

CHAPTER I

INTRODUCTION

1.1 Background

Based on Merriam – Webster Dictionary, child is an unborn or recently born person or a young person that is still consider as an infant or youth.

Several synonym can be use to replace word child, which are kid, juvenile, youngster, and youth¹. Beside that, Cambridge Dictionary also stated this word with different representation of a child compares to Merriam – Webster Dictionary, In this dictionary, child is a boy or a girl from time of birth until he or she is an adult, or a son or daughter of any age². From both dictionaries, we can briefly conclude that a child is more of a person that is still not yet reached adulthood rather than a measurement through numbers as an age to be consider as kid or adult.

Development is part of process that can be breakdown to many stages. Child development involves changes on physical, social, and functioning over time, from conception through adolescence. Changes consist of alteration on size, shape, and function that can be either regressive or progressive.³

Generally, child development is presented based on age stages which are prenatal development, infancy and toddlerhood, early and middle childhood, and adolescence. Developmental domains is separated onto three different areas, those are physical development, cognitive development, and social development.⁴ Physical development is a term that involves growth and change of a person body and bodily functions that includes physiological and motor development. Meanwhile Cognitive development involves mental and brain

¹ Merriam-Webster, <https://www.merriam-webster.com/dictionary/child>, accessed on 3 September 2019

² Cambrid, accessed on 3 September 2019

³ David Magnusson, *Individual Development : Holistic Integrated Model*, (Stockholm: Department of Psychology Stockholm University, 1995) on Carol Lynn Martin and Richard Fabes, *Discovering Child Development*, (Boston: Houghton Mifflin Company, 2009), p.4

⁴ Carol Lynn Martin & Richard Fabes, *Discovering Child Development*, (Boston: Houghton Mifflin Company, 2009), p.4

functioning. Last part of these development domain is social development that involves interaction with other people, personality, and other social aspect that is part of daily communication.

Concept of childhood had evolved since medieval era with various kind of names referring to a child. On medieval era, children often called as a little adult. Back at that time, childhood was not consider as an early phase of development compares to current situation.

Significant progress on childhood concept began to emerged on seventeenth century after John Locke which was a philosopher, brought a new concept that there were differences between children and adult⁵. Jean Jacques Rousseau shows no converse on that, which mean he did consider education as a process of cultivating positivism on people. These early shifts had continued until today.

On eighteenth century, there were changes on political, economic, and social throughout Europe from predominantly rural agricultural based societies to industrial capitalism. Science and Technology has become advance compares to previous century. Some scientist that took part on scientific experiment had tested that biologically children are different from adult. This outcome gave an impact on emphasizing conceptualization of childhood as a different and distinct stage life from adulthood. By twentieth century, some criticism appeared of how child psychology conceptualized childhood as notion that children had not fully grown as adult.

Urie Bronfenbrenner developed a model by emphasizing on both biological and social environment on children development. This was a recognition that children may had gone through different social experience and could not be treated similarly, different from pre model that was developed by previous scholars that often use a scientific biological model rather than to use both social and biological.

⁵ Sally Neaum, *Child Development : An Early Years Students and Practitioners*, 3rd edition, (California: Sage Publication, 2016), p.8

Through out centuries, children and childhood term remain shifting with different theories to reframe terms and to aside that children can only be tested through scientific model.

Different conceptualization of children and childhood on literature revealed that contemporary form may vary from each literature, framework, and reports. Contemporary form are not similar with theories since it is not always be an articulation of a theory about children development and it is not necessarily cohesive since it's been evolving through out time.

Lack of terminology of child based on age as a measurement for a person to be consider as an adult on majority of these theories might be a problem later on future due to its various terms of word child and childhood based on biological scientific test and social experience that a child had gone through if we refer child based on theories that has been mentioned earlier. None of those theories provide a terminology of child based on age and yet somehow, people would perceive it unpractical if maturity of a person is measures based on their psychology development or biological development. Each child develop differently, some are even suffers from developmental delays, which mean a child is delayed on their motor skills, speech, cognitive skill, and social development⁶ caused by several condition, some that can be mentioned are Fragile x syndrome or chromosomal abnormalities. Distinctiveness on biological growth development perhaps is a measurement of somebody maturity that can be detect from their physiology changes that occur differently on each child.

Several theorist adduced different types terminology of childhood and children on general that exhibit pluralism. None of them mentioned a number as an age of a person to be classified as a children which still going through process of developing and remain a child until particular age. Jean Piaget stated that person can be classified as a child chronologically based on age but did not specifically mention its number.

