



Sexual Deviation of Animals Between Law and Sharia; a Comparative Analysis

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[Submitted: July 11, 2021]

[Revised: August 20, 2021]

[Accepted: October 21, 2021]

Abstract

A bestiality is a form of sexual perversion. Bestiality, perpetrators seek sexual satisfaction by using animals as sexual objects, and this behaviour is considered to violate both legal and religious norms and societal moral codes. This research is qualitative and employs a comparative descriptive approach. The findings of this study indicate that there are divergent views on the sexual perversion of animals between Islamic and positive law. According to Islamic law, there are differing views on this; some say it is permissible, while others say it is not; from a positive legal perspective, it is said that the incident must be sanctioned and fined. The research implies that in order to prevent acts of bestiality (sexual activity against animals), strict and concrete rules are required to safeguard future generations of the nation, such as sound legal policies and the renewal of Islamic and positive law, as well as animal protection. It is critical to educate the public about the law prohibiting the consumption of animals fertilized by humans through maximum socialization.

Keywords:

Bestiality; Sexual Perversion; Islamic Law; National Law.

Abstrak

Bestiality sebagai bentuk penyimpangan seksual. Pelaku *bestiality* mencari kepuasan seksual dengan menjadikan hewan sebagai objek kepuasan seksual. Tingkah laku ini dianggap menyimpang, baik dari norma hukum, norma agama dan moral yang berlaku dalam masyarakat. Artikel ini bertujuan untuk membahas tentang perbandingan hukum Islam dan hukum positif tentang penyimpangan seksual terhadap binatang. Jenis penelitian ini adalah kualitatif dengan pendekatan penelitian deskriptif perbandingan. Hasil dari penelitian ini menunjukkan adanya perbedaan pendapat antara hukum Islam dan hukum positif mengenai penyimpangan seksual terhadap binatang. Pandangan hukum Islam yang berbeda pendapat dalam menanggapi hal tersebut ada yang mengatakan boleh dan ada yang mengatakan tidak boleh. Sedangkan dari segi hukum positif mengatakan bahwa peristiwa tersebut harus dikenakan sanksi dan denda. Impikasi penelitian yakni untuk mencegah perbuatan *bestiality* (aktifitas seksual terhadap hewan), diperlukan aturan yang tegas dan konkrit untuk melindungi generasi penerus bangsa, sebagai kebijakan hukum yang baik serta pembaharuan hukum Islam dan hukum positif dan juga perlindungan terhadap hewan. Pemberian informasi sangat diperlukan melalui sosialisasi secara maksimal kepada masyarakat tentang hukum mengkonsumsi hewan yang telah disetubuhi manusia.

Kata Kunci:

Bestiality; Penyimpangan Seksual; Hukum Islam; Hukum Nasional.

Introduction

Human knowledge is advancing rapidly,¹ as evidenced by the advancement of science and technology. While information technology has numerous advantages, one of which is its widespread use throughout the country, it also has drawbacks, one of which is lowering the human spirit.

Although Islam regulates legal and legal biological relationships, deviations continue to exist,² whether in adultery,³ lesbian, homosexual, or animal relationships (sexual relations with animals).⁴ This is because biology is uncontrollable, resulting from a failure to comprehend and practice religious teachings. The sex instinct is the most powerful, and it requires circulation; if its spread is insufficient, people will experience shock and lose control of their lust, and sexual relations outside the legal framework, such as animalistic, will occur.

