

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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VOLUNTARY PEER REVIEW OF CONSUMER PROTECTION LAW AND POLICY: INDONESIA



UNITED NATIONS



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United Nations publication issued by the United Nations Conference on Trade and Development.

UNCTAD/DITC/CPLP/2019/1

eISBN: 978-92-1-004198-0

NOTE

UNCTAD serves as the focal point within the United Nations Secretariat for all matters related to consumer protection policy. UNCTAD promotes the United Nations Guidelines for Consumer Protection and encourages Member States to create awareness of the many ways in which Member States, businesses and civil society can promote consumer protection in the provision of public and private goods and services.

The work of UNCTAD is carried out through intergovernmental deliberations, technical cooperation activities, policy advice, and research and analysis on the interface between consumer protection, competition policy and development.

Voluntary peer reviews of consumer protection law and policy conducted by UNCTAD are mandated by the General Assembly in its resolution 70/186 of 22 December 2015 adopting the revised United Nations Guidelines for Consumer Protection. The guidelines seek, among other things, to assist countries in defining and implementing consumer protection in their markets.

References to dollars (\$) are United States dollars.

ACKNOWLEDGMENTS

Voluntary peer reviews of consumer protection law and policy are conducted by UNCTAD at the annual meetings of the Intergovernmental Group of Experts on Consumer Protection Law and Policy or at the United Nations Conferences to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.

This report was prepared by Pierre Horna, Legal Affairs Officer at the Competition and Consumer Policies Branch (CCPB) of UNCTAD, in cooperation with the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH team based in Indonesia, who assisted in the drafting and provided substantive and editorial contributions to this report, as well as Anahi Chavez Ruesta, Arnau Izaguerri Vila, Legal Affairs Officers and Jacqueline Bouvier, all from CCPB, UNCTAD, under the direction of Pamela Coke-Hamilton, Director of the Division on International Trade and Commodities (DITC) and the overall guidance of Teresa Moreira, Head of the Competition and Consumer Policies Branch. Logistics for the field visits, liaison with national partners and additional comments and translations were delivered through the ASEAN-German cooperation projects “Competition Policy and Law in ASEAN” (CPL II) and “Consumer Protection in ASEAN” (PROTECT) which are implemented by GIZ upon commission by the Federal Ministry for Economic Cooperation and Development (BMZ) of Germany.

UNCTAD would also like to express their appreciation to Mr. Ir. Ardiansyah Parman, Chairman of the National Agency for Consumer Protection (BPKN) of Indonesia, to the Commissioners and staff of BPKN, whose engagement was crucial for the completion of this report. Thanks also to all the Indonesian individuals and representatives of the public and private sector institutions, and of civil society organizations who were interviewed and provided inputs for the peer review exercise.

The cover was prepared by Magali Studer.

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ABBREVIATIONS AND ACRONYMS

AADCP	ASEAN-Australia Development Cooperation Programme
AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACCP	ASEAN Committee on Consumer Protection
AEC	ASEAN Economic Community
AFTECH	<i>Asosiasi FINTECH Indonesia</i> The Indonesian Financial Technology Association
AHLP	ASEAN High-Level Principles on Consumer Protection
AIPEG	Australia Indonesia Partnership for Economic Governance
AKSI NASIONAL-PK 2018-2019	<i>Aksi Nasional Perlindungan Konsumen 2018-2019</i> National Actions on Consumer Protection 2018-2019
ASAPCP	ASEAN Strategic Action Plan on Consumer Protection
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASEC	ASEAN Secretariat
ASEM	Asia-Europe Meeting
BAPPENAS	<i>Badan Perencanaan dan Pembangunan Nasional</i> National Planning and Development Agency
BI	<i>Bank Indonesia</i> Central Bank of Indonesia
BPJS	<i>Badan Penyelenggara Jaminan Sosial Kesehatan</i> Social Security Administrator for Health
BPKN	<i>Badan Perlindungan Konsumen Nasional</i> National Consumer Protection Agency
BPOM	<i>Badan Pengawas Obat dan Makanan</i> National Agency for Drug and Food Control
BPSK	<i>Badan Penyelesaian Sengketa Konsumen</i> Consumer Dispute Settlement Body
BSN	<i>Badan Standardisasi Nasional</i> National Standardization Agency
COPOLCO	Committee on Consumer Policy
DGCPTC	Directorate-General for Consumer Protection and Trade Compliance
DPD	<i>Dewan Perwakilan Daerah</i> Council of Representatives of the Region

DPR	<i>Dewan Perwakilan Rakyat</i> House of Representatives
EU	European Union
GCPL	General Law on Consumer Protection of 1999
GDP	Gross Domestic Product
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH</i> Implementing agency for German Development Cooperation
ICPEN	International Consumer Protection and Enforcement Network
IDR	Indonesian Rupiah
IGE	Intergovernmental Group of Experts
IMF	International Monetary Fund
ISO	International Organization for Standardization
MPR	<i>Majelis Permusyawaratan Rakyat</i> People's Consultative Assembly
LTRA	Law on Trade of 2014
LPMUBTI	<i>Pedoman Perilaku Layanan Pinjam Meminjam Uang Berbasis Teknologi</i> The Code of Conduct of Responsible Lending
OECD	Organisation for Economic Co-operation and Development
OIC	Organisation of Islamic Cooperation
OJK	<i>Otoritas Jasa Keuangan</i> Financial Services Authority
PROLEGNAS	<i>Program Legislasi Nasional</i> National Legislation Programme
RCEP	Regional Comprehensive Economic Partnership Agreement
RPJM	<i>Rencana Pembangunan Jangka Menganah Nasional</i> National Mid-Term Development Plan
STRANAS PK	<i>Strategi Nasional Perlindungan Konsumen</i> National Strategy on Consumer Protection
UNCTAD	United Nations Conference on Trade and Development
UNGCP	United Nations Guidelines on Consumer Protection
USD	United States Dollar
YLKI	<i>Yayasan Lembaga Konsumen Indonesia</i> Consumer Association of Indonesia

I. INTRODUCTION

In its resolution 70/186 of 22 December 2015 on consumer protection, the United Nations General Assembly reaffirmed the United Nations Guidelines for Consumer Protection (UNGCP)¹ as a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems, and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations as suitable for their own economic and social and environmental circumstances. The guidelines promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The General Assembly also decided to establish an intergovernmental group of experts on consumer protection law and policy within UNCTAD to provide the international institutional machinery of the guidelines.

The Intergovernmental Group of Experts (IGE) on Consumer Protection Law and Policy is mandated, *inter alia*, to conduct voluntary peer reviews of national consumer protection law and policy of member States, as implemented by consumer protection authorities. In its third session, the Group encouraged interested Member States to volunteer for such peer reviews².

Voluntary peer reviews in the field of consumer protection are a world novelty. As contained in the UNCTAD note entitled “Framework for voluntary peer reviews on consumer protection,”³ their purpose is to provide an external and independent assessment of the effectiveness of consumer protection law and

policy in a given country; to identify the challenges to be addressed and areas to be improved in the legal and institutional frameworks, thereby contributing to enhancing quality, efficiency and consumer protection regimes; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures, designed in consideration of the economic and developmental particularities of each country, to address these challenges; and, where appropriate, to assist countries in implementing the recommendations by developing a capacity-building project in consultation with the country concerned.

The present report serves as background for the session on the voluntary peer review on consumer protection law and policy of Indonesia, to be held at the Fourth Session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy on 8 and 9 July 2019 in Geneva, Switzerland. Indonesia is the second Member State to volunteer to undertake the peer review, following Morocco. The interest in participating was expressed by the National Consumer Protection Agency (BPKN), through representatives of the Permanent Mission of Indonesia to the United Nations in Geneva. The peer review is set against the backdrop of Indonesia’s ongoing efforts to strengthen its national consumer protection system, and the recommendations derived from the peer review are expected to substantiate critical reform initiatives, including a revision of the existing general consumer protection law.

¹ United Nations, ‘United Nations Guidelines for Consumer Protection’ (December 2015) <http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf> accessed 16 December 2017.

² UNCTAD Secretariat, ‘Report of the Intergovernmental Group of Experts on Consumer Protection Law and Policy on Its Third Session’ (Trade and Development Commission 2018) TD/B/C.I/CPLP/15 <https://unctad.org/meetings/en/SessionalDocuments/cicplpd15_en.pdf>.

³ UNCTAD Secretariat, ‘Framework for Voluntary Peer Reviews on Consumer Protection Law and Policy’ (2017) TD/B/C.I/CPLP/6 <https://unctad.org/meetings/en/SessionalDocuments/cicplpd6_en.pdf>.

II. POLITICAL, ECONOMIC AND SOCIAL CONTEXT

Indonesia is an archipelago nation of 34 provinces and home to over 263 million people, making it the world's fourth most populous country⁴. According to its 1945 Constitution, Indonesia is a unitary state in the form of a Republic. The official language of the state is Indonesian (Bahasa Indonesia).

At the executive front, the President serves as the head of government and is elected directly by the people every five years. The current President is Joko Widodo, who has been in office since 20 October 2014. Elections of the president and vice president are set to take place in the first half of 2019, in conjunction with changes of the legislators⁵.

Legislative authority is held by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*, MPR), which is comprised of 560 members of the House of Representatives (*Dewan Perwakilan Rakyat*, DPR) and 132 members of the Council of Representatives of the Region (*Dewan Perwakilan Daerah*, DPD)⁶. The members of the MPR are elected through general elections every five years.

According to Article 24 of the 1945 Constitution, the Supreme Court is a *court of cassation* and has the authority to review regulations. The candidates for justices of the Supreme Court are proposed by a separate, independent body called the Judicial Commission, and appointed to office by the President upon approval of the DPR. The Constitutional Court is responsible for upholding the Constitution and is comprised of 9 constitutional justices who are also presidential appointees, with candidates nominated by the Supreme Court, DPR and the President. Chairs and Vice-chairs for both institutions are elected by and from their respective committee of justices.

Indonesia was the 60th member of the United Nations (UN), admitted on 28 September 1950⁷. Since then, the country has been engaged in other UN-related bodies, and was most recently re-elected as a Non-Permanent member of the UN Security Council for the fourth time⁸. Indonesia is also a founding member of the Association of Southeast Asian Nations (ASEAN) established in 1967⁹. Other engagements in international organizations and fora include the Asia-Europe Meeting (ASEM), Asia-Pacific Economic Cooperation (APEC), and the Organisation of Islamic Conference (OIC)¹⁰. Indonesia is a member of the G20¹¹, being the only ASEAN representative.

In the Human Development Index, Indonesia ranked 116 out of 189 countries in 2017, placing it in the medium human development category worldwide¹². Between 1990 and 2017, life expectancy at birth increased by 6.1 years, mean years of schooling increased by 4.7 years and the gross national income

⁴ The World Bank, 'The World Bank - Indonesia Overview' (*World Bank*) <<http://www.worldbank.org/en/country/indonesia/overview>> accessed 13 December 2018.

⁵ KPU, 'The General Elections Commission (KPU) - Publication Portal for General Elections 2019' (*Komisi Pemilihan Umum - Portal Publikasi Pemilihan Umum 2019*) <<https://infopemilu.kpu.go.id/>> accessed 11 January 2019.

⁶ Redaksi Indonesia.go.id, 'Parliament of Indonesia [Parlemen Indonesia]' (*Indonesia.go.id*) <<https://indonesia.go.id/profil/parlemen>> accessed 13 December 2018.

⁷ Permanent Mission of the Republic of Indonesia to the United Nations in New York, 'Indonesia and the United Nations - Permanent Mission of the Republic of Indonesia in New York' (*PTRI New York - Indonesia and The United Nations*) <<https://www.kemlu.go.id/newyork-un/en/indonesia-united/default.aspx>> accessed 13 December 2018.

⁸ Embassy of the Republic of Indonesia in Muscat, Sultanate of Oman, 'Indonesia Elected as Non-Permanent Member of the UNSC' (*Embassy of the Republic of Indonesia in Muscat, Sultanate of Oman*, 10 June 2018) <<https://www.kemlu.go.id/muscat/en/berita-agenda/berita-perwakilan/Pages/indonesia-elected-as-non-permanent-member-of-uns.aspx>> accessed 13 December 2018.

⁹ ASEAN Secretariat, 'History of ASEAN' (*ASEAN | ONE VISION ONE IDENTITY ONE COMMUNITY*, 16 May 2012) <<https://asean.org/asean/about-asean/history/>> accessed 13 December 2018.

¹⁰ Foreign Ministry of the Republic of Indonesia, 'List of Indonesia's Membership to International Organizations [Keanggotaan Indonesia pada Organisasi Internasional]' 7 <https://www.kemlu.go.id/id/kebijakan/Documents/Keanggotaan_Indonesia_pada_OI.pdf>.

¹¹ It became a member of G20 in 2008. See Foreign Ministry of the Republic of Indonesia, 'Multilateral Cooperations of the Republic of Indonesia [Kerjasama Multilateral RI]' (*Kementrian Luar Negeri Republik Indonesia*) <<https://www.kemlu.go.id/id/kebijakan/kerjasama-multilateral/default.aspx>> accessed 13 December 2018.

¹² United Nations Development Programme, 'Human Development Indices and Indicators: 2018 Statistical Update - Briefing Note for Countries on the 2018 Statistical Update' 2 <http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/IDN.pdf> accessed 13 December 2018.

per capita increased by nearly 150%.¹³ It should be noted, however, that the level of development and living standards in the country are not homogenous. As opposed to the densely populated islands of Java and Sumatra, as well as, to some extent, Bali and Kalimantan, there are 15 provinces which are still considered underdeveloped¹⁴. The government has therefore introduced several programmes that specifically target these regions to ensure that they are not “left behind”¹⁵.

