Comparative Law Study of Criminal Law Regulations Regarding Domestic Animal Abuse Cases in Indonesia

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Abstract

Indonesia is one of the countries with the lowest ratings for animal welfare issues, even compared to other countries in Southeast Asia. Lack of deterrent from existing legal instruments and criminal punishments are major factors contributing to this problem. The aim of this study is to analyze and examine criminal law policies in Indonesia regarding domestic animal abuse using comparisons with other countries such as in Southeast Asia. The research using legal comparison results that the current regulations for abuses of domestic animals in Indonesia are inadequate in serving as effective deterrents and preventive measures against cases of domestic animal abuse. The existing criminal laws, including the recent reform in the Criminal Code 1/2023, do not adequately address animal welfare concerns, resulting in minimal threat of criminal sanctions and lack classifications for domestic animals pertaining to animal abuse.

Keywords: Domestic Animal Abuse, Animal Welfare, Indonesian Criminal Code, Comparative Law, Legal Reform

Introduction

The rise in cases of animal abuse began to be considered an important issue since the 18th century in several countries. Jeremy Bentham was one of the pioneers of animal rights issues with his argument that animals have emotions of pain and also joy (Jeremy Bentham, 2000). The idea that animals are not just machines to be used for power or experimental tools began to emerge. In 1822, England issued the "Act to Prevent the Cruel and Improper Treatment of Cattle" which focused on prohibiting cruel actions against livestock. The idea grew and expanded to be grounds for the formation of regulations such as the Cruelty Animal Act 1876 that have developed for the protection of animals which states that animals are sentient creatures. They have the ability to feel pain, have consciousness and cognitive abilities. Apart from that, animals can not only observe but also react to things around them (Broom Donald, 2017).

Cases of animal abuse, particularly in Indonesia, can be considered to be alarming. World Animal Protection, a non-profit animal welfare organization, reported in 2020 that Indonesia received a score of E for the animal protection index. This assessment is given with A as the highest score and G as the lowest score, meaning that Indonesia is close to the lowest score. This score is obtained by assessing three aspects, namely legislation, related government institutions and the role of government in supporting international animal welfare. Malaysia, a country directly bordering Indonesia, got a score of C, the Philippines and Thailand got a score of D. Malaysia even received an award as a country that is at the forefront of animal welfare in Southeast Asia.

In line with the report, Asia for Animals Coalition issued similar statement. The agency reported research showing that Indonesia was ranked number one as the country that uploaded the most content in social media containing violence against animals. Of the 5.480 videos containing animal abuse that were collected, 1.626 videos came from Indonesia. This data was collected from July 2020 to August 2021 from YouTube, Facebook and TikTok.

During the pandemic (2020 – 2023) the increase in pet ownership in the form of dogs and cats was quite significant. This also has an impact on the population of abandoned dogs and cats. It is estimated that the cat population will increase by 200% while the dog population will increase by 150% (Corlevin Kalalo, 2022). Along with the increase in population, this has resulted in many cases of abuse to these animals. Animals whose lives depend on humans, in terms of food sources, will certainly be around the environment where they live and side by side with humans. These are one of the reasons cases of domestic animals need special attention.

Based on this, this study aim to analyze Indonesian government and its people on their commitment and viewpoints in tackling animal abuse, especially domestic animals that coexist with humans on a daily basis. This study will analyze existing regulations, the implementations, and using comparative law.

Materials and Methods

The approach method is used to understand the phenomena in a study. This research examines the juridical concept of law enforcement in tackling and dealing with criminal acts of abuse of domestic animals by comparing existing regulations in Indonesia with other countries in a comparative approach. The normative legal research approach in this research refers to the legal norms contained in statutory regulations, which in this case relate to regulations in Indonesia and other countries.

Results and Discussion

Animal abuse is regulated in a few regulations in Indonesia, including the Criminal Code (KUHP) and Law no. 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Animal Health. Regulations on animals are also contained in Law no. 5 of 1990 concerning Conservation of Natural Resources and Their Ecosystems. The regulations mentioned above are protection for the survival of animals.

According to Indonesian laws and regulations, animals are creatures whose entire or part of their life cycle is on land, water and/or air, whether kept or in their habitat. Animals are living creatures that can find their own food, but if the animal has been kept by a human, either on their own property or under their supervision, then that person must be fully responsible for feeding and caring for the animal (Chazawi Adami, 2005). It can be interpreted that pets are animals whose lives are partly or completely dependent on humans for certain purposes.

