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**Voluntary peer review of the consumer protection
law and policy of Indonesia**

**Voluntary peer review of the consumer protection
law and policy of Indonesia: Overview***

* The findings, interpretations and conclusions expressed herein are those of the author and do not necessarily reflect the views of the United Nations or its officials or Member States. The present document is an overview of a full report on the voluntary peer review of consumer protection law and policy of Indonesia.

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I. Introduction

1. The Intergovernmental Group of Experts on Consumer Protection Law and Policy is mandated, *inter alia*, to conduct voluntary peer reviews of national consumer protection laws and policies of member States, as implemented by consumer protection authorities. At its third session, the Group encouraged interested member States to volunteer for such peer reviews (TD/B/C.I/CPLP/15).

2. The present report serves as background for the session on the voluntary peer review of the consumer protection law and policy of Indonesia, to be held during 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 of UNCTAD, after Morocco, to volunteer to undertake the peer review. Interest in participating was expressed by the National Consumer Protection Agency of Indonesia, through representatives of the Permanent Mission of Indonesia, to the United Nations in Geneva. The peer review is set against the backdrop of ongoing efforts of the country to strengthen its national consumer protection system; the recommendations derived from the peer review are expected to substantiate critical reform initiatives, including a revision of the existing consumer protection law.

II. Political, economic and social context

3. Indonesia is a constitutional and democratic State with a total population of over 263 million people. It became the sixtieth member of the United Nations on 28 September 1950. In 2017, Indonesia ranked 116 out of 189 countries in the Human Development Index, placing it in the medium human development category worldwide.¹ Between 1990 and 2017, life expectancy at birth increased by 6.1 years and mean years of schooling by 4.7 years, while gross national income per capita grew by nearly 150 per cent.² Bank Indonesia, the country's central bank, reported a gross domestic product of approximately \$1,015 trillion, with an annual growth rate of 5.07 per cent and annual inflation of 3.61 per cent.³ The three largest sectors contributing to the country's gross domestic product are manufacturing, agriculture and the automotive industry.⁴ Indonesia is categorized by the World Bank as a lower-middle-income economy⁵ and has become the world's tenth largest economy in terms of purchasing power parity. According to 2018 figures, the country has succeeded in reducing its poverty rate by half since 1999, to 9.8 per cent.⁶

4. Indonesia has a longstanding history of consumer protection. The Indonesian Consumers Association (Yayasan Lembaga Konsumen Indonesia) was established in 1973 and became a member of Consumers International in 1974 (see <https://ylki.or.id/profil/tentang-kami/>; accessed 15 April 2019). The establishment of the National Consumer Protection Agency, on the basis of Law No. 8 on Consumer Protection (1999), also known as the General Consumer Protection Law, should be seen in the context of decentralization and efforts to increasingly delegate powers to local governments. Consumer disputes can be settled by litigation through the general court, as well as through

¹ United Nations Development Programme, 2018, Human Development Indices and Indicators: 2018 Statistical Update – Briefing note for countries on the 2018 Statistical Update, p. 2, available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/PER.pdf.

² *Ibid.*

³ Bank Indonesia, n.d., *2017 Economic Report on Indonesia*, available at www.bi.go.id/id/publikasi/laporan-tahunan/perekonomian/Pages/LPI_2017.aspx (accessed 5 April 2019).

⁴ *Ibid.*

⁵ World Bank, 2019, Data, World Bank country and lending groups, available at <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups> (accessed 8 April 2019).

⁶ *Ibid.*

non-litigation avenues, notably through specialized consumer dispute-settlement bodies, which are funded by local governments at the provincial level.⁷

5. The Government of Indonesia considers the revision of the Law to be a priority for the current legislative period. However, according to the National Legislation Programme 2015–2019, the draft bill is ranked ninety-second out of 189 draft bills to be reviewed and approved during the presidential election in mid-2019.⁸ This peer review makes some suggestions on how to deal effectively with 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. Recent reform efforts of the Government of Indonesia, international discussions and regional initiatives will be explored, along with the unique contextual challenges which the country faces due to its large domestic market, fast-developing economy and highly decentralized governance system.

III. Substantive framework

6. Article 28 (f) of the Constitution of Indonesia (1945) 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”. Aside from this provision, there is no direct mention of consumer rights or their protection in the Constitution.

7. Consumer protection is a transversal policy: it cuts across a range of legislation both vertical (sectoral) and horizontal (cross-cutting). The main piece of legislation and the focus of the present report is Law No. 8 on Consumer Protection (1999), which has been the general consumer protection law until now.

8. The Law was passed as part of a set of economic reforms following the Asian financial crisis, among others, in line with commitments to the International Monetary Fund. The Law covers the following topics within its 65 articles: background of the adoption of the law; principles and objectives of the law; definition of consumers and entrepreneurs; rights and obligations of consumers and entrepreneurs; prohibitions imposed on entrepreneurs; provisions related to standard clauses; structure and functions of the National Consumer Protection Agency; role of consumer associations; settlement of disputes; composition and functions of the consumer dispute-settlement bodies; and sanctions for violations of the Law.

