

CHAPTER II

LITERATURE REVIEW

2.1 Conceptual Framework

2.1.1 Child

Child is a young human being between stage of birth and puberty and they are still in developmental period of infancy and puberty. Legally, child is a minor, which is a person that incapable to do several things until they've reached adulthood. Concept of a child has always been a variety through out decades regarding to law that valid on a country and various terminologies regarding to child. Child should have legal representative¹⁵.

Technically, child is a person that still not yet fully grown in biological subject and remain consider as a human that is fluctuated instable from psychological subject until certain age which commonly these are regarded as issues for a child to do legal acts or several other actions that can only be done by people that had attained legal age, because basically they do not realized what they do, despite some children may had developed maturity earlier than others although based on legal age they are still classify as a child. On other hand, it would be fatale for them and people that involved in that legal act if indeed they had not fully developed as a mature person and could not conduct their rights as consequence of what they do.

Concept of child is simply a borderline between what a child can do and what they can't do if we referred it as legal age, but if we refer it as a biological and psychological subject, terms of child is more of human development that almost constantly shifting or developing through out their childhood and teenage years until they have fully grown or reached maturation. Maturation is changes brought about largely through unfolding of a person genetic code¹⁶, it can be between birth or puberty or between developmental period of infancy and puberty. Meanwhile, Psychologist

¹⁵ Minors Rights Protection Mechanism on Georgia, Volume: 5, P. 100

¹⁶ *op.cit*, p.5

maintains that childhood continues till age of twelve and between age of twelve and eighteen are called adolescent¹⁷.

Most countries legalized a person as an adult (age of majority) when they had turned 18, despite some countries declared a person as an adult when they already turned 15, 16, 17, or even 21 through issuance of their Identity Card. Post issuance of Identity Card, they are no longer categorized as a child anymore.

Contradiction may appear if we compare terminology of child based on legal age and psychology or biological subject, for biologically, instead of mentioning a number as a timeline or official age as an adult, it is more emphasizing on child phases to becoming an adult.

2.1.2 Abuse

Improper act or treatment done by human or a thing, often to gain benefit. It came up with many forms, which are, physical, verbal, assault, aggression, and crime. Several definitions of abuse are similar with violence and cruelty, and yet both are different. Violence and cruelty are part of physical abuse which is among other types or forms of abuse. Definition of abuse is never set, similarity with violence and maltreatment may result with confusion for some people. But on a wider scope, abuse can be used on many contexts, as it is divided into many types, which some that are mentionable are abuse of authority, abuse of discretion, abuse of dominance, abuse of rank, abuse of statistics, academic abuse, alcohol abuse, bullying, child abuse, cyber abuse, and many other forms of deeds that fall into categories of crime and wrongful behavior.

Perpetrator of physical or psychological abuse whether they are male or female are exhibiting high rates of personality disorder and manipulative behavior by shifting blame to victim instead of confessing their mistake.

¹⁷ Ram Natha Sharma and Rachana Sharma, *Child Psychology*, (New Delhi: Atlantic, 2006)

2.1.3 Child Abuse

Child abuse is an act generally deliberate, by parent or foster parent that results harm or death to a child¹⁸. Child abuse is separated from child neglect. Some literature would use this terminology as maltreatment or abuse. Child abuse is widely consider as infraction of law and illegitimate. Some physical abuse may use as disciplinary practices and most of people condemned this kind of behavior¹⁹. Physical punishment and other so called disciplinary practices yet abusive acts might give potential negative impact for a child. These are named as Corporal Punishment, which is use of physicals that causing a child to experience pain but not injury, for correction of child behavior²⁰. Conclusion of those, child abuse is not always takes form as a torture to suffers a child. But yet it is still harmful for child regardless neither as a punishment or to inflict injury.

Many adults are ill prepared for challenging role as parent to nurture a child with their immaturity, which may caused abuse on children that has long existed²¹. Perpetrator of child abuse varies from outsider that occasionally attends child daily activities or even family members that participate often on child development and their activities. There was evidence of a social class pattern with Physical abuse²², while it might be a little discriminative, but respondents that categorized on Social Grades with unskilled manual occupation, unemployed, and low grade occupation were more be rated as seriously physically abused.

Physical abuse is use of physical against child that results on harm for child health, survival, and development, this includes hitting, beating,

¹⁸ Monica L. McCoy & Stefanie M. Keen, *Child Abuse and Neglect: Second Edition*, (New York: Psychology Press, 2014), p.3

¹⁹ Lisa Aronson Fontes, *Child Abuse and Culture: Working With Diverse Families*, (New York: Guildford Press, 2008), p.110

²⁰ Murray Straus and Denise Donnelly, *Beating Out of Them: Corporal Punishment on American Families on Children*, (New Jersey: Transaction Publisher, 2001)

²¹ David Wolfe, *Child Abuse: Implication for Child Development and Psychopathology Second Edition*, (California: Sage Publication, 1999)

²² Nick Frost, *Child Welfare: Major Themes on Health and Social Welfare Volume 2: Child Abuse and Child Protection*, (Oxon: Routledge, 2005)

kicking shaking, scalding, strangling, and poisoning, and much of physical violence is inflicted with object of punishing. Based on genders, Girls are far more at risk to experience abuse. Serious physical abuse is slightly higher for girls rather than boys²³. Physical abuse signs and symptoms are injuries, bruises, fractures, and burn.

Other form of child abuse that regarded as normal behavior for parents done to their child is verbal abuse. Verbal abuse on general is an act of criticizing, insulting, or denouncing other person. Child verbal abuse includes yelling, enraged using harsh words, and other indignant acts that can be shown through verbally by adult, which on this context can be parents or other people beside their parents, to a child. This type of abuse is sometimes shown as common and normal behavior that actually could impact negativity on child.

Symptoms of a child suffers from abuse are withdrawal from friends and usual activities but yet they are still doing usual activities, aggression, anger, hostility, anxiety, frequent absence from school, rebellious behavior, and attempts running away²⁴. Symptoms is different with diagnosis, which symptom is more of a signs that can be shown from external, while diagnosis result will come out later after identification and examination are already done, by identifying abuse including checking for physical and behavioral signs using medical treatment.

2.1.4 Child Neglect

Failure of a parent to provide for a child physical, educational, medical and even minimum things or object that should be provided it is an act or omission done by parent or foster parent²⁵. Child abuse is not part of child neglect. Neglect and abuse is considered as part of maltreatment.

Neglect is when parents or foster parents does not prepared child basic stuff for their daily, some mentionable are clothing, food, housing with

²³ *ibid*, p.99

²⁴ Mayoclinic, "Child Abuse", <https://www.mayoclinic.org/diseases-conditions/child-abuse/symptoms-causes/syc-20370864>, retrieved on 5 November 2019

²⁵ *Op.cit*, p.4

clean condition, medical, and neglect is also when somebody leaves child for stretch of time with dangerous condition²⁶. Several signs of neglected child, which can be guess from outside or externally are being left or on hand of other children, eating more at a meal or keeping food for later, dirty clothing, does not get medical or dental routine, frequently skipping school, and poor weight gain.

Causes of child neglects are family living on poverty, poor social skills, substance abuse, large family, single parent household, and misconception on child development²⁷. Child neglect does not come up with single form, instead there are many types of it, which are physical neglect (abandonment, expulsion, shuttling, nutritional neglect, and clothing neglect), medical neglect, exposure to hazard, environmental neglect, inadequate nurturing, permitted drug or alcohol abuse, permitted maladaptive behavior, isolation, and educational neglect²⁸.

2.1.5 Psychological Maltreatment

This kind of maltreatment appeared ambiguously and confused with mental cruelty and other terminology in this context. This conceptualization is remain not clear even after establishment of United States National Law on Child abuse emerged²⁹. It can be verbal or non verbal, active or passive, and with or without harm, and negatively impact child cognitive and social³⁰. Psychological maltreatment might end up as a severe condition of child health issues and misbehavior of child as a result of direct impact of psychological maltreatment.

²⁶ Webmd, "Child Abuse and Neglect: Possible Behavioral Signs and Physical", <https://www.webmd.com/children/child-abuse-signs>, retrieved on 5 November 2019

²⁷ Benj Vardigan, "Child Neglect", <https://consumer.healthday.com/encyclopedia/children-s-health-10/child-development-news-124/child-neglect-648566>, retrieved on 5 November 2019

²⁸ "Types of Child Neglect", <http://projectsakinah.org/Family-Violence/Child-abuse/Child-Neglect/Types-of-Child-Neglect>, retrieved on 5 November 2019

²⁹ Nelson Binggeli, Stuart Hart, & Marla Brassard, *Psychological Maltreatment of Children*, (California: Sage Publication, 2001)

³⁰ Hibbard, Barlow, & Macmillan, "Psychological Maltreatment", <https://www.ncbi.nlm.nih.gov/pubmed/22848125>, retrieved on 26 October 2019

Psychological maltreatment increases as children grow, with those ages 7 and up being more reported than younger children for psychological maltreatment³¹. Psychologically maltreated children also demonstrate high levels of specific problems as aggression, conduct problem, disruptive classroom behavior, self abusive behavior, hostility, and anger³².

