

Solutions for Protecting Consumer Rights on E-commerce Platforms under Vietnamese Law

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Abstract

The Vietnamese legal framework for consumer protection in e-commerce transactions is still in the process of gradual improvement, with many limitations remaining. Violations of consumer rights frequently occur, causing damage to consumers when purchasing goods on e-commerce platforms. To promote the development of e-commerce transactions, it is necessary for the government to supplement legal regulations on consumer protection in e-commerce, ensuring the protection of consumers' legitimate rights and fostering their confidence and sense of security when conducting transactions on these platforms. This article highlights the challenges faced by consumers on e-commerce platforms and proposes appropriate solutions to protect consumer rights in accordance with Vietnamese law.

Keywords: *Consumer Rights, E-commerce, Vietnamese Law*

1. Theoretical Framework

1.1 Definition and Characteristics of E-commerce

E-commerce is a form of commercial transaction conducted through electronic environments. According to the Global Declaration on E-commerce adopted in 1998 by the World Trade Organization (WTO), "*e-commerce is understood as the production, distribution, marketing, sale, or delivery of goods and services by electronic means.*"

In a 2011 publication by the OECD, e-commerce is defined as "*conducting business through the Internet, selling goods and services that may be distributed either offline or online, including goods that can be digitally encoded and distributed online or offline.*"

The Model Law on Electronic Commerce by the United Nations Commission on International Trade Law (UNCITRAL) defines e-commerce as "*the exchange of commercial information through electronic means without the need to print any part of the transaction process.*" The term "commerce" is interpreted broadly to cover issues arising from all commercial relationships, whether or not they involve a contract. These relationships include, but are not limited to, transactions, making e-commerce applicable across various sectors of economic activity, with the buying and selling of goods representing only a small subset of e-commerce.

Before 2013, Vietnamese law did not provide a specific definition of e-commerce, and the concept was scattered across various legal documents. According to Clause 1, Article 3 of the 2005 Law on Commerce, "commerce" is defined as "*activities conducted for profit-making purposes, including the purchase and sale of goods, provision of services, investment, trade promotion, and other profit-oriented activities.*" The 2005 Law on Electronic Transactions only defines electronic transactions. According to Clause 4, Article 6, an electronic transaction is "*a transaction conducted by electronic means.*" Electronic means are defined in Clause 4, Article 10 as "*means operating on electrical, electronic, digital, magnetic, wireless, optical, electromagnetic, or similar technologies.*"

A formal definition of e-commerce was introduced in Clause 1, Article 3 of Decree No. 52/2013/ND-CP: "*E-commerce is the conduct of part or all of the commercial processes through electronic means connected to the Internet, mobile telecommunications networks, or other open networks.*"

The development of e-commerce is closely linked with and interacts reciprocally with the development of Information and Communication Technology (ICT). E-commerce involves the application

of ICT in all commercial activities. Therefore, advancements in ICT accelerate the growth of e-commerce, and conversely, the growth of e-commerce stimulates the development of various ICT fields, such as specialized hardware and software for e-commerce applications and payment services for e-commerce.

E-commerce transactions are conducted over the internet, allowing participants to exchange and transact without meeting in person. The scope of e-commerce is borderless; participants can engage in transactions from any location by accessing e-commerce websites or social networking platforms.

E-commerce transactions typically involve at least three entities: the seller, the buyer, and a third party that facilitates the transaction. These third parties, such as network service providers and certification authorities, act as intermediaries, ensuring the reliability of information exchanged during the transaction. Participants in e-commerce can conduct transactions 24/7 from anywhere with telecommunications networks and electronic devices connected to those networks. These electronic means are highly automated, helping to expedite the transaction process.

1.1.2. E-commerce Platforms and Their Key Characteristics

The concept of an e-commerce platform is defined in Decree No. 85/2021/ND-CP as: “*an e-commerce website that allows merchants, organizations, and individuals who do not own the website to conduct part or all of the process of buying and selling goods and services on it.*” Through e-commerce platforms, merchants who are not the platform owners can carry out some or all stages of the process of buying and selling goods and services. The platform owner acts as an intermediary, organizing and facilitating commercial activities on the platform.

