



Consumer rights in ASEAN

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Article Info

Article history:

Received 22 July 2019

Revised 18 January 2020

Accepted 28 January 2020

Available online 27 July 2022

Keywords:

consumer,
consumer rights,
consumer protection

Abstract

This qualitative research aimed to study the consumer rights of ASEAN countries in order to analyze guideline or recommendations for Thailand to be harmonized with ASEAN legislation and practice appropriately. The doctrinal research includes international consumer rights provided in the United Nations Charter, UN Guidelines for Consumer protection: UNCGP, Universal Declaration of Human Rights of the United Nations, ASEAN Economic Community Charter and AEC Blueprint including ASEAN Committee on Consumer Protection: ACCP's tasks. The result comes across nine international consumer rights, i.e., right to satisfaction of basic needs, right to safety, right to be informed, right to choose, right to be heard, right to redress, right to consumer education, right to healthy & sustainable environment and right to access to public service. Eight ASEAN countries reflect those rights through their legislation either directly or indirectly. Unfortunately, Cambodia and Myanmar lack legislation for the first right to satisfaction of basic needs partly. Burdens found in ASEAN Member States (AMSSs) are a shortage of legislation, awareness of consumer rights, services quality, the efficiency of state management in providing necessary services, rights access inequality, law enforcement and online dispute resolution system development. With consideration to the legislation and experiences of international organizations and AMSSs, the proposals to Thailand are (1) to set up a one stop service; (2) to set up online dispute resolution system; and (3) to build awareness among consumers and encourage business sectors to have their own redress mechanism.

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Introduction

The study addressed consumer rights provided in the above-mentioned UN legislations and guidelines and further on in Association of South East Asian Nations [ASEAN] legislation. According to the ASEAN Charter, the ASEAN Economic Community is aiming at the single market policy to make all members competitive in the regional economy, to increase the value chain, and finally to be globally competitive. Consumer protection is one of the priority policies. Mainly, international consumer rights are basically laid down from the ASEAN Intergovernmental Commission on Human Rights: AICHR, UNCGP and ASEAN Economic Community Charter and AEC Blueprint. There are various relevant national laws reflecting consumer rights categorized into: (1) constitution; (2) principal consumer protection law; and (3) specific laws. In order to accomplish the cited ASEAN legislation above, the ASEAN Committee on Consumer Protection [ACCP] is one of mechanisms used to develop a consumer protection system. Studying how each member provided protection regarding international consumer rights would be compiled as a whole and be a comparison among AMSs to develop their own legislations and protection for a better standard. As for Thailand, it would be a guideline to provide suitable protection for all.

Literature Review

The history of consumer protection overseas arose from a trading society where the producers were trading for profit reflecting the consumers' demand: "producers compete, consumers choose". In this sense, the consumer would be protected under a perfect market; otherwise, producers might take advantage of consumers. As such, the principles of contract and tort laws were studied and applied to the case and developed into consumer protection law (Howell & Weatherill, 2005). The trading society brought about the relationship and duty between two parties by having a business entrepreneur producing standardized products with the duty of care and consequently resulting in consumer protection. Gradually, consumer protection laws, either specific or the principal, were drafted and enforced by regulating businesses. The person to be protected by law is "de facto consumer",

who consumes products even with no renumeration. This evolved from the contract and tort law as in the beginning shown in the precedent cases of Macpherson vs Build Motor Co., 217 NY 382(1916) and Donoghue vs Stevenson [1932] UKHL 100. (Miller & Goldberg, 2014). Similarly, in Thailand, the consumer protection law was also incubated from the industrial sector having different specific consumer protection laws, e.g., the first specific act called Whey Act 1927, Medicines Act 1967 (Supanit, 2009), Product Liability Law 2008, etc. Eventually, the principal consumer protection law was drafted to be under the regulation of the Ministry of Commerce, but later was switched to the Office of the Consumer Protection Board [OCPB], the main authority. The principal Consumer Protection Act shall be enforced where there is no specific or applicable law. (Office of the Consumer Protection Board [OCPB], 2015)

Previous studies found no consumer rights researched or compiled as a whole, but specifically studied as individual issue, for instance, consumer protection on goods and services electronic sales (Thongchote, 2014), legal measure in telecommunication consumer protection (Nittayanunta, 2010), unfair contract term: non-life insurance (Wittayapairoj, 2006) or consumer protection on advertisement: alcohol drinks (Thongthub, 2010). As a consequence, this research was then carried out.

