Volume 3, No. 12 December 2025
p-ISSN 3032-3037 | e-ISSN 3031-5786

ADVANCES IN SOCIAL HUMANITIES RESEARCH

Reconceptualizing Consumer Protection in Apartments: a Normative Analysis of Criminalization Practices by Property Developers in Indonesia

Yenny Rosa*, Muhammad Mustofa, Tofik Yanuar Chandra
Universitas Jayabaya Jakarta, Indonesia[1,3]
Universitas Indonesia, Indonesia[2]
Email: yennyrosa007@gmail.com*, masmus21@gmail.com, tyc.jayabaya@gmail

Abstract

This study examines the emerging phenomenon of consumer criminalization in Indonesia's high-rise housing sector, where property developers increasingly utilize criminal law mechanisms to exert pressure on buyers involved in contractual disputes. While previous studies have largely focused on unfair contract terms, late delivery, and imbalanced bargaining positions, the use of criminal law as a tool of intimidation remains significantly underexplored. Employing a normative legal research approach, this study analyzes statutory frameworks, judicial decisions, and scholarly literature to investigate the structural and normative weaknesses that enable criminalization. The findings reveal that the misuse of defamation and embezzlement provisions represents a systemic distortion of the *ultimum remedium* principle and indicates a broader imbalance in the legal power relationship between developers and consumers. This study argues that current regulatory mechanisms are insufficient to prevent the instrumentalization of criminal law in what is fundamentally a civil contractual relationship. By integrating perspectives from global theories of overcriminalization, substantive justice, and consumer protection, the research provides a conceptual foundation for reconstructing Indonesia's legal framework. The study concludes by proposing regulatory reforms, institutional strengthening, and procedural guidelines to ensure that criminal law is not deployed as an oppressive tool against consumers. This contributes to the global discourse on proportionality in criminal law and the protection of vulnerable parties in modern housing markets.

Keywords: Consumer criminalization; Consumer protection law; legal power imbalance; Property developers; Contractual disputes. High-rise housing

INTRODUCTION

In the philosophy of law, law is seen not as just a collection of rigid norms, but as a moral instrument that functions to maintain a balance between individual interests and social interests. Law, as argued by Gustav Radbruch, must always find a common ground between justice, certainty, and utility. However, in modern social practice, law often shifts from its moral function to that of power especially when it is used as a tool of domination by economically powerful parties. This phenomenon is evident in the relationship between developers and consumers, where laws that are supposed to be protectors are often a tool of repression (Afdhali & Syahuri, 2023; Alamsyah et al., 2023; Amarini, 2018; Azharie, 2023; Hidayat & Arifin, 2019; Johan Nasution, 2014).

In the past decade, the construction of flats in Indonesia has increased rapidly. Based on data from the Ministry of PUPR in 2024, there are more than 3,200 commercial apartment projects spread across major cities such as Jakarta, Surabaya, and Medan. This increase is directly proportional to the increasing number of disputes between consumers and developers. The 2023 report by the Indonesian Consumer Institute Foundation

(YLKI) noted that more than 27% of consumer complaints in the property sector came from flats cases, with the most complaints related to late handovers, changes in building specifications, and the use of standard agreements that are detrimental to consumers. In fact, in some cases, consumers who voice protests against developers are reported criminally on charges of defamation or embezzlement, even though the problem is rooted in civil contractual relationships.

The phenomenon of criminalization of flats shows a paradigm shift in law enforcement practices in the field of consumer protection. Consumer disputes of a civil nature should be resolved through civil or administrative mechanisms, not by criminal proceedings. When criminal law is used excessively by business actors to pressure consumers, then the principle of ultimum remedium in criminal law has been ignored. This situation not only erodes the sense of justice, but also creates structural fear among people who want to demand their rights as consumers.(Paramadani et al., 2020; Zachman, 2020)(Dewi, 2022; Pratitis et al., 2020)(Amiruddin et al., 2021)

The urgency of this research lies in the urgent need to review the effectiveness of the consumer legal protection system in the context of flats, especially against the abuse of criminal law by developers. Ideal legal protection should not stop at the formal normative aspects listed in Law Number 8 of 1999 concerning Consumer Protection and Law Number 20 of 2011 concerning Flats, but also extend to the realm of praxis that guarantees substantive justice for society. The reality on the ground shows that there is a gap between the legal text (law in books) and the implementation of the law (law in action), where consumers are often victims of criminalization due to weak bargaining positions and inequality of economic power.