Meanwhile, domestic animals are animals that have been chosen to be selectively bred to live side by side with humans (Melinda Zeder, 2012). These animals were deliberately tamed to help human life. Like dogs and cats which are often kept as pets by humans. Apart from that, their energy and abilities can be used specifically, such as the police's K-9 dog squad, horses and buffalo are used as pack animals and for transportation purposes. Domestic animals are animals that have a close relationship with humans. The roles given in human life are very diverse, as companion animals, pets, livestock for food production and energy (Gary Francione, 1996). This closeness to humans can cause many cases of animal abuse around us. If we use pet law terminology, it will only focus on animals that are in the care of the owner. However, the pet terminology does not include protection for abandoned or ownerless animals even though they have undergone a domestication process. Animals that do not have owners are often referred to as stray animals, they are not classified as livestock or protected animals, but their existence depends on human life.

In the Criminal Code, the article on animal abuse is contained in Book Two, Chapter XIV concerning Crimes Against Morality, namely in Article 302 of the Criminal Code. The article reads;
"(1) Threatened with a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiah for committing light abuse against an animal
1. Whoever, without proper aim or excessively, intentionally hurts or injures animals or harms their health;
2. Whoever, without a proper aim or by going beyond the limits necessary to achieve that aim, deliberately does not provide food necessary for life to animals, which are wholly or partially his and are under his supervision, or to animals which he is obliged to care for.

(2) If the act results in illness for more than a week, or disability or suffering other serious injuries, or death, the guilty party is threatened with imprisonment for a maximum of nine months, or a fine of a maximum of three hundred rupiah, for animal abuse.
(3) If the animal belongs to the guilty person, the animal can be confiscated.
(4) Attempts to commit such crimes are not punishable."

In addition to the Criminal Code regulations already mentioned, Indonesia has reformed its criminal law with the promulgation of Law Number 1 of 2023. In its renewal, the article on animal abuse is regulated in Chapter VII, part six, namely the Crime of Depredation, Careless Care and Mistreatment of Animals. Article 337 reads:
(1) Any person who:
1. hurts or injures animals or harms their health by exceeding limits or without a proper purpose; or
2. having sexual relations with animals.

(2) If the act as referred to in paragraph (1) results in the animal being sick for more than 1 (one) week, disabled, seriously injured, or dead, it shall be punished with a maximum imprisonment of 1 (one) year and 6 (six) months or a fine. at most category III.

Previously, the act of abusing animals regulated in Article 302 of the 1946 Criminal Code was only contained in that one article. The differences and similarities can be seen in the following table:

No.		Old Criminal Code (1/1946)	New Criminal Code (1/2023)
1.	Perpetrator	Any person who, without proper aim or excessively, intentionally harms or injures an animal or harms its health;	Anyone who: a. hurts or injures animals or harms their health by exceeding limits or without a proper purpose; or b. having sexual relations with animals.
2.	Punishment if the animal does not suffer serious injuries	Maximum imprisonment of 3 months or a fine of four thousand five hundred rupiah.	Imprisonment up to 1 year or fine up to category II.
3.	Punishment if the animal suffers serious injuries, is sick for more than 1 week, is disabled or dies	A maximum of 9 months in prison or a fine of three hundred rupiah.	Imprisonment up to 1 year 6 months or fine up to category III.

It can be seen that there are similarities with the previous regulations in the Criminal Code that there are criminal sanctions or fines as an alternative to implementing corporal imprisonment. However, In the formulation of the new punishment, the increase in criminal sanctions is not significant. Apart from the threat of criminal sanctions, the phrase of the article and the formulation of the action are not expanded.

In article 302 of the Criminal Code 1/1946 there is a maximum penalty of imprisonment of nine months, in article 337 of the Criminal Code 1/2023 the penalty of imprisonment for minor abuse of animals is increased to 1 year, for serious abuse the sanction is increased to 1 year and 6 months. This increase in sanctions is not significant. When the Criminal Code 1/1946 was implemented with the threat of low sanctions, law enforcement was still considered weak. In fact, animal welfare observers are pinning their hopes on law enforcement bringing more legal certainty with the reform of criminal law.

Apart from the old and new Criminal Codes mentioned, there is the Animal Husbandry and Animal Health Law which seeks to create a conducive atmosphere in the implementation of animal husbandry and animal health by developing a law enforcement guarantee system in the form of imposing sanctions, both administrative sanctions and criminal sanctions, for actions that can cause harm to the state or the interests of many people. The current Animal Husbandry and Health Law does not fully cover animal aspects in a broad sense. The scope of regulation in this law only covers cultivated animals, namely livestock, pet animals and laboratory animals. The law does not guarantee special protection for domestic animals.

