

SCHOOL CORPORAL PUNISHMENT AGAINST CHILDREN IN INDONESIA: SHOULD THE TEACHER BE PENALIZED?

Rusmilawati Windari
Supanto
Widodo Tresno Novianto

ABSTRACT

Under Article 19 (1), 28 (2) and 37 the Convention on the Rights of the Child, school corporal punishment against children is regarded as a breach of children's rights and followed with legal prohibition in most of all the state parties. In Indonesia, this prohibition undoubtedly has evoked excessive response from society and may lead to a dilemmatic problem in law enforcement. The two most recent cases show that teachers can be easily criminalized and penalized just because administering corporal punishment toward misbehaved or disobedient pupils, and their acts, whatever the good reason inside, remains to be considered as physical violence or abuse under Indonesian legislation. This paper provides a qualitative analysis of Indonesian legislation relating to school corporal punishment against children and the feasibility of penalization against the teacher in the lens of criminal law principles, namely in perspective of ultimum remedium and harm principles. It discusses a single issue of whether or not the teacher should be penalized for administering corporal punishment toward misbehaved pupils in Indonesia. This paper urges both legislators and legal enforcers to re-examine as well as improve the quality of legislation in respect to crime prevention against school corporal punishment.

Keywords: School Corporal Punishment, Penalization, Child's Right, Teacher

INTRODUCTION

As commonly known, the current international perspective concerning corporal punishment has significantly shifted in that its use no longer accepted as an effective method in child rearing and internationally regarded as a breach of children's rights. If in the past, corporal punishment was mostly seen as a positive means that was popularly used to educate, correct misbehavior or simply gain a child's obedience. But in recent years, since a multitude of studies concludes that the use of corporal punishment potentially resulting in some harmful impacts on children, the punishment is considered as a part of violence with negative nuances and a child's right violation, instead. Thus, the prohibition of it in all settings seems to be an indispensable need.

By basing on Article 19 of the Convention on the Rights of the Child (hereinafter called with the Convention) as well as General Comment No 8 (2006), the committee on the rights of the Child encourages all States Parties to reform their respective national legislation notably in criminal law. Broadly speaking, there are two issues of prohibition that should be clearly enacted in the criminal law according to the General Comment: firstly, criminal law provision on assault should also cover all kinds of corporal punishment as a criminal act. Secondly, the abolition of traditional defense 'reasonable chastisement' or 'domestic authority' which is used to justify a particular corporal punishment with mild impact.

The challenge faced concerning prohibition of corporal punishment currently is rather on to what extent the feasibility of criminal law in tackling corporal punishment of children cases. Regardless, the concept of corporal punishment is quite different from violence or abuse in general. It occupies a grey area of right or wrong and involves two paradoxical interest of children and caregivers (parents, teacher, and others), by which all parties are entitled to equal legal protection. Meanwhile, criminal law is well-known as the harsh law which involves censure and imposes stigmatic punishment against the offenders (C.M.V. Clarkson, 2005: 253). Therefore, not all acts can be criminalized unless meeting the requirement of harmful wrongdoing. Likewise, not all offenders can be convicted without fulfilling the requirements of criminal liability and conformity with the objectives and principles of sentencing

As a country that has not yet specifically regulated corporal punishment in its criminal law, Indonesia applies some relevant criminal provisions to all cases of corporal punishment. However, the application of the provisions brought about a problem of law enforcement which tends to be unfairly deemed by some parties. For example, a hair cutting of Aop Saopuddin (2012), a pinching case of Samhudi in Sidoarjo (2016), and a beating case of Dharmawati (2017) which are presumed to have violated provisions of Penal Code and Child Protection Law No. 35 of 2014. The offender inevitably underwent a fairly long and exhausting legal process, and eventually was sentenced with imprisonment and probation.