Maturity is not constantly about somebody development based on their nature or psychology. External objects which refers to current situation that

⁶ "Global Development Delay"
www.mencap.org.uk, retrieved on 7 September 2019

force children to behave more mature earlier than they should, are considerably accepted for example, serve on military, having a job, or family problems that requires them to apply social or cognitive skill that usually only does by an adult on daily basis.

Inconsistences and even sometime contradictive of these various terminology of child shows that none of these can be settle as an official term word child. It would be more practical if there is an age based terminology that can be use to categorized children and adult. Eventually, a country should declare age of majority on their national law that can be either same with other country or different on some aspect. This Threshold of adulthood is recognized through national law and should not be confused with age of maturity, smoking age, and voting age. Opposite of majority is minority. When a person had reached this age, she or him no longer a minors and cease to be consider has not reached full age and since then a person is presumed as an independent and legally permit to do actions that cannot be done by minors.

Most of country established 18 as age of majority on their national law. Even Though several countries had set lower than 18 as age of majority with age range between 15 to 17 but on general 18 years old is categorized as adulthood. From that we can conclude anybody that had not reached age 18 is a minors or on other word is still a child from legal side.

Children and adult are separated based on their age, rights, permission on taking part of particular activities, participating on political act, and collection of permissible actions that significantly different with adult. Prior to twentieth century children often regarded as their parents property and also treated them as if they are it⁷.

History of childhood can be identify onto three periods which are indifference to childhood (pre 15th century), discovery of childhood (15th century and 18th centuries), and preoccupation with childhood (19th and 20th centuries). Currently we are living on century that already left from concept that children is presume as an object which is literally against human right. Results from this

⁷ Cindy Lou Miller – Perrin & Robin D. Perrin, *Child Maltreatment: An Introduction*, (California: Sage Publication, 2007), p. 13

evolution of childhood takes form as an ascription that children are more nurtured and more fragile than it used to be.

Kinds of abused that mainly regarded as an act against human right that performs on a child is categorized as child abuse. Children should be protected from any kinds of harm. To spread this movement, a law should be enacted as an early prevention and to apply sanction on perpetrators for law violation. On United States, this statutes had been passed by many state legislature since 20th century which is on early 1900's with direct contribution from large group of nurses, social workers, school Teachers, and legal advocate⁸. This shows that child abuse prevention had been conducted since pre modern era although this act has not enacted yet until 1974.

Lot of cases remain unreported due to no public laws regarding to child abuse that exist back at time. Child abuse began to take turn as a recognizable social problem on 1960s when Dr. C Henrey Kempe came up with a term called as "battered child syndrome".

On a global scope, Indonesia is still pertained as a lower middle income country including other countries which are Fiji, Lao's Democratic Republic, Republic of Marshall, Mongolia, Nauru, Papua New guinea, Philippine, Samoa, Solomon Islands, Tonga, Vanuatu, and Vietnam with frequent minors experiencing violence on Pacific area that can be distinguished based on genders with a gap between girls and boys based on their experience as a victim of child abuse⁹. Boys are prone to be victim of abuse rather than girls. Proven by this data that was compiled from different literature since 2000-2013 that shows girls as victims of abuse on lower middle income countries had reached 17,450 and boys 34,950.

Pacific region consist of some countries that are still in development to becoming a developed country. Compares to other region on this world, estimation of child abuse that occurred in eastern part of this world since

⁸ Risk For Youth Victimization: Lifestyle and Routine activities Theory, vol.11 1996

⁹ UNICEF, *Evidence Child Protection System Violence Against Children on East Asian and Pacific Regional Series, No.4 United Nations Children Fund*, (New York: UNICEF, 2014)

last year had reached 64 % with 714.556.771 children were exposed to various kinds of abuse¹⁰.

Some Region maintained numbers of children exposed to abuse less than that. In North America 56% with 40.195.431 children are victim of maltreatment. North America consist of several different countries which included United States, Bahamas, and Canada.

In United States approximately there are 674,000 children experiencing abuse and neglect in 2017 based on Children Bureau data while Indonesia had confirmed there are 4.100.000 children strayed and neglect in 2016 through publication of Social Ministry report. This significant differences between two countries shows that United States had actually lower rate of neglect and abuse, meanwhile Indonesia neglected children is even higher than United States on both abuse and neglect.

United States had mandated on each states to suspect any form of child maltreatment that may happen starting on late 1960's. This movement and mandatory shows that United States might have been only country that consider this social problem requires a law back at that time, way before Indonesia. Compares to other countries that exist on that era, United States had enacted child abuse Treatment and prevention act on 1974. This act was established on that year and continued amended since then until recently on 2018.

