

Internalization of Animal Welfare Norms: Legal Protection Against Animal Mistreatment

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Submitted: September 28, 2023; Reviewed: November 19, 2023; Accepted: December 03, 2023.

Article Info

Keywords:

Animal Welfare; Human Rights; Legal Protection; Right to Food.

DOI: 10.25041/fiatjustisia.v17no4.3205

Abstract

Animal welfare has important aspects in measuring the effect on animals in different situations and environments from an animal's point of view. Ignoring animal welfare, both livestock and slaughter animals will lead to fear, stress and pain in animals during the process of slaughtering, transporting, marketing and supplying poor feed and water. The type of research is socio-juridical, carried out in North Sulawesi Province with the practice of slaughtering animals which was considered sadistic and received international criticism. The results show that the efforts to protect animals in order to realize animal welfare can be carried out by establishing laws and regulations. Specifically, regulate animal protection so that disharmony does not occur with the substance of the law, multiple interpretations. Animals, in this sense, are subjects for the spread of disease, rather than as objects for contracting the disease, especially from humans. In Indonesia, factors that cause weaknesses in animal protection are sanctions applied, the lack of knowledge and understanding of law enforcement officials.

A. Introduction

Animal welfare is a philosophical concept that addresses the fair treatment of animals. The animals and humans have been related for thousands

of years. This can be seen in the history which shows the closeness between humans and animals so that it can be said that animals have a relationship with human life.¹ Some evidence is the use of animal symbols as state symbols, symbols of holiness or religious or cultural celebrations. Realize or not, animals are an integral part of the system of value, social and human culture.

The relationship between humans and animals then gives birth to patterns of human treatment of animals and it as one of the realities that is directly related to the term known as *animal welfare*.² In essence, animal welfare is a moral view or concept related to the level of fulfillment of welfare for non-human animals so that this concept cannot be separated from ethics towards animals.

Animal welfare includes physical and mental conditions, and the extent to which the natural characteristics of the animal are fulfilled. The application of animal welfare is usually based on the belief that non-human animals have a sensibility where humans must consider the welfare or suffering experienced by animals, especially when they are under human control.³ The conditions that must be considered such as how animals are slaughtered, how animals are used in scientific research, how animals are kept (as pets, in zoos, farms, circuses, etc.), and how human activities affect welfare and survival them as wild animals.

From these national regulations, as in Act No. 18 of 2009 *jo* Act No. 41 of 2014 concerning Animal Husbandry and Health, animal welfare is all matters related to the physical and mental state of animals according to the size of the animal's natural behavior that needs to be implemented and enforced to protect animals from the inappropriate treatment of every person towards animals that are used by humans. Animal welfare has 3 (three) important aspects, namely science or measuring the effect on animals in different situations and environments from an animal's point of view, ethics is about how humans should treat animals, law, which is about how humans should treat animals.

Swacita stated that animal welfare is basically aimed at providing attention to the comfort, pleasure and health of animals. Some matters relating to animal welfare include the process of slaughtering animals which starts with catching, transporting animals using trucks to put them in holding pens,

¹ Boy, Three. "Perlindungan Hukum Terhadap Tindak Pidana Penganiayaan Hewan Peliharaan Menurut Perspektif Hukum Pidana di Indonesia." *Jurnal Hukum Adigama* 4, No. 2 (2021): 3768-88.

² Pallotta, Nicole. "Origin of adult animal rights lifestyle in childhood responsiveness to animal suffering." *Society & Animals* 16, no. 2 (2008): 149-170.

