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# Protecting Human Rights to Adoption of Lesbian, Gay, Bisexual And Transgender People (LGBT) – Practice in Some Asian Countries and Vietnam

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## ABSTRACT

*In many countries around the world, lesbian, gay, bisexual and transgender people (LGBT) often face stigma and discrimination. The efforts in fighting for equal rights and non-discrimination against LGBT people are not only made in marriage but also in many other aspects, such as the right to adoption of LGBT people. This paper studies some issues related to human rights to adoption of LGBT people, including the influence of individuals' sexual orientation or gender identity on their rights to adoption, the rights of children adopted by LGBT people. The similarities and differences between the laws related adoption by LGBT in Vietnam and some Asian countries are indicated. Moreover, the paper analyzes the influencing factors and impacts of legal regulations on the rights of LGBT people. The gaps and inconsistencies in the legal system are shown, thereby some recommendations are recommended to improve the law to ensure human rights to adoption of LGBT people.*

**Keyword:** *human rights, adoption, LGBT, Vietnam, law.*

## I. INTRODUCTION

Adoption has existed for a long time in human society. The two oldest codes, including Codex Hammurabi and Codex Justinianus, specified the regulations on adoption<sup>2</sup>. Nowadays, although the laws of different countries have different provisions on the right to adoption, through bilateral or multilateral international treaties, the countries cooperate in intercountry adoption.

Adoption is a historical institution. However, the nature of adoption has changed dramatically over time. In the early days, adoption was mainly a means of ensuring that infertile couples had someone to inherit their family name and traditions. The birth of United Nations

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<sup>2</sup> See Wikipedia, *Adoption*, <https://en.wikipedia.org/wiki/Adoption>, retrieved on February 23, 2018.

Convention on the Rights of the Child 1989 opened the ideological revolution on children's rights. That children should be considered the center of protection affirmed by the Convention has contributed to changing the purpose of adoption from "bringing a child to the family" to "bringing a family to the child".

The adoption, especially the adoption of LGBT people, has been a controversial issue related to ensuring the rights of children and the rights of LGBT people. Adoption of LGBT people often occurs when (1) A married or unmarried LGBT couple jointly adopt children; (2) One partner of a same-sex couple got married and gave birth to a child, the other partner adopts such a child or another child; (3) A single LGBT person adopts a child. However, there are many arguments about the future of those children. Will they be influenced by the gender of their parents? How they can face the difficulties in a society that has not fully accepted LGBT people?

Many studies result in different conclusions on this issue. For example, Social Science Research site published a study by Mark Regnerus, a sociologist and professor at the University of Texas, showing that more than 50% of children raised in LGBT families tend to describe themselves as gay, bisexual or asexual. Children raised by lesbian families are twice as likely to have suicidal thoughts (12%) than those raised by heterosexual parents (5%)<sup>3</sup>. There is a huge difference in the proportion of victims of sexual abuse, while only 2% of children raised by heterosexual parents face this problem, 23% of children raised by LGBT families experience sexual abuse. In addition, in an article published on *Enewamerica*, Tryce Hansen, Professor of Sociology, emphasizes that same-sex marriage is extremely not good for children. He believes that the best and most ideal environment for the development of children is a family with a mother and father in the true sense of the word. According to Tryce Hansen, men tend to be assertive, rational, and proactive in relationships, while women have the opposite characteristics. In addition, heterosexual parents with their two different genders will help children have a more comprehensive view of their own gender, thereby having healthy, balanced thoughts and actions in future relationships. Same-sex marriage confuses children about their gender and unwittingly encourages sexual misconduct in minors which could lead to serious consequences later on. Hansen highlights that having same-sex parents is absolutely not good for children. Although we sympathize with homosexuals, we should not cause harm to children by that empathy, said Hansen. When we compare gains and losses, the needs of

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<sup>3</sup> Mark Regnerus, How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study, <https://www.baylorisr.org/wp-content/uploads/Regnerus.pdf>

LGBT people and children, children should not be the ones to suffer<sup>4</sup>.

