

ปัญหาทางกฎหมายการประกันและเยียวยาผู้บริโภคในประเทศไทย  
Enhancing Thai Consumer Protection Through a Legal Problem  
on Consumer Guarantees and Remedies

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**บทคัดย่อ**

เมื่อยุคสมัย สังคมโลกพัฒนาและการมีผลิตที่ซับซ้อนมากขึ้น ความเจริญและความต้องการในการอุปโภคบริโภค รวมทั้งปริมาณการผลิตมากตามยิ่งขึ้น นำไปสู่การที่ผู้บริโภคถูกเอาเปรียบจากผู้ค้า ประกอบกับการไม่มีหรือถูกจำกัดความสามารถในการเจรจาต่อรองหรือกำหนดการแสดงมาตรฐานขั้นต่ำในคุณภาพทั้งทางด้านสินค้าหรือการบริการ ปัญหาที่ยังเป็นจุดบอดประการหนึ่งของการคุ้มครองสิทธิผู้บริโภคในประเทศไทย คือ “การประกันผู้บริโภค” ซึ่งควรเป็นสิทธิที่เกิดขึ้นโดยอัตโนมัติและเป็นสิทธิขั้นพื้นฐานของผู้บริโภคทุกคน

สำหรับประเทศไทย ข้อมูลจากสถิติรับเรื่องร้องทุกข์ของผู้บริโภคจากระบบรับเรื่องร้องทุกข์ผู้บริโภค ประจำปี 2562 พบว่า สถิติการร้องเรียนอันดับต้นคือ สินค้าอุปโภคบริโภค และการบริการ นอกจากนี้แล้ว กฎหมายไทยที่เกี่ยวข้องทั้งสารบัญญัติและวิธีบัญญัติล้วนเป็นกฎหมายที่มุ่งแก้ไขเยียวยาที่ปลายเหตุ (indemnification approved approach) มากกว่าการป้องกันเหตุหรือความเสียหายที่จะเกิดขึ้นจากการใช้สินค้าหรือผลิตภัณฑ์หรือรับบริการล่วงหน้าในอนาคต (preventive approved approach) ทั้งนี้ ในปัจจุบัน ปัญหาสินค้าชำรุดบกพร่องสามารถแก้ไขโดยบทกฎหมายทั่วไปตามสัญญาซื้อขายในประมวลกฎหมายแพ่งและพาณิชย์ของไทย บัญญัติไว้ในมาตรา 472 – 474 ซึ่งค่อนข้างไม่ทันสมัยต่อยุคสถานการณ์ปัจจุบัน ปัญหาการไม่ชัดเจนในความหมายของ “การชำรุดบกพร่อง” (defect) กรณีชำรุดบกพร่องเล็กน้อย หรือไม่ประจักษ์หรือซ่อนเร้น ซึ่งยังไม่สามารถแก้ไขได้ในกฎหมายปัจจุบัน ถึงแม้ว่าจะมีร่างพระราชบัญญัติใหม่เรื่องความรับผิดชอบต่อสินค้าชำรุดบกพร่อง แต่กฎหมายดังกล่าวกำหนดให้ใช้กับกรณีประเภทสินค้ามือหนึ่งเท่านั้น ส่วนสินค้ามือสองหรือการบริการก็มิได้มีกฎหมายกำหนดเฉพาะแต่ประการใด ปัญหาการไม่มีซึ่งค่านิยามและขอบเขตการบังคับใช้เรื่อง “การประกัน” (guarantee) “การรับประกัน” (warranty) อีกทั้ง ยังไม่มีซึ่งมาตรการเยียวยาที่ชัดเจนเพียงพอในเรื่องดังกล่าว ในกรณีการแก้ไขเยียวยาความเสียหายที่เกิดขึ้นต่อสินค้าหรือการบริการ กฎหมายไทยมีกำหนดไว้ในกฎหมายทั่วไป คือ ประมวลกฎหมายแพ่งและพาณิชย์ และประมวลกฎหมายวิธีพิจารณาความแพ่งซึ่งกระบวนการทางกฎหมายล้วนดำเนินการเป็นไปอย่างล่าช้า ค่าใช้จ่ายสูง และไม่อาจสามารถคุ้มครองสิทธิของผู้บริโภคได้อย่างเหมาะสม และพระราชบัญญัติวิธีพิจารณาความคดีผู้บริโภค กรณีสินค้าชำรุดบกพร่องมีบัญญัติไว้ในมาตรา 41 แต่ก็มีได้กำหนดกฎเกณฑ์ที่เป็นลำดับขั้นตอนชัดเจนถึงวิธีการชดเชยเยียวยาความเสียหายแก่ผู้บริโภค ซึ่งเป็นผู้เสียหาย เพียงแต่ให้เป็นอำนาจดุลพินิจของศาลกำหนดได้ตามความสมควรและเหมาะสม ตัวอย่างกรณีคำพิพากษาคดี “ฟอร์ด” เป็นตัวอย่างที่น่าสนใจสำหรับการประกันผู้บริโภค

