

ESTABLISHMENT OF ONE-STOP SERVICE ORGANIZATION FOR CONSUMER PROTECTION IN THAILAND^{*}

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Abstract

This article presents a new alternative for Thailand's consumer protection by establishing a new organization with the duties to receive consumer cases and send them to the relevant government agencies including follow up on the cases on behalf of the consumers within a reasonable time. These government agencies do not have enough personnel to support the consumers whose rights were violated, therefore, to help reducing their workloads and to produce more effective remedy process for the consumers, the author suggests an establishment of a new organization. Moreover, to reduce the amount of consumer cases, which are petty cases, the authority shall institute a new organization entitled to settle the consumer cases under the Office of the Consumer Protection Board. This organization would be an obvious remedy to the aforementioned limitations.

Keywords: Consumer Protection, Remedy, Alternative Dispute Resolution, Consumer Complaint

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1. Introduction

The problems of the consumer protection process in Thailand are the existence of several authorized organizations that supervise the different areas of consumer protection, depending on the category of goods and services. In Thailand, there are no regulations governing the standard of time required to process the remedies. In some cases, there are only minimal damages which do not require much time as the other cases. Another important reason is the weakness concerning the enforcement of consumer rights as well as there is no forum for consumers to voice their concerns, and no one provides them with the information and skills necessary to deal with the advertising. Many consumers, particularly the rural people, the poor, the less-educated, and the people who lack information and option when choosing products, must rely entirely on advertising.

Technology is influential to business operators nowadays because it can help them connecting with consumers via internet for the advertisement of their products or services. It would therefore be influential to consumers' behaviors when they have to decide to buy any goods or services. Moreover, business operators use high technology and science to produce their goods or services. In contrast, consumers still lack knowledge about the quality of the goods or services and do not see through business operators' marketing techniques. Furthermore, there is an inequality of bargaining power between the parties because consumers do not have the choice to choose. Whenever there is a dispute, consumers do not know which government agency is authorized to handle the case because there are several government agencies that supervise the different areas of the dispute. In addition, some agencies such as the Food and Drug Administration of Thailand has the duty to monitor and punish business operators but they do not have any legal measure to resolve the dispute, which would cause the consumers to take too much of the responsibility in the dispute.

In Thailand, there is an organization that has the responsibility for receiving consumer disputes and supporting the consumers in the

preparation of documents and resolving the dispute. It is the Office of the Consumer Protection Board of Thailand by virtue of Section 21 of the Consumer Protection Act B.E. 2522.¹

However, this office also has a limitation under Section 21 to settle the dispute because in the cases that there are specific laws governing any matters, these cases will be subject to the provisions of such laws. As mentioned above, there are some agencies authorized by law to settle the cases but these agencies do not have any legal measures to handle the consumer cases. From the example above, it shows that there are various regulations and authorized agencies which have the duties to supervise the different business areas. However, when the dispute arising from the infringement of consumer rights, there are some agencies authorized to remedy and support the consumers. Moreover, these agencies have the authority only to punish the business operators, but they do not have any legal authority to help the consumers who suffer damages. The consumers have to bring the cases to the Office of Consumer Protection Board, which is authorized by Section 21 of the Consumer Protection Act B.E. 2522.

To support consumers whose right are violated and help reducing the state agency's workload, and to produce more effective remedy process for the consumers, the author would like to study the improvement of the consumer protection law on how to support the consumer remedies. In Thailand, consumers have to file their claims directly with the authorized agencies and they also have different processes of remedy. Therefore, the author will study the consumer laws in Hong Kong and Australia to look for the principle in the process of receiving consumer complaint and further adopt it to develop a process of consumer complaint in Thailand.

2. Consumer Protection in Thailand

Section 46, Section 61 and Section 64 of the Constitution of the Kingdom of Thailand B.E. 2560 confirm the rights of consumers to receive

¹ Consumer Protection Act B.E. 2522 (1979)

the facts and information about the goods and to file complaints for compensation.² Moreover, consumers can protect their rights and the government must provide the consumers with the right to find a consumer protection organization, which is not operated by a government sector or official. The operator of the organization should be any person other than the government official and he/she should have an authority to consider and resolve the dispute with the government's support.

