



The comparative study on consumer protection laws in ASEAN

Sareeya Galasintu*, Chanakant Loveera

Department of Law, Faculty of Social Sciences, Kasetsart University, Bangkok 10900, Thailand

Article Info

Article history:

Received 30 July 2019

Revised 24 January 2020

Accepted 4 February 2020

Available online 3 December 2021

Keywords:

consumer,
consumer protection,
redress

Abstract

Two phases of qualitative study on “The Comparative Study on Consumer Protection Laws in ASEAN Economic Community (AEC)” have revealed consumer protection laws of ASEAN members including the in-charge organizations and their redress mechanisms in order to weigh the readiness towards the ASEAN approach. The research findings discovered that regarding the preventive and suppress viewpoint, all ASEAN countries’ consumer protection laws are in harmony. Consumer are protected under either principal law or specific laws, which are complied with ASEAN Charter and ASEAN Economic Community Blueprint, with an exception of no competition law in Cambodia. With regard to the redress viewpoint, all member countries have by-law redress mechanism mostly in the principal law except for Laos, where basic litigation right is based on the Constitution. Indonesia, the Philippines and Vietnam have administrative sanctions as well. *Challenges* are consumer access to government services in Brunei Darussalam and Cambodia, geographical barrier and poverty in Indonesia and Vietnam, consumer online protection development in the Philippines and redress mechanism development in Laos. In summary, Brunei Darussalam, Malaysia, Singapore and Thailand are countries most ready with the legislation and redress mechanism, and Cambodia would be the most challenged country as to new legislation enforcement. *Recommendations* are divided into two areas. (1) *In terms of Policy*, it should start with (1.1) setting up a One Stop Service in national and regional levels using English as an official language. (1.2) State should encourage consumers to realize their rights and businesses to exercise the market ethically and establish a redress mechanism where possible. (1.3) The establishment of a model law on consumer protection is needed. (2) *In terms of redress mechanism*, (2.1) creation of consumer protection network should be encountered. (2.2) State should set up One Stop Service and an Online Dispute Resolution: ODR system or other means for a redress mechanism.

© 2021 Kasetsart University.

* Corresponding author.

E-mail address: fsocsyg@ku.ac.th, sareeya.g@live.ku.th (S. Galasintu).

Introduction

Consumer protection laws are framed by the AEC Blueprint in terms of B1: effective competitive policy and B2: consumer protection. This is in accordance with ASEAN's aim, that is, to encourage the competitive capacity to all traders throughout the region for the creation of fair market. Consequently, such will result in consumer protection including solving problems through a redress mechanism. One of the strategic measures for this accomplishment is to have all members put in place the competition and consumer protection legislation as a set framework. This study deliberated over general and specific laws including competition law as set by the AEC. Also, legislation on both viewpoints of prevention and suppress was examined, and redress mechanism was explored. In the overall picture, the in-charge authorities in all members would be assigned and be a center for ASEAN consumer.

Literature Review

Basically, consumer law shall be in the form of regulating business sectors. As a result, a de-facto consumer shall be protected at the end of the route either by general law or specific law through the in-charge authority. This concept of having a consumer protection law has been developed together with the idea of "de-facto consumer", who would be protected although consuming without paying anything in return. This is developed from the contractual and tort base (Miller & Goldberg, 2014). Regarding the first viewpoint, namely, prevent and suppress viewpoint, Thailand has a principal law of the Consumer Protection Act 1979 and various specific laws. Examples include the first law of Whey Act 1927 (Supanit, 2009), Competition Act. 2017, the Food Act 1979, the Medicines Act 1967, the Cosmetic Act 2015, the Direct Sales and Direct Marketing Act 2002, etc. The Thai principal Act regulates contract, label, advertisement, dangerous goods/services, and product safety. Business sectors will be punished in case of any breaches. Both civil and criminal remedies shall be applied. Regarding the second viewpoint of a redress mechanism, the principal Act provides the Consumer Protection Board the authority to lodge a lawsuit on the consumers' behalf. This is an alternative channel for consumers apart from proceeding with a court case on their own. In addition, the Product Liability Act 2008 and the Consumer Case Procedure Act 2008 do have provisions of compensation for a redress including punitive and mental damages.