Islam has established guidelines for husband and wife to engage in normal sexual relations.⁵ Sharing biological needs is not viewed solely as a means of fulfilling rights and obligations between husband and wife in the marriage bond. However, he also deserves worship in the eyes of Allah SWT. When sexual relations are conducted following the Prophet Muhammad's rules and advice, this act carries worship value. Parallel to the progression and evolution of civilization, many Muslims disregard the Prophet Muhammad's advice when engaging in sexual activity with their partners. Many Muslims believe that this activity is merely routine, devoid of religious significance. As a result, they act as they please. Meanwhile, the Prophet Muhammad has emphasized that sexual relations between husband and wife will earn a significant reward in the eyes of Allah SWT if they are conducted according to the regulations.⁶

¹ Elsbeth Stern, "Individual Differences in the Learning Potential of Human Beings," *Npj Science of Learning* 2, no. 1 (2017): 0–1, doi:10.1038/s41539-016-0003-0.

² Islamul Haq et al., "Paraphilia Exhibitionism between Sharia and Law: A Comparative Analysis," *Al-'Adl* 14, no. 1 (2021): 1, doi:10.31332/aladl.v14i1.1925.

³ Anis Widyawati, "Criminal Policy of Adultery in Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (2020): 171–83, doi:https://doi.org/10.15294/jils.v5i1.36786.

⁴ Desak Putu Eka Nilakusmawati and I Gusti Ayu Made Srinadi, "Adultery and Divorce; Studi of Women Perception," *Jurnal Studi Jender SRIKANDI* 6, no. 1 (2012), https://ojs.unud.ac.id/index.php/srikandi/article/view/2883.

⁵ Muammar Bakry et al., "Is It Possible to Perform Online Marriage during COVID-19 Outbreak?," in *Proceedings of the International Conference on Ummah: Digital Innovation, Humanities and Economic (ICU: DIHEc)* (Kresna Social Science and Humanities Research, 2020).

⁶ Shawn Meghan Burn, "The Psychology of Sexual Harassment," *Teaching of Psychology* 46, no. 1 (2019): 96–103, doi:10.1177/0098628318816183.

The author's theoretical sources include the Qur'an, Hadith, and Fatwas of the Indonesian Ulema Council, as well as articles about the legal material regarding the consumption of animals that humans have sexually assaulted. This piece of writing. Are the following.

Abdurahman's dissertation is titled *The Regulation of Sex Against Animals in Indonesian Criminal Law*. Sexual intercourse with animals has not been adequately regulated in Indonesian criminal law, both in the Criminal Code and other animal-related regulations. Including, but not limited to, Law No. 18 of 2009 on Livestock and Animal Health, Law Number 41 of 2014 amending Law Number 18 of 2009 on Animal Husbandry and Health, and Government Regulation No. 95 of 2012 on Veterinary Public Health and Animal Welfare.

In the journal "Sanctions for Sexual Deviance Against Animals in Islamic Criminal Law," Raden Fadhil Firdaus published an article titled "Sanctions for Sexual Deviance Against Animals in Islamic Criminal Law." This journal discusses the criminal penalties for animal sexual deviance. Sexual deviation is considered deviant behaviour because it violates established standards. *Sexual deviation* can also be defined as an action that violates, contradicts, or deviates from legal rules.

Methods

This is a qualitative study that employs a comparative approach. The purpose of this study is to compare Islamic criminal law and positive law about animal sexual perversion from a variety of perspectives. Primary, secondary, and tertiary data sources are used. The primary nature is the legal material, such as the Qur'an and Hadith, that binds or compels humans to obey the law. Secondary data is information gleaned from books, articles, and expert opinions, among other sources. Tertiary data is information that explains primary and secondary data.

After data collection, it is processed using data analysis techniques, specifically by reviewing and analyzing the data and interpreting the collected data to describe the phenomenon under study. The data is analyzed comparatively by comparing Islamic and favourable laws regarding sexual deviations against animals.

The Definition of Islamic Law and National Law

Islamic law is derived from the Koran. Islamic law cannot be fully implemented in Indonesia because it would contradict Indonesian law. The penalty for theft is

reduced under Islamic law, whereas in Indonesia, the penalty is imprisonment.⁷ Although Islamic law is theoretically the foundation for all aspects of life for Muslims, due to the influence of social, cultural, political, and economic life, Islamic law is still fighting for its place in society, which is even more ironic in an Islamic society.