Moreover, the government regulated Consumer Protection Act, B.E. 2522, which aimed to protect the consumers. However, from our research, the author found that there is not only Consumer Protection Act in Thailand that aims to protect the consumer, but there are many other laws and regulations which are regulated to protect consumers as well.³ Such as the Food Act B.E. 2522, Condominium Act B.E. 2551, and Tourism Business and Guide Act B.E. 2551.

The Consumer Protection Act, B.E. 2522 is a general principle of consumer laws which is different from the other consumer laws that focusing on a specific area. Therefore, in the case where a specific law shall impose for any matter, such matter shall be subject to the provisions of that law. The provisions of this Act shall apply only insofar as it is not a repeat of or contrary to such provisions.⁴ There are exceptions in the application of the general principle as follows:

“(a) In case of necessity for the interest of consumers, if it appears that the authorized official under such law has still not proceeded or has not completed the proceeding thereof in accordance with the law concerned and has not issued orders relating to consumer protection in accordance with such law within ninety days from the date of the receipt of written notice from the ad hoc committees or the Board

² Constitution of the Kingdom of Thailand B.E. 2560 (2017)

³ Susom Supanit, *Khum Atibai Kodmai Khumkongpuboripok [Consumer Protection Law]* (Chula Press 2008) (สุสม ศุภนิตย์, คำอธิบายกฎหมายคุ้มครองผู้บริโภค (สำนักพิมพ์แห่งจุฬาลงกรณ์มหาวิทยาลัย 2551))

⁴ Consumer Protection Act (n 1), s 21

(b) In the case where such law does not contain any provisions empowering the competent official to issue orders for the consumer protection, the ad hoc committees would have the power to issue orders in accordance with the provisions, except in the case where there is a provision of the competent official in such law.

As a conclusion, the legal measure under Consumer Protection Act, B.E. 2522 is a basic of consumer protection which intends to protect consumer about goods and service as the general provision where there is not a provision to govern.”⁵

3. Consumer Protection Organization in Thailand

There are several consumer laws and each law are authorized for applying by the organization in the different areas⁶. This is a reason for many various organizations in Thailand. Additionally, the consumer protection organizations in Thailand are classified into two types as follows:

First, the consumer protection organizations that have a general duty to protect consumers in Thailand. There is the Office of the Consumer Protection Board (OCPB) which has the main authority about consumer protection. The board can mediate the cases and file claim for compensation on behalf of the consumers to the court pursuant to Section 39 of the Consumer Protection Act B.E. 2522. However, it is also restricted by Section 21 of the Act to allow OCPB to handle only consumer disputes which are not governed by any specific laws.

Second, the consumer protection organizations that have specific duty to supervise the different areas such as the Food and Drug Association (FDA) which has duty to govern the matter concerning food and drug,

⁵ ibid

⁶ Office of the Consumer Protection Board of Thailand, ‘Consumers International’ (2019) <<https://www.consumersinternational.org/members/members/office-of-the-consumer-protection-board-of-thailand/>> accessed 14 July 2019

however, the FDA is not authorized by law to remedy the consumers,⁷ the National Broadcasting and Telecommunication Commission (NBTC) which has the duty to regulate telecommunication business,⁸ and the Office of the Insurance Commission (OIC) which has the duty to regulate insurance business.⁹ The two latter organizations have many channels to receive the complaints and the process of resolution outside the court. Moreover, Thailand also has the other consumer protection organizations, such as Damrongtham Center, which is a government agency under the Ministry of Interior and has the duty to receive complaints from the people with every area of legal problems.¹⁰

Although there are various government agencies in Thailand authorized by laws with the duties to regulate business operations in different areas, these agencies do not have their own mechanisms to settle the consumer disputes. Therefore, to claim for any compensation, consumers have to return to the Office of the Consumer Protection Board and as a result, it would be inconvenient for consumers who suffer damages. In Thailand, there is no organization authorized to receive all consumer cases and support the consumers in the remedy process outside the court by sending the dispute to the authorized agencies, following up the case in a reasonable time and providing updated feedback to the consumers. In addition, there are no laws prescribing the standard of time required to settle the case and the standard of resolution in the dispute process.

