

A Study on Information Regulation as a Legal Instrument for Protecting E-Consumers During COVID-19 Pandemic Outbreak

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ABSTRACT

The COVID-19 is an infectious respiratory disease caused by a novel coronavirus, severe acute respiratory syndrome coronavirus 2 (SARS- CoV-2) which is primarily transmitted between people through respiratory droplets and contaminated objects; airborne transmission may be possible in specific circumstances. The spread of Covid-19 significantly changed consumer shopping behavior from traditional retail shopping to new norm practice i.e. online shopping. Consumers shopped their basic needs using various platforms available such as Jaya Grocer Online, Tesco Online Grocery, Shopee. Lazada, Mudah.my and many more. However, these experiences of online shopping have not been very pleasant for many of the consumers. The common criticisms of online shopping are lack of enough and accurate information, lack of privacy and confidentiality, lack of refund policy and aftersales policy. This paper is focusing on information regulation as a measure to protect consumers from inadequate and inaccurate information supplied by the traders and sellers in online shopping platforms by analysing the concept of rights to be informed and the theory of informational regulation. This study is hope to provide a better mechanism for protecting the rights of e- consumers at all stages of transaction; pre-purchase, during purchase and post-purchase.

Keywords—*right to be informed, information regulation, consumer protection, COVID-19.*

1. INTRODUCTION

Traditionally, people shopped their basic needs such as food, clothes, medicines, toiletries and other personal stuffs from retail shops. Over the last few years, with the technological advancement, e-commerce industry has reached a whole new level and it is growing steadily [1]. While using the quick growth of technology, consumers around the globe continue to accomplish buying in the less difficult along with a more convenient approach using online platforms.

The spread of Covid-19 significantly changed consumer shopping behavior from offline to online shopping. The closure of physical stores due to lockdown and social distancing measures led consumers to ramp up online shopping, which in turn accelerated the e-commerce market growth in Malaysia. During the 1st phase of Movement Control Order (MCO), nearly all business activities in Malaysia has ground to halt. The only sector thrived during that period was e-commerce sector. Malaysians turned to online shopping for their basic needs as there was no shopping complex or mall opened during that period.

It can be seen with the rise of 9.3 percent rise in e-commerce value starting in April 2020 [2]. In addition, about 79,274 Small-Medium Enterprises (SMEs) have enjoyed beneficial sales through e-commerce in the first two quarters

of year 2020 [3]. According to a survey conducted by Rakuten Insight, 34 percent of respondents stated they made more online purchases during the COVID-19 pandemic [4]. Similar study stated that 73% of Malaysians said that the outbreak of the Covid-19 pandemic has made them more positive about online shopping [5]. These data illustrate that online shopping activities actively happened in the midst of COVID-19 period due to many reasons including of this virus, people avoiding to go out, keeping social distance, buying from home and working from home [6]. When the government declared the 1st Movement Control Order will be implemented started on 18th Mac 2020, consumers' behavior changed drastically and most of them were panicked in buying their basic needs. Jaya Grocer Online, Tesco Online Grocery, Shopee. Lazada, Mudah.my and many new applications being chosen as their main platform to shop their basic needs.

Lots of complaints lodged by the consumers due to many issues. Amongst them were unclear information on the product description, inaccurate information of goods, product quality issues, logistic related problem, inflexible return policy, lack of privacy and confidentiality, unclear website policies, lack of refund policy and aftersales policy. In order to minimize all those issues and to provide better mechanism for protecting consumers' interests, information regulation is seen as one of the alternative available.

2. METHODS

The methodology employed for this study is principally theoretical analysis where the concept of right to be informed and the theory of information regulation were analyzed. A number of sources were used for this research; library and online database. Academic literature relating to the theory of regulation through information provision as a specific instrument for protecting the rights of Malaysian consumers for adequate and accurate information has been examined. Besides, the information provision in the existing laws govern on the e-commerce business during COVID-19 pandemic including Sale of Goods Act 1957, Consumer Protection Act 1999 and Consumer Protection (Electronic Trade Transactions) Regulations 2012 were analyzed.

3. RESULTS AND DISCUSSION

3.1 *Information Regulation: A Measure to Protect Consumers on The Rights To Be Informed*

3.1.1. *Right to be informed*

The right to be informed is a core platform of consumer rights. The US President, John F. Kennedy declared right to be informed as one of the basic rights entitled by a consumer in his message in year 1962. Each and every consumer is entitled to be supplied with adequate and accurate information from the manufacturers, suppliers, traders and sellers and failure to provide information is a common basis of legal liability.