This maltreatment occurs usually after a child is treated with misbehave acts, either physically or not, which if it does not immediately terminated, that child probably will experience damage on their health.

Child can suffers from Personality disorder as well as other mental issues which can bring them to other health risk caused by dysfunctional ability to perform daily activities.

2.1.6 Childhood

Childhood is a separate space from adulthood and recognized that what is appropriate for an adult may not be suitable for a child. Other terminology taken from Merriam-Webster Dictionary stated that childhood is a state of being a child³³. Childhood is age span with ranging from birth to adolescence³⁴. Term of childhood is less specific on its time span and it could be imply a varying range of years on human development. Terminology of childhood does not set once it was emerged during European Renaissance as it continues to shifting even until modern era and evolving with various terms of childhood.

Childhood legally ends as a person legally become an adult. Childhood is life period during which a human being is regarded as a child, and cultural, social and economic characteristic of that period. Child

³¹ *op.cit*, p. 219

³² *op.cit*, p. 221

³³ Merriam-Webster, <https://www.merriam-webster.com/dictionary/childhood>, accessed on 7 October 2019

³⁴ Pan Macmillan, *Macmillan Dictionary For Student*, (New York: Simon & Schuster, 1984)

based on theory of human development health, is a possibility of becoming something else³⁵.

2.1.7 Violence

Violence is use of physical to injure, abuse, damage, or destroy³⁶. There are vast array of types of violence, it might be short and episodic as a slap or massive as a war³⁷. Violence does not constantly always regarding to its subject which is person or people that involve on that situation, but it is also can be regarded to its objective side, which is situation, this is called as sociology theory.

Violence, an act of physical causes harm, damage to inflict by violence may be physical, psychological or both³⁸. Violence maybe distinguished from aggression³⁹. Violence can be classified onto number of types and it is divided onto three categories: homicide, assault, and robbery. Violence is somehow multi causal as it is a result from combination of distinct causes, includes person social or cultural environment. Based on examination of scientific, multiple things may initiate violence, including genetic predisposition, abnormalities of neurochemical, characteristic of personality, and experience of abuse and neglect as a child.

2.1.8 Child Development

Jean Piaget developed four stages of child cognitive development, those are separated as, sensorimotor stage which occurs approximately from birth until age 2, preoperational stage which occurs around age 2 until 7, concrete operational stage which occurs around age 7 until 12, and formal operational stage which occurs around age 11 or 12 until

³⁵ Julia Fonda, *Legal Concept of Childhood*, (Oxford: Oxford Portland Oregon, 2001)

³⁶ Merriam- Webster, <https://www.merriam-webster.com/dictionary/violence>, accessed on 7 October 2019

³⁷ Randall Collins, *Violence: Micro Sociology Theory*, (New Jersey: University Press: 2008)

³⁸ Britannica, <https://www.britannica.com/topic/violence>, retrieved on 5 November 2019

³⁹ *ibid*

thereafter⁴⁰. Children remain develop until they had reached age of 18, even tough on some cases development of psychology and physical does continue until years later.

Early childhood is a time of tremendous physical, cognitive, and language development age span from birth to year 8⁴¹, meanwhile Middle childhood is a time when children develop skills for building healthy social and roles prepare them for adolescence and adulthood which proceed from age 6 to 12⁴². Last stage of childhood usually called as adolescence, despite it is biologically distinct from childhood, but it remain accepted by some culture as social childhood, because before age of 18 child is still consider as minor.

2.1.9 Minor

Terminology of minor is not sharply appears on most jurisdiction. It varies on every country regarding an age to be classified as a minor. Minor is illegal to travel across countries without parent companion or as a substitute for this requirement, at least a letter signed by parent as an agreement for a child to travel with adult that is officially appointed. Younger children and older adolescent are often lumped as “minors” but actually older adolescents are treated differently on some context⁴³. Some states, has passed laws, that person will tried as adult, regardless of their age, if a person is accused of heinous crime, for example murder. Distinction between minor and child is that child is usually being used as terminology not only on legal context but also on biological and psychological, while minor is usually use on term of uncapability of a person who had not reached age 18 to do legal act or for instance, travelling to outside country.

⁴⁰ “Jean Piaget Theory of Cognitive Development”, <https://www.simplypsychology.org/piaget.html>, retrieved on 26 October 2019

⁴¹ Education Encyclopedia, “States of Growth on Child Development”, <http://education.stateuniversity.com/pages/1826/Child-Development-Stages-Growth.html#ixzz0j0jMHgRB>, retrieved on 5 November 2019

⁴² Neal Halfon, *Lifecourse Health Development: A New Addressing Upstream Determinant of Health and Spending*, (Washington: National Institute For Health Foundation, 2009)

⁴³ Children and Law, Volume: 4, P. 2

2.2 Juridical Framework

Several Juridical Framework including both Indonesia Constitution and United States Constitution, Child Protection act of Indonesia, Child abuse prevention and Treatment act of United States, articles on Indonesia Criminal Code regarding of Child Protection and abuse, and articles on United States Criminal Code regarding of Child abuse, which works as legal base on analyzing this comparative law.

2.2.1 Indonesia National Constitution 1945

Indonesia National Constitution or if we translate it to Indonesia, it would be name as *Undang Undang Dasar Negara Republik Indonesia* 1945 is consisted of 78 articles, which are divided onto 16 sections. Some mentionable sub articles that confirms Indonesia is down for combating any specific kinds of child abuse and neglect which set forth through its constitution as a reflection of Indonesia should fulfilled their duties as an independent country are:

1) *“Article 34”*

“(1) Destitute and neglected children are nurtured by State”

“(2) State develops a social system for all people and develops for those who are poor based on human dignity”

“(3) State is obliged for delivers any sorts of health facilities and public facilities”

2.2.2 Constitution of United States

United States Constitution was presented on September 28 1787 but not being enforce until later on March 1789. It is originally comprising of seven articles where three articles out of seven embody doctrine of three branches of federal Governments, which are legislative, executive, and judicial. Meanwhile articles four, five, and six reflects consent of federalism, depicts rights of state Government, and process of

constitutional amendments. Last article, which is seven, contain procedures used by States to ratify it.

Recent amendments was back on 1992 named as Twenty Seventh amendment is composed of preamble, Article 1 (Legislative Branch), Article 2 (Executive Branch), Article 3 (Judicial Branch), Article 4 (States), Article 5 (amendments), Article 6 (Debts and Oath), Article 7 (Ratification), Signatories, and amendments. These amendments are structurally remain untouched by Congress for prior amendments and its original text. Through out numerous amendments, United States declared nor any state has a licensed to deprive any person life, as it was stated on amendments 14 regarding Citizenship Rights on its constitution.

I) *“Amendments 14”*

1. *“All person born or naturalized on United States, and subject to jurisdiction thereof, are citizen of United States and of State where they reside. No State should make or enforce any law which will abridge privileges or immunities of citizen of United States; nor any State deprive any person life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction. Protection of laws”*

2.2.3 Indonesia Law No. 35 of 2014 on Amendment to Law No. 23 of 2002 on Child Protection

Indonesia child Protection act had been amended since it was enacted on 2002. Several articles are removed, some are amended with few addition and some are totally amended.

Indonesia Law No. 23 of 2002 on Child Protection act is consisted of 93 articles, which are divided onto various of titles on every articles. Article 1 is composed of different terminology which are on used or frequently mention on each section or subsection as a brief sentence to confirm words which are on used are referring for. Article 4-19 is

consisted of rights and duties of a child which are to live, grow, and develop as a human and being protected as well. Every child earns right of freedom of Religion. Child is also obtained on rights of health and social.

Article 20 is consisted of General Obligations, Article 21–24 with State and Government Obligations, Article 25 with Obligation of Community, Article 26 with Parents Obligations, Article 27–28 with Child Identity, Article 30–32 with Child Custody, Article 37 with Child Fostering, Article 39–41 with Child Adoption, Article 42–43 with Religion , Article 44–47 with Health, Article 48–54 with Education, Article 55–58 with Social, Article 59–71 with Specific Protection, Article 72–73 with Community Role, Article 74–76 with Indonesia Commission of Child Protection , Article 77–90 with Criminal regulation, and Article 92–93 with Enclosure.

