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Nuraisyah Chua Abdullah

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Cooling-Off Period in The Purchase of Goods In Malaysia: Comparison with Selected Countries

Nuraisyah Chua Abdullah

Professor of Law, Faculty of Law, Universiti Teknologi MARA, Shah Alam, Malaysia

Abstract

Cooling-off period gives customers a window of time during which they can withdraw from a signed contract with little to no penalty. The Consumer Protection Act (Act 599), Malaysia's primary consumer protection law, does not guarantee the protection of a cooling-off period, unlike the legal position in the UK, Australia, New Zealand and the US. It is recommended that a cooling-off period clause is included in the Act 599, because consumers are most likely to profit from them in markets where there is a short window of time between the beginning of the transaction. As an alternative, it's pertinent to consider the idea of a "opt in" clause, where the contract will take into effect only when the customer "opts in" (confirms) within a specified time after being approached by the seller by getting in touch with the business and indicating that they want to proceed.

Keywords: Cooling-Off, Direct Selling, Consumer Protection, Contract, Goods

Introduction

Consumer protection laws have historically been justified by the idea of restricting the monopoly power of large corporations and the potential they had to influence customers through advertising that made it difficult for consumers to determine what was in their own best interests (Haupt & Stefan, 2003). This idea emphasises the consumer's overall economic disadvantage compared to suppliers. Because of this, the cooling-off period has long been the principal instrument in the consumer protection toolbox. A consumer who has "cooled off" about their decision to enter into a contract or agreement may legally withdraw from the deal over a set time period with little or no penalty. It is typically a window of time after a purchase within which the buyer is permitted to choose to cancel the transaction, return the products that have been delivered, and receive a full refund for any reason.

Such time frames frequently apply to door-to-door sales, telemarketing, residential real estate, and online purchases in several nations. A cooling-off time is beneficial in that it lessens consumer harm by enabling customers to change their minds about a choice they made in a hurry, under duress, or without all the information they needed to make an informed decision. Simply put, this tool gives customers a window of time during which they can withdraw from a signed contract with little to no penalty. It has been used to address a variety of issues, such as high-pressure sales tactics, hasty or emotional decisions, and a lack of knowledge about the products being purchased.

Therefore, this article aims to discuss the position of cooling off period in the context of consumer related laws i.e. the Sale of Goods Act of 1957 (Act 382), the Contract Act of 1950 (Act 136), the Consumer Protection Act of 1999 (Act 599) and the Direct Sales and Anti-Pyramid Scheme Act of 1993 (Act 500) a few of the laws in Malaysia that regulate the sale and purchase of goods involving sellers and buyers

Literature Review

Discussions on cooling-off period can be seen in Western writings as illustrated in the articles written by for example, (Atwell, 2015; Haupt & Stefan, 2003; Sovern, 2012). In view of the limited application of cooling-off period in the sale and purchase of goods in Malaysia, there is limited discussion on cooling-off period in Malaysia for example in the writing of (Amin & Nor, 2013). In the light of limited discussions on cooling-off period in Malaysia, the discussion in this article is to fill the gap.

Methodology

This study is doctrinal legal research and uses the content analysis method. Reference was made to the provisions in various consumer-related statutes in Malaysia particularly the Sale of Goods Act of 1957 (Act 382), the Contract Act of 1950 (Act 136), the Consumer Protection Act of 1999 (Act 599) and the Direct Sales and Anti-Pyramid Scheme Act of 1993 (Act 500). Using the comparative method, reference to selected statutes in the UK, Australia, New Zealand and US were made. Specifically, reference is made to the UK Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013, the UK Consumer Rights Act 2015, the Australian Consumer Law, the New Zealand Fair Trading Act 1986 and the US Rule Concerning Cooling- Off Period for Sales Made at Homes or at Certain Other Locations. Books and articles from journals are among the secondary sources referred to.

Results

Malaysian Perspective on Cooling-Off Period

The Sale of Goods Act of 1957 (Act 382), the Contract Act of 1950 (Act 136), the Consumer Protection Act of 1999 (Act 599) and the Direct Sales and Anti-Pyramid Scheme Act of 1993 (Act 500) are just a few of the laws in Malaysia that regulate the sale and purchase of goods involving sellers and buyers. These laws prescribed the provisions that protect the interests of the buyers or consumers who purchase goods.

