

Corporal punishment of children in Indonesia: Briefing for the Universal Periodic Review, 41st session, Oct./Nov. 2022



From the Global Partnership to End Violence Against Children, March 2022

This submission provides an update on the legality of corporal punishment of children in Indonesia since its review in the third cycle UPR in 2017. Corporal punishment prohibition is still to be fully achieved in the home.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Indonesia, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 2nd and 3rd cycle UPR of Indonesia, respectively in 2012 and 2017.

We hope the Working Group will note with concern the legality of corporal punishment of children in Indonesia. We hope states will raise the issue during the review this year and make a specific recommendation that Indonesia enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Indonesia in the 3rd cycle UPR (2017) and progress since

- 1.1 Indonesia was reviewed in the third cycle of the Universal Periodic Review in 2017 (session 27). Recommendations to prohibit corporal punishment in all settings were made and accepted by the Government.¹
- 1.2 A National Strategy on the Elimination of Violence Against Children 2016-2020 adopted in 2015 highlighted prohibition of physical punishment as “an international obligation

¹ 5 May 2017, A/HRC/WG.6/27/L.5, Draft report of the working group, unedited version, paras. 5(126), 5(129) and 5(137)

not yet translated into national law, and a challenge in relation to rules of law that needs to be overcome". However, since the review, no progress was made to enact a legislation to explicitly prohibit corporal punishment of children in all settings.

- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Indonesia. We hope states will raise the issue during the review this year and make a specific recommendation that Indonesia intensify its efforts to enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

2 Legality of corporal punishment in Indonesia

Summary of current law and opportunities for achieving prohibition

Corporal punishment of children in Indonesia is lawful in the home, alternative care, day care, schools and as a sentence for crime.

There appears to be no defence of "reasonable chastisement" or similar enshrined in legislation (information unconfirmed) but provisions against violence and abuse in the Penal Code, the Law on Child Protection, the Law on Human Rights, the Law on Domestic Violence and the Constitution are not interpreted as prohibiting all corporal punishment. The near universal social acceptance of corporal punishment in childrearing necessitates clarity in law that no level of corporal punishment can be considered "reasonable" and prohibition of all corporal punishment and other cruel or degrading forms of punishment, in the home and all other settings where adults have authority over children.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. The Law on Child Protection 2014 (amending the 2002 Child Protection Law) states that parents and other carers must protect the child (defined as persons under 18, art. 1(1)) from "harsh treatment violence and abuse" (art. 13), that every child shall be entitled to protection from "abuse, torture or inhuman punishment" (art. 16) and that every person who commits or threatens violence against a child shall be punished (art. 80); the Law on Human Rights 1999 states that children – have the right "to protection by parents, family, society, and state" (art. 52), to "protection before the law against all forms of physical and mental violence, neglect, mistreatment and sexual assault while under the care of his parents, guardian, or any other party responsible for his care" (art. 58), and "not to be the object of oppression, torture, or inhuman legal punishment" (art. 66(1)). But these provisions and provisions against violence and ill-treatment in the Penal Code 1918, the Law on Child Welfare 1979, the Law on Domestic Violence 2004, the Law on Youth 2009 and the Constitution 1945 are not interpreted as prohibiting all corporal punishment in childrearing. A draft new Criminal Code has long been under discussion: in March 2013 the Ministry of Justice and Human Rights reported that the revised Code had been submitted to the lawmakers.² It appears no new Code has yet been adopted.

