

Legal Sanctions for Bestiality Offenders in Indonesia: A Study Based on Fiqh al-Jināyāt

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Abstract

Bestiality is a form of sexual deviance that has seen increasing prevalence, particularly in Indonesia, since the early 2000s. Despite its alarming nature, the Indonesian legal system lacks specific regulations addressing this issue. In contrast, Islamic criminal jurisprudence (*fiqh al-jināyāt*) discusses such behaviour under the scope of discretionary punishment (*ta'zīr*). This study aims to analyze legal responses to bestiality in Indonesia through the lens of *fiqh al-jināyāt*. Employing a qualitative library research method, the study draws on classical and contemporary Islamic legal sources and scholarly opinions. It adopts the legal maxim *al-ḍarar yuzāl* (harm must be eliminated) as an analytical framework to interpret the application of *ta'zīr* to cases of bestiality. The findings reveal a significant discrepancy between Indonesia's legal treatment of bestiality and the normative provisions found in Islamic criminal law. While *fiqh al-jināyāt* provides a basis for firm punitive measures, Indonesian laws often address such acts merely as minor animal abuse, resulting in inadequate deterrent effects. This gap highlights the urgent need for educational programs to raise public awareness about the dangers of bestiality and to promote an understanding of healthy sexual behaviour. Moreover, strengthening moral and ethical norms in society is essential to prevent the recurrence of such deviant acts.

Keywords: Legal Sanctions, Bestiality, Indonesia, Jinayah

Bestialitas adalah bentuk penyimpangan seksual yang telah mengalami peningkatan prevalensi, terutama di Indonesia sejak awal tahun 2000-an. Meskipun mengkhawatirkan, sistem hukum Indonesia tidak memiliki peraturan khusus yang menangani masalah ini. Sebaliknya, yurisprudensi pidana Islam (*fiqh al-jināyāt*) membahas perilaku tersebut di bawah ruang lingkup hukuman kebijaksanaan (*ta'zīr*). Penelitian ini bertujuan untuk menganalisis tanggapan hukum terhadap bestialitas di Indonesia melalui lensa *fiqh al-jināyāt*. Dengan menggunakan metode penelitian kepustakaan kualitatif, penelitian ini mengacu pada sumber-sumber hukum Islam klasik dan kontemporer serta pendapat-pendapat para ulama. Penelitian ini mengadopsi pepatah hukum *al-ḍarar yuzāl* (bahaya harus dihilangkan) sebagai kerangka kerja analitis untuk menafsirkan penerapan *ta'zīr* pada kasus-kasus bestialitas. Temuan penelitian ini menunjukkan adanya perbedaan yang signifikan antara perlakuan hukum di Indonesia terhadap bestialitas dengan ketentuan normatif yang terdapat dalam hukum pidana Islam. Meskipun *fiqh al-jināyāt*

memberikan dasar untuk tindakan hukuman yang tegas, hukum di Indonesia sering kali menganggap tindakan semacam itu sebagai penganiayaan ringan terhadap hewan, yang mengakibatkan efek jera yang tidak memadai. Kesenjangan ini menyoroti kebutuhan mendesak akan program pendidikan untuk meningkatkan kesadaran masyarakat tentang bahaya bestialitas dan untuk mempromosikan pemahaman tentang perilaku seksual yang sehat. Selain itu, penguatan norma-norma moral dan etika dalam masyarakat sangat penting untuk mencegah terulangnya tindakan menyimpang tersebut.

Kata Kunci: Sanksi Hukum, Bestialitas, Indonesia, Jinayah

Introduction

In Islamic law, sexual relations are strictly regulated and permitted only within the bounds of a lawful marriage. Consequently, engaging in sexual activity outside of this legitimate framework, including with animals, is subject to punishment. This act is known as bestiality. While Islamic law addresses this matter clearly, specific national legal systems, including Indonesia's, also attempt to regulate such conduct. However, Indonesia currently lacks a specific legal provision that explicitly prohibits bestiality. Existing laws only address animal protection, prohibiting cruelty to animals, and regulating the conservation of ecosystems. The absence of targeted legislation leaves a legal gap that allows the act of bestiality to persist without adequate legal consequences. Violations are often prosecuted under general provisions, making it challenging to impose proportionate punishment. Therefore, new regulations or legal amendments are needed to criminalize bestiality explicitly and prevent its recurrence in the future.