ผู้ศึกษาเสนอให้มีการตราบทบัญญัติเพิ่มเติมเรื่องการประกันและการเยียวยาผู้บริโภคในพระราชบัญญัติคุ้มครองผู้บริโภค พ.ศ. 2522 และเสนอให้มีการจัดตั้งคณะกรรมการที่เกี่ยวข้องในเรื่องการประกันผู้บริโภคในมาตรา 14(4) ให้เป็นหน่วยงานหนึ่งในสำนักงานคณะกรรมการคุ้มครองผู้บริโภค โดยอาศัยมาตรา 3 และมาตรา 4(5) ตามพระราชบัญญัติคุ้มครองผู้บริโภค พ.ศ. 2522 เพื่อทำหน้าที่จัดการดูแลเฉพาะเรื่องดังกล่าวเพื่อให้เกิดการทำงานอย่างมีประสิทธิภาพยิ่งขึ้น ทั้งนี้เพื่อประโยชน์สูงสุดในการคุ้มครองผู้บริโภคอย่างแท้จริง

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## Abstract

When the complicated social market increased, the growth of mass production and consumption in the current century led to recognition that consumers were vulnerable and that their ability to negotiate or stipulate standards of the quality in respect to supplying goods or services was limited, or non-existent. One of the umbra problematic factor of Thai consumer rights is “consumer guarantee” which should be automatic and basic fundamental rights.

For Thailand, the data from the report of statistic of consumer’s complaining 2019 shows that the consumer goods and services are ranked first. Furthermore, the concerning substantive and procedural laws in Thailand are aimed to apply with the indemnification approved approach rather than the preventive approved approach. Nowadays, the problem of defect or faulty goods is always resolved by general sale contract under the Thai Civil and Commercial Code (C.C.C.), the liability on defect of goods, sections 472-474 which are almost not up to date as in current situation. The definition of ‘defect’, ‘minor defect’, ‘latent defect’ are not resolved by the current law. However, it also has a new draft Act on the liability of the defect goods, but it is limited to the new product, the second-hand goods or the supply of services do not enact to consider the consumer protection rights. The explication between terminology and scope of enforcement of ‘guarantee’ and ‘warranty’ either legal or commercial is vital for consumer to easily understanding. In case of remedial process damages from the products or services must be used by the general law (C.C.C. and Civil Procedure Code) which has slowly process, expensive and inappropriate measure to protect the vulnerable consumers and the Consumer Protection Case Procedure Act (CCPA) trends to determined court’s discretion at will on the defect goods in section 41. It does not enact explicitly and obvious detail or approach to remedy the exploited consumer. The historic “Ford” court order was the interesting case study for consumer guarantees.

The researcher will propose to enhance and strengthen Thai consumer protection law by proposing a new provision called “the Consumer Guarantees and the Remedies” on the current Thai consumer protection Act B.E. 2522 (C.P.A.) and also propose to set up the correspondent legal Institute in the Office of the Consumer Protection Board (OCPB) as the new Committee on Consumer Guarantee in section 14(4) by the virtue of sections 3 and 4(5) of the current Thai C.P.A. to accomplish and fulfill the best interest of consumers.

**Keywords:** Consumer protection, Consumer guarantees, Remedies, Defect

## Introduction

In this dissertation, the researcher examines problem concerning consumer rights and protection in Thailand. The researcher also investigates problems on remedy processes and patterns. Furthermore, the researcher offers recommendations for appropriate and suitable guidelines for the provisions of consumer guarantee in relating to supply

of goods and services as well as the remedies in Thailand.

The inadequacies of the existing statutory regime of the fundamental consumer rights and a set of mandatory quality minimum standards applying to the supply of goods and services such as consumer guarantees and the need of the correspondent statutory provisions for the remedies and legal Institute of consumer guarantees are interesting to suggestion.

Historically, the beginning concept of consumer protection was from the deceptive quality of goods or initial sale by the manufacturer, merchant or professional. The sellers and traders are exchanged through face to face, Now days it's not complicated. The "Caveat Emptor" or "Let the buyer or purchaser beware" (Supanit, S. 2002). Principle is adapted for the situation of defective goods after received the goods from the seller, the trader must not be liable for this unluckiness goods even the seller's fault because the buyer has the rights to check before accepting goods. The philosophy of 'freedom of contract' and 'sanctity of contract' informed the law.