United States does not share similar law system with Indonesia. United States had been adopted common law system or English law due to historical revolutionary war which was forced to be use back at that time, but currently United States combines 5 different Types of law which are Constitutional Law, Statutory Law, Treaties, Administrative, Regulation, and Common Law (Case Law) that implemented on system. Generally, common law system consist of judicial precedent of courts and similar tribunals which sometime contrast with statutory law¹¹. Each states is a separate sovereigns with their state constitution and state courts apart from each other. Even Tough United

¹⁰ Global Prevalence of Past Year Violence Against Children: Systematic and Minimum Estimates, Number 3, Volume 137, March 2016

¹¹ Garner Bryan, *Dictionary of Modern Legal Usage*, (New York: Oxford University Press, 2001)

States imposed common law on system but States body of legislature remain passed a written law or a statute with United States Constitution as its foundation. Current compilation of its code consisted of 51 Title that divided on to chapters and section. From several statutes that exist now, which had been enforced since 2014, Public Health and Welfare Statutes is some that can be mention which is compiled together with other statutes as an United States Code which was published as 2012 Edition. Contained with it is Child abuse prevention and treatment and adoption reform act (Amended version of Child Abuse Prevention and Treatment Act) as chapter 67 on Title 42 With its Title Public Health and Welfare.

Child abuse prevention and treatment act itself has been reauthorize recently using similar Title With Victim of Child abuse act of 1990 and was enacted on January 2019. Prevention and Treatment of child abuse act is detached from Victims of child abuse act although it is codified on same Title. This kind of separation shows pre actions of child abuse prevention should be separated with other child abuse theme act considering prevention is something that should be done to mitigate or minimalize any forbidden or illegal things that might happen. Sections contained on this act gives a broader and particular objects that should be implemented or conducted that takes form as a program or Technical assistant and funding as a budget to perform programs that had been structured.

Meanwhile Indonesia enacted an act regarding child maltreatment on 2002, way after United States had done it earlier. United States as a common law country does came up with a few differences with Indonesia as a civil law country on some legal aspect. Recent amendment of Indonesia Child Protection act was enacted on 2014 with previous act with same title on 2002. Indonesia does not provide law of prevention and treatment of child abuse with broader and cohesive sections. Indonesia as a civil law country probably can prepare an act regarding prevention and treatment of child abuse better than United States as a deemed that courts would do a consideration of a case based on valid national law

Comparison between both Indonesia Child Protection act with United States Child abuse Prevention and Treatment act is significantly different

from its structure. Indonesia child protection act is less specific on preventing child abuse.

On article 1 No. 2 of Indonesia Child Protection act, Child protection is consider as any kind of activities to assure and protecting children and their rights to live, growing, developing, and participating as a human, also protecting them from abuse and discrimination. Violence is any kinds of act that results with physical, psychological suffering, and neglect, including threat to do an act, and coercion.

Child abuse is physical maltreatment of a child. Child abuse has no specific definition in Indonesia Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection, only mentioning about child protection in general and each type of abuse that could be classified as a physical suffering, psychological suffering, neglect, and verbal threat but without any further definition from each of those maltreatment acts or abuse on its annexes and without mentioning those explicitly as well. Physical abuse involves non-accidental harming of a child for example breaking bones, burning, and beating.¹²

Psychological maltreatment is not consider as a major problem and sometimes it is being ignored compare to other types of child abuse that had been mentioned earlier. Terms of psychological maltreatment, once again, was not defined in Indonesia Law No. 35 of 2014 on amendments to Law No. 23 of 2002 on Child Protection giving an impact for this case that occurred in Indonesia unable to be notice both for government and citizens (family, social organization,) because lack of measurement tool for a case to be classify as a psychological maltreatment because it is not clear for signs of a child is suffering from this maltreatment if we refer this to Indonesia Child Protection act. It is proven based on latest statistic published by Indonesia National Commission for Child Protection on their website.

Between 2011–2016, reports of psychological maltreatment is not included¹³ in statistic. Perhaps it is caused by that those cases we're never

¹² "Child Abuse" re<https://www.psychologytoday.com/us/conditions/child-abuse>, retrieved on 9 September 2019

¹³ "Cases Based on Child Protection Cluster" re<https://www.kpai.go.id>, retrieved on 9 September 2019

reported or it remains ignored due to its legal base which is Law No. 35 of 2014 on amendments to Law No.23 of 2002 on Child Protection does not defined specifically terms of psychological abuse as a tool to gauge somebody is being a victim of it.

Meanwhile, child neglect is a form of failure to provide health, clothing, nutrition, housing, physical, education, and social as well, from their parents or foster parents. Neglected child is a child that is not being provided of those basic things. Spirituality, physically, mental, and social also included. Generally, neglected child will be taken to a safer place by official if they we're left behind without anybody from their family or relatives to foster them.