Several previous studies have addressed bestiality from various perspectives. Rohaedi (2007) emphasizes the role of intelligence and faith as defences against deviant behaviour. Firdaus (2019) discusses how sexual deviance should be addressed through state punishment based on Islamic views. Rohmah (2023) explores the positions of the Shafi'i and Hanbali schools, highlighting concerns over potential consequences such as deformed offspring and community gossip. Philothra (2022) points out that the explicit nature of bestiality complicates legal prosecution. Cahyani and Nashrina (2022), In their thesis titled *Criminalization of Sexual Deviance Towards Animals*, the authors propose an ideal legal framework for regulating bestiality as a criminal offense. Firdaus (2019) further contributes to this discourse by

comparing the punishments for adultery and related offenses under both Islamic law and Indonesian statutory law.

These studies generally agree that bestiality constitutes sexual deviance (zoophilia). However, discrepancies exist among scholars regarding the application of Islamic punishments. A notable case in Central Kalimantan, involving an orangutan named Pony, raised legal and ethical concerns. The relevant legal framework includes Law No. 5 of 1990 on Natural Resources and Ecosystem Conservation and Article 302 of the Indonesian Criminal Code (KUHP), which addresses animal cruelty and its consequences. Additionally, Law No. 41 of 2014, amending Law No. 18 of 2009 on Animal Husbandry and Health, explicitly prohibits acts of cruelty, including sexual acts against animals, prescribing criminal sanctions.

In Indonesian society, immoral behaviour is strongly discouraged. Norms and moral values are deeply rooted and form the foundation of social order. Islam itself aims to protect five fundamental objectives through *maqāṣid al-sharīʿah* (As-Subki, 2000). The legal maxim *dafʿ al-mafāṣid muqaddam ʿalā jalb al-maṣāliḥ* (Al-Fadani, 2000) "warding off harm takes precedence over procuring benefit" is particularly relevant to the issue of bestiality. Such deviant acts violate both natural law and religious ethics. If left unaddressed, they may lead to unhealthy relationships and long-term psychological and physical harm, both to the perpetrator and to the animal.

Methods

The research methodology refers to the systematic process employed to investigate and address the core research problem. This study adopts a qualitative approach using descriptive-analytical methods, aiming to explore legal frameworks related to sexual deviance involving animals and to analyze the associated legal and ethical issues critically. Rooted in the foundations of qualitative inquiry, this methodology is guided by fundamental questions of why, how, what, where, and when to understand complex social phenomena within their real-world contexts (Zaini, 2000).

The primary sources used in this study include classical Islamic texts such as the Qur'an and Hadith, which are interpreted through various exegeses and collections such as *Tafsīr al-Jalālayn*, *Rawā'ī' al-Bayān*, *Subul al-Salām*, and other tafsir and hadith compilations. Secondary sources, which complement the primary legal texts, include classical and contemporary Islamic jurisprudence references. Among the primary fiqh texts employed are *Fath al-Wahhāb* as well as supporting works such as the legal maxims text *Fawā'id al-Jāniyah* and Usūl al-Fiqh literature, notably *Jam' al-Jawāmi'*.

The data collection technique employed is library research, involving the selection and compilation of relevant materials from both classical scholars and contemporary fiqh literature. The collected data that meet the relevance and criteria of this study are then processed and analyzed. The method of data analysis applied is content analysis, through which all data are examined to gain a comprehensive understanding of the research problem.

Results and Discussion

Bestiality in Legal Perspective

Sexuality is a fundamental biological need essential to human reproduction. Some individuals direct their sexual desires toward inappropriate objects, leading to what is classified as sexual deviance. Bestiality, or zoophilia, is one such deviant behaviour. In practice, numerous cases of bestiality have emerged and drawn public attention. Despite the presence of long-standing social norms and existing legal frameworks, these mechanisms have proven insufficient in preventing such acts. This indicates a substantial legal and moral gap that must be urgently addressed to ensure the cultivation of a healthy, ethical, and socially responsible human environment in Indonesia.