Afterwards, with the development of the high technology social market and growth of mass production and consumption, the sale purchase transaction is also changed to new form of complicated technology communication business, the buyer don't have a chance to check the goods before paid, the monopoly and modern capitalism were effect to the consumer, the fair competition law was enacted by state. The consumers also were less knowledge and vulnerable than some exploited traders. The new concept "Caveat Venditor or Let the seller beware" (Supanit, S. 2002). to protect the consumer was replaced the old one.

One of the most significant areas of economic regulation in all countries has been adopted by Consumer Protection legislation. It has been wide-scale enacted

over recent decades in several legal systems. Many countries in the world has their own consumer protection law. The law on sale of goods and guarantees given on consumer goods are very common understanding in some countries. Both sales and guarantees give consumers a degree of protection against being left with faulty goods by stipulating the circumstances when a manufacturer and/or retailer is legally responsible for rectifying defects. Such legislation has generally resulted, as a minimum, in the imposition upon sellers of obligations relating to the quality or standard of goods, having regard to the way in which the goods are described or marketed by the seller. Goods should correspond to the description applied to their sellers. Similarly, goods sold by reference to a sample or demonstration model should be identical to the sample or model. These requirements recognize that consumers frequently buy goods which are offered for sale by description, whether by means of words or by tangible samples or models presented to the eye; and sellers should be responsible where consumers rely upon such descriptions in exercising their choices in making purchase.

For Thailand, there was data from the report of statistic of consumer's complaining 2018 (October 2017 – September 2018) (The Office of The Consumer Protection Board. (2018)., found that there were 7,676 cases passed to the Office of the Consumer Protection Board



(OCPB) and the first rank was the immovable properties and accommodations, the second was the consumer goods and the third was the consumer services. However, for the last couple months of the end of the year 2019 (The Office of The Consumer Protection Board. (2019), it was data in November, found that the consumer services appeared the first ranking and in December, the consumer goods showed the first rank of the report. In addition, the recent historic court class action case of “Ford” (Manager Online, 2018). in September 2018 was as a dominant case study on this dissertation.

The umbra problematic factor of consumer rights is “consumer guarantee” which should be automatic and basic fundamental rights. The concerning substantive and procedural laws in Thailand aimed to indemnification approved rather than preventive approved approach. (Piboonapiban, P. 2013). The growth of mass production led to recognition that consumers were vulnerability and exploitation. The consumerism or consumer protection in Thailand are indemnification approved legislation rather than preventive approved approach. The problem of defect or faulty goods is always resolved by general sale contract under the Thai Civil and Commercial Code (C.C.C.), the liability on defect of goods, sections 472-474 (Thailand Civil and Commercial Code, 2015). which is almost outdated. The problems on the lack of definition of

‘defect’, ‘minor defect’, ‘latent defect’, ‘guarantee’ and ‘warranty’ also the limited content of new draft Act on the liability of the defect goods and the insufficiency of the consumer protection’s remedy procedure and legal institute are the crucial obstacle to develop the consumer rights.

Thailand is one of country that has continuously improved consumer protection laws. (The Office of The Consumer Protection Board, 2019) Due to accomplishment of the primary consumer rights, the law should be realized and ensured to preserve and protect that rights as equal and similar as every human person. Determining the content or extent of these quality and fitness obligations requires a balancing of the interests and expectations of hypothetical reasonable sellers and buyers. As quality is concerned, the standard cannot be perfection, for that would be to place an onerous and unrealistic obligation upon sellers. It is not possible to fix a quality standard or requirement in any absolute way without regard to the circumstances relating to the particular goods or services and, sometimes, the sale itself. Also, the remedial procedure in general civil case is limited to resolve the problem on delayed legal process, the heavy burden of proof to the inferior consumers including the higher court fee lead to recognize the new specific provision to cease the problems.

On account of diffusion of legal instrument in consumer protection scope,



the researcher realizes that Thailand should implement and harmonize together with stipulate clear model law on consumer guarantees and the remedies by appending propose the new provision called “the Consumer Guarantees and the Remedies” within the current consumer protection law to bolster and protect all rights of both consumers and traders. In this paper, the researcher will analyze the problem into three main pillars as follows;

1. The problems of the inadequacy and unconformity of the existing statutory regime of the consumer protection law particularly on the consumer guarantees in respect of supply of goods and services in Thailand