According to the World Bank, Indonesia was categorized as a lower-middle income economy in 2017¹⁶. The Central Bank of Indonesia (Bank Indonesia, BI) accounted for a gross domestic product (GDP) of IDR 13,588.79 trillion (approximately USD 1,015 trillion), with an annual growth of 5.07% and annual inflation rate of 3.61%¹⁷. The three largest sectors contributing to the country’s GDP are manufacturing, agriculture and the automotive industry¹⁸. Indonesia has become the world’s 10th largest economy in terms of purchasing power parity and succeeded in reducing poverty by half since 1999, to 9.8% in 2018¹⁹. In the 2019 Ease of Doing Business Index, Indonesia ranks 73rd out of 190 countries, having successfully undertaken reforms to improve the regulatory environment for private sector engagement, among others through new regulations to start a business and obtain credit. Particularly noteworthy are recent judiciary reforms that have helped reduce the time and backlog in courts when it comes to insolvency cases²⁰.

Another important reform trend of the past almost 20 years has been the decentralization process. Initiated in conjunction with more democratic rules in 2001, more and more functions have since been relegated from the central government to sub-national entities, notably the provinces, regencies, and districts. In line with the Law No. 22/1999 on Local Government (later revised by the Law No. 23/2014²¹), the latter were accorded relative autonomy with respect to law-making, administrative powers and the allocation of funding for various public services. Although guidance is provided by the ministries at the central level to ensure policy coherence both vertically and horizontally, this remains a crucial challenge in many areas²² and is often aggravated by varying resources and capacities in local governments which can impact, among others, the effectiveness of public service delivery and public programmes. Similar challenges persist with the courts, in particular in the districts (of which there are 380 across the country)²³.

Indonesia has a longstanding history on consumer protection. The Consumer Association of Indonesia (*Yayasan Lembaga Konsumen Indonesia*, YLKI), the oldest of its kind in the country, was established in 1973 and became a member of Consumers International (CI) the following year²⁴.

The establishment of the National Consumer Protection Agency (*Badan Perlindungan Konsumen Nasional*, BPKN), on the basis of the GCPL, has to be seen in the context of these reforms. As an independent advisory body to the government, the tasks of BPKN include providing recommendations on policies related to consumer protection and receiving consumer complaints²⁵. Meanwhile, consumer disputes can be settled by

¹³ *ibid.*

¹⁴ Yenny Tjoe, ‘How bad is the economic gap in Indonesia?’ [Seberapa Parah Ketimpangan Ekonomi di Indonesia?] (*KOMPAS.com*, 31 August 2018) <<https://ekonomi.kompas.com/read/2018/08/31/100200826/seberapa-parah-ketimpangan-ekonomi-di-indonesia->> accessed 11 January 2019.

¹⁵ *ibid.*

¹⁶ The World Bank, ‘World Bank Country and Lending Groups – World Bank Data Help Desk’ <<https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>> accessed 13 December 2018.

¹⁷ Bank Indonesia, ‘Indonesia Economic Report 2017 - Central Bank of the Republic of Indonesia [Laporan Perekonomian Indonesia Tahun 2017 - Bank Sentral Republik Indonesia]’ (2018) xxxiv, 228 <https://www.bi.go.id/id/publikasi/laporan-tahunan/perekonomian/Pages/LPI_2017.aspx> accessed 12 December 2018.

¹⁸ *ibid.* 232–233.

¹⁹ The World Bank, ‘The World Bank - Indonesia Overview’ (n 4).

²⁰ The World Bank, ‘Doing Business 2019: Training for Reform’ (The World Bank) 16 7, 53, 59–60 <http://www.worldbank.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf> accessed 13 December 2018.

²¹ Law No. 23 on Local Government 2014.

²² ‘2018-11-22_1740_Discussion with BPSK DKI Jakarta.mp3’; ‘2018-11-23_1453_Discussion with Mr. Sudaryatmo.mp3’; ‘2018-11-28_1852_Discussion with Prof. Johannes Gunawan.mp3’.

²³ Kompas, ‘Indonesia Lacks 1,400 Judges [Indonesia Kekurangan 1,400 Hakim]’ (*KOMPAS.com*, 15 July 2016) <<https://nasional.kompas.com/read/2016/07/15/13160151/indonesia.kekurangan.1.400.hakim>> accessed 11 January 2019.

²⁴ *ylki.or.id*, ‘About Us - Consumer Association from Indonesia (YLKI) [Tentang Kami – Yayasan Lembaga Konsumen Indonesia]’ (*Yayasan Lembaga Konsumen Indonesia (YLKI)*) <<https://ylki.or.id/profil/tentang-kami/>> accessed 13 December 2018.

²⁵ Law No. 8 on Consumer Protection 1999 Article 34.

litigation through the general court, as well as via non-litigation avenues, such as the specialized Consumer Dispute Settlement Bodies (*Badan Penyelesaian Sengketa Konsumen* or BPSK) which are funded by local governments at the provincial level²⁶.

The government of Indonesia has listed the Law No. 8/1999 on Consumer Protection as a priority to be revised. However, according to the National Legislation Programme (*Program Legislasi Nasional*, PROLEGNAS) 2015-2019, the draft bill was only ranked 92 out of 189 draft bills to be reviewed and approved by the DPR until the presidential election in the first half of 2019²⁷. It is quite unlikely that an amendment or revision of the existing GCPL can be realized in the remainder of the current legislative period.

That notwithstanding, it is all the more pertinent and pressing to prepare an assessment and recommendations for improving the present system ahead of the new legislative period. This can take into consideration other recent reform efforts, international discussions and regional initiatives, but particularly needs to account for the unique contextual challenges with which Indonesia is faced as a country with a large domestic market, fast-developing economy and a highly decentralized governance system.

In light of this, the peer review can help underpin the planned amendment or revision of the GCPL by providing policy options based on international good practices as well as suggestions on how to adequately address emerging issues, such as the proliferation of digital and cross-border trade, without losing sight of the interests, concerns and needs of consumers, particularly vulnerable ones.

²⁶ ibid Article 49.

²⁷ DPR Secretariat, 'Laws and Draft Bills - House of Representatives [Undang-Undang dan RUU - Dewan Perwakilan Rakyat]' (*House of Representatives of the Republic of Indonesia*) <<http://www.dpr.go.id/uu/prolegnas-long-list>> accessed 13 December 2018.

III. SUBSTANTIVE FRAMEWORK

Indonesia's Constitution, in its article 28F accords every Indonesian citizen the right to "...communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels"²⁸. While there is no specific mention of consumer rights and their protection, this provision provides guidance on citizens' rights, which may be relevant for consumer policy.

More specifically, Indonesia's Law No.8 on Consumer Protection was enacted in 1999²⁹ and constitutes the General Consumer Protection Law (GCPL) until now. It was passed as part of a set of economic reforms following the Asian financial crisis, among others, in line with commitments established by the International Monetary Fund (IMF). The GCPL contains 65 articles and provisions on the following subjects:

Other consumer-related laws include the Indonesian Civil Code, particularly its article 1365 under Chapter III related to Contracts, as well as other specific laws under the jurisdiction of different ministries and agencies, such as laws on food products, health, financial services, information and communication technologies (ICT), as well as transportation.

It is also important to note that while article 31 of the GCPL orders the establishment of the BPKN to develop consumer protection efforts³⁰, article 29 (1) clarifies that it is the Government and sectoral ministries³¹ that are responsible for the implementation of consumer protection. Consequently, Law No. 7/2014 on Trade (LTRA) contains the overall provisions for the agency

²⁸ The 1945 Constitution of the Republic of Indonesia 1945 Article 28 F.

²⁹ Law No. 8 on Consumer Protection 24.

³⁰ This is a direct translation from the original text of the law which states that BPKN has the role to "develop [national] efforts for the protection of consumers", meaning that promotes consumer protection initiatives. The function and duties are further specified in Articles 33 and 34 of GCPL, respectively.

³¹ More information on the role of BPKN, Ministry of Trade and other sectoral ministries will be discussed in the chapter concerning the Institutional Framework.

Table 1
Content of the GCPL

Chapters	Articles/Sections	Content
Preamble	Points a-g	Background of the adoption of the law
General Provisions	Article 1	Definition of consumers and entrepreneurs
Principle and Objectives	Articles 2-3	
Rights and Obligations	Articles 4-7	Rights and obligations of consumers and entrepreneurs
Prohibition Imposed on the Entrepreneurs	Articles 8-17	Standard quality of goods and services, misleading advertisement, forceful advertisement, giving prizes on lotteries
Provision to Include "Standard Clause"	Article 18	Prohibited provisions which needs to be excluded from a standard clause
Entrepreneur's Obligations	Articles 19-28	On providing compensation for damage, burden of proof, exemptions
Development and Supervision	Articles 29-30	
National Consumer Protection Agency (BPKN)	Articles 31-43	Establishment, structure and functions
Non-governmental Consumer Foundations (Consumer Associations/LPKSM)	Article 44	Definition, role and duties
Settlement of Disputes	Articles 45-48	Litigation and non-litigation
Consumer Dispute Settlement Body (BPSK)	Articles 49-58	Establishment, composition and functions
Investigation	Article 59	Authority of civil servant investigators
Sanctions	Articles 60-63	Administrative and criminal sanctions
Provisions on Transition	Article 64	
Concluding Provisions	Articles 65-66	

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in charge of implementing consumer protection laws (i.e. the Ministry of Trade). Article 3.j. of the LTRA observes that trading activities should aim at improving consumer protection. Furthermore, article 5 of the LTRA states that domestic trade policies shall be directed to, among others, improving the business climate and business certainty, and finally, consumer protection³².

The following table presents an overview of the laws governing different priority sectors on consumer protection, as governed by the Government Regulation No. 50/2017, otherwise also known as the National

Strategy on Consumer Protection (*Strategi Nasional Perlindungan Konsumen*, STRANAS PK):

As a general principle, the revised United Nations Guidelines on Consumer Protection (UNGCP) recommend that any government "...must set its own priorities for the protection of consumers in accordance to the economic, social and environmental circumstances of the country and the needs of its population and bearing in mind the costs and benefits of the proposed measures."³³ In line with this, the following sections assess the main legal provisions related to consumer protection in Indonesia.³⁴

³² Law No. 7 on Trade 2014 chs IV-Domestic Trade.

³³ United Nations (n 1) Guideline (4) at page 7.

Table 2 Sectoral Laws			
	Responsible Ministries	Related Agencies	Main Sectoral Laws
Food and Drugs		Food and Drugs Agency	Law No. 8/2012 on Food Law No. 33/2014 on Halal Products Certification
Electricity, Household and Gas	Ministry of Energy and Mineral Resources		Law No. 22/2001 on Natural Oil and Gas Law No. 24/2007 on Disaster Management Law No. 30 / 2009 on Electrical Energy Law No. 32 / 2009 on Environmental Protection and Management Law No. 21/2014 on Geothermal Energy
E-Commerce	Ministry of Trade		Law No. 11/2008 on Electronic Information and Transaction Law No. 7/2014 on Trade
Financial Services	Ministry of Finance	Financial Services Authority	Law No. 21/2011 on the Financial Services Authority (OJK)
Telecommunication Services	Ministry of Communication and Information Technology		Law No. 36/1999 on Telecommunication Law No. 40/1999 on the Press Law No. 32/2002 on Broadcasting Law No. 14/2008 on the Openness of Public Information Law No. 38/2009 on Postal Services Law No. 19/2016 on Electronic Transaction and Information (Revision from Law No. 11/2008)
Housing	Ministry of Public Works and Housing		Law No. 26/2007 on Spatial Management Law No. 1/2011 on Housing and Residential Area
Transportation Services	Ministry of Transportation		Law No. 38/2004 on Road Law No. 23/2007 on Train/Railway Law No. 17/2008 on Sailing Law No. 1/2009 on Flights Law No. 22/2009 on Traffic and Road Transport Law No. 15/2016 on the Enactment of Maritime Labor Convention 2006
Healthcare Services	Ministry of Health	Social Security Administrative Body for Health	Law No. 36/2009 on Health Law No. 44/2009 on Hospitals Law No. 29/2004 on Medical Practices Law No. 36/2014 on Health Workers Law No. 40/2004 on the National Social Security System Law No. 24/2011 on the BPJS (Social Security Agency)
Electronics, Telematics and Automotive³⁴	Ministry of Industry		Law No. 3/2014 on Industry

³⁴ Other sectoral and horizontal issues of relevance such as water and education are not mentioned even though they are addressed by general and specific legislation (respectively Article 33 of the Constitution and Law No.11/1974: Article 31 of the Constitution and Law No.20/2003).

3.1 OBJECTIVE OF THE GCPL

The main objective of the GCPL is to create a consumer protection system which provides legal security, transparency as well as access to information to all citizens in Indonesia. Furthermore, an additional objective is to develop the awareness of entrepreneurs about the importance of consumer protection and the need for honest, fair and responsible business behavior. The latter can be interpreted in line with Guideline 1 of the UNGCP which encourages “...*high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers...*” (i.e., entrepreneurs as understood by Indonesian laws).

Moreover, while a hierarchy of objectives is not necessarily implied by the order of their mentioning in the Preamble of the GCPL, the emphasis on overall economic development and business growth is quite eminent. In view of this, it is important to critically review the actual interpretation and implementation of the Law, also in interaction with other relevant laws and regulations in various sectors.

3.2 CONSUMER RIGHTS GUARANTEED BY THE GCPL

Article 4 of the GCPL guarantees the following consumer rights:

- To obtain comfort, security and safety in using or consuming the goods and/or service
- To choose the goods and/or services and obtain the said goods and/or services in accordance with the promised conversion value, condition and warranty
- To obtain correct, clear and honest information on the condition and warranty of the goods and/or services

- To be heard in expressing opinion and complaints on the goods and/or services they use or consume
- To obtain proper advocacy³⁵, protection and settlement in the consumer’s protection dispute
- To obtain consumers training and education
- To receive proper, honest and nondiscriminatory treatment or service
- To obtain compensation, redress and/or substitution, if the goods and/or services received are not in accordance with the agreement or not as requested
- To obtain rights as regulated in the other provisions of the law

As listed above, the GCPL confers consumers with an important set of rights, which correspond to the generally accepted consumers rights and are also in line with the legitimate needs of consumers as indicated by the UNGCP on its Chapter III. This notably includes the protection of consumers’ health and safety, economic interests, access to information, education, redress and representation³⁶.

