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**AN EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS
FOR CONSUMER PROTECTION IN NIGERIA: A CASE STUDY OF THE
DEREGULATED ELECTRICITY SECTOR**

JAFARU, DAHIRU USMAN



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JAFARU, DAHIRU USMAN (94490)



**A Thesis submitted to the Ghazali Shafie Graduate School of Government
in fulfilment of the requirement for the degree of Doctor of Philosophy.
Universiti Utara Malaysia**

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ABSTRAK

Baru-baru ini, utiliti elektrik Nigeria telah kehilangan ciri-ciri perkhidmatan awam berikutan pembatalan kawal selianya. Pembatalan kawal selia elektrik telah dilaksanakan meskipun berdasarkan pengalaman buruk pengguna dalam pembatalan kawal selia sebelum ini ke atas sektor kualiti perkhidmatan, pengendalian aduan dan lain-lain. Tesis ini mengkaji secara kritikal rangka kerja perundangan dan institusi bagi perlindungan pengguna dalam sektor pembatalan kawal selia elektrik Nigeria dengan mengguna pakai kaedah penyelidikan sosio-undang-undang. Tesis ini didorong oleh keadaan undang-undang yang masih wujud dan penyusunan institusi bagi perlindungan pengguna; kegagalan peraturan yang berlarutan dan peningkatan eksploitasi pengguna dalam sektor elektrik Nigeria. Objektif tesis adalah untuk mengkaji rangka kerja; mekanisme tebus rugi pengguna; dan cabaran yang menghalang perlindungan pengguna dan tebus rugi elektrik di Nigeria. Data telah dikumpul melalui pendekatan kepustakaan dan dua puluh temu bual separa berstruktur dengan pihak berkepentingan daripada agensi perlindungan pengguna seperti Majlis Perlindungan Pengguna, Suruhanjaya Kawal Selia Elektrik Nigeria, Majlis Bantuan Guaman Nigeria; peguam yang terlibat dengan bidang akademik; dan ketua-ketua organisasi perlindungan pengguna. Tesis ini menggunakan kaedah interpretif doktrin dan analisis tematik dalam menganalisis data undang-undang dan data temubual. Pendekatan perbandingan secara analitikal juga telah digunakan kerana kepentingannya dalam kajian undang-undang. Berpandukan piawaian antarabangsa dan amalan terbaik global, tesis ini mendapati bahawa rangka kerja ini mempunyai kekurangan dan terhad dalam banyak aspek. Ianya kurang peruntukan mengenai hak-hak pengguna dan remedii; fokus produknya tidak menekankan kepada perkhidmatan; dan tidak mempunyai undang-undang persaingan yang kritikal bagi perlindungan pengguna dalam persekitaran pembatalan kawal selia. Tesis ini juga mendapati bahawa di samping mahkamah biasa yang mahal dan memakan masa, rangka kerja ini pula tidak mempunyai penyusunan institusi yang ideal seperti mahkamah tuntutan kecil dan ombudsman pengguna. Tesis ini juga mendapati bahawa perlindungan pengguna di Nigeria menghadapi beberapa cabaran di mana kurangnya kesedaran pengguna dan kurangnya pembiayaan ke atas agensi adalah merupakan cabaran utama. Demi kepentingan pengguna dan industri, tesis ini mencadangkan satu rangka kerja komprehensif yang mengintegrasikan persaingan, hak pengguna, dan peruntukan remedii. Tesis ini selanjutnya mengesyorkan penambahbaikan kepada skim bantuan guaman, penubuhan forum tebus rugi pengguna yang ideal, agensi pengawalseliaan yang efisyen bagi perlindungan pengguna yang lebih berkesan.

Kata Kunci: Keadilan Pengguna, Perlindungan Pengguna, Tebus Rugi Pengguna, Pembatalan Kawal Selia, Nigeria.

ABSTRACT

Recently, the Nigerian electric utility lost its public service character following its deregulation. The electricity sector deregulation was executed despite bad consumers' experience in the earlier deregulated sectors on service quality, complaints handling and others. Adopting a socio-legal research method, this thesis critically examines the legal and institutional frameworks for consumers' protection in the Nigerian deregulated electricity sector. The thesis was motivated by the state of the extant laws and the institutional arrangements for consumer protection; the lingering regulatory failure and rising consumer exploitations in the Nigerian electricity sector. The thesis's objectives are to examine the frameworks; the consumer redress mechanisms; and the challenges hindering electricity consumers' protection and redress in Nigeria. The data was collected through the library-based approach and twenty semi-structured interviews with stakeholders from consumer protection agencies such as the Consumer Protection Council, the Nigerian Electricity Regulatory Commission, the Legal Aid Council of Nigeria; lawyers in the academia; and the heads of consumer organisations. The thesis employed the interpretive doctrinal technique and the thematic analysis in analysing the legal materials and the interview data. The comparative analytical approach was also employed because comparison is useful in legal research. Guided by international standards and global best practices, the thesis found that the frameworks are deficient and limited in many aspects. It lacks provisions on consumer rights and remedies; its product-focused with less emphasis on services; and lacks competition law that are critical for consumer protection in deregulated environments. The thesis found that while regular courts are expensive and time consuming, the frameworks lack ideal institutional arrangements such as small claims court and consumer ombudsman. The thesis also found that consumer protection in Nigeria faces several challenges with lack of consumer awareness and underfunding of agencies being the prominent challenges. For the benefit of the consumers and industry, the thesis recommends comprehensive frameworks that integrate competition, consumer rights and remedies provisions. The thesis further recommends improvement to the legal aid scheme, the establishment of ideal consumer redress forums and efficient regulatory agencies for more effective consumer protection.

