



Journal Homepage: -www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI:10.21474/IJAR01/15768
DOI URL: <http://dx.doi.org/10.21474/IJAR01/15768>



RESEARCH ARTICLE

CONSUMER PROTECTION AGAINST ONLINE PURCHASE FRAUD IN MALAYSIA: AN ANALYSIS OF THE CONSUMER PROTECTION ACT 1999

Norhoneydayatie Abdul Manap, Amirah Madihah Adnan and Zamzuri Zakaria
Syariah Research Centre, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia.

Manuscript Info

Manuscript History

Received: 28 September 2022
Final Accepted: 30 October 2022
Published: November 2022

Key words:-

Fraud, Consumer Protection, Online
Purchasing, Contract, Consumer
Protection Act 1999

Abstract

There has been an increase in complaints received by the authorities of late concerning fraudulent online purchase cases. Consumers are faced with various modus operandi and fraudulent tactics when making online purchases even though the authorities have provided a safe-purchase guideline for online purchases. Hence, this qualitative study aims to analyse the legal framework surrounding consumer protection involving online shopping in Malaysia. Data were obtained using the content analysis and semi-structured interview methods. Findings indicate that online consumers are protected under the Consumer Protection Act 1999 in cases related to fraudulent online purchases.

Copy Right, IJAR, 2022.. All rights reserved.

Introduction:-

In Malaysia, the definition of deceit in relation to contracts, which is mentioned as 'fraud', is provided for in Section 17 of the Contract Act 1950. Although there is only one provision that provides a specific definition of fraud in the legal statute, the provision (section 17) does not specifically touch on fraud involved in online purchases.

The Description found under Section 17 regarding the act of silence, which is not considered as a form of fraud, also provides an opportunity for online traders to refrain from disclosing existing defects or damage to the goods sold (Sakina Shaik and Azimon, 2003). Nur Rabiatuladawiah (2018) agreed that the failure to disclose or notify the existence of defects in goods should be included as a form of fraud and should be categorized as 'fraud' in this provision.

The provision concerning fraud under Section 17 is a general provision, and consumers can refer to the provision when dealing with fraudulent elements in a contract. Hence, if the element of fraud is clearly present, then the victimized party can terminate the contract because the contract then becomes a voidable contract. Therefore, the victimized party has a choice of whether to continue or terminate the contract and claim remedies.

There are several views on the provision for fraud under the Contract Act 1950. One view is that the provision is an old unamended section that only discusses conventional contracts and not electronic contracts (Md Abdul Jalil, 2003). The National Consumer Complaints Centre (NCCC) also agrees that provisions in the Contract Act 1950 need to be amended as they are outdated and too broad in scope to resolve issues pertaining to e-commerce. Section 17 of this act needs to be reviewed to ensure that it can resolve issues pertaining to online purchasing (NCCC, 2019). Md Abdul Jalil (2003) also stated that the existing contract law in Malaysia is unable to deal with disputes related to electronic contracts. However, Fathi Yusof (2016) agreed that all forms of contracts containing elements

Corresponding Author:- Norhoneydayatie Abdul Manap

Address:- Syariah Research Centre, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia.

of fraud can come under the ambit of this Act. A specific definition of online purchase fraud is necessary so that traders do not have the leeway to manipulate buyers by continuing to commit fraud in order to reap profits.

Another Act that was enacted to regulate electronic transactions is the Electronic Commerce Act 2006. However, this Act was not intended to provide protection to online users; in fact, it was only intended to regulate online transactions because the provisions contained in this Act do not touch on electronic transactions that ought to be conducted in a safe and secure environment for the protection of e-consumers. This Act merely provides legal recognition to electronic messages, which helps to enable and facilitate electronic trade transactions. Therefore, this Act does not aim to provide protection to consumers, especially in the context of online purchasing of goods and it also does not provide for fraudulent electronic transactions.

Online users who meet the definition of 'users', as mentioned in Section 3 of the Consumer Protection Act 1999, i.e., users who purchase goods for personal use and not for business purposes, are still protected under this Act. Thus, when comparing consumers and sellers, consumers are often associated with having an 'unfair bargaining power' compared to sellers, so consumers are considered vulnerable, and need protection (Sheela, 2021). Therefore, this study aimed to analyse the Consumer Protection Act 1999 in the context of providing protection to consumers, especially in relation to fraudulent online purchases.