Some article does specifically works as a responses or legal base of issues regarding child abuse prevention and treatment, some of those are Article 1 with various terminology regarding child or other words that frequently mention on that act, Article 4-19 with right and duties of a child which are to live, grow, and develop as a human and being protected as well. Every child earns rights of freedom of Religion, article 20 with general obligation which included state, government, community, family, and parent, Article 21-24 with state and government obligation on implementation of children right through conducting it without differencing between child Religion, tribes, race, gender, groups, ethnicity, culture, language, child legal status, chronological order of child birth, and physic or mental condition of child, furthermore, government is also obliged to accommodate infrastructure and does monitoring on this implementation, Article 25 is consisted of obligation of community that can be done through community role activities, Article 26 with obligations of parents to nurture, maintain, and prevents from marriage, Article 37 with child fostering on case parents are incapable to perform nurturing and maintain their child or their location is unknown by people or anything, or no longer exist, which directly through an official agencies, Article 39–41 with child adoption which can be conducted based on local custom and

regulation that currently valid, Article 44-47 regarding child health where Government and State together does a comprehensive health infrastructure.

While parents is obliged to treat child health properly, whether they are on a condition which can be consider as family with poverty, then on this kind of case government should replace them by fulfilling parents obligation, article 55-58 composed of social of child, specifically for neglected child together with community agencies and government institution combating neglected child by declaring through a jurisdiction that a child is neglected and should remain on a shelter, Article 59–71 is regarded for Specific Protection. It includes child that involves on an emergency situation, child dealings with legal, child that came from isolated and minority groups, child as a victim of exploitation, child as a victim of trading, child as a victim of substance abuse, child as a victim of abduction, child as a victim of violence, child with disability, and child with maltreatment and neglect, Article 72-73 dominantly summarizing community enrollment on preventing maltreatment on a child or child neglect through personal role, social community institution, education institution, Religious organization, corporation, and mass media, Article 74-76 regarding of Indonesia Commission of Child Protection duties and their obligations, and Articles 77-90 is consisted of types of punishment which are imprisonment and fines that will be apply on perpetrators for having criminal acts with term of imprisonment range from 3 years to 15 years and penalty fines range from Rp 50.000.000–Rp 300.000.000.

These articles shifted until last amendment on 2014 with amendments of some articles, addition of new articles, and few addition of sub article. On Article 1 new Terminology is added gave a total numbers of existed Terminology on Article 1 on 2014 act 18.

Sub Article and Articles that goes through amendments are Article 6, Article 9 with amendments on Sub Article 1 and 2 and addition of new Sub Article that between Sub Article 1 and 2 which is Sub Article 1A, amendment of Article 12, amendment of Article 14 with addition of new

Sub Article 2, Article 15 with addition of letter f, amendment of Article 20, stipulation regarding title on section 2 chapter IV, Article 21, Article 22, Article 23, Article 24, article 25 with addition of new Sub Article 2, stipulation regarding title on section 4 chapter IV, Article 26 with addition of new letter d and Sub Article 2, Article 27 with amendment of Sub Article 4, Article 28, Article 33 on Sub Article 1, 3, 4, 5, addition of new Article which is 38A, Sub Article 1, 2, 5 of Article 39 with addition of new Articles 2A and 4A, Article 41, addition of new Article which is Article 41A, Article 43, Article 44, Sub Article 2 and 3 of Article 45, addition of new Article which are 45A and 45B, Article 46, Article 47, Article 48, Article 49, Article 51, Article 53, Article 54, Article 55, Article 56, Sub Article 2 of Article 58, Article 59, addition of new Article which is 59A, Article 60, Article 63 is removed, Article 64, Article 65, Article 66, Article 67, addition of new Article which are 67A, 67B, and 67C, Article 68, Article 69, addition of new Articles 69A and 69B, Article 70, Article 71, addition of new Articles 71A, 71B, and 71C, addition of new section IXA, addition of new Article 71E, Article 72, Article 73, addition of new section XA, Article 74, Article 75, Article 76, addition of new section XIA, addition of new Articles 76A, 76B, 76C, 76D, 76E, 76F, 76G, 76H, 76I, and 76J, Article 77, addition of new Articles 77A and 77B, amendments of Article 80, amendment of Article 81, Article 82, Article 83, addition of new Article 86A, amendment of Article 87, amendments of Article 88, amendment of Article 89, and addition of new Article 91A.

Several articles are specifically referring to child abuse prevention and treatment even though these were not mention explicitly as it but somehow it does work as it. Those articles are⁴⁴:

1) Article 1

“(2) Child protection is consider as any kind of activities to assure and protecting children and their rights to live,

⁴⁴ Indonesia, *Indonesia Law No. 35 of 2014 on Amendment to Law No. 23 of 2002 on Child Protection*, Article 1-80

growing, developing, and participating as a human, also protecting them from abuse and discrimination” fully

“(6) Neglected child is a child that is not being provided of those basic things. Spirituality, physically, mental, and social are also included”

“(15a) Violence is any kinds of act that results with physical, psychological suffering, and neglect, including threat to do an act, and coercion”⁴⁵

2) Article 23

“(1) State, Government, and local Government intervene on child protection and welfare by monitoring rights and duties of parents, foster parents, or others who is legally

“(2) State, Government, and local Government does monitoring on implementation of child protection”⁴⁶

3) Article 25

“(1) Implementation of child protection is conducted as part of community obligation on implementing child Protection through community role activities”

“(2) Community obligations that had been mentioned on Article 25 (1) are implemented with involvement from community organizations, academics, and child organizations”⁴⁷

4) Article 26

“(1) Parents are obliged for:”

“a. nurture, raising, educate, and protecting child”

“b. develop child based on their capability and talent”

“c. prevents marriages on childhood years ”

“d. provide character building and implantation of ethical values on child”.

⁴⁵ Indonesia, *Indonesia Law No. 35 of 2014 on Amendment to Law No. 23 of 2002 on Child Protection*, art. 1

⁴⁶ *ibid*, art. 23

⁴⁷ *ibid*, art. 25

“(2) On case parents is no longer exist, or their existences is unknown., or due to they cannot carry out their obligation, as it has been mentioned on Article 26 (I) it could be handed down to family of child with process based on applicable laws”⁴⁸.

5) Article 37

“(1) Child Fostering is exerted for a child with incapable parent to provide development of child Spirituality, mental, physic, and social”

“(2) Child fostering as it has been mentioned on Article 37 (I) can only be conducted by authorized agency”

“(3) If authorized agency as it has been mentioned on (2) is A Religious agency, child that may be brought up should had same Religion with Religious agency that will foster them”

6) Article 38

“(1) Child fostering as it has been mentioned on Article 37, should be implemented without differencing child tribe, race, group, gender, ethnicity, culture and language, child legal status, chronological order of child birth, and condition of mental and physic”

“(2) Child fostering as it has been mentioned on (1), should be held through coaching activities, raising, treatment, and education on sustainable includes providing financial and facility to develop an optimal child growth on their Spirituality, mentally, physically, or socially without affecting on child Religion”

7) Article 39

“(1) Child adoption can be done if it is necessary for child and can be conducted based on local custom and legislation that applies”

⁴⁸ *ibid*, art. 26

“(2) adoptive parents should had same Religion with adopted child”

8) Article 41

“(1) Government and community performs coaching and surveillance on implementation of child adoption”

“(2) Terms of coaching and surveillance as it has been mentioned on (1) are subsist on Government legislation”

9) Article 42

“(1) Every child earns protection to performs Religious worship toward GOD

10) Article 44

“(1) Government and local Government are obliged to provides health facilities on order every child to obtain an optimal health even before their birth”

“(2) Health facility and a comprehensive health”

“(3) Comprehensive health as it has been mentioned on (1) should be pervaded with .promotive. ,preventive, curative, and rehabilitative acts for both basic health treatment and referral”

11) Article 45

“(1) Parents and family should keep child health and treats child since on womb”

12) Article 45B

“(1) Government, local Government, community, and parents are obliged. To protect child from any specific acts that may disrupt child health and growth”

13) Article 47

“(1) Child should be protected from organs removing from their body for transplantation of others”

14) Article 54

“(1) Child which include or exclude from education institution is oblige to obtain protection from physical

violence, psychological abuse, and other type of crime that is conduct by any person”

15) Article 55

“(1) Government and local Government are obliged to implement maintenance, treatment, and social rehabilitation for neglect child”

“(2) Implementation of maintenance as it has been mentioned on (1) can be conduct by community agency”

“(3) For implementation of maintenance and treatment of child neglect, Government institution and community agency hold a cooperation with several parties”

“(4) Implementation of maintenance and treatment as it has been mentioned on (3), monitoring is conduct by Ministry that hold Government social subject”

16) Article 57

“(1) If neglect child is caused by parent neglected their obligation, therefore institution that has been mentioned on Article 55, family, or officials are able filed to a court for legalization to confirm a child is a neglect child”

17) Article 58

“(1) Court legalization that has been mentioned on Article 57 simultaneously confirming location of shelter maintenance, and treatment of neglect child”

“(2) Government and local Government or institution are obliged to provide locations that has been mentioned on (1)”