1) The problem of consumer guarantees in respect of supply of goods

1.1) The problem on the lack of explicit legislation on the legal guarantee

The Consumer Sale Directive (CSD) (The European Parliament, 1999) separates the legal guarantee and the commercial guarantee, the legal guarantee is mandatory rights by law and commercial guarantee is voluntary act of manufacturer or producer under sale contract. The definition of guarantees can see in Art. 1(e) and 6 of the CSD. Even though, in the Australian Consumer Law (ACL) (Australian Competition and Consumer Commission, 2016). doesn't define the terminology of guarantee but stipulate the exhaustive and clear detail of such guarantee. In Thai C.C.C., the parties can agree under the

privity of will unless it does not have any clause contravening the public order of act immortally (Art.150). Normally, the party under the sale contract is seller or retailer and buyer not relating to manufacturer, it will cause misunderstanding of the commercial guarantee and commercial warranty by the manufacturer. However, in the Thai C.P.A. section 35 bis and septum provide for terms and conditions in the sale contract and also in the new draft Act on liability of defect goods section 11 and 12 for the terms and condition of the contract and the warranty contract by writing and stipulate all beneficial consumer's rights but they are also provided the rough essence and controlled specific on some business. The controlled business and the usual supply of goods should vivid enact to unconstrained interpret. The clarification of definition and subject matter of ‘legal guarantee’, ‘commercial guarantee’ or ‘commercial warranty’ will explicit and sustain the basis core of the best interest of the consumer.

In Conclusion, in the researcher's opinion, the problematic issues on legal guarantee in respect of supply of goods can resolve or diminish the current problem by propose and adopt with the considerable and selective model law particular on the Australian Consumer Law and Malaysian CPA. The lack of progress and the need for improvement of the position of the consumer through an advanced set of mandatory quality

minimum standards such as consumer guarantees which apply where goods or services are supplied to the consumer are the crucial hindrance to sustain the fundamental rights. The introduction of clearly definition of the “consumer guarantees” and their qualification both goods or services of the 'acceptable quality' and proposed statutory for remedies which include not only a compensation determined by the authority, but also a right to reject the goods, a right to replace and repairs and a right to spare parts will also be useful improvement for our countries especially on the online market or e-commerce transaction.

Therefore, from above reason, the researcher will suggest and propose to adopt this model law and harmonize by establish the new provision into the Thai consumer protection Act called “the provision of consumer guarantees”. In order to elementary understand, the contents of the new chapter will also base on the two guarantees' issues; the consumer guarantee in respect of supply of goods and the consumer guarantee in respect of supply of services which each part also included the explicit and simple details as in the model pattern. The introduction of mandatory quality minimum standards such as consumer guarantees can be justified on the basis of information asymmetry that typically exists between consumers and traders, and the common inability of consumers to bargain terms on which goods and services

are supplied.

The new provision in part 4 ‘the consumer guarantees’ in the current consumer protection Act B.E. 2522 (1989) will be stated as follow;

#### **Part 4 “Consumer Protection in Consumer guarantees”**

##### **Subdivision A “Guarantee in respect of the supply of goods”**

1. Guarantee as to title
2. Guarantee as to undisturbed possession
3. Guarantee as to undisturbed securities
4. Guarantee as to acceptable quality
5. Guarantee as to fitness for any particular purposes
6. Guarantee relating to the supply of goods by description
7. Guarantee relating to the supply of goods by sample or demonstration model
8. Guarantee as to repairs and spare parts
9. Guarantee as to manufacturer’s express warranties
10. Guarantee as to price (Malaysian CPA)

1.2) The problem of the indistinctness of the form and the liability of defect on commercial guarantee

The Consumer Sale Directive (CSD) separates the legal guarantee and the commercial guarantee. In Thai C.C.C., the parties can agree under the privity of will unless it does not have any clause contravening the public order of act immortally (Art.150). Normally, the party under the sale contract is seller or retailer and buyer not related to manufacturer, it will cause misunderstanding of the commercial guarantee and commercial warranty by the manufacturer.

The basis core of the consumer protection should preserve and maintain the best interest of the consumer either supply of goods or supply of services and should be general use for all products. The controlled business and the usual supply of goods should vivid enacted to unconstrained interpret. The clarification of definition and subject matter of 'legal guarantee', 'commercial guarantee' or 'commercial warranty' will explicit and sustain the basis core of the best interest of the consumer.

This solution can resolve by definite the explicit definition of the legal guarantee and the commercial guarantee and warranty by using the EU Directive harmonize in section 3 of the current consumer protection Act B.E. 2522 (1989) as follow;

**“legal guarantee”** shall mean any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising.

**“commercial guarantee”** shall mean a voluntary service of the manufacturer, trader or third parties (the insurer or partners of the manufacturer) made by written in sale contract.

**“commercial warranty”** shall mean a formal written promise, issued to the purchaser of an article by its manufacturer, promising to repair or

replace it if necessary, within a specified period of time.

