Future of Indonesian Archipelago Consumer Protection Law in the Era of ASEAN Economic Community

Agustinus Joko Purwoko¹, R. Benny Riyanto², Bambang Eko Turisno²

¹Doctorate Program of Law Sciences, Diponegoro University, Semarang, Indonesia
Email: jokopurwoko.jp@gmail.com
²Faculty of Law, Diponegoro University, Semarang, Indonesia
Email: bennyriyanto@gmail.com
³Faculty of Law, Diponegoro University, Semarang, Indonesia
Email: bambangekoturisno@gmail.com

Abstract. Today, consumer protection issue is not only a national issue, but it also has become an international issue. Indonesia has had the consumer protection law since 1999 which is expected to protect the interests of consumers in an integrative and comprehensive manner and can be applied effectively in the community. After being applicable for more than 17 years, a number of weaknesses were found that the results were less optimal in consumer protection in Indonesia. On the other hand, since 2007, the ASEAN Committee on Consumer Protection (ACCP) has been established, which aims to notify and exchange information, to resolve cross-border consumer issues, and to increase the capacity of ASEAN communities. Finally, the ASEAN countries established a partnership through the integration of economic sectors in a single market in Southeast Asia, called the ASEAN Economic Community. The advances in information and communication technologies are increasingly pushing for the new techniques of trade transactions, which directly or indirectly affect consumers. Consumer protection aspect also becomes one of the parts included in the ASEAN Economic Community Blueprint 2025 (AEC Blueprint 2025). The paper was a conceptual study that used a qualitative analysis of the future of consumer protection law in Indonesia in the era of the ASEAN Economic Community. The analysis results show that the Indonesian Consumer Protection Law still has some weaknesses in the aspects of substance, structure, and legal culture. UUPK (Consumer Protection Law) as the substance of Indonesian consumer protection law requires revisions considering the AEC Blueprint 2025.

Keywords: consumer protection law, ASEAN economic community

1. Introduction

The history of the world consumer protection movement recognized the doctrine of caveat emptor (let the buyer beware) which is a warning for consumers to be cautious about consuming goods or services, and caveat venditor (let the seller beware) which is a warning for manufacturers to be careful in producing or marketing their products or services [1]. The development of the two doctrines is strongly influenced by many factors that develop in a country, including the availability of strong regulation in the field of consumer protection, the law enforcement, the parties involved in it, and the society’s legal culture of as a whole. It makes the issue of consumer protection grow at a global level.

The ASEAN countries, since 2007, have established the ASEAN Committee on Consumer Protection (ACCP), which aims to notify and exchange information, to resolve cross-border consumer issues, and to increase the capacity of the ASEAN communities. Recently, the ASEAN countries establish a partnership through the integration of economic sectors in a single market in Southeast Asia, called the ASEAN Economic Community. The cooperation will definitely enhance the dynamics of trade in goods and services due to the elimination of tariff and non-tariff barriers in the ASEAN
countries. The advances in information and communication technologies are increasingly pushing for new techniques of trade transactions, which directly or indirectly affect consumers. Considering this aspect, the aspect of consumer protection is also one of the parts included in the AEC Blueprint 2025.

The dynamics of consumer protection issues at regional and international levels influences the dynamics of consumer protection in various countries. Indonesia has to be involved and even bound by the agreements made in the ACCP and the ASEAN Economic Community. Indonesia with its large population is a potential market for goods and services circulation, and the fact will spur the increasing investment, industry and trade activities. Globalization has factually made economic activities more diverse and has expanded over the countries’ territorial borders. It encourages businessmen to conduct business activities in various fields; production, distribution and service affairs. Industrial and trading activities are growing as they are supported by technological advances. Innovation and modern technology in production, information, communication, and transportation enable mass production and distribution processes to various places. Such development and progress have an impact on the increase of various products and services produced and/or distributed by businessmen. The progress and development benefit consumers, as they will have a lot of choices to get goods and services. However, consumers will also possibly be the business activity objects conducted by businessmen bombarding them with various kinds of goods and services. The consumers will be increasingly stimulated to act consumptively by the presence of advertisement in various places and media.