18) Article 59

“(1) Government, local Government, and state institutions are obliged on maintenance and treatment of specific child”

“(2) Protection on specific child are given to:”

“a. Child on emergency situation”

“b. Child facing legal problem”

“c. Child from minority group and is isolated”

“d. Child as a victim of economic exploitation”

“e. Child as a victim of drugs abuse, alcoholic, and psychotropic abuse”

“f. Child as a victim of abduction and Trafficking”

“g. Child of terrorism victim”

“h. Child with disabilities”

“i. Child as a victim of mistreatment”

“j. Child with deviant social behavior and”

“k. Child as a victim of stigmatization from labeling of parent condition”

19) Article 59A

“Protection for specific child as it has been mentioned on Article 59 are conducted through:”

“a. Quick Handling, including medication treatment or physical rehabilitation, psychological rehabilitation, and social, including disease prevention and other impairment of health”

“b. Psychosocial assisting during medication until recovery”

“c. Appropriations of social funding for child with poverty”

“d. Protection on every stage of judicial process “

20) Article 66

“Protection for specific child that is exploited economically as it has been mentioned on Article 59 (2) letter d are conducted through:“

“a. Dissemination or socialization regulation of act regarding child Protection from exploitation economically”

*“b. Monitoring, reporting, and issuing sanction
 “c. Involvement of several company, non
 Governmental organization, and community on
 obliteration of child exploitation economically ”*

21) Article 67

*“Protection for specific child that had been a Victim of
 drug abuse, alcoholism and psychotropic as it has been
 mentioned on Article 59 (2) letter e and child that involved
 in its production and distribution is conducted through
 monitoring, prevention, maintenance, and rehabilitation”*

22) Article 68

*“Protection for specific child as a victim of abduction,
 trading, and trafficking as it has been mentioned on Article
 59 (2) is conducted through monitoring, protection,
 prevention, maintenance and rehabilitation”*

23) Article 69

*“Protection for specific child that had been a victim of
 physical or psychological violence as it has been mentioned
 on Article 59 (2) is conducted through:”*

“a. Dissemination and socialization

Regulation of child abuse and violence act”

“b. Monitoring, reporting, and issuing sanction”

24) Article 71

*“Protection for specific child as a victim of mistreatment
 and neglect as it has been mentioned on Article 59 (2) is
 conducted through monitoring, prevention, treatment,
 counseling, rehabilitation, and assistance”*

25) Article 71E

*“(1) Government and local Government are obliged to
 funding on implementation of this program”*

*“(2) Funding on implementation of child protection as it has
 been mentioned on (1) is financed from:*

“a. State income and state expenditure”

“b. Regional income and regional expenditure”

“c. Official fund and not binding”

26) Article 72

“(1) Community takes roles in this program, both personally or groups”

27) Article 73A

“(1) In order to increase value of Implementation of child protection ministry which held Government social subject should perform cross cutting coordination with other institution”

28) Article 74

“(1) In order to increase value of monitoring on implementation of child right fulfillment, Indonesia Commission for Child Protection is form as an independent organization”

“(2) Local Government is allowed to establish Regional National Commission of Child Protection or other similar institution to implement monitoring on regional area”

29) Article 76

“Indonesia Commission for Child Protection duties are”

“a. Conducted monitoring on implementation of protection and child right fulfillment”

“b. Collecting data regarding child protection”

“c. Receiving and analyzing community denouncement regarding violation of child right”

“d. Conducting mediation on dispute of child right violation”

“e. Conduct co working with institutions or agency that was organized by community on child protection subject”

“f. Giving to official as a speculation on violation of

this act”

30) Article 76A

“Every person are prohibited:”

“a. Treat a child with discriminatively that caused a child to experience loss, on material or moral that gives an impact for them on inhibit their social function”

31) Article 76B

“Every person are prohibited to positioned, letting, and involving a child on a mistreatment situation and neglect”

32) Article 76C

“Every person are prohibited to positioned, letting, and involved on performing a violence act against child”

33) Article 76G

“Every person are prohibited to obstruct child on confessing and performing Religious”

34) Article 76I

“Every person are prohibited on positioning, performing, and involved on doing exploitation to a child”

35) Article 77

“Every person that violates stipulation as it has been referred on article 76a will be sentence to prison five (5) years long or fine as many as Rp 100.000.000”

36) Article 77B

“Every person that violates stipulation as it has been refer on Article 76B will be sentenced to prison five (5) years long or fine as many as Rp 100.000.000”

37) Article 80

“(1) Every person that violates stipulation as has been refer on Article 76B will be sentenced to prison six (6) months long or fine as many as Rp 72.000.000”

“(2) On case a child as it was refer on sub article Iis heavily

injured, then perpetrator will be convicted with imprisonment as long as 5 (five) years long and fine as many as Rp 100.000.000”

2.2.4 Child Abuse Prevention and Treatment Act Originally Enacted 1974 / P.L. 93-247 / 42 .US. Code 5101 (Public Health and Welfare) / Chapter 67 with Recent Amendment as Victim of Child Abuse Act Reauthorization Act of 2018 / P.L. 115-424 / 42. US. Code (Public Health and Welfare) / Chapter 67

Child abuse prevention and Treatment act (CAPTA) had emerged after it was passed by 93rd United States Congress as a Bill before it eventually established as a Law or an act on 1974. It was structurally a series of U.S. Code Title 42 which is a codification that comprehensively regarding of Public Health and Welfare acts. U.S. Code is composed of 154 Titles (current edition) and 161 chapters (current edition) and remain amended every 6 years since.

CAPTA was enacted as an urgent response that addressed child abuse and neglect which occurs back at that time. It acts as a legal base for federal funding and prevention on a State, assessment, investigation, treatment activities, and demonstrating programs and project for public agencies, non-profit organization, and Indian Tribes and Tribal organizations. On addition, CAPTA also identifies Federal role on evaluation, technical assistance, and data collection activities.

Original CAPTA was codified as a public law with code P.L. 93 247 on U.S. Code Title 42 on 1974 is divided onto 7 Sections⁴⁹.

Sections are listed as next:

1) “Section 2: Center on Child Abuse and Neglect”

“a. Secretary of Health, Education, and Welfare (referred to on this act as “Secretary”) should established an office as .National .Centre. on child

⁴⁹ United States, Child Abuse Prevention and Treatment Act 1974, Section 2-7

abuse and neglect”

“b. Secretary, should:

“(1) Compile, analyze, and publish a summary annually of recently conducted and currently conducted research on child abuse and neglect”

“(2) Develop and maintain files clearinghouse on programs, including private programs, showing possibility of success, for prevention, identification, and treatment of child abuse and neglect”

“(3) Compile and publish training materials for personnel who are participate or are about to participate on prevention, identification, and treatment of child abuse and neglect”

“(4) Giving technical assistance (directly or through contract) to public and non profit private agencies or organization to assist them on improving, developing, and carrying out programs and activities regarding to prevention, identification, and treatment of child abuse and neglect”

“(5) Conduct research onto cause of child abuse and neglect, and onto prevention, identification, and treatment thereof and”

“(6) Held a full investigation of national incidence of child abuse and neglect, including an extent to which incidents of child abuse and neglect are increasing on number or severity”

2) “Section 3: Terminology”

“Term “child abuse and neglect” means physical or mental injury, negligent treatment, or maltreatment of a child before age of eighteen by a person who is obliged for child welfare on circumstances which indicate that child health or welfare is

harmed or threatened thereby, as where regulation prescribe by secretary”

3) “Section 4: Demonstration Program and Project”

“a. Secretary, through Center, is authorized to sign onto contract with, public agencies or non profit private organization (or combination thereof) for demonstration program and project to prevent, identify, and treat child abuse and neglect. Contracts on this subsection may be”

“(1) For development and establishment of training programs for personnel on fields of medicine, law, education, social work, and other relevant fields who are work on field of prevention, identification, and treatment of child abuse and neglect: and training programs for children, and for person on field of welfare of children, on methods of protecting children from child abuse and neglect”

“(2) For establishments and maintenance, based on geographic areas, staffed by multidisciplinary teams of personnel trained on prevention, identification, and treatment of child abuse and neglect, as a broad range of programs of child abuse and neglect, including direct satellite from center, as well as”

“(3) For furnishing teams of personnel trained of prevention, identification, and treatment of child abuse and neglect, on a basis to small communities where this kind of programs are not available”

“(4) For other programs and projects, including programs and project for parent, and for prevention and treatment of drug child abuse and neglect, that show possibility of success on preventing or treating

case of child abuse and neglect as Secretary may approve”

“Not less than 50 per centum of Grants appropriated on this act for any fiscal year should be used only for carrying out stipulation of this subsection”

“b. (1) Of sums appropriated on this act for any fiscal year, not less than 5 per centum and not more than 20 per centum may be used by Secretary for funding States for payment of expenses for assisting States on developing and carrying out child abuse and neglect prevention and treatment programs”