The researchers studied main relevant legal principles and theories. The principle of 'Caveat Emptor' is to protect a consumer where products are familiar to the consumer and as such, the burden of proof lies on the consumer. Conversely, with 'Caveat Venditor' the burden of proof lies on the business sector, where the products and consumption culture are gradually changed. (Supanit, 2009) *Main theories in consumer protection are "Freedom of Will" or "Freedom of Contract" and "Presumption of Fault"*. "Freedom of Will" or "Freedom of Contract" treats parties equally and shall not be applied to consumer contract since the bargaining power of both parties is unequal and results in consumer's disadvantages as expressly indicated in the remark of the Consumer Protection Act 1979. Regarding the "Presumption of Fault" theory, consumer protection law is based on "strict liability" in tort (Supanit, 2009) e.g., Product Liability Act 2008 and the Consumer Case Procedure Act 2008.

International consumer protection is shown in numerous significant frameworks; to be specific; United Nations Charter, UN Guidelines for Consumer protection: UNGCP, Universal Declaration of Human Rights of the United Nations, ASEAN Economic Community Charter and AEC Blueprint. Even though it is not compulsory to transplant these cited regulations into national laws, ASEAN members are driven to have consumer protection laws and their redress mechanism monitoring by ASEAN Committee on Consumer Protection (ACCP, 2015).

There are no previous studies related to ASEAN consumer principal laws. The only topic found is "awareness and usage of advertisement law by Thai advertising agencies". It revealed that most ASEAN members' advertisement law is in the same direction. Their laws regulate the content so as not to contain a false statement or over-claim. Differently, Brunei Darussalam regulates advertisement as provided in the city plan for consumers' safety. The Thai principal consumer protection law, drugs and food laws and other specific laws were examined and found to be in the same direction (Kradumpee, 2015). Other previous research has not been undertaken in the same direction as this research.

Methodology

This qualitative research was based on doctrinal and comparative methodologies. The study covered ASEAN national legislations on consumer protection, their redress mechanism including the in-charge authority.

Results and Discussion

The study of national legislation reflecting consumer protection in ASEAN countries discovered that there are the main principal consumer protection law and specific laws to provide different consumer protection aspects under the in-charge authorities. Such laws reflect two viewpoints, i.e., to prevent and suppress, and to redress. The right to litigation is provided under their principal laws, except for Laos by the Constitution. The details in each country compared to Thai laws are discussed below:

Brunei Darussalam has the principal law of Consumer Protection (Fair Trading) Order 2011: CPFTO. The Order regulates unfair practices basically focused on business-to-consumer (B2C) (ASEAN Secretariat, 2018). Reflecting the AEC blueprint, the Competition Order 2015 is also enforced in support to the consumer protection aspect. Although Brunei legislation does not match all issues in the Thai main act, both countries do have consumer issues providing legislation differently in specific laws. For a redress, the Small Claims Tribunal Order 2006 is enforced. Overall, consumer protection laws have both viewpoints as in Thailand. The in-charge authorities are the Competitive and Consumer Affairs Commission: CCAC, the Competition and Consumer Affairs Department: CCAD. A challenge would be focusing on the amount of poverty for at least access to education fundamental right (Walsh, 2016) and to state service welfare (Kakar, 2017). These areas are treated as barriers to exercise the consumer protection laws. If this can be fixed, Brunei will go through an efficient implementation for the benefit of consumers at the end.

The Kingdom of Cambodia recently promulgated the main Consumer Protection Law: November 2, 2019, covering unfair trading activities and unfair practices including pyramid schemes, minimum information standards such as labeling requirements, and complaint handling (Cohen, 2019). Some specific laws are enforced but there is still no competition law to comply with the AEC blueprint. However, it is under review by the Council of Ministers and Council of Jurists as part of the enactment process (DFDL Co., Ltd., 2018). These areas are in preventive viewpoint as in Thai laws in terms of regulatory techniques. Other consumer protection areas are covered by the specific laws. The redress mechanism is newly established by the incoming law having the in-charge authority of the National Committee on Consumer Protection (NCCP) with the procedure of complaints and appeals. Prior to the principal law, there was the Cambodia Import Export Inspection and Fraud

Repression Directorate General (CAMCONTROL), Ministry of Commerce handling consumer issues dealing with Constitution and other specific consumer protection laws (ASEAN Secretariat, 2018). Challenges for Cambodia are how to exercise a new law efficiently and also poverty and access to the state's services and welfare. These challenges are described in the Executive Summary of National Social Protection Policy Framework 2016–2025 (International Labour Organization [ILO], 2017). This shows that Cambodia and Brunei Darussalam are facing the same difficulties.

