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## **Animal Abuse in the View of Islamic Criminal Law**

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### **Abstract**

Islam as the majority religion in Indonesia teaches us to be a mercy to the universe, including taking care of animals on earth. However, Indonesia is the country with the largest number of downloaders of animal abuse content in the world. Therefore, the purpose of this study is to analyze these problems from the perspective of jurisprudence. The research method used is normative legal research with a statutory approach and analysis of Islamic legal theories. The results of this study indicate that the crime of mistreatment of animals in Indonesia is regulated in the Criminal Code (KUHP) Article 302 and Article 540, as well as Law Number 18 of 2009 as amended by Law Number 41 of 2014 concerning Animal Husbandry and Health. Animal abuse in jinayah fiqh is included in *the ta'zir finger*, in which the level and punishment are determined by the government (*ulil amri*).

**Keywords:** Animal Abuse, Criminal Law, Jinayah Jurisprudence.

### **Introduction**

Some humans keep animals, either as livestock or as playmates. These pets can entertain their owners. This is because animals have fun traits, and can be played with, or used as friends. Generally, there are two types of animals kept by the community as pets, namely cats and dogs. Humans and animals can have very close relationships like best friends. Animals are cared for, fed, invited to play, and even sleep together. (Bègue, 2022)

However, some people actually use animals, exploit them, abuse them, and even kill them for certain purposes. Currently, the problem of the mistreatment of animals is increasingly apprehensive. The case that went viral some time ago was a member of the TNI who shot several cats in the Sesko TNI environment, Bandung. Orangutans, as protected animals, are often victims of abuse, as happened in Karo, South Sumatra. Even mistreatment of animals is used as content to attract a large audience. As reported by Kompas.com, it is known data from *Asia for Animal Coalition* states that as many as 5,480 contents are circulating on social media containing abuse of animals in the world. From this data, 1,644, or 30% came from Indonesia. (Fitzgerald et al., 2022)

Based on the problems above, it is interesting to study more deeply related to animal abuse. Islam as the majority religion in Indonesia teaches to protect nature, including protecting animals that exist on earth. However, there are still frequent animal abuses that occur on Indonesian soil. Therefore, the purpose of this study is to analyze criminal acts of mistreatment of animals from the perspective of the jurisprudence of jinayah.(Muri et al., 2022)

## **Literatur Review**

According to Nurul Irfan and Masyrofah in their book *Fiqh Jinayah*, according to Nurul Irfan and Masyrofah, the scope, and division of *ta'zir finger*, if a finger is determined by the Qur'an and hadith, but no sanctions are specified, then it is included in *ta'zir finger*. *Jarimah ta'zir* is a form of *jarimah* whose levels and punishments are determined by the government (*ulil amri*). Prohibition of mistreating animals is in the Koran, al-Sunnah, and the government. Animal abuse is regulated in law by the Indonesian government so it is the judge who determines the level and type of punishment. Judges as enforcers of justice are guided by the law to decide sentences for perpetrators of criminal acts of animal abuse.(Rahman et al., 2018)

## **Research methods**

This research is normative legal research. Sources and legal materials are taken from the Koran, Hadith, Legislation, and various secondary literature to support the primary legal materials. Then this research was analyzed using a statutory approach and Islamic legal theories.

## **Results and Discussion**

### **Mistreatment of Animals under Positive Law**

Arrangements related to animal protection are regulated in Law Number 18 of 2009 as amended by Law Number 41 of 2014 concerning Animal Husbandry and Health (hereinafter referred to as the Law concerning Animal Husbandry and Health). With the enactment of the Law on Animal Husbandry and Health, the Indonesian state adopted provisions in an international convention under the auspices of the United Nations to recognize that animal protection is an important issue as part of the nation's social development throughout the world(Cârciumaru et al., 2022). The institutions that regulate animal protection are OIE (*Office International des Epizooticae*), RSPCA ( *Royal Society for the Prevention of Cruelty to Animals*), UDAW (*Universal Declaration of Animal Welfare*), WSPA (*World Society for Protection of Animals* ), CIWF (Compassion in World Farming), and HSI (*Humane Society International* ).(Ireland et al., 2022)