According to Elbina, as cited by Saidah (2016), bestiality involves individuals whose sexual orientation is deviant deriving sexual satisfaction by engaging with animals as a medium for stimulation. The triggers of this deviance vary. A study referencing Abdul Qadir Audah

identifies three general elements of criminal acts in bestiality cases: formal, moral, and material components. Furthermore, the specific element involves the act of sexual intercourse with animals, whether by male or female perpetrators (Firdaus, 2019). These elements do not yet include perspectives from medical or psychological experts.

Bestiality has numerous harmful effects, both for the perpetrator and the animal involved. It can transmit diseases, particularly zoonotic infections, that spread from animals to humans. Beyond health consequences, perpetrators may face legal repercussions in the form of fines or imprisonment. There are also significant social and psychological consequences for those involved.

Despite this, Indonesia does not yet have specific legislation that clearly prohibits bestiality. This legal vacuum presents a challenge in enforcing proportionate punishment. This research focuses on the legal disparity between Indonesia's national legal system and Islamic sharī'ah (fiqh), particularly in handling acts of bestiality.

From Policy to Practice

Several bestiality cases have emerged in Indonesia. In 2008, a man named Sutarya was reported for having intercourse with a cow. A similar incident occurred in South Sulawesi, where a man was caught sexually abusing a horse belonging to residents. In 2010, a man with the initials G.A. engaged in sexual activity with a cow while herding. In 2013, a teenager confessed to having had sexual intercourse with hundreds of chickens (Rohaedi, 2007). Another case involved the sexual exploitation of a Kalimantan orangutan named Pony, which was exploited by someone who claimed to own and care for her (Cahyani & Nashrina, 2022). A more recent incident involved a man who sexually assaulted a goat owned by his neighbour and later faced a tragic consequence.

Another case in Central Kalimantan, from 2003 in Kareng Pangi, Katingan Regency, involved transactional sex with an orangutan, an act motivated by financial gain, wherein the "owner" acted as a pimp. This case falls under Articles 302 and 540 of the Indonesian Criminal Code

(KUHP), which governs animal abuse and ownership responsibilities. Violators can be subject to both imprisonment and fines.

Scientific studies have shown that non-human species, such as Adelie penguins and chimpanzees, have been exploited in prostitution-like scenarios. In Indonesia, Law No. 5 of 1990 on the Conservation of Natural Resources and Ecosystems, along with Law No. 41 of 2014 (amending Law No. 18 of 2009 on Livestock and Animal Health), clearly prohibits acts of cruelty, including sexual exploitation toward animals, establishing legal penalties for such behaviour.

Indonesian society generally rejects immoral behaviour. Social norms are deeply embedded, reinforcing the importance of ethical conduct. In Islamic law, the concept of lawful sexuality is grounded in the principle that every creature is created in pairs. Sexual relations are intended to occur only between a man and a woman within a lawful marriage as part of God's natural order. Bestiality, by contrast, deviates from this divine pairing and is therefore considered a severe transgression against both natural and divine law.

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

And among the signs of His power is that He created for you mates from your kind (Adam and the rest of humankind from semen, male and female) so that you may find rest in them (and be intimate with them) and there may be love and compassion between you (all). Verily therein (are) signs for a people who contemplate (God's creation)." QS. Ar-Rum: 21.

On the other hand, a deviant sexual orientation is someone who directs their sexual desires to things that should not be or out of human nature. Like transactions, sexual relations also require justice from both parties. The punishment for bestiality has actually been written by Sheikh Zainuddin Al Malibari in the book Fath Al Mu'in with the following ruling:

وَلَا بِإِيلَاجٍ فِي فَرْجٍ بَهِيمَةٍ أَوْ مَيْتٍ، وَلَا يَجِبُ ذَبْحُ الْبَهِيمَةِ الْمَأْكُولَةِ، خِلَافًا لِمَنْ وَهُمْ فِيهِ، وَ إِنَّمَا يُجْلَدُ مَنْ ذَكَرَ
(مِائَةً) مِنْ جَلْدَاتٍ.

A person is prohibited from practising bestiality on both farm animals and dead animals. Edible animals are not required to be slaughtered, even if they are victims of bestiality (Abdussalam).