In the academic realm, studies on the protection of consumers of flats generally focus on contractual violations or defaults, while the criminal dimension is still rarely studied systematically. Some previous studies have highlighted civil aspects, such as the imbalance of standard clauses (Maryani, 2020) or delays in the handover of units (Sutanto, 2021). However, there has not been much research that outlines the legal protection mechanism for consumers who are victims of criminalization by business actors. In fact, the practice of criminalizing consumers reflects a crisis of legal ethics and distortion of the law enforcement function itself. Therefore, this research is here to fill the research gap by normatively and critically analyzing how the Indonesian legal system can be reconstructed in order to be able to provide effective protection for consumers of flats from the threat of criminal law abuse.

The objective of this research is to analyze the criminalization practices by property developers in Indonesia within the context of consumer protection in apartment sales, with a focus on normative legal frameworks. The study aims to reconceptualize consumer protection by evaluating current criminalization approaches, identifying gaps, and proposing more effective regulatory measures. This research will provide valuable insights into how existing laws can be reformed to better protect consumers, ensuring that property developers adhere to ethical practices and legal obligations. The findings are expected to contribute to the development of a more robust legal system that not only

addresses the rights of apartment buyers but also promotes transparency and accountability within the property development sector. By improving consumer protection, the research will help build trust in the real estate market, encourage fair business practices, and ultimately enhance consumer confidence and satisfaction in property transactions.

METHOD

This research employed a normative juridical approach oriented to doctrinal analysis of legal norms and principles governing consumer protection and the use of criminal instruments in housing disputes. This approach was chosen because consumer criminalization is a normative issue requiring systematic legal interpretation and critical evaluation of consistency between legal texts and enforcement practices (Fajar & Achmad, 2010; Soekanto & Mamudji, 2011; Suhaimi, 2018).

Legal data were collected through comprehensive literature review of laws and regulations, court decisions, scientific literature, consumer protection agency reports, and relevant government publications. Materials were organized thematically to identify patterns of criminalization, inequality in legal relations, and regulatory gaps affecting apartment consumer protection.

Data analysis was conducted qualitatively in three stages: first, normative description of the applicable legal framework; second, systematic interpretation connecting norms within the legal system; and third, critical evaluation assessing norm effectiveness and gaps between regulation and implementation. This approach produced coherent, prescriptive arguments aligned with international legal research standards.

RESULT AND DISCUSSION

Pattern of Criminalization of Flats Consumers by Developers

The results of the study show that the criminalization of flats tends to follow a consistent and systematic pattern. Developers take advantage of power imbalances and regulatory loopholes to pressure consumers through criminal reports. Common patterns found include the use of defamation articles when consumers submit complaints through social media, as well as reports of embezzlement against consumers who delay the handover of units due to non-compliance with specifications. These findings indicate a tendency to instrumentalize criminal law as a tool of repression, not as a mechanism for enforcing substantive justice.(Hastuty et al., 2015; Marbun et al., 2023; Subekti, 2015)

This pattern is in line with the YLKI report (2023) which recorded an increase in complaints related to legal intimidation by developers to consumers who are trying to negotiate the fulfillment of their rights. This suggests that criminalization is not an incidental phenomenon, but rather a structural strategy used by some developers to divert the focus from their own defaults. Thus, the results of this study strengthen the argument that the legal relationship between consumers and developers often shifts from the civil realm to the criminal realm disproportionately.