In addition, the Animal Husbandry and Health Law regulates the interests of animal welfare. What is meant by animal welfare in this law is a form of animal protection against inappropriate treatment taken advantage of by humans. In this case, it is contained in Article 66 paragraph (1) which regulates animal protection relating to actions of handling, slaughtering, and killing as well as proper treatment and care for animals(Campbell, 2022). The prohibition to abuse animals also indicates a violation of Article 66A of the Animal Husbandry and Health Law which states that it is prohibited for anyone to abuse animals.

Chandra and Astuti. Meanwhile, legal protection and animal welfare are related to the role of animals/animals: (1) as a commodity; (2) as a human friend; (3) as a helper who can lighten human work; (4) animals as guardians of the ecosystem of life, and so on.(Wolf et al., 2022)

See further provisions in the Criminal Code (KUHP)(Chandra & Astuti, 2018a) which regulates the mistreatment of animals, namely Article 302 of the Criminal Code. Based on laws and regulations, it can be said that in principle Indonesia is an animal-friendly country. If you look at the explanation above, violations of animal abuse cannot be separated from the legal protection of animal health and animal welfare, especially criminal sanctions. Based on the arrangements that have been regulated through the law above, it is very clear that law enforcers should pay more attention to this matter to carry out their responsibilities in protecting animals.(Da Silva Brandão et al., 2022)

There are two forms of mistreatment of animals, namely physical and psychological abuse of animals. Forms of physical abuse of animals include: (1) intentionally hitting or hurting the animal's body; (2) letting the animal starve and thirst; (3) never caring for the animal causing skin disease or internal disease; (4) always tie up the animal; (5) letting animals outside without providing shelter from rain and heat. While forms of psychological abuse of animals include: (1) not giving affection so that the animals become aggressive; (2) often neglecting the needs and health of animals; (3) confining and tying the animal so that it cannot socialize. As a result of violence against animals perpetrated by humans, these animals can suffer, be disabled for life, and can also cause death if the violence has reached a level that cannot be tolerated.(Riggs et al., 2022)Even light animal abuse still has to be legally proven because it has violated positive laws. If the practice of abusing animals is not immediately taken legal action at all, then we are tantamount to legalizing animal abuse in Indonesia. Meanwhile, according to R. Soesilo, to be called animal abuse, it must be proven that: (1) the person intentionally hurts, injures, or damages the animal's health; (2) the act was committed not with proper intent or exceeding the permissible limits.(Bartelink et al., 2022)

Protection and law enforcement for perpetrators of animal abuse are contained in Article 302 of the Criminal Code which reads:

1. Shall be punished by a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiahs for committing light maltreatment of animals:
  - (1) whoever, without proper aim or in excess, intentionally hurts or injures animals or harms their health;
  - (2) whoever, without proper aim or by exceeding the limits necessary to achieve that aim, intentionally does not give food necessary for life to animals, which are wholly or partly his and are under his supervision, or to animals which he is obliged to take care of.
2. If said act results in illness for more than one week, disability or other serious injuries, or death, the offender is punished by a maximum imprisonment of nine months, or a maximum fine of three hundred rupiahs, because of animal abuse.
3. If the animal belongs to the guilty party, it can be confiscated.
4. Attempts to commit the crime are not punished. BIP Team, 3 Codes of Law, Criminal Code, Criminal Code, Criminal Procedure Code (Jakarta: Grahamedia Press, 2021).

In the article described above, there is a division into two crimes of mistreatment of animals, namely: first, given the qualification as light abuse of animals, formulated in point 1 and point 2 paragraph (1). Second, it is qualified as animal abuse, formulated in the paragraph.