Keywords: Consumer Justice, Consumer Protection, Consumer Redress, Deregulation, Nigeria.

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UK, Consumer Credit Act, 1974.

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LIST OF ABBREVIATIONS

ABARE	Australian Bureau of Agricultural Resource Economics
ADB	African Development Bank
AGF	Attorney General of the Federation
AMLCP	African Model Law on Consumer Protection
BPE	Bureau of Public Enterprises
CFRN	Constitution Federal Republic of Nigeria
Com	Consumer Ombudsman
CPC	Consumer Protection Council
CT	Consumer Tribunal
CUP	Cambridge University Press
Discos	Distribution Companies
DoJ	Department of Justice
ETRAPCOPP	Ethiopian Trade Practices and Consumer Protection Proclamation
EPSRA	Electric Power Sector Reform, Act
FMF	Federal Ministry of Finance
FOs	Forum Offices
FTC	Federal Trade Commission
Gencos	Generating Companies
ISRJ	Indian Streams Research Journal
LACON	Legal Aid Council of Nigeria
LFN	Laws of the Federation of Nigeria
MANCAP	Mandatory Conformity Assessment Programme
MCPA	Malaysian Consumer Protection Act
MLJ	Malayan Law Journal
MW	Megawatt
NECAN	National Electricity Consumer Association Network
NERC	Nigerian Electricity Regulatory Commission
NIALS	Nigerian Institute of Advanced Legal Studies
NIS	National Industrial Standards
NWLR	Nigerian Weekly Law Report
NWZO	North-West Zonal Office
OECD	Organisation for Economic Co-operation and Development
OUP	Oxford University Press
PC	Product Certificate
PCC Act	Public Complaints Commission, Act
PCC	Public Complaints Commission
SI	Structured Interview
SACPA	South African Consumer Protection Act

SON	Standards Organization of Nigeria
SONCAP	Standards Organisation of Nigeria Conformity Assessment Programme
SSI	Semi- Structured interview
SUNY	State University of New York
Transco	Transmission company
UI	Unstructured Interview
UNGCP	United Nations Guidelines on Consumer Protection
UDHR	Universal Declaration of Human Rights
ICESCR	International Covenant on Economic Social and Cultural Rights



CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Until late 90s, states across the world especially in Africa owned, provided and regulated utility services.¹ Government was a major and active player in the economy,² and utility services provision such as electricity, telecommunications, water etc. were then considered as part of the social policy of governments. Economists, businesses, investment and utility management experts, were, however, not comfortable with the states' regulation and involvement in the market.³ They promoted free market enterprises through deregulation and for decades now there has been a shift from public ownership and control of several sectors of economies to deregulated, privatized and commercialized ones. This is more prominent in the utility sectors such as

¹J.H. Williams and R Ghanadan, "Electricity Reform in Developing and Transition Countries: A Reappraisal," *Energy Policy* 31 (2006):817; Daniel Czamanski, Privatization and Restructuring of Electricity Provision, (London: Praeger, 1999), 11; Navroz K.Dubash, "The Public Benefits Agenda in Power Sector Reform," *Energy for Sustainable Development* 5, no. 2 (2001):5; David M. Newbery, "Problems of Liberalising the Electricity Industry," *European Economic Review* 46, no. 4–5 (2002): 919; A.T. Ottow, "Mastering the Market? Exploring New Forms of Market Supervision," Inaugural Lecture, September 18, 2008, University Utrecht, (The Hague: Boom Juridische Uitgevers 2009), 2.

²Sanja Filipovic and Gordon Tanic, "The Policy of Consumer Protection in the Electricity Market," *Economic Annals* 53, no. 178-179 (2008):158; Trebing, Harry M., "A Critical Assessment of Electricity and Natural Gas Deregulation," *Journal of Economic Issues* 42, no. 2 (2008) 469; H.-J. Chang, "The Economics and Politics of Regulation," *Cambridge Journal of Economics* 21 (1997): 712; UNDP Policy Research Brief (January 2007) "Privatising Basic Utilities in Sub-Saharan Africa: The MDG Impact", <http://www.ipc-undp.org/pub/IPCPolicyResearchBrief3.pdf>. (accessed April 8, 2013); Ralf M.Dyllick-Brenzinger and Finger Matthias, "Review of Electricity Sector Reform in Five Large, Oil- and Gas-Exporting Mena Countries: Current Status and Outlook," *Energy Strategy Reviews* 2, no. 1 (2013): 31; Giuseppe Tesauro, "Market Power in Electricity Markets: Regulation, Deregulation and Competition Lessons From the Italian Experience and Other European and U.S. Case Studies," *Fordham International Law Journal* 25, no. 4 (2001):946; Sivalingam, G., *Competition in the ASEAN Countries*, (Singapore: Thomson Learning, 2005), 163. See also Newbery, David M. "Regulating Unbundled Network Utilities," *Economic and Social Review* 33, no. 1 (2002):24; Rigo, Fredrick S., "Why do Countries Adopt Competition Laws? The Tanzanian Case," in *Evolution of Competition Laws and their Enforcement*, ed. Mehta Pradeep S. (London, Routledge, Taylor & Francis Group, 2012), 180.

³Gregory L. Schneider, "Benjamin C. Waterhouse, Lobbying America: The Politics of Business From Nixon to NAFTA," *The American Historical Review* 119, no. 5 (2014): 1738.

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