9. Other consumer-related laws include the Civil Code of Indonesia, particularly chapter III, article 1365, as well as other laws, in particular those relating to food, health, financial services, information and communications technology and transportation that fall under the jurisdiction of various sectors, ministries and agencies. While article 31 of Law No. 8 on Consumer Protection calls for the establishment of consumer dispute-settlement bodies to develop consumer-protection efforts, article 29 (1) states that the Government is responsible for the actual implementation of consumer protection. Consequently, Law No. 7 on Trade (2014) contains provisions for the agency in charge of implementing consumer protection laws – the Ministry of Trade – while more specific provisions state that trading activities should aim at improving consumer protection (chapter II, article 3 (j)) and that domestic trade policies shall aim to improve the business climate and consumer protection (article 5).⁹

10. This peer review examines the following elements of Law No. 8 on Consumer Protection:

⁷ *State Gazette of the Republic of Indonesia*, 1999, Law No. 8 on Consumer Protection (1999), article 49, 20 April.

⁸ General Secretariat of the House of Representatives of Indonesia, 2016, Laws and draft bills, House of Representatives, available at www.dpr.go.id/uu/prolegnas-long-list (accessed 8 April 2019).

⁹ *State Gazette of the Republic of Indonesia*, 2014, Law No. 7 on Trade, chapter IV, Domestic Trade, 11 March.

(a) Objectives. The main objective of the Law is to create a consumer protection system that provides legal security, transparency and access to information to all citizens in Indonesia. The Law also aims to develop the awareness of traders and services providers about the importance of consumer protection and the need for honest, fair and responsible business behaviour;

(b) Consumer rights guaranteed by the Law. Article 4 of the Law guarantees consumers the following rights: to obtain safety in using or consuming goods and/or services; to choose goods and/or services; to obtain information on the condition and warranty of the goods and/or services; to be heard in expressing opinions and complaints on the goods and/or services used or consumed; to obtain proper advocacy, protection and settlement in a consumer-protection dispute; to obtain consumer training and education; to receive non-discriminatory treatment or service; and to obtain compensation, redress and/or substitution if the goods and/or services received are not in accord with the agreement or not received as requested. This shows that the Law has successfully included an important set of fundamental rights for consumers in line with the main consumer rights set out in the revised United Nations guidelines for consumer protection;

(c) Business obligations for advocacy. Given that business awareness and responsiveness to consumer protection is necessary to enable compliance with consumer rights and to pave the way for an effective consumer policy, an analysis of business obligations aimed at providing consumer protection was presented in the full report. Thus, comparing the aforementioned consumer rights with the business obligations listed in articles 7–19 of the Law, there are three sets of consumer rights that may not have a direct correlation with the obligations or prohibitions of a business, namely in relation to lodging complaints (article 4 (d)); receiving proper advocacy, protection and settlement in consumer-protection disputes (article 4 (e)); and obtaining training and education (article 4 (f));

(d) Rights of a business to rehabilitate good reputation. A comparison of a consumer's obligations with the rights of a business based on articles 5 and 6 of the Law shows that there is no consumer obligation that corresponds to article 6 (d) regarding the right of a business 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 Law and the overall objective to maintain a good business climate, businesses should also have the right to restore their good reputation if damaged unlawfully;

(e) Consumer due diligence. The Law includes a number of provisions related to due diligence requiring consumers to read instructions and other information related to the products or services obtained (article 5(a)). This places considerable responsibility on consumers, and traders are expected to act responsibly towards them. The issue of external protection by the law is hinted at, but compensation for harm incurred by consumers is only referred to in later provisions of the Law, albeit not as a primary objective. In disputes, the principle of due diligence could pose a challenge for consumers, as courts may assess whether a consumer has been diligent enough, for example, before entering into a contract or purchasing a product. The issue of burden of proof is only mentioned in the context of product safety in articles 19–22 of the Law, indicating that it is the responsibility of the trader to prove that he or she has not been guilty of fault or negligence in cases where damages or losses are reported by a consumer;

(f) Specialization and subsidiarity. The scope of application of the Law with regard to 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 laws. Larger jurisdictions in particular may benefit from such a system because it affords consumers more – and possibly better – options for protection from harmful or fraudulent business practices. It also means that authorities can act according to their specialized expertise or procedures, if necessary. However, the decentralized implementation of consumer protection brings certain challenges. Fully comprehending and consistently applying existing consumer protection rules can ultimately become a burden for consumers, businesses and government entities alike. A decentralized consumer protection system requires concerted efforts of coordination at all stages, from the drafting of substantive and procedural rules, to their implementation, and ultimately their review

and revision. Regular exchanges among the authorities concerned are indispensable in order to proceed at a similar pace and develop a common understanding or spirit to interpret and implement relevant laws and regulations. With regard to the litigation of consumer disputes, Civil Code provisions such as article 1365 further demonstrate the effectiveness of subsidiarity.

IV. Institutional framework

11. The implementation of consumer protection in Indonesia relies on a complex system of authorities, which includes different sectoral ministries, specialized agencies and sectoral regulators, as well as entities under the local government. In part, this is a consequence of the general decentralization efforts made by the Government over the past two decades.

12. The National Consumer Protection Agency is an independent authority and the main agency responsible for policy advice and formulation, in accordance with articles 33 and 34 of Law No. 8 on Consumer Protection. Under the Ministry of Trade, the Directorate-General of Consumer Protection and Trade Compliance is responsible for implementing general consumer policies in Indonesia in coordination with other related technical ministries and/or agencies in charge of sectoral consumer protection issues.¹⁰ The latter include the Ministry of Health,¹¹ Food and Drugs Agency,¹² Financial Services Authority,¹³ Central Bank and Ministry of Finance.