In addition to Article 302 of the Criminal Code, protection and enforcement of laws against perpetrators of animal abuse are also contained in Article 540 of the Criminal Code which reads:

1. A maximum light imprisonment of eight days or a maximum fine of two thousand two hundred and fifty rupiahs shall be punished:
  - (1) whoever uses animals for work that is clearly beyond his strength;
  - (2) any person who unnecessarily uses an animal for work in a way that is painful or which is torture for the animal;
  - (3) any person who uses an animal that is lame or has other defects, that has mange, is injured or is pregnant or is nursing for work which because of its condition is not suitable or which is painful or which is torture for the animal;
  - (4) any person transporting or ordering the transportation of animals without the need in a way that is painful or constitutes torture for the animal;
  - (5) any person who transports or orders animals to be transported without being given or told to feed or drink them.
2. If at the time of committing the offense less than one year has passed after the conviction has become fixed for the same offense as a result of one of the violations in Article 302, a maximum imprisonment of fourteen days may be imposed.

In addition to the sanctions for perpetrators of abuse against pets mentioned in Article 302 and Article 540 of the Criminal Code, there are also sanctions for perpetrators who abuse pets, which are contained in Article 91B of Law Number 18 of 2009 as amended by Law Number 41 of 2014 concerning Animal Husbandry and Health. Article 91B reads:

1. Everyone who abuses and/or abuses animals so that they become disabled and/or unproductive as referred to in Article 66A paragraph (1) shall be punished with imprisonment for a minimum of 1 (one) month and a maximum of 6 (six) months and a fine of at least Rp. 1,000,000.00 (one million rupiahs) and a maximum of Rp. 5,000,000.00 (five million rupiahs).
2. Everyone who knows that there has been an act as referred to in Article 66A paragraph (1) and does not report it to the competent authority as referred to in Article 66A paragraph (2) shall be subject to imprisonment for a minimum of 1 (one) month and a maximum of 3 (three) months and a fine of at least Rp. 1,000,000.00 (one million rupiahs) and a maximum of Rp. 3,000,000.00 (three million rupiah).

### **Mistreatment of Animals According to Fiqh Jinayah**

Islam is a religion that is full of compassion, both for fellow human beings and for other creatures such as animals and plants. Humans are the most perfect creatures among God's other creatures (Sujono et al., 2022). Therefore, it is fitting for humans to have a tolerant and friendly nature towards other creatures, including animals that often help with human work and many also become friends with humans. Animals have what we need such as milk, meat, energy, and others. Therefore, we must love animals and not do anything arbitrary to them. Allah SWT. Said as follows. (Hasan & Azman, 2022)

وَإِنَّ لَكُمْ فِي الْأَنْعَامِ لَعِبْرَةً مِّمَّا تُطْعَمُونَ

“And verily in livestock, there is a lesson for you. We give you to drink from (milk) that is in his stomach, and it, there is also a lot of benefit for you, and some of it you eat ”.

Doing good to animals is a commandment because animals are as much a part of nature as humans are. Therefore, the command to do good and have compassion for humans also means the same as doing good and having compassion for animals. The existence of animals as part of nature has an important value at all times and treats them well in ways. Protecting from extinction in Islamic teachings is rewarded. In addition, Islam emphasizes that animals have the right to protect and maintain their sustainability. Islam teaches us to do good to every creature including animals.(Yusuf, 2021)

There is a hadith that relates this as follows. “There was an adulteress woman who saw a dog on a very hot day. The dog circled the well while sticking out his tongue because of thirst. Then the woman took off her shoes (then scooped up water with them). He was forgiven because of his deed.” (HR. Muslim No. 2245). But on the contrary, if we are unjust to animals, Rasulullah SAW. said: “A woman was tortured because she caged a cat to death and she went to hell; the woman did not give the cat anything to eat and drink when she locked it up and did not allow it to eat its prey.