The application of the ciminal provisions against the case above successfully attracted public reactions, notably from the teachers who are members of the Indonesian Teachers Association. In their opinion, the law is inappropriate, unfair and places the teachers to be easily criminalized as well as penalized just because of their conduct in educating pupils may be categorized as violence as prescribed widely in regulation. Obviously, the existence of the provisions has made them feel uneasy and legally unprotected in performing their function as educators. Whereas, according to Law of Teacher No. 14 of 2005, they should have sufficiently been protected by law.

Taking into account the description of introduction above, we raise a single issue, namely: should the teacher be penalized for administering school corporal punishment against misbehaved children?. This paper is a combination of normative, conceptual and case studies, which is supported by a little empirical data taken from interviewing with the Supreme Court Judge. All data is then analysed qualitatively in order to obtain profound insights and comprehension on the feasibility of criminal law in tackling cases of corporal punishment against children in Indonesia. In addition, it aims at encouraging readers to look at the issue of corporal punishment in a balanced way, as well as urging both legislators and legal enforcers to improve the quality of legislation in respect to crime prevention against school corporal punishment.

THEORETICAL FRAMEWORK OF ON CORPORAL PUNISHMENT

By definition, corporal punishment is any punishment in which physical force is used and intended to cause the same degree of pain or discomfort, however light (General Comment No.8 (2006)). It may occur in all situations, such as at home, school, other care institutions. According to Avi I. Mints, parents and teachers can easily administer pain to children in various ways, one of which is through corporal punishment, ranging from mild to severe degrees (A.I. Mints, 2017: 344). The expected goal is to get child compliance and discipline, repair child misbehavior, and instill good social values.

Undoubtedly, the prohibition of corporal punishment in all settings nowadays seems to be an indispensable need. as many as 56 countries in 2018 have legally banned corporal punishment against children in all settings (www.endcorporalpunishment.com, 2018). while more than 56 other countries just stated their commitment. Sweden (1979), Netherlands (2007), New Zealand (2007), and Malta (2014) are some examples of countries that have fully banned corporal punishment in their legislation. Of the four countries, three countries criminally classify it as an assault, while only Malta consider it as corporal punishment. In Asia, Thailand and Japan also legally prohibit corporal punishment, but it is limited to severe and unreasonable punishment.

In the academic debates, the study of corporal punishment has been polarized regarding the prohibition of corporal punishment. The disagreed scholars, such as Henry C. Kempe (1962), Anna Smith (2006), Elizabeth T. Gershoff and Susan Bitensky (2007), Murray Straus (2010), Michael Freeman and Bernadette J. Saunders (2014) firmly argue that corporal punishment is a breach of child's right. It potentially becomes cruel and breeds a series of negative impacts, so that the legal prohibition is the only way to protect children from other more severe violence. Conversely, David Benatar (1998), Diana Baumrind, Robert E. Lazerere, and Philip A. Cowan (2002), Doarianne L. Coleman (2010), and Alison D. Renteln (2010) agree that corporal punishment may not be administered to children, but only severe, frequent and unreasonable punishment that shall be criminally banned.

We argue the issue of corporal punishment is no longer about the prohibition, but as to whether, or not criminal law is the appropriate measure to prohibit it. Indeed, most of the scholars principally agree that corporal punishment is a kind of violence. However, it is not always equal to violence in term of common crime. In this context, Johan V. Galtung (1990) categorizes it as violence with positive influence (Eko Prasetyo, 2001: 182), while Black (1983) qualifies it as moralistic violence because it is geared to control one's behavior (Margareth A. Zahn, 2004: 6-7). Taking into account criminal law is a stigmatized and cruel law, the use of criminal law in dealing with social problem shall be prudent and wise. G.E. Mulders highlighted that criminal law is a punitive law that exists in the most out circle of law. It does not offer protection of the whole legal interest, but only some legal violations (Jan Rummelink, 2003:7). Therefore, the use of criminal law shall be placed as the last resort in accordance with a principle of *ultimum remedium*.