Threat is an abusive act which sometime is mention as verbal abuse, verbal attack, or verbal assault. Threatening can be done by adult to a child in order coerce them to do something. It takes sometimes to concluded somebody is a victim of verbal abuse considering this form of abuse is being tolerated as a way to discipline a child in general society.

Prior to 2002, Indonesia never does an extensive act regarding child protection from abuse. Indonesia ratified Convention on Rights of Child in 1990 as a national law. This was an early contribution from Indonesia to take part combating child abuse. Eradicating this bad behavior done by adult through an establishment of Child act doesn't give an impact in declining violation of child abuse. Reports from 2014 to 2016 shows increases numbers of child abuse case with various form of abuse and maltreatment through out those years. It is an unexpected result from post establishment of Child Protection Law in Indonesia due to its purpose as a law that should be maintain numbers of cases and even to decreases amount of violation against child protection on Indonesia. Conclusion from this is that as long as amount of child abuse is increasing, simultaneously victims from this case is accumulating as well.

Child abuse case is escalating inconsistently since 2011 based on latest statistic which was released on 2018. Indonesia National Commission for Child Protection did a recap on amount of denunciation case based on Child Protection Cluster between year 2011-2018 which were divided onto 9 with

approximately 29,068 cases through out 7 consecutive years¹⁴. This numbers has been confirmed based on their annual data recap with its peak at 2014 with 4,960 cases. It goes downhill on 2015 with 4,129 cases and continuously showing no decline two consecutive years since then. This statistic outlines child protection in general with each cluster that doesn't always regarding child maltreatment or child abuse.

United States implemented federal law as their legal system which largely came from common law with validation on each state except Louisiana. United States has been involve on fighting against this major issue regarding child maltreatment since Child Abuse Prevention and Treatment Act (CAPTA) enactment on 1974 (P.L. 93-247). Evolution of this act was generally aimed to reducing victims of minors maltreatment not only regarding violence but also neglect.

This act was enacted by Senate and House of Representative of United States in congress assembled. Most recent reauthorization was in 2010 as Public Law 111-320 with 401 sections but it was not rewritten, which some of its sections are still remain same from previous reauthorization with some differences on fiscal year data due to an updated and general programs.

Government is implementing procedures for collaboration with private agencies and organizations to investigate, intervention, and deliver treatment for children and family using appropriate responses.

For a glimpse comparative between both law on prevention and treatment of child abuse in Indonesia and United States, Indonesia is less specific about process of preventing. Indonesia shows no significant update since it was and contains less sections regarding of prevention and treatment. This concluded that there might be a lot of things that Indonesia hasn't done to prevent this issue.

To compare both Indonesia and United States in this context which probably will give more things to start in order to improve Indonesia act about child abuse and neglect.

¹⁴ Indonesia Ministry of Health, *Violence against Child and Teenager*, (Jakarta: Indonesia Ministry of Health, 2019)

1.2 Research Question

1. How is development of Child Protection Law regarding child abuse prevention and treatment in Indonesia compares to Child Abuse Prevention and Treatment Act (CAPTA) in United States through out history?
2. What does government do to prevent child abuse and treatment for its victim in United States that possibly can be implemented as well in Indonesia?
3. What kind of sanction applied on child abuse perpetrator in Indonesia and United States?

1.3 Issues Limitation

Child abuse and neglect prevention and treatment law in Indonesia and United States.

1.4 Purpose and Benefit

1.4.1 Purpose

1. To compares development of Child Protection Law in Indonesia and Child Abuse Prevention and Treatment Act (CAPTA) in United States using a timeline form of its legislative history of each statute based on its amendment or reauthorization year.
2. To measures government action based on their early preventive actions, budgeting funds for combating child abuse, and further treatment for abuse victims that has been legalized as a law in United States that possibly can be implemented in Indonesia.
3. To compares both country on applying sanction for child abuse perpetrator as well as a consideration for Indonesia to use same kind of sanction that could be enact on later amendment of Child Protection Law.

1.4.2 Benefit

1. For Government

This research will be an extent summary of what has been consider as a lack that remain exist on some aspects of child abuse and neglect prevention and treatment including some advices on how to improve a better legal framework or projects that possibly could be implemented later to reduce high rate of child abuse and neglect and maintain stability. Some ministry and institutions that involve on this improvement are Ministry of Social, Ministry of Women and Children, and Indonesia Commission of Child Protection.

2. For Society

Society is coerced to accept and applying stipulations regarding of child abuse and neglect onto their life to gain a result on a form of better quality of child abuse and neglect prevention and treatment and also to prove and indicate that currently exist act is able to be held on society

3. For Citizen

Citizen should also participate on this prevention or even treatment by implementing stipulation established by conducting small or big act around their environment.