⁷ Food and Drug Association (FDA) Ministry of Public Health, 'Consumer Guidebook' (FDA, 2015) <<http://www.fda.moph.go.th/SharedDocuments/pdf>> accessed 1 April 2019

⁸ Order of Office of National Telecommunications Commission No. 8/2552

⁹ Office of Insurance Commission, 'Introduction' (OIC, 2019) <<https://oic.or.th/thconsumer/complaint1>> accessed 30 April 2019

¹⁰ Damrongtham, Ministry of Interior, 'Complaint Guide Book' (MOI, 2018) <<https://www.damrongdhammoi.go.th>> accessed 3 May 2019

4. Consumer Protection in Foreign Countries

Should the consumers be protected in the international market? It is still a question because it would interfere with the marketing system. In the conservative economic theory, it is advised that market competition would happen when there is a good corporate governance from the state sector. However, if the market is completely competed within the marketing mechanism, the marketing system no longer needs the government's supervision.¹¹

The author has studied the Australian and Hong Kong Consumer Laws and found that in Australia, there is an Australian Competition & Consumer Commission (ACCC) which is empowered to receive complaints from consumers in all cases¹². It is established to provide a mechanism for market fairness.¹³ The organization has a duty to investigate complaints which are related to consumers. After receiving a complaint, if it is a small problem, the ACCC has the power to order the business operator to do or stop doing something such as sending a letter to inform the business operator that its action has violated the consumer's rights. Moreover, the ACCC can request the business operator to mediate with the complainant and if it can be settled, the case will not be brought to the court.¹⁴

In Hong Kong, there is a Consumer Dispute Resolution Centre (CDRC) funded by the government to ensure that the principles of fairness and

¹¹ Lain Ramsay, *Consumer Protection and Criminal Law: Law Theory and Policy in the UK* (Cambridge University Press 2001)

¹² Australian Government, 'The Australian Consumer Law - A framework Overview' (2013) ISBN 978-0-642-74877-5

¹³ Australian Competition and Consumer Commission (ACCC), 'ACCC & AER Annual Report 2017-18' (ACCC, 2017) <<https://www.accc.gov.au/accc-book/printer-friendly/78660>> accessed 11 February 2019

¹⁴ ACCC, 'About the ACCC (2010)' (ACCC) <<https://www.accc.gov.au/about-us/australian-competition-consumer-commission/about-the-accc>> accessed 11 February 2019

justice are observed in managing every case of dispute resolution.¹⁵ The centre proposes that the CDRC would provide preliminary legal advice to consumers and adopt the approach of "Mediation First, Arbitration Next" to the consumers and business operators. Moreover, the CDRC would provide a mechanism for resolving consumer disputes in a manner more efficient and cost-effective than litigation.¹⁶

In Australia and Hong Kong, there are organizations authorized to protect the consumers, which can receive every category of consumer cases. These countries classify the cases by the claim amount called "Small Claim Tribunal" which is an effective method to settle the consumer cases. However, in Thailand the consumer dispute is categorized by the type of consumer cases which is the reason why these cases are sent to the other authorized agencies. Sending the cases to the other authorized agencies take a long time to settle the consumer dispute due to the fact that there is a time-frame for resolution process. From our study, in Hong Kong, the average time to settle the minimal case under small claim is less than 40 days.¹⁷

5. Analysis of Legal Measure and Consumer Dispute Resolution Process in Thailand

From the facts in the above paragraphs, the problems can be separated into three types as follows:

