CHAPTER I
INTRODUCTION

1.1. Research Background

The development of globalization era made the world community also increasingly recognize and understand how important Human Rights. In recent years, all aspects of the country's issues in the world are closely related to human rights issues connected economically, socially, politically, and culturally could be said to be directly related to the human rights protection. Human rights are a basic right and all people have this right.

International legal instruments concerning human rights such as the Universal Declaration of Human Rights\(^2\), the International Covenant on Civil and Political Rights (ICCPR)\(^3\), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)\(^4\) bring significant changes in the struggle to raise alertness of the importance of humanity. Human rights put their values on traditions, customs, and generally accepted norms, though not all countries have such customs or norms.

In connection with the existence of Lesbian, Gay, Bisexual, and Transgender (LGBT) which is the discussion of this thesis, cannot be separated from the existing tradition and growing in the community. The existence of LGBT

has existed for a long time, but not many people know and accept the existence of this LGBT. The existence of this group began to be known during the World War in which the Nazi group forbade their existence and sent them to the Concentration Camp for later torture and mass murder.⁵

After World War II ended and initiated the importance of Human Rights, LGBT people began to dare to voice their existence and the importance of their right to be protected.⁶ But this is not going well, because under the laws of some Islamic states, LGBT acts are considered a crime and can be sentenced death or by isolation.⁷

In 1977, in San Francisco, a town inspector named Harvey Milk became the first gay man to become an official.⁸ Harvey Milk is really active in expressing equality of rights for LGBT people. Due to the liveliness of Harvey Milk in voicing the protection of LGBT rights, even the Canadian Province of Quebec became the first province to constrain discrimination on the basis of sexual orientation. But Milk's struggle was a bitter result, a year after Harvey Milk and George Moscone (the Mayor of San Francisco at the time) were murdered by promoting LGBT rights in the San Francisco area.⁹ After Harvey Milk era, LGBT acceptance is still pros and cons. In some countries of the world, LGBT existence is strictly prohibited by applicable law in that country.

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⁵ “Nazi Persecution of Homosexuals,” United States Holocaust Memorial Museum, n.d.
⁹ The Biography.com.
Fundamentally, all people - Lesbian, Gay, Bisexual, Transgender - should be enjoying full human rights without discrimination. Inalienable human rights and preserved principle of anti-discrimination are described in countless international instruments, providing for a wide scope in application. Human rights principles in Indonesia are embedded at the national level in the Constitution\textsuperscript{10} and in the Act Concerning Human Rights.\textsuperscript{11} However, in a patriarchal heteronormative society such as in Indonesia, people who live non-normative lives continue to be discriminated and their rights are restricted.

At the national level, homosexuality is not overtly criminalised, however laws exist that infringe on the rights of Indonesian’s LGBT. The Pornography Act became the first national law that contained specific discriminatory language against homosexuality and lesbianism.\textsuperscript{12} Several laws such as the Health Act\textsuperscript{13} and the Marriage Act\textsuperscript{14} in particularly are containing discriminatory passages and do not recognize the needs of LGBT people rights. There are currently no laws that support the rights of LGBT people and no laws that specifically prohibit the discrimination of and LGBT people in Indonesia.

In general, Indonesia indeed has a bad record related to the protection toward minority groups, either those that are based on certain religion\textsuperscript{15}, Sexual Orientation, Gender Identity, and Gender Expression (SOGIE), race, or even political/ideological view. Among these minority groups, minority group of

\textsuperscript{10} Republic of Indonesia, “The Constitution of the Republic of Indonesia of 1945” (1945), sec. X.
SOGIE, religion and political/ideological-left view are those that frequently become the target of hatred in Indonesia. Related to LGBT community in Indonesia, the label “deviant” and abnormal also become the hindrance for the community to be accepted and treated equally, either socially or as the citizen of the state. In the research conducted by PEW Research Centre in 2013, it was found that 93% of Indonesian do not accept homosexuality in the middle of the society. In the research that conducted by Arus Pelangi about types of violence suffered by LGBTI in three provinces in Indonesia. Based on the research, it was found that 89.3% LGBTI have suffered from physical violence, 79.1% have suffered psychological violence, and 45.1% have experienced sexual violence. In other word, majority of LGBT in Indonesia have suffered violence in their lives. LGBT are beginning to realize that they have a different orientation when at a young age. Studies show homosexual behavior or same-sex attraction is common since 15 years old, considering homosexual behavior and same-sex attraction as different but overlapping dimensions of homosexuality. The study found 20.8% of United States males, 16.3% of United Kingdom males, and 18.5% of France males, and 17.8% of United Stated females, 18.6% of United Kingdom females, and 18.5% of France females in the United States, the United Kingdom, and France are considered having homosexual behavior or same-sex attraction.