فَإِنْ جُعِلَ كَاللَّوْاطِ، فَفِي قَتْلِ الْبَهِيمَةِ أَوْجُهُ، نَالِهَا: يُذَبِّحُ مَا يُؤْكَلُ لَحْمُهُ، وَيُحْرَمُ قَتْلُ مَا لَا يُؤْكَلُ لَحْمُهُ، فَإِنْ أَوْجِبْنَا
قَتْلَ مَا لَا يُؤْكَلُ، وَجَبَتْ قِيمَتُهُ عَلَى الْأَصْحَ،

This opinion then becomes different from the hadith, which explains that in bestiality both the perpetrator and the animal must be killed. In contrast to the perpetrators of bestiality, although not killed, the perpetrators are subject to flogging with a nominal of one hundred lashes by the male party. The hadith also states that there is a lot of disbelief in it. Then, in the book Fath Al Qarib, Sheikh Muhammad Qasim Al-Ghazi also mentions the punishment for bestiality, which is as follows (Abi Syuja):

وَ حُكْمُ اللَّوْاطِ وَ إِيْنَانُ الْبَهَائِمِ كَحُكْمِ الزَّنى.

The law on sodomy and bestiality is the same as the law on adultery. In this case, adultery is an act where the punishment has been served with volumes or rajam with a certain amount.

Why is bestiality punished like adultery? According to Sheikh Tajuddin As Subuki (As Subki) in his book Jam'u Al Jawami' it is explained:

وَأُجِيبَ بِأَنَّ الْقِيَاسَ لَا يُخْرِجُهَا عَمَّا ذُكِرَ وَالْمَعْنَى مُشْتَرَكٌ فِيهِ كَمَا هُوَ عَلَّةٌ لَهَا يَكُونُ عَلَّةٌ لِمَا تَرْتَبُ عَلَيْهَا مِثَالُهُ فِي
السَّبَبِ قِيَاسُ اللَّوْاطِ عَلَى الزَّانَا بِجَمَاعٍ إِيْلَاجٍ فَرْجٍ فِي فَرْجٍ مُحَرَّمٍ شَرْعًا مُشْتَهَى طَبْعًا .

Bestiality is equated with the law of adultery, which is seen from the 'illat (nature or reason that causes the application of law to specific actions) of the prohibition of the two issues, which have similarities. The 'llat is the placement of a person in sexual intercourse, namely using the wrong media or object. Adultery is haraam because it is done with a non-legal partner. While bestiality with animals as its object. opinion

regarding the hadd law for bestiality perpetrators is not among the superior opinions.

The taking of this law is based on the words of the Prophet SAW in book of As Shana'ani:

وَعَنْ ابْنِ عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: «مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلِ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمُفْعُولَ بِهِ وَمَنْ وَجَدْتُمُوهُ وَقَعَ عَلَى بَهِيمَةٍ فَاقْتُلُوهُ وَاقْتُلُوا الْبَهِيمَةَ». رَوَاهُ أَحْمَدُ وَالْأَزْهَعِيُّ وَرِجَالُهُ مُوثِقُونَ إِلَّا أَنَّ فِيهِ اخْتِلَافًا

It is stated that whoever encounters an individual engaging in behaviour akin to that of the people of Prophet Lūṭ (i.e., homosexuality), then both the active and passive participants should be executed. Similarly, in the case of bestiality, the perpetrator must be put to death along with the animal involved. This ḥadīth is narrated by Imām Aḥmad and the other four leading Imams through reliable transmitters, although there are differences of opinion (*ikhtilāf*) among scholars regarding its interpretation and application.

وَالْحَدِيثُ فِيهِ مَسْأَلَتَانِ «الْأُولَى»: فِيمَنْ عَمِلَ عَمَلِ قَوْمِ لُوطٍ وَلَا رَيْبَ أَنَّهُ ارْتَكَبَ كَبِيرَةً وَفِي حُكْمِهَا أَقْوَالٌ «:الْأُولَى»: أَنَّهُ يُحْدِثُ حَدَّ الزَّانِي قِيَاسًا عَلَيْهِ بِجَمَاعِ إِيلَاجٍ مُحَرَّمٍ فِي فَرْجٍ مُحَرَّمٍ وَهَذَا قَوْلُ الْهَادَوِيَِّّةِ وَجَمَاعَةٍ مِنَ السَّلَفِ وَالْخَلَفِ وَإِلَيْهِ رَجَعَ الشَّافِعِيُّ وَاعْتَدَوْا عَنْ الْحَدِيثِ بِأَنَّ فِيهِ مَقَالًا فَلَا يَنْتَهِضُ عَلَى إِبَاحَةِ دِمِ الْمُسْلِمِ، إِلَّا أَنَّهُ لَا يَخْفَى أَنَّ هَذِهِ الْأَوْصَافَ الَّتِي جَمَعُوهَا عِلَّةٌ لِإِلْحَاقِ اللَّوَاطِ بِالزَّانِي لَا دَلِيلَ عَلَى عِلَلِهَا