Indonesia has Law no. 8 of 1999 on Consumer Protection (UUPK) which has been around for more than 17 years. The general elucidation of the UUPK argues that UUPK is an umbrella (legal umbrella) which integrates and strengthens the law enforcement in the field of consumer protection. The establishment of UUPK is an effort to empower consumers in order to protect their interests in an integrated and comprehensive way, and it can be applied effectively in the community. The tool of law protecting consumers is not intended to turn off the activities of businesses, but, on the contrary, consumer protection will create a healthy business climate encouraging the emergence of a tough company in facing the competition of qualified goods and services provision. The implementation of the UUPK has so far shown the existing weaknesses and problems.

Indonesian (consumer) society has a heterogeneous condition, in terms of education, economic capability, and the level of legal awareness. It will greatly affect the level of awareness, willingness and ability to respond when their rights as consumers are violated. The ability of the consumers to get an access to justice is strongly influenced by the factors. On the other hand, the state has an obligation to protect its people (consumers), amidst increasingly diverse methods of trade transactions. The condition poses a challenge to the future of consumer protection law in Indonesia. Based on the description above, the problem discussed in this paper was ‘How the future of Indonesian consumer protection law in the era of ASEAN Economic Community. The aim to be achieved from the results of this study was to provide a description and analysis of the need for the changes in UUPK (Consumer Protection Law) as the substance of consumer protection law in Indonesia to face the era of ASEAN Economic Community. The analysis in this paper consists of 3 (three) parts. The first part deals with the problems and weaknesses of consumer protection law covering the aspects of substance, structure, and legal culture. The second part covers the degree of conformity between the substance of the Consumer Protection Law and the characteristics and elements of consumer protection in the AEC Blueprint 2025. The last part explains the concrete steps that must be taken by the Indonesian government to strengthen comprehensive national and regional consumer protection systems that can function well.

2. Method

This paper is a conceptual study of the future of Indonesian consumer protection law in the era of the ASEAN Economic Community. The data used in this paper was secondary data consisting of primary and secondary legal materials. The primary legal materials included laws and regulations
relevant to the topic of the study, and the secondary legal materials included books and the other literature relevant to the topic of the study. The data were collected through literature studies, both in hard copy and electronic form. Once collected, the data were analyzed qualitatively by using socio-legal approach.

3. Findings

3.1. The Problems and Weaknesses of Indonesian Consumer Protection Law (UUPK)

This section describes the problems and weaknesses of the UUPK and its implementation by using the legal system approach including the aspects of structure, substance, and culture.

The substance of the UUPK has several weaknesses and problems that hamper its implementation and law enforcement, i.e.:

(a) The consumers referred to in the UUPK are end-users, but the definition of end consumers is not clear so that it leads to various interpretations in the implementation and enforcement of the UUPK;

(b) The limitations of business are highly broad and blurred, in terms of the form, type, and field of businesses;

(c) In the chapter, the acts prohibited for business practitioners are confused between 'producing' and 'trading', whereas the legal relationship and responsibility between businesses and consumers from both terms are different. It results in a confusion in its application and law enforcement;

(d) Unclear definition of standard clauses and the legal consequences of the faulty use of standard clauses results in various interpretations in the application and enforcement of the UUPK;

(e) The Consumer Dispute Resolution Agency (BPSK) shall not be authorized to execute its verdict, but it shall be required for the fiat execution at the district court;

(f) Although the BPSK's decision is final and binding, it appears that the UUPK provides an opportunity for parties not to accept the decision of the BPSK to file an objection to the decision to the district court;

(g) The National Consumer Protection Agency (BPKN) serves only as an advisory body, so it does not have a coordinating function in the implementation and enforcement of the UUPK.

The structural aspect is related to the establishment, execution, and law enforcement institution or apparatus. Historically, it can be argued that the UUPK is drawn up by the Parliament (DPR) based on the right of initiative. The processes of filing, discussing, and endorsing were performed quickly from November 1998 to April 1999 in the midst of economic, social and political crisis. The state and national crisis accompanied by foreign interventions influenced the process of lawmaking. The roles of social forces did not only influence the people as the targets governed by law but also against legal institutions including law-making institutions. The implementing and enforcing agencies of the UUPK have obstacles in carrying out their duties and authorities. The coordination among various law enforcement agencies involved in enforcing the UUPK; in relevant Ministries, the Consumer Dispute Resolution Agency (BPSK), Police, Prosecutor and Court did not work well.