Regarding the defect goods under C.C.C. sections 472 – 474, the obscure of the word 'defect' refers to the defect for subject matter rather than in sale contract. In case of 'minor defect' or 'latent defect', the buyer is undergone by himself. However, the exemption liability by law under Section 473 and 474 must be apparent the defect in the time of agree or delivery.

In the section 3 of the U.K. Consumer Protection Act 1987 provided the meaning of defect attached with the DePuy case (Courts and Tribunals Judiciary, 2018.) which examined the scope of the 'defect' as a defective product when in all the circumstances it fails to meet the standard of safety that the public is generally entitled to expect at the time when it is introduced to the market.

In conclusion, for above reasons, the researcher proposes to amend the Thai Commercial and Civil Code for up to date and be suitable for the current situation by extend the detailed content of the definition of 'defect' as adoption as in section 3 of the CPA of the U.K. and considerable examine by the obvious agreement in the contract, the particular purposes on the contract, the usual purpose of the normal use and open-wide scale definition of defect through the product installation and instruction including the wrong delivery of products or misrepresent the less amount or

quantity from the contract, the limitation of claimant rights of the buyer and the liability of the seller also manage and limit the step and scope of the exercise rights. In other option, it can amend by add the content of the definition of 'defect' into section 472 of the C.C.C.

Furthermore, the exemption of the liability by law as stated in the current C.C.C., section 473 should amend similar as section 10 of the new draft Act on liability of defect goods which is more punctilious protection consumer than the C.C.C. It will add on an exemption of seller's liability if 1) the buyer knew of the defect at the time of sale unless the business has deceit conceal the defect or promise to warranty of products or goods quality or 2) the consumer has participated such defect goods in the public auction process. The amendment will be as follows;

"section 473 The seller is not liable in the following cases:

(1) If the buyer knew of the defect at the time of sale, or would have known of it if he had exercised such care as might be expected from a person of ordinary prudence.

(2) If the defect was apparent at the time of the delivery, and the buyer accepts the property without reservation.

(3) If the property was sold by public auction.

(4) \* If the buyer knew of the defect at the time of sale unless the business has deceit conceal the defect or

promise to warranty of products or goods quality." (amendment)

In addition, the researcher will propose to amend the clause in this section as "section 474 No action for liability for defect can be entered later than one year after the discovery of the defect." to extend the prescription from one year as in the current law to two years as similar as the section 14 of the new draft Act on the liability of defect goods.

Finally, the exception of liability by contract in the C.C.C. "Section 483 The parties to a contract of sale may agree that the seller shall not incur any liability for defects or eviction." It should amend the limit of disadvantage interpret the indistinctness contract for vulnerable consumer. The extension of the claim rights should be sole granted to the consumer's side rather than the exploited party. So 'the parties' in this section should amend to 'the consumer' or vulnerable party. (Roimalee, J. (2012).

1.3) The problem of the insufficiency clarification of the characteristic of warranties and the liability of defect on commercial warranties

The problem on commercial warranties is the clarification of the meaning of express warranty and the characteristic of warranty (the name's type; manufacturer's warranty, warranty against defect, extended warranty etc.). The spreading problem in relation to the case of overdraft or excess of actual advertisement or hidden terms and

conditions, especially, in the case of the limitation times to repair or any terms or conditions to remedy under the warranty has elapsed or be void without buyer's or consumer's fault.

The proposed solution of this problem will adopt the definition of the ACL into section 3 of the Thai Consumer Protection Act as follows;

**“express warranty”** shall mean in relation to goods, means an undertaking, assertion or representation:

- (a) that relates to;
  - (i) the quality, state, condition, performance or characteristics of the goods; or
  - (ii) the provision of services that are or may at any time be required for the goods; or
  - (iii) the supply of parts that are or may at any time be required for the goods; or
  - (iv) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods, in relation to which the undertaking, assertion or representation is given or made, form part; and
- (b) that is given or made in connection with the supply of the goods, or in connection with the promotion by any means of the supply or use of the goods; and
- (c) the natural tendency of which is to induce persons to acquire the goods.

**“warranty against defect”** shall mean a representation communicated to a consumer in connection with the supply

of goods or services, at or about the time of supply, to the effect that a person will (unconditionally or on specified conditions:

- (a) repair or replace the goods or part of them;
- (b) provide again or rectify the services or part of them; or
- (c) wholly or partly recompense the consumer;

if the goods or services or part of them are defective, and includes any document by which such a representation is evidenced.

**“extended warranty”** shall mean a prolonged warranty offered to consumers by the warranty administrator, the retailer or the manufacturer in addition to the standard warranty with an extra charge on new items.

