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Obligations of Tourism Business to Consumer in Vietnam Laws: A Critique from Globalization Perspective

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Abstract

Despite Vietnam laws already having a framework defining the obligations of the tourism business to the consumer, the concept and applicability of these legal provisions still need to be improved. Since the tourism business fails to comply with its obligations to consumers, laws' educational and forcible features are eroded. Based on the evaluation of the

current law in Vietnam within the context of globalization, this research analyzes the fundamental rights of the consumer to provide some suggestions focusing on facilitating the application of tourism business obligation to secure the legal rights of tourism consumers.

Keywords: Obligations in Doing Tourism Business, Consumer Protection, Vietnam Law

1. Introduction

The significant development of science and technology and the depth of international integration have cemented the foundation for the growth of the products and services market. In this line, protecting consumer rights is becoming critical since customer protection is a factor in securing national sustainable development. In the context of globalization and with the opening of the market economy, the power to control the market is in the customer's hand. They are the most significant force in society, and their consuming decisions thus have a particular impact on trading goods, products, and services. The customer's spending behaviors and spending power also reflect the existence of goods, products, and services in a specific market.

With "Doi moi" policies, Vietnam has transformed the nation from a central and planned economy to a market economy, with flourishing achievements recognized in this process. In terms of the tourism industry, Vietnam has defined this as one of the spearheading economic sectors in the national strategy for economic development (Resolution No. 08-NQ-TW) [1]. From an economic perspective, the tourism market is deemed a part constituting the goods and service market. This market includes economic relations and mechanisms regarding place, time, conditions, and scope of providing products, goods, and services to meet the tourism needs of consumers.

In recent years, the Vietnam tourism market has vividly developed with positive achievements, which can be seen through more and more international tourists considering Vietnam at the top in their options for destinations. According to the Ministry of Culture, Sport, and Tourism data, the number of tourism consumers in 2022 reached 101.3 million visitors. This number is much higher than the post-Covid period in 2019, with only 85 million visitors.

Despite those highlights, some concerns remain when we envisage the issue from a legal perspective, and one of these is the compulsory obligations of the tourism business regulated by laws. Due to the asymmetry in information, risks may happen during the transaction where consumers buy and use tourism products and services (clause 1 Article 3 of the Law on Protecting Consumers 2010) [4]. This asymmetry leads to the fact that consumer has to suffer material and spiritual losses when they use these tourism products and services.

The actual practice also shows that the development of technology has placed consumers in the new context of globalization. This movement is the interlacement of features and the comprehensive option for destinations, tourism products, and services. More than ever, the consumer has to face fraudulent and unfaithful businesses, which are often camouflaged under various means. Many recent cases show that the consumer is often experienced with price manipulation, fraud, and fake advertisement regarding the quality of tourism products and services, unsanitary food, and the safety of tourism destinations...

In addition, many tourism business subjects are ready to violate consumers' fundamental rights for profit maximization. Although many reasons cause these violations, the main and direct one is the absence of an effective legal mechanism for the tourism business subject to fully perform its obligations to the tourism consumer.

These arguments show that consumers always need help buying and using tourism products and services. The consumer is totally in a vulnerable position compared to the tourism business subject. Therefore, regulating the tourism business's obligation is meaningful to protect the consumer's rights and contribute to building a healthy market. These are necessary conditions for sustainable development, which practically enables the tourism industry to be a spearhead economic sector of Vietnam.

2. Basic Rights of Consumers in Laws

The Law on Protecting Consumers 2010 originated from the legitimate needs of consumers to be protected. Therefore, this research enhances the importance of envisaging the right of consumers since this is a part of the research's findings. So far, consumers in Vietnam are acknowledged with the following rights:

i) The right to be satisfied basic needs: This right allows consumers to have goods, essential services, accommodation, health care, mental needs... at reasonable prices; ii) The right to security: The consumer is secure about the safety of goods and services without compromising health and life in the short and long term; iii) The right to information: This right requires to have reliable, correct, and complete information about goods and services. Based on this information, the consumer can have the appropriate decisions. This right includes protection against fraud, disloyalty, or fake advertising; iv) The right to freedom of selection allows consumers to freely select products and services without any external harmful intervention such as fraud, distraction, or force. These products and services are also provided at a value-for-money price; v) The right to be heard and represented: This right allows the consumer to contribute their opinions in the process of strategy and policy building when they find that these policies may impact their rights. This right includes being consulted directly or through a representative about any related issue; vi) The right to claim and compensation: When a consumer suffers a loss or damage, they can claim and ask for reasonable compensation for this damage. This right includes filing a lawsuit for the court's intervention; vii) The right to education: This right allows consumers to be trained or educated at an adequate level about the knowledge in consuming products or services so they can be proactive and wise in making decisions. This right enables people to have a reasonable consuming style to protect themselves as well as contribute to social development; viii) the right to a friendly and sustainable living environment allows people to live in a good and safe environment. People can live in a deserved manner without compromising the happiness of the current and future generations.

