

CHAPTER TWO

LITERATURE REVIEW

A. Overview on Consumer's Definition

The term of *konsumen* in *Bahasa* Indonesia is derived from the word consumer (British-America) or *consument* (Dutch). Literally, consumer is the opposite of producer or everyone who uses the good.¹ In general, consumer refers to an end-user of product submitted by businesses; everyone who acquire goods or services to be used and not for trading or traded again.² According to the Consumer Protection Act Article 1 paragraph (2) of Law No. 8 of 1999, the definition of consumer is every user of goods or services provided in the community, either for their own, their family, other people and other living being and not to be traded.

The expert of consumer problems in the Netherlands, Hondius concludes that generally jurists agreed to define consumers as users of final production of goods and services. By his formula, Hondius wants to compare between the consumer and end-user consumer. There are three concepts of consumer's definitions such as:³

¹ Celina Tri Siwi Krisyanti. 2009. *Hukum Perlindungan Konsumen*. Jakarta: Sinar Grafika. P.22

² Janus Sidabalok, 2010, *Hukum Perlindungan Konsumen di Indonesia*, Citra Aditya Bakti, Bandung, p.17

³ Az Nasution. 1999. *Hukum Perlindungan Konsumen Suatu Pengantar*. Jakarta: Daya Widya , p.13

- a. Commercial; the user of goods and services or beneficiaries of goods or services with a specific purpose.
- b. Intermediary consumer; the user of goods and services or beneficiaries of goods to be produced (producer) and traded (distributor) with a specific objective.
- c. End user; the user of goods and services or beneficiaries of goods and services that require their own needs, their family or household but that are not to be traded back.

In consumer's opinion, a good and service include capitals such as raw material, adjuvant, or another product's component produced. The intermediary consumers get the goods or services in the marketplace producer. Looking at the nature of the used of goods or services, the consumers are actually businessmen including both individuals and legal entities, whether they are private or public, even providers of funds (investor), maker of the final product used by end consumers or producers or providers or seller of end products such as suppliers, distributors, sellers or traders. Meanwhile, the final consumer is the consumers who are usually used to meeting the needs of personal, family, or household (consumer products).⁴

The goods or services of consumer are generally obtained in the consumer markets. The value of the goods or services used by consumers in their daily lives

⁴ *Op. cit*

were not measured on the basis of ecomercial profit and loss economically, but it needs to fulfill the lives needed of consumer.⁵

B. Overview on Consumer Protection

1. The Definition on Consumer Protection

Consumer protection is a group of laws and organizations designed to ensure the rights of consumers as well as fair trade, competition and accurate information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors. They may also provide additional protection for those most vulnerable in society.⁶

Consumer protection laws are a form of government regulation that aim to protect the rights of consumers. For example, a government may require businesses to disclose detailed information about products—particularly in areas where safety or public health is an issue, such as food. Consumer protection is linked to the idea of consumer rights, and to the formation of consumer organizations, which help consumers make better choices in the marketplace and get help with consumer complaints.⁷

Other organizations promote consumer protection include government organizations and self-regulating business organizations, such

⁵ *Ibid.* p. 51

⁶ West Encyclopedia of American Law. 2010. “*Consumer*”. Available at http://www.answers.com/Q/What_is_meant_by_the_consumer_protection_act Retrieved on January 31, 2010. Accessed on October 5th 2016

⁷ *Ibid.*

as consumer protection agencies and organizations, the Federal Trade Commission, ombudsmen, Better Business Bureaus, etc.⁸

2. Legal Regulations on Consumer Protection Based on Indonesian Law

The definition of consumer protection is stated in Law Number 8 of 1999 Article 1 paragraph (1). It states that consumer protection is all efforts that guarantee the legal certainty to provide protection to the consumer (Article 1, point 1).

The formulation in terms of consumer protection contained in article 1 point 1 of the consumer protection act is sufficient. The sentence which stated that “any measure that guarantees the legal certainty” is expected as a fortress to abolish the arbitrary action that could harm the interests of business to consumer protection.⁹ There are some legal certainties in providing protection to the consumers, such as improving the dignity and value of consumers, opening the access of information about the goods and services and cultivating the attitude of honest and responsibility to the businesses.¹⁰

In Indonesia, the legal basis which makes a consumer protection can be applied are:

⁸ *Ibid.*

⁹ Ahamdi Miru dan Sutarman Yodo, 2010, *Hukum Perlindungan Konsumen*, Rajawali Pers, Jakarta, p.1

¹⁰ Adrian Sutedi, 2008, *Tanggung Jawab Produk dalam Perlindungan Konsumen*, Ghalia Indonesia, Bogor, p.9