**“Implied warranty”** shall mean a promise, arising by operation of law, that is not expressly stated but presumed, that the real or personal property that is sold will be merchantable and fit for the purpose for which it is sold.

When the defects of goods are happening under the manufacturer's warranty, the question is come up who will be responsibility and what is type of the warranty. The main problem is the lack of explicit definition of “defect”, in this recommendation, the researcher will adopt the meaning of ‘defect’ (Taylor Wessing LLP, 2018). under the UK consumer protection Act 1987 as pattern as follow;

**“Defect”** shall mean functional

attribute of a product of service that exhibits that the product or service failed to meet one of the desired specifications, and including of the “safety” of product in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

In determining for the purposes of what persons generally are entitled to expect in relation to a product all the circumstances shall be taken into account, including

(a) the manner in which, and purposed for which, the product has been marketed, its get-up, the use of any mark in relation to the product and any instructions for, or warning with respect to, doing or refraining from doing anything with or in relation to the product;

(b) what might reasonably be expected to be done with or in relation to the product; and

(c) the time when the product was supplied by its producer to another;

And nothing in this definition shall require a defect to be inferred from the fact alone that the safety of a product which is supplied after that time is greater than the safety of the product in question.

In conclusion, It can divide the problem of implied warranty and express warranty, the researcher will propose by amend the current Commercial and Civil Code in the section of the problem on the liability of defective goods; definite the terminology of ‘warranty’, ‘commercial warranty’, ‘implied warranty’, ‘express warranty’, ‘extended warranty’ also the

meaning of ‘defect’ including ‘minor defect’ and ‘latent defect’ (hidden defect) to clarify and explicit understand by extend the detailed content of the definition of ‘defect’ consideration by the obvious agreement in the contract, the particular purposes on the contract, the usual purpose of the normal use and open-wide definition of defect through the product installation and instruction including the wrong delivery of products or misrepresent the less amount or quantity from the contract. In other hands, the characteristic of warranty such as the ‘warranty against defect’ and ‘express warranty’ as at least definite the meaning content in the ACL not only amend in the C.C.C. but should also clarify in the current consumer protection Act in order to complete and fulfill the consumer rights. So that, the above problem on the commercial warranty in supply of goods should amend both in the Civil and Commercial Code and the Consumer Protection Act.

2) The consumer guarantee in respect of the supply of services

2.1) The problem of the lack of legislation consistent with the consumer guarantees in respect of the supply of services

When profound study on the consumer guarantee in supplying to the services, the researcher discovered that there is rarely examine and explain on this issue. People always pays attention to the consumer’s goods rather than the services; it can indicate by Thai legislation

such as the consumer Protection Act B.E. 2522, The Civil and Commercial Code, The Product Liability Act and the new draft Act on the liability of defect goods.

In conclusion, the researcher's opinion, because of the lack of Thai legislation on the consumer guarantee consistent with the supply of services, the researcher will suggest by adopt the Australian Consumer Law (ACL) and Malaysian CPA particular on the consumer guarantee relating to the supply of services which exhaustive and sophisticated contents and harmonize into the new chapter of the Consumer Protection Act and exemplify the detail in each content into the new provision. This new provision will call 'Guarantees in respect of supply of services' either in service contract or out of contract and impose each clear contents of the services as state earlier as follow;

#### **Subdivision B – Guarantees in respect of the supply of services**

1. Guarantee as to due care and skill
2. Guarantee as to fitness for particular purposes
3. Guarantee as to reasonable time for supply
4. Guarantee as to price (Malaysian CPA)

2. The problem on the inappropriate and inefficiency of the statutory provisions for the remedies on consumer guarantees in Thailand

The Consumer Protection Case Procedure Act normally focuses on the remedy and compensates to consumer after happening damages (indemnification

approved approach), no have a precautionary principle for liability measure (preventive approved approach). (Piboonapiban, P, 2013). This Act is designed to benefit consumers, simplified expedites the legal process for consumer to seek redress. However, in practice after this Act came into force, it had many flaws such as the business allowed to use the same procedure which is not the purpose of the enactment, also the role of the court to consider such discretion depends on independent court's decision under the reasonable consideration. In addition, the Thai judge may also inexperienced expert on consumer protection issue or lacking specific professional on such issue because of the rotation of the Thai court system.