Law of the Republic of Indonesia No. 8/1999 on Consumer Protection provides protection to consumers and also a balance in business interest in the good competitive market for a sustainable economy (United Nations Conference on Trade and Development [UNCTAD], 2019). It provides four aspects of protection: contract, label, advertisement and unfair competition practice. Adhering to the main law, Indonesia also enacted Law No. 5/1999 on competition law. When comparing to the Thai main law, the first three main areas are the same, and the fourth one is the same as provided in the Thai Competition Act. The left-out issues are provided in other specific laws. For a redress, the Consumer Dispute Settlement Agency will handle consumer complaints. Consumer protection laws have both viewpoints as in Thailand, Brunei Darussalam and Cambodia. Additionally, Indonesia also includes administrative sanction. The in-charge authority is the National Consumer Protection Agency. In addition, the non-governmental Consumer Protection Foundation plays an important role and is supportive. Challenges would be a difficulty in providing services through the geographical areas, a wide range of poverty and an amendment to comply with the ASEAN Blueprint in details (Turisno, 2018).

The main law on Consumer Protection in Lao People's Democratic Republic No. 02/NA Vientiane Capital dated 30 June 2010 provides protection in four categories: (1) consumption of goods and services (2) production, importation, selling and distribution of goods and services (3) advertisement and (4) labelling and contracts. Regarding the unfair trade practices, there is an active competition law 2015. When comparing to Thai main law, three main areas in (3) and (4) are the same, and the rest is in other Thai specific laws. For a redress, the consumer is entitled to the normal litigation right and may lodge a complaint to any relevant authorities. Unfortunately, there is no redress mechanism by the principal law. Nevertheless, the court shall provide an alternative means of dispute of resolution e.g.,

mediation or conciliation (Keoduangdy, 2014). Consumer protection laws have both viewpoints as in the four countries of Thailand, Brunei Darussalam, Cambodia and Indonesia. The in-charge authority is the Division of Consumer Protection under the Ministry of Industry and Commerce: MOIC. Challenges would be a difficulty in providing services for the huge amount of poverty and the access to state services and welfare including the lack of fundamental structure. (Manichanh, 2009) These are barriers to exercising the law efficiently, the same problem as found in Brunei Darussalam, Cambodia and Indonesia.

Malaysia has a main law of Consumer Protection Act 1999 (CPA), which provides four aspects of protection; (1) misleading conduct including advertisement (2) safety standard of goods and services (3) guarantee and (4) liability of defective products. Regarding the unfair trade practices, there is an active competition law 2010. When comparing to Thai main law, only the first area of advertisement is the same, and the rest is provided in other specific laws. For a redress, the Tribunal for Consumer Claims Malaysia: TCCM, shall handle the claim of not over 25,000 ringgits, which is also available on e-tribunal especially for tourists (Ministry of Domestic Trade Co-operatives and Consumerism [MDTCC], 2021). Consumer protection laws have both viewpoints as in the five countries of Thailand, Brunei Darussalam, Cambodia, Indonesia and Laos. The in-charge authority is the Ministry of Domestic Trade and Consumerism: MDTCC. A challenge would be development in online dispute resolution through the Guideline on the Implementation of Consumer Rights of Redress.

The Republic of the Union of Myanmar has the main law of Consumer Protection Law 2014 providing protection aspects of labelling and advertisement. When comparing to Thai main law, both areas are the same while other areas in two countries are provided in other specific laws including recent promulgated competition law (Ministry of Commerce, 2018). For a redress, the Consumer Dispute Settlement Body is established for handling all complaints where consumers' litigation right is still reserved (ACCP, 2019). Consumer protection laws have both viewpoints as in six countries. The in-charge authority is the Consumer Affairs Division, Department of Trade Promotion and Consumer Affairs, Ministry of Commerce. Challenges would be development in legal implementation and how to provide a range of protection for consumers.

The Republic of the Philippines has the Republic Act No. 7394: RA 7394, as the main law. It is separated into seven aspects: (1) food, drugs cosmetics and devices (2) hazardous substances (3) prohibition against deceptive

sales acts or practices (4) label (5) liability for products and services (6) advertisement and promotion and (7) credit transaction. Regarding the unfair trade practices, there is a competition law 2015 enforced. When comparing to Thai main law, the same areas of protection are label, liability for products and services, advertisement and promotion. Other issues are provided in other specific laws. A redress mechanism is also provided by the main law. Similar to the aforementioned seven countries, consumer protection laws have both viewpoints. Additionally, the Philippines also includes administrative sanction as in Indonesia. The in-charge authority is the National Consumer Affairs Council: NCAC. A challenge would be the e-consumer protection guideline announced earlier (Department of Trade and Industry, 2021), which is driven to be included in the main act (Angara, 2018).