13. The Ministry of National Development Planning, Ministry of Trade and related technical ministries and/or agencies are mandated to coordinate and monitor every six months the implementation of national actions on consumer protection 2018–2019,¹⁴ derived from the National Strategy on Consumer Protection, as outlined in Presidential Regulation No. 50 (2017). The evaluation results are reported to the Ministry and submitted to the President every year.¹⁵

14. At the provincial level, the consumer dispute-settlement bodies are responsible for facilitating the settlement of consumer disputes out of court.¹⁶

15. The institutional players and layers of intervention prevalent in the Indonesian consumer protection system (administrative, quasi-judicial and in some cases judicial) result in a high degree of complexity. With this in mind, the following parameters are used to assess the effectiveness of the legal and institutional framework:

(a) Relevance to the national midterm development agenda. The agenda is a five-year midterm national development plan outlining broad strategic orientations and policy priorities of the respective administration. The agenda for the years 2015–2019 includes a brief reference to consumer protection under the chapter on economic development.¹⁷ In drafting the follow-up midterm development agenda for the next administration, a process carried out under the auspices of the Ministry of National Development Planning, the mention of consumer protection under mainstream topics, such as gender equality and governance, is being considered.¹⁸ Though the mainstreaming topics are only featured in

¹⁰ Based on an interview with the Director of Standardization and Quality Control, Directorate-General of Consumer Protection and Trade Compliance; and a representative of the Directorate of Consumer Empowerment, Directorate-General of Consumer Protection and Trade Compliance, UNCTAD fact-finding mission, November 2018.

¹¹ *State Gazette of the Republic of Indonesia*, 2009, Law No. 36 on Health (2009), 13 October.

¹² *State Gazette of the Republic of Indonesia*, 2017, Presidential Regulation No. 80 on the Food and Drugs Agency (2017), 9 August.

¹³ *State Gazette of the Republic of Indonesia*, 2011, Law No. 21 on Financial Services Authority (2011), 22 November.

¹⁴ *State Gazette of the Republic of Indonesia*, 2019, Presidential Instruction No. 2 on National Actions on Consumer Protection (*Aksi Nasional-PK*) 2018–2019, 25 January.

¹⁵ *Ibid.*

¹⁶ *State Gazette of the Republic of Indonesia*, 1999.

¹⁷ Based on an interview with a representative of the Ministry of National Development Planning, UNCTAD fact-finding mission, November 2018.

¹⁸ *Ibid.*

the latter part of the agenda, the change is also indicative of a growing understanding that consumer protection measures cut across various sectors;

(b) Autonomy of the institutions in charge of consumer protection. To assess the autonomy of the different entities in charge of consumer protection, it is necessary to look into the disaggregation of these entities according to the mandate received by law. Resources for implementing the mandate are a priority. The National Consumer Protection Agency, the entity in charge of formulating recommendations, appears to be autonomous enough to carry out its functions, especially with the most recent regulation in place for the Agency to receive its financing from the State budget instead of the Ministry of Trade. With regard to the autonomy of the Directorate-General of Consumer Protection and Trade Compliance to deal with consumer protection issues, given that it is placed within the Ministry of Trade and has been entrusted with several other priorities, it may tend to pursue other policy objectives such as the protection of businesses or entrepreneurs in accordance of the Law No. 7 on Trade (2014). The same will apply to sectoral regulators;

(c) Level of inter-agency coordination. Efforts are under way to enhance inter-agency coordination horizontally among the responsible entities at the central level – especially the National Consumer Protection Agency – and vertically, with a reach into the provinces. These efforts include streamlining procedures related to small claims courts,¹⁹ allowing for the filing of observations on verdicts issued by the consumer dispute-settlement bodies,²⁰ and establishing a one-stop complaints portal by the Directorate-General of Consumer Protection and Trade Compliance in cooperation with sectoral ministries. That notwithstanding, a further clarification of roles would be warranted, for example to better define the mandates and roles of the Agency, the Ministry of National Development Planning and the Ministry of Trade in mainstreaming consumer protection;

(d) Empowerment of consumers. In view of the low level of consumer empowerment in Indonesia, the National Strategy on Consumer Protection seeks to strengthen consumer education and activism by introducing consumer protection issues into educational curricula and setting up an integrated online information system for consumers.²¹ More intensive efforts would be needed to engage civil society, notably consumer associations, in policymaking and as spokespersons of consumers when seeking redress;

(e) Access to justice. The only non-judicial entities presently mandated to provide consumer redress are the consumer dispute-settlement bodies. However, consumers still have to refer to a district court to carry out the decisions issued by those bodies. However, the litigation of consumer cases is rare. Such litigation is also challenging because it is time-consuming and cost-intensive – there are only a handful of lawyers who will take on such cases, usually on a pro bono basis. Further, there remains the risk of appeals through the district courts or higher courts, or even the annulment by the Supreme Court of decisions of the consumer dispute-settlement bodies. The existing challenges affect the effectiveness of such bodies before the courts and would benefit from clarification;

(f) Assertiveness of consumer legislation. Law No. 8 on Consumer Protection lays down a number of rules to protect consumers. Yet law practitioners²² prefer to use the most common legal basis for consumer lawsuits, which is tort, governed by article 1365 of the Indonesian Civil Code of 1847.²³ In practice, ministries and/or agencies refer to the

¹⁹ State Reports of the Republic of Indonesia, 2015, Supreme Court Regulation No. 2 on Small Claims Court Procedures, 7 August.

