

Legal Framework as a Consumer Protection Framework

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Abstract: In the era of globalisation and trade liberalisation, trade becomes an important activity which contributes significantly to the national economy. Consumer as a party to the trading activity becomes the major contributor in this activity. Since, trade is important to consumers thus it is important that this activity is being monitored so as to benefit the consumer. Globalisation which brings with it the concept of trade liberalisation illustrates the free movement of goods and services in different parts of the world due to borderless economy. This phenomenon resulted in free entry of goods from abroad without restriction and this will bring a negative impact on consumers in Malaysia if the goods are of low quality. Thus, consumers need to be protected in facing globalisation and trade liberalisation. Based on doctrinal research and by applying content analysis method, this study will review the protection conferred by the legal framework with regards to consumer protection in Malaysia. The legal framework which consists of law and policies will be reviewed to examine their role in upholding consumer protection in Malaysia.

Key words: Consumer protection, law, framework, consumer, trader

INTRODUCTION

The emergence of globalization and trade liberalization affected the trading process in Malaysia. The practice of trade liberalization in Malaysia had caused Malaysians to recognize that world is no longer borders and markets are no longer confined. This is a complex international free trade era and a confusing environment for the Malaysian consumers (Mahathir bin Mohamad and Makaruddin, 2002). The Malaysian market is now wide open and local businesses have to compete with the multinational traders from around the world. Goods from all over the world can be obtained in local markets as a result of this new form of trade. Trade liberalization also leads to competition between the local businesses and traders from abroad who are more experienced and sophisticated. This competition affected the consumers in the sense that the local manufacturers have to produce more competitive goods in order to compete on the market. The problem occurs when imported goods from abroad are sold to consumers at a lower price. This situation leads to the reduction of production cost by the local manufacturer so as to ensure lower price of the goods produced. The lower production costs will likely lead to production of low quality goods. The use of low quality goods by the consumers is harmful if the goods

later were found defective. This is one of the problems faced by the consumers in Malaysia in the era of trade liberalization. Therefore, Malaysia should not receive trade liberalization with open arms but to manage it wisely in the interest of consumers in Malaysia.

CONSUMER PROTECTION IN MALAYSIA

Consumer protection is becoming an important agenda in every country in the world today. This is due to the changes in the economy of the country. The coming of the globalization which triggers trade liberalization creates problems to the consumer. Therefore, the government is responsible for ensuring that trade liberalization is compensated by the sovereignty of consumers through effective protection.

The concept of consumer protection for the first time has been introduced by the former US President, Kennedy in his speech to the US Congress. This showed that the government is concerned about the consumers on the market which is dominated by traders. The definition of consumer protection may not be accurate but many efforts were made to give a universal meaning to the concept. Jolowicz (1969) gives the following meaning to the concept of consumer protection. Consumer protection can mean one of two things which are to prevent

something from being wrong for the consumers or providing redress for consumers when things become wrong.

Consumer protection is important in the era of globalization and trade liberalization. It is important to create a good economic structure thus contributing to a better society (Shaik and Yusoff, 2007). Trade liberalization also sees market forces fail to provide protection to consumers. According to Ziegel (1973), trade liberalization leads to unfair bargaining power. It creates imbalance between consumers and traders in terms of negotiating power, the imbalance of information asymmetry on the technical components of an article and imbalance of material resources. The complexity of goods produced as a result of technology advancement leads to weak consumers being unable to assess the quality of the goods while the traders on the other hand in a better position because they have access to the information on the goods produced. This is a good example of market failure. Thus, the market failure requires government intervention (Rachagan, 1992). Government intervention is necessary to provide the best protection to the consumers. Therein lays the spirit of paternalism as a justification for government intervention.

Importance of consumer protection in Malaysia can be seen with the emphasis placed on various aspects of consumerism in the Malaysian Plan. The 7th Malaysian Plan saw the enactment of Consumer Protection Act, 1999 which makes the interest of consumers as its primary focus. Government concerns can also be seen in the 8th Malaysian Plan whereby the government emphasize on self protection by raising awareness among consumers to safeguard their own interests. In the 9th Malaysian Plan, the government realised the importance of consumer protection in the era of trade liberalization, hence the government proposed that the Consumer Protection Act 1999 to be reviewed. The scope of the act to be expanded to cover areas such as electronic commerce, health, risk assessment products and services including genetically modified organisms. Initiative taken by the government clearly shows that the government is moving towards enhancing consumer protection in Malaysia.

LEGAL FRAMEWORK AND CONSUMER PROTECTION

The legal framework is one of the components of consumer protection in Malaysia. The law is seen as a tool to control or regulate the community. Enforcement of the law allows members of the community to be controlled and their actions will be controlled accordingly

(Summers, 1971). The role of law in regulating the actions of members of the community is important. The law works to keep local peace by preventing immoral activities from occurring in the society such as murder, assault and chaos. The existence of the law can provide security in a society where the law works as it should be to resolve disputes, to offset any claims and impose rules for the interest of the community (Harris, 1980). According to Summers and Howard (1986), legal institutions work to help improve public health and a healthy environment; strengthen the family institution and to protect personal life in order to ensure safety in the community, protect fundamental freedoms; defend equality; uphold and protect the right of the private property and gives the right to monitor and control the actions of the authorities to prevent abuse of power.