However, in the other view, many studies indicate that LGBT parenting does not really give a negative impact on children. Charlotte J. Patterson in her research emphasizes that there is no factual basis to conclude that homosexuals are unfit to be parents. Results of the studies on lesbian couples show that lesbian couples tend to share housework and work properly, in some cases they even have better parenting skills than heterosexual couples. The author analyzes three components of the sexual identity of children raised by same-sex parents, including gender identity, gender-role behavior, and sexual orientation. Regarding gender identity, several related studies are cited to conclude that there is no research on gender identity to prove the difficulties in determining gender identity of children living in the families lesbian parents, and there is also no similar data for children living in the families with gay parents. Regarding gender behavior, the author confirms that there is no difference between children raised by lesbian parents and the ones raised by heterosexual parents in terms of favorite toys, activities, favorite TV shows, other personal interests, and career choices. Regarding sexual orientation, in all studies, the majority of children raised by gay or lesbian parents identify their sexual orientation as heterosexual. The study also shows a positive picture of community activities, especially the school environment, of children raised by same-sex parents, although some children have faced same-sex stigma from their peers. In the family, children of lesbian parents often maintain their relationships with family members, such as fathers (divorced mothers) and grandparents<sup>5</sup>. The researchers indicate that there is almost no difference in personality, health, and closeness to family between children in LGBT and normal families. The children of same-sex couples even slightly overwhelm in these aspects. Another study by the University of Massachusetts at Amherst - USA proves that children born into LGBT families are affected only by the relationship and emotions of their parents, not by the gender of their parents. The researchers compare the development of children in 104 families, including 50 families with heterosexual parents, 29 families with gay parents, and 25 families with lesbian parents.

In the context of increasing same-sex couples raising children, this issue receives mixed reactions from scientific studies and social viewpoints. Building a legal system to both regulate the legality of this adoption and ensure the human rights of LGBT people and the rights of children adopted by LGBT couples is important and needs more studies in the aspects of both

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<sup>4</sup> <https://vnexpress.net/lo-ngai-xung-quanh-viec-nguoi-dong-tinh-nhan-con-nuoi-2892081.html> retrieved on November 25, 2021

<sup>5</sup> Charlotte J. Patterson, Lesbian and gay parents, and their children: Summary of research findings, *ibid*, pg. 05-15

international and national law.

### **(A) Research Methods**

To study this topic, the author will use the combination of theoretical research methods such as the synthesis-analysis method, the interpretation-inductive method, the statistical method, the comparative comparison method, etc. to go from study the actual developments to generalize and make an assessment of the general trend.

## **II. FINDINGS AND DISCUSSION**

### **(A) Adoption is a right of LGBT people from the perspective of international law**

Everyone has the right to marry, regardless of their sexual orientation and gender identity. The family exists in many different forms. No family shall be subjected to discrimination by sexual orientation and gender identity of any member of that family, including adoption and assisted reproduction. Adoption is considered a right of LGBT people for the following reasons:

Firstly, the principle of equality without discrimination in international human rights law. "Non-discrimination" is a fundamental principle of international law in general and human rights law in particular. The principle of non-discrimination was first announced in UDHR and then presented in most of the basic legal documents such as ICCPR, ICESCR, CRC, CEDAW, etc. Article 1 of UDHR affirms that: "Everyone is born free and equal in dignity and rights"; Article 2 of UDHR states: "Everyone is entitled to all the rights and freedoms without distinction of race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or any other status".

The above principle is repeated and concretized in Article 2 of ICCPR and Article 2 of ICESCR. Accordingly, Member States commit to respect and protect the rights specified in ICCPR and ICESCR to all persons within their territories and jurisdictions, without distinction of any kind such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. UDHR, ICCPR, and ICESCR include the list of prohibited grounds of discrimination in their articles to ensure nondiscrimination.