Herbert L. Packer, also argues that in particular condition, criminal law may become both prime guarantor and prime threatener. It becomes a prime guarantor if it is carried out prudently and humanely. On the contrary, it becomes a prime threatener if it is imposed carelessly, indiscriminately, and coercively (H.L. Packer, 1968:366). Besides, to feasibly penalize the perpetrator is not an easy task. According to a theory of harm, the only good reason to subject a person to criminal punishment is to prevent them from wrongfully causing harm to others. (Joel Feinberg, 1984: 26).

By definition, harm is physical or mental damage or injury: something that causes someone or something to be hurt, broken, made less valuable, or successful, etc. (The Merriam Webster Dictionary). The losses and harm have a huge spectrum. Not all losses and harm shall be settled by using criminal law. According to *de minimis* principle, the law does not care about a trivial matter. It means that a trivial act cannot justify a state infringement of the right not to be punished (Douglas Husak, 2008:161). In other words, only a deed resulted in non-trivial harm and substantial risk can be accounted to penalize a perpetrator.

LEGAL STATUS OF SCHOOL CORPORAL PUNISHMENT IN INDONESIA

In overcoming school corporal punishment, to date, Indonesia has not provided the specific rules governing the issue. Within Indonesian Legislation, child protection from all kinds of violence actually has been ruled as a child right according to Article 28 B paragraph (2) of National Constitution of 1945 and Article Article 58 paragraph (1) of Human Rights Act No.39 of 1999. In addition, Article 54 of Child Protection Act of 2014 also expressly regulates that children are protected from physical, psychological violence, sexual crimes and other crimes committed by teachers, school managers, school mates, and others, both in School or other similar educational institutions. So does the Ministerial Regulation No. 82 Of 2015 on the Prevention and Sanction of Violence in School. However, all regulations are not followed by penal provisions that clearly enough ban the use of school corporal punishment.

Nevertheless, considering that corporal punishment is presumably a derivative of violence, and includes unlimited actions, the use of school corporal punishment can be subject to criminal provisions on abuse and violence that are scattered in several applicable laws, namely: (1) violence in general as stipulated in Article 335 paragraph (1) of Penal Code; (2) deprivation of liberty as stipulated in Article 333 of Penal Code, if the corporal punishment administered constitutes locking children in a certain place, in class or school warehouse for instances, and for a certain period of time; (3) Abuse in general as prescribed in

Article 351-353 of Penal Code; and (4) Violence against Children as prescribed in Article 76 C *juncto* Article 80 of the First Amendment of Child Protection Act No. 35 of 20014. Those provisions have some normative facts as follows:

- a. There is no criminal provision which clearly and specifically regulates school corporal punishment against children;
- b. Both in Penal Code and Child Protection Act No. 35 of 2014, any school corporal punishment whatever its form and degree, is qualified as a crime;
- c. The provisions concerning abuse and violence above only formulate juridical qualification of the criminal acts, without being equipped with their constitutive elements; and
- d. The criminal acts stipulated in the above provisions constitute a general typology of acts, and do not include corporal punishment as a part of the scope of the provisions.

Barda Nawawi argues that the substance of criminal acts plays important role in realizing justice. In his opinion, errors or inaccuracies in the substance of criminal law will have logical consequences on law enforcement issues (Barda N. Arief, 2012: 11). At first glance, the application of the above criminal provisions to cases of corporal punishment seems effective, eventhough the facts show otherwise. They have several weaknesses that potentially hamper the realization of fair law enforcement, as follows:

- a. Broad formulation of violence act and no legal explanation of abuse may lead to a multi-interpretation among legal enforcers and open wide chance of easily qualify all forms of corporal punishment as a violence. It is in line with Jan Rammelink's opinion. In this case, he states that the formulation general typologi of criminal acts without completed with its constitutive element will lead to legal uncertainty and unjust law enforcement.(Jan Rammelink, 2003: 87).
- b. The norms of criminal law are potentially over worked. The current legislations do not give an exception for mild corporal punishment with minor impacts, so that it seems to ignore the principle of *ultimum remedium*.