Methodology Of The Study:-

This qualitative study had adopted the content analysis method for data collection purposes. The Consumer Protection Act 1999 was analysed to identify provisions pertaining to consumer protection involving online purchases. In addition, semi-structured interviews were also conducted with officers from the Ministry of Domestic Trade and Consumer Affairs (KPDNHEP), which is the main government agency overseeing consumer affairs and it also plays a role in enacting policies, strategies and studying matters related to the development of domestic trade and consumerism. KPDNHEP also plays a role in raising consumer awareness and education through consumerism movements (NGOs or affiliates) throughout Malaysia, for example by establishing Rakan KPDNHEP in 2001.

Discussion:-

Enforcement of the Consumer Protection Act 1999 (APP 1999) was a sign of success in the struggle to recognize consumer rights and afford consumer protection in Malaysia (Afida et al., 2014). The main purpose of APP 1999 is to prevent the exploitation of consumers as well as provide a simple, cheap and fast dispute resolution method involving disputes between traders and consumers (Mohamed Iqbal and Afida 2001). According to Section 3, the protection provided is limited to the end user of a product or service, which does not include purchases for commercial purposes. APP 1999 has been amended four times to provide protection for online users and improve existing provisions. Amendments in 2007 extended the scope of Act 599 to include commercial electronic transactions.

Among the important provisions in the context of fraudulent online purchases mentioned in Section 16 is the provision for the return of goods in case of dissatisfied consumers, including the case of a misunderstanding. The respondent stated that, "In regard to a misunderstanding, if there is a provision where he can claim restitution, then he can make a claim if he is not satisfied." (KPDNHEP). In addition, there are some actions that are considered illegal under Section 16, whereby when the seller has the intention of not supplying the goods, which is an offense under Section 16(a). In reference to this context, the respondent stated, "This means that he received payment but he was unable to offer the goods and services. First, it is an offense under Section 16(a), since the person did not intend to supply, meaning he was unable to supply the goods". (KPDNHEP).

In addition, supplying goods dissimilar to the ordered item is also an offense under Section 16, as explained by the respondent, "he intends to supply the goods and the goods are there, but they are different." (KPDNHEP). Meanwhile, the act of not delivering the goods within the promised period is an offense under Section 16 (c). The respondent stated, "he does not have a single reasonable reason for delivering the supplied goods within the specified period. For example, he said it will arrive two weeks after that. One month or even two months thereafter and the goods are yet to arrive, which is an offense under Section 16(c)". (KPDNHEP)

Part II of the APP provides for misleading conduct, false representation, and unfair practice. Section 25(1) provides for penalties for contravening Part II. The provision found in Part II is important and closely related to fraud. This

section concerns misleading behaviour, 'false representation' or making misleading or false statements, misleading depictions of advertising prices, giving gifts or free offers and claims that goods are limited, or agreeing to receive payment but without the intention to supply the goods. Hence, Section 25(1) states if these actions occur when the buyer makes an online purchase, then these actions are tantamount to an offence under this section and the perpetrator can be fined or penalized (Sheela, 2020).

In addition, Part V of APP 1999 provides for implied terms and the breach these terms could lead to a claim for damages. Section 31 provides for an implied warranty of title (ownership), Section 32 provides for an implied warranty of acceptable quality, Section 33 provides for an implied warranty of fitness for a particular purpose, Section 34 provides for an implied warranty that the goods conform to the description given, Section 35 provides for an implied warranty that the goods conform to the sample, Section 36 provides for an implied warranty for price and Section 37 provides for an implied warranty for repair and replacement. Based on these provisions, if the seller violates or infringes the implied terms, then the user can claim damages.

APP 1999 also protects consumers from unfair terms imposed by traders. Thus, the consumer is also protected against unfair terms included in the contract. In reality, the practices adopted by e-commerce platforms, such as Shopee, Lazada and others, have established terms. Therefore, if there are unfair terms, then the user is protected under APP 1999.

Section 85, Part XII of APP 1999 provides for the establishment of the Malaysian Consumer Claims Tribunal (TTPM), which operates under the purview of the Ministry of Domestic Trade and Consumer Affairs. This Tribunal was established as an alternative forum to the civil courts, where consumers can make compensation claims for goods or services in a cheap, easy and quick manner. It has the jurisdiction to hear compensation claims for the purchase of goods and services allowed under the jurisdiction of the Tribunal as provided under APP 1999. Claims made to the TTPM must not exceed RM50,000.00 and claims must be accrued within three (3) years from the date of the incident. Users who wish to make a claim with the TTPM have the option of either appearing at TTPM counters in state offices throughout Malaysia including in the Federal Territory of Putrajaya, Kuala Lumpur or Labuan or file it online at <https://ttpm.kpdnhep.gov.my>. The claim filing fee is RM5.00 (KPDNHEP Website). Hence, claims against online purchase fraud cases can also be made with the TTPM.