Islamic legislation is derived from everything that serves as a guide or source of Islamic law, specifically the Koran, the Prophet Muhammad's Hadith (Sunnah of the Prophet Muhammad), *Ijmā'*, and *Qiyās*.⁸ When formulated broadly, the primary goal of Islamic law is to bring Allah's pleasure into human life in this world and the hereafter.

Positive law is a collection of written and unwritten legal principles and regulations that are currently applicable and binding in general or in particular in Indonesia and are enforced by the government or courts. The emphasis is necessary because the scientific definition of *rechtwefenschap*, or positive law, has been expanded. Not only what is currently in effect but also what was previously in effect. This expansion occurs due to the scientific definition of positive law, which includes elements that apply at a specific time and place.⁹

The Definition of Sexual Deviance

Sexual deviation is considered deviant behaviour because it violates established standards. *Sexual deviation* can also be defined as a pattern of behaviour that disregards values and standards that contradict or deviate from legal regulations.¹⁰ The sexual deviation is generally multifactorial, involving both internal and external symptoms (intrinsic and extrinsic symptoms) that are interconnected. Intrinsic factors are hereditary or inherited. For example, a woman with adrenogenital syndrome, or an abnormally high level of adrenal androgens produced during the fetus's development, tends to be a tomboyish male woman. On the other hand,

⁷ Laras Astuti and Trisno Raharjo, "Harmonization of Adultery Regulations in Indonesian Criminal Code with Islamic Law," in *4 International Conference the Community Development in ASEAN*, 2017, 416–26.

⁸ Hudūd Dan et al., "PENGGOLOONGAN HUDŪD ABDULLAHI AHMED AN-NA ' IM" XXXV, no. 2 (2011): 372–90.

⁹ Fajar Nurhardianto, "Sistem Hukum Dan Posisi Hukum Indonesia," *Jurnal Teropong Aspirasi Politik Islam* 11, no. 1 (2015): 34–45, doi:<https://doi.org/10.24042/tps.v11i1.840>.

¹⁰ Ishak, "Analisis Hukum Islam Tentang Perbuatan Zina Dalam Pasal 284 Kitab Undang-Undang Hukum Pidana Dalam Pembaharuan Hukum Pidana," *Kanun: Jurnal Ilmu Hukum* 14, no. 1 (2012): 165–78, doi:10.24815/kanun.v14i1.6205.

extrinsic factors include physical and psychological harm caused by external influences or by experiences interacting with traumatic environments. Sexual deviation caused by extrinsic factors can also result from life experiences as a child or adult. It can manifest itself in various ways, including harsh treatment, cruelty, emotional distress, humiliation, criticism, and media influence.¹¹

Islamic Law on Sexual Deviation

Islam regulates sexual relations between men and women in order to preserve human dignity through the institution of marriage, as humans can only fulfil their biological needs through a legal marriage.

Explicitly stated in the Surah al-Mu'minūn verses 5-6:

وَالَّذِينَ هُمْ لِأَعْيُنِهِمْ فَحِظُونَ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ

Meaning:

*“and those who keep their private parts private, except for their wives or slaves, are truly blameless”.*¹²

According to the verse above, sex can only occur between two people already married. The verse implies that having sex with animals is haraam, as humans are not permitted to marry animals.

Moreover, scholars who believe the perpetrator is sentenced to death postulated that the Prophet said in a hadith from Ibn Abbas ra.

Meaning:

“If you meet someone who has sex with an animal, kill him and the animal that is the victim.” (HR. Tirmidzi, Abu Daud, dan Ibn Majah).