SAMPLE OF COURT RULINGS ON SCHOOL CORPORAL PUNISHMENT

In the last five years, there have been many cases of school corporal punishment occured in Indonesia that were brought to court and attracted public attention. Two of them are cases of Aop Saopuddin v. Iwan Himawan (2013), and Dharmawati v. Ayu Ashari (2017).

First, *The hair-cutting case of Aop Saopuddin v. Iwan Himawan*

On March 19, 2012, Aop Saopuddin, a freelance teacher in an Elementary School (SDN Panjalin Kidul V), Majalengka –West Jawa, performed a disciplinary treatment constituting slight cutting – off hair of several long - haired male students based on a Principal's Decree of SDN Panjalin Kidul V No. 423.5/01-SD/2012. Because of his conduct, a parent of his student named Iwan Himawan made a police report on him and filed up this case to the court.

He underwent a fairly long and exhaustive legal process. Both in the District Court of Majalengkan and the appeals Court of Bandung, he was adjudicated and declared legally guilty for committing an unpleasant act in a way of violence under Article 335 (1) of Penal Code. According to Judgment No. 257/Pid.B/2012/-PN.Mjl. and Judgment No. 226/PID/2013/- PT.BDG, he was sentenced with 3 months imprisonment combined with 6 months probation.

Eventhough in the two previous court rulings he was declared guilty, Aop Saopuddin was not desperate to keep seeking justice. Subsequently, he appealed his case to the Supreme Court and his effort apparently was not in vain. According to Judgement No. 1554/K/PID/2013, the judges of Supreme Court eventually cancelled the previous court rulings on him, declared him innocent, and released him from all lawsuits under rationale of teacher protection. A judge of the Supreme Court, Salman Luthan stated that the disciplinary treatment committed by Aop Saopuddin did not constitute a criminal act because it was carried out for a good purpose of disciplining student. In addition, it was already in accordance with his task and obligation as a teacher of student affairs.

Second, *the beating case of Dharmawati v. Ayu Ashari*

In 2017, Dharmawati as a teacher of islamic religion in one of Senior High School in Pare-Pare, South Celebes, was ensued for beating her student, Ayu Ashari with female moslem prayer's outfit (Mukenah) because of being noise at Musholla and abandoning student's obligation of performing Dhuhur's Prayer together. According to Judgement of the District Court of Pare-Pare No. 92/Pid.Sus/2017/PN Pre, dated on July 18, 2017, she was declared legally guilty committing a criminal act of violence against children under Article 76 C *juncto* Article 80 of the Amendment of Child Protection Act No. 35 of 2014. For her deed, She was sentenced with 3 months of imprisonment, and 7 months of probation.

Both cases have triggered a bulk of protest from most of teachers in Indonesia. According to the representative of the Association of Indonesian Teachers, the trial against teachers is unfair and unwise. They argue that there should have been other measures instead of applying criminal law, to settle the issue of school corporal punishment. In their view, teachers should have not carrying out legal process and being penalized just because of educating and disciplining children, moreover, the impact caused is mild and insignificant to students.

IN CRIMINAL LAW PERSPECTIVE: SHOULD TEACHERS BE PENALIZED?

In Indonesia, uniforming public view of corporal punishment is probably an uneasy task. As a multicultural country, people's perspective on the legitimacy of corporal punishment including the appropriate response toward the perpetrator may still be different one to another, even likely more diverse than that western society. As Paul Robinson said that views of what is societally harmful or what is considered injury may different from time to time, and from society to society (Paul H. Robinson, 1994: 284). The differences surely are much affected by many factors inherent in each society, such as religion, values, culture, tradition, level of scientific achievement, as well as ability of society to detect injury.