Satjipto Rahardjo, quoting Friedman, argued that legal culture is defined as the attitudes and values related to law along with the attitudes and values related to the behaviors concerning law and its institutions, either positive or negative. Friedman explains legal culture as social forces which are constantly at work on the law and the element of social attitude and value. The overall substance and structure of the UUPK are highly dependent on the surrounding legal culture. Highly legal-positivistic legal procedures of law enforcers and implementers will hinder the creation of justice for consumers.
3.2. Level of Conformity between the Substance of the Indonesian Consumer Protection Law and the ASEAN Economic Community Blueprint 2025

The United Nations has published guidelines for consumer protection. The United Nations Guidelines for Consumer Protection are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions, and redress systems. Furthermore, the Guidelines assist the interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their economic, social and environmental circumstances; they also help promote international enforcement cooperation among the Member States and encourage the sharing of experiences in consumer protection. The Guidelines were first adopted by the General Assembly in resolution 39/248 of 16 April 1985, later expanded by the Economic and Social Council in resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly in resolution 70/186 of 22 December 2015.

These guidelines have inspired and encouraged many countries and regions of the country to formulate similar guidelines. The ASEAN countries have formulated the ASEAN Strategic Action Plan for Consumer Protection 2016-2025. The ASEAN Strategic Action Plan for Consumer Protection or the ASAPCP sets out ASEAN’s strategy for consumer policy over the next ten years (2016-2025). The ASAPCP builds upon the ACCP work on consumer protection since its establishment of the ACCP in 2007. The focus of the ACCP work has been to ensure that consumer protection legislation is in place in all AMS, consumer access to information is enhanced, mechanisms for consumer redress and recalls are effective and running, and institutional capacity is strengthened. These are reflected in the strategic approaches under the work plan for the ACCP 2012-2015, and the significant progress made in the last 9 years.

The ASAPCP comprises of four goals, covering a ten-year period from 2016 to 2025. The implementation of the ASAPCP will be overseen by the ASEAN Committee on Consumer Protection (ACCP) in cooperation with other ASEAN sectoral bodies, relevant consumer bodies, and stakeholders. The four goals under the ASAPCP are:

I. A Common ASEAN Consumer Protection Framework is Established;
II. A High Common Level of Consumer Empowerment and Protection is Ensured;
III. High Consumer Confidence in the AEC and Cross-border Commercial Transactions is Instituted; and
IV. Consumer Concerns in all ASEAN Policies are integrated.

These goals are designed to allow ASEAN to work towards a common consumer protection framework, build ASEAN citizens confidence in the ASEAN Economic Community (AEC), integrate consumer concerns into all other ASEAN policies and to maximize the benefits of the AEC for consumers and business. The following are the objectives of the ASAPCP:

I. to develop a dynamic, people-centered AEC that generates prosperity for consumers and business;
II. to build consumer confidence in a fair and transparent ASEAN market; and
III. to achieve this by working along and together with AMS, national consumer administrations and consumer organizations.

In a wider context, The ASEAN Economic Community formed in 2015 has formulated the AEC Blueprint 2025. One of the characteristics formulated in the AEC Blueprint 2025 is ‘A competitive, innovative and Dynamic ASEAN’. The objective of this characteristic is to focus on elements that contribute to increasing the region’s competitiveness and productivity by (i) engendering a level playing for all firms through effective competition policy; (ii) fostering the creation and protection of knowledge; (iii) deepening ASEAN participation in GVCs; and (iv) strengthening related regulatory frameworks and overall regulatory practice and coherence at the regional level.
The characteristic includes the material on consumer protection as one of the key elements. Consumer protection is an integral part of a modern, efficient, effective and fair marketplace. Consumers will demand the right of access to: adequate information to enable them to make informed choices, effective redress, and products and services that meet standard and safety requirements. Increased cross-border trade, use of e-Commerce and other new trading methods resulting from globalization and technological advancement require governments to find innovative ways of protecting and promoting the interests of consumers. This will require comprehensive and well-functioning national and regional consumer protection systems enforced through effective legislation, redress mechanisms and public awareness.