This principle requires fair treatment to all individuals or groups regardless of their particular characteristics. It is also used to assess the neutral criteria that could create systematically disadvantageous consequences for people with these characteristics. Thereby, individuals in similar circumstances should receive the same treatment and not be treated less merely because of a particular characteristic they have. The purpose is to give all people equal and fair access to the available opportunities in society. It is an essential principled recognition of respecting

and ensuring human rights, and accessibility to the rights without any discrimination on grounds of natural or social characters that are completely random and uncontrollable. The principle emphasizes that human rights law needs to embody the philosophy of respecting the physical and mental differences of people that exist randomly<sup>6</sup>. This proves that LGBT people must be treated equally like all members of society and that they have the right to enjoy a happy life and to found a family. Having and raising children is a need of both couples and individuals, regardless of their sexual orientation or gender identity. Many factors influence the decision to have biological or adopted children of gay, bisexual and transgender people. Based on the fundamental principle of "equality without discrimination", it can be affirmed that people with every different sexual orientation and gender identity are entitled to be human beings before the law and have full human rights in all areas of life, including the right to marry, to found a family, raise children, and adopt children.

Secondly, the right of LGBT people to marry and to found a family. This right is an overarching and fundamental right to ensure the exercise of related rights, including the right to custody of children. The rights to marry, to found a family, and equality in marriage are first mentioned in Article 16 of UDHR, whereby every person of full age has the right to marry and found a family without any restriction on race, nationality, or religion. In addition, Clause 3, Article 16 affirms that "the family is the natural and fundamental cell of society, protected by the state and society". The above provisions of UDHR were subsequently reaffirmed and concretized in Article 23 of ICCPR and Article 10 of ICESCR. According to Commission on Human Rights, "the concept of the family can differ in several respects, such as nationality, even religion, and therefore it is impossible to give a universal standard definition"<sup>7</sup>. In addition, according to United Nations Committee on the Rights of the Child, family should be considered by "different family structures, arising from diverse cultural patterns and family relationships forming in society"<sup>8</sup>. Therefore, research on the right to adoption needs to study the differences in the right to marry and to found a family.

Thirdly, the content of regulations related to the right to child custody and adoption conditions. Regarding child custody, Article 9, CRC stipulates: "1. States Parties shall ensure that children are not separated from their parents against their will, unless the competent authorities subject to judicial review, in accordance with current laws and procedures, decide

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<sup>6</sup> Assoc Prof. Dr. Nguyen Hien Phuong – Dr. Dao Le Thu, *Anti-discrimination from the perspective of international and national human rights laws*, Labor Publisher, Hanoi 2020, tr. 23

<sup>7</sup> General Comment No. 19: Protection of the Family, the Right to Marriage and Equality of the Spouses, Human Rights Commission, United Nations Instrument. HRI/GEN/1/Rev.2 (1990), at 2

<sup>8</sup> "Report on the Fifth Session", Committee on the Rights of the Child, United Nations Instrument. CREC/C/24, Appendix V

that such separation is necessary for the best interests of the children. Such a decision may be necessary in particular cases, such as when a child is abused or neglected by the parents, or when the parents are living separately, and a decision must be made for children's place of residence". At the same time, Paragraph 4, Article 18 of ICCPR clearly states that "The States Parties commit to respect the freedom of parents, and legal guardians where applicable, in religious and moral education for their children according to their own will". Under these regulations, parents have the right to raise and live with their children. Parents shall be separated from their children only when such separation is necessary in accordance with regulations of national law and the applicable procedures in that national law. Therefore, LGBT parents have the full right to custody of children.

In terms of adoption condition, Clause 1, Article 21 of CRC states that the admission or authorization of adoption must ensure that the best interests of the child are of the utmost concern. Accordingly, as long as the individuals are qualified and provide appropriate conditions for adoption, they have the right to adopt. Moreover, there is no regulation stipulating that sexual orientation and gender identity are the basis to prevent individuals from exercising their right to adopt. In Hague Convention 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, there is no regulation restricting LGBT people from adopting children. The adoption takes place when the competent authority of the country certifies that the prospective adoptive parents are eligible and suitable for adoption, and they will strictly and completely comply with the order and legal procedures of adoption law<sup>9</sup>. Therefore, LGBT people only need to have the ability to provide the best benefits for children, satisfy the adoption conditions, and comply with adoption orders and procedures.