Controlling the actions of the society through the law can be achieved through sociological approach. This approach asserts that the law should link to the need of the society. Law is seen as an instrument of society that exists to protect the interest of society (Mohamad, 2004). The law is also considered as a form of security and it is important to act as a medium to resolve disputes between individuals in the society. Consumer protection law is considered as a protective social mechanism that serves the need of society. The law does not punish but to uphold the rights of the society and also seeks to protect the society.

Soft law: Soft law is considered as a rule which has no binding effect in terms of enforcement and sanctions but it is a rule that need to be defined in each case (Wellens and Borchardt, 1989). Soft law exists because of the existence of non-governmental organizations in various sectors that require a set of rules for the body to operate properly. Despite the deficiency, soft law also has its own advantages. Soft law is more flexible and it provides benefits to the parties involved when it comes to non-compliance. Soft law is also preferable when it comes to complex and unclear problems (Morth, 2004). According to Abott and Snidal (2000), soft law avoids some of the costs of hard law and has certain independent advantages of its own.

The policy and codes of practice are important soft laws and act as a basic principle in providing protection for consumers in Malaysia. National Consumer Policy (NCP) was created to provide the best protection for consumers in Malaysia. This is because the policy is an important principle to be used as a basis for decision making. The NCP formulated by the National Consumer Protection Council (NCPC) and was later acquired by the

National Consumer Advisory Council (NCAC) established under the Consumer Protection Act 1999. Finally in May 2002, NCP has been approved by the Cabinet after nearly 45 years of independence. The NCP aims to promote a balance of rights and responsibilities among and between users, suppliers/manufacturers and the government in carrying out their respective roles. The balance of rights and responsibilities is crucial in ensuring the well being and welfare of the consumers in the era of globalization. The efforts of the three parties are most welcome for the success of the government policy. Therefore, specific technique should be used. Consumers need to use self-protection technique. The technique requires the consumer to be well informed, smart planner and good decision maker. The maxim ignorance of law is no defense requires Malaysian consumers to be more alert of the consumer protection law around them. Ignorance towards the law will make the consumer a victim in the economy. For the supplier/manufacturer (trader), they should use self-regulatory technique. Through this technique, the trader have to control their own organization in compliance with the fixed code of ethics. On part of the government, they will continue to play a role to strengthen the enforcement of laws, amend existing laws from time to time by imposing civil and criminal actions to control the irresponsible commercial activities, enact the new law taking into account the impact of globalization, trade liberalization and sustainable use and ensure that all laws that related to the consumers will contain provisions which ensure the welfare and well-being of consumers.

Other than NCP, the government also has introduced a Code of Business Practices (CBP) and Malaysian Rukuniaga. CBP and Malaysian Rukuniaga was introduced by Ministry of Domestic Trade, Cooperatives and Consumerism on January 15, 2002. It has been introduced to alert traders of their role to provide suitable goods and services to consumers. Traders should practice business ethics for the interests of consumers and businesses. Malaysian Rukunniaga has been drafted to meet the following objectives:

- To provide the principles that could be adopted, embraced and practiced by all traders for the well-being of consumers and businessperson
- To assist traders to adopt high standards of business ethics among them so as the interests of all parties are secure in order to support the economic growth
- Symbolizes the universal values derived from various religious beliefs and faith, philosophy and culture in Malaysia

Government concerns regarding this matter is shown through the establishment of the policy to uphold consumers protection in Malaysia. The NCP is required as a principle and guidance in enacting laws relating to consumer protection. NCP also should be applied in the formulation of any economic or social policies of a country. This policy is fundamental to the consumerism activities by the government agencies, consumer associations, non-governmental organizations as well as private sector so as the development of sustainable consumerism can be nurtured in this country. CBP and Malaysian Rukuniaga on the other hand require the trader to trade ethically in order to ensure consumer protection on the market.

Hard law: Hard law is a law enacted through a legitimate process. The legislative process occurs when the bill is brought to Parliament and pass through four stages which are the first reading, second reading, the discussion in committee and third reading. Finally, the bill will receive Royal Assent before it can exist as law. The law passed by Parliament is known as hard law. Hard law has a binding effect (Wellens and Borchardt, 1989). The best example of hard law which provides for consumer protection in Malaysia are the thirty laws enforced under a different ministry. These laws are listed in Table 1. Hard law will be imposed on traders in order to deter unethical conduct of traders. Sanctions provided in the hard law is able to promote ethical trading in the economy.