³ Kania, Delila, Deni Zein Tarsidi, Darda Abdullah Sjam, and Zakki Abdillah Sjam. "Pentingnya Pengetahuan Perlindungan Hukum Terhadap Hak Asasi Hewan Peliharaan Bagi Warga Negara Indonesia." *Pro Patria: Jurnal Pendidikan, Kewarganegaraan, Hukum, Sosial, dan Politik* 6, No. 1 (2023): 57-66.

escorting animals from their pens to the slaughterhouse, laying them down animals, the process of slaughtering and determining the death of animals. The advantages of paying attention to animal welfare are providing convenience in the process of handling animals, minimizing the occurrence of accidents in animals and butchers, obtaining quality meat that is safe, healthy, intact and halal, does not reduce nutritional content and does not endanger the health of the people who consume it.⁴

Ignoring animal welfare, both livestock and slaughter animals will lead to fear, stress and pain in animals during the process of slaughtering, transporting, marketing and supplying poor feed and water. North Sulawesi is one of the regions in Indonesia that has received attention related to the consumption of meat, especially dog meat. This animal problem is not just a matter of consumption, but a way of killing dogs by beating and burning them, and that is considered sadistic and uncivilized.

Also, health issues are a matter of concern related to the dog trade in North Sulawesi. Dog consumption and exposure to diseased dog blood can directly infect humans. In general, the act of processing animals such as dogs at extreme market Tomohon is considered by activists and animal lovers as a sadistic act. The cruelest thing was shown when the dogs were bludgeoned to death and then burned. The dogs were lined up in front of the seller's stalls. Representative of the European Union Parliament from Germany, Sabastian Margenfeld in a meeting with the Government asked the city government for confirmation regarding the sadistic butchery of dogs and cats in Tomohon market. The European Union Parliament considered that the butchery was too sadistic to do.⁵

For the people of North Sulawesi Province that consuming dog meat by killing dogs and hitting is a habit that has been practiced for a long time so that it has become commonplace for society, but when viewed from the aspect of animal welfare and human health, the method of consuming and killing dogs in this area can cause problems for human health so that it is necessary to have a regulation regarding procedures for treating animals such as dogs so that they can implement animal welfare and pay attention to environmental and human health.

This study aims to find out how the concept of animal welfare and legal protection is in the laws and regulations in Indonesia. The state of art is to conduct research to follow up on various conclusions from previous studies which generally found that there were juridical, social and cultural obstacles

⁴Arianto, 2010. *Penggemukan Sapi Potong Secara Cepat*. First Edition. Penebar Swadaya, Jakarta. p. 23

⁵ CNN Indonesia. "Pasar Tomohon Resmi Larang Perdagangan Daging Anjing dan Kucing" Source: <https://www.cnnindonesia.com/nasional/20230721203112-20-976328/pasar-tomohon-resmi-larang-perdagangan-daging-anjing-dan-kucing>. accessed on 21 July 2023

in the implementation of animal protection in North Sulawesi Province where this protection was in conflict with community habits that had been going on for a long time and accepted in everyday life by society.

This research uses a descriptive method is a method that examines the status of human groups, an object and a condition, a system of thought or an event in the present. So, the type of research is socio-juridical. It was carried out in North Sulawesi Province with the practice of slaughtering animals which was considered sadistic and received international criticism. To analyze the data obtained in this research, it is then processed and analyzed qualitatively. This analysis was carried out using a theoretical basis as an analytical tool to explain the phenomena as focus of this research.

B. Discussion

1. Assessing Animal Welfare and Law Enforcement in Animal Protection

Animals are one of God's creatures that need welfare and even though understanding animal welfare is a difficult thing because it requires separate measurements or parameters and the reality so far has shown different parameters put forward by experts.⁶ Duncan stated that the different parameters of experts in assessing animal welfare is a challenge in itself because there are many points of view.⁷ Duncan provides indicators of animal welfare from the physical performance of the animal's body.