²⁰ Supreme Court of the Republic of Indonesia, 2006, Supreme Court Regulation No. 1 on the Procedures to File an Objection on the Verdict of the Consumer Dispute-settlement Body (National Consumer Protection Agency), 13 March.

²¹ *State Gazette of the Republic of Indonesia*, 2017, Presidential Regulation No. 50 on the National Strategy for Consumer Protection (2017), 3 May.

²² Based on an interview with the Chair of Lembaga Perlindungan Konsumen Swadaya, a non-governmental consumer association, UNCTAD fact-finding mission, November 2018.

²³ State Reports of the Republic of Indonesia, 1847, Indonesian Civil Code [*Burgerlijk Wetboek*], 30 April.

main laws under their sectoral authority to exercise consumer protection measures based on the principles of specialization and subsidiarity. General and specific consumer protection provisions need to be better coordinated and disseminated to establish a sound basis for action;

(g) Self-regulation and good business practices. In line with chapter IV of the United Nations guidelines for consumer protection, the need of the private sector to promote good business practices is essential to encourage a healthy business climate as stated in Law No. 8 on Consumer Protection (1999), with a particular focus on e-commerce, where consumers might be more vulnerable than in the traditional, offline marketplace. This requires more attention, as there is a low level of business compliance with product safety requirements,²⁴ and summons issued by the consumer dispute-settlement bodies are frequently overlooked,²⁵ as decisions are not final.²⁶

16. Recent initiatives for institutional reform include efforts to revise Law No. 8 on Consumer Protection and the enactment of the National Strategy on Consumer Protection, which indicates that the Government of Indonesia has recognized the importance of consumer protection by bringing it forward as an issue for public scrutiny and integrating it into the national regulatory framework. New regulations pertaining to the role and funding of the National Consumer Protection Agency,²⁷ as well as the National Action Plan on Consumer Protection 2018–2019,²⁸ are moving the consumer protection agenda forward. With regard to e-commerce, it is urgent to provide a broader legal umbrella, as opposed to the central bank regulations, to protect the rights of both consumers and businesses.²⁹

17. Efforts of the business community are currently most prevalent in the financial services sector. As many as 43 businesses, members of the Indonesian FinTech Association, adopted the Responsible Lending Code in August 2018.³⁰ The Code was drafted by the Association's working group on financial inclusion and agreed upon voluntarily by its members, providers of online loans to consumers in Indonesia.³¹ Similar initiatives could be promoted in other sectors, as well.

18. Civil society organizations, such as the Consumer Association of Indonesia, have been strong proponents of consumer advocacy, education and measures to compensate consumers, for instance those that had been exposed to fraudulent pilgrimage (*umrah*) schemes.³² For example, the Association was actively involved in a case of vehicle loss in a parking facility. Three lawsuits were filed³³ and after over a decade of judicial process,

²⁴ Based on an interview with the Chair of Lembaga Perlindungan Konsumen Swadaya, a non-governmental consumer association, UNCTAD fact-finding mission, November 2018.

²⁵ Based on an interview with a representative of the Consumer Dispute Settlement Agency, Daerah Khusus Ibukota Jakarta Province, UNCTAD fact-finding mission, November 2018.

²⁶ Based on an interview with the Chair of Lembaga Perlindungan Konsumen Swadaya, a non-governmental consumer organization, Masyarakat, UNCTAD fact-finding mission, November 2018.

²⁷ *State Gazette of the Republic of Indonesia*, 2019, Government Regulation No. 4 on the National Consumer Protection Agency, 28 January.

²⁸ *State Gazette of the Republic of Indonesia*, 2017, Presidential Regulation No. 50 on the National Strategy for Consumer Protection (2017), 3 May.

²⁹ *Bisnis.com*, 2019, House of Representatives, *DPR: Regulasi e-money perlu undang-undang agar masyarakat tak dirugikan* [E-money law needed to prevent consumers' loss], 8 January, available at <https://finansial.bisnis.com/read/20190108/90/876421/dpr-regulasi-e-money-perlu-undang-undang-agar-masyarakat-tak-dirugikan> (accessed 11 January 2019).

³⁰ *Wartakotalive.com*, 2018, *Pelaku usaha wajib memastikan perlindungan konsumen dan menerapkan praktik bisnis bertanggung jawab* [Businesses must ensure consumer protection and implement responsible business practices], 23 August, available at <http://wartakota.tribunnews.com/2018/08/23/pelaku-usaha-wajib-memastikan-perindungan-konsumen-dan-menerapkan-praktik-bisnis-bertanggung-jawab> (accessed 11 January 2019).

³¹ *Ibid.*

³² *The Jakarta Post*, 2018, First travel assets to be sold to compensate victims of 'umrah' scam, 26 February, available at www.thejakartapost.com/news/2018/02/26/first-travel-assets-to-be-sold-to-compensate-victims-of-umrah-scam.html (accessed 11 January 2019).

