

Legal Development of the Malaysian Consumer Protection Act 1999: 20 Years After

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Abstract

— Consumer Protection Act (CPA) 1999 was enforced in Malaysia on 15 November 1999 after it was reviewed for almost six years and finally tabled before the Parliament in 1999. There are 14 parts and 150 sections in CPA 1999 that protects the consumers through the National Consumer Advisory Council (NCAC) and Tribunal for Consumer Claims (TCC). Focusing on CPA as the primary legislation that incorporates provisions to adequately protect the consumers, its legal development and effectiveness in improving the position of consumers in Malaysia for the past two decades were reviewed in this paper. As a doctrinal study, content analysis was employed to explore the development and effectiveness of TCC in serving its core function as well as the impact of CPA amendments on the protection of consumer rights. The findings of this study were deemed significant for the future development of CPA in protecting consumer rights and gaining public confidence

Index Terms: Amendment of law, Consumer Protection Act 1999, legal development, Tribunal for Consumer Claims

1 Introduction:

The first legislation that protects consumers in their purchase of products and services is the Consumer Protection Act (CPA) 1999 [1], which specifically highlights its role of protecting the consumers' rights and the establishment of the National Consumer Advisory Council (NCAC) and Tribunal for Consumer Claims (TCC) in Malaysia. Under CPA 1999, complaints from consumers can be properly addressed and assisted. Being influenced by the legal developments in Australia, Canada, New Zealand, and the United Kingdom (UK), the CPA 1999, which is only limited to consumer transaction (B2C) under Section 2(1) of the Act, addresses all core aspects of consumer protection in relation to the supply of goods and services, trade practices, contract terms, product safety, liability, and redress mechanism.

Under Section 3(1) of the Act, “consumer” refers to one who either obtains or uses a product or services for any personal or household purposes or re-supplies a product or services in trade, manufacturing, repairing, or treating process. In other words, consumers are those who purchase products and services that are not used for commercial purposes. For instance, in *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd* [2012] 1 MLJ 27, the Court of Appeal decided on the position of the private company as a consumer given its purchase of a Mercedes-Benz car as a company car.

2 The Development Of CPA 1999

The growing concern to defend consumers who are vulnerable and susceptible to purchase risks, especially when it involves inequality of bargaining power [2], in this thriving economic era has intensified law

development in consumer protection. Considering the gaps of knowledge and resources between the suppliers (of products and services) and consumers, the latter group holds a weaker bargaining power. Hence, consumer protection laws are necessary to ensure a fair trade that does not involve fraudulent practices for consumers.

There are various types of unfair trade practices (e.g. faulty, inferior, and unsafe products) and dishonest trading means (e.g. misleading or false advertisement, price display, and description of products or services) in the market. Certain traders or manufacturers do not provide adequate information and selections for consumers to make proper purchase decision. Thus, it is integral that consumers' rights are adequately protected.

A. National Consumer Policy 2002

As specified in Part XI of CPA, NCAC was established to provide counsel on consumer-related matters. Focusing on the welfare of consumers, NCAC launched the National Consumer Policy (NCP) on 26 July 2002 that focuses on the balance of rights and responsibilities of the government, business operators (e.g. traders, suppliers, and manufacturers), and consumers.

Based on the principles of NCP 2002, consumer protection policies and laws are established. The public and private sectors and non-governmental organisations (NGOs) refer to this policy as a reference to develop and execute activities that promote and enhance consumerism and sustainable production cultures [3]. Apart from achieving an effective level of consumer protection and creating and sustaining a conducive and fair market environment with respect to the domestic and global economic progress, the introduction of NCP 2002 also focuses on initiating the inculcation of self-protection among consumers and self-regulation among traders, suppliers, and manufacturers [4].

The policy generally serves to increase the overall living standard, ensure adequate consumer protection, and sustain fair and ethical trade, consumer education, sustainable consumption, redress mechanisms, consumer forums that involve the government, traders, suppliers, and manufacturers, and consumers, as well as international cooperation in consumer-related matters.

Basically, the purpose of NCP 2020 includes producing consumers who are adequately informed and conscientious and take the initiative to protect themselves. This would subsequently influence the awareness and operation of traders, suppliers, and manufacturers given their considerable impact on the socio-economic aspects of this country. Inevitably, traders, suppliers, and manufacturers would be more driven to deliver ethical and reliable operation in favour of the welfare and well-being of consumers. Through NCP 2002, consumers as well as traders and manufactures become more aware of their roles as well as rights and responsibilities in this global market.

Considering the influence of the values considered by consumers on their behaviour and decision-making, there are five key values of consumerism highlighted in NCP 2002. The five values are expected to present the optimal level of consumer protection in Malaysia. It should be noted that NCP 2002 was first reviewed in 2010 with the help of the Malaysian Consumer for Family Economics Association (MACFEA).