“(2) On order for a state to qualify for assistance on this subsection, this state should”

“(a) Implementing a law on a state regarding child abuse and neglect which should include stipulation for immunity for person reporting instances of child abuse and neglect from prosecution, on any state or local law, arising out this kind of reporting”

“(b) Gives reporting of suspected instances of child abuse and neglect”

“(c) Gives receipt of a report of suspected instances of child abuse and neglect an investigation should be initiated promptly to substantiate accuracy of report, and immediate step should be taken. To protect health and welfare of abused or neglected child, as well as of any other child on same place who may be on danger of abuse or neglect”

“(d) Demonstrate that there are impact throughout State, with implementation of child abuse and neglect laws and with reporting of suspected instances of child abuse and neglect, for instances administrative

procedure, personnel trained on child abuse and neglect prevention and treatment, training procedures, institutional and other facilities (public and private), and multidisciplinary program and service as may be appropriate for a State will deal with child abuse and neglect cases on a State”

“(e) Prepare for methods to preserve classified record on order to keep child and parents privacy”

“(f) Prepare for cooperation of laws official, courts of jurisdiction, and appropriate State agencies”

“(g) Provide on every case involving an abused or neglected child which result on judicial proceeding an adult to represent child on proceeding”

“(h) Prepare that an aggregate for program or project regarding to child abuse and neglect assisted by State funds should not be reduced less of level prepared during fiscal year 1973, and set forth policies and procedure for Federal funds is available on this act for any fiscal year will be so used to supplement, and to extent practicable, increase level of State funds which would, on absence of federal funds, be available for programs and project”

“(i) Prepare for dissemination of records to general public of problem of child abuse and neglect and facilities and prevention and treatment methods available to combats instances of child abuse and neglect”

“(j) To extent feasible, parental organization combating child abuse and neglect receive treatment”

“(3)(c) Assistance prepared to this section should not be available for construction of facilities are not

otherwise available, and for minor remodeling or alteration of existing facilities”

4) “Section 5: Authorization”

“There are hereby authorized to be appropriated for this act \$15.000.000 for fiscal year ending June 1974, \$20.000.000 for fiscal year ending June 1975 and \$25.000.000 for fiscal year ending June 1976 and for succeeding fiscal

5) “Section 6: Advisory Board on Child Abuse and Neglect”

“a. Secretary shall, with sixty days after enactment of this act, appoint an advisory board on Child abuse and Neglect (here refer as advisory board), which should be composed of representative from Federal agencies with obligation on programs and activities regarding to child abuse and neglect, including Office of Child Development, Office of Education, national Institute of Mental Health, National institute of child health and human development, social and rehabilitation and, health administration. Advisory board should assist secretary on coordinating programs and activities regarding to child abuse and neglect administer or assist on this act with this kind of program and activities administer or assist by federal agencies who representative are member of advisory board. Advisory board should alsoassist secretary on development of federal standards for child abuse and neglect prevention and treatment programs and project”

“b. Advisory board should prepare and submit, with eighteen months after enactment of this act, to president and congress a report on program assisted on this act and program, project, and activity regarding to child abuse and neglect administer or

assist by federal agency which representative are member of advisory board.

This report should include a research of drug abuse and child abuse and neglect”

“c. Of funds appropriate on section 5, I per centum, or \$1.000.000, whichever is lesser, may be used by Secretary for report regarding on subsection b”

6) “Section 7: Coordination”

“Secretary should promulgate regulation and arrangement as may be appropriate to settle coordination programs regarding child abuse and neglect on this act and other programs which are assisted by Federal funds”

Subsequent amendment was established by 95th United States Congress on 1978 with few addition of new articles and sub articles, striking out several clause and replaced it with new lieu, and some Titles of section were edited⁵⁰. This version of amendment was Titled as “*Child Abuse Prevention and Treatment and Adoption Act of 1978*”. On this specific act, it is consisted of 10 sections, which divided onto 2 Titles with Title 1 amendments to Child Abuse Prevention and Treatment Act and Title 2 Adoption. Section 1. Section 2 is Titled as National Center of Child abuse and neglect with addition of new subsection 7 r and after that, it will be submitted to advisory board. Besides that, another subsections are being amended as well, which are, subsection 1 (a) and 1 (b) by inserting “*publish and disseminate*” clause, subsection 2 is amended by inserting at end of subsection c with sentences that “*any Grant will be check by Secretary at least annually regarding mechanism for its progress of research and to keep its quality*”, and subsection 3 is being amended through adding new subsection d regarding availability of staff to carry out function of this act through Secretary.

⁵⁰ United States, *Child Abuse Prevention and Treatment Act of 1978*, Section 2

Section 3 is titled as Terminology with 2 new clauses were insert, which are “*or exploitation*” and “*or age specified by child protection law of state on question*”⁵¹.

Section 4 is titled as Demonstration or Programs and Project, with 3 subsections, with subsection 1 was amended by inserting on subsection (a) “*or service*”, (b) striking out “development and establishment of” clause, and (c) striking out last sentence of this subsection. Subsection 2 is amended by striking out “of sums” on subsection (a), (b) inserting on paragraph 2 clause that “*if a state is failed to obligate Grant gave on this subsection on eighteen months after date of given Grant, next Grant should be reduce by an amount equal to amount of unobligated unless for some exception*”, and amending this section heading as Demonstration or Programs and Project⁵².

Section 5 is Title as authorization or appropriation Center. Subsection 1 is amended by striking out “and” after 1975 and inserting clauses that exhibit increasing amount of funds for each fiscal years which, for fiscal year ended on September 1979 with \$ 25.000.000, fiscal year ended on September 1980 with \$ 30.000.000 and fiscal year ended on September 1981 with \$ 30.000.000⁵³. Funds based on appropriated fiscal year, should be used for contract to implement research, demonstration and project exactly as it has been referred on Section 2 (b) (5). There is also a consideration to continue Grant for child abuse and neglect programs and project of national or regional scope, which is not less 25 per centum should be use for these programs and projects as it has been referred on Section 4 (b) (I). On subsection 2, new subsections were added on subsection 2 (b) (I) that shows sums of appropriated for fiscal year ending on September 1978 with \$ 3.000.000, for fiscal year ending on September 1979 with \$ 3.500.000, and for fiscal year ending on September 1980 with \$ 4.000.000, and for fiscal year ending on September 1980 with \$ 4.000.000 for conducting contracts to prevent, identify, and treat abuse of

⁵¹ *ibid*, Section 3

⁵² *ibid*, Section 4

⁵³ *ibid*, Section 5

children includes program treatment of family unit and programs for training of personnel. Subsection 3 was amended on several subsections, which regarding term of child as “any person who had not attained age 18” and amended subsection 4 (a) and (b) which stated that.

Section 6 with advisory board as its Title is consisted of 3 subsections that were amended, with subsection (1) by inserting this sentence on subsection (a): “*and not less than three members from general public with experience on field of child abuse and neglect*”, subsection (2) inserting clause “*administered*”, subsection (3) was amended by inserting new subsections (b) regarding submittal to President and Congress and (c) regarding compensation of member of advisory board⁵⁴.

Title 2 of this act named as adoption, contains sections that regarding of adoption procedure and qualification. Section 201 is a brief consideration stated by Congress referring to children that remain on institution or foster home due to barrier to their permanent place or adoptive home. Therefor, this title is to facilitate elimination of that barrier through:

“(1) Promoting establishment of model adoption legislation and procedures on States and territories of United States on order to eliminate jurisdictional and legal obstacle to adoption”.

“(2) Prepare a mechanism for Department of Health, Education, And Welfare to

(a) promote quality standards for adoption including pre placement, post placement, and adoption counseling and standard.

To protect rights of children that should be adopted and

(b) prepare for national adoption and foster home data gathering and analysis system to bring children who would benefit by adoption and qualified prospective adoptive parents who might adopt children”.

Section 202 is Titled as Model adoption Legislation and Procedures with each subsection confirming about a formation of a panel to adopt

⁵⁴ *ibid*, Section 6

model of adoption legislation through a panel appointment, which will be published on the federal register. When this appointment is over after attaining the model of its adoption, that panel should be terminated which is after the Secretary publishes the final model of its legislation and procedures. The final part of this subsection, summarizing that members of the existing panel will receive compensation during travel time or away from home⁵⁵.

Section 203 is a section that outlines the establishment and operation of a national adoption and foster care, which its data are gathered and analyzed, held by the Secretary through direct or contract with public or private nonprofit agencies or organizations. Furthermore, education and training programs regarding adoption and adoption assistance programs are also being conducted for any parties that participate. Operation of a national adoption files exchange is also prepared as part of facilitation for a proper adoptive place for children that is currently being sheltered. Technical assistance is also applicable for carrying out programs, as well as improving and developing this adoption program⁵⁶.

Section 204 contains stipulation on report of unlicensed adoption placement should be exerted to congressional committee⁵⁷.