³³ *Hukumonline.com*, 2007, *Secure Parking kembali digugat pemilik kendaraan* (Secure Parking is sued again by vehicle owner), 12 November, available at

regulations were amended to ensure alignment with Law No. 8 on Consumer Protection. This demonstrates that the prerequisites for enabling consumer empowerment and consumer redress in a systematic manner are already in place.

V. Regional and international cooperation

19. Indonesia is a member of the Association of Southeast Asian Nations (ASEAN) Committee on Consumer Protection, established in 2007 as “the focal point to implement and monitor regional arrangements and mechanisms to foster consumer protection in the ASEAN Economic Community”.³⁴ Representation on the Committee is ensured by the Directorate of Consumer Empowerment of the Ministry of Trade.³⁵ The work of the Committee is directed towards realizing a “people-centred ASEAN”, as described in the ASEAN Strategic Action Plan on Consumer Protection 2025.³⁶ Among others, this encompasses the development of the *Handbook on ASEAN Consumer Protection Laws and Regulations*, launched in July 2018,³⁷ enhancement of knowledge management and complaints-handling through the website of the Committee (www.asean-consumer.org); and endorsement of the ASEAN high-level principles of consumer protection,³⁸ which set a benchmark for consumer protection in the region. As Chair of the Committee in 2016, Indonesia also helped promote the ASEAN product recall website and its integration with the global product recall portal of the Organization for Economic Cooperation and Development.³⁹

20. As an ASEAN member State, Indonesia is part of the ASEAN–Australia–New Zealand Free Trade Agreement and the Regional Comprehensive Economic Partnership. In addition to removing trade barriers and facilitating movement of goods and persons, the Agreement strives to establish an investor–State dispute-settlement mechanism.⁴⁰ Negotiations through the Partnership will cover dispute settlement, e-commerce, trade and investment issues.⁴¹ Starting in 2019, a new project within the framework of the Agreement

www.hukumonline.com/berita/baca/hol17968/secure-parking-kembali-digugat-pemilik-kendaraan; Hukumonline.com, 2009, *Mobil hilang, Secure Parking kembali digugat* [Car loss: Secure Parking sued again] 13 July, available at www.hukumonline.com/berita/baca/hol22563/mobil-hilang-secure-parking-kembali-digugat; KOMPAS.com, 2010, *Belajar dari mobil hilang di parkiran* [Learning from car loss at a parking facility], 29 July; available at <https://nasional.kompas.com/read/2010/07/29/09183872/Belajar.dari.Mobil.Hilang.di.Parkiran>; accessed 11 March 2019.

- ³⁴ ASEAN Committee on Consumer Protection, 2019a, The ASEAN Committee on Consumer Protection, available at <https://aseanconsumer.org/cterm-regional-cooperation-in-asean/the-asean-committee-on-consumer-protection-accp> (accessed 11 April 2019).
- ³⁵ ASEAN Committee on Consumer Protection, 2019b, Indonesia, available at <https://aseanconsumer.org/selectcountry=Indonesia> (accessed 11 April 2019).
- ³⁶ ASEAN Committee on Consumer Protection, 2019c, Regional cooperation in ASEAN, The ASEAN Strategic Action Plan on Consumer Protection (ASAPCP) 2016–2025, available at <https://aseanconsumer.org/cterm-regional-cooperation-in-asean/the-asean-strategic-action-plan-on-consumer-protection-asapcp-2016-2025>, accessed 11 April 2019.
- ³⁷ ASEAN, 2018, *Handbook on ASEAN Consumer Protection Laws and Regulations*, available at [https://aseanconsumer.org/file/post_image/Handbook%20on%20ASEAN%20Consumer%20Protection%20Laws%20and%20Regulations%20\(1\)-ilovepdf-compressed.pdf](https://aseanconsumer.org/file/post_image/Handbook%20on%20ASEAN%20Consumer%20Protection%20Laws%20and%20Regulations%20(1)-ilovepdf-compressed.pdf).
- ³⁸ ASEAN, n.d., ASEAN High-level Principles on [of] Consumer Protection, ASEAN Committee on Consumer Protection, available at https://aseanconsumer.org/file/pdf_file/ASEAN%20High%20Level%20Principles%20on%20Consumer%20Protection.pdf.
- ³⁹ Organization for Economic Cooperation and Development, Global portal on product recalls, available at <https://globalrecalls.oecd.org/front/index.html#/about-us> (accessed 11 April 2019).
- ⁴⁰ ASEAN–Australia–New Zealand Free Trade Agreement, 2019, Overview: The ASEAN–Australia–New Zealand Free Trade Agreement (AANZFTA), available at <https://aanzfta.asean.org/aanzfta-overview/> (accessed 11 April 2019).
- ⁴¹ ASEAN, 2019, Regional Comprehensive Economic Partnership Community (RCEP), available at https://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership (accessed 11 April 2019).

will examine the interfaces between competition policy and consumer protection with a view to strengthening consumer protection provisions in the competition chapter.