In this regard, animal welfare is associated with the condition of the body and the physical environment where if an animal can produce well, it is said that the animal is prosperous.⁸ This concept has been developed through research by linking animal welfare with indicators that are more related to physical aspects, such as physiological conditions to determine animal responses to environmental changes. However, the use of physiological parameter measurement results is more difficult to interpret because the implications can be both positive and negative. Like the heart rate, it can increase due to positive things due to the presence of female animals or negative due to predators.⁹

The development of animal welfare is an answer to the occurrence of wildlife crime and is generally considered a form of crime in which flora and

⁶ Kerr, Andrew Jensen. "The trans-pacific partnership and the construction of a syncretic animal welfare norm." *Duke Envtl. L. & Pol'y F.* 27 (2016): 155.

⁷ Fraser, David, and Ian Duncan. "'Pleasures', 'pains' and animal welfare: toward a natural history of affect." *Animal welfare* 7, no. 4 (1998): 383-396.

⁸ Safitri, Myrna Asnawati, and Firman Firman. "Animal Welfare and Covid-19 in Indonesia: A Neglected Legal Issue." *Hasanuddin Law Review* 7, No. 1 (2021): 1-11.

⁹ Duncan, Ian. 1996. "Animal welfare defined in terms of feelings". *Acta Agriculturae Scandinavica. Section A. Animal Science. Supplementum*, Vol. 27 (1996): 29-35.

fauna become victims because they are taken or harvested without applicable procedures or laws. This is a major threat to biodiversity. Animal welfare is an effort that provides suitable environmental conditions for animals so that there is an increase in the psychology and physiology of animals. This activity is carried out to show human concern for animals by increasing the quality of life for animals that are confined in cages or bound without freedom of movement. The target of animal welfare is all animals that interact with humans where human intervention greatly affects the survival of animals, animals in confinement (conservation, zoos, laboratories), livestock and slaughter animals, working animals and pets.

Furthermore, Fraser,¹⁰ provides a classification of animal welfare in 5 (five) categories, namely: a) free from hunger and thirst; b) free from discomfort; c) free from pain, injury and disease; d) free from fear, and e) free to express natural behavior. Animal welfare is a term to describe the level of quality of life of animals at a certain time. Animal welfare is a scientific discipline because it is material for discussion about actions that must be taken by humans in relation to animal welfare, but this is more of an ethical issue and not science application. However, he agreed that any application of science should contain a correct ethical justification. This argument is in line with the statement put forward by David Fraser that animal welfare can be studied scientifically, but these studies will be heavily influenced by the basic values or ideas of researchers regarding what is considered important in assessing the quality of life of animals, and these basic values are heavily influenced by the culture in which the scientist lives and exists. It is these differences in ethical values which then trigger a debate about animal welfare among scientists around the world.

Some scientists emphasize their studies on the health and physical condition of animals, such as free from disease and injury. Meanwhile, other scientists emphasize their studies on the affective status of animals, such as pain, stress, and excitement. Other scientists argue that the ability of animals to live naturally, behave or act freely and naturally is the most important factor for animal welfare. In one scientific study the three criteria for the groups above could overlap, but on the other hand these groups had clear enough criteria to separate them as an exclusive group.

Definition of animal welfare as status of individual animals related to their ability to cope with environmental conditions. Being able to cope with environmental conditions means that the animal is mentally and physically stable in its environment. Therefore, animal welfare individually can be measured scientifically and have a range of quality welfare that varies from very good to very poor. Animal welfare individually is worst when animals

¹⁰ Fraser, David. 2008. *Understanding Animal Welfare*. Wiley-Blackwell: USA. p. 43
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have difficulty or fail to adapt to their environment.¹¹ An internationally recognized method for evaluating animal welfare is *The Five Freedoms* as follows:¹²

- a) *Freedom from Hunger and Thirst*, provide sufficient food and drink to ensure the animal is in good health
- b) *Freedom from Discomfort*, provide suitable environmental conditions for animals and a pleasant atmosphere
- c) *Freedom from Pain, Injury and Disease*, prevent disease and guarantee medical treatment by a veterinarian if the animal is sick
- d) *Freedom to Express Natural Behavior*, provide an adequate environment that allows animals to move naturally and socialize with other animals in a population
- e) *Freedom from Fear and Distress*, treat animals well to avoid stress and fear

Law enforcement is an effort made to make law, both in a narrow formal sense and in a broad material sense as a guideline for behavior in every legal action, both by the legal subjects concerned and by law enforcement officials who are officially given the task and authority by laws to guarantee the functioning of legal norms that apply in social and state life. The main purpose of law enforcement is to create a sense of justice, legal certainty and benefit in society. In this process, it must reflect aspects of legal certainty and order.