Methodology

This qualitative research was based on doctrinal and comparative methodologies. The study covered ASEAN national legislation, which provides consumer rights in the AMSs.

Results and Discussions

International consumer rights are shown in United Nations Charter, UN Guidelines for Consumer protection: UNCGP, Universal Declaration of Human Rights of the United Nations, ASEAN Economic Community Charter and AEC Blueprint. The UNCGP has defined eight rights, but if considering all mentioned relevant rules, it can be concluded that there are nine international consumer rights, i.e., right to satisfaction of basic needs, right to

safety, right to be informed, right to choose, right to be heard, right to redress, right to consumer education, right to healthy & sustainable environment and right to access to public service. This is the start to study consumers right in the AMSs.

The study of national legislation reflecting consumer rights in ASEAN countries can be found in their constitutions, principal consumer protection laws and specific laws which are explained by country, alphabetically, after the Kingdom of Thailand. To clarify all nine rights, the first right to satisfaction of basic needs is provided in a broad term provided in aforementioned international standards (Association of South East Asian Nations [ASEAN], 2018). Nevertheless, this research intended to study only: (1) basic factors, which are four basic needs, i.e., medicine, food, residence and clothing; and (2) healthcare services since other mentioned rights are specified in nine rights separately. All studied laws might provide protection directly, e.g., the right to education in the Constitution or the right to choose or right to redress in the principal Consumer Protection Act. Otherwise, the right might be reflected indirectly, e.g., the medicine law regulates the medicine producer for safe medicine production and distribution, where consumers shall be protected accordingly. In term of redress mechanism, the ASEAN Committee on Consumer Protection [ACCP] was established and encouraged members to develop across border consumer redress website to provide the range of ASEAN consumer protection in the region. Apart from that, in order to reflect each consumer right in the AMSs, only part of legislation is presented in this article. Subsequently, the issues of problem and development are discussed.

The Kingdom of Thailand's legislations have provided all 9 consumer rights through various legislation. Basically, consumer rights shall be protected according to the 2017 Constitution. Also, the right of healthcare service access with no expenses, which is one part of the right to satisfaction of basic needs, the right to healthy & sustainable environment, the right to access to public service and the right of education are provided for. The OCPB as the main authority also has a duty in supporting consumer education. In detail, the principal law of the Consumer Protection Act 1979 with its amendment provides five rights; right to safety, right to be informed, right to choose, right to be heard and right to redress. The last-mentioned rights are also protected by,

at least, the Consumer Case Procedure Act 2008. The specific laws provide protection for other consumer protection rights. To begin with, is the right to satisfaction of basic needs in the Medicine Act 1967, and Food Act 1979 for medicine and food protection respectively. Residence is regulated by the National Housing Authority providing various types of housing to people, and clothing is regulated by the Ministry of Interior. Although all rights are protected, there is room to improve. (Consumers International, 2011). First of all, the number of complaints is inconsistent with in-charge officers in different authorities, which requires a long time for consideration. Therefore, a management system is needed. Besides, an independent Consumer Organization should be established and co-operation among authorities is also needed.

All 9 consumer rights are protected through the Brunei Darussalam legislation. The Brunei Darussalam Constitution 1959 with amendments through 2006 provides the right to access to public service and the right to consumer education. They are also driven by the Bandar Seri Begawan Development Masterplan in 2035. The Competition and Consumer Affairs Department: CCAD as the main authority is in charge. The principal Consumer Protection (Fair Trading) Act 2008: Act 15 of 2008 provides the right to choose, the right to be heard and right to redress. For the redress purpose, the central authority; Department of Economic Planning and Development, established the Centre for Consumer Complaint/Redress. Specific laws showing the right to satisfaction of basic needs are through the National Health Care Plan 2000–2010 and the Public Health (Food) Act (Chp. 182) for healthcare services. Also, the National Housing Scheme with an Action Plan for Eradicating Poverty has homes built for people and provides clothes for those in poverty. The right to safety and the right to be informed are expressed through, at least, Medicines Order 2007 for medicine safety. The right to a healthy & sustainable environment is in the country's environmental policy and strategies and development plans. Although all rights are protected and the country has one of the best healthcare services with the 2016 Gross Domestic Product of 11.401 billion Brunei dollars (The World Bank, 2018), there is still room to improve. In particular, poverty in Brunei causes the problem of leaving school, and such people are not able to earn a living efficiently, thus becoming homeless. (Walsh, 2016) Additionally, economic and political

measures in Brunei must be taken to address the emergent issues of poverty, opportunity, freedom and, simultaneously, sustain growth and prosperity (Kakar, 2017).