21. Indonesia was also one of the 12 founding members of the Asia–Pacific Economic Cooperation forum in 1989, hosting the economic leaders’ meeting of the forum in 1994 and 2013.⁴² Within the forum’s Subcommittee on Standards and Conformance, which works in areas such as good regulatory practices, and 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 member economies of the forum (last updated in 2014).⁴³

22. Indonesia is not yet a member of the International Consumer Protection and Enforcement Network, founded in 1992. The Network is a virtual organization comprised of consumer protection law enforcement authorities from 61 countries and is aimed at encouraging cooperation in consumer protection issues and law enforcement.⁴⁴

23. Indonesia works primarily with Australia through the Australia–Indonesia Programme on Economic Governance, as well as the ASEAN–Australia Development Cooperation Programme (Phase II). The former has been assisting the Financial Services Authority on consumer protection and dispute resolution in the area of financial services.⁴⁵ Under the latter,⁴⁶ Indonesia was involved as a member of the ASEAN Committee on Consumer Protection in numerous regional activities and initiatives, such as the formulation of six comprehensive modules on key issues related to consumer protection, along with other guidance and reference documents. The modules were developed with UNCTAD assistance.

24. Germany has been assisting the Committee and selected ASEAN Member States in strengthening their national consumer protection systems since 2015. ASEAN–German Cooperation projects, through the German Agency for International Cooperation, have thus far focused on the development of a peer-review mechanism, self-assessment toolkit and an ASEAN consumer empowerment index. In addition to promoting regional dialogue and cooperation, the Agency-assisted projects also operate at the country level. Close cooperation with international organizations, notably the Organization for Economic Cooperation and Development and UNCTAD, is being envisaged in order to link up with international discussions on emerging trends and issues.

25. Further, Indonesia has been a participating member of the Committee on Consumer Policy of the International Organization for Standardization since 1954, represented by the National Standardization Agency of Indonesia.⁴⁷ In May 2018, the Agency and the Committee on Consumer Policy organized a workshop in response to the growth of digital economic transactions.⁴⁸

⁴² Asia–Pacific Economic Cooperation, 2019a, available at www.apec.org/About-Us/About-APEC/Member-Economies (accessed 11 April 2019).

⁴³ Asia–Pacific Economic Cooperation, 2019b, Subcommittee on Standards and Conformance, available at www.apec.org/Achievements/Group/Committee-on-Trade-and-Investment-2/Sub-Committee-on-Standards-and-Conformance (accessed 11 April 2019).

⁴⁴ International Consumer Protection and Enforcement Network, 2017, Who we are, available at www.icpen.org/who-we-are (accessed 11 April 2019).

⁴⁵ Australia Indonesia Partnership for Economic Governance, 2017, AIPEG [Australia Indonesia Programme for Economic Governance] Progress Report : 1 January to 30 June 2017, available at <https://dfat.gov.au/about-us/business-opportunities/Documents/aipeg-progress-report.pdf>, pp. 47 and 49.

⁴⁶ ASEAN–Australia Development Cooperation Programme (Phase II) and Australian Aid, 2018, *Study on AADCP II Influence on Consumer Protection Policy in Select ASEAN Member States*, available at <http://aadcp2.org/wp-content/uploads/FA-AADCP-Study-Report-May2018.pdf>, pp. 8–10.

⁴⁷ International Organization for Standardization, n.d., BSN Indonesia, Membership: Member body, available at www.iso.org/cms/render/live/en/sites/isoorg/contents/data/member/00/17/1798.html (accessed 11 April 2019).

⁴⁸ Badan Standardisasi Nasional [National Standardization Agency of Indonesia], Indonesia ensures security systems and consumer protection in the age of the digital economy, available at

VI. Conclusions

26. There is a long history of consumer protection in Indonesia. Recent initiatives of the Government illustrate a high-level commitment to promoting reforms that further improve the existing system, mainstreaming consumer protection and streamlining inter-agency coordination. The adoption of the National Strategy on Consumer Protection as a comprehensive, cross-sectoral national strategy, and its accompanying two-year action plan, through intensive stakeholder discussions and a sound diagnosis of prevalent challenges, are indicative of the Government's commitment towards promoting and strengthening consumer protection.

27. Based on a comprehensive desk study, as well as consultations with relevant stakeholders in Indonesia and international experts, the following points summarize the key challenges from which recommendations for reforms in the short, medium and longer term are derived.

28. Challenges related to the legal framework. The enforcement of consumer protection rules in Indonesia is based on a decentralized model. Although this has clear benefits in facilitating access to justice, particularly in a large economy, it also has implications for legal certainty. Consumers, businesses and enforcers alike may face difficulties in navigating the multitude of sectoral provisions that supplement Law No. 8 on Consumer Protection. Further, policies, laws and regulations developed by various entities in charge of consumer protection often follow a different pace and philosophy, for instance regarding the scope of application and interpretation. The challenge also stems from the emphasis placed by the Law on the role of well-informed consumers and their responsibility to show due diligence when obtaining goods or services.

29. In addition, prevalent substantive and procedural provisions, and institutional practice appear to focus much more on disciplining businesses rather than facilitating consumer dispute resolution and redress. Difficulties faced by consumer dispute resolution and redress are a major concern, and experiences with collective action and the litigation of cases where consumers have been harmed are still uncommon, not least because the Law is not sufficiently elaborated for that purpose.