Meanwhile, in the syarah of the book At Taqrib, it is explained more concisely:

وَمَنْ أَتَى بِهَيْمَةً حَدَّ كَمَا قَالَ الْمُصَنِّفُ لَكِنَّ الرَّاجِحَ أَنَّهُ يُعْزَرُ.

The above evidence means that anyone who has intercourse with an animal is subject to the hadd punishment. Sheikh Muhammad Qasim al-Ghazi says in the book that the ruling is not hadd but ta'zir according to the superior opinion. Therefore, the ruling of ta'zir is more decisive because it is the more correct opinion.

Then the scholars agreed by mentioning in the book Al Fiqh Al Minhaj 'Ala Madzhab Ash-Shafi'i:

مَنْ أَتَى بِحَيْمَةٍ، فَإِنَّهُ يُعَزَّرُ، وَلَا حَدَّ عَلَيْهِ عَلَى الْقَوْلِ الرَّاجِحِ فِي الذَّهَبِ، لِأَنَّ فَعْلَهُ بِمَا لَا يُسْتَهَى عِنْدَ أَصْحَابِ الْأَذْوَاقِ السَّلِيمَةِ، بَلْ هُوَ بِمَا يَنْفَرُ مِنْهُ الطَّبْعُ الصَّحِيحُ وَلَا تَمِيلُ إِلَيْهِ النَّفْسُ السَّلِيمَةُ، فَلَا يَجْتَاحُ إِلَى زَجْرٍ، وَالْحَدُّ إِنَّمَا شُرِعَ زَجْرًا لِلنَّفُوسِ عَنْ مُقَارَبَةِ مَا يُسْتَهَى طَبْعًا عَلَى وَجْهِ غَيْرِ مَشْرُوعٍ.

Whoever engages in sexual intercourse with an animal is subject to ta'zīr punishment, not ḥadd. According to the strongest opinion (*rājih*), the appropriate punishment for such an individual is exile or isolation. This is because such an act is contrary to public decency and is inherently rejected by sound human nature. A person with a healthy disposition would not be inclined toward such behaviour, rendering formal warning or admonition unnecessary. The purpose of ḥadd punishments is to deter desires that directly contradict the prescriptions of Islamic law (*sharī'ah*).

Nevertheless, several other scholars also support the application of ta'zīr in cases of bestiality. This view is upheld by prominent jurists such as Imām Mālik (Mālikī school), Imām Aḥmad ibn Ḥanbal (Ḥanbalī school), and Imām Abū Ḥanīfah (Ḥanafī school). These three leading scholars unanimously agree that bestiality warrants punishment under the discretionary category of ta'zīr, rather than the fixed ḥadd penalties.

In this case it is also explained:

أَمَّا إِنِّيَانُ الْبَهَائِمِ فَالْجُمْهُورُ عَلَى أَنَّ حَدَّهُ التَّعْزِيرُ إِلَّا مَا وَرَدَ فِي بَعْضِ الرِّوَايَاتِ عَنِ الْإِمَامِ أَحْمَدٍ رَضِيَ اللَّهُ عَنْهُ أَنَّ عُقُوبَتَهُ كَاللَّوْاطِ يُقْتَلُ الْفَاعِلُ وَتُقْتَلُ الدَّابَّةُ. وَلَا شَكَّ فِي أَنَّ مَنْ يَأْتِي مِثْلَ هَذِهِ الْقَبِيحَةِ النَّكَرَةِ يَكُونُ أَحْسَنَ مِنَ الْحَيَوَانِ وَلَكِنَّ الرَّأْيَ الرَّاجِحَ هُوَ مَا ذَهَبَ إِلَيْهِ الْجُمْهُورُ وَاللَّهُ تَعَالَى أَعْلَمُ.