Section 2 of the Act 382 defined goods as *“every kind of movable property other than actionable claims and money and include stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”*

Section 3 of the Act 599 defined goods as *“goods which are primarily purchased, used or consumed for personal, domestic or household purposes, and includes —*

(a) goods attached to, or incorporated in, any real or personal property;

(b) animals, including fish;

(c) vessels and vehicles;

(d) utilities; and

(e) trees, plants and crops whether on, under or attached to land or not.”

Section 2 of the Act 500 defined goods as “*every kind of movable property other than choses in action, negotiable instruments, shares, debentures and money.*”

Despite the fact that the definitions of goods in all the legislation stated above are not exactly the same, it appears from the definitions that they are similar in concept for the purposes of the discussion in this article.

The Act 599, Malaysia's primary consumer protection law, does not provide any provision on cooling-off period. The Act 500 was amended in April 2010 to expand the definition of mail order to include "any other means of mailing, including through electronic means." According to a new section 19A, no one may sell or advertise for the sale of any products or services through an electronic transaction "unless in compliance with this Act or the regulations". The amendment's clear impact is that all e-commerce businesses now need direct sales licences, must abide by direct sales law, and now e-consumers are also covered by the Act's consumer protections.

Within the meaning of this Act, a direct sale includes both a door-to-door and a mail-order transaction. Unreliable merchants frequently use this strategy to persuade customers to purchase products that are neither necessary nor wanted. These individuals frequently defraud unwary clients, including housewives, the elderly, pensioners, and residents in rural locations like plantations and Felda Schemes (estates). In Sabah and Sarawak, foreigners charge premium prices for carpets and clothing that they sell to locals in outlying settlements. The locals are encouraged to give up their land instead when the payments cannot be paid. The government passed Act 500 in June 1993 in order to safeguard customers, promote moral direct selling practises, and outlaw pyramid schemes. This Act aims to permit licenced individuals to engage in direct selling, including door-to-door and mail-order sales. Malaysia is covered by the Act 500, but only with regard to direct sale contracts signed after the Act went into effect. It should be noted that the Act will not apply in cases where the buyer or prospective buyer is a body corporate insurer under a takaful contract.

No products may be supplied and no services may be rendered under a contract relating to a direct sale until the cooling-off period has passed, according to section 25(1) of the Act 500. In essence, the Act 500 states that during the 10-day "cooling-off" period, no agreements may be signed and no deposits may be made. No products should be supplied and no services should be rendered before the "cooling-off time" has passed. A buyer may terminate the agreement within this time period by notifying the seller in writing of his desire to do so. According to section 25(2) of Act 500, a buyer is assumed to have renounced his right to void the contract under section 26 if he gives the vendor a written notice asking them to deliver the products or provide the services before the cooling-off period expires. Despite this clause, Section 25(3) of the Act 500 states that no notice may be delivered to the vendor before 72 hours have passed since the contract was signed. In other words, a customer has the right to change his or her mind about purchasing the good or service during this time. No vendor or other person is allowed to accept money or other payment from a buyer under a contract formed under this Act prior to the cooling-off period's expiration, according to Section 25(4) of the Act.

Any vendor or other person who violates this section is considered to have committed an offence, according to Section 25(5) of the Act. Additionally, according to Section 26(1) of the Act 500, a buyer who has entered into a contract may rescind it by giving the vendor a

notification in the manner permitted by law at any time prior to the cooling-off period's expiration declaring his intention to do so. According to Section 26(2) of the Act, the notice must be personally delivered to the vendor or sent to that vendor at the address listed in the contract via registered mail. After three days have passed after the day it was posted in accordance with Section 26(3) of the Act, the notice will be regarded to have been delivered to the vendor. In accordance with Section 27 of the Act, the contract is regarded to have been retracted by mutual consent and never to have had effect when a notice of rescission is submitted. Any contract of guarantee pertaining to the contract is also deemed never to have had effect. The Act 500, however, is a criminal law that needs to be strictly enforced in order to be effective. Therefore, despite the fact that the Act has undergone a considerable change, it is still unknown whether this law adequately protects consumers in general and e-consumers in particular (Amin & Nor, 2013).