30. Challenges related to the institutional framework. The complexity of the legal framework is illustrated by the number of entities in charge of consumer protection policy and law enforcement. Despite the advantages of a decentralized system, the role of the National Consumer Protection Agency as the national consumer protection authority vis-à-vis the Ministry of Trade and other responsible sectoral ministries/sector regulators needs to be more clearly defined with respect to policy advice versus policy formulation and implementation, as an overlap of tasks affects the effectiveness of the framework. Information gathered through consumer complaints should be centralized, assessed and utilized more systematically to feed into evidence-based policymaking and enforcement.

31. Providing clear guidance, for example through the national strategy, on how to finance the consumer protection policies, is a major challenge. The limited resources, capacities and accessibility of the consumer dispute-settlement bodies, and questions that have been raised concerning the legal effect of their decisions, ultimately discourage consumers in a country where the consumer complaints culture is not well developed. As it is the prerogative of each provincial government to prioritize its consumer protection agenda, including the funding of such bodies, the central government has little scope of action to intervene in this regard.

32. There are few private sector initiatives to self-regulate and promote responsible business practices. Further, consumer associations face constraints in securing continuous funding and are often engaged solely on an ad hoc basis. To improve the existing system, it could be worthwhile to consider the merits of intensifying the engagement of stakeholders from the private sector and civil society to address consumer protection issues using a more holistic approach.

VII. Recommendations

33. The Government of Indonesia may wish to consider the following recommendations, which are aimed at strengthening the existing legal and institutional framework. The main idea is to put the consumer at the centre of the system, downplaying the current focus of legislation towards business.

Strengthening the legal framework

34. To strike a positive balance between a pro-consumer legal culture and the prevalent legal approach on consumer diligence, the following recommendations could be envisaged in the pending process of amending or replacing the current law on consumer protection:

(a) Prioritizing the amendment of Law No. 8 on Consumer Protection (1999) in the legislative agenda. In order to enhance legal certainty in the interest of businesses and consumers, it would be appropriate to clarify and redefine the scope of application of the Law in line with sectoral provisions, in due consideration of the principles of specialization and subsidiarity. The revision and broadening of the scope of the Law should engage all relevant stakeholders so that the updated law will reflect a common understanding and generate wider acceptance;

(b) Completing implementing regulations across sectors. In parallel with the amendment of the Law, it is advisable to review all existing implementing regulations and guidelines issued by relevant ministries and sector regulators in the short term. The objective is to ensure greater coherence, particularly regarding procedural aspects in enforcing consumer protection, such as dispute resolution and funding mechanisms. These efforts should be guided by the national strategy and complemented by annual action plans for each sector;

(c) Adequacy and applicability to address emerging issues (e-commerce, data protection, privacy). In the medium term, it is recommended that implementing regulations be devised to address emerging issues, such as online and cross-border transactions across various sectors, in accordance with the United Nations guideline for consumer protection 63. Despite Law No. 19 on Electronic Information and Transactions (2016), laws on other consumer protection e-commerce-related issues such as data protection and data sovereignty have yet to be formulated and certain provisions applied across all sectors.

Strengthening the institutional framework

35. The following recommendations are primarily intended to strengthen the institutional capacity of the National Consumer Protection Agency and consumer dispute-settlement bodies as key entities of effective consumer protection in Indonesia, while retaining the existing decentralized enforcement model:

(a) Mandate of the National Consumer Protection Agency:

(i) Advisory function:

a. To allow for a more effective role of the Government and better monitoring of key consumer concerns and trends, two recommendations could be considered for immediate implementation: first, introduce an obligation for government entities to follow up on the recommendations prepared by the National Consumer Protection Agency and provide a formal response justifying the acceptance or non-acceptance of the recommendations within a certain period of time; second, ensure access to the consolidated complaints data gathered from all relevant ministries and sectoral regulators, as well as the consumer dispute-settlement bodies at the local level, establishing an integrated system. In the longer term, modification of the position of the Agency, as the overarching national agency for consumer protection, could be considered by placing it directly under the Office of the President or Vice-President in order to enhance its standing and acceptance of its recommendations by sectoral ministries and sectoral regulators. This would lead to a more visible consumer protection agenda within the

Government and for the general public, and it would allow the Agency to play a more prominent role in mainstreaming consumer protection among all public bodies competent in the field, as envisaged under the next national midterm development agenda.

b. Another recommendation concerns the Agency's role in engaging and empowering consumer associations for joint awareness-raising efforts: for example, some funds (out of its general budget) could be set aside to support campaigns or projects delivered by the associations. The Agency could organize regular tenders for consumer protection projects for interested associations, encouraging the presentation of innovative proposals. This would raise the profile of consumer associations and provide them with a source of additional funding;

(ii) Training and education measures. The Agency could engage more with the local consumer dispute-settlement bodies to help professionalize them in consumer dispute-settlement resolution. Training activities should also be encouraged for other ministries and sectoral regulators, in line with mainstreaming measures. In addition, the Agency could provide training activities to business associations to promote responsible business practices. Finally, it could link up with consumer associations to raise greater awareness and jointly advocate consumer interests in schools and universities seeking to integrate consumer protection in curricula at all levels and to establish networks among academics and activists alike. Training modules could build on the *UNCTAD Manual on Consumer Protection*,⁴⁹ on abundant research in this area and on the materials for strengthening technical competency on consumer protection in six core areas, as developed by the ASEAN Committee on Consumer Protection;⁵⁰