Section 205 does mention regarding amounts of appropriated Grant to carry out this Title, for fiscal year ending September 1978 is \$ 5,000,000 and similar sums are valid for three fiscal years⁵⁸.

Next amendment is imposed in 1984 after it was passed by the 98th Congress with Title as “*Child abuse amendment of 1984*” as a public law with code number P.L.98-457, which divided into 3 Titles, Title 1, Title 2, and Title 3.

Title 1 amendments to Child Abuse Prevention and Treatment Act with Program called as “*Program Improvement*” is composed of section 2 with title as National Center on Child Abuse and Neglect, shows that it has been through an amendment which can be distinguished from previous act

⁵⁵ *ibid*, Section 202

⁵⁶ *ibid*, Section 203

⁵⁷ *ibid*, Section 204

⁵⁸ *ibid*, Section 205

particularly on subsection (6) and (7), if we summarize it by combining both subsections, it is to extent any incidents that can be categorize as child abuse and neglect, that are increasing on number and severity, two years after child abuse amendment 1984 is enacted, and to prepare an annual report that will be exert to appropriate Committee of Congress to bring out coordination of objectives and activities of agencies and organization regarding programs⁵⁹.

Section 3 with titled as “*Terminology*”, is amended by adding new terminology and sentence, which, new terminology of child and inserting sentence: “*including any employee of a residential facility or any staff person preparing out of home*” to it⁶⁰.

Section 4 is Titled as “*Demonstration or Programs and Project*” which it is being amended by adding waiver clause on it⁶¹.

Section 5 is regarding of “*authorization of appropriation*” with renewal amounts of appropriated Grant to carry out this act. For. Fiscal year 1984 is \$ 33.500.000, for fiscal year 1985 is \$ 40.000.000, for fiscal year 1986 is \$ 41.500.000, and for fiscal year 1987 is \$ 43.100.000. Not less than \$9.000.000 on available fiscal year is used for State Grant, meanwhile for carrying out demonstration or project, files dissemination, research, and technical assistance, exact amount of funds that should be expense is not less than \$ 11.000.000. For identification, treatment, and prevention of abuse, sums of funds that is authorized is lesser than any other that has been mentioned previously, which is \$ 5.000.000. For additional funds of State, \$ 5.000.000 is spared to carry out stipulation of section 4(c) (1)⁶².

Section 6 is subjected as “*advisory board on child abuse and neglect*” and Section 7 is regarding of “*coordination*”, which both were not significantly amended from previous act⁶³.

⁵⁹ United States, *Child abuse amendment of 1984*, Section 2

⁶⁰ *ibid*, Section 3

⁶¹ *ibid*, Section 4

⁶² *ibid*, Section 5

⁶³ *ibid*, Section 6 and 7

Part B of this act is Titled as *“Treatment For Disabled Infants”* and is divided onto 24 sections. This part of act is started from Section 121 (3) and it is title as *“New Terminology”*, Section 122 (4) with title *“New Basic State Funding Requirement”*, Section 123 with title *“additional state funds and assistance for Training, Technical assistance, and clearinghouse activities”*, Section 124 with title *“Regulation”*, Section 125 with title *“Report of Financial”*, Section 126 with title *“Implementation Report”*, and Section 127 with title *“Statutory Construction”* are remain part of Title 1 of this act⁶⁴.

Title 2 of this act is titled as *“Amendments to Child Abuse Prevention and Treatment and Adoption Reform Act of 1978”*, with section 201 heading was reenacted as *“Declaration”*, this particular section is a confirmation for public that thousands of children, including disabled infants, which currently are sheltered on institutions or foster home, are probably living on a jeopardy and requires a placement or adoptive home. Mechanism of promoting quality standard for adoption should be implemented, also for pre placement, post placement, and post legal adoption as well as coordinating with Federal department and agencies for national adoption data and analysis system⁶⁵.

Section 202 is titled as *“Model Adoption Legislation and Procedures”* with composition of new sentences and subsection of coordination should be held by Secretary with national, State, and other parties⁶⁶.

Section 204 is titled as *“Authorization of Appropriation”*, by striking out *“and”* and inserting clause *“and \$ 5.000.000 for each fiscal year 1984, 1985, 1986, and 1987”*.

Title 3 of this act was enacted with title as *“Family Violence Prevention and Service Act”*, as Section 302 heading was established as *“Declaration”*, with clauses on subsection *“(1) Demonstrate of assisting States to prevent family violence and to prepare immediate shelter and*

⁶⁴ *ibid*, Section 122 - 127

⁶⁵ *ibid*, Section 201

⁶⁶ *ibid*, Section 202

assistance for victims of family violence” and subsection “(2) *Prepare technical assistance and training to family violence programs to State, local public, agencies, nonprofit private organization, and other personal assistance*”⁶⁷.

Section 303 titled as “*State Demonstration authorized*” is enacted as a legal based for Secretary to do demonstration funds to State.

Section 304 is regarding of allotments funds, which similar with its heading title and as a section that outlines ratio of sums appropriated fund for State.

Section 305 heading title was enacted as “*Secretarial*”, Section 306 with “*Evaluation*”, Section 307 with “*Discrimination Prohibited*”, Section 308 with “*National clearinghouse of family violence prevention*”, Section 309 with “*Terminology*”, Section 310 with “*authorization of appropriation*”, Section 311 with “*Law Training and Technical assistance funds and contract*”, and Section 312 with “*administration and statutory construction*”.

4th amendment was eventually enacted on 1988 after it was passed by 100th Congress with its title that can be referred as “*Child Abuse Prevention, Adoption, and Family Service Act of 1988*” with Public Law code as P.L.100-294⁶⁸. On front part of its text, a distinct form of structure is shown after existing Table of Contents is placed as part of this act, to list out each section that consisted and as a brief summary of what this recent amended act does. This act is separated onto a4 Titles, with Titles 1.

“*Child abuse prevention and treatment act*”, Title 2 as “*Child Abuse Prevention and Treatment and Adoption Reform Act of 1978*”, Title 3 as Family violence prevention act, and Title 4 as administrative.

Regarding there are 4 Titles on this act, 2 Titles are remain used on this brief summary of its act.

On Section 1 we can only conclude benefit with existence of this act from its short title and table of content as these are only clauses taken

⁶⁷ *ibid*, Section 302

⁶⁸ United States, *Child Abuse Prevention, Adoption, and Family Service Act of 1988*

from title of heading on Section 1 that was mentioned on that part of table of contents.

Section 2 is filled with clauses regarding of national center on child abuse and neglect, where this can be consider as a similarity with previous act, referring to its Section 2.

Meanwhile, Section 3 does by outlining task and other objectives of advisory board on child abuse and neglect⁶⁹.

Section 4 exhibited tasks of Inter agency on child abuse and neglect for instances on coordination with Federal, development of activities, and coordination of funds that will be used based on this act⁷⁰.

Section 5 with “*National Clearinghouse For files regarding to child abuse*” as its title of section heading, meanwhile Section 6 is comprise of research and assistance activities of National Centre on Child abuse and neglect⁷¹.

Section 7 is titled as funds to public agencies and nonprofit private organization for demonstration or programs or project, for training program, as this kind of section had always been on this act since it was originally enacted and even after it kept being amended. Teams of personnel that came from multidisciplinary (personnel from field of medicine, law, and social work) are trained as a staff for prevention, identification, and treatment of child abuse and neglect. Several program and project should be develop through funding by cooperating with preschool, elementary, and secondary school and involving hospital⁷².

Section 8 is quite similar with section 7, thing that separate both from similarity is that this section scope is a State, regarding funding of programs⁷³.

Section 9 was titled as “*Technical Assistance to States for Child Abuse Prevention and Treatment Programs*” which on general, this

⁶⁹ *ibid*, Section 3

⁷⁰ *ibid*, Section 4

⁷¹ *ibid*, Section 5 and 6

⁷² *ibid*, Section 7

⁷³ *ibid*, Section 8

section is a legal framework for Secretary on preparing training and technical assistance program as part of development, implementation, and operation of programs and procedures as a responses of medical neglect and establish national files clearinghouse to attain current data regarding medical treatment for disabled infants⁷⁴.

Section 10 also depicts regarding funding to States, however on this section, it is more on how investigation and prosecution of child abuse case take place. Reports should be submitted as well.⁷⁵

Section 11 with *“Miscellaneous Requirement Regarding to Assistance”* as its title, with majority of these subsections are addressing *“Geographical Distribution”* so each programs and project could possibly reach urban and rural areas and also addressing *“Prevention activities”* through funding for research and development⁷⁶.

Section 12 is regarding of *“Coordination of Child abuse and neglect programs”* and Section 13 is section of *“Report”*⁷⁷.