3.3 BUSINESS’ OBLIGATIONS RELATED WITH CONSUMER PROTECTION

The following overview juxtaposes consumer rights and obligations as well as those of businesses, as outlined in articles 4, 7-19 of the GCPL. It is important to understand the correlation between the rights and obligations accorded to consumers and businesses under the GCPL especially regarding disputes between consumers and businesses that need to be resolved.

³⁵ Which could be interpreted as the provision of support to consumers regarding disputes.

³⁶ UNCTAD, ‘United Nations Guidelines for Consumer Protection’ [2016] UNCTAD/DITC/CPLP/MISC/2016/1 35, 7–8.

Table 3 Consumer Rights and Corresponding Business Obligations	
Consumer rights	Business Obligations
a. Obtain comfort, security and safety when consuming the goods and services;	<p>Businesses shall not:</p> <ul style="list-style-type: none"> - offer goods by using force or any other methods which can cause either physical or psychological annoyance to consumers (art. 15) - break the order at the time of settlement of the agreed ordering (art. 16a.) - break the promise on certain services and/or performance (art. 16b.) - include a standard clause that: <ul style="list-style-type: none"> ✓ transfer responsibility (art. 18.1.a.) ✓ reserve the right to refuse to receive back or refund the goods purchased (art. 18.1.b and c) ✓ gives authority for unilateral actions (art.18.1. d) ✓ impose mortgage, pledge or guarantee against goods purchased (art. 18.1.h) ✓ to include the clause at the place which is difficult to read or see or understand (art. 18.2) <p>Standard clauses shall be declared invalid by operation of law (art.18.3) and entrepreneurs are obliged to adjust the standard clause which contravenes the law.</p>
b. Choose the goods or services which are in accordance to the promised value, condition and warranty;	<p>Provide the opportunity to the consumers to test and or/try on certain goods and/or services and provide warranty and/or guarantee on the produced and/or traded goods; guarantee the goods and/or services produced and/or traded based on the prevailing quality standard provisions of the goods and/or services; act in good faith in conducting the business</p> <p>Businesses shall not produce/trade goods/services that do not:</p> <ul style="list-style-type: none"> ✓ meet required standards ✓ weight net volume as label ✓ actual size ✓ conditions, guarantee ✓ degree. composition ✓ expiration dates ✓ language
c. Obtain correct, clear, honest information on the condition and warranty;	<p>Provide correct, clear and honest information with regard to the condition and warranty of the goods and/or services and provide explanation on the use, repair and maintenance;</p> <p>Businesses shall not:</p> <ul style="list-style-type: none"> ✓ trade damaged, defective or used goods ✓ mislead offering, promoting advertising, misleading statements regarding price, use of goods, discount, danger of using the goods ✓ offer, promote, advertise goods on special prices if the traders do not intend to implement that discount ✓ in the advertising business, not to deceive consumers on the quantity, quantity, use, prices, guarantee, risks, incorrect, wrong or inaccurate information; and violate the ethics or legal provisions on advertising (art. 17)
d. Lodge complaints on the goods and services	-
e. Receive proper advocacy, protection and settlement in the consumer protection dispute	-
f. Obtain training and education	-
g. Receive proper, honest, non-discriminatory treatment or service	Treat and serve the consumers properly and honestly and non-discriminatively;
h. Obtain compensation, redress and/or substitution when goods or services are not in accordance with the agreement or not received as requested.	Provide compensation, redress and/or substitution for the damages caused by the use, consumption and application of the goods and/ or services; provide compensation, redress and/or substitution if the goods and/or services received or used do not accord with the agreement
i. Sue the entrepreneurs who refuse and/or do not respond and/or do not provide compensation to consumers' claims through the Consumer Disputes Settlement Agency or brought to court at the domicile of the consumers. (art. 23)	Compensation can be in the form of refund or goods and/or services of the same type or has equal value, or in the form of health care and/or insurance coverage in accord with the prevailing law. (art. 19.2) The provisions shall not be valid if the entrepreneurs can prove that the consumer is at fault (art. 19.5)
j. Obtain rights as regulated in the other provisions of the law	-

Source: UNCTAD and based on articles 4, 7 - 19 of the GCPL.

The table above shows that there are three sets of consumer rights, namely related to lodging complaints (article 4.d); receiving proper advocacy, protection and settlement in the consumer

protection dispute (article 4.e); and obtaining training and education (article 4.f) which may not have a direct correlation with business' obligations or prohibitions.

Consumer obligations	Business rights
To read or follow the information instructions and application or usage procedures of the goods and/or services for security of safety	–
To act in good faith in conducting the transaction of purchasing the goods and/or services;	To obtain legal protection from the consumer's acts of bad faith;
To pay for the price in accordance with the agreed conversing on value	To receive the payment in accordance with the sales agreement on the conditions and conversion value of the goods and/or services
To follow the proper legal settlement of consumer's protection dispute	To conduct proper self-defense in the legal settlement of the consumer's dispute
–	To rehabilitate its good reputation if legally proven that the consumer's damage is not caused by the goods and/or services purchase;
–	To obtain rights as regulated in the other provisions of the law

Source: UNCTAD and based on Article 5 and 6 of the GCPL

Chapter IV of the UNGCP referring to good business practices, recommends businesses to make available complaints-handling mechanisms with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden to consumers. However, this crucial aspect has not been yet fully considered in the applicable Indonesia legislation.

On the other hand, as indicated in the table above, there is no consumer obligation which corresponds to article 6.d. regarding the business right to “rehabilitate its good reputation if legally proven that the consumer's damage is not caused by the goods and/or services purchase”. In line with the spirit of the GCPL and the overall objective to maintain a good business climate, businesses should also have the right to restore their good reputation if it is was damaged unlawfully. This business right is a unique element of Indonesian laws and is not normally observed in the consumer protection laws of other jurisdictions. Nevertheless, in some instances (notably the online market place) businesses might be tempted to twist the real impact of “name-and-shame” policies (i.e. consumer reviews) with the generation of *fake* consumer reviews, thereby undermining an efficient mechanism for overcoming information asymmetry between online sellers and buyers.³⁷

³⁷ See Justin Malbon, ‘Taking Fake Online Consumer Reviews Seriously’ (2013) 36 Journal of Consumer Policy 139.

3.4 CONSUMERS' EMPOWERMENT DUE DILIGENCE

There are other consumer obligations as prescribed by the GCPL which relate to consumer empowerment and the right to information. These “obligations” indicate that consumers are expected to read the information, instructions, application or usage procedures as indicated by Article 5.a. of the GCPL, implying that consumers have the duty to inform themselves for responsible choices, while entrepreneurs are expected to act responsibly vis-à-vis consumers. The aspect of ‘external’ protection by the law is hinted at, but the compensation for harm incurred by the consumers is only referred to in later provisions of the GCPL, albeit not as a primary objective.

In the context of a consumer dispute, this principle refers broadly to the level of judgment, care, prudence, and information that a consumer would be reasonably expected to undertake when acquiring goods and services.³⁸ In other words, in disputes, courts may look into whether a consumer has been diligent enough, and that, in itself, may pose significant challenges in terms of the burden of proof for consumers for contractual and other disputes. While it is also important to note

³⁸ myeverymanlaw, ‘Law Office of Sade Ogunbode | Real Estate, Consumer Rights, Contract Disputes’ (*Law Office of Sade Ogunbode*, 27 February 2018) <<http://www.everymanlaw.com>> accessed 11 December 2018.

that the issue of the burden of proof is only mentioned in context of product safety in the GCPL (articles 19-22) according to which it is the responsibility of the entrepreneur to prove that there has been no fault or negligence from their side in cases where there are damages filed by a consumer, the actual implications of the spirit of the overall GCPL on consumers' *due diligence* will be addressed in more detail later in the report, when looking at institutional and procedural aspects of the implementation of the GCPL.

3.5 SPECIALIZATION AND SUBSIDIARITY

Indonesia faces a challenge common to many jurisdictions around the world concerning the adoption of general/centralized vs. sectoral/decentralized consumer protection rules by different ministries, sectoral regulators and even local authorities. The legislative framework in Indonesia is as multifaceted as its institutional landscape (see next chapter). The scope of application of the GCPL vis-à-vis sectoral provisions acknowledges the principles of specialization and subsidiarity, according to which there can be concurrence between a broader general law and more specific sectoral laws³⁹. Larger jurisdictions, in particular, may benefit from such a system because it affords the consumer more, and possibly also better, options to be protected from harmful or fraudulent business practices. It also means that several authorities can take action if their specialized expertise or procedures are required. In addition, Civil Code provisions can be drawn upon in consumer lawsuits, aside from the GCPL and sectoral laws.

However, the decentralized implementation of consumer protection can come with certain challenges as well, as it may be difficult for consumers and businesses in one side to know who to turn to as for public bodies on the other side to understand when to act. This is because of potentially overlapping

mandates, different procedures or provisions that could confuse all involved parties in a consumer protection dispute. A decentralized consumer protection system therefore requires concerted efforts to coordinate at all stages regarding the drafting (and revision) of substantive and procedural rules, and their implementation and enforcement. Regular exchanges among all the authorities concerned are indispensable to allow them to proceed in coordination and with a similar pace to develop a common understanding regarding all relevant laws and regulations.

Concerning litigation in consumer disputes, civil code provisions (such as article 1365) further demonstrate the effectiveness of subsidiarity. This specifically concerns efforts to obtain consumer redress for which tort law (invoking the civil code) provides a stronger and more appropriate basis than the GCPL.

State of the substantive legislation

Advances have been made in enhancing and completing the legal framework for consumer protection in Indonesia in recent years. The UNGCP calls for an overall balance between consumer rights and business obligations and prohibitions as well as consumer obligations and business rights. In this regard, the GCPL as well as sectoral provisions already foresee broad coverage. However, existing substantive and procedural rules focus on disciplining businesses, but are less clear about compensation for consumers. In the latter respect, additional provisions and/or the clarification of existing different provisions would be useful towards increased completeness and comprehensiveness. Finally, in terms of applicability to address emerging issues (e.g. digitalization, consumer data protection, cross-border issues and other specific sectoral concerns), legal provisions are already being drafted or in preparation, as mentioned later in section 4.3. on the institutional interplay and recent reform initiatives.

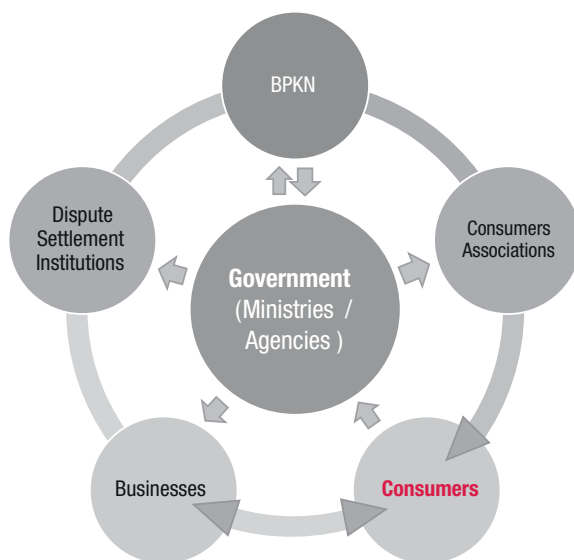
³⁹ In this case, the issue of specialization refers to the sectoral ministries and subsidiarity refers to the application of the Civil Code provisions in consumer lawsuits.

IV. INSTITUTIONAL FRAMEWORK

The Indonesian institutional landscape for the adoption and implementation of consumer protection measures is a complex system of authorities, including different sectoral ministries, specialised agencies and sectoral regulators, as well as entities under the local governments. In part, this system is a consequence of the general decentralisation efforts of the government over the past two decades, vertically (due to autonomy in the sub-national level) and horizontally (on the relevant ministries and agencies in charge of the implementation of laws and regulations). (see Figure No. 1 below)

The following section describes and analyses the respective mandates and roles of different institutions in formulating, implementing/enforcing consumer protection rules as well as redressing consumer rights in Indonesia. Recent reform efforts undertaken are also discussed.

Figure
Institutional Framework for Consumer Protection in Indonesia



Source: Presented by BPKN officials during the kick-off meeting (figure translated and re-created by GIZ)⁴⁰

⁴⁰ This figure refers to “dispute settlement institutions” in a broad way, not detailing that these include different relevant entities such as the Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen*, BPSK) and judicial courts.

4.1 ENTITIES IN CHARGE OF CONSUMER PROTECTION

As in most jurisdictions, the mandate for policy formulation in Indonesia lies with its parliament and sectoral ministries. As indicated by several stakeholders interviewed for this peer review, the GCPL was introduced in compliance with a requirement by the International Monetary Fund following the 1997 Asian financial crisis. Interviewees referred that at the time, the drafting was done in a short period of time which has negatively impacted the implementation of Law No. 8/1999 since its inception⁴¹. In light of this, there are now efforts mainly led by the Ministry of Trade and the parliament, with the support of academia, to either amend or entirely substitute the existing GCPL of 1999.

Article 33 of the GCPL created the “National Consumer Protection Agency” to “... provide suggestions and considerations to the government in the framework of developing consumers’ protection in Indonesia”⁴². This is currently the **BPKN**, which as per article 34, has the specific functions of providing recommendations to government on consumer protection, conducting surveys and studies and encouraging the development of NGOs (consumer associations), among others⁴³.

BPKN was established as an independent authority and is not formally attached to any specific ministerial structure. It currently has 19 Commissioners (for the term 2017-2020)⁴⁴ who were directly appointed by the President⁴⁵. The members of BPKN must have relevant experience and knowledge in the field of consumer protection.⁴⁶ In addition, BPKN has 50 staff members in the secretariat to support its advisory work⁴⁷. Up until early 2019, funding was allocated from

⁴¹ ‘2018-11-28_1852_Discussion with Prof. Johannes Gunawan.mp3’ (n 22).

⁴² Law No. 8 on Consumer Protection 1999 13.

⁴³ *ibid* 14.