Generally, these 8 basic rights of consumers serve as a basis on which nations can engage in their national laws and policies to protect the consumer. Compared to this UN approach, Vietnam 2010 Law on Protecting Consumers reflects 6/8 fundamental consumer rights such as i) the right to security; ii) the right to information; iii) the right to freedom of selection; iv) the right to be heard; v) the right to claim and compensation; and vi) the right to education.

Although the 2010 Law on Protecting Consumers of Vietnam has not been defined, the two remaining rights, namely the rights to be satisfied fundamental needs and the right to have a good and sustainable living environment, are currently available in the National Constitution and other

legal documents. Therefore, these rights should not be reiterated in the protecting consumer law since this law is distinctive and it only mentions the protection of consumer right. With this in mind, the Vietnam laws have provided an adequate legal framework for consumer protection in line with international standards without confusion or conflict.

3. The Obligations of the Tourism Business Subject to Protecting Consumer

The obligations of the tourism business subject sparked by the need to protect the consumer's legitimate rights and interests. Accordingly, the obligations of the tourism business subject include:

i) The obligation to ensure the security

The tourism business subject has an obligation to the security of tourists. This means that tourists are secured from any damage to life, health, or property throughout the tour program conducted by the tourism business subject.

ii) The obligation to provide information

The tourism business must provide complete and reliable information for consumers about the detail of the tour program, the features of products and services, and the methods of trading tourism products and services between the tourism business and consumer.

iii) The obligation to ensure the consumer's freedom of selection

The tourism business subject must respect the consumer's freedom of selecting tourism destinations, products, and services in line with the consumer's capability and needs. Therefore, all behaviors of the tourism business subject which can violate the consumer's freedom of selecting destinations, tourism products, and services, as well as the consumer's decision, are forbidden by the laws. Thus, the following behaviors such as:

First, providing fake or fraudulent information about destinations, tourism products, and services; Second, hiding or providing incomplete information about destinations, tourism products, and services; Third, committing coercion, harassment, abuse, and mutilation of consumer travel programs during the use of tourism products and services.

iv) The obligation to hear and receive the feedback of consumer

The tourism business subject should listen to, study and receive the feedback of consumers to ensure the security and quality of tourism products and services offered to the consumer. This feedback from consumers may include the destination's security, the quality of tourism products and services, serving attitude, tour organizing manner, payment methods, and other issues relating to tour programs offered by the tourism business subject.

v) The obligation to resolve the claim of the consumer

The claim is understood as the request of the consumer asking the tourism business subject to resolve a particular issue relating to the tour product and service offered by the tourism business subject when the consumer assumes that their legitimate rights and interests are violated. Accordingly, tourism business subjects must build and publicly list the process of resolving consumer claims at their registered business location and in branches, if any.

Upon receiving a claim from a consumer relating to tourism products or services offered, the tourism business subject must resolve it in the possible time and within the timespan defined by law. The result should then be communicated to the consumer and other related parties. Noticeably, the result

should be communicated in writing or by other means the consumer accepts.

vi) The obligation to compensate the consumer

Compensation for damage is a civil liability of one who fails to perform or incompletely performs their obligation to the rights holders during the use of a tourism product or service. Accordingly, the compensation liability resulted from the wrongful acts of the tourism business subject in offering tourism products and services. This negatively impacts the legitimate rights and interests of the consumer. The compensation liability of tourism business subjects can be originated from contract violations or torts.

4. The Current Context of Vietnam Law about the Obligation of Tourism Business Subject in Protecting Consumer Right and Interest

This is critical content with distinctive nature in doing tourism business. The tourism business subject as defined in Article 31 of the law on tourism 2017 is: i) fulfilling the conditions of forming an enterprise as defined in the enterprise law; ii) satisfying the requirement about guarantee deposit according to the type of tourism business (domestic and inbound, outbound); and iii) ensuring to meet the conditions about the in-charge person in doing tourism.

Against this backdrop, the obligation of the tourism business subject to the consumer is defined in Article 37 of the Law on Tourism 2017. Accordingly, there are: i) domestic tourism subject; ii) inbound tourism business subject; and iii) outbound tourism business subject. All these provisions aim to secure consumers' legitimate right and interest in experiencing their tourism destinations or consuming tourism products and services on their trips.