1.1.3. The Necessity of Legal Protection for Consumer Rights in E-commerce Transactions

Consumption is a vital component of any economy, with a reciprocal relationship with economic growth. Consumption serves as both the output of production and a driver of economic growth, which, in turn, increases household incomes and stimulates further consumption. Various entities participate in the market, each playing a critical role, including producers, consumers, market intermediaries, and the state. Among these, consumers are one of the primary stakeholders.

Theoretically, market relationships are self-regulated by economic principles such as the Law of Value, the Law of Supply and Demand, the Law of Monetary Circulation, and the Law of Competition. Consumers play a decisive role in these relationships, acting as regulators of supply and demand. Consequently, policies aimed at stimulating consumption are often integral to national economic growth strategies.

To foster consumer confidence in general and in e-commerce platforms specifically, consumers must be assured of their safety, rights, health, and well-being when purchasing and using goods provided by manufacturers or sellers. Additionally, they have the right to legal protection in cases where goods or services infringe upon their legitimate interests.

Recognizing the critical role of consumers in the economy, the *Law on Protection of Consumer Rights* (Law No. 59/2010/QH12) was enacted by the National Assembly of Vietnam and came into effect on July 1, 2011. Since then, consumer protection activities in Vietnam have achieved significant initial results, gradually integrating consumer protection laws into everyday life and contributing to safeguarding the legitimate rights and interests of both consumers and legitimate businesses.

1.1.4. Responsibilities of Parties in E-commerce Transactions

When conducting commercial transactions, the participation of relevant parties is an indispensable element. The Law on Protection of Consumer Rights 2010 stipulates the responsibilities of organizations and individuals engaged in the business of goods. Accordingly, organizations and individuals trading in goods and services are responsible for: Providing consumers with information about goods and services; Providing evidence of transactions; Warranty services for goods, components, and accessories; Recalling defective goods, and Compensating for damages caused by defective goods.

They must also register standard form contracts and general terms and conditions for essential goods and services as specified by law.

Unlike traditional commerce, e-commerce requires the involvement of intermediaries who provide the transaction environment. The participants in e-commerce can be classified into five main parties based

on their functions, which can be grouped into three primary categories: Sellers, Intermediaries providing e-commerce platform services, and Buyers.

The regulation of responsibilities for businesses operating on e-commerce platforms creates a healthy competitive environment, ensures the protection of consumers' legal rights and interests, and reflects the consistency of legal management for both traditional and online transactions.

Sellers on e-commerce platforms must ensure the accuracy of the information regarding goods on the platform, helping consumers clearly understand the product before entering into an online contract. Additionally, sellers must comply with legal provisions on obligations such as taxation, payments, advertising, intellectual property, and other relevant regulations.

In 2022, the Government issued Decree No. 91/2022/ND-CP, which supplements the responsibility to provide seller information to tax authorities. Accordingly, e-commerce platform operators are required to provide information to tax authorities on a quarterly basis via electronic submission through the General Department of Taxation's portal.

1.1.5. Sales Contracts on E-commerce Platforms

A contract is a type of civil relationship used to establish agreements between parties involved in a transaction. The continuous growth of e-commerce has led to the emergence of a new type of contract e-commerce contracts.

E-commerce contracts retain the legal characteristics of traditional commercial contracts but are conducted through electronic means and presented as data messages.

Article 33 of the Law on Electronic Transactions (2005) defines an electronic contract as "a contract established in the form of a data message." The legal validity of electronic contracts is recognized in Article 34 of the same law.

E-commerce platforms must provide contract terms to customers before they submit a purchase request, as stipulated in Article 16 of Decree No. 52/2013/ND-CP. The decree outlines procedural requirements for forming electronic contracts, including: Notice of invitation to offer – Article 15; Offer to contract – Article 17; Acceptance of the offer – Article 19; Termination of the offer – Article 20; Time of contract formation – Article 21, and Contract formation on e-commerce websites – Article 23. In an e-commerce transaction: The goods and related terms displayed on the website serve as a "notice of invitation to offer," When the customer clicks the "Order" button, it constitutes the "offer to contract," and The contract is formed when the seller accepts and responds to the customer's offer. Article 20 of Decree No. 52/2013/ND-CP addresses the termination of an offer. If a customer does not receive a response within a specified period—either declared by the seller or within 12 hours of submitting the offer—the offer is considered void. If the customer wishes to proceed with the transaction, they must restart the process from the initial step of submitting a new offer.

