The Legal Protection of E-Consumers Against E-Commerce Fraud in Malaysia

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ABSTRACT
In the past decade, E-commerce has developed and plays a vital role in our daily lives. However, fraud in E-commerce has increasingly become more prevalent and causes huge monetary loss, especially to E-consumers which usually results in them being unable to get what they have paid for. Fraudsters use various modus operandi to trick E-consumers such as displaying cheap goods via online platforms to induce them to pay for the goods. Despite considerable concerns about E-commerce fraud in Malaysia, the legislative sanction is still inadequate due to the deficiency of the existing legal framework. This paper examines the nature of E-commerce fraud, understand the modus operandi, and look into the legal protection afforded to E-consumers in Malaysia. It employs doctrinal content analysis and secondary data from the Malaysian Penal Code and the Communication and Multimedia Act 1998, academic journals, books, news articles and online databases. The authors contend that the lack of legal protection for E-consumers is due to the insufficiency of the law and the lack of awareness of the gravity of the such crime. Effective governance of fraud in E-commerce is imperative to facilitate prosecution and investigation and holistic protection for the victims of cyber fraud.

CONTRIBUTION/ORIGINALITY: This paper contributes to the existing literature on the protection of E-consumer against E-commerce fraud in Malaysia. It detailed the modus operandi of the fraudster, the lack of awareness of the E-consumers and the protection provided by the Malaysian Penal Code and the Communication and Multimedia Act 1998 to the consumers.
1. Introduction

E-commerce fraud involves any type of fraud that takes place on an E-commerce platform. According to the United Nations Centre for Facilitation of Procedures and Practices for Acquisition, Commerce and Transport, 1997, Electronic Commerce is defined as doing business electronically which includes the sharing of structured or unstructured business information by any means such as electronic mail or messaging, World Wide Web technology, electronic bulletin boards, smart card, electronic funds transfer and electronic data interchange between the suppliers, customers, government bodies, and other partners to perform transactions in business, administrative and consumer activities (Misiran et al., 2021). E-consumers generally indicate the person who purchases the goods and services through electronic systems like the Internet and other computer networks (Amin & Mohd Nor, 2013). The digital age has made lives more efficient and convenient. Daily activities formerly viewed as time-consuming can now be done more effortlessly (Misiran et al., 2021).

However, in an online transaction, the disadvantage is that the consumers unable to see and touch the products but merely look at the electronic images of the products which may be misleading and the consumers have the right to information (Muhammad Arif et al., 2021). Besides, E-commerce is also struggling due to online fraudulent activities (Misiran et al., 2021). Insufficient and vulnerable cyber security is a setback commonly shared by online users, including buyers, sellers and platform providers (Misiran et al., 2021).

The Ministry of Domestic Trade and Consumer Affairs reported that they receive more than 2,500 complaints monthly on E-commerce fraud which shows the gravity of the such crime and the severe impact experienced by victims (Bernama, 2019). 24,018 complaints were recorded by The Ministry of Domestic Trade and Consumer Affairs (KPDNHEP) on online fraud and electronic media scams during the pandemic and based on these complaints recorded from 2020 to 17 February 2022 the losses amounting to RM21.7 million (Aubrey, 2022). 8,162 cases of E-commerce fraud with losses amounting to RM57.73 million have been reported nationwide as of 31 October 2021 (Bernama, 2021). According to Bukit Aman Commercial Crime Investigation Department (CCID) investigating officer Assistant Superintendent Mohd Sa’adon Sabirin, E-commerce fraud continues to surge (Bernama, 2021). In 2018, there were only 3,318 cases involving losses amounting to RM22.39 million but the situation get worse in 2020 when 5,848 cases of E-commerce fraud were reported as more people started buying online when the Covid-19 pandemic hit (Bernama, 2021). It was believed that the statistics only conferred to those who are cheated and file reports, whereas there are still people who do not lodge police reports (Bernama, 2021). Apart from that, such reports validate the notion of how E-commerce needs to be better governed to ensure safety and security for E-consumers.