Consumers should be supplied with appropriate, accurate and adequate information on the quality, quantity, potency, purity, standard and price of goods so as to protect themselves against unfair trade practices. It is also to allow them to make intelligent and informed product choices, necessary to empower them to be better able to act and become more empowered, savvy and resilient [7].

Consumers are viewed by economic theory as rational decision-makers who are only concerned with self-interest [8]. It needs to be clear about what sort of information is at issue when we are talking about information and rational choice. Firstly, consumers need to acquire information about the products or services that they intend to purchase. Secondly, they need to know whom they are dealing with especially when they are buying online or dealing with a new trader with whom they have no previous experience. Thirdly, they need to know about the terms and conditions of the contract under which the service is provided. This is important because consumers need to aware about their rights and obligations under the contract, in particular with regard to the allocation of risks between traders and consumers.

Along the way of searching and acquiring information, e-consumers may encounter a number of obstacles such as consumers are unaware of and/or do not read consumer information or contract terms. Real-life consumers are only seldom disciplined and patient enough to read terms and conditions, and even if they do so, there are many, including

cognitive, reasons why they will not understand the information, may not find it useful, or will be unable to translate it into sensible commercial decisions. There are several reasons why e-consumers omit from reading the information provided to them. One important reason for not doing so is that they underestimate the value of the information or their need for this information [9]. Secondly, part of the not-reading-problem is that people lack a rudimentary understanding of how laws and contracts work and, most importantly, what the law or regulatory authorities do not do (e.g. scrutinize terms and conditions on a regular basis). Inability to understand the legal implications of ignoring information are also reasons why people simply lack the incentive to invest effort in the reading of terms of use.

3.1.2. *The theory of information regulation*

Imperfect information in the market may prevent efficient outcomes. There are several ways that could be used to solve this problem. In current digital society, there are continuing demands for more government action to protect consumers. Information regulation could be the most appropriate measure to fill any gap of information or correct market imperfection due to information failure. Besides, it could protect e-consumers from economic loss as well as emotional distress.

There are several valid explanations why information provision should be implemented as a basic mechanism to protect the rights and welfare of e-consumers during COVID-19 pandemic. One is that e-consumers are not properly aware about the design, quality and ingredient of the goods on the market. Some groups of consumers were panicked in buying their basic necessities when the government declare MCO phase 1 will be implemented started on 18th Mac 2020. They grabbed whatever stuffs available without carefully check the labelling and packaging of the products. Those phenomena caused many issues especially when the products purchased by them were expired and have some defects.

Information regulation is acknowledged as a step to develop the level of information received by the less informed buyers to a greater extent than by those more sophisticated consumers who may already acquires and be able to process the requisite information. In some cases, it can be generated simply by removing some restraint on the flow of information. Otherwise, the only alternative is to somehow, affirmatively increase the amount of information available to consumers and perhaps, this alternative will improve the level of information provides by the sellers to consumers. Traditionally, this has usually taken the form of a requirement for sellers to provide certain information to consumers at the pre-purchase phase, right after the purchase as well as post-purchase.

By requiring particular types of information to be made available to e-consumers, the law serves to bridge the information gap, permitting the e-consumers to choose between the different types of products in an informed manner and to know on what terms they are purchasing a product. The availability of relevant information is essential to all economic activity including e-commerce. Information is a deciding

factor for consumers when making their choices and affects both consumer interests and their confidence in the products and services circulating within the market. More particularly, consumers need three items of information about the product or service they are buying; information about the price, quality and the terms on which they are buying. Without knowing the price, cost, quality, availability, and the like, consumers cannot make rational and efficient decisions. Lack of information is a market imperfection that distorts otherwise efficient outcomes. Much government regulation attempts to correct this imperfection by gathering and disseminating information that otherwise would not be available to market actors at all or at a reasonable price. Filling any gap of information by information provision could safeguard the interests and welfare of consumers from economic, emotional as well as spiritual loss.

In addition, regulating the information provision in pursuit of public interest of e-consumers would be one of the bases of intervention though Mike Feintuck indicates that the public interest will always be a fragile basis for intervention, so long as it remains theoretically unspecified. This approach seems as a precautionary measure that should be taken at the earlier stage before the customers enter into any contract with any traders.