In essence, Islam teaches its people to love animals and preserve their lives. Allah SWT. has bestowed upon mankind a dominion that encompasses everything in this world. Allah SWT. said as follows.

وَسَخَّرَ لَكُم مَّا فِي السَّمٰوٰتِ وَمَا فِی

“And He subjected what is in the heavens and what is on the earth to you all (as mercy) from Him. Indeed, in that case, there are signs (of Allah's greatness) for people who think.”

This verse does not at all show that humans have absolute power ( *carte blanche* ) to do as they please and nor do they have unlimited rights to use nature to damage their ecological balance. Similarly, this verse does not support humans abusing animals for sporting purposes or for making animals as random experimental objects. This verse reminds mankind that the Creator has made everything in nature (including animals) a trust that they must protect.

Islamic criminal law is the law that regulates crimes committed against humans or human property and is regulated in the Qur'an and al-Sunnah. Criminal acts in Islamic criminal law are called *jarimah*. Jarimah is divided into several types based on the severity and lightness of the punishment, whether confirmed or not in the Qur'an and hadith. Scholars divide *jarimah* into three types as follows.(Yani et al., 2020)

#### 1. *Finger hudud*

In essence, *finger hudud* is a punishment that cannot be abolished as an unlawful act whose type and punishment have been determined by the texts, namely *had punishment* (God's right) with a limited amount. Scholars agree that what is included in the *hudud jarimah category* is adultery, accusing someone of adultery (qazf), stealing, robbing ( *hirabah* ), rebelling ( *bughat* ), drinking, and apostasy.

#### 2. *Jarimah qisas-diyah*

*Jarimah qisas* have also determined the type and severity of punishment in the Qur'an and al-Sunnah. However, in *jarimah qisas* there are adami's rights that open opportunities for victims, guardians, or heirs of victims to grant forgiveness. If the victim, guardian, or heir of the victim grants forgiveness, then the punishment will be replaced by *diyah*. Meanwhile, if the perpetrator is unable to pay *the diyah* and the victim or his guardian forgives, then the punishment that will be received is in the form of *ta'zir* where the level of punishment is determined by the judge to be a lesson for the perpetrator.

3. *Jarimah ta'zir*

In *hudud*, *visas*, and *diyah jarimah*, the level and type of punishment are determined by *syara'*, while in *ta'zir jarimah*, the level and type of punishment are determined by the ruler or judge. The judge in giving punishment to this *finger* is given freedom in doing *ijtihad* according to the type of *finger* and the circumstances of the perpetrator (Ismail et al., 2020). In *the ta'zir finger*, it is known that the highest punishment and the lowest punishment. The types of *ta'zir* punishments vary, including the following:

a. Death penalty

The punishment for *jarimah ta'zir* aims to provide teaching so as not to repeat the immoral acts committed. Some scholars consider that *the finger of ta'zir* does not lead to the death penalty, but some scholars provide an exception that the death penalty is permissible if the public interest requires it or if eradication cannot be carried out except by punishment, such as spies, slanderers, and recidivists who endanger.

b. Imprisonment or imprisonment

Islamic criminal law divides two types of prison sentences or confinement based on the length of the sentence. First, the prison sentence is limited to a minimum sentence of one day and for the maximum or highest limit, according to Syafi'iyah scholars, the maximum limit is one year, which is equated with exile in a *finger* of adultery. Other scholars surrender entirely to the authorities based on benefit. Second, the prison sentence is not limited. That is, the time is not limited, it lasts until the person is sentenced to death or if the perpetrator repents sincerely and does not repeat his actions so that he becomes a better person than before. The person who is subject to this punishment is a dangerous criminal or a person who repeatedly commits dangerous *fingers*.

c. Binding punishment, flogging, and the like

There are differences in the upper limit on binding punishment among jurists. According to a well-known opinion among the Malikis, the upper limit is completely left to the ruler. Abu Yusuf believes that the highest limit is 75 times while Imam Abu Hanifah believes the highest is 39 times.