The first key value is the value of money, where all consumers, traders, suppliers, and manufacturers, and the public sector are aware of their rights and responsibilities, while fulfilling their basic needs. Secondly, the human value of caring highlights the formation of a caring society that overlooks differences in race, religion, and status for a balanced and fair market. Thirdly, the value of democracy reflects public awareness on the collective power to defend the interests of consumers, traders, and manufacturers. Besides that, there is also the value of justice (fight to uphold justice), where political and economic

discriminations are not advocated. Through advocacy practices that promote the welfare of consumers, the development of a balanced and fair community can be realised. Last but not least, the value of the environment reflects the significance of protecting and preserving the environment without overexploiting the natural resources and contributing negative environmental impact.

B. Regulations and Order

CPA 1999 serves as the primary Act in consumer protection. There are several regulations under the CPA, such as (1) Consumer Protection (TCC) Regulations 1999, (2) Consumer Protection (Workshops Information Disclosure) Regulations 2002, (3) Consumer Protection (Safety Standards for Toys) Regulations 2009, (4) Consumer Protection (Certificate of Conformance and Conformity Mark of Safety Standards) Regulations 2010, and (5) Consumer Protection (Electronic Trade Transactions) Regulations 2012. Besides that, there is also the Consumer Protection (Future Services Contract) Order 2002.

3 The Tribunal For Consumer Claims

Initially, consumer disputes were brought to the civil court that involved complex, costly, and lengthy procedures. Small claims courts at the state level were established to settle consumer claims of below RM 5,000. However, consumers were still not willing to put forward their claims against unreliable and unscrupulous traders, suppliers, or manufacturers of products or services, particularly if the claim amount was deemed low. Therefore, TCC was launched in Malaysia as a simpler and more cost-effective platform to efficiently settle consumer disputes.

Under Section 85 Part XII of CPA 1999, TCC presents efficient and straightforward steps to address consumer-related matters [5]. TCC operates independently and primarily works on consumer-related hearings and consumer disputes, subjected to the provisions of the Act. TCC previously handled consumer claims that were below RM 25,000. Following the implementation of CPA (Amendment) 2019, TCC handles consumer claims that do not exceed RM 50,000 since 1 October 2019. In most cases, consumer claims are linked to supply issues of goods and services, fraudulent trade practices, or deceiving advertisements or price display. Besides that, TCC may also address relevant consumer complaints under other statutes within the purview of the Ministry of Domestic Trade, Cooperatives and Consumerism. For examples, consumer complaints on hire purchase transactions, direct selling, and pyramid schemes. As specified in Section 98, TCC recently expands its jurisdiction. The tribunal may also address consumer claims involving redress mechanisms that are not addressed under any other laws, even if the claims are beyond CPA, provided that they are not clearly excluded from its jurisdiction.

Overall, a total of 112,367 cases were filed from 2000 to 2019, with the increasing number of cases filed annually. Based on the number of cases filed alone, the responses from consumers in consumer protection seem rather promising. The increasing number of cases filed also suggests that the procedures involved are less complex, more efficient, and simpler at a lower cost (the fees charged is only RM 5). Moreover, the case can be settled within 60 days from the date of its filing.

4 Amendments Of CPA 1999

CPA 1999 was amended in 2002, 2007, 2010, 2012, and 2019, which brought several changes. For instance, the amount of claims was increased from RM 10,000 to RM 25,000 and finally, up to RM 50,000 in 2019.

In 2002, the listing of the types of future services contract gazetted by the Ministry for the purpose of the section expanded the membership of TCC Malaysia to the members of the judicial and legal services.

Previous Section 2(2)(g) of CPA addressed only offline trade transactions and was not applicable to online trade transactions, unless otherwise prescribed by the Ministry. The scope of the Act was then expanded in 2007 to include trade transactions that involve electronic platform in order to protect the welfare of e-consumers [6]. Following this amendment, regardless of the nature or type of transaction involved, all consumers are protected under CPA.

Through the enactment of the Consumer Protection (Electronic Trade Transactions) Regulations 2012, e-consumers can receive the necessary protection against unscrupulous traders, suppliers, and manufacturers in the online platform. Most of the issues faced by e-consumers who fully depend on the information displayed online [7] are limited awareness of the products and the traders, suppliers, or manufacturers as well as incomplete product description. Online traders, suppliers, and manufacturers are responsible to provide all relevant information of the products or services under the regulations that are similar to Section 20 of the Direct Selling and Anti Pyramid Scheme Act. Besides that, they are also responsible to describe the required steps of purchase to the e-consumers and promptly verify the purchase order made. The e-consumers must have access to the acknowledgement of receipt. Although the regulations cover the pre-contractual disclosure of information, numerous other potential problems at the contract development phase and after the conclusion of the contract are not included. For examples, confirmation of e-payment, maximum period of performance, cooling-off period, and delivery and return of goods.