In addition, the law protects animals that are considered as resources and have economic value only.

In Law no. 5 of 1990 concerning the Conservation of Natural Resources regulates the abuse of animals, but this only applies to protected animals, so the reach of this regulation is very limited. The definition of protected animals in Law no. 5 of 1990 concerning Conservation of Natural Resources Biological resources are animals in danger of extinction or animals whose populations are rare. However, the protection of this law only refers to protected animals.

Several regulations in other countries, including Indonesia, identify animals only as resources that support human life. But in recent years there have been updates. Such as Austria (2013), Egypt (2014) and most recently England (2021), updating the definition of animals in law, where animals are defined as living creatures who are able to see the world with their own feelings. In this sense, animals are not merely considered inanimate objects but as living creatures capable of experiencing pain, stress and fear. They also define animals as living creatures with dignity and protection in law. Apart from that, there are several regulations regarding animal welfare and protection that other countries have, including countries in Southeast Asia. These regulations can show that the countries mentioned are committed to tackling animal abuse and fighting for animal welfare. With the recognition that animals have feelings and can feel pain, regulations in the country are based on animal welfare.

Compared with other countries in Southeast Asia, Indonesia received the lowest score (F) in preventing animal abuse and recognizing animal welfare, based on the Animal Protection Index (API) which was released in 2020. Some of the countries mentioned in the report got better scores, Malaysia (C), Singapore (B), Thailand and the Philippines (D). In reports written for each country, they got better scores because both aspects of legal instruments and law enforcement mechanisms were better and more focused. Another reason to compare with these countries is because they are still in the same region, namely Southeast Asia. Historically, they have had a range of similar culture, language, and way of life and relationships. And the distribution of flora and fauna in this area is also similar. The main factor is that based on an assessment by the World Animal Protection organization, Indonesia's score is quite far behind the countries mentioned.

By using comparative law, it is hoped that Indonesia can find an ideal model based on criminal policies in that country. Below we will also explain the threat of criminal penalties from several other countries' laws as a comparison, including:

No	Country	Criminal Penalty
1	Malaysia	Article 29 Animal Welfare Act 772: • Threat of a minimum fine of 20,000 ringgit, maximum 100,000 ringgit. • The threat of imprisonment is a minimum of 3 years.

No	Country	Criminal Penalty
2	Singapore	Article 41 C Animals and Birds Act 2014 concerning Neglect: • for a first offense, a fine not exceeding $40,000 or imprisonment for a term not exceeding 2 years or both; And • for a second or subsequent offense, to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 3 years or both Article 42 Animals and Birds Act 2014: • for a first offense, a fine not exceeding $15,000 or imprisonment for a term not exceeding 18 months or both; And • for a second or subsequent offense, to a fine not exceeding $30,000 or to imprisonment for a term not exceeding 3 years or both.
3	Thailand	Article 31 The Cruelty Prevention Act 2014: • Imprisonment for a maximum of two years or a fine not exceeding 40,000baht or both. • If the court is of the opinion that the animal is likely to be abused or maintained with inadequate welfare if it remains in the possession of the owner or offender, the court may issue an order prohibiting the owner or offender from possessing the animal, and sending the animal to a State Agency, or person who the court deems appropriate to own or keep the animal.
4	Philiphines	Article 7 The Animal Welfare Act of 1998 revised 2013: • Imprisonment 1 year 6 months to 2 years and/or a fine not exceeding one hundred thousand pesos (P100,000.00) if the animal subjected to cruelty, abuse or neglect dies; • Imprisonment of 1 year to 1 year 6 months and/or a fine of not more than Fifty thousand pesos (P50,000.00) if the animal subjected to cruelty, abuse or neglect survives but is seriously injured by losing its natural ability to survive and requires intervention human hands to maintain life;

No	Country	Criminal Penalty
4	Philiphines	• Imprisonment 6 months to 1 year and/or a fine of not more than thirty thousand pesos (P30,000.00) for subjecting any animal to cruelty, abuse or neglect but without causing its death or paralyzing it for its own survival.

A significant difference with Indonesia is the absence of laws that specifically regulate animal welfare and the prohibition of mistreating animals. Until now, the regulations are still combined in the criminal law book. The absence of legal products that specifically regulate animal abuse in the countries mentioned above can create difficulties in enforcement.