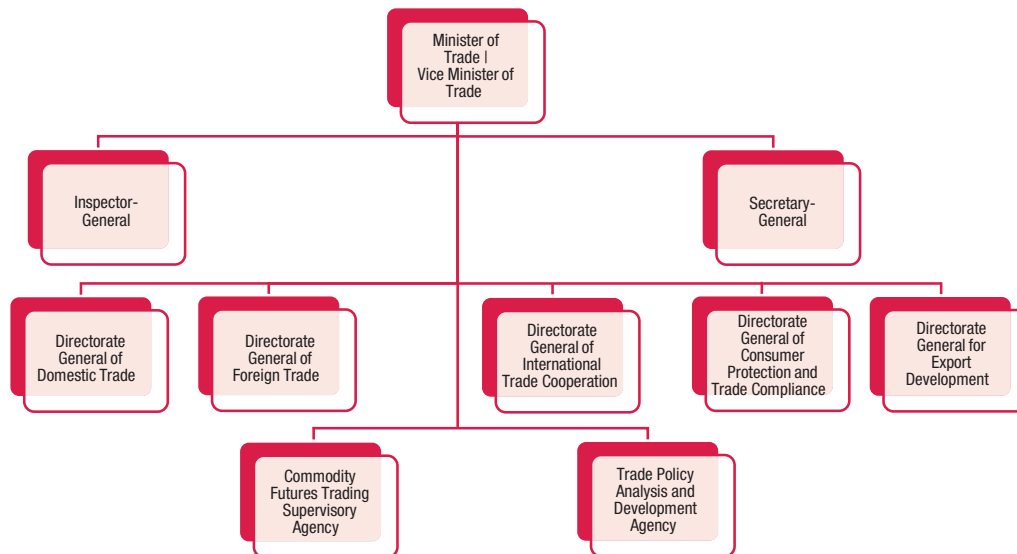
⁴⁴ BPKN official website, ‘Profile of the BPKN Members for the period 2017-2020 - PROFIL ANGGOTA BPKN PERIODE 2017-2020’ (24 November 2018) <http://bpkn.go.id/uploads/document/7117c35d39430ae2f80170ef49dd9cbf55a2573c.pdf>.

⁴⁵ Law No. 8 on Consumer Protection 14.

⁴⁶ BPKN official website (n 44).

⁴⁷ Interview with BPKN Commissioners, ‘Kick-off Meeting to Launch the Stakeholders’ Consultations Regarding the UNCTAD Voluntary Peer Review on Consumer Protection Law and Policy for Indonesia’ (22 November 2018).

Figure 2
Organizational Chart of the Ministry of Trade of the Republic of Indonesia



the budget of the Ministry of Trade, but with the latest Government Regulation No. 4/2019 BPKN can now receive funding directly from the national budget⁴⁸.

BPKN's recommendations can be addressed at various members of government (e.g. ministries, sector regulators, even the president) and are typically a result of monitoring and research activities upon BPKN's own initiative, taking into account fact-finding and stakeholder consultations. BPKN reports that out of the 161 recommendations formulated since 2006⁴⁹, only 30 have thus far been followed up and implemented⁵⁰.

For instance, the latest recommendation issued in August 2018 was in relation to housing.⁵¹ In this recommendation, BPKN requested the Minister of Home Affairs to draft some specific regulations or guidelines for local governments together with the Ministry of Public Works and Public Housing, among others to counter misleading advertisement and

clarify contract terms, property titles, provisions for mortgages and other standard clauses.⁵²

BPKN also has set up a hotline through which consumer complaints can be received, followed up and monitored. The complaints data also guides BPKN in defining policy priorities. In recent years, the number of consumer complaints submitted to BPKN has gradually increased: from only 28 in 2015 to 241 by June 2018⁵³.

The Directorate General of Consumer Protection and Trade Compliance (DGCPTC), within the **Ministry of Trade**, is the institution in charge of implementing general consumer policies in Indonesia and enforcing the GCPL in coordination with other related ministries in charge of sectoral consumer protection issues.⁵⁴ The figure below shows the organizational structure of the Ministry of Trade.

The framework regarding the Consumer Protection implementation is provided by the Government

⁴⁸ Government Regulation No. 4 on the National Consumer Protection Agency (BPKN) 2019 4.

⁴⁹ Badan Perlindungan Konsumen Nasional Republik Indonesia, 'Research & Recommendations Made by BPKN since 2006 per Year / Kajian & Rekomendasi' <<https://www.bpkn.go.id/posts/list/id/6>> accessed 24 November 2018.

⁵⁰ Interview with BPKN Commissioners (n 47).

⁵¹ BPKN, 'Recommendation on Housing to Minister of Home Affairs / Rekomendasi Perumahan Menteri Dalam Negeri' (Badan Perlindungan Konsumen Nasional (BPKN) 2018) 216 /BPKN/08/2018 <<http://bpkn.go.id/uploads/document/f59cba6d2a8e2fba21ae7f8cc8629daaa63f5e2a.pdf>> accessed 24 November 2018.

⁵² *ibid* 3.

⁵³ ANTARA News Agency, 'Half-hearted effort in consumer protection / Upaya perlindungan konsumen masih setengah hati - ANTARA News Jambi' (*Antara News*, 26 July 2018) <<https://jambi.antaranews.com/berita/328271/upaya-perlindungan-konsumen-masih-setengah-hati>> accessed 24 November 2018.

⁵⁴ Interview with Frida Adiati, Director of Standardization and Quality Control, DGCPTC and Jerie Caraen, Directorate of Consumer Empowerment, DGCPTC, 'Meeting with the Directorate General of Consumer Protection and Trade Compliance of the Ministry of Trade' (22 November 2018).

Regulation No. 58 of 2001.⁵⁵ Its article 3 encompasses general provisions regarding the efforts and measures to be undertaken by the Ministry of Trade, as well as other relevant ministries. These provisions are geared towards:

- i) The creation of a business climate and development of healthy relations between businesses and consumers;
- ii) the development of consumer associations; and
- iii) the improvement of human resources quality, research and development activities in the field of consumer protection.⁵⁶

Under article 5 of the LTRA, the central government shall regulate the activities of domestic trade through policies and control which shall pursue, among others, consumer protection goals.⁵⁷ DGCPTC comprises 633 civil servants and consists of six branches which are⁵⁸: (i) secretariat, (ii) consumer empowerment, (iii) metrology, (iv) market surveillance for goods and services, (v) trade compliance, and (vi) standardization and quality control.⁵⁹

Pursuant to article 2 of the Government Regulation No. 58/2001, DGCPTC is responsible for the implementation of consumer protection, thereby ensuring that the rights of both consumers and businesses are defended and their responsibilities towards one another duly respected.⁶⁰

Additionally, through the latest Presidential Instruction No. 2/2019, the Ministry of Trade together with the Ministry of National Development and Planning (BAPPENAS) as well as sectoral ministries and agencies are mandated to coordinate and monitor the implementation of the National Actions on Consumer Protection 2018-2019 every

six months.⁶¹ The evaluation results should be reported to BAPPENAS, which will later submit it to the President annually.⁶²

In addition to the Ministry of Trade, there are related sectoral ministries and agencies in charge of sector-specific consumer protection issues, notably with respect to health, food and drugs, financial services and e-commerce, among others. For instance, in the health sector and in accordance with article 58 of the Law No. 44/2009 on Hospitals, the Indonesian Hospital Supervisory Body is in charge of, among others, drafting guidelines on hospital supervision to be used by the supervisory body at the provincial level⁶³, which in turn has to receive and resolve, as best as possible, consumer complaints through mediation.⁶⁴ Furthermore, the Food and Drugs Agency (BPOM) was been granted the authority to monitor the use of food and drugs as mentioned in the Presidential Regulation No. 80/2017⁶⁵. More information on sectoral entities will be provided in a table at the end of this section.

Efforts from the Ministry of Trade specifically pertaining to consumer protection can be seen from the development of the Consumer Empowerment Index. Currently, the Ministry observes a low level of consumer empowerment in Indonesia. On a scale of 0-100, Indonesian consumers rank 33.70 out of 100 in the 2017 Consumer Empowerment Index released by the Ministry of Trade in 2018. It was found that consumers understand that they have rights and responsibilities, however, they are not completely able to exercise them to decide upon their consumption choice and to effectively seek redress if their rights are violated.

On complaints handling, the Ministry of Trade too, has a hotline through which consumer complaints can be received, as do most of the other institutions. Due to greater outreach, DGCPTC also receives complaints through their website (www.konsumen-indonesia.go.id), amounting to 1771 in 2018. This is being developed as a one-stop web portal where complaints received will be directed to the sectoral ministries for follow-up.

⁵⁵ Government Regulation No. 58 on the Guidance and Monitoring of Consumer Protection Implementation 2001.

⁵⁶ *ibid* 2.

⁵⁷ Law No. 7 on Trade 8.

⁵⁸ 'Directorate General of Consumer Protection and Trade Order Ministry of Trade Republic of Indonesia' ([kemendag.go.id](http://www.kemendag.go.id)) <<http://www.kemendag.go.id/en>> accessed 24 November 2018.

⁵⁹ Interview with Frida Adiati, Director of Standardization and Quality Control, DGCPTC and Jerie Caraen, Directorate of Consumer Empowerment, DGCPTC (n 55).

⁶⁰ Government Regulation No. 58 on the Guidance and Monitoring of Consumer Protection Implementation 2.

⁶¹ Presidential Instruction No. 2 on the Consumer Protection National Action (Aksi Nasional-PK) 2018-2019 2019.

⁶² *ibid*.

⁶³ Law No. 44 on Hospitals 2009 17.

⁶⁴ *ibid* 20-21.

⁶⁵ Presidential Regulation No. 80 on the Food and Drugs Agency (BPOM) 2017.

The Ministry of Trade is also authorised to sanction businesses by revoking their licenses, as stated in various provisions of the LTRA.⁶⁶ This is similar in the health sector where the Ministry of Trade can also issue sanctions against hospital operators and healthcare providers, of the Indonesian Medical Association (for example, if they are found to have been engaged in malpractice). In this regard, a distinction should be made between implementing consumer policies on the one hand, and enforcing laws and regulations to consumers, even if those functions are concentrated in the DGCPCTC or related sectoral ministries.

The last layer within the consumer system in Indonesia is the **Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen, BPSK)**, which was established to settle disputes between consumers and businesses out of court⁶⁷. Appointment of the members of the different BPSK is regulated by the Ministerial Regulation No. 6/2017 released by the Ministry of Trade⁶⁸, and prospective members should demonstrate, among others, knowledge and experience in the field of consumer protection.⁶⁹ While originally the BPSK offices were set up at the district level for reasons of accessibility, the latest developments in 2017 placed them directly under the provincial government⁷⁰. The background was to ensure better funding, but as a consequence, funding practices have remained inconsistent depending on the respective local administration, and some offices at the district level still exist in order to be “closer to consumers”.

According to article 52 of the GCPL, BPSK comprises between 9 to 15 representatives appointed by the local government⁷¹ which come from the main stakeholder groups, i.e. three to five representatives each from the provincial or district government, civil society, and businesses associations. There are presently

no competency standards for the selection of BPSK members, and often, commitment and/or capacities are limited⁷².

Article 52 of the GCPL⁷³ establishes the following extensive duties of BPSK:

- to handle and settle consumer disputes through mediation, or arbitration, or conciliation;
- to provide consultation for consumer protection;
- to conduct supervision against the inclusion of standard clause;
- to report to the public investigators if there are any violations to the provisions of this law;
- to receive written or oral complaints from the consumers regarding the violations against the consumers protection.
- to investigate and examine the consumers protection disputes;
- to summon the entrepreneurs who are accused to have violated against consumers' rights;
- to summon and bring witnesses, witness experts and/or individuals considered to have known that there has a law infringement;
- to request assistance from the investigators to bring the entrepreneurs, witnesses, witness experts;
- to obtain or examine and/or evaluate the letters, documents or other evidence to be used for investigation and/or examination;
- to decide and determine if the consumer has suffered any damages or not;
- to notify the decision to the entrepreneurs who have infringed consumers' rights
- to impose administrative sanctions against the entrepreneurs who infringed this law.

A legal assessment in 2003 of the various duties and responsibilities entrusted to BPSK appears to remain valid until today, 15 years after. In fact, the study affirms that the “...many roles assumed by BPSK are uncommon under Indonesian Legal system. BPSK has been vested with so many and wide-ranging powers. The reason behind it may be because the drafter at the time of drafting put too much emphasis on protecting consumers

⁶⁶ Law No. 7 on Trade.

⁶⁷ See Article 49, Numeral (1) at Law No. 8 on Consumer Protection 18.

⁶⁸ Ministerial Regulation No. 6 on the Consumer Dispute Settlement Body (BPSK) 2017.

⁶⁹ See Article 49, Numeral (2.e) Law No. 8 on Consumer Protection.

⁷⁰ Sella Panduarsa Gareta, 'Efforts for Consumer Protection in the Local Level Still Faces Hurdles [Upaya Perlindungan Konsumen Di Daerah Masih Terkendala]' (*Antara News*, 2 November 2017) <<https://www.antaranews.com/berita/662335/upaya-perlindungan-konsumen-di-daerah-masih-terkendala>> accessed 3 December 2018.

⁷¹ Law No. 8 on Consumer Protection 19.

⁷² '2018-11-22_1740_Discussion with BPSK DKI Jakarta. mp3' (n 22).

⁷³ Law No. 8 on Consumer Protection 19.

No.	Mandate	Ministry/agency
1	Policy formulation and advice	BPKN, National Planning and Development Agency (Bappenas)
2	Policy implementation and enforcement	
	a. General	Ministry of Trade (Directorate General of Consumer Protection and Trade Compliance)
	b. Sectoral	
	- Healthcare Services	Ministry of Health, Indonesian Hospital Supervisory Body, Social Security Administrative Body for Health (BPJS Kesehatan)
	- Food and Drugs	Food and Drugs Agency (BPOM)
	- Financial Services	Ministry of Finance, Financial Services Authority (OJK), Central Bank
	- E-commerce	Ministry of Trade
	- Telecommunication Services	Ministry of Communication and Information Technology
	- Housing	Ministry of Public Works and Housing
	- Transportation Services	Ministry of Transportation
	- Electricity, Household and Gas	Ministry of Energy and Mineral Resources
	- Electronics, Telematics and Automotive	Ministry of Industry
	- Etc.	
3	Consumer Redress	
	a. Litigation	General Court (District Court)
	b. Non-litigation	BPSK

that many of the provisions contravene with various legal doctrines and principles.”⁷⁴ It transpired from the interviews conducted for this report that there is confusion concerning the mandate of BPSK and its position vis-à-vis the general court (at the district level).