The Republic of Singapore has the Consumer Protection (Fair Trading) Act (Chapter 52A) as a main law providing three areas of protection: (1) unfair practice (2) consumption of goods and services and (3) contract. Adhering to the first area, the competition law has been enforced since 2004. When comparing to Thai main law, some areas are the same and other issues are provided in other specific laws including competition law. A redress mechanism is also provided by the main law and subsequent law of Small Claims Tribunal handling complaint not exceeding 20,000 Singapore dollars. Similar to the aforementioned eight countries, consumer protection laws have both viewpoints. The in-charge authority is the Ministry of Trade and Industry Singapore, which oversees policy matters relating to the CPFTA, whereas the Competition and Consumer Commission of Singapore (CCCS) is the administering agency for the CPFTA (CCCS, 2019), where the Consumers Association of Singapore (CASE) is an optional non-profit, non-governmental organization assisting consumers throughout the country (ASEAN Secretariat, 2018). Challenges would be a mechanism of handling consumer small claims including cases falling out of the court's jurisdiction and development on online complaint systems.

The Socialist Republic of Vietnam has the Law on Protection of Consumer (Law No. 59/2010/QH12) providing six areas of protection. These are (1) consumer data protection (2) labelling (3) protect consumers through third party and advertisement (4) contract (5) transaction evidence and (6) warranty liability. Regarding the unfair trade practices, there is a competition law 2019 enforced. When comparing to Thai main law, areas (2)–(4) have the same protection provided. The other issues shall be covered in other specific laws.

A redress mechanism is also provided by the main law by various means, e.g., negotiation, mediation, arbitration and litigation, which aim to protect consumers' rights (Consumers International, 2011). Similar to the aforementioned nine countries, consumer protection laws have both viewpoints. Additionally, Vietnam also includes administrative sanction as in Indonesia and the Philippines (ASEAN Secretariat, 2018). The in-charge authority is Vietnam Competition and Consumer Protection Authority: VCA. In addition, there is a supportive NGO of Vietnam Standards and Consumers Association: VINASTAS (Consumers International, 2019). A challenge would be the access to state services and welfare for the large amount of poverty (VN Express International, 2018).

Considering the preventive and suppress viewpoints, all ASEAN members do have principal consumer protection law providing protection in this aspect. Although it is varied in each country, it shall be covered either by the principal law or specific laws. According to the AEC Blueprint, only Cambodia has no competition law. Sanctions are provided both in civil and criminal codes, however, administrative sanction is included in three countries of Indonesia, the Philippines and Vietnam. With regard to the redress viewpoint, all ASEAN members do have their legislation mostly by the principal law including their mechanism and in-charge authorities, except for Laos, where the litigation right is provided under the Constitution.

To analyze the readiness of ASEAN members, the researchers are of the opinion that the members most ready to move forward are Thailand, Brunei Darussalam, Malaysia and Singapore. Malaysia and Singapore have the advantage of English daily usage to provide protection easier to ASEAN consumers. Cambodia is the most challenged country with new legislation implementation. Nevertheless, overall, the issue of distribution of state services and welfare throughout the country and to put the emphasis on poverty are key indications to develop in Brunei Darussalam, Cambodia, Laos and Vietnam. It is worth to note that the difficulty in providing services throughout the geographical area of Indonesia needs to be solved.

The recommendations are considered in two perspectives (1) *Policy perspective* starting with (1.1) an online system should be created in order to serve ASEAN consumers although most countries have main in-charge authorities. A barrier to language is a significant factor here. (1.2) The state has to (a) encourage consumers to realize their rights and know how to protect themselves and (b) support business sectors to have their own redress system. (1.3) ASEAN should establish a model law on

consumer protection in order to have the same standard and to avoid the barriers to trade and distortion of competition within ASEAN. (2) *Redress Mechanism perspective* comprising of (2.1) creation of consumer protection network between private agencies with governmental support across ASEAN nations. (2.2) State should set up One Stop Service and an Online Dispute Resolution: ODR system studying based on RAS (Rapid Alert System) and European Consumer Centres Network (ECC-Net). This is to reduce the numbers of complaints borderless by having ASEAN in-charge authorities as the information and redress desks using ACCP website. In addition, the state should also set up other means to redress. To be specific, it is an ASEAN redress fund either from the state budget or from business sectors.

Conflict of Interest

There is no conflict of interest.