Section 14 was enacted as *“Terminology”* section of this act, by establishing recent term of child, board, and child abuse and neglect. Child is refer to a *“person who has not attain age of 18”* Board is refer to *“advisory board on child abuse and neglect”*, and child abuse and neglect is refer to *“physical or mental injury, abuse or exploitation, negligent treatment, maltreatment of a child by a person who is obliged for child welfare, on circumstances which indicate that child health or welfare is harmed or threatened”*⁷⁸.

Last section of this act is Section 15 as an authorization of appropriation as its title. On general, appropriated to carry out this act is \$48.000.000 for fiscal year 1988, with a similar sums for fiscal year 1989, 1990, and 1991. \$11.000.000 is available for activities of section 5,6, and 7, and \$9.000.000 on each fiscal year is available for section 8 and 9,

⁷⁴ *ibid*, Section 9

⁷⁵ *ibid*, Section 10

⁷⁶ *ibid*, Section 11

⁷⁷ *ibid*, Section 12 and 13

⁷⁸ *ibid*, Section 14

\$5.000.000 is available for section 7 (Grants for contract), and \$ 5.000.000 is available to carry out Section 8 (Compliant and Education Grant)⁷⁹.

Rest of sections of this title that are excluded from Table of Contents are Section 102 (child abuse and disability), Section 103 (child abuse and alcoholic families), Section 105 (high risk), and Section 106 (presidential commission on child and youth)⁸⁰.

Title 2 of this act is "*child abuse prevention and treatment and adoption reform act of 1978*" with Section 205 titled as "*authorization of appropriation*", outlining sums of authorized appropriated for each fiscal year 1988, 1989, 1990, and 1991, which is available to carry out programs and activities of sections 203 of child abuse prevention and treatment and adoption reform act of 1978, with amount of \$ 6.000.000 and Section 202 titled as "*amendments to child abuse prevention and treatment and adoption reform act of 1978 regarding to adoption assistance and service*"⁸¹.

5th amendment is enacted on Tuesday, 3rd January 1989 by 101 Congress on City of Washington with Public Law code P.L. 101-126, titled as "*child abuse prevention challenge Grants reauthorization act of 1989*". 7 sections are listed as part of this act, which are Section 2 titled as "*Transfer of Program to Child Abuse Prevention and Treatment Act*", Section 3 titled as "*Technical and confirming amendments to child abuse prevention and treatment act*", Section 4 titled as "*Modification of Transferred Program*", Section 5 titled as "*authorization of appropriation of transferred program*", Section 6 titled as "*authority, to transferred program, of national clearinghouse regarding to child abuse*", and Section 7 titled as "*Transferred Program by General accounting office*".

To carry out this act, appropriated act that is available for each fiscal year 1989, 1990, and 1991 is \$ 7.000.000⁸².

⁷⁹ *ibid*, Section 15

⁸⁰ *ibid*, Section 102 - 106

⁸¹ *ibid*, Section 205 - 202

⁸² United States, *Child Abuse Prevention Challenge Grants Reauthorization Act of 1989*, Section 2 - 7

6th amendment was inserted on “*Stewart B. McKinney Homeless assistance amendment act of 1990*” which mean it is not amended as a whole act⁸³.

7th amendment is enacted by 102nd Congress on 1992 with title as “*Child Abuse, Domestic Violence, Adoption, and Family Service Act of 1992*”, with Public Law code as P.L. 102-295, as 3 Titles are contained on this act, only partially that is usable as a legal framework, which is Title 1, due to 2 other titles are distinctly referring to different act⁸⁴.

Title 1 contains as much as 4 Subtitles and 15 Sections, with Subtitle a as “*General*” with Section “*amendatory*”, Subtitle B as “*General Program*” with Section 111 as “*advisory board on child abuse and neglect*”, Section 112 as “*Research and assistance activities of national Center on child abuse and neglect*”, Section 113 as “*Grants To public agencies and nonprofit private organization for demonstration or service program and project*”, Section 114 as “*Grant program for child abuse neglect prevention and treatment*”, Section 115 as “*Emergency Grant program*”, Section 116 as “*Grant program for investigation and prosecution of child abuse case*”, and Section 117 as “*authorization of appropriation*”, Subtitle C as “*Community Based Prevention Grants*” with Section 121 as “*Title heading*”, Section 122 as “*Grants authorized, authorization appropriation*”, Section 123 as “*State eligibility*”, Section 124 “*Limitation*”, Subtitle D as “*Certain Preventive Service Regarding Children of Homeless Family or Family at Risk of Homelessness*” with Section 131 as “*authorization of appropriations*”, and Subtitle E as “*Miscellaneous*” with Section 141 as “*Technical amendment*” and Section 142 as “*Report regarding reporting system*”⁸⁵.

8th amendments was reenacted partially and it was inserted on “*Older American Art Tech Amendment of 1993*” with public law code

⁸³ United States, *Stewart B. McKinney Homeless Assistance Amendment Act of 1990*

⁸⁴ United States, *Child Abuse, Domestic Violence, Adoption, and Family Service Act of 1992*

⁸⁵ *ibid*, Section 111, 112, 113, 114, 115, 116, 117, 121, 122, 123, 124, 131, 141, dan 142

P.L. 103-171, with approval on 1993 by 103rd Congress, with only consist of Section 9 as amendment to “*Child Abuse, Domestic Violence, Adoption, and Family Service Act*”. Section 114(d) was only section that is amended regarding of General clause, by inserting “*on October, 1993*” and “*occurs*”⁸⁶.

9th amendment is enacted on 1994 and it was inserted on “*Human Service amendment of 1994*”, it slides onto this act⁸⁷.

10th amendment is a replacement for previous CAPTA amendment titled as “*Child Abuse Prevention and Treatment Act Amendment of 1996*”, which is quite similar from several aspect of sections and structure, things that significantly distinguished this amendment from previously is placed on Section 2, where it does mentioned amount of children that has been exposed from abuse and neglect on America, specifically 1.000.000, by adding actual data rather than just terminology⁸⁸. This amendment was reenacted by 104th Congress on October 1996 with Public Law code P.L. 104-235. It was separated onto 2 Titles, with Title 1. as an amendment to this act (CAPTA), consisted of 18 sections, meanwhile, Title 2 is an amendment to others act (family violence prevention and service act, child abuse prevention and treatment and adoption reform act of 1978, abandoned infants assistance act of 1988, and victims of child abuse act of 1990) consisted of 10 sections. Sections listed on this act, which some are remain same are Section I titled as “*Short Title and Table of Content*”, Section 100 titled as “*Data*”, Section 101 titled as “*Office on Child abuse and neglect*”, Section 102 titled as “*advisory board on child abuse and neglect*”, Section 103 titled as “*Repeal on inter agency task on child abuse and neglect*”, Section 104 titled as “*national clearing house regarding to child abuse*”, Section 105 titled as “*Research, evaluation, and assistance activities*”, Section 106 titled as “*Grants for demonstration programs*”, Section 107 titled as “*State Grant for prevention and treatment programs*”, Section 108 titled as “*Repeal*”, Section 109 titled as

⁸⁶ United States, *Older American Art Tech Amendment of 1993*

⁸⁷ United States, *Human Service Amendment of 1994*

⁸⁸ United States, *Child Abuse Prevention and Treatment Act Amendment of 1996*

“*Miscellaneous requirement*”, Section 110 titled as “*Terminology*”, Section 111 titled as “*authorization of appropriation*”, Section 112 titled as “*Construction*”, Section 113 titled as “*Technical and confirming amendment*”, Section 121 titled as “*establishment of program*”, Section 131 titled as “*Repeal of Title 3*”, Section 141 titled as “*Table of contents*”, and Section 142 titled as “*Repeal of other law*”⁸⁹. Title 2 might not be regarded as a legal frame work for child abuse prevention and treatment except for Subtitle B, with consideration it does not covers any legal form for child abuse prevention and treatment specifically.

11th amendment is basically similar with any other amended CAPTA, but with a renewal on its act title named as “*Keeping Children and Families Safe Act of 2003*”, as this whole act technically does not provide as a single form of act only, it was meant to be a type of act with single title and cohesively consisted of several different act gather as one, which other previous amendment also does⁹⁰. It was enacted by 108th Congress on June 2003 as Public Law code P.L. 108-36 with separation based of 4 Titles, which are Title 1 as “*Child abuse prevention and treatment act*”, Title 2 as “*adoption opportunities*”, Title 3 as “*abandoned infants assistance*”, and Title 4 as “*Family violence prevention and service act*”. Title 1 is consisted of Subtitle A and Subtitle B. Subtitle A is a General Program where on each section is similar or even identical with previous amendment act despite it has been amended, it still enacted with usual structure and content. Subtitle B with “*Community Based Grant For Prevention of Child abuse*” is slightly different from previous amendment, as these sections are added.