While BPSK can issue decisions in consumer disputes, the decisions need to be executed through courts. Decisions adopted by BPSK are deemed final and binding (article 54 (3) of the GCPL), yet article 57 states that its execution should be requested to the district court where the consumer is domiciled. Moreover, certain cases may not be considered “consumer disputes” by the Supreme Court if, for example, they are related to immaterial loss, coercive payment and prejudgment seizures. Due to a perceived overreach of their mandates, in 2017 the Supreme Court annulled 127 BPSK cases between May to October 2017. This points to the need for clarifying procedural standards and explains the low number of consumer complaints lodged to BPSK in recent years. Indeed, a representative from BPSK Jakarta Province reported that while 129 complaints were received and settled in 2017, 143 complaints were filed up until October 2018.⁷⁵ These were mostly

related to licensing, construction and insurance.⁷⁶ However, the figure does not seem significant, given the large population size which the BPSK Jakarta Province needs to cater to.⁷⁷

Budget constraints are another challenge. In the past years, there have been multiple reports of little or late operational transfer of funds to be provided to the BPSK’s budget⁷⁸. This means that it becomes difficult for BPSK to attract qualified and committed members and secretarial staff to deal with consumer disputes, also affecting training opportunities. (Perceived) deficits in knowledge in turn, not only frustrate consumers and businesses as direct clients, but also make it difficult to get resources to fund consumer protection measures and strengthen redress mechanisms.

Other entities in charge of consumer protection can be found in the following table:

with a Representative from the Consumer Dispute Settlement Agency BPSK - DKI Jakarta Province’ (22 November 2018).

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ Massir, ‘Finally, the budget for the Consumer Dispute Settlement Body in Sukabumi Regency is liquidated [Akhirnya, Anggaran BPSK Kabupaten Sukabumi Cair]’ (<https://sukabumiupdate.com/>, 10 February 2017) <<https://sukabumiupdate.com/detail/sukabumi/peristiwa/20533-akhirnya-anggaran-bpsk-kabupaten-sukabumi-cair>> accessed 26 November 2018.

⁷⁴ Hikmahanto Juwana, ‘Dispute Resolution Process in Indonesia’ [2003] IDE Asian Law Series 129, 63.

⁷⁵ Interview with Ms. Sularsi S.H. Deputy Assembly, Consumer Dispute Settlement Agency - DKI Jakarta Province, ‘Meeting

4.2 ASSESSMENT OF THE INSTITUTIONAL FRAMEWORK FOR CONSUMER PROTECTION

As the system has different layers of intervention (administrative, quasi-judicial and in some cases, also judicial), there are different forces and dynamics in this process either at the level of policymaking and policy-advice or enforcement as in other countries across the world. This may lead to overlaps between sectoral ministries and authorities, which may be competent to both investigate complaints from consumers and sanction the traders and services providers. In addition, mandates and procedures for court and out-of-court mechanisms also need to be taken into account. This requires the setting up of coordination mechanisms to promote cooperation and achieve coherence and effectiveness and, in some cases, this situation may benefit from a redefinition of roles and competences of the competent bodies, including courts and out-of-court entities entrusted with consumer dispute resolution.

Bearing in mind the complexity of the institutional set-up for consumer protection policy in Indonesia, the following criteria were selected to assess the effectiveness of the system.

a. Relevance for the national mid-term development agenda

Under Law 24/2004, the Long-Term National Development Plan (2005-2025) was formulated.⁷⁹ It is divided into 5-year mid-term plans, titled *Rencana Pembangunan Jangka Menengah Nasional* (RPJMN), which provide a broad strategic orientation on policy priorities of the respective President and their administration. The 2015-2019 RPJMN includes a brief reference to consumer protection under the chapter on economic development.⁸⁰

Since the current legislative period ending in early 2019, efforts are well under way to draft the follow-on RPJMN. Some discussion has been related to consumer protection. From an interview with the National Planning and Development Agency (*Badan Perencanaan and Pembangunan Nasional*, BAPPENAS), it was mentioned that current thinking suggests including consumer protection under the mainstreaming topics, such as gender equality

and governance, instead of referring it just within economic development⁸¹. Though the mainstreaming topics are only featured in the later part of the RPJMN, the change is also indicative of an understanding that consumer protection measures are cross-cutting and need to be highlighted.

b. Level of inter-agency coordination

The issue of inter-agency coordination is one of the key areas to be assessed given the complex system of consumer policy in Indonesia; the vast amount of central government entities (sectoral ministries and authorities, including regulators) and local or provincial governments. One of the efforts is reflected in the provision from the Supreme Court serving as a guide on the procedures on Small Claims Court⁸² and filing objections to verdicts issued by the BPSK⁸³.

It transpired from the consultations and interviews conducted that there is room to enhance coordination across all competent ministries and more importantly between local and central government entities in charge of consumer protection. This is apparent in the ongoing effort at the central level among responsible sectoral agencies to coordinate complaints filing and handling through the one-stop web-portal presently being established by the DGCPCTC of the Ministry of Trade. It could be considered by the Ministry not only to integrate this with the sectoral ministries, but also extend it to complaints received and handled by local BPSKs in the medium term. This is because the complaints handling system is set up separately by local governments of each provinces and may differ depending on where the BPSK stands⁸⁴. This is to ensure that the system follows a coherent as well as thorough settlement of consumer disputes mechanism, providing also compensation to consumers harmed, if needed and, in addition, to the administration of sanctions to the businesses.

⁸¹ *ibid.*

⁸² Supreme Court Regulations No. 2 on Small Claims Court Procedures 2015.

⁸³ Supreme Court Regulations No.1 on the Procedures to File an Objection on the Verdict of the Consumer Dispute Settlement Body (BPSK) 2006.

⁸⁴ Ministerial Regulation No. 6 on the Consumer Dispute Settlement Body (BPSK) 2017., as indicated in the interview with Frida Adiati, Director of Standardization and Quality Control, DGCPCTC and Jerie Caraen, Directorate of Consumer Empowerment, DGCPCTC (n 52)..

⁷⁹ Law No. 24 on the National Development Planning System 2004.

⁸⁰ '2018-11-29_1321_Discussion with Bappenas.Mp3'.

Coordination should also be developed horizontally, between entities in charge of policy formulation and advice as well as those in charge of its implementation, enforcement and monitoring. While the overarching consumer protection enforcement falls under the remit of the Ministry of Trade, there should also be a clear delineation on the roles of BPKN, BAPPENAS and the Ministry of Trade in mainstreaming consumer protection across the public sector and raising awareness to the private sector and civil society.

c. Mandate and resources of the institutions in charge of consumer protection issues

According to the UNGCP, member States "...should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. (Part III -General principles, guideline 8) and "...should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers..." (Part V - A. National policies for consumer protection, guideline 15).

These recommendations address two important issues, the mandate conferred to these institutions and the resources available to implement the mandate, related to the budget available for functioning. Furthermore, the ability to deliver the mandate without influence from the Government nor from private interests, that is to say to act independently, may be a consequence of the mandate received (for instance, law enforcement) and/or of the organizational arrangements established (regarding the appointment of senior management, their tenure and their removal).

The assessment of these requirements will be different regarding the different entities responsible for consumer protection issues in Indonesia as indicated earlier. BPKN as the policy advisor to the central government and bearing in mind the appointment of their members, has a degree of independence in carrying out its functions but may lack resources for an effective functioning. Indeed, until January 2019 before the new Government Regulation No.4 was enacted, it was reported that BPKN's budget is part of the Ministry of Trade's and therefore depending on it.⁸⁵

⁸⁵ Interview with BPKN Commissioners (n 47).

Regarding the implementation of the consumer policies (by the Ministry of Trade as by sectoral ministries), the general vs. sector-specific responsibilities, wide range of goals pursued and possible conflict of interests (between consumer protection and traders/services providers) are present within the Ministries' remits and dynamics and may have a negative impact in the effectiveness of consumer policy.⁸⁶

d. Empowerment of consumers

The first objective of the GCPL is to improve the awareness, ability and independence of the consumers to protect themselves.⁸⁷ In addition, the new strategy for consumer protection of 2017 seeks to increase consumer empowerment by strengthening consumers' support and education. Particularly, this involves inserting consumer protection issues in formal education and providing an online-integrated information system for consumers.⁸⁸ The government through the Ministry of Trade has identified a low-level of consumer empowerment in the country, which illustrated that Indonesian consumers are still not completely able to exercise their rights or to effectively find redress if their rights are infringed⁸⁹. In order to increase consumer awareness about their basic rights, BPOM (Food and Drugs Agency) for instance, has engaged with the local government, health offices, SMEs and schools to inform, draw attention and encourage standards for healthy snacks for students.⁹⁰

Other than awareness raising and education initiatives, consumers associations could also be more associated to policy making and could play a more relevant role as spokesperson of consumers seeking redress. To date, consumer associations in Indonesia have not represented individual consumers or groups in disputes. While they have been active in advocating for consumer rights in the media and exploring avenues to achieve for compensation⁹¹, they have yet to be fully involved in the formulation of policies, as well as supporting and representing consumers in acceding to justice.

⁸⁶ Law No. 7 on Trade. See also the objectives of the GCPL.

⁸⁷ Law No. 8 on Consumer Protection 3.

⁸⁸ Presidential Regulation No. 50 on National Strategy for Consumer Protection 2017.

⁸⁹ '2018-11-29_1321_Discussion with Bappenas.Mp3' (n 81).

⁹⁰ '2018-11-23_1201_Discussion with BPOM.mp3'.

⁹¹ As referred later on the initiatives from civil society.

e. Access to justice

In Indonesia's complex consumer protection system, the only entity that can provide redress is the BPSK. However, the challenges faced by the BPSK are difficult to overcome, as highlighted above, and a course of action through the courts system is out of question for most consumers due to the length of courts' proceedings and court fees. For instance, a consumer would need to go to a district court to execute a settlement decision processed by BPSK and the execution fee could be summed up in the table below⁹²:

No.	Type of Execution Fee	Amount (IDR)	Est. in USD
1	Warning fee	692,000	50
2	Auction fee	6,336,000	450
3	Voiding fee	10,000,000	711

In fact, litigation of consumer cases is still rare, and there are only a handful of lawyers who take on such cases on a *pro bono* basis.

As it stands now, the system devotes a significant amount of financial and human resources to policy advice (through BPKN) and to the implementation of consumer policies by ministries and sectoral regulators (the responsible Directorate General within the Ministry of Trade alone has 900 staff across the country). Less attention and resources have been granted to consumer redress. In any case, BPSK decisions are also subject of appeals to district or higher courts, or even to the Supreme Court.

In other words, despite the achievements verified in relation to formulating, advising on and implementing consumer protection in Indonesia, there is room for improvement in the crucial area of access to justice, promoting more effective alternative dispute resolution mechanisms and facilitating consumers' access to the judicial system, towards increased consumer protection.

⁹² District Court of Central Jakarta, 'List of Fees for Civil Lawsuits - District Court of Central Jakarta [Biaya Perkara Gugatan - Pengadilan Negeri Jakarta Pusat Kelas IA Khusus]' <<http://pn-jakartapusat.go.id/contents/131/panjar-biaya-perkara>> accessed 24 November 2018.

f. Legal certainty for businesses and consumers

Legal certainty and transparency of businesses' transactions in the marketplace as well as for consumers' choice and awareness are critical for the effectiveness of a consumer protection system.⁹³

Legal certainty can be also affected by the different layers of sectoral ministries' responsibilities and other authorities in charge of consumer protection laws and regulations.

The Indonesian Consumer protection system can become cumbersome and difficult either for businesses or consumers. Hence, while the GCPL prescribes a number of rules that aim to protect consumers, law practitioners⁹⁴ still use civil courts as the most common legal basis for consumer lawsuits, particularly tort laws governed under article 1365 of the Indonesian Civil Code of 1847.⁹⁵

As indicated earlier, according to the Indonesian system, ministries and agencies would refer to the main laws respective to their sectoral authority to exercise consumer protection measures due to the specialization and subsidiarity principle. In many instances, this sectoral specialization can be justified as these authorities thanks to their sector-specific knowledge can better respond to its consumer-related issues. In addition, this particular situation can streamline the rights and obligations for businesses and consumer across the fields as many of these obligations and responsibilities are included in sectoral laws which are directly enforced by these sectoral ministries. In any event, legal certainty and transparency are especially needed to ensure that consumer protection is effectively and timely provided for.

g. Self-regulation and good businesses practices

The need to educate and sensitize businesses in order for them to take into consideration consumer protection issues is essential to preserve the

⁹³ Many laws in the area of health (Hygiene Act of 1966, the Health Act of 1992, the Food Act of 1996) as well as banking (the Banking Act of 1998) have provided broad and general declarative provisions on consumer protection. See at Juwana (n 75) 60.

⁹⁴ Interview with Dr. David M.L. Tobing S.H., M.Kn., Mediator and Consumer Counsellor, 'Meeting with the Chairman of the Consumer Association LPKSM' (23 November 2018).

⁹⁵ Indonesian Civil Code [Burgerlijk Wetboek] 1847.

healthy business climate as stated in the GCPL in Indonesia.⁹⁶ Particular attention should be devoted to the technological markets where consumers might be more vulnerable than in offline environments.

The National Strategy of Consumer Protection in Indonesia adopted in 2017 described the low level of business compliance in the country, in particular in terms of product safety.⁹⁷ It was also reported that businesses do not normally comply with the summons issued by BPSK at the first time they received them.⁹⁸ In addition, from the interviews conducted, businesses perception of the BPSK's role is low due to the possibility of appealing its decisions to general district courts of the judicial branch as BPSK decisions are not final rulings.⁹⁹

Business compliance with consumer protection legislation is of the utmost importance for an effective consumer policy but business self-regulatory initiatives - voluntary codes of conduct and agreed best practices - should also be encouraged and welcomed as complementary to legislation, allowing traders and service providers to contribute in a positive way for enhanced consumer protection.