The problem of law enforcement in various criminal acts if it is not implemented properly will have a negative impact.¹³ The impact of this crime cannot only be measured from the problem of economic losses, but also involves issues of social stability, politics, security and defense of a nation and developed or developing countries with a decline in economic life and the moral mentality of the community or nation. Overcoming this crime requires a more precise understanding and hard work from law enforcement officials such as the Police, Prosecutors and Judiciary. In revealing the types of crimes that caught the attention of criminologists in the early 20th century.¹⁴

The existence of these regulations is intended as an effort to protect animals, but there are still many people who use them for their own economic interests, so the existence of these regulations does not have much impact on animal welfare, because in reality, humans often do not pay attention to the

¹¹ Hagen K, van den Bos, de Cock Buning T. Editorial: Concepts of Animal Welfare. *Acta Biotheor*, 59 (2011): 93-103

¹² Hewson, Caroline J. "What is animal welfare? Common definitions and their practical consequences." *The Canadian Veterinary Journal* 44, no. 6 (2003): 496.

¹³ Putra, Muhammad Amin. Perkembangan Muatan HAM Dalam Konstitusi di Indonesia." *Fiat Justisia: Jurnal Ilmu Hukum* 9, No. 2 (2015): 199-216.

¹⁴ R. Sudarto. *Hukum Pidana dan Perkembangan Masyarakat*. Sinar Baru: Bandung, 1983. p. 93

welfare of these animals. Just taking care of them is included in the torture of animals, because they have to live in a place that is not their natural habitat. Phenomena like this are exacerbated by employing forced animals to perform attractions. Animals that are often coerced into performing acrobatic stunts include elephants, lions, tigers, dolphins and seals. One of the animals that has caught a lot of attention from the public is the dolphin. The species that is often used in shows is *Tursiops Aduncus* or what is known as bottlenose dolphin. Even though dolphin shows like this are not very educational, the educational and conservation reasons stated by the related corporations are just justification for the mere exploitation of dolphins for commercial purposes.

Animal mistreatment must be strictly dealt with by law enforcers, because if the perpetrators of animal mistreatment are allowed to roam freely, it will have a negative impact on humans. There are several cases where a person who is used to committing crimes in the form of abusing and killing animals, mentally the perpetrator can do the same thing to fellow human beings. A person who commits a crime against animals must be dealt with strictly by law enforcers by imposing criminal sanctions in accordance with the applicable laws and regulations. Punishment in the form of criminal sanctions, aims to provide special suffering to the perpetrators, and is deliberately given by the state to perpetrators who violate the law. Nevertheless, punishment is also a moral education for perpetrators who have committed crimes with the intention of not repeating their actions.¹⁵

2. Comparison of Legal Substance on Animal Protection in Indonesia: Concepts and Measurement

Animal protection is an effort to give animals the right to life to be free from torture, abuse, fear, anxiety and stress, freedom from hunger and thirst. This has been declared by UNESCO since 1978 in Paris, France which consists of 14 articles with the affirmation that no animal deserves to receive mistreatment, exploited for entertainment (show), and animal rights must also be protected by law, like human rights and besides that the UK's Livestock Animal Welfare Initiation Committee mentions the benchmarks for animal welfare, namely animal freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury or disease, freedom of expression naturally and freedom from fear and suffering.