Furthermore, this pattern of criminalization is not just a procedural deviation, but a manifestation of regressive legalism, where legal instruments are actually converted to protect the power of capital by suppressing the voices of victims. This process crystallizes structural inequalities: consumers who should be protected as weak parties are instead positioned as suspects, while developer defaults—as the root of the problem—are masked by the dramatization of criminal offenses by consumers. As a result, the psychological, financial, and social burden shifts from business actors to consumers, while existing consumer protection mechanisms have proven to be unable to reach victims who have been entangled in the criminal apparatus. This analysis confirms that consumer criminalization is a deflection strategy that not only obscures the root of the civil problem, but also weakens access to substantive justice for vulnerable groups.

Inequality in Legal Relations and Their Impact on the Effectiveness of Consumer Protection

Analysis of laws and regulations and various court decisions shows that the inequality in the legal relationship between developers and consumers is rooted in several factors, namely the economic strength of developers, the unbalanced nature of standard agreements, and structural bias in criminal law enforcement. When consumers are in an inferior position in contract negotiations, they do not have enough room to reject adverse clauses. This situation is exacerbated by the fact that the legal system often responds more quickly to developer reports than consumer reports.

Standard agreements in PPJB often include clauses that give developers wide latitude in determining handover times, interpreting building specifications, and resolving disputes. This kind of provision creates a contractual structure that developers can use to victimize consumers, both civil and criminal. The absence of an effective monitoring mechanism for the content of the standard agreement has an impact on the weak position of consumers and the increased risk of criminalization.

This finding is intertwined with the concept of legal power imbalance introduced by some modern contract law researchers, which states that structural power imbalances can result in disproportionate legal pressure on weaker parties. Thus, in the context of flats, this inequality creates space for the abuse of criminal law as a means of control.

Deviation of the Principles of Ultimum Remedium and Substantive Justice

From the point of view of legal theory, the pattern of criminalization of consumers by developers shows a serious deviation from the principle of ultimum remedium, namely the principle that criminal law should only be used as a last resort. The use of criminal law in civil disputes not only violates this principle, but also shifts the legal orientation from a protector to an oppressive tool. This deviation illustrates the incompatibility between the legal structure and the normative values that should be upheld in the legal system.

Moreover, the use of criminal law to pressure consumers is contrary to the concept of substantive justice, where law is supposed to ensure that weaker parties obtain the protection they deserve. In Friedman's theory of the legal system, this problem can be understood as a failure on three levels at once: inadequate legal substance, a legal

structure that is biased towards the powerful, and a legal culture that tends to prioritize the economic interests of business actors.

Reconstruction of the Consumer Legal Protection Model against Criminalization

Based on the findings and theoretical analysis, the reconstruction of the legal protection model needs to be directed at three aspects: regulation, institutional, and law enforcement practices. First, regulatively, it is necessary to contain provisions that expressly prohibit the use of criminal instruments in consumer disputes except in cases where there is evidence of real and verified malicious intent. This kind of provision can be a safeguard to prevent criminalization of economic motives by developers.

Second, from an institutional perspective, BPSK needs to be strengthened so that it has broader quasi-judicial authority, including the authority to provide recommendations for the termination of criminal legal proceedings when it is proven that the dispute is a contractual relationship. This strengthening is important to close the gap in the arbitrary use of criminal law.

Third, in law enforcement practice, law enforcement officials need to be given technical guidelines that clearly distinguish between civil disputes and criminal acts in the consumer-business relationship. Without adequate guidelines, the authorities will tend to receive reports from developers without assessing the contractual context, so that the practice of criminalization can continue.

CONCLUSION

This study revealed that the criminalization of apartment consumers by developers stems from structural contractual inequalities, regulatory weaknesses, and misuse of criminal law, which deviates from its *ultimum remedium* role and exploits legal loopholes to intimidate buyers, transforming consumer protection into coercion. Rather than an anomaly, this reflects systemic failures in institutional and legal cultural structures that prioritize economic interests over consumer rights. To address it, the study proposed legal reforms limiting criminal law in contractual disputes, strengthening BPSK authority in resolutions, and establishing consumer-prioritizing enforcement guidelines to restore substantive justice. These insights contribute to global discourses on overcriminalization and consumer protection, informing legal theory and policy. For future research, scholars could empirically examine the post-reform effectiveness of these proposals through longitudinal case studies of BPSK interventions in Indonesian apartment disputes.