¹⁵ Consumer Council (HK), 'Advocating for Establishing Consumer Dispute Resolution Centre' (Consumer Council, August 2016)

<https://www.consumer.org.hk/sites/consumer/files/competition_issues/20160831/summary_e.pdf> accessed 12 February 2019

¹⁶ Consumer Council (HK), 'The Role of Consumer Arbitration in the Alternative Dispute Resolution Regime for Consumer Protection' (Hong Kong K. Wah Centre, 2016)

¹⁷ The Judiciary (HK), 'Small Claims Tribunal' (2016)
<http://www.judiciary.gov.hk/en/crt_services/pphlt/html/schtm> accessed 12 February 2019

5.1 The Variety of Consumer Protection Organization in Thailand and Consumer Protection Organization in Foreign Countries

On the part of consumer protection organization in the country, it appears that there are too many organizations that cause inconvenience to the consumers. Especially, the consumers who have suffered damages from buying goods or services from businesses. These consumers do not know how and which organization to file their complaint. They also file complaints to the organizations that have no authority to consider the cases resulting in the delay of remedy process for the consumers and as a result, the consumers are not compensated. Moreover, it does not have the same standard in considering the complaint and remedies process to redress consumers. In Hong Kong and Australia, there is only one state agency responsible for the consumer protection, which is why they do not face the same problems as mentioned above.

5.2 Problems of Classified Consumer Protection Organization and Different Process of Remedies

In Thailand, consumer cases are separated by the nature of damages. In the general consumer law, the amount of loss or quantity of claim is not considered. For example, if the dispute relates to food or drug, the consumers have to file a complaint with the FDA etc. In Australia and Hong Kong, they both classify the cases by the amount of loss.

5.3 Problems of Facilitation on Redressing Process for Consumer Protection

The author found that there are several consumer protection organizations in Thailand which have the duties to receive complaints from consumers. However, they can receive only the cases that are not governed by a specific provision of laws. The Consumer Protection Act B.E. 2522 allows the committee to punish business operators with criminal penalty by imposing fine and imprisonment. However, the law does not provide power to the committee to call for a replacement or repair of the product to

punish the business operators, which is the fundamental consumer rights. While in Australia, the ACCC is authorized to order the business operators who have violated the consumer's right to replace, repair or taking back the goods under the consumer guarantee principle.

6. Conclusion

In Thailand, there is a Consumer Protection Board to support consumers whose rights are violated, but this agency has insufficient personnel. Therefore, to help reducing the state agency's workload, and producing more effective remedy process for the consumers, the author suggests an establishment of a new organization which has the duties to receive consumer cases and send them to the authorized agencies and also follow up on the cases on behalf of the consumers in a reasonable time. Moreover, to reduce minimal consumer cases, the new organization shall be authorized to settle the consumer cases under the control of the Office of the Consumer Protection Board. This organization would be the obvious remedy to the aforementioned limitations. From researching the consumer protection organizations in foreign countries, the author found that there is no consumer protection organization in Thailand to receive all types of consumer case, to consult and support the consumers and to assist the consumers in sending the cases to the authorized agencies and helping in the follow up of the cases until they are settled. Therefore, it would be better if Thailand has a one-stop service consumer protection organization to support consumers in the remedy process. In part of coordination with the other agency that has an authorization in that specific area, the model of Damrongthamg Center, Ministry of Interior, shall be adopted. From our research, the author found that almost 98% of the cases handles by this organization was performed by coordination between the authorized organizations to follow up on the cases. It will help the Consumer Protection Board to focus on the regulation of the law for consumer protection.

Consequently, if there is a legal action concerning the granting of power to the Consumer Protection Committee to resolve the small claim disputes, the mediation will be performed in the same standard and clear criteria. The organization shall be provided with a direct responsibility for consumer protection in Thailand in the future. Moreover, it would be beneficial to both consumers and business operators as well as helping to reduce the consumer cases filing in the court. The consumers will also receive fast and appropriate remedies that most satisfy their own interest.

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