² Reported in *Jakarta Globe*, 7 March 2013

- 2.2 National Strategy was adopted by the Ministry for Women’s Empowerment and Child Protection in 2015. The strategy identifies corporal punishment as a “dangerous practice” and highlights prohibition of physical punishment as an international obligation not yet translated into national law, and a challenge in relation to rules of law that needs to be overcome. Following the adoption of the National Strategy on the Elimination of Violence Against Children 2016-2020, Indonesia became a pathfinder country with the Global Partnership to End Violence Against Children, which was established in 2016. This commits the Government to three to five years of accelerated action towards the achievement of Target 16.2 of the Sustainable Development Goals. The roadmap on the implementation of the National Strategy has not yet been adopted but a roundtable event on the issue was held in May 2017.
- 2.3 **Alternative care settings (lawful):** There is no explicit prohibition of corporal punishment in alternative care settings, where it is lawful as for parents (see under “Home”). National Standards of Care for Child Welfare Institutions, adopted under Ministry of Social Affairs regulation 30/HUK/2011, state that corporal punishment should not be used but there is no prohibition in law. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence (see under “Home”).
- 2.4 **Day care (lawful):** There is no explicit prohibition of corporal punishment in day care: it is lawful as for parents. Children have limited protection under the Ministerial Regulation No. 6/2011 on Protection of Women and Child Victims of Violence (see under “Home”).
- 2.5 **Schools (lawful):** Corporal punishment is lawful in schools. The Law on Child Protection 2014 protects children in schools from “violence and abuse from teachers, school managers, and school mates both in the school and other educational institutions” (art. 54); Ministerial Regulation No. 82/2015 on the Prevention and Sanction of Violence in Schools also provides protection from violence but neither text explicitly prohibits corporal punishment. A group of teachers has been reported to pursue a judicial review procedure of the Law on Child Protection 2014 in order to clarify the interpretation of the term “violence and abuse”³ – as of July 2017 the Constitutional Court does not appear to have a decision yet.
- 2.6 The Act on the National Education System 2003 is silent on the issue of corporal punishment. We have been unable to examine the text of the Teachers and Lecturers Law 2015 but there are no indications that it addresses corporal punishment.
- 2.7 **Penal institutions (unlawful):** Corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but it is not explicitly prohibited. The Law on Correctional Facilities 1995 provides for respect for human dignity (art. 5) and corporal punishment is not among permitted disciplinary measures (art. 47). The Law on Human Rights states that children deprived of their liberty have the right to “humane treatment, as befits the personal development needs of his age” (art. 66); the protections from violence and cruel treatment in the Law on the Juvenile Justice System 2012, the Constitution 1945 and the Law on Child Protection 2014 also apply (see under “Home”). Protection from cruel and degrading treatment is provided for in the Regulations of the Minister of Justice No. M.04-UM.01.06 1983 on Procedures for Placement of Prisoners and the Discipline of Prisoners in Correctional

³ See <http://indonesiaexpat.biz/news/corporal-punishment-students/>, accessed 24 March 2022

Facilities and No. M.04-UM.01.06 1983 on Detention and Care of Detainees, and Order of State Detention Center.

- 2.8 **Sentence for crime (lawful):** Corporal punishment is unlawful as a sentence for crime under provisions protecting children from “inhuman punishment” in the Law on Human Rights 1999 (art. 66) and the Child Protection Law 2014 (art. 16). The Law on the Juvenile Justice System 2012 states that children in conflict with the law have a right to “be treated humanely and in accordance with the needs of their age” and to “freedom from torture and other cruel, inhuman or degrading punishment or treatment” (art. 3, unofficial translation) and article 71(4) states that “the penalties imposed on children must not violate the dignity of the child”. However, we have yet to ascertain the applicability of these laws in relation to Shari’a law in Aceh and other areas.
- 2.9 Shari’a law has been implemented in the province of Aceh and other areas. Law No. 11/2006 on the Government of Aceh authorises that Government to establish bylaws, including criminal law (Qanun Jinayah), criminal procedure (Qanun Jinayah on Procedural Law) and the Shari’a Court (Mahkamah Syariah): these should be consistent with national law. In 2009, the Aceh Legislative Council endorsed the Aceh Criminal Code (Qanun Hukum Jinayat) – a set of bylaws which would replace part of the Indonesian Criminal Code with Islamic provisions applicable to Muslims, including punishment for adultery and premarital or homosexual sex with caning or stoning to death. In September 2014, the Aceh provincial parliament approved the Principles of the Islamic Bylaw and the Islamic criminal code (Qanun Jinayah) which extend Sharia law to non-Muslims and provide for judicial corporal punishment.⁴

3 Recommendations by human rights treaty bodies

- 3.1 **CRC:** The Committee on the Rights of the Child has expressed concern at corporal punishment of children in Indonesia and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s second report in 2004,⁵ and in the state party’s third-fourth report in 2014.⁶
- 3.2 **CAT:** In its 2008 concluding observations on the state party’s second report, the Committee Against Torture expressed concern at corporal punishment of children and recommended the Government abolish all corporal punishment.⁷
- 3.3 **HRC:** The Human Rights Committee expressed concern at the use of corporal punishment in the penal system and recommended that the Government put an end to it, in its concluding observations on the state party’s initial report in 2013.⁸

⁴ 2 October 2014, Human Rights Watch press release, <http://www.hrw.org/news/2014/10/02/indonesia-aceh-s-new-islamic-laws-violate-rights>, accessed 24 March 2022

⁵ 26 February 2004, CRC/C/15/Add.223, Concluding observations on second report, paras. 43, 44 and 61

⁶ 10 July 2014, CRC/C/IDN/CO/3-4, Concluding observations on third/fourth report, paras. 7, 8 and 60

⁷ 2 July 2008, CAT/C/IDN/CO/2, Concluding observations on second report, paras. 15 and 17

⁸ 21 August 2013, CCPR/C/IND/CO/1, Concluding observations on initial report, para. 15

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