- a. The 1945 Constitution in the Article 5 paragraph (1), Article 21 paragraph (1), Article 21 paragraph (1), Article 27 and Article 33.
- b. Law No. 8 of 1999 on Consumer Protection (State Gazette of the Republic of Indonesia of 1999 No. 42 Additional State Gazette of the Republic of Indonesia No. 3821.
- c. Law No. 5 1999 On Prohibition of Monopolistic Practices and Unfair Business Competition.
- d. Law No. 30 Year 1999 on Arbitrate and Alternative Dispute Settlement.
- e. Government Regulation No. 58 of 2001 on the Supervision and Development of Consumer Protection.
- f. Circular of the Director General of Domestic Trade No. 235 / DJPDN / VII / 2001 About Handling consumer complaints addressed to the whole department Indag Prop / Regency / City.
- g. Circular of the Director General of Domestic Trade No. 795 / DJPDN / SE / 12/2005 on Guidelines for Consumer Complaints Service

C. ASEAN Economic Community

ASEAN Economic Community (AEC) is an ASEAN community in which has specific concern on economics it was launched at the 9th ASEAN Summit in Bali at 2003, otherwise known as Bali Concord II. The establishment of community was initiated by the head of state of ASEAN

after the 1997 economic crisis in Southeast Asia. AEC is expected to achieve a stable, prosperous and highly competitive area with balanced economic growth and reduced poverty and socio-economic disparities. Bali Concord II not only agreed on the establishment of the AEC, but also agreed to establish the ASEAN Community in the field of ASEAN Political-Security Community and ASEAN Socio-Culture Community.

The AEC aims to integrate South-east Asia's diverse economies into a single market with 625 million people and a combined gross domestic product of US\$2.5 trillion in 2014.¹¹ It is to be defined by a few key characteristics - a single market and production base, a highly competitive economic region, a region of equitable economic development and a region fully integrated into the global economy.

By transforming ASEAN into a single market and production base, the AEC will boost the competitiveness and connectivity of the region as a whole. If implemented, the AEC could lift aggregate output by 7 per cent by 2025.¹² Ideally, the AEC will help link up the less developed economies with the more developed ones, bringing about a more equitable economic development across the region. Asean as a whole will be better integrated into the global economy. Asean as a single economy is forecast to become the fourth largest economy in the world by 2030, behind only the United States and China.

¹¹ Jacqueline Woo, 2015, "6 Things You Need to Know About ASEAN Economic Community" Available at <http://www.straitstimes.com/business/6-things-you-need-to-know-about-asean-economic-community>, accessed on October 15th, 2016 at 4.44 p.m.

¹² *Ibid*

The AEC, as a single market comprising more than 600 million people, has sparked keen interest among foreign investors. For businesses, this could spell positive prospects. Besides getting to enjoy lower trade barriers and higher trade flows, they can access larger markets and enjoy the same incentives regardless of which Asean country they operate in. With tariff and non-tariff fully eliminated, those looking for opportunities within the region will be able to expand more easily, while tapping on the integrated production base. Small and medium-sized enterprises will be better placed to expand regionally and then globally.

As a continuation of the preparation of the AEC Blueprint, representative of ASEAN Member State has signed the Roadmap for an ASEAN Community (2009-2015) at the 14th ASEAN Summit in Hua Hin- Thailand. The implementation of the AEC in 2015 will create a new configuration of the distribution of production and intra-ASEAN economic production factors.¹³

The name is evocative, for an “Economic Community” immediately brings to mind the European experience. ASEAN has always studied carefully European economic integration and seen it as a sort of “role model”¹⁴, though certainly to be adapted in the Southeast Asian development context.

¹³ ASEAN Secretariat, “*A Blueprint for Growth: ASEAN Economic Community 2015: Progress and Key Achievements*”, November 2015, Jakarta, ASEAN Secretariat, p. 3.

¹⁴ Hamada, Koichi and Beate Reszat, 2009, “*Toward Monetary and Financial Intergration in East Asia*”, London: Edwar Elgar Publishing Limited. p. 13.

Although working within the confines of the AEC integration timetable has been a struggle for member states, their efforts have paid off: many companies have already approached ASEAN as one region. This has been helped by the ASEAN Single Window (ASW), a regional initiative to allow free movement of goods across borders. But progress is slow: the region can only proceed at the behest of national governments, and with every ASEAN country being so different, a common vision can be hard to arrive at.