Section 150(2)(a) of APP 1999 empowers the Minister from the respective ministry to formulate regulations. Therefore, in the context of online purchases, there is the Consumer Protection Regulations (Electronic Commerce Transactions) 2012, which provides for the obligation to disclose 8 types of information to consumers as mentioned in the Schedule (Regulation 3), which must be complied with by the seller. First, the seller needs to disclose the name of the merchant or company so that consumers have information regarding whom they are dealing with. Second, the seller must disclose the company or business registration number. Third, the seller must disclose contact information such as phone number, email or business address. Fourth, the seller must disclose the description of the goods or products sold. For example, if the seller is selling a handbag, it is necessary to state the characteristics or features of the handbag including the material, colour, shape etc., so that the received item matches the initial description as claimed by the seller (KPDNHEP). Fifth, the seller must disclose the full price of the goods or products. Sixth, the seller must also disclose the method of payment for the goods that will be made by the buyer. Seventh, the seller must disclose the established terms and conditions to the user because each company or trader has different terms and conditions (KPDNHEP). Eighth, the seller must disclose the estimated delivery time of the goods to the buyer. The respondent also mentioned, "As for the delivery, we have to see how the seller wishes to send the goods, how many days it would take. He has to tell you how many days it would take to send the item. Estimate how many days and if it is a pre-order then it would take two weeks. He has to mention it in the platform" (KPDNHEP).

Conclusion:-

Online fraud contravenes the law and should be controlled by the legislative authorities so that such acts do not become rampant. In reference to the Malaysian legislation, consumers are protected by APP 1999, especially pertaining to fraudulent acts involving online purchases. Based on APP 1999, it is clear that this Act provides various mechanisms in the form of legal provisions to protect online consumers, which includes punishments against sellers who transgress the law by misleading consumers. In addition, a tribunal was also established under APP 1999 to provide an avenue for consumers to file complaints for a reasonable fee. APP 1999 has provided for subsidiary

regulations related to online transactions that serve as a guideline for online sellers. Based on the provisions contained in APP 1999, it is clear that online users are also well protected by the law.

Acknowledgement:-

Appreciation and thanks to Grant FRGS/1/2019/SSI10/UKM/03/1 as well as Universiti Kebangsaan Malaysia (UKM) for facilitating the research funding and financial support.

References:-

1. Afida Mastura Muhammad Arif, Elistina Abu Bakar & Syuhaily Osman. 2014. *Perlindungan Pengguna Ke Arah Memperkasakan Pengguna di Malaysia*. Persatuan Ekonomi Pengguna dan Keluarga Malaysia. Universiti Putra Malaysia.
2. Md. Abdul Jalil. 2003. *Is The Contracts Act 1950 (Malaysia) Suitable on The Internet: A Critical Evaluation*. *Jurnal Undang-undang dan Masyarakat* 7, 123–138.
3. Mohamed Iqbal, M. S. & Afida Mastura, M. A. 2001. *Akta Perlindungan Pengguna 1999: Penawar untuk masalah pengguna*. *Jurnal Pengguna Malaysia* 1, 1-14
4. Muhammad Fathi Yusof. 2016. *Undang-Undang Kontrak Di Malaysia*. Gombak: Mus'ab E-Books Publication House.
5. NCCC. 2019. *Annual Consumer Complaints Report 2018*. Petaling Jaya: Selangor. Sakina Shaik Ahmad Yusoff & Azimon Abdul Aziz. (2003). *Mengenal Undang-undang Kontrak Malaysia*. Petaling Jaya: International Law Book Services.
6. Soklingam, A. 2021. *KPDNHEP. Webinar: Sejauhmana Perlindungan Pengguna Terhadap Pembeli dalam Talian?* 21 Mac.
7. *Tribunal Tuntutan Pengguna*. n.d. Portal Rasmi Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna. <https://www.kpdnhep.gov.my/ms/info-korporat/bahagian/timbangan-ketua-setiausaha-pendayaupayaan-pengguna/tribunal-tuntutan-pengguna-malaysia-ttprm>, 27 November 2022.