CHAPTER I
INTRODUCTION

A. Research Background

Violence, especially domestic violence is a violation of human rights and crimes against humanity and dignity, and it is a form of discrimination. Today, domestic violence is phenomenon that becomes a common talk between people; it occurs all over the world, became a growing problem to this society. In the late 90th, the Indonesia Department of Humans Rights conducted a study and estimated that between partners alone, not including children and others family members, there were between 1 million and 3 million annual incidents of domestic violence in Indonesia. In 2005, the Police Department reported that one in three female murder victim was killed by a husband or boyfriend. And one of the Government University study reported that one in three female high school students had suffered physical or sexual abuse by a partner.¹ This does not include the immeasurable number of cases that go unreported every year.

By Indonesian Law No. 39 of 1999 on Human Rights, an adult is defined as any person aged 18 years or over. Family members are defined as mother, father, son, daughter, brother, sister, and grandparents, whether directly related, in laws or stepfamily.

¹ Femina Magazine, 20 October 2005, pg.43
Domestic abuse occurs across society, regardless of age, gender, race, sexuality, wealth, and geography. However, it consists mainly of violence by men against women. In many cases of violence against women, court decisions perceived victim is far from fair. There are many legal materials, mechanisms, and procedures that are less friendly to accommodate the interests and rights of women.

The reality of injustice is still experienced by most Indonesian women even in this modern era. The position of women still lags far behind men in many aspects of life. In the health sector, in 2005-2008, the maternal mortality rate for lives births 309/100.000.\(^2\) As for Thailand, in southern area is around 42/100.000.\(^3\) The causes include bleeding, infection, malnutrition and blood, and low socioeconomic status. Low socioeconomic status can lead to domestic violence, which may cause the numbers of maternal mortality to increase.

Rights (or human rights) are things that every person has that describe what she or he is entitled to. Human rights are the God's gift from birth; hence no one can take it or break it. But human rights do not mean to arbitrarily, because humans also have to respect other human rights. There are three human rights of the most basic, such as Right to Life, Rights of Freedom and Rights of Having. In Indonesia, commonly we see Human Rights with Rights to speak, Rights to live our own way, and Rights to choose our religion. With the large number of domestic violence victim nowadays, indicate that mostly women rights have been ignored, or we can say, discriminated.

\(^2\) “Wajah Terabaikan Perempuan Pedesaan”, Kompas, 15 October 2008
\(^3\) How to curb high maternal mortality in south? available on http://www.irinnews.org
Discrimination means unfair treatment of a person or group for any reason such as being a girl or a boy, belonging to a particular race or religion or having different abilities, and so on. When people are discriminated against, they cannot experience and enjoy their rights. Violence is something that related with discrimination and thus should be stopped, not to be tolerated.

The age of modern globalization has enriched the religious, ethnic, and cultural composition of our society. One of the benefits of individual growing knowledge regarding their personal legal rights and the desensitization of society regarding the former shame associated with domestic violence is the increased of willingness of individuals to step forward in this matters. As recently as the mid 20th century, people aware of domestic violence that happens in another household but did not report it because the privacy of each family was considered superior to the rights of the individual being abused. However, the old saying, “a man’s home is his castle”, was very much a reality in many communities both urban and rural area.4

However, as society became increasingly open, people began to report violence, organizations formed to assist victims, and communities came together to support those who found themselves in violent circumstances, do not let them drown in the thinking of the violence towards them was like bruises under a mask, often hides in the shadows, concealed from the public eye.

Domestic violence will definitely affects someone’s thoughts, feelings and behaviors and can significantly impact someone’s mental stability. It will also

increase anxiety, post-traumatic stress disorder and depression symptoms, which are commonly observed among survivors of domestic violence. The negative influence of domestic violence also varied and not merely a family relationship, but also to members of the family in it. In case of serious physical and psychological injuries directly suffered by women victims, the continuing domestic violence limits women's opportunities to gain equal rights in law, social, political and economic society. Regardless of the victimization of women, domestic violence also led to a crack between the family and the children that can then become a source of social problems, which may lead to chaos in the future.

As for Thailand culture, the issue of domestic violence is so universal. In 2007, the country passed its first ever domestic violence law to protect victims abused by their partners. The act was praised for enforcing punishments, more prosecutions and better protection for women. The problem is that while the law may theoretically protect, yet those responsible for enforcing it are not exactly enforcing or protecting. There is still a huge lack of understanding of both the law itself, and the necessity for such a law. The Thais do not have the conception that domestic violence is now a crime. With this law, women who suffer from it can take their abusers to court. Victims can tell the story publicly, through the governments, political parties, women groups, magazines, television shows, etc.

Even so, women in Thailand are still not preventable to become domestic violence victim, from the source like magazines, news, newspapers, and radios, it
shows that the number of cases related to domestic violence is still growing. In the case of domestic violence, especially in such a macho society like Thailand, it requires an entire societal shift, whole scale of education, cultural enlightenment and the rebooting of gender roles to really affect changes to better. It is not something that can happen overnight.