1.1.6. Regulations on Responsibilities Related to Goods in E-commerce Transactions

Goods responsibility reflects the seller's accountability for the products they sell and serves as a way to enhance consumer trust. Additionally, regulations on goods responsibilities aim to protect consumer rights in cases where goods are damaged through no fault of the buyer. The *Law on Protection of Consumer Rights 2010* outlines key responsibilities related to goods, including: Warranty obligations; Recall of defective goods, and Compensation for damages caused by defective goods.

Vietnamese law does not have a specific regulation defining the concept of "goods warranty." Instead, warranty provisions are scattered across different laws, such as the *Civil Code*, the *Commercial Law*, and the *Law on Protection of Consumer Rights*.

Articles 446 and 447 of the *Civil Code 2015* stipulate the seller's obligation to provide a warranty and the buyer's right to request a warranty. Specifically: The seller is obligated to provide warranty services during the warranty period if agreed upon by the parties or required by law; When the buyer discovers defects in the goods, the right to request warranty service depends on the terms agreed upon by both parties at the time of contract formation; In most cases, the parties agree on a return or exchange policy if the goods are found to be defective.

This provision is also mentioned in Article 21 of the *Law on Protection of Consumer Rights 2010*, which states that goods, components, and accessories must be warranted either based on the agreement between the parties or as mandated by law.

1.1.7. State Agencies Responsible for Protecting Consumer Rights and Consumer Protection Organizations

The role of the state in managing the protection of consumer rights in e-commerce transactions is crucial. The enforcement mechanism for consumer protection in e-commerce transactions is primarily assigned to the Ministry of Industry and Trade and local People's Committees at various levels:

According to Chapter 5 of the *Law on Protection of Consumer Rights 2010* on state management responsibilities for consumer protection and Articles 34 and 35 of Decree No. 99/2011/ND-CP, at the central level, the Ministry of Industry and Trade is responsible for managing state affairs related to consumer rights protection. The Department of Competition and Consumer Protection assists the Minister of Industry and Trade in carrying out these functions.

At the local level, People's Committees at all levels are the agencies responsible for state management of consumer rights protection, with the Department of Industry and Trade supporting the Provincial People's Committees in executing these functions locally. The Department of Industry and Trade may delegate consumer protection management duties to the Trade Management Department, the Import-Export Department, the Foreign Affairs Department, or the Market Management Sub-department.

1.1.8. Resolving Complaints in E-Commerce Transactions

To resolve disputes and complaints between consumers and businesses in e-commerce transactions, Article 30 of the *Law on Protection of Consumer Rights 2010* allows for resolution through methods such as negotiation, mediation, arbitration, or the courts.

Article 76 of Decree No. 52/2013/ND-CP outlines dispute resolution in e-commerce, permitting e-commerce platforms to receive and handle customer complaints regarding contracts formed on their platforms. Additionally, Clause 10, Article 36 of Decree No. 52/2013/ND-CP stipulates that e-commerce platforms are responsible for publicly disclosing their dispute resolution mechanisms during transactions on the platform and must actively assist customers in protecting their rights.

Thus, when any conflict arises from a customer during the execution of a contract through an e-commerce platform, it must be resolved based on the previously disclosed dispute resolution mechanism, which is essentially a negotiation process, as the contract is based on the agreement between the parties.