Indeed, Chapter IV of the UNGCP) has incorporated a set of principles for good business practices that will establish a level playing field for businesses for conducting their activities whether they are offline or online marketplaces. These principles include the following recommendations: (a) Fair and equitable treatment; (b) Commercial behaviour; (c) Disclosure and transparency; (d) Education and awareness-raising; (e) Protection of privacy; and (f) Consumer complaints and disputes.¹⁰⁰

These new guidelines address for the first time directly the private sector, encouraging businesses to actively commit to consumer protection and associating them to this policy area.

4.3 INITIATIVES FOR REFORM

a. Initiatives from the Government

An important precedent is a recent Presidential Decree and its annex that were adopted in 2017 to set up the National Strategy of Consumer Protection in Indonesia (*Strategi Nasional Perlindungan Konsumen*, STRANAS PK).¹⁰¹ The strategy was formulated as the current administration took office with BAPPENAS as the main coordinating agency for national planning spearheading it in cooperation with sectoral ministries and agencies. There were also interesting suggestions from development partners, for example in 2016, the Australia-Indonesia Partnership for Economic Governance (AIPEG) issued a discussion document recommending the adoption of a five-year consumer protection strategy for Indonesia.¹⁰²

The STRANAS PK provided a diagnosis of the current conditions in the country regarding consumer protection. It mentioned that there were low degrees of consumer empowerment, of consumer complaints and of business compliance in Indonesia since the consumer protection agencies have not been utilized enough or were not widely known by the public.¹⁰³

As such, the government intends the STRANAS PK to serve as a guideline for ministries and local government in planning, implementing, monitoring and evaluating consumer protection efforts and programmes based on their mandate, as well as for businesses and the people to exercise their active role for consumer protection¹⁰⁴. The STRANAS PK aims to strengthen the foundation and accelerate the implementation of consumer protection in priority sectors in order to increase social welfare and create a more equitable business climate as well as consumer-business relationship¹⁰⁵. The strategy noted the importance of the role of the government (in creating an effective consumer protection system), of consumers (to be further empowered) and businesses (to have pro-

⁹⁶ Law No. 8 on Consumer Protection.

⁹⁷ Presidential Regulation No. 50 on National Strategy for Consumer Protection.

⁹⁸ Interview with Ms. Sularsi S.H. Deputy Assembly, Consumer Dispute Settlement Agency - DKI Jakarta Province (n 76).

⁹⁹ Interview with Dr. David M.L. Tobing S.H., M.Kn., Mediator and Consumer Counsellor (n 95).

¹⁰⁰ United Nations (n 1) 9.

¹⁰¹ Presidential Regulation No. 50 on National Strategy for Consumer Protection.

¹⁰² Achmad Shauki, 'How Should Indonesia Pursue a Consumer Protection - Discussion Document' (Australia Indonesia Partnership for Economic Governance 2016) 141.

¹⁰³ See the assessment provided by the Annex of the Presidential Decree at: Annex of the Presidential Regulation No. 50 on National Strategy for Consumer Protection 2017.

¹⁰⁴ '2018-11-29_1321_Discussion with Bappenas.Mp3' (n 81).

¹⁰⁵ *ibid.*

consumer protection values in their practices), dubbed the “three pillars of consumer protection” to achieve such goals¹⁰⁶.

Along with current efforts to revise the GCPL, the enactment of the STRANAS PK as regulated by the Presidential Regulation is another step that the government has taken in recognising consumer protection, bringing it to public scrutiny and integrating it in the national regulatory framework which may later be streamlined.

However, discussions with BAPPENAS on the STRANAS PK revealed that there are controversial issues within the legal framework (between the GCPL and ministerial regulations) and emerging and new issues that need to be addressed, such as e-commerce and cross-border transactions¹⁰⁷. Furthermore, BAPPENAS is also aware that there is a need to align the existing institutional arrangements with respect to supervision, law enforcement, resources and coordination given the cross-sectoral nature of this topic¹⁰⁸. Concerns about the (low) awareness from consumers and businesses also persist.

On the issue of e-commerce, one of the members of the Commission XI of the DPR voiced out concerns on the importance of regulations concerning e-money. As digital transaction is increasingly widespread nationally, providing a legal umbrella instead of merely Central Bank Regulations (PBI) to protect consumers’ rights as well as businesses becomes more urgent¹⁰⁹.

b. Initiatives from business

Efforts from the business community have been noted in the financial services sector. As much as 43 businesses members of the Indonesian FinTech Association (AFTECH) have signed the Code of

Conduct of Responsible Lending (LPMUBTI) last August 2018¹¹⁰. The code of conduct is put together by AFTECH’s working group on financial inclusion and agreed upon voluntarily by its members providing online loans to consumers in Indonesia¹¹¹. The three basic principles of the LPMUBTI is (1) transparency and offering method, (2) prevention of excessive loans, and (3) ethical practices on offer, procurement and collection of debts without physical or non-physical violence, including cyber-bullying¹¹².

Although this is a sector-specific initiative, it does impact all consumers, setting a relevant example for other business associations to follow.

c. Initiatives from civil society

As the voice of consumers, civil societies such as YLKI has also been actively involved in consumer support, education and efforts for consumers to reach settlement and receive compensation in cases of loss. In 2018 YLKI has been at the forefront in voicing out against fraud umrah schemes which caused financial loss amounting to over USD 60 million to more than sixty thousand pilgrims-to-be¹¹³. To this end, YLKI not only advocates for the Ministry of Religious Affairs to establish a standard for umrah bureaus to prevent reoccurrence¹¹⁴ it also explored philanthropy efforts to arrange umrah travel for 99 underprivileged pilgrims-

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ John Andhi Oktaveri, ‘House of Representatives: E-Money Law Needed to Prevent Consumers’ Loss [DPR: Regulasi e-Money Perlu Undang-undang agar Masyarakat Tak Dirugikan]’ (*Bisnis.com*, 8 January 2019) <<https://finansial.bisnis.com/read/20190108/90/876421/dpr-regulasi-e-money-perlu-undang-undang-agar-masyarakat-tak-dirugikan->> accessed 11 January 2019.”plainCitation”:”John Andhi Oktaveri, ‘House of Representatives: E-Money Law Needed to Prevent Consumers’ Loss [DPR: Regulasi e-Money Perlu Undang-undang agar Masyarakat Tak Dirugikan]’ (*Bisnis.com*, 8 January 2019

¹¹⁰ Aloysius Sunu D, ‘Businesses are Obligated to Ensure Consumer Protection and Implement Responsible Business Practices [Pelaku Usaha Wajib Memastikan Perlindungan Konsumen dan Menerapkan Praktik Bisnis Bertanggung Jawab]’ (*Warta Kota*, 23 August 2018) <<http://wartakota.tribunnews.com/2018/08/23/pelaku-usaha-wajib-memastikan-perlindungan-konsumen-dan-menerapkan-praktik-bisnis-bertanggung-jawab>> accessed 11 January 2019.

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ The Jakarta Post, ‘First Travel Assets to Be Sold to Compensate Victims of “umrah” Scam’ (*The Jakarta Post*, 26 February 2018) <<https://www.thejakartapost.com/news/2018/02/26/first-travel-assets-to-be-sold-to-compensate-victims-of-umrah-scam.html>> accessed 11 January 2019. See the box above for details and reference.

¹¹⁴ Dias Saraswati, ‘YLKI Requested for the Ministry of Religious Affairs to Make Standards for Umrah Bureaus [YLKI Minta Kemenag Buat Standar Untuk Biro Umrah]’ (*CNN Indonesia*, 27 May 2018) <<https://www.cnnindonesia.com/nasional/20180527170156-20-301677/ykki-minta-kemenag-buat-standar-untuk-biro-umrah>> accessed 11 January 2019.”plainCitation”:”Dias Saraswati, ‘YLKI Requested for the Ministry of Religious Affairs to Make Standards for Umrah Bureaus [YLKI Minta Kemenag Buat Standar Untuk Biro Umrah]’ (*CNN Indonesia*, 27 May 2018

to-be¹¹⁵. YLKI also released a press conference containing a list of suspicious umrah bureaus based on the consumer complaints it has received as well as pointers to avoid similar form of scams¹¹⁶.

First Travel Umrah Scam

63,310 pilgrims-to-be paid fees for Umrah (minor hajj) through First Travel yet failed to leave for Mecca as promised by the travel agency. Total loss suffered was over IDR 905 billion (US\$63.37 million).

By mid-2017, the Ministry of Religious Affairs tried to process the complaints received by mediation, to no avail. The Financial Services Authority (OJK) also stopped the fund-collecting activity of the travel agency for offering products without permission with possibilities of loss for consumers. Afterwards, the Ministry revoked the license of First Travel to organize Umrah due to reported negligence.

The Depok District Court sentenced the two owners of First Travel to prison terms of 20 years and 18 years on May 2018 for the Umrah scam. The court also ordered them to each pay an IDR 10 billion fine or serve an additional eight months in prison.

Sources: BBC, The Jakarta Post, Jakarta Globe

Judicial cases may lead to a change of regulations, as the following example, related to a case of vehicle loss in a parking facility, illustrates. The parking facility refused to compensate for the loss as it stated in the parking ticket that the operator would not be held responsible for any loss or theft in the facility. The consumers, represented by Adams & Co. law firm, individually sued the operator claiming that it has violated the GCPL. The Supreme Court through its Decision No. 1246/K/PDT/2003 held the parking facility operator responsible for the breach of the law resulting to the loss of the plaintiff. In 2012, the local government of Jakarta enacted the Local Government Regulation No. 5/2012, which requires the parking operator to compensate for vehicle loss or theft through insurance. This issue, however, took three cases and over a decade for regulations to be changed in accordance to the GCPL in place.

The cases show that even though efforts made by civil society do effect change in the system and have brought to surface consumer protection issues to the public, it is still necessary to go beyond sporadic and case-driven initiatives. This would be indispensable to create greater credibility and legal certainty for redress.

¹¹⁵ Rumah Zakat, 'YLKI with Rumah Zakat Departing Jamaah for Umrah, the Fraud Victims of Umroh Travel' (*Rumah Zakat*, 23 November 2018) <<https://www.rumahzakat.org/en/ylki-bersama-rumah-zakat-berangkatkan-jemaah-korban-penipuan-travel-umroh/>> accessed 11 January 2019.

¹¹⁶ YLKI, 'Press Conference - YLKI Appeals to the People Not to Register to Suspicious Umrah Bureaus [Siaran Pers : YLKI Himbau Masyarakat Yang Ingin Umrah Tidak Mendaftar Pada Biro Umrah "BERMASALAH"]' (*Yayasan Lembaga Konsumen Indonesia (YLKI)*) <<https://ylki.or.id/2017/06/siaran-pers-ylki-minta-masyarakat-yang-ingin-umrah-tidak-mendaftar-pada-biro-umrah-yang-sedang-bermasalah/>> accessed 11 January 2019.

V. REGIONAL AND INTERNATIONAL COOPERATION

Regionally, Indonesia is a member of the ASEAN Committee on Consumer Protection (ACCP). The ACCP was established in 2007 as “the focal point to implement and monitor regional arrangements and mechanisms to foster consumer protection in the ASEAN Economic Community (AEC)”¹¹⁷. Representation by Indonesia is through the Directorate of Consumer Empowerment, Directorate General of Consumer Protection and Trade Compliance, Ministry of Trade¹¹⁸. In accordance with ASEAN’s overarching vision as stated in the AEC Blueprint 2016-2025, the work of the ACCP is directed towards realizing a “people-centred ASEAN”. Details are outlined in the ASEAN Strategic Action Plan on Consumer Protection (ASAPCP 2025)¹¹⁹, among others the development of the Handbook on ASEAN Consumer Protection Laws and Regulations (launched in July 2018)¹²⁰, enhancing knowledge management and complaints-handling through the new ACCP website (www.asean-consumer.org) and the endorsement of the ASEAN High-Level Principles on Consumer Protection (AHLP)¹²¹. The latter set a benchmark for consumer protection in the region with 8 principles, as follows:

1. Enforcement of Consumer Protection Laws are Fair, Consistent, Effective and Proportionate
2. Consumers are Equipped with the Skills, Knowledge, Information and Confidence to Exercise their Rights
3. Consumers are Protected from Harmful Goods and Services
4. Consumers Have Access to Appropriate and Convenient Sources of Advice and Redress including Alternative Dispute Resolution (ADR)
5. Consumers Understand the Impact of Consumption Decisions on the Shared Environment
6. Strong Consumer Advocacy is Promoted
7. High Levels of Cooperation between Different Levels of Government and with Business and Other Stakeholders
8. Consumers in E-commerce are Protected

Indonesia last chaired the ACCP in 2016 and has actively contributed to the ACCP’s agenda over the years, including hosting regional workshops and receiving delegations for study visits from other ASEAN Member States. Indonesia, through the Directorate of Consumer Empowerment at the Ministry of Trade, also helped promote the ASEAN product recall website and its integration with the OECD’s global product recall page¹²².

Through ASEAN, Indonesia is also part of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and Regional Comprehensive Economic Partnership (RCEP). Other than removing trade barriers and facilitating movement of goods and persons, the AANZFTA strives to establish an investor-state dispute settlement mechanism¹²³. Negotiations through the RCEP will further cover dispute settlement and e-commerce issues, in addition to trade and investment¹²⁴.

¹¹⁷ ASEAN, ‘The ASEAN Committee on Consumer Protection (ACCP)’ (*ASEAN Committee on Consumer Protection (ACCP)*) <<https://aseanconsumer.org/cterm-asean-cooperation-in-asean/the-asean-committee-on-consumer-protection-accp>> accessed 31 December 2018.

¹¹⁸ ASEAN, ‘Country Profile: Indonesia_ACCP’ (*ASEAN Committee on Consumer Protection (ACCP)*) <<https://aseanconsumer.org/selectcountry=Indonesia>> accessed 19 December 2018.

¹¹⁹ ASEAN, ‘The ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2016-2025’ (*ASEAN Committee on Consumer Protection (ACCP)*) <<https://aseanconsumer.org/cterm-asean-cooperation-in-asean/the-asean-strategic-action-plan-on-consumer-protection-asapcp-2016-2025>> accessed 31 December 2018.