4.1 The Obligation to Provide Information about the Tourism Program, Services, and Destination for Consumer

The obligation to provide the consumer information about programs, services, and destinations is stipulated at point d, clause 1, Article 37 of the Laws on Tourism 2017. This provision entitles tourists to "request the organization or individual doing tourism business to provide necessary information", which is recognized in clause 2, Article 11 of the Laws on Tourism 2017. With this regulation, the obligation to provide information about the tourism program, services, and destination will create a transparent and reliable business environment for tourism organizing activities. However, the current law still needs to clearly define which information the tourism business subject must provide to the consumer is compulsory. This information may be about prevention methods or caution that consumers should mind when participating in tour activities organized by tourism business subjects.

This information plays an essential role in the legitimate right and interests of the consumer when they participate in tourism activities. This is deemed a prerequisite condition, which helps consumers to have a general evaluation of the risk and the possibility of the risk. As a result, consumers will have better knowledge about their destination. On the other hand, the consumer will have good preparation to protect themselves from dangerous circumstances during their visits. Simultaneously, this information helps them to be more confident in their decision-making process, which enables their decision to be wiser and more suitable to their capability.

4.2 The Obligation to Secure the Life, Health, and Property Safety of the Consumer

The obligation to secure the tourism consumer's life, health, and property safety is recognized at point i, clause 1, Article 37 of the Law on Tourism 2017. Following this, the tourism business subject should be reliable and secure the protection and safety of consumers during their visit, preventing accidents or unexpected incidents from happening to the consumer when they participate in the tour program. Otherwise said, the obligation of the tourism business subject to secure the life, health, and property safety of the consumer is an integral part of the legal conditions for operating the tourism business in Vietnam. When the tourism business subject entirely and strictly performs its obligation to secure the consumer's life, health, and property safety, they create unforgettable memories for their customers.

Similarly, point g, clause 1, Article 37 of the Law on Tourism 2017 stipulates that tourism business subjects must "communicate to the tourists about the compliance of the law or regulations in the destination". These regulations ensure that: when the tourism business subject communicates information about the requirement of complying with the law to help the consumer to understand and comply, this means that both the tourism business subject and tourism consumer do not violate the law as well as potentially prevent all legal consequences which can be happened to both parties. On the other hand, when consumers understand the regulations and acceptable behaviors, they can avoid potentially dangerous situations and reduce the level of dissatisfaction from the communities or disputes.

Therefore, when the tourism business subject provides information, this will help consumers understand and comply with the laws and regulations of the destination where the consumer will visit. On the other hand, this not only helps the consumer avoid legal consequences, causing security or infringing on local culture but also creates a basis for sustainable tourism and maintains a good interaction between tourists and locals. From the other perspective, this helps consumers legally and securely participate in tourism activities for themselves, the natural environment, and society.

However, the law needs to define in detail those issues that the tourism business subject must inform the consumer about the risk that may happen during the tour experience. Additionally, there is no provision in the Law on Tourism 2017 stipulating the obligation of the tourism business subject that they must inform tourism consumers about the risk that may be happened when a consumer uses products or services during the tour.

4.3 The obligation to buy insurance for tourists during the tour

Previously, the 2005 Law on Tourism requests that tourism business subjects must have an obligation to "buy traveling insurance for Vietnamese consumers when they are traveling abroad during the tour" (point b, clause 2, Article 50), and this provision was not applied to domestic tour (clause 2, Article 45). However, the 2017 Law on Tourism witnesses a step forward in the obligation to buy insurance for the tourism consumer. Accordingly, the tourism business subject must buy traveling insurance for tourism consumers while they are traveling without any distinction between

domestic or international traveling (point d, clause 1, Article 37 of the 2017 Law on Tourism)^[5].

The tourism business subject buying traveling insurance for tourism consumers is a legal requirement. So, when the law requires the tourism business subject to buy traveling insurance for the consumer during the tour is a practical action to protect the legitimate rights and interests of the consumer. This also shows the responsibility of the tourism business subject. Accordingly, in case unexpected situations happen during the trip, such as accident, sickness, or loss of properties...the consumer will be compensated and supported in an emergency. This will reduce the financial risk, allow tourism consumers to experience the tour safely, and assure them to enjoy their trip. In sum, raveling insurance help to protect tourists' property and finance in case of loss or damage. This includes insurance for properties and personal belongings, health insurance for covering health care treatment and emergencies, and civil liability insurance to protect consumers from disputes and compensation requests.