2. Legal Issues and Practical Challenges in Consumer Protection in E-Commerce Transactions in Vietnam

After more than 12 years of implementing the *Law on Protection of Consumer Rights* (2010) and 17 years of the *Electronic Transactions Law* (2005), Vietnam has essentially established a legal framework to protect consumers in e-commerce transactions. However, some provisions of the *Law on Protection of Consumer Rights* and its implementing documents have become outdated due to the rapid development of e-commerce. This has led to several issues, including legal gaps, difficulties in enforcement, and violations that are challenging for regulatory bodies to address. Specific issues include:

The firts, Definition of "Consumer": The definition of a consumer in the law — “a person who buys and uses goods or services” — is problematic due to the punctuation (comma) between the verbs “buy” and “use,” which complicates the identification of the parties involved in disputes. The question arises as to whether “buying” and “using” are distinct actions or should be understood as a combined process (i.e., the consumer must both buy and use the goods or services). This ambiguity complicates the determination of whether an entity is a consumer for the purpose of applying consumer protection laws. Additionally, the law’s specification that the goods or services must be for “personal consumption or family use” raises challenges in determining whether a business organization can be considered a consumer.^{[1][SEP]}

Second, Providing Accurate Product Information and Transaction Conditions: There are frequent violations related to misleading product descriptions on e-commerce platforms. Examples include products that differ from what was advertised, incorrect information about the product’s origin, or misrepresentation of pricing. Sellers sometimes advertise goods at a certain price that does not reflect the actual sale price, leading to consumer confusion. Furthermore, there is often a lack of transparency in product information from manufacturers and sellers, which can cause misunderstandings and complications when goods are faulty. Also, while the law requires merchants to notify customers of any delays in delivery or service, in practice, merchants rarely encourage contract cancellations due to delays, as this incurs additional costs.

Moreover, there are no provisions for penalties for late deliveries, which can be viewed as a breach of contract.

Third, *Illegal Collection, Use, and Commercialization of Personal Information:* Consumer rights protection regarding personal information is crucial in e-commerce transactions. Although various laws have provisions for data protection, such as the Civil Code, Criminal Code, and Information Technology Law, illegal collection and misuse of personal data remain prevalent. Many e-commerce platforms collect and exploit customer data for commercial purposes without the consumer's informed consent, leading to a loss of consumer trust. Despite the existence of laws, there is no comprehensive personal data protection law, which exacerbates the issue.

Fourth, *Product Quality and Counterfeit Goods:* According to Article 9 of the *Law on Protection of Consumer Rights 2010*, consumers are obliged to "inspect goods before acceptance." However, e-commerce transactions are indirect and electronic, so consumers cannot physically inspect products before purchasing, making it impossible to verify the authenticity, origin, and quality of goods. This often results in consumers receiving substandard, counterfeit, or fake products. Furthermore, sellers rarely allow for pre-delivery inspections, leaving consumers to deal with product issues only after delivery.

Fifth, *Deficiencies in Warranty for Goods and Accessories Sold Online:* Post-sale services, including warranties for goods and accessories bought through e-commerce platforms, are often inadequate. Many sellers do not provide sufficient after-sales support, which could include returns, exchanges, or repair services for faulty products.

Sixth, *Insufficient Deterrence from Sanctions:* While the *Law on Protection of Consumer Rights* prohibits businesses from selling goods or services that endanger consumers' lives or health, the fines and penalties for violating this law are often insufficient to deter fraudulent practices. In some cases, the penalties imposed do not match the severity of the violation, leading some businesses to view the penalties as just a cost of doing business, rather than a deterrent.

Seventh, *Dispute Resolution Dependent on E-Commerce Platforms:* Consumers often have to rely on the e-commerce platforms to handle complaints and disputes. Many platforms set specific time frames for complaints (usually between seven to ten days after receiving the product), which may be insufficient for products that take longer to show defects. Once the e-commerce platform has processed the payment to the seller, the transaction is considered complete, making it more difficult for the consumer to resolve the issue effectively.

In conclusion, although Vietnam has made significant strides in establishing a legal framework for consumer protection in e-commerce, there are still significant legal and practical challenges that need to be addressed to ensure the protection of consumer rights in this rapidly growing market.