Normally, consumers are middle class status, when they go to the court, it needs to hire the lawyer which may be expensive wages and worthless both money and time for beginning of file a lawsuit until the end at the court. The burden of proof is hard-finding for the vulnerable sufferers as consumers because they may be unknow the complex process of production and manufacture. It seems that the vulnerable consumers are inferior to the exploited party. The specific provision to ensure the consumer rights need to recognize. The Thai access to justice as the 'Ford' case was extremely long-lapsed, it does not concordance with the principle of the best interest of the consumers. Even though, there is the remedies on section 6 of the

new draft Act on the liability of the defect of goods that the consumer can exercise the rights to inform the trader to correct, change, modify, repair or replace and/or terminate the contract or reduce the price and/or claim compensation or expenses. Such new draft Act is provided only for all new product including food and drug product. The current C.P.A. does not appear the explicit remedies' procedure for second-hand goods or services, it should amend by increasing the rights of consumer particular on consumer guarantee issues.

Comparison with the Australian Consumer Law (ACL) (Australian Competition and Consumer Commission, 2009), provides the exhaustive minimum standard of quality in supply of goods and services also including the chapter of the rights to remedy from the supplier, the manufacturer or both depending on the particular guarantee, repair, replacement, refund, compensation for actual damage and consequential lose and cancellation of the contract, also the limitation of the 'no return or no refund' sign and the example of burden of proof complete and fulfill the fundamental of consumer's rights.

Regarding the proposal of the remedies in Thai consumer Protection law, the researcher will propose and suggest that Thailand should adopt and harmonize the ACL be the pattern model law, set up the new part 5 called "the Consumer Protection in Remedies relating to guarantees" into the chapter II "the

Consumer Protection" of the C.P.A. which can separate the part of 'Action against suppliers of goods', 'Action for damages against manufacturer of goods' and 'Action against suppliers of services', including each clear and obvious contents. The current consumer law to bolster and protect all rights of consumers. The unique of the new appending part will bolster measure and hammer automatically the common floor of consumer guarantee rights to all the relating party. The new part of "the remedies" will be provided as follows;  
**Part 5 "The Consumer Protection in remedies relating to guarantees"**

**Division 1 Action against suppliers**

**Subdivision A. Action against suppliers of goods**

1. Rights against suppliers of goods
2. When a failure to comply with a guarantee is major failure
3. The Rejection Period
4. Rights of gift recipients
5. Rights of consequential loss or damage

**Division 2 Action for damages against manufacturers of goods**

1. Action for damages against manufacturers of goods
2. Damages that may be recovered by action against manufacturers of goods
3. Time limit for actions against manufacturers of goods

**Subdivision B. Action against suppliers of services**

1. Action against suppliers of services
2. When a failure to comply with a

guarantee is a major failure

3. The problem on the deficiency of the effective and suitable legal institution for consumer guarantees in Thailand

Normally, consumers who are in middle class, always inferior to the bargaining power of the exploited business, the poverty and benighted consumers may lead to violate the basic consumer rights. When confronting to the court in Thailand, the consumer is always indigent and moneyless to hire the lawyer, some consumer case may be cause to automatic cessation because of its poverty. If Thailand has a specific institution on consumer guarantees, it will eliminate and terminate the problem on the first stage by the government agency before going through the court. The consumer may have different options to cease the problem.

The current C.P.A. sets up the government organizations. (The Independent Committee for Consumer Protection (ICCP), 2019). as three pillars as

- 1) The Consumer Protection Board
- 2) The Ad Hoc (specific) Committee (Advertisement, Label and Contract) and
- 3) The Office of Consumer Protection

Each section has its composition and duty to protect the best of consumer rights. The new ad hoc (specific) committee on consumer guarantee will bolster for the basic of consumer rights. It will be beneficial for save the budgets of government for establishment of the new institute including embody the

experienced officer, effective structure and administration system. The researcher proposes to set up a new specific committee on consumer guarantee in the Office of the Consumer Protection Board (OCPB) by the virtue of section 3 and 4 of the C.P.A. in section 14 as follow.

**“Section 4.** A consumer has the rights to be afforded the following protection:

- (1) the right to information including correct and adequate description of quality as to the goods or services;
- (2) the right to enjoy freedom in the selection of goods or services;
- (3) the right to be afforded safety in the use of goods or services;
- (3 *bis*) the right to fairness in concluding contracts;
- (4) the right to have injury considered and compensated for;
- (5) \* the right to consumer guarantee

provided that all this shall be as provided by the law on particular matters or by this Act.”

**“Section 14.** There shall be the ad hoc committees as follows:

- (1) the Committee on Advertisement;
- (2) the Committee on Labels;
- (3) the Committee on Contracts.
- (4) \* the Committee on Consumer Guarantee.

A specific Committee consists of not less than seven but not more than thirteen members qualified in the related matters as appointed by the Board.



A member of a specific Committee shall hold office for a term of two years and section 11 paragraph two and section 12 shall apply mutatis mutandis. An Ad Hoc Committee has the powers and duties as provided in this Act and as entrusted by the Board.”