References

- Angara, E. J. (2018). *Protecting Filipino consumers*. Business Mirror. Retrieved from <https://businessmirror.com.ph/2018/04/19/protecting-filipino-consumers/>
- ASEAN Committee on Consumer Protection [ACCP]. (2015) *About: ASAPCP*. Retrieved from <https://aseanconsumer.org/cterms-regional-cooperation-in-asean/asean-committee-on-consumer-protection-accp>
- ASEAN Secretariat. (2018). *Handbook on ASEAN consumer protection laws and regulations*. Retrieved from <http://asean.org/storage/2018/05/Handbook-on-ASEAN-Consumer-Protection-Laws-and-Regulation.pdf>
- Consumer Commission of Singapore [CCCS]. (2019). *CCCS and the consumer protection (fair trading) act*. Retrieved from <https://www.cccs.gov.sg/about-cccs/what-we-do/cccs-and-the-consumer-protection-fair-trading-act>
- Cohen, J. (2019). *Cambodia enacts a new E-commerce law and a consumer protection Law*. Retrieved from <https://www.tilleke.com/resources/cambodia-enacts-new-e-commerce-law-and-consumer-protection-law>
- Consumers International. (2019). *Vietnam standards and consumers association (VINASTAS)*. Retrieved from <https://www.consumersinternational.org/members/members/vietnam-standards-and-consumers-association-vinastas/>
- Department of Trade and Industry. (2021). *Consumer protection online*. Retrieved from <https://www.dti.gov.ph/archives/news-archives/e-commerce-transactions-guidelines/>
- DFDL, Co., Ltd. (2018). *Cambodia legal alert: Cambodia's latest draft competition law*. Retrieved from <https://www.dfdl.com/resources/legal-and-tax-updates/cambodia-legal-alert-cambodias-latest-draft-competition-law/>
- International Labour Organization [ILO]. (2017). *Social protection country brief-Cambodia*. Retrieved from https://www.usp2030.org/gimi/RessourcePDF.action;jsessionid=Bg7pvOUgO-WL1ZWpek_kzboNe_bsiQ6Ch8hdcCHUO-mfwRrDKqtW!-1491252213?id=55813
- Kakar, A. (2017). *The hidden face of the poverty in Brunei*. Retrieved from <https://borgenproject.org/poverty-in-brunei-2/>

- Keoduangdy, P. (2014). *Consumer protection in AMSs*. The ASEAN seminar on consumer protection administration and management – Strengthening the consumer protection in ASEAN: Challenges and Trends Ahead, Bangkok, Thailand.
- Kradumpee, S. (2015). *Awareness and usage of ASEAN advertisement law in Thailand agencies*. (Unpublished master's thesis). Sukhothai Thammathirat Open University, Bangkok, Thailand.
- Manichanh, C. (2009). *Lao PDR country report on consumer protection*. ASEAN-USFTC Regional Seminar on Consumer Protection and the 2nd Meeting Committee on Consumer Protection, Kedah, Malaysia.
- Miller C. J., & Goldberg R. S. (2014). *Product liability* (2nd ed.). Oxford, UK: Oxford University Press.
- Ministry of Domestic Trade Co-operatives and Consumerism [MDTCC]. (2021). *Consumerism: Tribunal for consumer claims Malaysia*. Retrieved from <https://tspm.kpdnhep.gov.my/portal/home>
- Ministry of Commerce. (2018). *Myanmar Competition Commission (MMCC)*. Retrieved from <https://www.commerce.gov.mm/en/article/myanmar-competition-commission-mmcc>
- Supanit, S. (2009). *Consumer protection law* (7th ed.). Bangkok, Thailand: Chulalongkorn University Press. [in Thai]
- Turisno, B. E. (2018). *Future of Indonesian Archipelago consumer protection law in the era of ASEAN Economic Community*. Retrieved from https://www.researchgate.net/publication/326591705_Future_of_Indonesian_Archipelago_Consumer_Protection_Law_in_the_Era_of_ASEAN_Economic_Community
- United Nations Conference on Trade and Development [UNCTAD]. (2019). *Voluntary peer review of consumer protection law and policy: Indonesia*. Retrieved from https://unctad.org/system/files/official-document/ditccplp2019d1_en.pdf
- Consumers International. (2011). *Road mapping capacity building Needs in consumer protection in ASEAN: Country Report: Vietnam*. Retrieved from https://asean.org/wp-content/uploads/images/2015/february/Consumer_protections_information/VIETNAM%20FINAL%20REPORT%20-%20rev%2023May14.pdf
- VN Express International. (2018). *9 million Vietnamese people still living in extreme poverty: Report*. Retrieved from <https://e.vnexpress.net/news/news/9-million-vietnamese-people-still-living-in-extreme-poverty-report-3733087.html>
- Walsh, A. (2016). *Poverty in Brunei*. Retrieved from <https://borgenproject.org/poverty-in-brunei/>