Scholars dispute the validity of this hadith. In addition, this hadith contradicts the statement of Ibn Abbas in another narration:

Meaning

“There is no special punishment for someone who has sexual relations with an animal. (HR. Tirmidzi)”

Scholars dispute the authenticity of this hadith. Additionally, this hadith contradicts Shari'a, as it does not specify a specific punishment for him but instead refers to government policies such as imprisonment or flogging. If you meet someone who has sex with an animal, kill him and the animal that is the victim.¹ The Law of the Fucked Animal.

¹¹ Widyawati, “Criminal Policy of Adultery in Indonesia.”

¹² Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an Badan Litbang dan Diklat Kementerian Agama RI, 2019), doi:10.16309/j.cnki.issn.1007-1776.2003.03.004.

Malikiyah stated that killing is not required regardless of whether the animal is consumed. This is because the Shari'a contains no explicit command to slaughter it. While the edicts contained in Ibn Abbas's history regarding the order to kill him are permissive, they are not followed.

Hanafiyah believes that if the perpetrator owns the animal, it is obligatory to kill him. As a result, people would not bring it up every time they saw him leave or return home. They claim that these animals are manipulated to the point where they commit the sin of striking and that many of the perpetrators fall in their eyes even if the offender has repented of his sin.

He slaughtered the animal to prevent it from giving birth to a disabled child and did not consume the meat following the slaughter because it was unclean. According to legend, a shepherd had sex with an animal, giving birth to a deformed child. If the animal is not yours, you are not required to slaughter it.

There are two narrations in al-Shafiyah. To begin, if the animal produces edible meat, slaughter it; if the meat cannot be consumed, it is not slaughtered, as killing it involves destroying property for no reason, which is a prohibited act. Second, they assert, the animal was slaughtered, regardless of whether the meat was edible. Its objective is to stifle gossip and conceal blasphemy. Because Allah SWT. has commanded that Muslims' errors be covered, whoever covers the faults of Muslims will have his errors covered in this world and the next.

Hanabilah believes that it is obligatory to slaughter the animal, whether it belongs to the perpetrator or another person, regardless of whether the meat is permissible to consume. If it belongs to someone else, the perpetrator is required to replace it because they are deemed to be the cause of the damage. As a punishment for breaking something, the offender must replace it. He is afraid that he will obliterate the name of the animal's owner and the perpetrator because people will recall the perpetrator's heinous act every time he is seen.

Animal Legislation after Slaughter

Hanafiyah and Hanabilah stated: If the animal's flesh is consumed, it must be burned, and the meat cannot be consumed. Malikiyah argues that it is permissible for the perpetrator and others to consume it without objection. Because there is no

clear evidence in the Shari'a that eating it is forbidden, it retains its original law, which is permissible.

There are two views on Shafiyah: it is justified for the perpetrator, and the other is that it should be eaten according to opinion. Malikiyah's Second is prohibited from consuming for perpetrators and others, according to Hanafiyah and Hanabilah.

The prohibition against having sex with animals is based on Islamic law, according to Imam Syafi'i, which states that it is forbidden to have sex with animals and that those who do so face the death penalty. Meanwhile, Imam Ahmad and Imam Hambali believe that ta'zir adequately punishes the perpetrator because the act is not adultery.

There is a scholarly error regarding this case, Ibnu al-Qayyim ra. stated that: *"For those who have sex with animals, there are three opinions: The first: he is educated (therapy) and not punished, The second: the punishment is the same as adulterers, Third: the punishment is the same as homosexuals"*.

A National Legal Review of Animal Sexual Deviance

Soerjono Soekanto explained that criminalization is the act or determination by authorities that the community or groups of people consider specific actions to be actions that may be punished as criminal acts or that classify the act as a criminal act thus subject to punishment by the government through government employees.¹³ There are several principles inherent in the concept of criminalization that legislators must take into account when determining whether an act is criminal and when enacting crime-related restrictions, namely:

a) Legality consequences

The principle of legality performs six functions, namely:

- 1) In essence, the legality principle is intended to educate the broadest possible community about the criminal law's prohibitions in order for them to adjust their behaviour.
- 2) According to the classical school, the legal principle serves to limit the scope of criminal law, whereas the modern school views the legal principle as a tool for achieving the goal of community protection.