One thing that is difficult owned by the victims of domestic violence are "mentally brave", daring to report violence to the authorities experienced, dare to get a better life, and courageous husband to have more meaningful life. Basically, everyone is entitled to feel safe and comfortable, and for whatever reason a person does not have the right to hurt others.

It is in this context, for a developing country like Indonesia and Thailand, certainly the number of domestic violence has to be cut out to prevent more aspects that may inhibit the growth of the country. Regarding with some legal breakthrough for efforts to bring out the justice for domestic violence victim, Indonesia has the Elimination of Domestic Violence Act No. 23 of 2004, Thailand has the B.E (2550) 2007 about Domestic Violence Victim Protection Act, and the world has The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to help us for minimizing the numbers of domestic violence.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble
and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention provides the basis for realizing equality between women and men through ensuring women’s equal access to, and equal opportunities in, political and public life - including the right to vote and to stand for election - as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.\(^5\)

Together with the Indonesia’s Elimination of Domestic Violence Act No. 23 of 2004, Thailand’s B.E (2550) 2007 about Domestic Violence Victim Protection Act, and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in recent years researcher observe increasing efforts by legislatures and policy makers to initiate statutory acts and amendments to combat the phenomenon of domestic violence. Nevertheless, drafting and enacting written laws is only the first step in the implementation of effective justice policies, for the future, the amendments need to include more international law for comparative to the excellence.

In general, the existing conventions are not fully used and effective, it motivates researcher to research about this particular topic. One common approach to this topic has been to look to the law, law of each country and the international law. Comparative law is great value, particularly in the equality

field, where there is increasing cross-point of view across different international jurisdictions.

Traditionally, international law consisted of rules and principles governing the relations and dealings of nations with each other, though recently, the scope of international law has been redefined to include relations between states and individuals, and relations between international organizations. Generally, international law is the universal system of rules and principles concerning the relations between sovereign States, and relations between States and international organizations such as the United Nations. The modern system of international law was developed in Europe from the 17th century onwards and is now accepted by all countries around the world.

The rules and principles of international law are increasingly important to the functioning of our interdependent world and include areas such as:

a. Telecommunications, postal services and transportation (such as carriage of goods and passengers)
b. International economic law (including trade, intellectual property and foreign investment)
c. International crimes and extradition
d. Human rights and refugee protection (including domestic violence in it)
e. The use of armed force by States and non-State actors
f. Counter-terrorism regulation
g. Nuclear technology

*International Law, available on [http://www.law.cornell.edu](http://www.law.cornell.edu)
h. Protection of the environment
i. Use of the sea, outer space and Antarctica.

Thus, women's advocacy both in Indonesia and Thailand should be to make improvements legalization and policies that criminalize domestic violence. How much differences are there in Indonesia and Thailand, which is both based on Civil Law systems, make and execute the Law of Domestic Violence, ratify the International Convention, and does it works effectively? To be able to answer those questions, it comes out with the title of "A Comparative Analysis on the Implementation of Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in the Domestic Violence Law of Indonesia and Thailand".

B. Research Question

Based on what as mentioned above at the research background about, the researcher identify some core problem and therefore the research questions are as follows:

1. What are the laws in Indonesia and Thailand that issued to implement CEDAW?
2. What institutions in Indonesia and Thailand which implement the CEDAW approaches?
3. How effective does the implementation of CEDAW in Indonesia and Thailand?
C. Research Purposes and Benefits

1) Research Purposes

In general, the purpose of this research is to research about the questions that mentioned above and to compare and contrast domestic violence and equality laws in Indonesia and Thailand, with a view to inform future development of Europe Union anti-discrimination laws.

In particular, the purpose of this research entitled “A Comparative Analysis on the Implementation of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the Domestic Violence Law of Indonesia and Thailand” can be formulated as follows:

1. To inventory about the Domestic Violence Law of Indonesia and Thailand, especially when both country ratified the CEDAW;
2. To identify which of Indonesia and Thailand organization implement the CEDAW approaches;
3. To analyze the effectiveness under CEDAW which specifically relate to the domestic violence and protection against women from the point of view of legal aspect.

2) Research Benefits

The benefits of this research are:

1. For the Academicism

Researcher hopes to be informative and enrich the knowledge in the issue of domestic violence, especially in the comparative between Indonesia and
Thailand, for students as a reference and basis to do further research in Domestic Violence Law.

2. For the Society or Family

Researcher hope to contribute some thoughts so that it will actually help society or family that probably confronted about the matter and became much more understanding of the legal aspects which they may encounter, and report it outright.

3. For the Government

Researcher hope the research can be useful for the development and reparation of law regulation by the government, especially the legislature that has the authority to make laws, to make out an update and a complete Nation’s Law, especially attention to women’s rights and empowerment, into more as for citizens will be more secure in terms of law secure and law certainty.