The above evidence explains the ruling on bestiality. The majority (majority opinion) of scholars punish it with ta'zir punishment. Although there is one narration from Imām Ahmad RA which explains that the sanction for bestiality behavior is like sodomy behavior, namely by killing the perpetrator and killing the animals involved. Indeed, there is no doubt about the despicability of this behavior, which is even more despicable than animals. However, the stronger opinion states that the

punishment is ta'zir, which is left to the discretion of the judge, taking into account the situation.

قَالَ الْخَطَّابِيُّ: وَقَدْ اختلف العلماء في مَنْ أُنِيَ هَذَا الْفِعْلُ، فَقَالَ إِسْحَاقُ بْنُ رَاهَوَيْهِ: يُقْتَلُ إِذَا تَعَمَّدَ ذَلِكَ وَهُوَ يَعْلَمُ مَا فِيهِ عَنْ رَسُولِ اللَّهِ ﷺ، فَإِنْ دَرَأَ عَنْهُ إِمَامٌ الْقَتْلَ فَلَا يَنْبَغِي أَنْ يَدْرَأَ عَنْهُ جُلْدَ مِائَةٍ تَشْبِيهَا بِالزَّانِ. وَرَوَى عَنْ الْحَسَنِ أَنَّهُ قَالَ: يَرْجَمُ إِنْ كَانَ مُحْصَنًا، وَيُجْلَدُ إِنْ كَانَ بَكَرًا، وَقَالَ الزُّهْرِيُّ: يُجْلَدُ مِائَةً أَحْصَنَ أَوْ لَمْ يُحْصَنَ، وَقَالَ أَكْثَرُ الْفُقَهَاءِ يُعَزَّرُ. وَكَذَلِكَ قَالَ عَطَاءٌ وَالنَّخَعِيُّ، وَبِهِ قَالَ مَالِكٌ وَسُفْيَانُ الثَّوْرِيُّ وَأَحْمَدُ بْنُ حَنْبَلٍ، وَكَذَلِكَ قَالَ أَبُو حَنِيفَةَ وَأَصْحَابُهُ، وَهُوَ أَحَدُ قَوْلِي الشَّافِعِيِّ، وَقَوْلُهُ الْآخَرُ إِنَّ حُكْمَهُ حُكْمُ الزَّانِي.

Next is Imām Al Khatthabi who states that bestiality has a difference of opinion on its legal impact. According to Ishaq bin Rahawaih, if a person intentionally and knowingly commits a relationship, then this is a major sin and should be killed, as well as the words of the Prophet Muhammad SAW. Then if a judge or imām imposes the death penalty, this opinion states that the perpetrator should not be spared from the punishment (as explained earlier) because the act committed is indeed considered very serious and despicable. Al Hasan also narrated about the punishment for muhsan adulterers with ranjam and binding for gair muhsan adulterers. This is different from the opinion of Imām Az Zuhri, who prescribed flogging for both muhsan and gair muhsan adulterers. But back to the opinion of the majority of scholars, that the punishment for bestiality behaviour is ta'zir not had. This is the view held by some of the major scholars, which is why this view is considered to be the strongest and most influential of all.

يَرَى الْإِمَامُ (أَبُو حَنِيفَةَ) أَنَّ حَدَّ الزَّانِي الْبَكْرِ هُوَ الْجُلْدُ مِائَةً جُلْدَةً أَوْ النَّفْيُ لَيْسَ مِنَ الْحَدِّ فِي شَيْءٍ وَأَنَّهُ مُفَوَّضٌ إِلَى رَأْيِ الْإِمَامِ إِنْ شَاءَ غَرَبَ وَإِنْ شَاءَ تَرَكَ. وَيَرَى الْجُمْهُورُ (مَالِكٌ وَالشَّافِعِيُّ وَأَحْمَدُ) أَنَّ حَدَّهُ الْجُلْدُ مِائَةً جُلْدَةً وَتَغْرِيبٌ عَامٌّ.

Based on the above explanation, it can be concluded that there is a significant consensus among foremost classical scholars Imām Mālik, Imām al-Shāfiʿī, and Imām Aḥmad regarding the punishment for bestiality: namely, 100 lashes and exile. However, the final decision remains at the discretion of the judge (ḥākim), depending on the circumstances of the case.