In Indonesia, arrangements regarding animal welfare can be found in Act No. 18 of 2009 concerning Animal Husbandry and Animal Health where in article 67 it is emphasized that animal welfare is the responsibility of the government, local government and the community. This law was amended

¹⁵ Irmawanti, Noveria Devy, and Barda Nawawi Arief. "Urgensi tujuan dan pedoman pemidanaan dalam rangka pembaharuan sistem pemidanaan hukum pidana." *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 217-227.

through Act No. 14 of 2014 where in article 66 it is emphasized that everyone is prohibited from abusing animals and has the obligation to report acts of violence against animals to law enforcement officials. Article 302 of the Criminal Code regulates punishment for perpetrators of abuse/mistreatment. Minor violence, such as causing harm to health, and not feeding animals are subject to a maximum sentence of three months or a fine of Rp. 4.500. Meanwhile, violence that results in illness for more than a week, serious injuries, disability, and death can be punished with a maximum imprisonment of nine months and a fine of Rp.300.

In reality, the existence of the laws and regulations above does not provide effectiveness in efforts to protect animals in Indonesia.¹⁶ Substantially, the criminal law code has provided arrangements regarding animal protection in article 302, however, it still has weaknesses because animal abuse is not given a clear classification, heavy and light abuse are given the same sanction, namely a maximum of 9 months and not even regulated explicitly about the persecution that led to death. Handling cat case Tayo in Medan, the perpetrator was sentenced to 2.5 years, and this is still not charged with Article 302 but uses Article 363, namely theft. This reality shows that theft of animals has a higher penalty than mistreatment that causes death of animals.

At present, animal protection is spread across several laws and regulations, which can create difficulties in law enforcement and are prone to disharmony in its application and multiple interpretations from law enforcement officials so that there is a need for one regulation in the form of a law as well as a *lex specialist* from the Criminal Code which is a reference for all law enforcement in the context of animal protection. The law provides clear arrangements regarding forms of legal protection and forms of exceptions to such legal protection so as to create harmonization between legal protection and the needs of society, bearing in mind that animals are one of the things that humans need for their survival.¹⁷ Hence, there is a need to regulate procedures for treating them. animals both in their position as living beings and in their position as objects needed by humans in human life.

Act No. 14 of 2014 also clearly regulates the responsibility for animal protection, namely the government, regional government and the community so that apart from being in the form of a law, it is necessary to have legal substance in the area established in the framework of animal protection by adapting to local wisdom in their respective areas. Currently there are 15

¹⁶ Carder, Gemma, H. Proctor, J. Schmidt-Burbach, and N. D'cruze. "The animal welfare implications of civet coffee tourism in Bali." *Animal Welfare* 25, no. 2 (2016): 199-205.

¹⁷ Hastreiter, Marie T. "Animal welfare standards and Australia's live exports industry to Indonesia: Creating an opportunity out of a crisis." *Wash. U. Global Stud. L. Rev.* 12 (2013): 181.

regions that have issued Circulars regarding the ban on trade and consumption of dog meat, including Sukoharjo regency prohibiting the consumption of dog meat with Regional Regulation No. 5 of 2020 concerning the Development and Empowerment of Street Vendors, Salatiga City government issued Circular Letter 510/345/ 414 concerning the Prohibition of Dog Meat Distribution, Medan City government prohibits the commercial sale of dog meat in Circular Letter No. 440/4676 of 2023.

In the aspect of legal structure, what is meant here is law enforcement officials. Law enforcement officers' knowledge and understanding of animal protection is not optimal at all. This can be seen in the case of dog maltreatment in Tangerang which was previously described where the dog owner's report was not accepted by the police because he did not have proof of ownership of the dog. This shows that animal protection in the view of researchers is related to the protection of the owner's rights, not the rights of the animal because to follow up on reports, they still ask for evidence as the owner of the animal.