¹³ Islamul Haq, "Prison in Review of Islamic Criminal Law; Between Human and Deterrent Effects," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020): 132–50, doi:10.1017/CBO9781107415324.004.

- 3) The legitimacy principle's purpose is to safeguard the position of general laws against the state (government).
- 4) The legitimacy principle is associated with criminal justice, implying more than simply protecting citizens from the government's arbitrariness.
- 5) To restrain arbitrariness in criminal law, to supervise and limit the exercise of that power, and to normalize the function of supervising criminal law.¹⁴

The legality principle provides the public with legal certainty regarding prohibited acts (criminal acts) that are accompanied by specific criminal threats.

b) *Principle of subsidiarity*

Criminalization must also be justified on the basis of the subsidiarity principle. This means that the criminal law should be used as a last resort (the primary weapon) in dealing with the crime problem through the use of the instrument of punishment, not as the primary remedy (the primary weapon). If it is determined during the investigation that other methods (non-punitive methods) are more effective and useful for dealing with crimes, then do not use the criminal law.¹⁵

c) *Principle of equation*

The thoroughness principle is motivated by a more transparent and straightforward criminal law system. Lacroix argues that the principle of rigour catalyzes not only just criminal law but also an appropriate criminal sentence. Criminalization criteria must be considered; for example, behaviour in an isolated area does not need to be criminalized, whereas behaviour in the public domain may be criminalized if it significantly jeopardizes the community's interests.¹⁶

Perpetrators of criminal acts of sexual intercourse with animals result in significant losses in terms of life, material, and future generations' survival. This act is primarily determined by psychological factors, such as that sexual relation with animals do not illicitly channel it to the opposite sex. Examining several regulations relating to animals in positive Indonesian law, including those governing animal welfare and other aspects of animal health, such as:

1. *Indonesian Kanun Jinayah*

¹⁴ Dan et al., "PENGGOLOONGAN HUDÛD ABDULLAHI AHMED AN-NA ' IM."

¹⁵ Barda Nawawi Arif, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2005)., p. 45.

¹⁶ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, III (Bandung: Citra Aditya Bakti, 2003)., p. 60.

Article 302 of the Criminal Code provides penalties for animal abusers, including imprisonment for a maximum of three (3) months or a maximum fine of Rp. 4,500, - (four thousand five hundred rupiah) if the perpetrator destroys or fails to feed the animal. If the abuse results in the animal becoming ill for more than a week, or becoming disabled, or becoming seriously injured, or dying, the threat of punishment is increased to a maximum of 9 (nine) months in prison or a maximum fine Rp. 4.500, -. (four thousand five hundred rupiahs). If the offender is the animal's owner in question, the animal or animals in question are confiscated. If the perpetrator is merely attempting abuse, he is not punished. However, there is no direct interpretation in this Kanun Jenayah that the relationship between humans and animals is a criminal act that is regulated because this article does not explicitly state that such acts are prohibited. However, the act deviates from the norm for human beings. Sex with animals is harmful to animals and economically disadvantaged animal owners and the local community.¹⁷

2. Veterinary Public Health and Animal Welfare Government Regulation Number 95 of 2012

Paragraph (2) According to Article 1 of Government Regulation No. 95 of 2012 on Public Health and Animal Welfare, animal welfare encompasses all aspects of an animal's physical and mental state consistent with its natural behaviour that must be implemented and enforced to protect animals from inhumane treatment when humans use them.

Additional prohibitions regarding animal welfare are contained in paragraph (1) of Article 99 of Government Regulation Number 95 of 2012 concerning Animal Public Health and Animal Welfare.