2. Literature Review

E-consumers generally indicate the person who purchases goods and services through electronic systems like the internet and other computer networks. The consumer that purchases the goods and services through E-commerce is called E-consumer and this E-consumer is exposed to cyber fraud in the E-commerce environment.
2.1. Lack of legal protection towards E-consumers

In Malaysia, the laws that safeguard the E-consumers in online shopping are the Sale of Goods Act 1957, Consumer Protection Act 1999 (CPA), Electronic Commerce Act 2006 and Consumer Protection (Electronic Trade Transactions) Regulations 2012 (Abdul Rahman, 2020). Besides, some factors may affect the consumer welfare in E-commerce which are lack of knowledge of consumer protection, consumer economy, the expansion of government interference, a practical and effective dispute settlement process between E-commerce and buyers, and appropriate solutions for e-commerce contracts for the selling of products (Abdul Rahman, 2020). These all factors have resulted in consumer protection legislation remained to be lacking (Abdul Rahman, 2020).

According to Arif, there is a deficiency of research on how consumers should empower and protect themselves in the online market even though there are extensive studies on the legislative measures (Muhammad Arif et al., 2021).

According to Abdul Rahman (2020), regulations on consumer protection must safeguard that goods sold meet satisfactory standards of quality and safety especially if the customer has made clear the reason for the intention of the usage of the product (Abdul Rahman, 2020). The legislation must guarantee that the E-retailer is only allowed to supply goods which are suitable for the purpose described by the consumer and the goods supplied must comply with any descriptions of the product (Abdul Rahman, 2020). A useful regulation on consumer protection should include provisions protecting the right of consumers to return or exchange products, if necessary and guarantee that consumers are allowed a refund when it is reasonable (Abdul Rahman, 2020). There is also a need of regulation for consumer protection to allow an adequate "cooling off " time to give consumers the right to return goods or cancel service within a reasonable time of entering into the contract for those goods (Abdul Rahman, 2020).

2.2. Modus operandi of the fraudster

According to Yurita, occurs when someone is cheated out of money by another party either an individual or business originally a promise by the seller to provide services or goods which do not exist, are not intended to be provided or were misrepresented (Abdul Talib & Rusly, 2020).

Online fraud currently is a global issue-and uses various Internet technologies such as e-mails, chatrooms, websites, and most recently social networking sites to conduct fraudulent transactions (Abdul Talib & Rusly, 2020). Those tools are relatively cheap or free and are easily accessible by fraudsters (Abdul Talib & Rusly, 2020).

Witke suggests several ways E-commerce fraud can be committed but the most common types of fraud are identity theft, friendly fraud, clean fraud, triangulation fraud, merchant fraud, etc (Witke, 2019).

Identity theft is the most common type of E-commerce fraud (Witke, 2019). Fraudster usually targets personal information, such as names, addresses, email addresses and credit card or account information to commit identity theft which is using to order items online under a false name and pay using another people's credit card information or by debiting another person's account (Witke, 2019). Friendly fraud is another modus operandi used by the fraudster to trick the customer (Witke, 2019). Customers will
order goods or services and pay for them using a "pull" payment method such as a credit card or direct debit (Witke, 2019).

Clean fraud is another way a fraudster uses a stolen credit card to purchase anything, but the transaction is manipulated to evade the fraud detection functions (Witke, 2019). Another type of E-commerce fraud is triangulation fraud where the fraud is carried out through three points (Witke, 2019). Firstly, a fake online storefront that offers high-demand goods at very low prices; secondly, using other people’s stolen credit card data and the name collected to order goods at a real store and ship them to the original customer; thirdly, using the stolen credit card data to make additional purchases where the order data and credit card numbers are now almost impossible to connect, so the fraud usually undiscovered for a more extended period which can result in huge damages (Witke, 2019).

Merchant fraud is another very simple method (Witke, 2019). Goods are usually offered at low prices but are never shipped. The fraudster will keep the payments (Witke, 2019). This method is also used in wholesale and there is no specific payment method.