The Direct Selling Association of Malaysia has also developed a consumer-related policy, specifically in relation to cooling-off periods, in addition to Act 500. The World Federation of Direct Selling Associations' World Codes of Conduct, which serve as the cornerstone of the global direct selling industry's commitment to moral business conduct and customer service, are the foundation upon which the Association has based its policy regarding cooling-off periods. The policy of the cooling-off time and return of goods is one of the World Federation of Direct Selling Associations' World Codes of Conduct. Companies and direct sellers are required by the Codes to make sure that order forms have a cooling-off clause that allows customers to cancel their orders within a certain time frame. Additionally, direct sellers are required to guarantee the return of any payments or products exchanged. Companies and direct sellers must also provide a written, unequivocal right of return.

Cooling-Off Period in Selected Countries

The Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 and the United Kingdom's Consumer Rights Act 2015 both have regulations on the cooling-off period.

Section 2(8) of the Consumer Rights Act 2015 states that goods are *“any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for supply in a limited volume or set quantity”* meanwhile **Section 5 of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013** states that goods are *“any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for sale in a limited volume or a set quantity.”*

The definition of goods in both statutes are similar. A consumer is entitled to a refund under Section 20(15) of the Consumer Rights Act of 2015 within fourteen days of their decision to reject the contract, while Section 30 of the Consumer Contract (Information, Cancellation, and Additional Charges) Regulations of 2013 stipulates that consumers have fourteen days to withdraw from a contract they have entered into.

In the United Kingdom, when products are bought online, the 14-day cooling-off period begins on the day the buyer receives ownership of the goods under regulation 30(3). The purchaser can cancel the goods at any time from the moment they place their order and up to 14 days from the date they arrived. However, for services purchased online, the 14-day cooling-off period starts the day after they entered into the contract for the service. It should

be noted that under regulation 28(1), there are some situations where a cooling-off period would not apply to goods and there are also cooling-off period exemptions for some services.

Aside from that, under regulation 28(1)(h), consumers would not be entitled to a cooling-off period for services like booking a hotel room, renting a car, transporting goods, including courier services, catering, or leisure activities for specific dates like booking a hotel or restaurant, purchasing theatre tickets, or catering for a big event like a wedding or birthday party. Under regulation 28(3)(b), consumers are excused from the right to a cooling-off period for items like CDs, DVDs, and software if they break the seal on the packaging, as well as for items like flowers or some foods that can spoil soon.

Additionally, under regulation 29(1), consumers in the UK have the right to immediately cancel an online order. According to the Customer Contracts (Information, Cancellation, and Additional Charges) Regulations 2013, a consumer has a 14-day period to cancel an order starting from the time he places the order until the items are delivered to him, a designated neighbour, or a safe spot. Hence, the consumers should be given the ability to cancel an order at the point of sale.

This could be accomplished, for instance, by a contact form online. While a cancellation form should be made available, customers can cancel online orders in writing, by fax, or by email under regulation 34. However, it is advisable to follow the retailer's established procedure if it is appropriate. In accordance with the law, the vendor should not unnecessarily make it difficult to cancel an online order. For instance, consumers should not be required to seek authorization before returning an item as required by law or a cancellation code before returning an item.

The sale and purchase of goods by consumers are governed by the Australian Consumer Law. According to Section 1 of the definition, "goods" are defined as

- "(a) ships, aeroplanes, and other vehicles*
- (b) animals, including fish;*
- (c) minerals, plants, and crops, whether on, beneath, or attached to land or not;*
- (d) water; and gas and electricity."*

In contrast to the UK, not all consumer contracts are subject to the Australian Consumer Law's cooling-off period. The unsolicited consumer agreement is the only type of contract that is subject to the cooling-off period. An unsolicited consumer contract happens and consumer is entitled to cooling-off period when a supplier or salesperson approached or called consumers without their consent, hence, negotiating over the phone or in person at a location other than the supplier's premises, and the total value of the agreement being over \$100 or the value not being agreed upon. According to Section 82 of the Australian Consumer Law, a consumer can terminate an unsolicited consumer agreement after 10 days.