ASEAN is one of the success stories of modern economics. In 2014, the region was the seventh-largest economic power in the world. It was also the third-largest economy in Asia, with a combined GDP of US\$ 2.6 trillion – higher than in India.¹⁵

The launch of the AEC needs to mark, its not the end. But the beginning of another dynamic process. ASEAN has to boost intra-regional trade to reduce the vulnerability to external shocks. This requires a common regulatory framework to address infrastructure gaps and the simplification of administrative policies, regulations and rules. Only 50% of ASEAN businesses have utilized tariff reductions setting out in the ASEAN's regional Free Trade Agreement (FTA).¹⁶ And although tariffs are in decline, non-tariff measures – health and safety regulations, licences and quotas – are on the rise and need to be addressed.

¹⁵ Wolfgang Lehmacher, May 31st 2016, “*The ASEAN Economic Community: what you need to know*” Available at <https://www.weforum.org/agenda/2016/05/asean-economic-community-what-you-need-to-know/> Accessed on 22 October 2016 5.06 p.m.

¹⁶ *Ibid*

Provided the agreement is well managed over the next decade, the AEC could boost the region's economies by 7.1% between now and 2025 – which is more than ASEAN's growth of 5.4% of from 2004 to 2014. It could also generate 14 million additional jobs, according to a study by the International Labour Organization and Asian Development Bank.¹⁷

D. The ASEAN Committee on Consumer Protection

Consumer protection is an essential tool in building a people-oriented ASEAN Economic Community (AEC). The AEC prioritises the interests and welfare of consumers in the implementation of strategies for achieving an integrated economic region. Consumer protection is also an important component of a modern, efficient and competitive market place. Confident and informed consumers who make well-reasoned decisions, represent powerful drivers for innovation and productivity, thereby contributing towards the development of the AEC.

With a market of over 600 million consumers, rising purchasing power and a young demographic profile, ASEAN represents an important market for businesses.¹⁸ Consumer protection policies are therefore a necessary adjunct to ensure consumers buy with trust and confidence and that businesses refrain from engaging in fraudulent practices. Furthermore, consumer policies should be able to respond to new and emerging

¹⁷ *Ibid*

¹⁸ ASEAN, 2015, "Overview Consumer Protection", Available at <http://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/consumer-protection/> accessed on March 28, 2017 at 10:16 p.m.

challenges and opportunities facing ASEAN. These includes cross-border e-commerce and other new trading methods resulting from globalisation and technological advancement, requiring governments to find innovative ways to protect and promote the interests of consumers.

Increased globalization, cross border purchasing, changes in consumer demographics and advances in technological innovation are having significant influences on business and consumer behavior in ASEAN Member States (AMS). These developments require that more effort be made towards advancing the ASEAN consumer protection agenda as part of the competitive ASEAN agenda under the ASEAN Blueprint 2025. In this connection, taking cognizance of these trends, the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2025 was developed to give further detail to the strategic measures on consumer protection under the AEC Blueprint 2025, in terms of strategic goals, initiatives and outcomes. The ASAPCP was then endorsed at the 48th ASEAN Economic Ministers' Meeting on 3 August 2016 in Vientiane, Lao PDR. The ASAPCP will be implemented by the ASEAN Committee on Consumer Protection (ACCP).

In order to steer the implementation of initiatives and commitments under the ASEAN Economic Community Blueprint, a strategic approach toward consumer protection has been adopted by the ASEAN Committee on Consumer Protection. This approach contains policy measures and detailed priority action with specific timeframes for implementation,

including the development of a (i) notification and information exchange mechanism by 2010; (ii) cross border consumer redress mechanism by 2015; and (iii) strategic roadmap for capacity building by 2010.¹⁹

The ASEAN Committee on Consumer Protection is a newly-established sectorial body, and will be face with extensive and complex work programs. Specifically, the main area of capacity-building needs at the regional and national levels will have to be identified, prioritized and addressed. Substantial technical and financial assistances would be required in the process of developing and promoting national policies, laws and institutional arrangements on consumer protection. Among all of the challenges the most interesting one is globalization and regional integration will appear complex and difficulties in customer protection that have to manage by all Member States.

The four strategic goals and initiatives of the ASAPCP 2025 flow from the key consumer action strategies under the AEC Blueprint 2025. These four goals are: a common ASEAN consumer protection framework; a high common level of consumer empowerment and protection; high consumer confidence in the AEC and cross border transactions and streamlining consumer concerns in ASEAN policies. In addition to these four goals, supportive measures were incorporated to reflect additional efforts that focuses on new and emerging consumer issues, developing

¹⁹ *Ibid*

long term capacity building program to assist AMS to implement its consumer protection legislations and strengthening the ACCP.