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17 Indana Laazulva, Menguak Stigma, Diskriminasi, Dan Kekerasan Pada LGBT Di Indonesia (Uncovering Stigma, Discrimination, and Violence against LGBT People in Indonesia) - Case Study in Jakarta, Yogyakarta, and Makassar (Jakarta Selatan: Arus Pelangi, 2013), 64.
This situation shows that school age groups are vulnerable ages to start engaging in same-sex relationships. While the decision to become homosexual occurs mostly in young adulthood\(^\text{19}\) or at an age when they are mostly high school students or college students.

Data released by UNESCO in 2016 showed that there are 61.2% of LGBT Students reporting ever experienced prejudice or discrimination based on SOGIE. That report used data from several regions and countries/territories, included Indonesia.\(^\text{20}\) Based on data released by the Indonesian Child Protection Commission (KPAI) on the second session of Human Rights discussion in Jakarta on December 2012, 87.6% of children admitted having experienced various forms of school violence including bullying. The 29.9% of the violence was committed by teachers, 42.1% were done by classmates, and 28% were performed by other classmates. Data were taken from 1,026 respondents who are students from various secondary schools in Indonesia.\(^\text{21}\) This makes state cannot fulfill the children’s education right.

According to Child Protection Act, on article 4 stated that "Every child shall have the right to live, grow, develop, and participate accordingly human dignity, and protection from violence and discrimination."\(^\text{22}\) From the data, there are a lot of children as a result of violence and discrimination from various aspects, one of them being discriminated by SOGIE. As we know that Article 3 of

\(^\text{21}\) Yuli Rustinawati et al., Pendidikan Anti Bullying Berbasis SOGIE & HAM (Jakarta Selatan: Arus Pelangi, 2013).
this Act stated that "Children protection aims to ensure the fulfillment of the rights of children to live, grow, develop, and participate optimally according to human dignity and dignity, and have protection from violence and discrimination, for the sake of the realization of quality Indonesian children, noble and prosperous." 23

But with the cases as mentioned above, children are discriminated physically and mentally, making it difficult for them to participate in society. Article 21 of this act which states that "States and governments are responsible and responsible for respecting and guaranteeing their respective rights children, regardless of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of children, birth order and physical and/or mental conditions." 24 The legislative and the executive must take action by making anti-discrimination act, therefore children with aberrant sexual orientation are not discriminated against physically and mentally in the community. As people said children is the future of a state, the state needs to fulfill their right and the children can contribute for developing the state himself, or if the children end up dropping out from school and hardly accepted by society therefore he will end up become a burden for the state.

Unlike Indonesia, Taiwan respects the rights of LGBT people. This can be known from article 7 of the Taiwan (Republic of China)’s Constitution that explicitly states the protection of LGBT rights, that stated "All citizens of the Republic of China, irrespective of sex, religion, ethnic origin, class, or party..."
affiliation, shall be equal before the law.” This article is reinforced by Article 22 in the Constitution, which is "All other freedoms and rights of the people that are not detrimental to social order." Considering from the constitution, Taiwan Gender Equity Education Act has passed Legislative Yuan on June 4th 2004 and promulgated by president on June 5th 2004. The purpose of this act is to promote gender equality importance, exclude gender discrimination, encourage human dignity, and boost education and gender equality.

In relation to the above cases, researchers are interested to research further in order to obtain accurate data and information on LGBT rights protection for Children who have different sexual orientation. Based on the description above, the author has been done by literature research and the result of the research is presented into the thesis with the title “COMPARISON OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) CHILD RIGHTS PROTECTION BETWEEN INDONESIA AND TAIWAN: A LEGAL CONSTRUCTION OF RIGHTS PROTECTION FOR LGBT CHILD IN INDONESIA”.

26 China.
27 Legislative Yuan, “Taiwan Gender Equity Education Act” (2004).
1.2. **Research Question**

The existence of discrimination and the absence of protection in the LGBT child's environment that resulted in physical and mental violence as described in the background. This makes the researcher interested in conducting an assessment of the problems as follows:

1. How the conditions are for LGBT Children rights protection in Indonesia and Taiwan?
2. Why does Taiwan law protect LGBT Children rights more than Indonesian law?
3. How is the construction of a fair legal system in Indonesia to protect LGBT Children rights in terms of the applicable laws in Taiwan?

1.3. **Research Purpose and Benefit**

The purposes of writing in this research paper are:

1. To find out the similarities and differences of LGBT’s rights protection between Indonesia and Taiwan;
2. To analyze the causes of Taiwan more protective than Indonesia against LGBT’s rights;
3. To analyze and construct a fair legal system in Indonesia to protect LGBT's rights in respecting of the applicable laws in Taiwan.
The benefits of writing in this research paper are:

1. Providing knowledge and information about LGBT’s rights protection between Indonesia and Taiwan;

2. Describing views and analysis results on LGBT’s rights protection in Taiwan;

3. Extending the view and deepening the reader's Knowledge of LGBT’s rights protection issues in Indonesia and Taiwan and providing fair and non-discriminatory legal recommendations.