In Australia, a consumer may terminate a contract within the period of three months after it was made (or after the contract was received if the agreement was made over the phone) if the salesperson visited the customer outside of the allowed selling hours, failed to disclose the reason for the visit, failed to produce identification, or refused to leave the premises after being asked to do so.

However, if a salesperson violated other requirements for unsolicited agreements (like failing to provide a written copy of the agreement or omitting required information in the written agreement), failed to inform the customer about the cooling-off period, or provided goods or

services worth more than \$500 or services other than electricity or gas during the cooling-off period, the period may be extended to six months.

An agreement may be terminated orally or in writing. Basically, written notification can be sent via email, fax, post, or person. Although it does not have to be on a specific form, the consumer should nonetheless receive a cancellation form or notice along with the contract. The day the notice of termination was issued, sent, or posted is regarded as the termination date.

The contract is nullified as of the day on which a trader has been advised of the intention to terminate it. In most cases, the notice is still valid even if it was delivered in writing but was not received by the merchant, and even if the consumer has fully or partially used the products or services that were provided to them. It is the supplier's responsibility to get in touch with the credit provider and make cancellation arrangements for products purchased with credit or financing.

According to the Australian law, any linked contracts are also dissolved when a consumer cancels an unsolicited arrangement. For instance, a buyer consents to acquire a \$900 washing machine from a door-to-door salesperson and to sign a separate contract for the washing machine's \$80 maintenance.

Although the cooling-off period does not apply to this second contract, if the customer decides not to buy the washing machine, the service contract will also be cancelled. It is the supplier's responsibility to get in touch with the credit provider and make cancellation arrangements for products purchased with credit or financing. Any money paid by the client under the agreement or a related contract must be quickly returned or refunded to the consumer if the arrangement is terminated.

Any unfinished items must be returned or the supplier must be informed of where to pick them up within a reasonable amount of time after the contract for the goods or services has ended. However, if that specific customer does not treat the products with reasonable care, the supplier may claim reimbursement for the depreciated value. In general, consumers are not required to make up for ordinary use of the items or unavoidable conditions.

The consumer may keep the items if the supplier does not collect them within 30 days of the termination. Consumers who cancel a contract after the cooling-off period but after a service has been rendered may be required to pay for the service. Obviously, once the service has been rendered, it cannot be "undone."

The New Zealand Fair Trading Act 1986 specifically provide provision on cooling-off period for uninvited direct sale agreements. Section 2 of the Fair Trading Act 1986 defines goods as

- “(a) means personal property of every kind (whether tangible or intangible); and*
- (b) includes*
 - (i) ships, aircraft, and vehicles*
 - (ii) animals, including fish*
 - (iii) minerals, trees, and crops, whether on, under, or attached to land or not:*
 - (iv) gas and electricity*
 - (v) to avoid doubt, water and computer software.”*

Section 36L (3)(a) of the Fair Trading Act of 1986 specifies the cooling-off time that applies to uninvited direct selling agreements. According to this rule, the customer has the right to cancel the agreement within five days. Section 36K (1)(a)(b) of the Fair Trading Act of 1986 defines a "uninvited direct sale agreement" as "an agreement for the supply, in trade, of

goods or services to a consumer made as a result of negotiations between a supplier and the consumer in a situation described in either subsection, whether or not such negotiations are the only negotiations that precede the making of the agreement," and "where the price paid or payable by the consumer under the agreement is less than the price paid or payable by the consumer under \$100".

This indicates that the terms of the uninvited direct sale agreement are negotiable between the supplier and the consumer, and the consumer's price paid is either greater than \$100 or cannot be determined. Uninvited direct selling agreements are used when a company contacts a consumer uninvitedly and makes a sales pitch over the phone, in person, or at their place of employment. To qualify as this type of sale, the items or services must be valued at more than \$100 (or not have a confirmed price at the time of sale) (Lindblom, 2021)

While many US retailers may not let customers return items if they change their minds, customers do have the choice to walk away and consider whether or not they really want the item at the moment of purchase. In contrast, with direct selling, customers are approached in their homes or persuaded to temporary selling venues with promises of free goods or services only to be confronted with aggressive sales tactics. Rarely is the customer allowed a day or two to consider the purchase; instead, they are frequently under pressure to make a decision the day the seller meets with them. The cooling-off rule was established in the US to address the issue of sales being achieved by high-pressure and dishonest sales practises applied to consumers at times and locations where they normally may not expect to be solicited for sales and find it challenging to escape the circumstance (Consumer Affairs Victoria, 2009).