Table 1: The enforcement agency and consumer protection laws in Malaysia

Enforcement agencies	Laws
Ministry of Domestic Trade, Cooperatives	Price Control Act 1946, Control of Supplies Act 1961 Trade Descriptions Act 1972 and Consumerism (Amendment 1980) Hire Purchase Act 1967 (Revised 1978) Direct Selling Act 1993 Weights and Measures Act 1972 Consumer Protection Act 1999 Competition Act 2010
Ministry of Agriculture and Agro-Based	Control of Padi and Rice Act 1994 Pesticides Act 1974 Animal Ordinance 1953 Malaysian Fisheries Development Authority Act 1971
Ministry of Housing and Local Government	Rent Control Act 1966 Pawnbrokers Act 1972 Housing Development (Control and Licensing) Act 1966
Ministry of Transport	Road Transport Act 1987
Ministry of Science, Technology and Environment	Standards of Malaysia Act 1996 Environmental Quality Act 1994
Ministry of Health	Food Act 1983 Akta Pencegahan dan Kawalan Penyakit 1988 Medicines (advertisement and sale) Act 1956 (Revised 1983) Sale of Drugs Act 1952 Poisons Act 1952 (Revised 1989) Pharmacists Registration Act 1951
Ministry of Human Resource	Occupational Safety and Health Act 1994 Factories and Machinery Act 1967
Ministry of Finance	Insurance Act 1966 Banking and Financial Institutions Act 1989 (BAFIA 1989) Islamic Banking Act 1983 Takaful Act 1984

Legal framework is important in providing protection to the consumers in Malaysia. Legal framework requires enforcement of the law to control or regulate the community (Summers, 1971). According to Table 1, consumer protection laws in Malaysia are being enforced by eight different ministries with multiple functions. The multiple functions of the ministry illustrates the ineffectiveness of the ministry in ensuring consumer protection. According to Oughton and Lowry (2000), multiple function of the institution may lead to consumer issues being overlooked. Thus, it is important for the government to have a specific ministry which enforce the consumer protection laws in Malaysia.

CONCLUSION

Globalization is seen as a tool used by the world's major power to open up the economy of the developing countries and dominate the market of these countries in the name of liberalization. The concept of borderless economy which has been introduced is said to benefit the consumers, however in reality it creates problem to consumers. In the borderless economy, traders will do everything in order to make profits. Traders will sell low quality goods with low prices, thus the traders are in violation of consumer's right to enjoy acceptable quality of goods. If this situation continues, it will jeopardize the national interest. Therefore, it is inevitable for the government to come out with certain measure to protect the consumers in Malaysia. Realising this matter, the government has taken an initiative to protect the consumers by introducing legal framework. Legal framework which consists of soft laws and hard laws have functioned well in providing protection to consumer in Malaysia. The soft law is important in dealing with complex issues. As for hard law, it is important in assisting the consumers in getting redress in the event of breach by the traders. However, different ministry enforcing the consumer protection laws resulted in poor enforcement. It is submitted that Malaysia should consider having a specific government institution which is in charge of consumer matters in order to avoid unorganized enforcement.

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REFERENCES

- Abott, K.W. and D. Snidal, 2000. Hard and soft law in international governance. *Int. Organiz.*, 54: 421-456.
- Harris, J.W., 1980. *Legal Philosophies*. Butterworths, London, ISBN: 9780406859365, Pages: 282.
- Jolowicz, J.A., 1969. The protection of the consumer and purchaser of goods under English Law. *Mod. Law Rev.*, 32: 1-18.
- Mahathir bin Mohamad and H. Makaruddin, 2002. *Globalisation and the New Realities*. Pelanduk Publication, Selangor.
- Mohamad, M.A.B.S., 2004. *Pengenalan Prinsip Jurispruden*. International Law Book Services, Selangor, ISBN: 9789678914727, Pages: 107.
- Morth, U., 2004. *Soft Law in Governance and Regulation: An Interdisciplinary Analysis*. Edward Elgar Publishing Limited, United Kingdom, ISBN: 9781781958841, Pages: 224.
- Oughton, D.W. and J.P. Lowry, 2000. *Text Book on Consumer Law*. Blackstone Press Limited, London.
- Rachagan, S.S., 1992. *Consumer law reform-A report*. Universiti Malaya Press, Kuala Lumpur.
- Shaik, S. and A. Yusoff, 2007. *Undang-Undang Komersial Dan Penggunaan*. Bahasa and Pustaka, Kuala Lumpur.
- Summers, R.S., 1971. The technique element in law. *Cal. Law Rev.*, 59: 733-735.
- Summers, R.S. and C.G. Howard, 1986. *Law: Its Nature, Functions and Limits*. Prentice Hall, Englewood Cliffs, New Jersey.
- Wellens, K. and G. Borchardt, 1989. Soft law in the european community. *Eur. Law Rev.*, 14: 267-321.
- Ziegel, J.S., 1973. The future of canadian consumerism. *Can Law Rev.*, 52: 191-193.