### **(B) The rights of children adopted by LGBT people in families with LGBT parents**

First of all, it should be emphasized that children have the right to be adopted. According to Articles 21 and 22 of CRC, a child who is temporarily or permanently deprived of his or her family environment or in his or her own best interests cannot remain in that environment, have the right to have a new family and to be adopted by lawful means and procedures<sup>10</sup>. CRC States Parties must recognize and permit adoptions, ensure the best interests of children. Although CRC provides some specific references to a child's parents, it nevertheless acknowledges that a child's family can be understood more broadly than the concept of the nuclear family. As proof of this, CRC specifies that a legal guardian, other than parents, may

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<sup>9</sup> Hague Convention 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, Article 4 and Article 5.

<sup>10</sup> CRC, Article 21, Article 22.

have primary responsibility for raising a child (CRC: Article 18 §1). Therefore, the recognition of the right to adoption of LGBT people shall create more opportunities for children to find their own families.

Article 2.1 of CRC further recognizes the principle of equality and non-discrimination for children, which stipulates: "States Parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, regardless of race, color, sex, language, religion, political or other opinion, national origin, ethnic or social origin, property, disability, birth or other status". Therefore, adopted children in any family, including adopted children in LGBT families, must be treated equally. For that reason, denying a child the enjoyment of family rights based on the child's birth status, or the sexual orientation or gender identity of the child's parents or guardians without good cause is not compatible with CRC.

Secondly, CRC recognizes the requirements to ensure the best interests of children adopted by LGBT people. The adoption must satisfy two core principles in protecting children's rights, including "non-discrimination against children" and "for the best interests of children", in which for the best interests of children is the utmost principle of all child-related decisions to ensure the most comprehensive development environment for children. The sexual orientation and gender identity of children and their parents that is recognized and protected by international law are not the basis for discrimination.

In the case of children adopted by same-sex couples, the recognition of same-sex marriage is an important condition to ensure equal rights for children in LGBT families. The reason is that a child of a married couple usually has a relationship with both mother and father that is fully recognized by law, regardless of whether they are biological children or not. This obviously brings significant and special benefits to the children of LGBT parents. Furthermore, with legal recognition of same-sex marriage, a couple, regardless of gender or sexual orientation, can participate fully in a marital relationship, provide the child with appropriate guidance and direction to exercise the rights recognized in this Convention, in a manner appropriate to the child's developmental level of capacity" (CRC: Article 5).

Vietnam is the first country in Asia and the second country in the world to ratify United Nations Convention on the Rights of the Child on February 20, 1990 and commits to protect the rights and interests of children, create all conditions for children to fully exercise their rights. This has been clearly reflected in Vietnamese legal system. Children's rights are recognized in 2013 Constitution and certain legal documents, such as Civil Code, Criminal Code, Labor Code,



Education Law, Land Law, HIV/AIDS Prevention Law, Law on Gender Equality, Legal Aid Law, Law on Film, Law on Domestic Violence Prevention, and Law on Mutual Legal Assistance. In particular, Law on Child Protection, Care and Education concretizes the basic principles of the Convention on the Rights of the Child, in which Vietnam is a States Party, by emphasizing the principle of "non-discrimination against children" and "for the best interests of children". Specifically, the principle of non-discrimination against children recognized in Article 4 of Law on Child Protection, Care and Education concretizes the basic principles of Convention on the Rights of the Child as follows: "Children, regardless of girls, boys, children in wedlock, children out of wedlock, biological children, adopted children, stepchildren, common children, regardless of race, religion, class, social status, political opinion of parents or guardians, are protected, cared for and educated, and enjoy the rights prescribed by law". Thereby, children have the right to be protected, cared for, educated and enjoy the rights prescribed by law without discrimination.