This consensus among classical scholars also appears to be more realistic in the contemporary era. The objective of ta'zīr is to serve as a deterrent to criminal behaviour, to protect the rights of Allah's creatures, to preserve public morality and dignity, and to maintain social balance. Compared to the application of ḥadd punishments, such as stoning or flogging, ta'zīr is deemed more appropriate and adaptable in modern times. This view is further supported by several contemporary scholars and countries implementing shari'ah-based legal systems such as Saudi Arabia, Iran, and Pakistan where bestiality is punished under the category of ta'zīr. The reason is that there is no explicit reference in either the Qur'an or the Prophetic ḥadīth prescribing a fixed punishment for bestiality. Thus, ta'zīr is employed based on situational and moral considerations. Contemporary scholars emphasize the importance of preserving societal morality and honour through such discretionary punishments, which may include corporal penalties or imprisonment, depending on the severity of the offence.

In the context of Indonesian law, bestiality may fall under provisions related to cruelty and abuse of animals. This is regulated in Law No. 18 of 2009, which stipulates a prison sentence ranging from 1 to 9 months and/or a fine of up to Rp 50 million, depending on the gravity of the harm caused. Article 66A of the same law mandates the humane treatment of animals, prohibits cruelty, and upholds animal welfare. Thus, bestiality can be prosecuted under this provision, especially given the moral and physical harm it entails. According to Law No. 41 of 2014, violators may face imprisonment of up to 9 months and fines of up to Rp 10,000,000.

This contrasts with Article 91B, which concerns acts of cruelty that render animals disabled or unproductive. Violators of this provision face a minimum of 1 month and a maximum of 6 months imprisonment, along with fines ranging from Rp 1,000,000 to Rp 5,000,000. However, when compared to other countries that have explicit legal statutes addressing bestiality, the punishment in Indonesia remains relatively lenient. In several jurisdictions, bestiality is classified as a Class C felony,

with penalties ranging from 5 to 15 years of imprisonment. For example, in some U.S. states, proposed laws separate bestiality from general animal abuse and classify it as a sexual offence punishable by up to 5 years in prison and a fine of up to USD 10,000 (equivalent to approximately IDR 163,683,534.00) (Navarro & Tewksbury, 2015).

The Indonesian Criminal Code (KUHP) regulates animal abuse under Article 302. Paragraph (1) contains two main points:

- (1) Any person who hurts, injures, or harms the health of an animal without a justifiable reason or excessively and intentionally is subject to punishment.
- (2) It also includes those who fail to fulfil their responsibility to feed and care for animals under their charge. This includes providing the food necessary for the animal's survival and general care.

Violators of this article may face imprisonment of up to three months and/or a maximum fine of IDR 4.5 million. Paragraph (2) further stipulates that if such abuse results in the animal becoming ill for more than a week, suffering permanent disability, sustaining serious injuries, or dying, the offender may be sentenced to a maximum of nine months in prison or fined up to IDR 300,000. Paragraph (3) states that if the abused animal belongs to the offender, the animal may be confiscated by the authorities.

When compared to bestiality laws in other countries, Indonesia's legal treatment is relatively lenient. The law does not explicitly criminalize bestiality; instead, it treats it under general provisions on animal cruelty and welfare violations. In contrast, countries with specific legislation on zoophilia provide more precise definitions and stronger punishments.

In practice, the penalties of imprisonment and/or fines under Indonesian law are arguably insufficient to deter offenders, particularly in bestiality cases. Ta'zīr, under Islamic law, is not only intended as a deterrent but also functions to uphold justice, protect public order, and prevent recurrence. Ta'zīr allows flexible punishments ranging from verbal warnings to physical punishments or imprisonment based on the

severity and consequences of the offence. Compared to Indonesia's punitive measures, which are limited and often weak, the concept of ta'zīr offers a more comprehensive and impactful approach.

In Indonesia, bestiality is primarily prosecuted under laws on animal abuse and violence, such as Law No. 18 of 2009, which imposes a maximum prison sentence of nine months or one year, and Law No. 41 of 2014, which emphasizes the obligation to treat animals appropriately and prohibit cruelty. However, bestiality is not merely animal abuse; it is a grave violation of social norms and public morality. Therefore, it should not be considered a minor offence. The author argues that the current legal framework in Indonesia concerning the 'iqāb (punishment) for bestiality is inadequate and does not align with the standards of ta'zīr discussed in *fiqh al-jināyāt*.