Law enforcement officials are pioneer of law enforcement, including animal protection in Indonesia. Issuance of legal substance aimed at protecting animals in Indonesia that has been implemented so far has been ineffective in large part due to law enforcement officials' understanding of animal protection is still very minimal. Refusal to report animal mistreatment on the grounds that the complainant has no evidence of ownership of the animal indicates a lack of understanding by law enforcement officials.¹⁸ For this reason, it is necessary to carry out intense outreach activities at every law enforcement institution in cooperation with agencies related to animal protection in order to obtain a comprehensive understanding of animal protection in Indonesia, which is one of the responsibilities of law enforcement. One effort that can be done is to form civil servant investigators who specifically handle cases related to crimes against animals.

For comparison in Philippines, the Philippine's Animal Welfare Act 1998 stipulates that it is mandatory for every person or legal entity that trades animals to have a Livestock Industry Bureau certificate. The Livestock Industry Bureau supervises and regulates any business involving animals. Furthermore, an Animal Welfare Committee was also established which has the task of enforcing the law.¹⁹

The Chinese government in practice enforces the General Principles of Animal Welfare. In addition, it is encouraged to enact a stand-alone animal welfare law, which recognizes the feelings of animals and sets detailed welfare

¹⁸ Fathurahman, Iqbal, and I. Maryam Jamilah. "Animal welfare assessment system for sustainable cattle production in Indonesia." *KnE Life Sciences* (2019): 189-199.

¹⁹ David Favre and Charles Hall. Comparative National Animal Welfare Laws. Michigan State University Collage. *Animal Legal and Historical Center, East Lansing*, 2004. p. 54.

requirements for various animal species, in line with the international standard OIE (*the office international des epizooties*) which is the reference standard for animal protection, which was founded in 1924 in France and already has members in a number of 167 countries on all continents. The government is also encouraged to abolish the licensing system that allows captive breeding, commercial trade and consumption of wild animals or products derived from wild animals. In 2020, China has a animal welfare law.²⁰

Animals in the view of the Indonesian people in general are still categorized as same as other objects even though animals have lives, but the factor of tradition in society is that they still place animals without regard to the rights of these animals.²¹ The community plays a very large role in protecting animals because they are the main legal subjects and also perpetrators of animal abuse. Public awareness and concern today still underestimate animals so that human treatment of animals is solely for their own benefit. This has been going on for a long time and even in certain cultures it has become a tradition that is recognized and preserved by the community.

Nowadays, people's understanding of animals is one of the objects whose task is to meet human needs so that animals are considered not to have the right to their own life, even now animals are used as one of the supporters of the human lifestyle. Therefore, it is necessary to socialize the community both by the central and regional governments regarding the protection of animals along with sanctions when causing pain to animals. The implementation of this socialization is performed by involving all elements of society so that there are no conflicts related to the existence of certain cultures that make animals as objects in the preservation of this culture.

C. Conclusion

In Indonesia, efforts to protect animals in order to realize animal welfare can be carried out by establishing laws and regulations that specifically regulate animal protection so that disharmony does not occur with the substance of the law, multiple interpretations between law enforcement officials in applying the law, increasing the knowledge and understanding of law enforcement officials and outreach to the community regarding animal protection. In Indonesia, factors that cause weaknesses in animal protection are sanctions applied, the lack of knowledge and understanding of law

²⁰ Leyuan Ma. 2020. Hong Long Will China's Animal Cruelty Laws Have To Wait? *Legal Journal Princeton*. April 29, 2022. Available online at: <https://legaljournal.princeton.edu/how-long-will-chinas-animal-cruelty-laws-have-to-wait%E2%82%AC%91BC/>

²¹ Wahyuwardani, Sutiastuti, S. M. Noor, and B. Bakrie. "Animal Welfare Ethics in Research and Testing: Implementation and its Barrier." *WARTAZOA. Indonesian Bulletin of Animal and Veterinary Sciences* 30, no. 4 (2020): 211-220.

enforcement officials because they still place animals as objects that have no rights to themselves and the culture of society that has been maintained for generations which places animals only to fulfill human needs.

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