We exemplify Saopuddin and Dharmawati's cases. Unlike child protection activists and agencies who affirm that corporal punishment is not allowable and support any legal measures to tackle any form of corporal punishment. Salman Luthan, a Supreme Court Judge who adjudicated the case of Saopuddin on level of cassation appeal has distinctive opinion. He argues that the issue of corporal punishment in Indonesia can not be seen from a single or double angles, such as the assessment of child rights, or psychology solely. Instead, it should be considered in a wider context, and resolved by taking into account the Indonesian context as a multicultural country whose majority population are Muslim, and surely have different perspective on human rights as figured out by western community. (Salman Luthan, 2017).

In the context of Indonesia, Luthan contends that corporal punishment which is administered fairly and moderate, moreover, light in nature and in line with the official task of teacher, as Saopuddin's case, should not be necessarily a legal issue. He argues that criminal law can primarily be brought against corporal punishment if the acts given are beyond the limit of reasonableness, arbitrariness and out of the official duty assigned (Salman Luthan, 2017).

In our opinion, most of today's world society agree that every child must be protected from any kinds of violence, including corporal punishment. However, that does not mean that the child protection will blindly ignore the balance principle of protection of others. On the contrary, such effort should still take into account the protection of persons who directly fulfill the child rights itself, such as parents, teachers, and other care givers.

To dealing with the infringement of child rights, particularly the right to be free from violence, criminal law often becomes a main tool that is considerably applied in Indonesia. As commonly known, criminal law is the oldest philosophy of crime control (G. Kassebaum, 1974: 93). As a crime control, the nature of criminal law is unique compared to the other types of law. It is fairly known as a vicious and coercive law which strongly censures unlawful human conduct. Its existence is even prone to partial attack of human rights (of perpetrator), so that it shall be implemented carefully and limitatively. Thus, in this case, if corporal punishment is to be resolved by using criminal law, then the settlement, of course, must be in accordance with the principles of criminal law as follows:

a) Principle of *Ultimum Remedium*

As stated previously, the criminal law is typically vicious and coercive law, in which the existence of criminal sanction may infringe a part of perpetrator's rights. Herbert L. Packer states that criminal sanction has two faces depending on how we implement it. It can be a prime guarantor if it is applied providently and humanely. It can also be, *vice versa*, a prime threatener if it is used indiscriminatively and coercively (Herbert L. Packer, 1968:366). Thus, it is presumably logical if criminal law is treated as the last resort or *ultimum remedium* once the other alternative measures (non-penal) have been advanced.

In term of coping with corporal punishment against children by using criminal law, we contend that the principle of *ultimum remedium* shall become a main consideration. In our opinion, it is inappropriate and unwise thought if criminal law is placed as the forefront in addressing corporal punishment, particularly the one which is provenly causing mild or insignificant effect, and the perpetrator does not merely intend to harm children but instead has a good purpose or motive behind his/her action. However, the use of criminal law shall be in prudential way, unless it would be a prime threatener as what Packer predicted. In this context, it is important to consider the notion of Macaulay. He explains:

“ When an act is of such a description that it would be better that it should not be done. It is quite proper to look at the motives and intentions of the perpetrator for the purpose of deciding whether he shall be punished or not. But, when an act which is really useful to society, an act of a sort which is desirable to encourage, has been done. It is absurd to inquire into the motives of the perpetrator, for the purpose of punishing him if it shall appear that his motives were bad” (Paul H. Robinson, 1994: 284).

This statement implies that, in addition to whether one's act has fulfilled normative elements of criminal act prescribed in applicable law, the inquiry of the motives and intention of the perpetrator also plays important role in determining whether the perpetrator shall be punished or not. In associated with *ultimum remedium principle*, although all elements of a criminal act defined by the law have been met, it does not mean criminal sanction can be automatically imposed to the perpetrator without investigating the motives and intentions of the perpetrator. If as long as criminal proceedings, the judge finds out a good motive behind wrongdoing committed by the perpetrator, it can surely be a good consideration for him to evade the imposition of criminal sanction, or, it can be a sufficient rationale to opt for imposing other appropriate non-penal measures as a substitution.