2.3. Lack of awareness of the E-consumers

As online fraud keeps increasing, consumers should be cautious when dealing with online shopping to avoid being a victim of online shopping fraud. According to Button et al. (2014), new forms of shopping have grown with Amazon and eBay and online banking services are also now used by half the UK adult population, but seventy-six per cent (76%) of 25–34-year-olds which cause the revolution around the globe in the way we interact with one another and buy goods and services (Button et al., 2014). These changes have also provided new chances for the fraudster to commit crimes and frauds (Button et al., 2014).

According to Germain, young adults and adults over 75 are the most vulnerable cybercrime victims (Germain, 2021). This is because young adults tend to be more relaxed in their usage patterns and willing to share personal data even though they are highly tech-savvy while, the adults over the age of 75 confront a different challenge as they are less familiar with the latest digital technologies which increased their susceptibility to scams and phishing attempts (Germain, 2021).

There are certain types of consumer-targeted by the scammer to fall into their trap. According to the Ministry’s head of Investigation, Exhibit and Operation Division, Shamsul Nizam Khalil, overexcited and unsuspecting customers who have easy access to banking and communication services were to blame for falling prey to the scammers (Bavani, 2020). He also said that even nowadays, consumers can buy anything online, they do not think about the genuinity of the products because of getting carried away with the discounts and promotion and the consumer actually should check the price of the product, the company name, address and email when buying from the Facebook platform (Bavani, 2020). The consumer should always be cautious to avoid being targeted by scammers in E-commerce (Bavani, 2020).

Besides, the previous Deputy Minister, Chong Chieng Jen said that the Ministry had received complaints from the public that they would get some money if they were able to recruit new members for the company and could also obtain commissions when those members buy the company’s products and it is advisable that if any MLM scheme or
direct selling scheme promises high returns with only minimal work or high yields on recruiting the members, that maybe money scam or pyramid scheme which is against the law in Malaysia (Bernama, 2019).

The literature suggested that fraud, theft, blackmail and ransom have converted into the cyber context, and nowadays, it represents the natural one in which opportunities will arise (Abdul Talib & Rusly, 2020).

3. Methodology

This paper implements a library-based research methodology through conceptual and doctrinal legal analysis. The secondary data consists of primary sources which are the consumer protection laws. The primary source is triangulated with secondary sources, including journals, law reports, decided cases, online databases and other library-based sources. Data analysis of these primary and secondary sources is using thematic and content analysis.

4. Result

According to Arif, the issue in cyberspace is that the advertisement placed on the website is considered as an ‘invitation to treat’ and the problem is whether the acceptance made only using the computer system without the knowledge of the trader can be considered as acceptance as the law has required that before it considered as a valid contract, both parties must agree and know about the terms of the contract (Muhammad Arif et al., 2021). After that, the issue of contract validity is resolved by the enactment of the Electronic Commerce Act 2006 (ECA) which is under the purview of the Ministry of Domestic Trade and Consumer Affairs (MDTCA) (Muhammad Arif et al., 2021). The ECA recognizes electronic messages, but electronic transactions must be done in a secure system (Muhammad Arif et al., 2021).

Then, the Trade Description Act 2011 (TDA) was enacted to promote good trade practices to forbid false or misleading trade descriptions regarding the supply of goods or services (Muhammad Arif et al., 2021). The TDA is applicable for both online and physical store transactions (Muhammad Arif et al., 2021). The TDA is under the jurisdiction of the MDTCA, and the provisions enable the suppliers to be punished if they commit the offence (Muhammad Arif et al., 2021). If the consumers want to claim damages, actions can be taken under contract law, tort law and the Consumer Protection Act 1999 (CPA) (Muhammad Arif et al., 2021).