5. Solutions to Improve the Effectiveness of Enforcement of the Provisions about the Obligation of Tourism Business Subject

5.1 Ensure Tourism Business Subject will Comply With the Obligation to Provide Information

The rights and obligations between tourism business subjects and consumers are equal in law. One party will have the right while the other will have obligations. Ensuring the obligation to provide information on tourism business subjects will increase the effectiveness of enforcing the law on protecting consumers. As a part of the hospitality industry, the obligation to provide information on the tourism business subject plays an essential position in protecting the legitimate rights and interests of the tourism consumer. Therefore, the tourism consumer can request that business subjects provide complete information about the tour program, services, and destination. On the other hand, the tourism business subject must provide information about the tour program, services, and destination to the tourism consumer (Article 37 of the Law on Tourism 2017)^[5].

Previously, in the Law on Tourism 2005, the tourism business subject only needed to register to form a company to offer domestic tourism services (clause 1 Article 44) without depositing an amount to get the license to offer domestic tourism services. However, to prevent the risk to life, health, or mental suffering of the consumer as well as to secure the obligation of the tourism business subject to the consumer, the Law on Tourism 2017 requires that tourism businesses running either domestic or inbound services must deposit an amount of money with the bank as well as owning the license for offering tourism service (Article 31). Based on this, the law should have a provision requiring that tourism business subject offering either international or domestic tourism service must have information about their business license by posting and showing this in the company's headquarter and branches. In this line, the provisions about the obligations of the tourism business subject should be clear, detailed, harmonized, and enforceable.

As stipulated by laws, the tourism business is a conditional business showing via two types of documents: i) The certificate of business registration issued by the Department of Planning and Investment; and ii) The domestic tourism

service license provided by the Department of Culture, Sport, and Tourism or international tourism service license issued by the General Bureau of Tourism (which is now the Vietnam National Bureau of Tourism). In practice, the examination of the information of a business subject and its business registration can be made on the Department of Planning and Investment data. However, since the tourism business is a conditional business, if the consumer wants to know about the tourism service license of the tourism business subject is a challenging job. Laws define that consumer has the right to request that tourism business subjects provide the information. However, laws do not specify that tourism business subjects should provide information about the tourism service license.

Against this backdrop, to protect the legitimate rights and interests of the consumer and eliminate unlawful tourism business, the Law on Tourism should provide a provision requiring tourism business subjects to publicly list the tourism service license or a copy of this document in the headquarter and the branch. This is to prove to their consumer the satisfaction of business conditions of the tourism business subject. Moreover, listing this document also shows the transparency of the tourism business subject to consumers and society.

This is a reasonable provision showing the equality of rights and interests. The consumer has the right to request the tourism business subject to provide the necessary information. In contrast, the tourism business subject should perform in line with the license and inform that license publicly, transparently, and honestly to the consumer. On the other hand, this provision also secures the harmonization between the tourism business subject and the Government regarding the examination and performance business obligation. Therefore, the provision about listing the tourism service license at the headquarter and branch is necessary. This will help improve the tourism business environment with fair competition and the quality of tourism programs secured.

The provision required the tourism business subject should inform the consumer about the potential risk which may be occurred during the tour as well as preventing solutions. The context of tourism law does not require the tourism business subject to inform tourists about potential risks or does not require the responsibility of the tourism business subject to guide the consumer to avoid these risks. The law only stipulates that the tourism business subject should inform the authority timely about accidents or risks to the consumer (point i clause 1 Article 37 of the Law on Tourism 2017)^[5].

To protect the right and safety of the consumer when participating in tourism programs offered by tourism business subjects, they need to be informed about the potential risks and the skills to avoid and prevent suggestions. The stipulation in detail about this obligation is needed in today's context of the tourism business.

Protecting legitimate rights and interests of the consumer is defined through the regulations about the right of the consumer together with the obligations of the tourism business subject while organizing the tour program. The tour program is specified in clause 8, Article 3 of the Tourism Law 2017, "showing the tour schedule, services, and price which are previously set for the trip of tourist from the starting point to the ending point of the trip". The tour program combines different products and services to serve consumers and meet their satisfaction. Traveling behaviors

of the consumer are constantly changing, and in adventuring or exploring tours, the risks are potentially happening at a high level. With the business purpose of "preventing is better than fighting" and knowledge and professional capability in designing tours to meet the consumer's needs, the tourism business subject can contemplate potential issues and guide consumers when these issues happen. Therefore, the obligation of information to protect the interests and the safety of the tourists should be stipulated in law. The regulation of this obligation is compatible with the right to be informed of the consumer. When this provision is available in law, this will form a legal framework to protect the legitimate right and interests of consumers, which can be seen in detail via the provisions about the rights and obligations of the tourism business subject.