The Kingdom of Cambodia is short of the right to basic need. The country promulgated the Consumer Protection Law on November 2, 2019 (Cohen, 2019). The National Committee on Consumer Protection: NCCP will move forward the law enforcement and any development involved. Nevertheless, the right to satisfaction of basic needs in terms of food is still missing. However, it was announced at an UNTAD meeting that the food safety bill was in the process (Seiha, 2009) to be promulgated (Vannak, 2019). Unfortunately, it was still under consideration in 2021 (Pisei, 2021). The medicine factor and healthcare services are provided through the Law on the Management of Pharmaceuticals, 1996, of Cambodia with the National Social Security Fund for Civil Servant, the National Fund for Veterans, the People with Disabilities Fund and the Health Equity Fund according to National Social Protection Policy Framework, 2016–2025. The Constitution does guarantee housing and clothing factors, for which the National Mutual Help Association also helps those in need. Also, it covers right to safety, right to choose, right to consumer education, right to healthy & sustainable environment, and right to access to public service. The Management of Quality and Safety of Products, 2000, provides the right to be informed. In addition, it provides that business entrepreneurs shall be liable for their breaches, which implies to the right to be heard and right to redress. Room for improvement in Cambodia is to promulgate the food law for consumer safety and laws to provide equal access to state services, consumer's essential information, cross-border trading supervision and consumer redress. However, for redress, the consumer has the right to a civil remedy through the Constitution. Furthermore, the state should promote the cooperation between the government authorities and NGOs (Sumllivong & Chamroen, 2014).

The Republic of Indonesia has all consumer rights provided having National Consumer Protection Agency under supervision of the Prime Minister as the central organization. This is by the 1945 Constitution, which also guarantees the right to satisfaction of basic needs and right to healthy & sustainable environment. The principal Law (the Law No. 8 of 1999 on Consumer Protection) provides the right to safety, right to be informed, right to choose, right to be heard, right to redress and right to

consumer education. The right to access to public service is provided by specific laws, such as the Indonesian Aviation Law: Law No. 1 of 2009 on Aviation. The issue found arguably is the problem of healthcare services quality both in hospitals and their personnel staff (Leana & Bachtiar, 2017).

Laos People's Democratic Republic has all consumer rights provided for protection. However, provisions are quite spread and not grouped logically. The right to satisfaction of basic needs is indirectly shown in specific laws, e.g., Ministerial Regulation in Food Safety, Law on Drugs and Medical Products 2000 No. 01/NA dated 8 April 2000, etc. The principal Law (Law on Consumer Protection in Lao People's Democratic Republic No. 02/NA Vientiane Capital, Dated 30 June 2010) provides the right to safety, the right to choose, right to be heard, right to redress and right to healthy & sustainable environment. The right to be informed is directly provided in the Law on Food 2004. The right to consumer education is provided in the Constitution. The last right to access to public service is at least shown in Land Transport Law 1997, No. 35/PO, and there is development in infrastructure, both local and international, at least until 2017 (Baolau, 2017). Overall, the principal law is quite new, and its enforcement is not undertaken quickly, and the central organization is not established, which shall not facilitate consumers well enough (ASEAN Committee on Consumer Protection [ACCP], 2015).

Like Thailand, Brunei, Indonesia and Laos, Malaysia has all consumer rights provided for protection. For the right to satisfaction of basic needs, the National Consumer Movement Council for Consumer Protection has periodically revised the National Consumer Policy and set one of objectives to raise the living standard. (Ministry of Domestic Trade and Consumer Affairs, n. d.) Specific laws reflecting this right are, at least, the Food Act 1983 and Sale of Drugs Act 1952. The Malaysian Federal Constitution guarantees the healthcare services by the authority of the Ministry of Health assisting an individual in achieving and sustaining as well as maintaining a certain level of health status. This could be materialized by introducing or providing promotional and preventive approaches, other than an efficient treatment and rehabilitation services, which are suitable and effective, whilst giving priorities to the less fortunate groups (Ministry of Health Malaysia, 2013). With regard to housing provision, the National Vision 2020 has its