Malaysia tends to rely on the Act enacted in Malaysia such as the Consumer Protection Act (CPA) which came enacted on the 15th of November 1999 to provide legislative provisions to protect the consumers in Malaysia (Ministry of Domestic Trade and Consumer Affairs, 2021). The CPA is the main statute for consumers to claim compensation (Muhammad Arif et al., 2021). CPA establish the Tribunal of Consumer Claims (TCC) as the main channel for consumers to seek compensation (Muhammad Arif et al., 2021). The CPA has also made important developments to the law by providing some implied guarantees concerning the supply of goods in Part V and the supply of services in Part VIII (Muhammad Arif et al., 2021). The consumer has the right to quiet possession of the goods stated in section 31, the goods are of satisfactory quality in section 32, the goods fit for their purpose in section 33, the goods correspond with the description in section 34, the goods correspond with the sample in section 35,
reasonable price in section 36 and the availability of repairs and spare parts in section 37 (Muhammad Arif et al., 2021). Besides, the CPA also provides a remedy that requires the supplier to remedy the failure within a reasonable time which is stated in sections 41 and 42 of the CPA (Muhammad Arif et al., 2021). If the failure is unable to be remedied, the consumers can choose either to get a refund or replacement as stated in sections 44 and 46 (Muhammad Arif et al., 2021).

In 2002, there is an amendment of Subsection 17 (1) to list the types of Future Services Contract gazette by the Ministry for the section (Ministry of Domestic Trade and Consumer Affairs, 2021).

Then, in 2003, there is a further amendment to increase the Tribunal for Consumer Claims (TTPM)'s membership to include members from judicial and legal services as well as the TTPM's award to be increased from RM10,000 to RM25,000 (Ministry of Domestic Trade and Consumer Affairs, 2021).

In 2007, the CPA was amended to remove section 2(2)(g) to enable protection to the consumers nevertheless of the nature of their transaction. Part II of the CPA deals with misleading and deceptive conduct, false representation and unfair practice (Muhammad Arif et al., 2021). It is also including the prohibition of misleading price indication, bait advertisements, promising of giving gifts, prizes and free offers with no intention of providing and requesting payment with no intention to supply (Muhammad Arif et al., 2021).

In 2010, the amendment of CPA inserted a new Part IIIA, which significantly impacts consumer protection in Malaysia where it addressed the issue concerning unfair contract clauses (Muhammad Arif et al., 2021). The amendment authorizes the court or the Tribunal for Consumer Claims (TCC) to raise the matter regarding whether the contract or the terms of the contract are procedurally in section 24C and substantively in section 24D unfair no matter if no party has raised the question in their pleading (Muhammad Arif et al., 2021). The effect of the amendment is that the court or Tribunal may decide whether the contract or terms of the contract are not enforceable or void (Muhammad Arif et al., 2021). In the case of Che Mohd Hashim Abdullah v Air Asia X Sdn. Bhd (no: TTPM-WPPJ-(P)-10-2011), the Tribunal ruled that when making an online purchase, the consumers have no bargaining power and therefore, any unfair clause was considered invalid (Muhammad Arif et al., 2021).

Later on, the CPA was last amended in 2019, where the claim value limit was increased from RM25,000 to RM50,000 and the maximum penalty for non-compliance of tribunal award, which increased from RM5,000 to RM 10,000 or imprisonment for a term not exceeding two years or both (Muhammad Arif et al., 2021).

Even though there is some overlap between the CPA and TDA, the significant difference is that the TDA is a purely penal statute but, section 29 of the CPA empowers the court in criminal cases to make compensation orders to direct the offenders to pay damages to the consumers (Muhammad Arif et al., 2021).

Besides, the implementation of Section 51 of the CPA which stated that there is no right of recourse against the manufacturer if the goods fail to meet the implied warranty under section 50 because (a) of default or omission of a person other than the manufacturer, or any statement made by such person; or (b) of a cause independent of
human control, arising after the goods have left the control of the manufacturer is considered as an instrument of injustice because it helps producers to escape their responsibility (Abdul Rahman, 2020).