¹²⁰ ASEAN, ‘Handbook on ASEAN Consumer Protection Laws and Regulations’ (*ASEAN Committee on Consumer Protection (ACCP)*) <<https://aseanconsumer.org/read-publication-handbook-on-asean-consumer-protection-laws-and-regulations>> accessed 31 December 2018.

¹²¹ ASEAN, ‘ASEAN High-Level Principles on Consumer Protection’ (*ASEAN Committee on Consumer Protection (ACCP)*) <<https://aseanconsumer.org/cterm-asean-cooperation-in-asean/asean-high-level-principles-on-consumer-protection>> accessed 31 December 2018.

¹²² OECD, ‘OECD Global Recalls Portal’ (*Organisation for Economic Co-operation and Development (OECD) Global Recalls Portal*) <<https://globalrecalls.oecd.org/front/index.html#/about-us>> accessed 9 January 2019.

¹²³ AANZFTA, ‘AANZFTA - Overview’ (*ASEAN-Australia-New Zealand Free Trade Agreement*) <<https://aanzfta.asean.org/aanzfta-overview/>> accessed 9 January 2019.

¹²⁴ ASEAN, ‘Regional Comprehensive Economic Partnership (RCEP)’ (*ASEAN | ONE VISION ONE IDENTITY ONE COMMUNITY*) <https://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership> accessed 9 January 2019.

Indonesia was also one of the twelve founding members of the Asia-Pacific Economic Cooperation (APEC) in 1989, hosting the APEC Economic Leaders' Meeting in 1994 and 2013¹²⁵. Within APEC's Sub-Committee on Standards and Conformance working in areas such as good regulatory practices, product and food safety, Indonesia participates in the Electrical and Electronic Equipment Mutual Recognition Arrangement, with information on mandatory requirements for regulated electrical and electronic products made available for exchange with other APEC Member Economies (last updated in 2014)¹²⁶.

At present, Indonesia is not yet a member of the International Consumer Protection and Enforcement Network (ICPEN) which is a network comprised of consumer protection law enforcement authorities worldwide. ICPEN currently has member authorities representing 61 countries, encouraging cooperation between consumer protection authorities in consumer protection issues and law enforcement since its establishment in 1992¹²⁷.

As concerns international development partners, Indonesia is primarily working with Australia through the aforementioned AIPEG as well as the ASEAN-Australia Development Programme Phase II (AADCP II). AIPEG has primarily been assisting the OJK on consumer protection and dispute resolution related to financial services. In 2016, OJK took into account the Australian experience in drafting its first set of governing regulations to protect consumers in an emerging Indonesian FinTech sector¹²⁸. In the same year, AIPEG also supported the participation of OJK officials in the International Financial Consumer Protection Organization's Seminar on "Fast Innovation and Development of Fintech: Striking the Balance between Financial Inclusion and Consumer

Protection"¹²⁹. Under the Australia-Indonesia Partnership for Economic Development (PROSPERA), to run from 2018 until 2023, Australia plans to support the Indonesian government in developing more effective institutions and policies that contribute to strong, sustainable and inclusive economic growth and improved public sector performance.

Meanwhile, under the AADCP II¹³⁰, Indonesia was involved as a member of the ACCP in numerous regional activities and initiatives, such as the formulation of six comprehensive modules of key issues related to consumer protection, along with other guidance and reference documents. The AADCP II is expected to run until 2019¹³¹ and will be complemented by additional assistance under Economic Cooperation Work Programme of the AANZFTA in 2019. The latter foresees an exploratory project on regional cooperation and the interfaces between consumer and competition policies.

Moreover, starting in 2015, Germany has been assisting the ACCP and selected ASEAN Member States in strengthening their consumer protection systems. The ASEAN-German Cooperation, through the *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) GmbH, focused on the development of a peer review mechanism, self-assessment toolkit, and an ASEAN Consumer Empowerment Index. A new multi-year regional project is set to commence in early 2019. Close cooperation with international organizations, notably UNCTAD and the OECD, is foreseen in order to link up with international discussions on emerging trends and pertinent issues.

Indonesia has also been a participating member of the ISO/COPOLCO (International Organization for Standardization/Committee on Consumer Policy) since 1954, represented by the National Standardization Agency (*Badan Standardisasi Nasional*, BSN)¹³² as

¹²⁵ APEC, 'APEC - Member Economies' (*Asia-Pacific Economic Cooperation (APEC)*) <<https://www.apec.org/About-Us/About-APEC/Member-Economies>> accessed 9 January 2019.

¹²⁶ APEC, 'APEC - Sub-Committee on Standards and Conformance' (*Asia-Pacific Economic Cooperation (APEC)*) <<https://www.apec.org/Achievements/Group/Committee-on-Trade-and-Investment-2/Sub-Committee-on-Standards-and-Conformance>> accessed 9 January 2019.

¹²⁷ International Consumer Protection Enforcement Network, 'ICPEN - Who We Are' (*International Consumer Protection Enforcement Network (ICPEN)*) <<https://www.icpen.org/who-we-are>> accessed 7 January 2019.

¹²⁸ DFAT AU, 'AIPEG Progress Report :1 January to 30 June 2017' (Department of Foreign Affairs and Trade Australia (DFAT AU) 2017) 47 <<https://dfat.gov.au/about-us/business-opportunities/Documents/aipeg-progress-report.pdf>> accessed 31 December 2018.

¹²⁹ *ibid* 49.

¹³⁰ ASEAN – Australia Development Cooperation Program – Phase II (AADCP II) and Clear Horizon Consulting, 'Study on AADCP II Influence on Consumer Protection Policy in Select ASEAN Member States' (2018) 8–10 <<http://aadcp2.org/wp-content/uploads/FA-AADCP-Study-Report-May2018.pdf>> accessed 19 December 2018.

¹³¹ ASEAN – Australia Development Cooperation Program – Phase II (AADCP II), 'AADCP II - About Us' (*ASEAN Australia Development Cooperation Program Phase II (AADCP II)*) <<http://aadcp2.org/about-us/#about-aadcp>> accessed 7 January 2019.

¹³² ISO, 'BSN Indonesia Membership of ISO' (*ISO*) <<http://www.iso.org/cms/render/live/en/sites/isoorg/contents/data/member/00/17/1798.html>> accessed 31 December 2018.

the responsible body for national standardization. The scope of work of the ISO COPOLCO includes¹³³ to study ways of ensuring that consumers benefit from, and participate in, national and international standardization. To this end, ISO COPOLCO provides a forum for the exchange of experiences among relevant authorities and advises the ISO Council, among others on the need for new or revised policies or actions related to consumer interests and needs. Presently, ISO COPOLCO has 73 participating and 52 observing members¹³⁴. Under its direct

responsibility, the Committee has thus far published 8 ISO standards on product safety, information for consumers and guidelines for consumer needs¹³⁵. Last May 2018, BSN with ISO/COPOLCO organized a workshop titled “Consumer Protection in the Digital Economy” in response to the rise of digital economic transactions¹³⁶. During this workshop, BSN highlighted the enactment of the National Indonesian Standard (SNI) ISO/IEC 27001:2013 on the requirements for a standard information security management system¹³⁷.

¹³³ ISO, ‘ISO/COPOLCO - Committee on Consumer Policy’ (*ISO/COPOLCO*) <<http://www.iso.org/cms/render/live/en/sites/isoorg/contents/data/committee/05/50/55000.html>> accessed 19 December 2018.

¹³⁴ *ibid.*

¹³⁵ ISO, ‘ISO/COPOLCO - Standards Catalogue’ (*ISO/COPOLCO*) <<https://www.iso.org/committee/55000/x/catalogue/p/1/u/0/w/0/d/0>> accessed 31 December 2018.

¹³⁶ Badan Standardisasi Nasional (BSN), ‘Indonesia Ensures Security and Consumer Protection System in the Digital Economy Era - [Indonesia Pastikan Sistem Keamanan dan Perlindungan Konsumen di Era Ekonomi Digital]’ (*BSN*) <<http://www.bsn.go.id/main/berita/detail/9301/indonesia-pastikan-sistem-keamanan-dan-perlindungan-konsumen-di-era-ekonomi-digital#.XB0BWUzblU>> accessed 19 December 2018.

¹³⁷ *ibid.*

VI. CONCLUSIONS AND RECOMMENDATIONS

6.1 CONCLUSIONS

Consumer protection has a fairly long track record in Indonesia, with the establishment of the first country-wide consumer organization, YLKI, in the early 1970s. While the general consumer protection law was only enacted in 1999, other laws in the area of health (notably, Hygiene Act of 1966, Health Act of 1992, Food Act of 1996) and financial services (notably, Banking Act of 1998) already had a bearing on consumer protection. These sectoral provisions were applied in parallel to the implementation of the GCPL and were gradually updated in line with emerging issues. With respect to financial services in particular, advances have been made to introduce mechanisms for complaints-handling and alternative dispute resolution, under the purview of the newly formed authority, OJK, since 2011.

At the same time, the Indonesian government has recognized the importance of “mainstreaming” consumer protection and streamlining inter-agency coordination. With the STRANAS PK, a comprehensive national strategy on consumer protection was adopted by Presidential Regulation in 2017, requiring all sectoral ministries and regulators to periodically consult and devise annual action plans on consumer protection. Although the latter could not yet be realized due to limited time, there is little doubt that ongoing efforts will be continued in the upcoming legislative period starting in 2019. The process of developing the strategy itself, through intensive stakeholder discussions and a sound diagnosis of prevalent challenges, illustrates the government’s commitment towards promoting and strengthening consumer protection in the future.

The revised United Nations Guidelines for Consumer Protection, which were considerably expanded to address current and emerging challenges faced by consumers and consumer protection agencies across the world (namely, regarding access to essential goods and services, the protection of vulnerable and disadvantaged consumers, consumer data protection, national policies for consumer protection, dispute resolution, electronic commerce, financial services and good business practices), establish common principles referring to the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. They also call for the participation of other stakeholders, such as consumer

associations and the private sector, recommending that member States coordinate these contributions.

Hence, the Guidelines provide important recommendations for Indonesia to consider when improving its consumer protection system.

Major challenges still remain with respect to the existing legal and institutional framework as referred to next, as well as the basis for the recommendations to be considered by the Indonesian government in the short, medium and longer term.

a. Challenges related to the legal framework

The implementation of consumer protection rules in Indonesia follows a decentralised model, with different sectoral ministries and sector-specific regulators at the central and local levels in charge of implementing the GCPL as well as specific sectoral policies, laws and regulations. This concurrence whereby the GCPL is complemented by more detailed sectoral provisions is suited for a large country like Indonesia, where a decentralised model can afford greater accessibility and multiple avenues for consumers to lodge their complaints. This is in accordance with the principles of specialisation and subsidiarity. However, the negative side of this model is that both, public and private actors, as well as the consumer themselves, must navigate through a multitude of legal provisions. This can be challenging and complex, in particular since the GCPL puts an emphasis on well-informed consumers and expects them to proceed with due diligence when acquiring goods or services. Because there are many provisions related to consumer protection, it is important to ensure legal certainty for consumers and businesses alike. Difficulties arise if the policies, laws and regulations developed by the various entities in charge overlap, show inconsistency or divergences, varying in accordance to their scope of application and/or interpretation.

Adding to this is the fact that prevalent substantive and procedural provisions, and institutional practice, seem to focus much more on disciplining businesses rather than facilitating consumer redress. The redress limitations need to be addressed as experiences in the litigation of cases where consumers have been harmed are still scarce in Indonesia, not least because the GCPL is not sufficiently elaborated for that purpose.

b. Challenges related to the institutional framework

The complexity of the legal framework for consumer protection in Indonesia is mirrored by the number of entities in charge of consumer protection policy and enforcement. Initiatives are under way to enhance coordination, among others under the STRANAS PK, the new national strategy which aims to promote the “mainstreaming” of consumer protection across different parts of the government and, to some extent, seeks to overcome “sectoral feuds” by synchronising efforts. However, the role of BPKN as the national consumer protection authority vis-à-vis the Ministry of Trade and other sectoral ministries and regulators needs to be more clearly defined with respect to the provision of policy advice vs. policy formulation and implementation. There are some overlaps of tasks that ultimately hamper the effectiveness of the existing consumer protection system. In addition, there are only few initiatives on the part of the private sector to self-regulate and promote responsible business practices. Meanwhile, consumer associations face constraints in securing continuous funding and are often only engaged on an *ad hoc* basis.

Aside from awareness-raising, most ministries and sectoral regulators have put into place hotlines and other means of monitoring complaints. The challenge is to appropriately coordinate and synergize these separate mechanisms as a source of intelligence to provide a stronger basis for policymaking and enforcement.

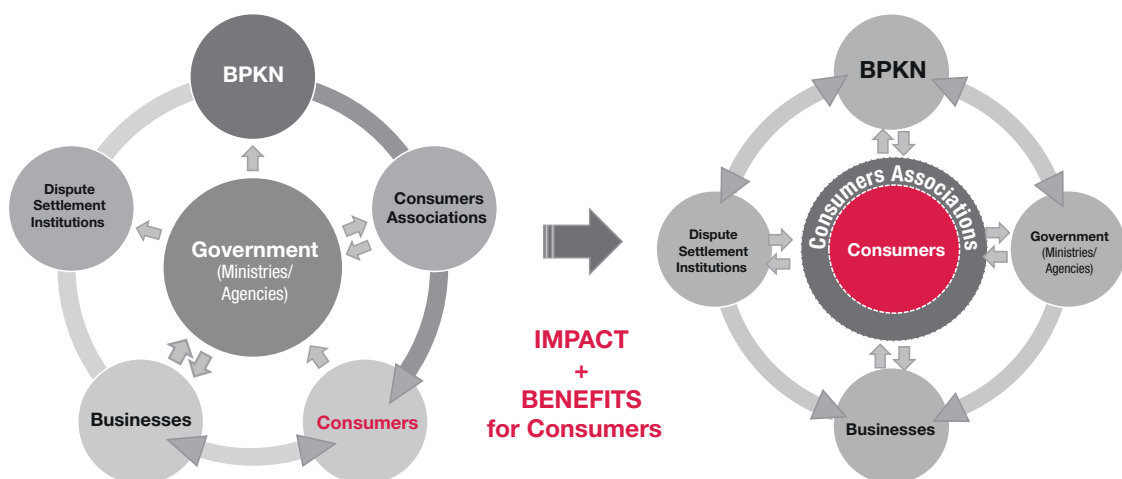
Another challenge is the provision of clear direction, through the national strategy, on the necessary resources for the implementation of consumer protection. In particular, the dispute settlement bodies, BPSK, responsible for taking on general consumer disputes, presently placed under the authority of the provincial governments, are underfunded. It is the prerogative of each provincial government to determine how much priority they accord to consumer protection and how much resources should be allocated to the respective bodies.