Policy and program to support people. The right to safety is reflected from the principal law and related acts and regulations. The principal Act (Consumer Protection Act (CPA) 1999 (Law of Malaysia, Act 599) and Consumer Protection Act (CPA) 2010 (Law of Malaysia, Act 30/2010) provide indirectly the right to be informed, right to choose, right to be heard and right to redress. Establishing an effective redress mechanism is one of the policies of the National Consumer Policy (Consumer International, 2011). The Tribunal for Consumer Claims, Malaysia is then in charge of dispute resolution settlement (Ministry of Domestic Trade Co-operatives and Consumerism, 2018). The Constitution also guarantees the right to consumer education, right to healthy & sustainable environment and right to access to public service. Although the principal Act was amended in order to protect the interests of e-consumers, the question remains as to how far the Act and other existing legislation can protect e-consumers in sale of goods contracts. (Aminm & Mohd Nor, 2018) and some consumer protection issue, i.e., halal food hygiene is still an issue (Halim et al., 2014).

The consumer rights laws in the Republic of the Union of Myanmar are short of the right to satisfaction of basic needs regarding only clothing, however, support from the private sector is still in place (Myanmar times, 2018). Medicines and food are reflected, indirectly at least, from the National Drug Law 1992 and the National Food Law 1997. Housing is managed by the government (The Irrawaddy, 2017). The principal law (the Consumer Protection Law 2014: the Pyidaungsu Hluttaw No.10, Dated 14 March 2014) provides the right to safety, right to be informed, right to choose, right to be heard and right to redress. For the benefit of redress mechanism, the Consumer Dispute Settlement Body has been established from the Act to assist consumers' complaints. The Constitution provides the right to consumer education. The right to healthy & sustainable environment is provided in the specific law, namely, The Environmental Conservation Law 2012. The last right to access to public service is at least shown in Multi-Modal Transport Law. Although there is a central organization and NGO-Myanmar Consumers' Union assisting consumers' complaints, and the country was funded by United States Agency for International Development: USAID, to set up an online consumer complaint system, a study showed that most of the consumers have poor awareness of

consumer rights and are unfamiliar with the consumer complaint system. It was reported that food safety and poor quality/substandard goods and services are traditional and the most pressing problem. Transportation services, public utilities services, electricity supply, health care services, telecommunication services are the most stated issues by consumers. The study from events, interviews, and survey showed that raising consumer education and public awareness, accountability and transparency of consumer protection authorities, access to safe and quality goods and services are important issues here. The report also included consumer protection activities, consumer problems, challenges encountered in consumer protection, and state of consumer protection (Muang, 2018).

Like five countries, except Cambodia and Myanmar, the Republic of the Philippines has all consumer rights provided for protection. For the right to satisfaction of basic needs, the 1987 Constitution has provided for the right to consumer education, the fundamental rights in housing and clothing and healthcare services. The principal Consumer Act 1992 has provided for the protection of medicines and food. It also provides protection for the right to safety, right to be informed, right to choose, right to be heard, right to redress, right to consumer education and right to healthy & sustainable environment. The National Consumer Affairs Council is also in charge of driving these rights to be efficiently enforced. The last right to access to public service is shown in specific law, at least, in the Development, Utilization and Commercialization of Renewable Energy Resources Act. However, there is a lack of investment in infrastructure, which can be seen from the scene of heavy traffic congestion as shown in the World Economic Forum's latest Global Competitiveness Index. The Philippines ranked 56th out of 137 countries, falling behind six of its ASEAN neighbors. As such, a "Build, Build, Build" initiative, a "golden age of infrastructure", was announced with support from the Australian Embassy and the Asia Foundation, in more closely linked public infrastructure investment with local economic priorities (The Asia Foundation, 2018).

Similar to the aforementioned six countries, except Cambodia and Myanmar, the Republic of Singapore has all consumer rights provided for protection. The right to life and healthcare services, right to consumer education, right to access to public service and right to satisfaction

of basic needs can be found through the Constitution, Act 9 of 2010. The Sale of Food Act, Chapter 283, covers food safety and standard while Housing Development Board covers house building for people. With the support of the Central Provident Fund; the “Comcare” project under the supervision of Ministry of Social and Family Development helps those who need jobs, clothing and assistance. The principal Act (the Consumer Protection (Fair Trading) Act (Chapter 52A): CPFTA) provides the right to safety, right to be informed, right to choose, right to be heard and right to redress. For the last two mentioned rights, the Small Claims Tribunal Act, also supports the consumers' claims individually or as a class action and facilitates complainant by using electronic means; Community Justice and Tribunals System: CJIS. In addition, the NGO: Consumer Association of Singapore provides alternative dispute resolution, either mediation or arbitration. Regarding the last right to healthy & sustainable environment, the government has set up the “Green City Programme” under the “Sustainable Singapore Blueprint” and plans to be “a zero waste nation” in 2030 (Ministry of Sustainability and the Environment, 2015). Among ASEAN countries, all rights seem to be covered with efficient enforcement in Singapore, however, a few minor problems need to be addressed, to be specific, equality for poverty (The Borgen Project, 2018).