d. Punishment of ex-communication

Islam prescribes this ostracism punishment as was done during the time of the Prophet who had excommunicated three people for not participating in the Tabuk War. The three people were Ka'ab bin Malik, Miroroh bin Rubai'ah, and Hilal bin Umayyah. They were isolated for fifty days and not spoken to.

e. Fines in the form of property

This punishment is in the form of paying a fine that has been determined by the ruler or judge. Rasulullah SAW. states that the person who brings something out, then he

will be subject to a fine of as much as two times as much as the punishment. The same punishment applies to someone who hides lost items.

Regarding animal abuse, Islamic criminal law does not specifically regulate it, it's just that Islam prohibits humans from mistreating animals. It is said to be a crime if it fulfills the elements of a criminal act as follows. First, the formal element is the existence of a law or text which prohibits this action. Persecution of animals is prohibited both in law and in texts, namely in Surah al-Mu'minun verse 21, HR. Abu Dawud – 2300 HR. Muslim – 4160 HR. Abu Daud – 2199. Second, the material element is an act committed completely against the law. Third, the moral element is the actor who is face-to-face, namely a person who is wise and mature.(bin Muhamad et al., 2015)

Animal abuse is not included in *hudud* and *qisas-diyah jarimah* because in the surahs and hadiths that explain the prohibition of mistreating animals, the level and type of punishment are not mentioned. That is, animal abuse is included in *the ta'zir jarimah*.(Afzal & Khubaib, 2021)

According to Nurul Irfan and Masyrofah in their book *Fiqh Jinayah*, the scope and distribution of *the ta'zir* are divided into four, namely:

1. *Jarimah hudud* or *jarimah qisas-diyah* which has doubts will be diverted into *ta'zir sanctions*, such as parents who steal their children's property and parents who kill their children.
2. *Jarimah hudud* or *jarimah qisas-diyah* which does not meet the requirements will be subject to *ta'zir sanctions*. Examples include attempted murder, attempted adultery, and attempted theft.
3. *Fingers* determined by the Qur'an and hadith, but no sanctions are specified, are included in *the finger of ta'zir*, such as failure to carry out the mandate, false witnesses, humiliation, illegal logging, and bribery.
4. *Jarimah* is determined by *ulil amri* for the benefit of the people, such as pickpocketing, fraud, pornography and pornography, piracy, smuggling, *money laundering*, and *human trafficking*.

*Ta'zir* punishment is to give a deterrent effect to perpetrators of animal abuse so they don't repeat their actions. In addition, there are also several other objectives, namely:

1. prevention (preventive); prevention with the aim that other people do not do *jarimah* animal abuse.
2. make perpetrators deterrent (repressive); The punishment given is expected to deter the perpetrators from their actions in mistreating animals.
3. curative (islah); It is hoped that the punishment given to perpetrators of animal abuse can have a good impact so that they treat animals well and no longer abuse them.
4. educative (education); Punishment is given as a lesson that the act of mistreating animals is evil and disgraceful so that it can change the convict's lifestyle in a better direction by not doing anything that endangers the lives of animals.

## **Conclusion**

Criminal acts against animals in Indonesia are regulated in the Criminal Code (KUHP) Articles 302 and Article 540, as well as Law Number 18 of 2009 as amended by Law Number 41 of 2014 concerning Animal Husbandry and Animal Health. Animal abuse is included in *the ta'zir jarimah*. *Jarimah ta'zir* is a form of *jarimah* whose levels and punishments are determined by the government ( *ulil amri* ). Prohibition of mistreating animals is in the Koran, al-Sunnah, and the government. Animal abuse is regulated in law by the Indonesian government, so it is the judge who determines the level and type of punishment. Judges as enforcers of justice are guided by the law to decide sentences for perpetrators of criminal acts of animal abuse.

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