Nevertheless, the expansion of the existing provisions ensures the relevance of the Act given the recent changes in trade practices and provides additional consumer protection. Two new parts were incorporated into CPA in 2010: (1) Part IIIA - Unfair Contract Terms that protects consumers from discriminating contract terms; (2) Part XIIA - Committee on Advertisement that grants power to the Ministry to form a committee that keeps track and take action against those who present advertisements that confuse or deceive consumers.

Taking the case of Part IIIA of the CPA (Amendment) 2010, consumers are protected from discriminating contract terms. This establishes the underlying basis of most contracts that involve offline or online consumer transactions. Consumers can question the validity of contract terms that may be either procedurally (related to the process of making a contract) or substantively (related to the content or substance of the contract made) unfair, or both. With that, this empowers consumers against discriminating contract terms and subsequently, prevents such cases from occurring to a certain extent through its strict enforcement in Malaysia [8].

The legal concept of CPA went through a significant change by setting aside the privity rule, where a user of a product or services is entitled to claim the guarantees and the supplier or manufacturer can be made liable. As consumer protection under CPA cannot be contracted out, the issues of exemption clauses in consumer-related contracts are resolved to a certain extent.

Exclusion clauses are commonly found across various settings in Malaysia. Car parks are among the common locations that apply exclusion clauses, where a notice of “park at your own risk” is often displayed. The standard contract terms for general purposes are often preferred among traders, suppliers, and manufacturers. In most cases, consumers would have to accept these terms, regardless of their stance, in order to proceed with their purchase or consumption of the products and services provided.

However, there are several cases that involve attempts of eliminating or denying their liabilities under the law, which put consumers in an unfavourable position to exercise their rights, especially when they are

not familiar with or aware of the contract terms. Moreover, the court does not have the general power to nullify such contract based on reasons such as unreasonable, unethical, or discriminatory.

Such case was first found in the Court of Appeal decision of *Saad Marwi v Chan Hwan Hua & Anor* [2001] 3 CLJ 98. In particular, for justice, Gopal Sri Ram JCA decided on the need to acknowledge a wider doctrine on the inequality of bargaining power. Unlike how the UK deals with discriminatory contract terms by enacting new legislation, Part IIIA, which was formulated according to the recommendations of the Law Commission of India's 199th Report on Unfair (Procedural & Substantive) Terms in Contract (August 2006), was then incorporated into the existing CPA in Malaysia. The term "unfair" reflects all circumstances that involve substantial inequality in terms of the rights and responsibilities of the involved parties in contracts or injustice to consumers.

The enactment of Part IIIA has been regarded as a noteworthy decision made by the Parliament, as traders, suppliers, and manufacturers would have to properly justify the exclusion or restriction of their contract terms. The court or tribunal also can open a case of an unfair contract and then nullifies the contract or grants judgment even when no party raises such issue in its pleadings. A breach of any provision of Part IIIA results in a hefty fine or imprisonment, or both.

However, the enforcement of CPA on only consumer contracts that involve the private use of products and services, without the inclusion of commercial contracts, was initially criticised. This led to the introduction of Section 24B of the Act, where the new provision of Part IIIA appears to include all contracts. Nonetheless, the scope of this provision has remained ambiguous, particularly on the inclusion of commercial contracts, such as commercial charter parties, hire purchase contracts, insurance contracts, sale and purchase agreements, and supply of goods contracts.

If Part IIIA is intended to expand its jurisdiction beyond the consumer contracts, exclusive legislation on discriminatory contract terms should be enforced (as how the UK deals with such cases) or such provisions should be incorporated into the Contracts Act 1950 instead. However, a new part was merely incorporated into existing legislation in consumer protection. Nevertheless, the new part in the CPA only applies to consumer contracts that fall within the ambit of the CPA.

5 CONCLUSION

Overall, CPA has significantly transformed in the past two decades to provide adequate consumer protection, which has become a significant mark in the legal development of consumer protection. Despite that, certain provisions of CPA have remained underutilised. It is important to address the existing shortcomings of the CPA. With that, the enactment of more subsidiary legislation under CPA, particularly in the domain of consumer services and product safety, is expected. Considering the effective role of the National Consumer Advisory Council (NCAC) and continuous assessment on the performance of TCC, as well as strict law enforcement, CPA is expected to present enhanced customer protection at large.

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