Other things prohibited in Government Regulation Number 95 of 2012 concerning Animal Public Health and Animal Welfare relating to animal welfare are in paragraph (1) article 99:

- a) It is unnecessary to engage in activities that result in animal suffering;
- b) It is unnecessary to destroy the It is unnecessary to provide materials that result in animal poisoning, disability, injury, death; and

¹⁷ Solahuddin, *Kitab Undang-Undang; Hukum Pidana, Acara Pidana Dan Perdata*, II (Jakarta: Visimedia, 2008).

- c) Complaining to animals results in the animal experiencing fear, pain, loss of eternal effort, and death..

To prevent animal acts (sexual activity against animals), the country's future generations require strict and concrete regulations to ensure legal certainty and animal protection. Because one of the law's functions in society is to ensure that humans always engage in legal action and relationships. From conception to death, laws constantly encroach on human life.¹⁸

A Comparative Analysis of Islamic Law and National Law Regarding Sexual Deviance of Animals

- a. *Comparing sexual deviant behavior with animal in Indonesia under National Law and Islamic Law*

There is no specific legal regulation in Indonesia that prohibits or penalizes people with sexual relations with animals. While Islamic law stipulates that treason is an act forbidden by Allah because sexual intercourse is carried out by having sex with animals, this violates Islam's prohibition on fulfilling sexual desires with anyone other than one's husband or wife.

- b. *A comparison of corporal confinement and animal sexual deviance according to National Law and Islamic Law*

Favourable laws in Indonesia do not contain specific provisions governing the punishment of perpetrators of sexual relations with animals. Meanwhile, Islamic criminal law stipulates that those who commit acts of destruction face the death penalty.

- c. *A comparative analysis of legal sources of sexual deviance in animals according to National Law in Indonesia and Islamic Law*

The explanation of sexual deviation against animals highlights several distinctions between two sources of law, namely the source of Indonesian criminal law, the Criminal Code, and other laws and regulations based on the results of human thought (ratio) and then promulgated in the state gazette to become valid and legally binding. Additionally, Indonesian criminal law is derived from customary law, which contains criminal law, one of which is. While Islamic criminal law is based on

¹⁸ Ibid.

the Al-Quran, Hadith, and scholars' Ijtihad. Islamic criminal laws are generally direct revelations from Allah SWT. to His messenger Prophet Muhammad. A hadith is a statement made by the Prophet himself under the guidance of Allah SWT. While Ijtihad is the scholars' interpretation of the Qur'an and Hadith. Although the two sources of law are similar, they have been compiled into a book that serves as a guide for a country that follows the source of law.

Conclusion

From various perspectives, sexual deviation against animals is compared between positive law in Indonesia and Islamic law. Sexual deviation against animals following positive Indonesian law and Islamic law, namely Islamic law does not explicitly regulate the object of sexual deviation crimes, such as age limits, in contrast to positive Indonesian law, which is very clear and specific, but Islamic law is more specific. Extensively regulating various sexual deviance offences is not currently regulated by positive law in Indonesia. In Indonesia, positive laws include the death penalty, imprisonment, fines, chemical castration, public announcement of identity, and the installation of electronic screening devices. Meanwhile, Islamic law imposes a more severe penalty for almost all forms of sexual perversion, namely the death penalty. Islamic law does not provide for alternative punishments in fines (Diat) for sexual abusers. Because positive law in Indonesia includes the terms "longest" and "maximum," the judge has the authority to determine the severity of the punishment meted out to perpetrators of sexual deviance crimes. In Islamic criminal law, the barrier that must be imposed on the perpetrator of a criminal act of sexual deviance is subject to sanctions (provided by Allah SWT), which prevent the judge from changing the barrier. To prevent bestiality (sexual activity against animals), strict and concrete rules are required to safeguard the nation's future generations, as well as a sound legal policy, the renewal of Islamic and positive law, and animal protection. It is necessary to educate the public about the law prohibiting the consumption of animals fertilized by humans through maximum socialization.

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