

STRENGTHENING CONSUMER PROTECTION FOR POST-PURCHASE IN ELECTRONIC COMMERCE TRANSACTIONS: A PRELIMINARY STUDY

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Abstract: *The Consumer Protection Act of 1999 (CPA 1999), provides consumer protection in Malaysia. On the other hand, the Contract Act 1956 is vital in regulating contractual transactions in Malaysia. However, this protection must be improved in electronic commerce transactions, particularly after the consumer has completed the payment, often known as post-purchase. Additionally, although much research has been conducted on post-purchase in electronic commerce transactions, there is yet to be a concrete solution to address the lacuna in the Act itself, especially since most of these statutes were enacted before electronic commerce transactions. Various statutes had been critically analysed, including but not limited to the Consumer Protection Act of 1999 (CPA 1999), Consumer Protection (Electronic Trade Transaction) Regulation 2012 (CPR 2012), Contract Act 1956 (CA 1956), and Sales of Goods Act 1957 (SOGA 1957). Due to the rapid advancement of consumer protection in the United Kingdom, various legal frameworks have also been critically analysed to recommend improvements to the current legal framework and consumer protection in Malaysia. Secondary information was used in this study, based on analysing scholarly databases such as Google Scholar and websites belonging to consumer organisations and publications covering pandemics, non-government organisations, and governmental organisations. Findings found a few main legal issues in the post-purchase electronic commerce transactions in the post-purchase phase. These were deemed to be the primary legal concerns in electronic commerce transactions. Recommendations were made to enhance the regulation in these aspects. This paper has provided additional insight into the current lacuna in consumer protection in*

Malaysia in the post-purchase phase. This also updates the body of knowledge in this area, which can help legislators to amend archaic provisions in current legal frameworks.

Keywords: *Consumer protection, electronic commerce, post-purchase, delivery, return and refund.*

Introduction

In Malaysia, consumers are protected by Consumer Protection Act 1999 (CPA 1999). Post-purchase concerns for electronic commerce regarding shipment, tracking, and returns (Cao, Ajjan, & Hong, 2018), while Zoltners, Sinha, & Lorimer (2004) assert that post-purchase activities include product assistance, customer service, shipping, repairs, and return. The scope of the study for this research will focus on post-purchase issues in electronic commerce. Electronic commerce is defined as sharing business information, maintaining commercial contacts, and conducting business transactions via telecommunications networks (Zwass, 1996). This is supported by Khan (2016), which defines electronic commerce, also known as electronic commerce, which refers to the exchange of products and services over computer networks like the Internet.

Every year, electronic commerce transaction revenue in Malaysia gradually rises. This was influenced by several variables, including the rise in active internet users, the development of numerous electronic commerce platforms, and the recent Covid-19 pandemic, which encourages people to shop online. According to the Department of Commerce in the United States of America, electronic commerce revenue in Malaysia reached \$4 billion in 2020. The Malaysian electronic commerce market saw a rise of 37% in 2020, contributing to the global growth rate of 26%. According to a report revenue in the electronic commerce market is projected to reach US\$ 10.19 billion in 2023. By 2027, the market volume is predicted to reach US\$16.98 billion, with revenue forecast to expand at a 13.62% annual rate (CAGR 2023–2027) (Statista, 2022).

The number of cases increases in line with electronic commerce transactions. Most of the issues faced by online consumers occurred in the post-purchase phase. This means that after an online consumer has made the payment, various issues may arise, from delivery to return & refund process. According to Sabou, Avram & Zima (2017), online consumers face a few problems: experienced delays in delivering goods/services, damaged products, online fraud, technical problems or difficulties in finding information about the warranty of goods/services. Therefore, the objective of this study is to suggest a few amendments to the existing legal framework that would ensure Malaysian online consumers are effectively protected.

The Overview of Current Legal Aspects in Post-Purchase in Malaysia

Most legal issues occur after payment has been made to the seller (post-purchase). Based on a report from the National Consumer Complaints Centre (NCCC), in 2018 alone, it was estimated that consumers suffered losses of up to RM 360 million in their transactions due to various factors such as faulty products and poor services. The figure was based on 54,618 consumer complaints it had received in 2017, compared to 48,563 complaints in 2016.

