culture Ulumul Qur'an No.3, Vol. VI Th. 1995.
- Rajagukguk, Erman *Budaya Hukum dan Penyelesaian Sengketa di Luar Pengadilan*, Journal of Master of Law, PPs-UII, Vol. 2 N0.4, Oktober 2000, Yogyakarta.
- Syaifuddin, Muhammad, 2008, *Perlindungan Hukum Hak Masyarakat Kurang dan Tidak Mampu atas Pelayanan Kesehatan Rumah Sakit Swasta Berbadan Hukum Perseroan Terbatas*, -Dissertation, PDIH-Universitas Brawijaya, Malang.
- Spacone, Andrew Carl 1985, *The Emergence of Strivt Liability Polycy's Product Prespective and Other Consideration, Including Senate 100*, Journal of Products Libillity.
- Setiawan, *Empat Kriteria Perbuatan Melawan Hukum dan Perkembangan dalam Yurisprudensi*, Varia Peradilan No. 16 Tahun II (Januari 1987).
- Sach, Ignancy, 1995, Searching for New Development Strategis Chalenges of Social Summit, dalam *Economic and Political Weekly*, Volume XXX.
- Toar, Agnes M. *Tanggung Jawab Produk dan Sejarah Perkembangannya di Beberapa Negara*, Makalah Penataran Hukum Perikatan, Ujung Pandang, Tanggal 17-29 Juli 1989.
- Widijantoro, J. *Product Liability dan Perlindungan Konsumen di Indonesia*, Justitia Et Pax, Juli-Agustus 1998.

Electronic Library:

<http://pustaka.unpad.ac.id/wp-content/uploads/2014/02/Eksistensi-Small-Claim-Court.pdf/> accessed on \ 13 Desember 2014,

<http://rivvei.blogspot.com/small-claim-court-pengadilan-cepat.html>, accessed on 2014.

<http://lib.law.ugm.ac.id/> accessed on 5 Desember 2014.

<http://www.harianterbit.com/2014/Hati-Hati-Belanja-Di-Sim-Lim-Square-Singapura>, accessed on 6 Desember 2014.

<http://iismardeli30aia.wordpress.com/2013/12/01/kepastian-hukum/> accessed on 17 Juni 2014,

<http://idazahro.blogspot.com/2012/11/kasus-tentang-perlindungan-konsumen.html>
www.Indosiar.com accessed on 11 September 2011

<http://id.scribd.com/doc/18545014/makalah-perlindungan-konsumen>.

<http://alibielsya.blogspot.com/2014/02/makalah-indonesia-menghadapi-afta.htm>,
accessed on 12 Mei 2014.

FOR AUTHOR USE ONLY

About the Author



Dr. Holijah, S.H., M.H., is a Business Law lecturer in the Faculty of Sharia and Law at Raden Fatah State Islamic University Palembang. She was born in Tanjung Baru in 1972, the daughter of Ismail A. Hamid, A.Ma.Pd., and Alm. Hj. Zakiyah. She is an alumna of Bachelor's Degree of Faculty of Law Science Universitas Muhammadiyah Palembang (1990), Master's Degree of Faculty of Law Science Universitas Sriwijaya (2011), and Doctoral Degree of Faculty of Law Science Universitas Sriwijaya (2015). She also teaches in several master programs of law Science in Palembang city. She wrote in several national and international journals and attended professional training at home and abroad. Married to Drs. M. Rizal, M.H., and has been blessed with children named Badru Zaman Muhammad (FISIP UIN Raden Fatah Palembang) and Roza Holilah (FKM Sriwijaya University).

FOR AUTHOR USE ONLY

FOR AUTHOR USE ONLY

FOR AUTHOR USE ONLY

**More
Books!**



yes
I want morebooks!

Buy your books fast and straightforward online - at one of world's fastest growing online book stores! Environmentally sound due to Print-on-Demand technologies.

Buy your books online at
www.morebooks.shop

Kaufen Sie Ihre Bücher schnell und unkompliziert online – auf einer der am schnellsten wachsenden Buchhandelsplattformen weltweit! Dank Print-On-Demand umwelt- und ressourcenschonend produziert.

Bücher schneller online kaufen
www.morebooks.shop

KS OmniScriptum Publishing
Brivibas gatve 197
LV-1039 Riga, Latvia
Telefax: +371 686 20455

info@omniscryptum.com
www.omniscryptum.com

OMNIScriptum



FOR AUTHOR USE ONLY

FOR AUTHOR USE ONLY

FOR AUTHOR USE ONLY