According to Islamic jurisprudence, the prevailing opinion on the punishment for bestiality is ta'zīr, as previously elaborated. The concept of ta'zīr is similar to Indonesia's context, where punishments are not fixed but are determined based on the severity and impact of the crime and are imposed by judges or local authorities. However, despite these similarities, the actual sentences handed down in Indonesia are often too mild to serve as effective deterrents.

From the perspective of Islamic law, bestiality can also be analyzed using the legal maxim "*al-Ḍarar yuzāl*" ("harm must be eliminated"). This principle is essential in enforcing Islamic law and achieving the five objectives of *maqāṣid al-sharī'ah* the preservation of religion, life, intellect, lineage (*nasl*), and property. Bestiality directly threatens *ḥifẓ al-nasl* (the protection of lineage). As stated in classical works, such as that of al-Subkī: "*fa-al-nasab ayy ḥifẓuhu al-mashrū' lahu ḥadd al-zinā*" lineage must be preserved, and violations concerning it are punished similarly to *zinā* (fornication). The application of this principle extends even to the owners of animals, who bear moral and legal responsibility to prevent their animals from being involved in acts prohibited by Islam, such as bestiality.

Another principle is "*Daf' al-Mafāsīd Muqaddam 'ala Jalb al-Maṣāliḥ*" the prevention of harm takes precedence over the pursuit of benefit. In the application of Islamic law, bestiality is viewed as a source of significant harm to individuals, animals, and society. Therefore, both sharī'ah and state laws clearly prohibit such acts. The principle "al-Ḍarar yuzāl" further reinforces the necessity of banning bestiality.

However, the case in Kareng Pangi (Central Kalimantan) is more complex. It involved not only the perpetrators who captured and exploited a rare Kalimantan orangutan named Pony but also local communities who opposed her rehabilitation. This case invokes another Islamic legal maxim: "*Mā Ḥurima Akhdhuhu Ḥurima Iṭā'uḥu*" "What is unlawful to take is also unlawful to give." (Al-Fadānī)

This principle is highly relevant to the Kalimantan case. It began with the illegal capture of a baby orangutan (*Pongo pygmaeus*) from its natural habitat, followed by training the animal for sexual exploitation in a brothel. Pony was not only sexually abused but was also regularly shaved, perfumed, and dressed to attract clients. This is a clear violation of the animal's rights and dignity, especially considering orangutans are a protected species in Indonesia.

Such acts violate both aspects of the maxim: "*mā ḥurima akhdhuhu*" (illegally acquiring a protected animal) and "*ḥurima iṭā'uḥu*" (unlawfully using or offering it). Thus, this legal principle affirms that the act of bestiality in Kareng Pangi constitutes a grave and multifaceted violation both religiously and legally.

Conclusion

Bestiality, or sexual conduct involving animals, is classified as an extreme and controversial form of sexual deviance. In Indonesia, there is currently no legal regulation that explicitly prohibits this practice. Existing laws primarily focus on general animal protection, such as prohibitions against cruelty and ecosystem destruction. However, bestiality poses serious threats to ethical standards, public health, and

animal welfare. Therefore, legal reform or amendments are necessary to establish a clear legal basis and to ensure adequate deterrence.

From the perspective of *fiqh al-jināyāt* (Islamic criminal jurisprudence), scholars are in consensus that bestiality falls under acts punishable by *ta'zīr* a discretionary punishment determined by the authorities. Nevertheless, this study finds a significant disparity between Indonesia's legal framework and the principles of *fiqh al-jināyāt* regarding sanctions for bestiality. Indonesian positive law tends to impose lenient penalties, such as Law No. 18 of 2009, which prescribes a maximum imprisonment of only nine months.

By applying the legal maxim *al-darar yuzāl* (harm must be eliminated), this study underscores the urgency of strengthening legal protections and safeguarding animal rights. It also highlights the principle *daf' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* ("preventing harm takes precedence over securing benefit"), given that the harms caused by bestiality far outweigh any conceivable benefits.

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