5.2 Communicate, Guide, and Implement Legal Provisions about the Obligations of the Tourism Business Subject

Tourism business subjects should know legal provisions about their obligations and implement them. They should keep in mind essential provisions regarding tourism business recognized from Article 30 to Article 44 in the Law on Tourism 2017 and ensure to implement these provisions. Therefore, communication about tourism laws needs to engage various means as well as conduct often to ensure effectiveness. This is to fulfill the lousy habit context that tourism business subject frequently searches for legal information on social network, which this source is not a mainstream one. The result is that the legal concept stipulated in laws and other legal documents needs to be clarified or misled.

Currently, the legal application and implementation of the tourism business subject are difficult and confusing, which may lead to conflicts and overlap in applying laws. The real practice shows that the burdensome and the existence of conflicts among legal provisions have undermined the transparency of the law and made the laws complicated, hard to understand and apply. The guidance to implement the law should be specific and easy to understand so tourism business subjects can implement it in line with the legal requirements.

For example, the laws should define the valid period of the certificate of managing domestic and international tourism (point c clause 1; point c clause 2 of Article 31 of the Law on Tourism 2017)^[5] when the tourism business subject applies for a business license. Or when the tourism business subject already has the international business license, should they need to provide further the certificate of managing domestic tourism? The tourism business subject knows and implements the law on tourism, particularly the new provision in the Law on Tourism 2017, which will help underpin the rule of law and ensure the right of tourism business subjects as well as the obligations they should commit to the consumer. Following this, the new legal provision will be more effective if these are communicated by the authority or by institutions majoring in researching and guiding the application of the law. From this point, the tourism business subject will timely apply and implement laws strictly.

5.3 Inspecting and Checking the Implementation of the Laws of Tourism Business Subject

Inspecting and checking are essential steps of the Government in controlling and managing activities by laws.

Inspecting or checking activities is necessary to implement the laws to be secured. This activity is a post-check procedure for the tourism business subject. Therefore, these become an essential regime in securing the effectiveness and validity of implementing laws to protect the rights and interests of consumers, particularly to the obligation of the tourism business subject to the consumer. Based on this, promoting inspecting and checking activities and handling violations contribute significantly to engaging legal provisions into practice to protect consumers. Some suggestions can be made as:

- Appropriately identifying the purpose of checking and inspecting activities is to ensure the legal provisions about the obligations of tourism business subject to protect the legitimate right and interests of consumers will be implemented strictly and uniformly;
- Checking and inspecting activities should be engaged with communicating and guiding to implement laws. Checking and inspecting will help the tourism business subject to understand and comply with the laws about protecting the right and interests of the consumer voluntarily;
- Checking and inspecting activities should be conducted often and continuously with mutual support between levels of authority. These activities aim to prevent the violation of the laws of protecting the legitimate right and interests of the consumer;
- The result of checking and inspecting activities about violation should be strictly treated and in line with the laws to enforce the validity of legal provisions as well as to deter tourism business subjects from violating the legitimate right and interests of the consumer, creating equality between subjects participating in tourism business;
- Increase the professional capability of governing for direct force in inspecting and checking activities. The success of this can ensure the effectiveness of implementing laws to protect consumers.

6. Conclusion

Currently, tourism is regarded as a spearhead sector in the Vietnam economy. With legal provisions about the obligations of tourism, business subject have marked the development of national legislation in forming a comprehensive legal framework to ensure the right and interests of consumers. This also creates an equal environment for tourism business subjects so they can assure to perform their commercial activities in the market economy.

The research has identified the fundamental rights of consumers and evaluated the current context of Vietnam regarding the obligations of tourism business subjects in protecting the right of consumers in the context of globalization. Together with providing basic solutions to improve the enforcement of the law about the obligation of tourism business to the consumer protection, harmonizing the interests of consumers and tourism business subject, suitable with the development of socialist-oriented market economy and meeting the needs of international economic integration in Vietnam.

7. References

1. Polit bureau, Resolution No. 08, Hanoi, 2017.
2. The Ministry of Culture, Sport and Tourism, Annual

report 2022, Hanoi, 2023.

3. National Assembly of the Socialist Republic of Vietnam, Law on Tourism, 2005.
4. National Assembly of the Socialist Republic of Vietnam, Law on Protecting Consumer, 2010.
5. National Assembly of the Socialist Republic of Vietnam, Law on Tourism, 2017.