Additionally, concerning the principle of *ultimum remedium*, in our opinion, it is important to empower the actual involvement of the Professional Organisation for Teacher, such as the Indonesian Teacher Society (known as IGI, abbreviation of Ikatan Guru Indonesia). To address cases of school corporal punishment, the organisation can provide a special unit and mechanism. The unit is assigned to assess (based on the severity level of cases) which cases require criminal law intervention, and vice versa, which ones are adequate to be settled internally in the organization. Prior to transfer the case to criminal litigation, more particularly the case with minor loss, the unit shall be able to provide the assessment, offer and facilitate the settlement, and perhaps impose a certain sanction (if necessary) to the doer (the teacher). If the case has been resolved internally, the intervention of criminal law is certainly no longer required.

b) Principle of Non-Trivial Harm

“Harm” apparently is an essential component of criminalization and penalization. In this sense, its existence becomes a substantial requirement to criminalize the wrongdoing, while the result of harm or perhaps the risk of harm (it also can be said as “potential harm”) is a determinant factor to penalize the perpetrator for the wrongdoing being committed. Robinson, in this case, associated “harm” component with an ultimate goal of criminal law. He says that: “All would agree that the criminal law seeks to prevent harmful results rather than to punish evil intent that produces no harm” (Paul H. Robinson,

1994: 283). He firmly reminds us that criminal law will be out of its accepted role, or appears unfair and overreaching, and ultimately loses its credibility and integrity, if it ignores the requirement of harm in criminalizing the wrongdoing and penalizing the perpetrator (Paul H. Robinson, 1994: 283).

Talking about harm requires comprehensive elaboration. It cannot be defined solely as an injury caused by the act, or pain suffered by the victim. The concept of harm may be broader than that. In criminal law context, we cannot stop at a question “what is harm?”, but more importantly, as Gross said, we must identify “what kinds of harm that ought to be penalized?”. According to Gross, harm can be simply defined as any violation of an interest of a person, encompassing natural person and social creations of persons such as the state, the community, the family, corporations, and various human associations (Clarkson and Keating, 1994: 14). Nevertheless, he then emphasizes that an act that causes some harm cannot sufficiently guarantee the intervention of the criminal law (Clarkson and Keating, 1994: 115-116).

With regard to identifying harm that ought to be penalized, many scholars contend similar argument. R.A. Duff, for example, argues that the endangerment must be serious enough to merit the coercive attentions of the criminal law and the various costs that criminalization involves (Ashworth and Zedner, 2011: 289-291). Stuart Mill, a proponent of utilitarianism, by underlying his argument on conception of liberty, asserts that the seriousness of loss, adversity, or danger shall become the main basis for the State to criminalize a human act (Nina Persak, 2007: 13). In this case, criminal law shall not deal with the acts with mild impact, therefore the sentencing upon the perpetrator shall also be avoided. In short, criminal prevention against minor-loss criminal act shall not justify the State to violate one’s right of not to be penalized (Douglas Husak, 2008: 66-71).

c) Is a Justification Defence needed?

The study of harm requirement in criminalizing the act as well as penalizing the perpetrator is closely attributed with justification defence. In criminal law, there are two models of justification. First, the justification of criminal act, which means examining justification of an act that may be criminalized; second, the justification as a legal defence, which can be used to depenalize a criminal act. In this sense, we examine to what extent a criminal act can be justified, and the perpetrator who proposes this defence can be released from penalization. What we discuss in this part is the second sense, namely the justification defence.

As commonly known, human conduct is a complex set of behaviors. it cannot be merely figured out from one angle, but must be construed from different angles. Robinson stated that no such code, however, can accurately prescribe the correct conduct in all situations; it can only provide an approximation of society’s intuitive judgement. Thus, as suggested by Robinson, a code shall necessarily make generalizations which are subject to exceptions in terms of attempting to responding infinite variety of factual situations (Paul H. Robinson, 1994: 287).