According to NCCC's 2016 Annual Consumer Complaint Report, delivery issues accounted for many customer complaints. The complaints concerning delivery show that the online merchant does not deliver the merchandise as promised. For instance, hollow guarantees are made to

customers, such as that the ordered things would arrive within two weeks. Customers had to wait several months before receiving their purchases.

Recently, Domestic Trade and Consumer Affairs Minister Datuk Seri Alexander Nanta Linggi said the ministry received 15,957 consumer complaints from January 1 to July 31 of this year, with 4,760 of the complaints coming from online scams, 4,187 from misleading prices and 3,289 from misleading services. This is worsened by poor seller service, including but not limited to refund and delivery issues. These issues arise due to various factors, and the current gap in the various legal frameworks among major factors contributed to various legal issues, especially in the post-purchase phase.

Due to the majority of items being sent from one state to another and even around the world rather than being traditionally purchased on-site, the legal framework in Malaysia still preserves archaic laws which are no longer relevant, especially for electronic commerce transactions, and it is unreasonable and unfair to online consumers.

Methodology

This research adopts a qualitative type of research method. Review the literature on this subject critically, including books, scholarly articles, reports from the government and NGOs, and reports from the National Consumer Complaint Centre. Secondary information was used in this study, based on analysing scholarly databases such as Google Scholar, websites belonging to consumer organisations, and publications covering pandemics, non-government organisations, and governmental organisations. Analyse the pertinent literature with a critical eye for context-related gaps in the existing legal system. Additionally, this phase of the process conducted a detailed examination of the definitions, the present state of the legal frameworks and gaps in Malaysian law. Finally, a critical examination of the legislation governing these processes is presented, along with a comparison of Malaysian law with those of other nations, particularly the United Kingdom (UK). Content analysis and library-based approaches are used for reviewing these secondary data.

Legal Issues on Delivery in the Post-Purchase Phase.

The first legal issue in post-purchase in Malaysia is preserving legal principles in the privity of contract. Due to this, online consumers will have challenges when trying to sue the delivery service. This is due to the existing Contract Act's continued preservation of archaic legal concepts such as the privity of contract. According to Rai (2012), privity of contract means that even in cases where it was intended for him to have a right under a contract but he was not a party to it, the person cannot enforce the right.

This means that only those who are parties to the contract or privy to it can sue or be sued. As a result, if a third party suffers any damages or loss during the transaction, he cannot take any legal action against the courier service company. Suppose the parcel is lost, damaged or destroyed during the delivery. In that case, the buyer cannot take legal action against the courier service because the goods were initially sent by the seller using his or her name. Hence the buyer cannot sue the courier company even in the tribunal since the buyer is not privy to the contract. This rigid principle came from the common law case of *Tweddle v Atkinson*.

The principle has strictly been applied by the court in Malaysia in various cases such as in the case of *This principle strictly been applied by the court in Malaysia in various cases such as in the case of Kepong Prospecting Ltd & Ors v Schmidt and Phua Siong Hoe v RHB Bank Berhad*

& Anor. Many authors have discussed the legal issue of product delivery in various works of literature over the years. The law is particularly ambiguous regarding whether courier services are to blame for a delay in the delivery of goods (Nor & Amin, 2016). This is supported by Braganza (2013), who stated that while the risk remains with the online retailer, there are frequently few options for redress against the carrier for missing or damaged packages during delivery. In Malaysia, the current legal framework does not sufficiently protect the online consumer regarding delivery. For example, Section 20 of the Sales of Goods Act 1957 still preserves the concept of ownership following the risk whereby “Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price, or the time of delivery of the goods, or both, is postponed”. This section allows the seller to escape their responsibility regardless of whether the goods are damaged or lost, which is unfair and unreasonable to the online consumer, who will find it difficult to bring a lawsuit against the seller, especially if the seller invokes Section 20 of the Sales of Goods Act.