REFERENCES

Afdhali, D. R., & Syahuri, T. (2023). The ideality of law enforcement is reviewed from the perspective of legal purpose theory. Collegium Studiosum Journal, 6(2). https://doi.org/10.56301/csj.v6i2.1078

Alamsyah, M. S., Shobari, A., Gusma, A., Rahmanda, M. R., Antoni, H., & Dewi, E. K. (2023). The comparison of certain criminal acts in Law Number 1 of 1946 with Law Number 1 of 2023 is reviewed with the theory of legal purpose according to Gustav

Radbruch. Journal of Muhammadiyah De Jure Cirebon, 7(1). https://doi.org/10.32534/djmc.v7i1.4209

Amarini, I. (2018). Realizing Social Justice in Dispute Resolution in Administrative Courts. Journal of Legal Media, 25(2). https://doi.org/10.18196/jmh.2018.0111.162-170

Amiruddin, A., Pancanigrum, R. K., & Purnomo, C. E. (2021). The concept of prejudicial geschil in the examination of criminal and civil cases. Journal of Legal Compilation, 6(1). https://doi.org/10.29303/jkh.v6i1.71

Azharie, A. (2023). The Utilization of Law as a Means to Achieve Social Justice. Lex Aeterna Law Journal, 1(2), 72–90. https://doi.org/10.69780/lexaeternalawjournal.v1i2.20

Dewi, N. M. T. (2022). Non-Litigation Dispute Resolution in Civil Dispute Resolution. Journal of Legal Analysis, 5(1). https://doi.org/10.38043/jah.v5i1.3223

Fajar, M., & Achmad, Y. (2010). The dualism of legal research: normative & empirical. Student Library.

Hastuty, R. Y., Winarno, B., & Istislam. (2015). Legal Protection for Consumers in the Buying and Selling of Commercial Flats That Have Not Been Built. Journal of Law of Universitas Brawijaya, 0(0).

Hidayat, A., & Arifin, Z. (2019). Politics of Law and Legislation as Socio-Equilibrium in Indonesia. Journal of Ius Constituendum, 4(2). https://doi.org/10.26623/jic.v4i2.1654

Johan Nasution, B. (2014). A philosophical study of the concept of justice from classical thought to modern thought. Jurisprudence of the Law Journal, 3(2). https://doi.org/10.20961/yustisia.v3i2.11106

Marbun, L. D., Ginting, B., & Sukarja, D. (2023). Legal Responsibility of Flats Developers in Binding Sale and Purchase Agreement Without Certificate of Functional Fitness to Consumers Based on Indonesian Positive Law. Law Studiosum Law Review, 2(2). https://doi.org/10.32734/rslr.v2i2.14075

Paramadani, S. P., Rubiati, B., & Suwandono, A. (2020). Legal protection for buyers of non-residential flats (non-residential) is reviewed based on Law Number 8 of 1999 concerning Consumer Protection and Law Number 20 of 2011 concerning Flats. Acta Diurnal Journal of Notary Law and PPAT-An, 4(1). https://doi.org/10.23920/acta.v4i1.326

Pratitis, Y., Murjiyanto, R., & Asri, D. P. B. (2020). Legal protection of health service consumers at home circumcision service providers in Yogyakarta City. Study of Legal Research Results, 4(1). https://doi.org/10.37159/jmih.v4i1.1232

Soekanto, S., & Mamudji, S. (2011). Normative Law Research, A Brief Review. Raja Grafindo Persada.

Subekti, S. (2015). The concept of legal certainty in the ownership of flats for consumers. Business Law and State Administration, 1(1). https://doi.org/10.25139/mih.v1i1.199

Suhaimi. (2018). Legal Problems and Approaches in Normative Law Research. Journal of Justice, 19(2).

Zachman, N. (2020). Comprehensive Commercial Flats with Ideal Management Principles that Provide Legal Protection for Owners and Occupants of Flats. Legality: Journal of Law, 12(1). https://doi.org/10.33087/legalitas.v12i1.198