To institute the new government organization particular on the general section of the same unit will economize the budgets, experienced officers and active time for establishment and administration system. The new ad hoc (specific) committee on consumer guarantee in section 14 (4) of the C.P.A. will scrutinize and bolster for the basic of consumer rights, advice and consult including process throughout the final remedies for all consumers. The obvious detail of role and duty of between the consumer and business, the relation of mechanical alliance, the effectiveness and fairness of dispute settlement

management to consumer and the effective standard remedies’ measure, the product and services unit alert cooperation on center website or any specific channel are useful and beneficial for all consumer. In this case, the OCPB will collimate and cooperate with the ad hoc committee on consumer guarantee because of its same part of government organization.

In summary, the researcher will propose the illustrated table to understand the concept of the new specific provision guideline on consumer guarantees and remedies as follows;

**Conclusion**

The Proposal Guideline on Appropriate and Suitable for the Consumer Guarantees in Relation to Supply of Goods, Supply of Services and the Remedies in Thailand.

Problem Issues	Factors of The Problems	Proposal
1. The existing statutory regime of the consumer protection law	The inadequacy and unconformity of the existing statutory regime of the consumer protection law particular on the consumer guarantees in related to supply of goods and services in Thailand	Propose new provision on the current C.P.A; Part 4 of the Chapter II of The Consumer Protection; “The Consumer Protection in Consumer Guarantees”
1.1 The consumer guarantee in respect of the supply of goods	1) The legal guarantee 1.1) The lack of explicit legislation 1.2) The deficiency of awareness recognition of consumer rights on legal guarantee	1) Definite the ‘consumer guarantee’ and ‘legal guarantee’ in section 3 of the current C.P.A. 2) Amend the rights to consumer guarantee in section 4(5) of the current C.P.A. 3) Enact new provision part 4 called “the consumer guarantee”, subdivision;



Problem Issues	Factors of The Problems	Proposal
	<p>2) The commercial guarantee</p> <p>2.1) The indistinctness of the form of commercial guarantees</p> <p>2.2) The liability of defective goods</p>	<p>“guarantees in supply of goods” in the current C.P.A.</p> <p>1) Stipulate the definition of “legal guarantee”, “commercial guarantee”, “commercial warranty” in section 3 of the current CPA.</p> <p>2) regarding the exception of liability should amend</p> <p>2.1) section 472 of the C.C.C. by adding on the definition of “defect” including minor and latent defect.</p> <p>2.2) amend section 473 of the C.C.C. by adding on (4) * If the buyer knew of the defect at the time of sale unless the business has deceit conceal the defect or promise to warranty of products or goods quality. (sec. 10 of new draft Act)</p> <p>2.3) amend section 474 of the C.C.C. by replace from one year to two years (sec. 14 of new draft Act)</p> <p>2.4) amend section 483 of the C.C.C. by replace from the party of the contract to the vulnerable party as consumer.</p>
	<p>3) The commercial warranty</p> <p>3.1) The insufficiency clarification of the characteristic of warranties</p> <p>3.2) The liability of defective goods</p>	<p>1) Stipulate the definition of “implied warranty”, “express warranty”, “warranty against defects”, “extended warranty” in section 3 of the current C.P.A.</p> <p>2) Amend section 472 of the C.C.C. by adding on the definition of “defect” including ‘minor defect’ and ‘latent defect’.</p>
<p>1.2 The consumer guarantee in respect of the supply of services</p>	<p>The lack of legislation consistent with the consumer guarantees in respect of supply of services</p>	<p>Enact new provision called “the consumer guarantee”, subdivision; “guarantees in supply of services” in the current C.P.A.</p>
<p>2. The consumer guarantees’ remedies</p>	<p>The inappropriate and inefficiency of the consumer guarantees’ remedies in Thailand</p>	<p>Enact new provision in part 5 of the C.P.A. called “the remedies relating to guarantees”, subdivision ‘Action against suppliers of goods’, ‘Action for damages against manufacturer of goods’ and ‘Action against suppliers of services’</p>



3. The legal institution on consumer guarantees	The need for appropriate and suitable legal institution of consumer guarantees in Thailand	Amend by adding the ad hoc (specific) committee in section 14 (4) of the C.P.A. "The Committee on consumer guarantee"
4. Conclusion and recommendations	No specific legislation and organization correspondent with the consumer guarantee and remedies	Enact the new provision called "The consumer guarantees and remedies" and establish the new ad hoc (specific) committee on consumer guarantees and attach with the independent organization (new national consumer council) related to the consumer guarantee in relating to the supply of goods and supply of services and the remedies in Thailand.

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