Through the provisions of international law, it is proved that the rights to custody and adoption of an individual are human rights recognized and protected by international law. LGBT people are also individuals who are treated equally before the law and protected equally by the law, thus the rights to custody and adoption of LGBT people are also recognized and protected by law like the rights of other individuals in society.

### **(C) Law on adoption of LGBT people in Vietnam in comparison with other Asian countries**

Based on the peculiarities of customs, traditions, culture, religion, etc. it is undeniable that discrimination against LGBT people exists in Vietnam and most Asian countries. For example, the Muslim minority in Philippines still believes that homosexuality is a crime that should be punished. However, the undeniable positive point is that Vietnam has never criminalized homosexuality while some other Asian countries are still criminalizing homosexuality, such as Brunei. In 2019, Brunei officially applied Sharia law to Muslims in this country (with 250,000 Muslims, accounting for 65% of the population), thereby, same-sex crime is classified in the same label of adultery and rape which is punished by stoning to death<sup>11</sup>. In Indonesia, Aceh province applied Sharia law since it was granted special autonomy in 2001 - an attempt of the central government to quell a protracted separatist insurgency. Instead of the death penalty, the punishment for homosexuals here is often public caning<sup>12</sup>.

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<sup>11</sup> Humandignitytrust.org. 2022. Brunei | Human Dignity Trust. [online] Available at: <<https://www.humandignitytrust.org/country-profile/brunei/>> [Accessed 23 January 2022].

<sup>12</sup> The Library of Congress. 2022. *Indonesia: Aceh Province Law Expands Caning Punishment to Adultery and*

As of 2020, 28 countries and regions have legalized the possibility of LGBT adoption. Asia and Africa are the two regions with the lowest rates of acceptance for LGBT adoption. In Asia, only same-sex couples in Israel<sup>13</sup> can adopt children.

First of all, same-sex couples in most Asian countries are currently unable to exercise their right to adoption because same-sex marriage has not been recognized. In terms of recognizing same-sex marriage, Asian countries either do not recognize it, such as Brunei, Indonesia, etc. or do accept it to a very limited extent. In Asia, the number of countries denying or admitting same-sex marriage is very small. Most Asian countries, including Vietnam, have a neutral view which means not banning same-sex marriage but not recognizing it as a legal marriage, not allowing same-sex marriage to be registered at the competent authority. This view, compared with the past, is a new step forward in legal policy for homosexuals, thereby contributing to the reduction of social discrimination against homosexuals, and ensuring their right to pursuit of happiness<sup>14</sup>. However, same-sex marriage is not recognized, same-sex couples in these countries cannot jointly adopt children because the laws of the countries generally allow only single people or legal couples to adopt a child. Gay couples are not assisted in reproduction by surrogacy<sup>15</sup>.

Therefore, joint adoption of same-sex couples (not a biological child of two people) in Vietnam and most Asian countries today, such as Korea<sup>16</sup>, Thailand<sup>17</sup>, Philippines<sup>18</sup>, has not been allowed by the law on adoption because they are not recognized as having a marital relationship. Therefore, only one of two homosexuals can adopt a child and establish a legal parent-child relationship while the other cannot. Thus, it is very difficult to maintain the rights and obligations of both homosexuals toward their children.

For the territories that have recognized same-sex marriage in Asia, typically Taiwan, the adoption of same-sex couples cannot be implemented because this recognition is limited. In

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*Homosexual Acts*. [online] Available at: <<https://www.loc.gov/item/global-legal-monitor/2015-10-28/indonesia-aceh-province-law-expands-caning-punishment-to-adultery-and-homosexual-acts/>> [Accessed 23 January 2022].

<sup>13</sup> Statista. 2022. *Countries where same-sex couples can jointly adopt children 2020* | Statista. [online] Available at: <<https://www.statista.com/statistics/1269946/countries-where-same-sex-couples-can-jointly-adopt-children/>> [Accessed 23 January 2022].