Xavier claims that regulation by information provision is perceived as a means of increasing the amount of information obtained by the less educated consumers to a greater degree than by those e-consumers who are already able to access, understand and process the requisite information [10]. When the amount of information provided to the e-consumers allows them to make an informed decision, undoubtedly it will help them to protect their interests. However, it should be noted that providing information in large amount or also known as information overload may place e-consumers in confusion. Therefore, it is significance for the sellers and traders to provide the essential information within a reasonable capacity.

The question is how to measure the amount of information that should be supplied to the consumers? Is there any specific measure or tool that can be used to measure the information to be made available to consumers? There is no specific measure that has been designed by the professionals or academic scholars on how to measure the information that should be provided by the sellers to the consumers so far. Therefore, sellers and traders should play their part in ensuring that consumers are given a reasonable amount of essential information at all stages of the contract.

If sellers or traders offer valuable information on products and services to the buyers, it may assist consumers protect their interests by selecting the goods or services that are closest to their preferences. Consequently, consumer detriment may be minimized by ensuring goods and services are more likely to be in line with realistic e-consumer expectations based on reliable information.

The question is when is the most appropriate time to provide information to the consumers? Information provision is vital at all phases of a contract either at pre-purchase, pre-contractual, during purchase and post-purchase. However, it is

incredibly important to safeguard consumers' interests from any detriment due to misinformed or uninformed choice at the earliest stage, particularly at the pre- pre-purchase decision because consumers may not be able to get out of it once they purchased the product. By regulating the essential information of a particular product to be provided to consumers at the earliest phase particularly at pre-purchase stage, the law serves to fill the existing loophole, allowing the consumers to make well informed decision and to know the remedies available when the products are not in a good condition as expected. So it is not shocking that the introduction of pre-purchase information duties was a highly common consumer protection device.

Being an informed consumer is advantageous to the economy, market and consumers [11]. An informed consumer is capable of making sensible decisions, gains insight about a product prior to its purchase. In the ideal case, consumers would come to informed decision or choice when they have been presented with a set of sufficient information for the decision being made and understand what the reasonably expected consequences may be of making that choice. An informed decision can be said to have been made based upon a clear appreciation and understanding of the facts, implications, and future consequences of an action. Essential information relating to a particular goods or service is crucial for them in making well-informed decision.

Furthermore, e-consumers could self-protect from unscrupulous traders and service providers if they were adequately informed and capable of understanding the information they received. However, consumers are a heterogeneous, rather than a homogeneous group [12]. Some are reasonably well informed, observant and circumspect [13]. Others may be ignorant, unthinking and credulous [14]. Most probably fall somewhere between these two positions. Some will be confident and assertive, others more easily persuaded. Protecting such a wide range of individuals (particularly vulnerable consumers) appropriately is a challenge. Burden argued that consumers may be vulnerable for two main reasons: first, because they may find it more difficult to obtain or to deal with information needed to make appropriate purchasing decisions, and second, because they may suffer a greater loss than other consumers by making inappropriate purchasing decisions. If the vulnerability is caused by an information gap, then information remedy either by regulating information provision or education to disseminate information could be the most appropriate way to protect vulnerable consumers.

3.2. Malaysian Legal Framework on Information Regulation

3.2.1. Sale of Goods Act (SOGA) 1957

The SOGA is presumably applicable to online business since there are no express or implied provisions which prohibits for the sale of goods over the net [15]. Online transaction does not permit the consumers physically check

the products and knowing the sellers. Thus, e-consumers are more vulnerable compared to traditional consumers. This Act which preserves the common law rule of caveat emptor only provides minimal protection for consumers generally and the e-consumers in particular. Even, some academic scholars argued that this rule of caveat emptor is not relevant anymore to the e-consumers and replaced it to caveat venditor (let the seller beware). The onus is now on the sellers to make sure the buyer makes a reasonably informed choice and to compensate for defective products.

Therefore, information by description on website or any e-commerce platform is crucial to be provided to the consumers. Adequate and accurate information should be provided by the sellers as a main reference to the consumers in decision making process. The information provided as description of the goods may help consumers choose the best product suits to their preference of buying. By virtue of section 15 SOGA, it is stated that:

“Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Implied condition as to quality or fitness”.

This section impliedly explains to us that whatever description provided by the seller in their website or at any online platform must be correspond to the actual product.