This is detrimental to consumers since they are merely the recipient and not a contracting party with the courier service. Hence only the sender/seller can take legal action against the courier service provider. This is in contrast with the United Kingdom, whereby the Contracts (Rights of Third Parties) Act 1999 has already been enacted to protect the benefit of third parties to remedy the harshness of the common law principle. According to Yeo (2001), the law was not intended to alter the rule that a contract cannot impose obligations on third parties. It created a broad statutory exception to the doctrine of privity, allowing the parties to a contract, in specified circumstances, to confer enforceable rights on a third party. This is lacklustre in Malaysian law, which develops not in line with the development of the legal framework in the UK this aspect.

This is because, under the Contracts (Rights of Third Parties) Act 1999, for third parties to exercise their right, they are only required to fulfil a few elements of the Act, which only require third parties sufficiently identify in the contract (the recipient of the goods/consumer). Another requirement, as prescribed in s.1(1)(b) which only requires the contract was made for the benefit of third parties. If these requirements can be fulfilled, the consumer can directly sue the courier service provider or file for a claim, including but not limited to insurance and compensation due to the loss of the parcel. In contrast, current law in Malaysia does not provide such protection to consumers. Malaysia's market participants and customers are more susceptible to market intrusion by the dominant upper hand because it is a developing nation (Nasution, 2023) and laws surrounding still developing from time to time. Hence ample protection from a legal perspective must be enacted by the legislative body as soon as possible

Another rampant issue and a major complaint consumers make is a specific delivery time. In electronic commerce transactions, delivery of goods usually begins after online consumers have successfully made payment. Another flaw in the current legal framework is the lack of regulation regarding the delivery of the goods. The seller must only state the estimated delivery date by referring to Regulation 3 of Consumer Protection (Electronic Trade Transaction) Regulation 2012 (CPR 2012). No penalty or specific date for delivery is stated in CPR 2012. As a result, the seller can send the goods at any time they wish, without considering the need and requirements of the consumers. In addition, no penalty will be imposed against sellers if they fail to deliver the goods as they had promised initially. The seller must only state the estimated delivery date by referring to Regulation 3 of Consumer Protection (CPR 2012). No penalty or specific date for delivery is stated clearly in CPR 2012. As a result, the seller can

send the goods at any time they wish, without considering the need and requirements of the consumers.

Last but not least, another lacuna in the current legal framework in this country is regarding the cooling-off period. Both legal frameworks in Malaysia, which consist of Consumer Protection (Amendment 2019) and Consumer Protection (Electronic Trade Transactions) Regulations 2012, do not specify a cooling off period which is vital for a consumer to have ample time to verify and check on the quality of the product.

Cambridge Dictionary online defines cooling-off as an agreed-upon amount of time during which a person can decide not to purchase something they have already agreed to purchase or a time frame during which two parties to an argument can attempt to resolve their differences before taking further action. Walker & Ford (1970) explain that during the "cooling-off" period, a customer may cancel a contract to buy goods or services if the transaction occurs somewhere other than the seller's address. (Howells, 2005). had previously stated that the cooling-off period modifies the default rule of the sanctity of contract, protects the consumer's autonomy, and forces them to think about it for a certain time.

Without a cooling off period, there is no certainty on both sides- online consumer and seller as to when the consumer can test and verify that the goods purchased are of good and in merchantable quality. Since CPA 1999 does not specify the time, sellers tend to reject the refund even though online consumers use the goods once or twice until the goods are eventually broken and unusable. According to (NCCC, 2016), sellers frequently give the assurance that the goods will last for a few years was given to the customers. However, after a few uses, it was discovered to be flawed, and it was sent in for repair multiple times for the same problems. Suppose there were deficiencies with the product in 11.3% of the 7371 reports received. Even though the merchandise repeatedly demonstrates that it is not fit for its customary, normal, and reasonable purpose, some sellers may cite "warranty" as a defence to refuse a full refund to the online customer. This exploitation occurred mainly due to the lacuna in the current Malaysian legal framework. This is because s.43(1)(a) of CPA 1999 states that the right to reject goods is lost. The right conferred under this Act to reject goods shall not apply where the right is not exercised within a reasonable time.