<sup>14</sup> Clause 2, Article 8, Law on Marriage and Family of Vietnam 2014

<sup>15</sup> Law on Adoption. Clause 3, Article 8 of the Law on Adoption of Vietnam

<sup>16</sup> Nqapia.org. 2022. *FACT SHEET: LGBTQ Rights in South Korea – NQAPIA*. [online] Available at: <<https://www.nqapia.org/wpp/lgbtq-rights-in-south-korea/>> [Accessed 23 January 2022].

<sup>17</sup> CNA. 2022. *Thailand's Civil Partnership Bill sparks further debate on same-sex couple rights*. [online] Available at: <<https://www.channelnewsasia.com/asia/thailand-civil-partnership-lgbtqi-gender-equality-discrimination-710036>> [Accessed 23 January 2022].

<sup>18</sup> The Library of Congress. 2022. *Philippines: Supreme Court Rules on Same-Sex Marriage*. [online] Available at: <<https://www.loc.gov/item/global-legal-monitor/2020-01-24/philippines-supreme-court-rules-on-same-sex-marriage/>> [Accessed 23 January 2022].

2019, Executive Yuan promulgated a bill called "The Enforcement Act of Judicial Yuan Interpretation No. 748" that allows two same-sex people to establish a "permanent union of intimate and exclusive nature for the purpose of living a common life to ensure equal protection of the right to freedom of marriage". Therefore, the Act does not directly recognize same-sex marriage. The content of the Act does not use the term "marriage" (hunyin) to refer to a same-sex couple relationship but uses the term "permanent union of intimate and exclusive nature for the purpose of living". Although it does not directly refer to the term "same-sex marriage" or "allowing same-sex couples to marry", the Act uses the definition of "marriage" and recognizes the rights and benefits that are similar to the ones arising from the marital relationship of same-sex couples<sup>19</sup>.

Due to this unclear regulation, it is difficult to confirm that same-sex marriage in Taiwan is legal for these couples to exercise their right to adopt. Even when same-sex couples have a legal marital relationship, the law only allows them to adopt a child who has a blood-relation with the other spouse. That means, in the couple, there must be one person who is the biological father or biological mother of the child, then the other person can adopt the child and thereby establish the relationship of an adoptive mother or adoptive father.

Secondly, although the laws of Vietnam and most Asian countries allow single individuals to adopt children, the exercise of these rights faces many difficulties. Specifically, Vietnamese Law on Marriage and Family 2014 stipulates that family is "*a collection of people bound together by marriage, blood relation or nurturing relationship*"<sup>20</sup>. By this definition, there are three ways to form a family relationship: (1) marriage; (2) blood relationship (birth of children); (3) nurturing relationship (adoption). In terms of the birth or adoption of a child, the provisions of current Vietnamese law do not discriminate on grounds of sexual orientation or gender identity of individuals in having a biological child or adopting a child.

In case that an LGBT individual wants to adopt a child, Vietnamese law on adoption ensures that the LGBT individual has the same right to adoption as a heterosexual person without any discrimination as long as that individual meets the conditions for an adopter as prescribed by the law on adoption<sup>21</sup>.

The persons who are gay, lesbian, bisexual, and transgender are, as an individual, entitled to adopt a child on their own when they meet the adoption conditions prescribed by law on

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<sup>19</sup> [http://blog.hawaii.edu/aplpj/files/2013/02/APLPJ\\_14.2\\_Lin.pdf](http://blog.hawaii.edu/aplpj/files/2013/02/APLPJ_14.2_Lin.pdf)

<sup>20</sup> Vietnamese Law on Marriage and Family 2014, Article 3, Clause 2

<sup>21</sup> Law on Adoption 2010, Article 14 (Conditions for domestic adopters) and Article 29 (Conditions for adopters involving foreign elements)

adoption. According to this regulation, in order to adopt a child, the adopter must not only meet the conditions of health, economy, and accommodation to ensure the care, upbringing, and education of the adopted child, but also have to satisfy other conditions related to his or her identity, such as having good moral character, having full civil act capacity<sup>22</sup>. These conditions are not related to the gender identity or sexual orientation of the adopter. However, the criteria for considering an adoption application based on the condition that “the adopter must not only meet the conditions of health, economy, and accommodation to ensure the care, upbringing and education of the adopted child and must have good moral character” do not have any specific guideline that could lead to inconsistent application in each area and reflect the subjective viewpoints of competent agencies allowing the adoption.