There is little scope of action on the part of the central government to intervene in this regard, but the impact on consumers (particularly in the lesser developed regions) can be significant. In fact, the limited resources, capacities and accessibility of the BPSK, in conjunction with different interpretations of the binding nature of their decisions, ultimately discourages consumers in a country where the general complaints culture is already underdeveloped.

6.2 RECOMMENDATIONS

The Government of Indonesia may wish to consider the recommendations listed below which are aimed at strengthening the country’s legal and institutional framework. The main proposition is to put the consumer in the centre of the system and shift the focus away from government guidance towards businesses.

Figure 3
Shifting the focus of consumer protection in Indonesia



Source: GIZ elaboration¹³⁸

¹³⁸ Although the charts do not seem to be directly related, the objective is to suggest a focus on consumers, placing them at the center of the system.

1. Strengthening the legal framework

The idea is to strike a more positive balance between a pro-consumer (legal) culture and how businesses should see consumers' behaviour in the marketplace. To the extent possible, the recommendations could be taken into account in the pending process of amending (or substituting) Law No. 8/1999.

a. Prioritising the amendment of the Law No. 8/1999 in the legislative agenda

The government of Indonesia has listed the Law No. 8/1999 on Consumer Protection as a priority to be revised. However, according to the National Legislation Programme (*Program Legislasi Nasional*, PROLEGNAS) 2015-2019, the draft bill is presently only ranked 92 out of 189 draft bills to be reviewed and approved by the DPR until the presidential election in mid-2019¹³⁹. It remains to be seen whether an amendment or revision of the existing GCPL can be achieved in the remainder of the current legislative period.

New legislators are set to be appointed following the presidential elections in the first half of 2019. This provides an opportunity to place consumer protection higher on the legislative agenda and to prepare additional recommendations for the amendment of the GCPL, based on international guidelines and good practices.

Developing a common understanding among all relevant stakeholders about the scope and "spirit" of the (updated) GCPL will be indispensable. In order to enhance legal certainty in the interest of businesses and consumers, refining the scope of application of the GCPL vis-à-vis sectoral provisions, in due consideration of the principles of specialisation and subsidiarity, is of utmost importance.

b. Completing implementing regulations across sectors

Since the amendment of the Law No. 8/1999 can be considered a medium-term target, it is suggested to review in parallel existing implementing regulations (or guidelines) issued by sectoral ministries and regulators. The objective is to ensure greater coherence, particularly regarding procedural aspects of enforcing

consumer protection, such as in dispute resolution and funding mechanisms. These efforts should be guided by the national strategy and complemented by specific annual action plans for each sector.

c. Adequacy and applicability to address emerging issues (e-commerce, data protection)

In the medium term, it is further suggested to consider legislation to address emerging issues, such as online and cross-border transactions across various sectors. According to the UNGCP 63, online consumers have the right to a level of protection that is no less than that afforded to other forms of commerce. Although general provisions exist already in the Law No. 19/2016 on electronic information and transactions, specific laws on data protection, data sovereignty and other issues have yet to be formulated and certain standards applied across all sectors.

2 Strengthening the institutional framework

The goal is to improve the institutional capacity of BPKN and BPSK as key entities for effective consumer protection in Indonesia, while retaining the existing decentralised enforcement model.

a. Mandate of BPKN

Advisory function

To improve BPKN's current function in providing evidence-based policy advice to the government, two immediate recommendations could be put into action: first, introduce an obligation for government entities to follow up on the recommendations prepared by BPKN and provide a formal response and reasons for the acceptance or non-acceptance of the recommendations within a certain period of time); and, second to provide for the integration and overall coordination of the information gathered through access to the consolidated complaints data from all sectoral ministries and regulators as well as the BPSK at the local level (for example, through an integrated system). These two measures would allow for BPKN to be more effective regarding their own role vis-à-vis the government; as well as to better monitor key consumer concerns and trends.

¹³⁹ DPR Secretariat (n 27).

In the medium-longer term, a modification of the position of BPKN could be considered: first, to place BPKN directly under the Office of the President (or Vice President) in order to enhance its standing (and acceptance by other ministries and sectoral regulators) as the overarching national agency for consumer protection; second, to accord it its own budget for greater operational independence and a more effective functioning. This would lead to more visibility of the consumer protection agenda in the government and to the eyes of the general public. It would also allow BPKN to play a more prominent role in “mainstreaming” consumer protection among sectoral ministries and regulators, as foreseen under the next RPJMN. One approach could be by advising on how to assess whether new or revised policies, laws and regulations at the central and local levels have an adverse impact on consumers.

Another suggestion concerns BPKN’s role in engaging and empowering consumer associations for joint awareness-raising and consumer support efforts: for example, some public funds (out of the general budget of BPKN) could be set aside to support their delivery of campaigns or projects. BPKN could organise regular tenders or “ideas competition” for interested associations, encouraging innovative approaches. This would raise the profile of consumer associations and provide them with more stable conditions for an active performance. It would be important to design a transparent and fair process for consumer associations to apply for such funding and to ensure the accountability of the BPKN when coordinating these tenders.

Training and education measures

Complementary to its advisory function, BPKN should intensify efforts on training and education concerning consumer protection. Aside from the other ministries and sectoral regulators, which should be targeted in line with “mainstreaming” measures, BPKN could engage more with the local BPSK to help professionalise them in the resolution of consumer disputes. In addition, BPKN could also provide training to business associations, seeking to promote more responsible business practices. Finally, BPKN could link up with consumer associations to raise greater awareness and jointly advocate for consumer interests. Lectures, trainings and public discussions in cooperation with local schools and universities

should be envisaged as well, among others with a view towards integrating consumer protection in curricula at all levels and establishing networks among academics as well as activists. The idea is for BPKN to empower intermediaries as multipliers that could also reach out to consumers and build a broad-based pro-consumer culture. Training modules could be based on the UNCTAD Manual on Consumer Protection¹⁴⁰, among others, or the materials for strengthening technical competency on consumer protection as developed by the ACCP.

Settlement of high-impact consumer disputes

Considering the difficulties faced by BPSK when dealing with consumer disputes, a medium/long-term reform that could be considered would be to provide BPKN with the mandate to handle consumer disputes that are either above a certain financial threshold, constitute a national priority or otherwise affect a large number of consumers. To that end, BPKN would have to become a quasi-judicial body. While this could have merits in improving the overall effectiveness of dispute resolution and consumer redress, it also requires a longer discussion with and buy-in from the Supreme Court, as the highest authority within the judiciary which would need to provide the judicial review of the BPKN decisions without being directed to district or higher courts. The latter might be difficult to accommodate in the ongoing revision of the GCPL, but it also is recommended to be included in the discussions.

b. Mandate of BPSK

Resource allocation and professionalisation

Appropriate resources to hire and train BPSK personnel is critical to its performance and effectiveness. Although the central government cannot interfere with the authority of the local governments under which the BPSK are placed, a minimum standard for allocating budget funds appropriate for them to perform their operations should be set and applied across all provinces. In the longer term, it could be further considered to introduce grants through specially allocated funds in order to improve the qualifications of the BPSK’s staff.

¹⁴⁰ UNCTAD, *Manual on Consumer Protection 2017* <https://unctad.org/en/PublicationsLibrary/ditccplp2017d1_en.pdf>.

To professionalise the BPSK, several avenues could be explored: first, introduce a standardised testing mechanism to screen prospective members from each of the three stakeholder groups (government, business, consumer); second, develop modules and implement standardised trainings (of trainers), facilitated by BPKN and, if necessary, other ministries and sectoral regulators' representatives on specific issues.

Settlement of small claims

In order to better delineate the tasks of the BPSK vs. the general courts, it is recommended for the BPSK to focus on small claims. According to the Supreme Court Regulation No. 2/2015, these are classified as not exceeding 200 mio. IDR (approx. 2,000 USD); however, the international average for developing countries is typically lower. Given the access to BPSK in the provinces, appeals should be made to the high courts as the first instance (at provincial level) and subsequently, the Supreme Court. As such, the level of the BPSK's claims handled would be similar to district courts. A clarification of existing procedural rules would ensure that there is no additional step or fee necessary to execute the decisions issued by BPSK, and that these can be considered final and binding. A tangible impact for consumers in terms of access to justice could be achieved more easily.

c. Streamlining stakeholders' participation in consumer protection policy

For the purposes of better coordination of policies and consumer protection measures, under the umbrella of the national strategy, the establishment of a national council on consumer protection as an advisory body could be considered in the medium to long term. This council could be chaired by BPKN (and BAPPENAS) and should comprise all sectoral ministries and /sector-specific regulators, as well as representatives from the business community and civil society. The council would acknowledge the decentralised mandates for policy formulation and enforcement but enable regular consultations to enhance policy coherence and effectiveness. Through the council's discussions and opinions, the currently rather *ad hoc* engagement of consumer associations in policy discussions could be formalised. The council would also provide a forum for reviewing key performance indicators and action plans, derived from either the national strategy or even the RPJMN. Consumer associations, such as

YLKI, could present their own monitoring data to the other council members, as a means of checks and balances.

d. Self-regulation and good business practices

Indonesia should consider drawing attention to local self-regulation schemes in different markets and sectors, as per chapter IV of the UNGCP and in accordance with international good practices. Further guidance could be derived from the forthcoming code of conduct for good (online) business, to be developed by the ACCP as a regional reference. As described above, BPKN could spearhead the initiatives to reach out to and sensitise business member organisations, for example the Indonesian Retailers Association. In the longer term, a national standard or code of conduct could be devised for all businesses to adhere to.

e. Building a pro-consumer culture and "community of practice"

Networking among consumer associations and activists (e.g. researchers, lawyers) should be enhanced to allow for mutual learning as well as leverage and exposure to consumers. One option could be to set up an online platform or forum for the exchange of information and experiences concerning misc. consumer issues. This could be complemented by conferences, seminars, workshops etc. organized at regular intervals (e.g. annual reviews), for example, hosted by universities, that allow for face-to-face interaction. Through this, a "community of practice" can gradually evolve in the longer term, driving also efforts to integrate consumer education in schools and universities.

f. Regional and international cooperation

Indonesia is already an active member of the ACCP, however, representation has thus far only been through the Ministry of Trade. Since typically two delegates per country attend the ACCP meetings, it is suggested that representatives of the BPKN are also invited to attend the ACCP in the future. This would aid with knowledge management and linking up to the regional as well as international discussions, particularly on cross-border consumer issues. Furthermore, membership in the ICPEN could be explored to benefit from and leverage on peer learning and the mutual sharing of experiences. This could also potentially

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facilitate the conclusion of bilateral agreements with other authorities in the ASEAN region (and beyond), as suggested by the UNGCP guideline 82.

Finally, Table No. 7 below summarizes all the recommendations suggested in this report according to their short-, medium- or long-term perspective.

Table 7 Summary of the Peer Review Recommendations		
Recommendation	Short to Medium Term	Medium to Long Term
Legal framework		
Political and legislative agenda	<ul style="list-style-type: none"> Refine the scope of application of the GCPL vis-à-vis sectoral provisions 	<ul style="list-style-type: none"> Amend and align the GCPL with international guidelines and good practices, as a priority in the legislative period 2019-2024
Substantive and procedural standards	<ul style="list-style-type: none"> Complete implementing regulations and ensure consistency across sectors 	
Emerging issues (e.g. online and cross-border trade)	<ul style="list-style-type: none"> Update provisions, as necessary, to accommodate new trends and developments 	
Institutional framework		
BPKN	<ul style="list-style-type: none"> Enhance advisory function through improved monitoring of complaints data and follow-up of recommendations Broaden and shepherd training and education measures to government, private sector and civil society ("mainstreaming") 	<ul style="list-style-type: none"> Increase budgetary means to assert its role and mandate Elevate position of BPKN to be directly under the Office of the President Add mandate for settlement of high-impact consumer disputes
BPSK	<ul style="list-style-type: none"> Mobilize appropriate resources to professionalise BPSK members through common competency standards and continued training/education 	<ul style="list-style-type: none"> Set standards to secure sufficient and continuous funding from all provincial governments Clarify mandate (and procedures) for settlement of small claims Ensure immediate executability of the decision issued by BPSK without further process at the District Court Simplify the procedure of appeals to the BPSK's decision (i.e. once via the High Court)
Streamlining stakeholders> participation	<ul style="list-style-type: none"> Combine efforts to "mainstream" consumer protection, in line with the RPJMN and STRANAS PK 	<ul style="list-style-type: none"> Establish a national council on consumer protection (involving all stakeholders> groups)
Self-Regulation and Good business practices	<ul style="list-style-type: none"> Promote self-regulation initiatives among local businesses 	<ul style="list-style-type: none"> Devise a (binding) national code of conduct for businesses
Consumer associations and activists	<ul style="list-style-type: none"> Provide on- and offline fora for networking among academia and other members of civil society Consider governmental funding to carry out specific campaigns in key sectors of relevance to consumers¹⁴¹ 	<ul style="list-style-type: none"> Integrate consumer protection in curricula for primary, secondary and tertiary education¹⁴²
Regional and international cooperation	<ul style="list-style-type: none"> Involve BPKN and include it in ACCP meetings and activities Become a member of ICPEN 	<ul style="list-style-type: none"> Forge bilateral agreements with other authorities within and outside of ASEAN

¹⁴¹ Overseen by BPKN.

¹⁴² In close cooperation with the Ministry of Education and Culture.

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