According to Hamelin, Nwankwo & Hadouchi (2013), there has been an increase in the trade of counterfeit goods worldwide, and this has become a global phenomenon. Counterfeit goods, especially electronic goods, may not meet the required standard and may not function after a certain period. Hence ample time must be given to online consumers so that the goods can be tested and verified within a specific period. Most developed nations like the UK and Singapore have already implemented legal frameworks relating to cooling-off periods that protect online consumers from poor quality products and deceptive counterfeiting and instil trust in the public in electronic commerce transactions.

Githii et al., (2014) clarify that customers struggle to distinguish between genuine and fake goods. This becomes one reason why online consumers accidentally buy low-quality and damaged goods. Consumer electronics products are likewise susceptible to counterfeiting, which can have similarly disastrous or fatal effects. This broad category, which includes anything from kitchenware to electronics for amusement, poses a risk to unwary customers (United Nations Office on Drugs & Crime, 2022)

Legal Issues on Return & Refund in The Post-Purchase Phase

Refund is another legal issue and lacuna in the current Malaysian legal framework; there is no specific time for any company to refund the purchase after their customer returns the goods and the cost to return defective goods to the seller. Under CPA 1999, s.42 (1)(a) of Consumer Protection Act 1999 states that where the failure can be remedied, the consumer may require the supplier to remedy the failure within a reasonable time. However, nowhere in the Act states what amount to a reasonable time. Delay in a refund to online consumers is unfair to consumers since that particular consumer may need to use the money to purchase the same type of goods from another seller. For example, university students may financially rely on student loans such as Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN). Suppose the laptop that they bought is defective. In that case, they are unable to use the laptop within that period and cannot purchase the laptop from another seller since the previous seller refuses to refund their money. This kind of hassle is not only faced by students but also by entire consumers in Malaysia in various types of purchases ranging from small to substantial amounts of purchase.

Hence, a specific period for a refund to be introduced is compulsory. The current 14 days refund policy in Consumer Protection Act 1999 is only applicable for Future Services Contract. Only services stated category Consumer Protection (Future Services Contract) (Amendment Order 2014), such as body treatment and beauty, fitness and health, and education, have specific times for the customer's money to be refunded. However, this protection is exclusively for services only and not for goods. Not to mention, some seller states no refund policy, which causes unfairness and injustice to the online consumer.

Recommendations to Strengthen Consumer Protection in Delivery Aspect.

Firstly, it is recommended relevant section regarding the privity of a contract be amended. For example, in the United Kingdom (UK specific legal framework had been enacted to cater for this issue). This Act is known as the Contracts (Rights of Third Parties) Act 1999. Since this Act was in force, third-party right is well protected, especially if the contract was initially made for the benefit of the third party itself. If the third party is the intended recipient of the parcel, that particular recipient/consumer can directly take legal action against the courier service provider.

According to Yeo (2001), the law was not intended to alter the rule that a contract cannot impose obligations on third parties. It created a broad statutory exception to the doctrine of privity, allowing the parties to a contract, in specified circumstances, to confer enforceable rights on a third party. This is lacklustre in Malaysian law, which develops not in line with the development of the legal framework in this aspect.

This is because, under the Contracts (Rights of Third Parties) Act 1999, for third parties to exercise their right, they are only required to fulfil a few elements of the Act, which only require third parties sufficiently identify in the contract (the recipient of the goods/consumer). Another requirement, as prescribed in s.1(1)(b) which only requires the contract, was made for the benefit of third parties. If these requirements can be fulfilled, the consumer can directly sue the courier service provider or file for a claim, including but not limited to insurance and compensation due to the loss of the parcel. This is because to inspire trust and confidence in people who utilise products and services, security assurance is essential (Yean & Yi, 2023), and this includes protection in the form of insurance as well.