12th amendment was titled as “*Child Abuse Prevention and Treatment Act Reauthorization Act of 2010*” as an amendment to previous similar act, which are “*Child Abuse Prevention and Treatment Act*” and “*Child Abuse Prevention and Treatment and Adoption Reform Act*”, as well as amending “*Family Violence Prevention Act Of 1978*” and

⁸⁹ *ibid*, 100 – 113, 121, 131, 141, and 142

⁹⁰ United States, *Keeping Children and Families Safe Act of 2003*

“abandoned infants assistance act of 1988”⁹¹. It was enacted by 111th Congress on 2010 with Public Law code as P.L. 111-320. a

Recent data based on Section 101 of this amendment, shows a quite significant decreasing of children as a victim of abuse and neglect, on fiscal year 2008, as approximately 772,000. 1/3 children as maltreatment victim on 2008 were attributed to neglect⁹². Based on percentages charts, which were mention on this act, 71 percent of children were victims of maltreatment did suffers neglect⁹³ and 19 percent suffers physical abuse⁹⁴. Table of contents is removed on this amendment. Title 1 came up with a comprehensive and extent framework on procedural of implementing Grants on program and project including miscellaneous activities, which has been conducted through out years. Title 1 is consisted of similar sections from previous amendment with several differences on amount of Grants or data, which could be shifting on any fiscal year.

Title 2 was established as “*Community Based Grants For Prevention Of Child abuse and neglect*” with Section 132 as “*authority*”, Section 133 as “*Eligibility*”, Section 134 as “*amount of Grant*”, Section 135 as “*application*”, Section 136 as “*Local Program Requirement*”, Section 137 as “*Conforming amendment*”, Section 138 as “*National Network For Community Based Family Programs*”, Section 139 as “*Terminology*”, Section 140 as “*authorization of appropriation*”, Section 141 as “*Transfer of Terminology*”, Section 3 as “*General Terminology*”, and Section 151 as “*amendment To Table Of Content*”.

13th amendment was partially amended through modification on Section 106 (b) (2) (b) (iii) of infant born and identified as being impacted by substance abuse or withdrawal symptom or fetal alcohol spectrum disorder by adding several requirements for State, with adding Section 503

⁹¹ United States, Child Abuse Prevention and Treatment Act Reauthorization Act of 2010

⁹² United States, *Child Abuse Prevention and Treatment Act Reauthorization Act of 2010*, Section 101 (2)(I)

⁹³ *ibid*, Section 101 (2)(2)

⁹⁴ *ibid*, Section 101 (2)(3)

of “*Comprehensive Recovery Act of 2016*” as a Public Law with code P.L. 114-198 which was enacted by 114th Congress to CAPTA.

14th amendment was slides onto Section 802 of “*Justice for Victim act of 2015*” as a Public Law with code P.L. 114-22. Only several subsections goes through amendment, which those are, Subsection title as “*General*”, “*Terminology*”, “*State*”, “*Conforming amendment*”, and “*Technical*”⁹⁵.

15th amendment is current version CAPTA and also recent amended that has been enacted since January 2019 titled as “*Victim of child abuse act reauthorization act of 2018*” by 115th Congress as Public Law with code P.L. 115-424 to reauthorized “*Victim of Child abuse act of 1990*”, which perhaps is slightly difference with a distinction located on previous act that was amended, is not specifically a legal framework for child abuse prevention and treatment, however it is still remain with a same theme. It is consisted of 3 Sections on this act, meanwhile Section 3 (a) of this act is an amendment for Section 106(b)(2)(b)(vii) of CAPTA as this sentence is enacted:

*“Stipulations for immunity from civil or criminal based on State and local law and regulation for person doing reports of suspected or instances of child abuse or neglect, or who otherwise prepare data or assistance, including medical evaluation. With a report, investigation, or legal intervening pursuant to a report of child abuse and neglect”*⁹⁶.

Rest of other sections are still based on CAPTA.

2.2.5 Indonesia Criminal Code Regarding Child abuse and Neglect

Indonesia Criminal Code does not provide any specific article regarding child abuse and neglect or maltreatment if we refer this to its general criminal code. There are no specific articles regarding of violation, maltreatment, or any abuse acts to a child. However, there are several articles that perhaps can be consider as a protection for a child but it is

⁹⁵ United States, *Justice For Victim Act of 2015*

⁹⁶ United States, *Victim of Child Abuse Act Reauthorization Act of 2018*, Section 2

excluded or not classify as child abuse or maltreatment, which is prohibition to conduct an abortion or kill a recently born child, with consequences of imprisonment up to 15 years (articles 341, article 342, article 346, article 347, article 348, and article 349)⁹⁷.

2.2.6 United States Criminal Code Regarding Child Abuse and Neglect

Criminal Code of United States on terms of format is distinct with Indonesia Criminal Code, as these differences are lay on its codification system, contents, and separation of titles. United States Criminal Code is titled as Title 18: Crimes and Criminal Procedure as collection of enacted U.S. Code, which compose various kinds of 59 Titles on current version⁹⁸.

Title 18 is separated onto 5 parts, with Part I as “*Crimes*” (I-2725), Part 2 as “*Criminal Procedure*” (3001-3772), Part 3 as “*Prison and Prisoner*” (4001-4353), Part 4 as “*Correction of Youth Offender*” (5001-5043), and Part 5 as “*Immunity*” (6001-6005). Regarding of child abuse and other form of deliberation maltreatment or violence against children, which those are consider as crimes are included on Part 1.

Part 1 is a series of specific chapters with subject of prohibition on doing acts regarded as unlawful behaviors or on other word crimes, as well as fines or imprisonment that will be applied for any perpetrator. Chapter 110 of this criminal code is referred to child abuse with title as “*Exploitation and Other abuse of Children*”. Few mentionable sections consisted on this chapter are “*Selling or buying children*”, “*Failure to report child abuse*”, and “*Terminology*”.

Consequences of doing it so takes form as sentences of imprisonment up to 1 year or fine or even both if a failure to report child abuse does ever happen on regions of United States jurisdiction as it referred on Section 2258.

⁹⁷ Indonesia, *Indonesia Criminal Code*, article 341, 342, 346, 347, 348, and Article 349

⁹⁸ United States, *United States Criminal Code Title 18: Crimes and Criminal Procedures*

Meanwhile, imprisonment would not be less than 30 years if a person involved on trading of children with circumstances referred on subsection a and b of Section 2251a.

2.3 Theoretical Framework

2.3.1 Theories Regarding Comparative Law

Doing comparative law may consist of disparate activities for example, deciding systems and topics to be compare on both, formulating issues, obtain *tertium comparationis* (common things both had), travel and translation, formal or informal data collecting, statistical regression, capturing foreign using fluent language, and dissemination of foreign practices⁹⁹ as it has been mentioned by Maurice Adam, a professor of General Jurisprudence at Law School of Tilburg University Netherland and Jacob Bomhoff, a Lecturer at Department of Law of London School of Economic and Political Science of their book which was edited by both, titled Theory on Comparative Law on its section of comparative law as discipline practice.

This theory is consider as a specific methodology on implementing a research of comparative law and it can be included on methodology of research on general as part of issues formulation, analytical process, and data collecting due to this would not work as a whole process of implementation of this research on account of it is more emphasized on comparing law of two different country using various steps of activities as it has been mentioned earlier.

Comparing law does not always should be done by traveling to other country where its law is comparison to law of nation where we live right now. Retrieving through online archive, official website or, library would be just fine. Today world is somehow different on particular compares to previous years regarding doing a research considering currently more flexible.

⁹⁹ Maurice Adams & Jacob Bomhoff, *Theory on Comparative Law*, (Cambridge: Cambridge University Press: 2012), p. 4

Conclusion is, Adam and Bomhoff theory on comparative law might be implemented to conduct a comparative law but it is unnecessary to do every single thing or exactly similar with their statement regarding process of doing it to attain final result, for example is travelling, as it is regarded unpractical and may cost lot of budget

2.3.2 Lawrence Friedman Legal System Theory

Lawrence M. Friedman stated on his book published on 1984 regarding of effectiveness and measuring tool for indicating whether law enforcement has been on a success level through three elements, which are structure of law, substance of law, and legal culture. Structure of law referring to law enforcement apparatus, substance of law covering acts as normative form of law (*das sollen*), and legal culture is a living law currently exists on society (*das sein*).

Friedman emphasizing structure as an organize law institutions with errands to run legal devices. Pattern of structure is exhibiting on how law is executed based of its formal stipulations and it is also exhibiting how court and institutions as well as process of law are working. For instance, on Indonesia those institutions are consists of police department, district attorney, and court.

Second aspect of these elements is substance. It is referring to norms, act, and behavior pattern of human consist on a system with statute ability to bind and use by apparatus as well to be applied.

Third component of this legal system theory is legal culture, which is human demeanor including legal culture of apparatus on existing law and law system. Structure of law could not ever be consider a success without actually being implemented by people involves on system and society as legal culture, no matter how much quality of its substance.