(iii) Resolution of high-impact consumer disputes. Considering the difficulties faced by consumer dispute-settlement bodies in dealing with consumer disputes, it is recommended that in the medium to long-term, the Agency be given the mandate to handle some consumer dispute cases that are either above a certain financial threshold, or that are a priority, that is to say, affecting a large number of consumers. This means the Agency could become an adjudicatory body and fulfil a role similar to that of the Indonesian Competition Authority. This would require a longer discussion with and the support of the Government and the Supreme Court, as the highest authority within the judiciary, which would then need to directly hear appeals concerning decisions of the Agency (judicial review) without being previously heard by district or higher courts. This might be difficult to accommodate in the ongoing revision of Law No. 8 on Consumer Protection but perhaps it could be included in current discussions;

(b) Mandate of consumer dispute-settlement bodies:

(i) Resource allocation and professionalization. Although the central government cannot interfere with the authority of the local governments, under which the consumer dispute-settlement bodies are placed, it would be advisable to set and apply a minimum standard for allocating sufficient funds for their operations across all provinces. In the longer term, the suggestion to introduce grants through specially allocated funds in order to improve the quality of such bodies may be considered. Various avenues could be explored to professionalize the consumer dispute-settlement bodies. For example, a standardized testing mechanism could be introduced to screen prospective members from each of the three stakeholder groups (government, business, consumers), with the aim of improving their qualifications and expertise. In addition, training of trainers could be provided in specific areas, facilitated by the National Consumer Protection Agency and, if necessary, by other ministries and sectoral regulators;

⁴⁹ UNCTAD, 2018, *Manual on Consumer Protection* (United Nations publication, Geneva).

⁵⁰ ASEAN and UNCTAD, 2015, *Product Safety and Labelling* (training module), available at <http://aadcp2.org/wp-content/uploads/Product-Safety-Labelling-Module-Final-21Dec15.pdf>.

(ii) Settlement of small claims. In order to better define the tasks of the consumer dispute-settlement bodies with regard to the general courts, it is recommended that such bodies focus on small claims. According to Supreme Court Regulation No. 2 (2015), these are classified as not exceeding Rp200 million (about \$20,000); however, the international average for developing countries' small claims is typically lower. Given the access to such bodies in the provinces, appeals should be made to high courts as the first instance (at the provincial level) and subsequently, the Supreme Court. As such, the level of cases dealt with by the consumer dispute-settlement bodies would be similar to that of the district courts. A clarification of existing procedural rules would ensure that there is no additional step or fee to enforce the decisions of such bodies, and that these decisions can be considered final and binding. This would allow for a tangible improvement to be made in giving consumers access to justice;

(iii) Streamlining inter-agency coordination. To ensure better coordination of consumer protection policies and measures, a national council on consumer protection, under the umbrella of the national strategy, could be established in the medium to long term. This council could be chaired by the National Consumer Protection Agency (and the Ministry of National Development Planning) and would comprise representatives of all relevant ministries and/sectoral regulators, of the business community and of civil society. The council would acknowledge the decentralized system but would provide for regular consultations and discussions to enhance policy coherence and effectiveness. Through this mechanism, the current ad hoc engagement of consumer associations in policy discussions could be formalized and improved. The council would also provide a forum for reviewing key performance indicators and action plans, derived from either the national strategy or the national midterm development agenda. As a means of checks and balances, consumer associations, such as the Consumer Association of Indonesia, could present their own monitoring data to other council members;

(iv) Self-regulation and good business practices. Indonesia could consider the promotion of local self-regulation schemes in different markets and sectors, in accordance with chapter IV of the United Nations guidelines for consumer protection and international good practices. Further guidance could be derived from the forthcoming code of conduct for good online business practices, to be developed by the ASEAN Committee on Consumer Protection as a regional reference. As described above, the National Consumer Protection Agency could spearhead initiatives to reach out to and sensitize member business organizations such as the Indonesian Retailers Association. In the longer term, a national standard or code of conduct could be devised for all businesses to adhere to;

(v) Building a pro-consumer culture and community of practice. In the event that a national council on consumer protection is established, the active participation of consumer associations is essential. In addition, networking among consumer associations and activists (for example, researchers and lawyers) should be enhanced to allow for mutual learning, leverage and exposure to consumers. One option would be to set up an online platform or forum for the exchange of information and experiences concerning consumer issues that could be hosted in partnership between the National Consumer Protection Agency and the Ministry of Trade. This could be complemented by the organization of conferences, seminars or workshops hosted by the Agency at regular intervals, for example, annual reviews held at universities, for face-to-face interaction. This would enable a community of practice to develop gradually and flourish in the longer term, also driving efforts to integrate consumer education in schools and universities;

(vi) Regional and international cooperation. Indonesia is an active member of the ASEAN Committee on Consumer Protection. However, representation has thus far been undertaken solely by the Ministry of Trade. Since two delegates per country generally attend the Committee meetings, it is recommended that representatives of the National Consumer Protection Agency also be invited to attend. This would improve knowledge management and facilitate linking up to regional and

international discussions, particularly with regard to cross-border consumer issues. Further, the membership of Indonesia of the International Consumer Protection and Enforcement Network could be explored to benefit from and leverage peer learning on enforcement and the mutual sharing of experiences. This might also facilitate the conclusion of bilateral agreements with other authorities in the ASEAN region and beyond, as suggested in United Nations guideline for consumer protection 82.