Alternatively, it is also suggested that a compulsory insurance policy must be taken under the purchaser's name so that if the goods are lost or damaged during the delivery, online purchases can claim for insurance. This is because, Currently, Postal Services Act (PSA) does not sufficiently protect consumers against lost or damaged goods during delivery. This Act also preserves the exemption clause under s.31, which states that "A universal service licensee shall not be liable for any loss, misdelivered, delay of or damage to the postal articles during the transmission of postal articles, unless it is proven that the universal service licensee has maliciously or negligently or intentionally cause the loss, misdelivered, delay or damage. Making it worse, most courier service providers already limit the maximum amount of their liability when the goods are damaged or lost. Most of the courier services in Malaysia would limit their liability up to RM300 per parcel regardless of the actual amount of the goods if the sender did not take an insurance policy. Security assurance on products and services is significant to generate trust and confidence in users who are using them. IR4.0 device manufacturers are expected to implement security functionalities in their products that will enable security to function appropriately (Daud, & Rasiah, 2023).

Secondly, Consumer Protection (Electronic Trade Transaction) Regulation 2012 must be amended to include a specific time for delivery. The seller must provide the approximate delivery date by referring to Regulation 3 of the Consumer Protection (Electronic Trade Transaction) Regulation 2012 (CPR 2012). The CPR 2012 makes no mention of a penalty or deadline for delivery. As a result, the seller is free to ship the items whenever they see fit without taking the needs and demands of the customers into account. Additionally, if merchants fail to deliver the items as originally promised, no penalties will be assessed against them.

Hence, to overcome this, it is strongly suggested that a specific delivery date must be stated in the CPR 2012. For example, in the UK, under Contracts (Information, Cancellation and Additional Charges) Regulations, 2013, Delivery shall be made without excessive delay and, in any case, within 30 days of the contract's entry, according to the Regulations unless a shorter or longer period has been agreed upon, before the contract's entry or in another way taking into account the nature of the goods (for instance, frozen goods sent via postal service must be delivered in good condition and still frozen upon arrival). Under s.28(6) of the Consumer Rights Act 2015, failure of the trader to send the goods will allow the consumer to rescind the contract. Without a specific date that the seller compulsory delivers the goods, this will be detrimental to consumers, especially if they are in urgent need of goods and they cannot purchase goods on the premise due to unexpected limitations such as due Movement Control Order that had been faced by Malaysian during a pandemic. Consumer behaviour regarding the purchase of goods and services may differ during this difficult period compared to the pre-COVID-19 period. This is further supported by Seah et al (2022), who state that as a result, COVID-19 is having an impact on consumer spending patterns, which directly stimulates demand for the e-commerce sector.

Thirdly, in the aspect of cooling off period, in terms of the cooling-off period, there is a lacuna in the current legal framework in Malaysia. Hence it is strongly suggested that this provision be added to the current legal framework. According to Spark et al. (2014), most legislations providing a cooling-off period stipulate days and a procedure for exercising the right to withdraw, often without penalty. In the UK, according to s.30 of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, the cancellation can be made within 14 days after the contract has been entered. The cooling-off period ends 14 calendar days after the day on which the goods are delivered. If the goods are delivered in

several instalments, then it will be 14 days from receipt of the last instalment. The cooling-off period ends 14 calendar days after the day on which the goods are delivered. If the goods are delivered in several instalments, it will be 14 days after receipt of the last instalment (Nicola, 2014). This is an increase from 7 days before the latest amendment. Sullivan (2016) agreed that this extended period from seven to fourteen days was to increase legal certainty and reduce compliance costs for businesses dealing across borders. Hogan (1971) argues that statutory provisions to level the playing field are vital, especially when one party is likely to be subjected to manipulations and abuses from the party in the stronger position, usually the goods and services provider. Hence it is significant for the protection to be included in the current legal framework

Fourth, in the aspect of return and refund, a common issue consumers face is when sellers delay giving a refund to the consumer. In the United Kingdom, s.45(3) of the Consumer Rights Act 2015 states, “A refund must be given without undue delay, and in any event within 14 days beginning with the day on which the trader agrees that the consumer is entitled to a refund. Consumers can reject substandard goods and be entitled to a full refund and limits the number of repairs or replacements of substandard goods before traders must offer some money back based on this Act. Giliker (2017) emphasizes that consumers can reject substandard goods and be entitled to a full refund and limits the number of repairs or replacements of substandard goods before traders must offer some money back based on this Act. This is because there are certain limited situations in which a consumer has a right to cancel a contract and receive a refund for the return of the purchased item (Consumer Protection Division, 2007).