The purpose of comparing with other countries is to look for similarities and differences between each other. It is hoped that looking at the similarities and differences can provide a solution to the same legal problem. Comparative law can achieve a new goal, namely legal reform. For example, the policy base for protection and regulation of animal abuse tends to favor animals that only have economic value, whereas in several countries the grouping of animals above is broader and has its own regulations. Indonesian law also does not describe in detail the act of harming animals. The phrasing of the article in the new Criminal Code also does not specify what actions are included in the category of harming animals, whereas in Malaysian and Singaporean law, neglect and abandonment have implications for criminal sanctions.

As in Singapore's Animal and Birds Act, there is a gradual regulation of violations. A first offense of abuse has different sanctions than a second offense. After the first violation the sanctions will be added to become more severe. In addition to the fines and criminal sanctions received, violators will be subject to confiscation of pets in their ownership. In fact, it is also regulated that for the next few years, violators will no longer be allowed to adopt or keep animals.

Furthermore, each country has a more detailed classification of acts regarding neglect, abandonment, forms of harm, forms of cruelty and so on. In Indonesia itself, the classification of animal types is still unclear. The classification of animal types means that protection for animals is not yet comprehensive. The priority and prominent interest in animal classification is the existence of animals that are economical or profitable. As the reference provided by Drh. Wiwiek Bagja, it would be better if the grouping of animal status needs to be adjusted to fulfill animal welfare as follows (Wiwiek Bagja, 2022);

1. food animals/farm animals;
2. hobby/pet/domestic animals;
3. wild animals and zoo animals for conservation purposes;
4. aquatic animals (fresh water or sea);
5. laboratory test animals.

Several areas in Indonesia, such as Bali, which is an area with many residents who keep dogs and cats, among them many stray dogs and cats, already have several regional regulations. Such as the Sega Traditional Village Regulations which have regulations on the Procedures for Handling Dogs and Cats in the Sega Traditional Village. These village regulations are formed based on collective community decisions which are expressed in the form of regulations. These regulations contain matters regarding animal welfare, prohibitions on eating dog and cat meat, provisions for vaccinating pets, prohibitions on harming and mistreating animals and so on. According to animal welfare activists in Bali, Corlevin Kalalo, it is a waste to establish research and programs to eradicate rabies in Bali if there are no results in the form of regulations.

So, in the policy formation stage, it is best to pay attention to the aspirations of the community, both in the formulation of criminal sanctions and in the enforcement stage. Such as traditional regulations in the Balinese Traditional Village as mentioned which are in accordance with the needs of the local community, as well as comparing with other countries as mentioned above.

Criminal policies for cases of animal abuse in Indonesia need to be updated, guided by the ideals and hopes of society which is generally pro-animal welfare rights. In formulating criminal policies through penal measures, Indonesia can study and be guided by other countries to find an ideal model as an effort to overcome animal abuse crimes.

Conclusion

Criminal law regulations regarding mistreatment of domestic animals in Indonesia need to be updated further as they are not sufficient to act as deterrent and preventive measures to combat domestic animal abuse cases. The existing criminal law policies in Indonesian law as well as the updates in Criminal Code 1/2023 do not yet support animal welfare aspects, so the threat of criminal sanctions is still minimal. And there is no classification of domestic animals in the regulations on animal abuse. The Animal Husbandry and Health Law, which contains regulations on animal abuse, still focuses on farm animals that have economic value. A comparison between Indonesia and Singapore, Malaysia, Thailand and the Philippines shows that Indonesia still does not have specific animal abuse regulations based on animal welfare.

Conflict of Interest

We certify that there is no conflict of interest with any financial, personal, or other relationships with other people or organizations related to the material discussed in the manuscript.

Reference

Adami, C. 2005. Tindak Pidana Mengenal Kesopanan. PT Raja Grafindo Persada, Jakarta. 180.

Bentham, J. 2000. An Introduction to the Principles of Morals and Legislations. Batoche Books Ltd, Kitchener. 24.

Donald, B. 2017. Sentience and Animal Welfare, reprinted ed. CABI, Wallingford. 22-24.

Francione, G. 1996. Front Matter Rain Without Thunder: The Ideology of the Animal Rights Movement. Temple University Press. pp. i-viii.

Kalalo, C. 2022. The Role of Animal Welfare in Disease Prevention and Control. Animal Welfare 1st Conference in Indonesia.

Zeder, M. 2012. The Domestication of Animals. Journal of Anthropological Research. 68 (2). 20.

World Animal Protection. 2020. Animal Protection Index (API) 2020: Republic of Indonesia. Available online from: <https://api.worldanimalprotection.org/sites/default/files/api_2020_-_indonesia.pdf> [Accessed 15th August 2021]