The Consumer Protection (Electronic Trade Transactions) Regulations 2012 (ETT) has also been passed under the CPA to regulate online transactions, especially concerning information disclosure (Muhammad Arif et al., 2021). ETT applies to online traders and online market operators such as Lazada, Shopee, eBay, Lelong, Mudah and others (Muhammad Arif et al., 2021). ETT require online traders to reveal important information such as the name of the person, who operates a business, the registration number of a business company, the email address, telephone number, description of the goods and services, the full price, the modes of payment, the estimated time of delivery and all the terms and conditions of the transaction on the website (Muhammad Arif et al., 2021). Moreover, online traders should also provide the appropriate means for the customers to cure any errors before confirming the order and acknowledge receipt of the order to the consumers without undue delay (Muhammad Arif et al., 2021). There is also a compulsory responsibility for online marketplace operators to maintain a proper record of their customers for a period of two years (Muhammad Arif et al., 2021). ETT protects consumers when they are dealing with online traders, including online market operators (Muhammad Arif et al., 2021).

Another statute regulating online transactions is the Direct Sales Act and Anti-Pyramid Scheme 1993 (DSASA) which covers the door to door services and mail order including electronic means (Muhammad Arif et al., 2021). There are ten days cooling-off period that begins after the contract date excluding public holidays to allow the buyers to reconsider whether they want to cancel or proceed with the transaction (Muhammad Arif et al., 2021). Nevertheless, the right to rescind the contract can be waived by the buyers by serving the seller a notice in writing demanding the goods to be delivered and the services to be performed (Muhammad Arif et al., 2021). The DSASA is a penal statute and needs strict enforcement to be effective (Muhammad Arif et al., 2021). However, the Act’s effectiveness is not been proven yet, especially for online consumers (Muhammad Arif et al., 2021).

Fraudsters usually offer products or services and demand some amount of money to be paid (Abdul Talib & Rusly, 2020). Victims continue with the payment, even though the products or services promised have not yet been obtained by the E-consumers (Abdul Talib & Rusly, 2020). Victims only realise that they had been defrauded later when the seller started to be unresponsive to their communications (Abdul Talib & Rusly, 2020).

According to Abdul Rahman (2020), not even one legislation has been enacted in Malaysia that protects e-consumers including the Consumer Protection Act 1999 (Act 599), which is the primary consumer protection regulation in Malaysia (Abdul Rahman, 2020). This caused insight to the consumers that legal protections for E-commerce transactions in Malaysia are almost non-existent (Abdul Rahman, 2020).

Even though many studies have been conducted on the aspects of the law to improve consumer protection, these legal instruments are still insufficient to resolve all types of problems caused by online purchase transactions (Muhammad Arif et al., 2021). Hence, these causes the consumers themselves to learn to protect themselves in online transactions (Muhammad Arif et al., 2021). In addition, going to court should always be
the final option and should only be considered when other choices have been exhausted (Muhammad Arif et al., 2021).

Online fraud is expected to increase with the evolution of online technologies and it should be expected, as with other countries, that many more Malaysians have been subjected to online fraud but did not report the incidents (Abdul Talib & Rusly, 2020). Typical reasons for not reporting such incidents in Malaysia are due to embarrassment, self-blame, the small scale of the fraud and not knowing what to do when the fraud occurred (Abdul Talib & Rusly, 2020). Since the Ministry provides many venues to assist the consumers in filing a complaint, the consumers must be educated to clear the cache after every online transaction and file complaints when the online purchase transaction is unsatisfactory (Muhammad Arif et al., 2021).

5. Conclusion

In conclusion, Fraud in E-commerce becomes more common nowadays due to the evolution of online technologies. Even though various types of online fraud are difficult to determine, has used certain legal protection to protect E-consumers. The government has enacted legislation such as the Consumer Protection Act (CPA), the Sale of Goods Act 1957 (SOGA), the Consumer Protection (Electronic Trade Transactions) Regulations 2012 (ETT Regulations) and the Electronic Commerce Act 2006 (ECA) to protect the E-consumers in Malaysia. However, the legislations enacted in Malaysia are still inadequate to protect E-consumers. Some Act enacted is ineffective as not been proven yet. Besides, some Provisions in the Act becomes the instrument of injustice. Since, the legislation is inadequate to protect the E-consumers, this caused the E-consumers to learn to protect themselves in online transactions. However, this is not an easy task because some E-consumers refused to complaint about the fraud occurrence due to the worries of the humiliation, self-incrimination, and lack of knowledge.

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