In this matter, R.A. Duff also suggests the significance of reasonableness of conduct as well as social justification in order to diminish the rigidity of criminal law, as well as to reach out fairness. He elaborates that:

“If we act, without justification, in a way that we realise might harm others, when that prospective harm provides a conclusive reason against acting thus. We do wrong; we do wrong to those whom we endanger. The wrong consists not merely in creating a risk of harm, but in creating an unreasonable or unjustified risk of harm- a risk whose unexcused creation manifests our lack of proper concern for the interest of those we endanger” (R.A. Duff, 2005: 53).

In broader sense, justified penal liability is determined by two central constraints: the offence conducted has been designed to prescribe a non trivial harm or evil, and defendant’s conduct is wrongful (Douglas Husak, 2008: 82). In this case, Husak argues that the absence of non trivial harm of evil theoretically can be proposed as justification defence based on *de minimis principle*. Hence, it is necessary for judges before penalizing the defendant to carefully determine and also consider whether the act committed by the defendant really causes or presents serious harm or evil, or otherwise does only trivial degree of harm (Douglas Husak, 2008: 67).

Besides Husak, Goerge P. Fletcher also elaborates trivial degree of harm as justification defence, and attributes it with theory of lesser evils. According to this theory, the justification defence is provided based on a consideration of crime level, or, the virtue that is valued better than most of choices. In short, there is no justified criminal act unless its benefit exceeds its cost (G.P. Fletcher, 2000: 744-745). Titus Reid also highlighted that the law recognizes the rights of parents or teachers to discipline their children or students, as long as it is conducted reasonably and properly. Otherwise, it can be categorized as assault, battery, or violation of civil rights (Sue Titus Reid, 2004: 169).

To assess the severity degree of corporal punishment that ought to be penalized, we can employ six basic guidelines provided by Fontes and O’Neill - Arana, as follows:

- a. the age of the child;
- b. the frequency of conduct;
- c. the apparent physical and emotional losses;
- d. the duration of the punishment administered;
- e. the intensity and severity level of physical or emotional losses suffered by the child; and
- f. the invasiveness of the punishment given (Alison D. Renteln, 2010: 254-279).

In short, all kinds of corporal punishment that influence daily normal life of the child, or endanger a child’s health shall be viewed as an abusive act that can be penalized unless it cannot be found, based on six basic guidelines above, that harm or the risk caused (injury or pain), is insignificant or included in trivial degree.

CONCLUSION REMARKS

Basing on the elaboration above, we conclude that the prohibition of corporal punishment against children is an indispensable need. However, not all corporal punishment can be feasibly settled by criminal law, and the perpetrator can be imposed by criminal sanction. In accordance with principle of *ultimum remedium* and non-trivial harm (*de minimis*), the penalization toward the perpetrator of corporal punishment can be justified if there is no non-penal measures can be employed to address corporal punishment cases. The intervention of criminal law shall be enforced as the last resort after other milder way advanced does not succeed. In addition, It can also be justified if corporal punishment administered is serious, unreasonable, intensive, and also breeds non-trivial harm or substantial risk of harm on children. Thus, the judge is expected to take into account the probability of the penalization removal for the perpetrator of mild corporal punishment, and the imposition of other non penal measures as the substitution of criminal sanction.

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Rusmilawati Windari
Doctoral Student at Law Faculty
University of Sebelas Maret, Surakarta, Indonesia
Email: wiendari@gmail.com

Supanto
Faculty of Law
University of Sebelas Maret, Surakarta, Indonesia
Email: supanto.8787@gmail.com

Widodo Tresno Novianto
Faculty of Law
University of Sebelas Maret, Surakarta, Indonesia
Email: novianto@consultant.com