Strategic measures include the following: (i) Establish a common ASEAN consumer protection framework through higher levels of consumer protection legislation, improve enforcement and monitoring of consumer protection legislation, and make available redress mechanisms, including alternative dispute resolution mechanisms; (ii) Promote a higher level of consumer empowerment and knowledge by addressing consumer concerns as well as enhancing consumer knowledge and advocacy; (iii) Build higher consumer confidence and cross-border commercial transactions by strengthening product safety enforcement, stronger participation of consumer representatives, and promotion of sustainable consumption; (iv) Encourage consumer-related matters in ASEAN policies through impact assessment of consumer protection policies and development of knowledge-based policies; and (v) Promote consumer protection measures in products and services sectors such as finance, e-Commerce, air transport, energy, and telecommunications.

The formulation and coverage of consumer protection in the AEC Blueprint 2025 are more visionary than those of the UUPK. It encourages a more comprehensive and visionary review of the substance of the UUPK. The strategic aspects formulated in the AEC Blueprint 2025 have already been in part in the substance of the UUPK, for example, on consumer counseling and advocacy, alternative dispute resolution and compensation for consumers. Some others have not been available yet or still need to be improved in their effectiveness to strengthen the law enforcement of product security, to promote sustainable consumption, consumer protection and knowledge-based policy development, and to promote consumer protection measures in the sector of products and services using technology in the transaction model (e-commerce).

3.3. Concrete measures to strengthen comprehensive national and regional consumer protection systems

Indonesia, with a large population today (around 257 million of people), is a potential market for the circulation of goods or services. The condition spurs increasing investment, industry and trade activities. On the one hand, the condition benefits consumers because they have many options to get the goods and services needed. On the other hand, consumers will be the object of business activities of the businesses which bombard consumers with all kinds of goods and services. Consumers are increasingly stimulated to act consumptively through the presence of advertising in various places and media. The Indonesian community (consumer) is heterogeneous, in terms of education, economic capacity, and level of legal awareness. It greatly affects the level of awareness, willingness, and ability to respond when their rights as consumers are violated. The ability of consumers to access to justice is strongly influenced by the factors. According to Ward Berenschot and Adriaan Bedner [8], Indonesian is included in a lower class or at a disadvantage position when faced with the judicial system. Businessmen, with their capabilities in the capital, technology, or distribution networks, are possible to run their business activities in an unlawful and dishonest way to gain great profits. It may be the case in a production process that ignores the quality of product safety, which means ignoring the interests and rights of consumers.

The increasingly strong global economic system results in the control of the strong against the weak. The state has the responsibility of providing protection to weak parties, including consumers when disputing with stronger businesses (national or multinational/ trans-national corporations). All
stakeholders consisting of the state, business, and consumer have a shared responsibility to achieve protection to consumers. The primary duty of the legal bearers in the level of legislation, judicial or execution is to identify and realize a bonum commune [9]. The common goals and goodness of all Indonesian people have been formulated in Pancasila and the 1945 Constitution. The development of the legal system, including the consumer protection law, is strongly supported by the politics of economic law which is based on Pancasila and the 1945 Constitution. The protection and granting justice to every citizen (Consumer) are the aspects that must be realized together.

The access to justice for consumers should be strengthened by the following measures: (a) revising the substance of the UUPK in order to cover consumer protection issues in a more comprehensive and visionary manner; (b) increasing and building the capacity of the implementing and enforcing authorities; (c) establishing and strengthening the legal awareness in consumers and businesses.

4. Conclusion

Based on the results of the discussion, it can be concluded that: (a) the weaknesses and problems of the UUPK cover the aspects of substance, structure, and legal culture. They hinder the implementation and enforcement of the UUPK which does not provide injustice in consumers; (b) The formulation of consumer protection materials in the AEC Blueprint 2025 is more visionary than the UUPK. Some of the strategies formulated in the AEC Blueprint 2025 have already been included in the UUPK, but there are still others that need to be formulated and improved; (c) the concrete measures that have to be taken are the revision of the UUPK and building the capacity of law executor and enforcement officers as well as the legal awareness of consumers and businesses.

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