In addition, Hjort & Lantz (2016) emphasize that certain countries, such as Finland and Germany, interpreted the previous Distance Selling Directive (Directive 97/7/EC, 1997) in a way that allows customers to return products without having to pay for the return postage (monetary leniency). The ability to return and get a refund post-purchase is significant because it will affect consumers’ interest in purchasing from the seller. Based on Saleh (2020), most (92%) of consumers surveyed by the Infographic said they would buy again if the product return process were easy, whereas 79% wanted free return shipping. Min (2021) believes that this survey result indicates that customers are likely to complain unless they can return products whenever they want.

In addition, the UK legal framework provides a specific period when the seller should refund their customer. Online consumers are well protected in this matter under s. 22 of the Consumer Rights Act 2015 sets a minimum period of 30 days in which consumers can reject the goods and receive a full refund. It also establishes 30 days when consumers can reject substandard goods and be entitled to a full refund. It limits the number of repairs or replacements of substandard goods before traders must offer some money back. This law is in line with Consumer Sales Directive 99/44/EC, the Unfair Terms in Consumer Contracts Directive 93/13/EEC and the Consumer Rights Directive 2011/83/EU, which have made significant changes to Member State law, promoting the idea of the ‘informed consumer’.

In contrast, in Malaysia, it still is up to the seller when they want to refund their customer’s money regardless of the hardship faced by their customer due to defective goods they sold. This is because current law does not specifically state the time the seller should refund their customer. Nevertheless, some e-commerce platforms, such as Shopee in Malaysia, specifically stated a time frame for customers to be refunded. Under the Shopee refund policy, for example, after a quality check is done upon receipt of the item, it will take 3-5 days for a decision to be

made before your refund is credited. This is an excellent initiative the respective e-commerce platform took to ensure their online consumers are well protected. However, this policy is only applicable to specific e-commerce platforms and not to other platforms or other medium e-commerce transactions.

In short, urgent amendments must be made to the current legal framework to protect online consumers, further boosting consumers' confidence in conducting transactions with electronic commerce players. Scott (1998) added that refund guarantees, for example, are effective in significantly reducing such consumer risk, leading to their purchase. Hence based on previous literature review and research, an excellent and speedy refund process will benefit the seller in the long run because it develops trust and confidence of the consumer to purchase from the same seller again, which is indirectly beneficial to all electronic commerce players, including but not limited to electronic commerce platforms such as Shopee and Lazada, as well as to government in term of taxation and national income.

Conclusion

Malaysia's electronic commerce is brimming with opportunities. As previously mentioned, it is anticipated that in 2023 the electronic commerce market will earn more than USD10 billion in revenue. This suggests that there is a significant amount of electronic commerce in Malaysia. Nevertheless, the number of consumer complaints about the post-purchase experience, particularly about delivery, return, and refund, is rising in line with the growth of electronic commerce transactions. This is caused by various lacunas in Malaysian current legal framework, mainly in the privity of contract, no specific time for the seller to send the goods, absence of a cooling off period, and poor return and refund legal framework. Based on the research conducted, it is strongly recommended that legislators consider amending the existing lacuna in the legal framework in all these aspects. It is hoped that the finding of this research will contribute to the body of knowledge and literature on e-commerce and consumer protection in Malaysia. The limitation of this research can be seen from the qualitative aspect as most of the consumer complaints and reports are based on the secondary data collected from National Consumer Complaint Centre. In addition, the number of affected consumers may be much larger, especially for unreported cases. This is contributed by various factors, including but not limited to the price of goods being too small and tedious bureaucratic procedures to file complaints. This limits the potential insight regarding the significance of this study. It is recommended that future research can also include quantitative aspects to get better feedback from consumers through primary data in this aspect. Along the way, much of the quantitative study should be conducted to improve the validation and generalisation of this area.

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