However, there is no single provision in SOGA which regulation on the information that should be provided by the sellers or traders on their products. This is a big gap in the SOGA which may disadvantage to the e-consumers. Information provided by the seller at pre-purchase stage play an important role to the e-consumers before they make any decision. It will explain the functions, ingredients, instruction on how to use the product, expiry date, price and details of the seller. However, there are sellers who reluctant to provide all this information in the online platform. This scenario may detriment e-consumers' rights and place them at disadvantage position. Even, there are sellers who are purposely hide some information from the e-consumers' knowledge as to cheat their consumers. Therefore, regulation the information that should be provided by the sellers or traders might secure e-consumers' interests and minimize information asymmetric.

3.2.2. Consumer Protection Act (CPA) 1999

The CPA 1999 was initially inapplicable to any trade transactions by electronic means but the law has been amended in 2007 to include “any trade transactions conducted through electronic means” in order to protect the rights of the e-consumers. Therefore, it is understood that the CPA 1999 is the law governing the purchase or supply of goods and services either offline or online. It means that protection under

the CPA 1999 applies to all consumers regardless of the nature or method of their transactions.

The CPA 1999 provides for the protection of e-consumers against misleading and deceptive conduct, false representations and unfair practices. This is contained in Part 11 of the CPA 1999 which essentially concerns with providing adequate and accurate information to the consumer since many of consumers' problem are actually caused by lack of information and awareness of products and suppliers. This is particularly vital for e-consumers who rely totally on the information given on the website. However, this section does not spell out what are the information that should be provided by the sellers or traders as to prevent from any misleading or deceptive conduct. Even, there is no single guideline that has been designed to measure how much information should be provided to the consumers.

3.2.3. Consumer Protection (Electronic Trade Transactions) Regulations 2012.

The Regulations apply to all online business supplier and online marketplace operators including a private person. An ‘online marketplace’ refers to a website where goods or services are marketed by third parties for the purpose of trade [19]. It mainly concerns with providing sufficient and correct information to the consumer since many of consumers' problem are actually caused by lack of information and awareness of products and suppliers. This is particularly crucial for e-consumers who rely totally on the information given on the webpage. E-traders are now under a duty to disclose relevant information as specified under the Regulation 3 which states that:

“Any person who operates a business for the purpose of supply of goods or services through a website or in an online marketplace shall disclose on the website where the business is conducted the information specified in the schedule”.

There are eight (8) basic information should be provided by the seller to the e-consumers in a particular online platform; 1) the name of person who operates the business, 2) the registration number of business, 3) the email address and telephone number, 4) a description of the main characteristics of goods or services, 5) the full price of goods or services, 6) the method of payment, 7) the terms and conditions, 8) the estimated time of delivery of goods and services to the buyers. A failure to disclose the foregoing information is an offence [16]. Additionally, any person who discloses or provides information that he knows or has reason to believe is false or misleading also commits an offence [17].

In addition, online traders also must provide the appropriate means to enable the buyer to rectify any errors prior to the confirmation of the order and they must also acknowledge receipt of the order without undue delay [18]. The acknowledgement of receipt shall be deemed to have been received by e-consumers when they are able to access to such receipt. The 2012 Regulations should therefore improve consumer protection online as well as encourage the development of electronic trading in the country.

However, the Regulations merely deal with basic pre-contractual disclosure of information. There are many other e-consumers issues at the stage of formation of e-contract and after the conclusion of the contract not covered by the Regulations. These include a confirmation of e-payment, maximum period of performance, cooling-off period, delivery and return of goods and many others.

4. CONCLUSION

Thus, this study strongly believes that 'information regulation' could overcome the aforementioned struggle and be the best consumer protection tool, especially for e-commerce consumers during COVID-19 pandemic. In other words, the information regulation should act as a bridge to fill the holes in current laws, regulations and approaches. Therefore, it is necessary to legalize the information which should be given to consumers by sellers, traders and manufacturers in order to ensure that the interests will be secured at the first level, i.e. before concluding any sales contract with sellers and traders. The provision of clear and available information on a specific product is required to ensure the purchase process is more intuitive, open, consistent and efficient. To prevent e-consumers from being the victim of exploitation or fraudulent actions by sellers and traders, buyers must have adequate and accurate information beforehand. Of that purpose, the most resourceful way to protect customers may be the provision of information. Apart from that, practicing support self-reliance will certainly be in par of working comprehensively with the relevant State legislative instruments. Hence, the consumers will be benefited from this movement.

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