As the aforementioned seven countries, except Cambodia and Myanmar, the Socialist Republic of Vietnam has all consumer rights provided for protection. The right to satisfaction of basic needs is provided at least through the Law on Food Safety 2010, the Law on Medicines of 2005, the Constitution for healthcare services and Housing and Resettlement Area Law for clothing support. The principal Consumer Protection Law 2010 provides the right to safety, right to be informed and right to choose. The rights to be heard and to redress are addressed in the Constitution and the principal Law provides the means of alternative dispute resolution. The Constitution also guarantees the right to consumer education and right to healthy & sustainable environment. Regarding the right to access to public service, the Act on Public Services, supervised by the ombudsman, shall provide changes in public transportation for a better standard (Girindrawardana, 2011). Nevertheless, some issues need to be improved, e.g., regarding the right to a healthy and sustainable environment, 52 percent of rural

people are unable to access clean water (Saurdi, 2011). Poverty and tribe minority groups are unable to reserve the education and the problem of education curriculum quality (Soapboxie, 2017). While overall poverty levels remarkably dropped to 14.5 percent in 2010, ethnic minority groups have experienced a much slower pace of poverty reduction compared to the majority of Viet Nam's population. Progress in reducing poverty among ethnic minority people in dimensions other than income, such as education, health, housing, sanitation, and water, also lag behind the national average (United Nations Development Programme [UNDP], 2016).

Conclusion and Recommendation

The main international consumer rights are provided in international and ASEAN Charter and AEC Blueprint and it can be concluded that there are 9 international consumer rights. There are right to satisfaction of basic needs, right to safety, right to be informed, right to choose, right to be heard, right to redress, right to consumer education, right to healthy & sustainable environment and right to access to public service. All rights can be found directly or indirectly through legislations, policy and practices in the constitution, the principal law or specific law. From the study, 8 AMSs have legislation providing the mentioned consumer rights while 2 AMSs have left out legislation for part of the right to satisfaction of basic needs, to be specific, that is (1) no food law in Cambodia and (2) no legislation on clothing provision in Myanmar, however, there is a voluntary assistance from the private sector in this regard.

Even though most international consumer rights are protected in ASEAN, there are some areas needing to be improved. Firstly, lack of legislation in Cambodia and Myanmar, and such needs to be drafted and promulgated. Secondly, lack of consumer awareness needs to be addressed and promoted, mostly in Cambodia. Other ASEAN members still need more public awareness to educate consumers for self-prevention. Thirdly, service quality needs to be improved, at least in hospital services in Indonesia. Fourthly, public services need to be developed, for example, transportation in the Philippines. Fifthly, right access equality especially for poverty and minority group needs to be improved in Brunei, Cambodia, Indonesia, Singapore and Vietnam. Sixthly,

state management and enforcement need to be well organized and speedy in Cambodia, Indonesia, Laos, Malaysia and Thailand. Lastly, Online Dispute Resolution system needs to be established in all AMSs. Such needs to be improved in Malaysia and Thailand for the current systems, whereas Singapore has the system well set up.

From the above study, in order to improve consumer protection overall, Thailand can learn from experiences and barriers from what are in use or left out in other countries. To begin with, although all legal rights are provided in Thailand, the government has to scrutinize what is needed, or shortage of, so as to develop a consumer protection regime. Furthermore, the issue of consumer awareness constantly needs to be improved and encouraged. Regarding the public services, such should be provided throughout the country equally, both in quality and type of services. Considering a redress mechanism, the complaint process has to be faster during the consideration period, setting up a system having in-charge officer involved. The experiences of Malaysia and Singapore on the most up-to-date consumer redress mechanism could be a good example for Thailand. To sum up, Thailand still needs improvement in each area of consumer protection by considering individual law and its barrier.

The recommendations therefore propose Thailand: (1) to set up one stop service integrating all in-charge authorities; (2) to set up an online dispute resolution for a redress mechanism; and (3) to build an awareness among consumer and encourage business sectors to have their own system for the redress mechanism for the speed in complaint handling and reduce such numbers at the governmental authorities.

Conflict of Interest

There is no conflict of interest.

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