3. Some Proposals to Improve the Legal Framework for Consumer Protection in E-commerce Transactions in Vietnam

From the legal issues and challenges faced in the practical application of consumer protection law in e-commerce transactions, combined with international experiences from countries with well-developed legal systems such as Australia, South Korea, and China, which were summarized earlier, the author proposes several legal improvements to enhance the effectiveness of consumer protection law in e-commerce transactions in Vietnam.

First, it is necessary to clearly define the overall goal of building consumer protection law. In terms of structure, Vietnamese lawmakers have not designed the Consumer Protection Law from the perspective of behavior but have built it based on the viewpoint of consumers in relation to the market participants. Additionally, the goal of the law remains unclear in the 2010 version of the law. The government's Report No. 45/TTr-CP dated May 4, 2010, on the Consumer Protection Law project outlined some general goals for the law, but did not specify concrete objectives. Therefore, setting out clear overall objectives and specifying the goals mentioned above is necessary to guide the development of the Consumer Protection Law in future amendments.

Second, the definition of "consumer" in the Consumer Protection Law needs to be expanded. Based on research on the definition of "consumer" in other countries, the definition in Clause 1, Article 3 of the 2010 Consumer Protection Law does not cover all types of consumer activities today. Consumers should be individuals, but the law should also include specific cases where "households, organizations" can be recognized as consumers for particular consumption purposes. Furthermore, the definition should clearly

recognize both the buyer and the user of goods as consumers, rather than using a comma to separate ("purchase, use goods and services") as it currently stands. According to Chinese law, a consumer is the final user of goods, while in Singapore, both the buyer and the final user are protected.

Third, regulations on unfair terms should be added. Regarding unfair terms, current Vietnamese law only regulates the invalidity of contract terms under Article 16 of the Consumer Protection Law. The author suggests referring to Australia's regulations, which define unfair terms, specify the cases and behaviors that constitute violations, and provide remedies when an unfair term appears, in order to improve the current law.

Fourth, more attention should be given to legal provisions on commitments regarding delivery, returns, refunds, and warranties. Consumers should feel assured that goods will be delivered on time, and there should be prompt solutions when issues arise. The law should include provisions on the maximum time to process deliveries, returns, and refunds in specific cases. Moreover, return policies must protect the interests of both parties, ensuring that the buyer returns the goods in "integrity," and there should be a process for handling items that are returned damaged or incomplete.

Fifth, regulations on pre- and post-transaction information provision should be improved. Article 12 of the 2010 Consumer Protection Law in Vietnam only requires sellers to provide complete information about their goods and services. Referencing South Korea's experience, the Consumer Protection Electronic Commerce (CPEC) law mandates that sellers provide clear information about themselves to customers before confirming transactions on e-commerce platforms. Clause 2, Article 20 of the 2010 Consumer Protection Law merely requires the seller to "facilitate" access to such information, which is not mandatory in Vietnam's law. Therefore, a party should be responsible for providing the seller's information and storing this information after the completion of e-commerce transactions.

Sixth, regulations on defective goods, product liability, and the responsibilities of businesses selling goods on e-commerce platforms should be expanded. Clause 3, Article 3 of the 2010 Consumer Protection Law defines defective goods as those that develop defects during manufacturing, processing, transportation, or storage. According to this definition, even if goods are perfect at the factory, any defects arising during transportation or storage should still be considered defective, and the producer, importer, or seller should be held responsible.

Seventh, additional provisions on personal data protection should be included, as well as measures for remedying consequences for individuals or organizations that store customer data on e-commerce platforms.

Eighth, there should be an effective dispute resolution mechanism between consumers and sellers on e-commerce platforms. Currently, e-commerce platforms have a mechanism for members to file complaints about goods or services, and consumers can easily complain about the condition of goods via the platform's system. The law should require e-commerce platforms to take responsibility for resolving these disputes.

Ninth, penalties for violations of consumer rights in e-commerce transactions should be increased.

Conclusion

With the proposed solutions, the author hopes that the Vietnamese legal system regarding consumer protection in e-commerce transactions will continue to improve. The occurrence of violations of consumer rights in e-commerce transactions should decrease, leading to the protection of legitimate consumer rights and giving consumers confidence and a sense of safety when transacting on these platforms.

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