Part 429 of the Rule Concerning Cooling- Off Period for Sales Made at Homes or at Certain Other Locations governs the cooling-off rule in the United States. The cooling-off rule was established on October 26, 1972, and is administered and enforced by the Federal Trade Commission (FTC) of the United States. On November 1, 1973, November 19, 1973, and November 10, 1988, amendments were made. Purchases of \$25 or more may be returned within three days of the transaction. A full refund is available for cancellations made up until the end of the third business day following the sale. At the time of the sale, the salesperson must tell the customer of their right to cancel. A copy of the contract or receipt, as well as two cancellation forms (one to keep and one to submit), must also be provided by the salesperson. The contract or receipt must be dated, include the seller's name and address, and state the buyer's right to cancel. The agreement or invoice must be written in the same language as the sales pitch. It should be emphasised that customers are not required to provide a justification for returning an item.

The customer must complete one copy of the accompanying cancellation form, sign it, and date it in order to cancel a sale. Following that, he must ship it to the location specified for cancellation, ensuring sure the envelope is postmarked before the close of business on the third business day following the contract date. In the absence of cancellation documents from the seller, the buyer may submit their own cancellation letter. Similar to the "official" form, it needs to be postmarked three business days after the sale. When a customer cancels a purchase, the seller has 10 days to return all of the money paid by the customer, provide a negotiable document signed by the customer, and inform them of whether any remaining merchandise will be picked up and any trade-ins will be returned. The seller has 20 days to pick up any things left with the customer, or if the customer chooses to send the items back, to pay for the shipping costs. In the event that the customer purchased any items from the vendor, they are required to return them to the seller in like-new condition. If the things are

not made available to the seller or if the customer is supposed to return the items but doesn't, they are still liable under the terms of the contract.

The Way Forward

As a result of the foregoing discussion, it is reasonable to consider including a cooling-off period in Malaysia's main consumer law, the Act 599, because consumers are most likely to profit from them in markets where there is a short window of time between the beginning of the transaction (for instance, when the consumer and trader begin negotiations or discussions) and the time the contract is signed. Consumers have little time to consider the goods or service and to back out before the contract is signed if this period is too brief. The likelihood of consumers changing their minds or learning new information during the cooling-off phase is likewise high. Finally, cooling-off periods are likely to motivate traders to adjust their behaviour in a way that minimises harm to consumers, which would be of little help if issues or information did not surface until after the product was acquired.

As an alternative, it's pertinent to consider the idea of a "opt in" clause, which states that after a customer signs a sales agreement at home, it won't go into effect until the customer "opts in" (confirms) between 24 and 48 hours later by getting in touch with the business and indicating that they want to proceed. The contract expires if the customer chooses not to participate.

It is argued that an opt-in provision would function best if the vendor was unable to get in touch with the customer during that time. The customer would then be free to choose without being subjected to pressure selling tactics.

With the opt-in method, contracts are only final when customers get in touch with the trader again after two days, freeing them from predatory sales methods.

Using this strategy would aid in overcoming pressure and psychological biases that can arise during the sales process. As a result, the concept is reasonable (and maybe profitable) — if the product is good and the client wants it strongly enough, they will opt in. Instead of using predatory methods, the sales process relies on high-quality goods and effective customer-seller interaction.

Instead of depending on the high-pressure selling practises that are typical in some of these sectors, this strategy will drive businesses to target the proper consumers, produce better products, and engage in more honest sales procedures.

In the absence of discussion on cooling off period in the existing literature, the discussion in this article assists in providing suggestions to the improve the position of consumers in relation to goods they purchase by way of providing statutory cooling off period which is absent in the existing Act 599. The discussion on option of statutory "opt in" method could be a possible contribution of this article in the absence of such discussion in the existing literature.

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