Among the conditions for the adopter, that the adopter must have good moral character and have practical conditions to ensure the care, upbringing, and education of the adopted child is a very important condition to ensure that the child, especially minor, could live in an environment with the best interests. Obviously, these criteria are qualitative while the social discrimination against LGBT people still exists, it is assumed that the adoption of LGBT people may affect the normal development of children. As a result, although the right to adoption of LGBT people is allowed by law, it is very difficult to exercise this right.

For transgender people, Vietnam Civil Code 2015 has regulations on transgender, thereby individuals who have undergone sex-change must register for changing civil status in accordance with Vietnamese law on civil status<sup>23</sup>. That means, after transgender people perform sex reassignment surgery and carry out civil status procedures to change gender on their identification card to get married, for example, a transgender woman marries a male or a transgender male marries a woman, the marriage relationship between these two people is recognized by Vietnamese law, they have the right to jointly adopt children. If a person having a child on his or her own marries a transgender person, the transgender person may adopt his or her spouse's stepchild as a stepfather or stepmother.

In short, in all continents in the world, LGBT people in Asia still suffer from many stigmas and discriminations stemming from traditions, customs, and religions, etc. Currently, Asian countries have made a positive change in the awareness and legality of LGBT people's rights, from banning same-sex marriage to neither banning nor recognizing it, like in Vietnam. Korea does not recognize same-sex marriage, but in October 2019, Korean government announced

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<sup>22</sup> Article 14, Law on Adoption of Vietnam 2010

<sup>23</sup> Civil Code 2015, Article 37 and Civil Status Law 2014, Article 3

that it recognizes same-sex spouses of foreign diplomats in Korea as legally married couples under Korean law. Another example is that Taiwan recognizes same-sex marriage. Generally, we can see the trend of recognizing the family right of LGBT people. However, the rights of LGBT people in Asia, the right to a happy life, the right to found a family, especially the right to adoption in Asia are extremely limited and in many places almost impossible to enforce.

### **III. CONCLUSION**

Two core principles emphasized in international treaties related to the protection of children's rights are "non-discrimination against children" and "for the best interests of children". International law recognizes and protects children's rights without any discrimination on grounds of sexual orientation or gender identity of children or their parents. Children have the right to have a family and to be adopted. Recognizing the right to adoption of LGBT people not only ensures the rights of this group itself, but also increases opportunities for orphaned and abandoned children to have a family.

There are currently many scientific studies and mixed reviews on the disadvantages of children living in families with LGBT parents. In particular, under the impact of culture, religions, customs and traditions, as well as the unrecognition of same-sex marriage, LGBT people in Asia have almost no chance to adopt joint children. Even single individuals cannot adopt children because of unclear provisions in the context of social discrimination.

Current Vietnamese law has no discrimination in the provisions on sexual orientation and gender identity of children or their parents. The differences in sexual orientation or gender identity do not detract legal status from anyone as a human being, and do not take away their human rights in all areas of life, including the right to marry, to found a family, and to adopt children. All people regardless of sexual orientation or gender identity should enjoy the right to non-discrimination and equality, which are fundamental principles of International Human Rights Law.

Current Vietnamese law has no prohibition or condition on the sexual orientation or gender identity of the adopter or guardian or representative, so the difference in sexual orientation or gender identity does not deprive an individual of these rights. However, the legal provisions are not clear, some regulations are still subjective, which has led to the discrimination in considering and approving adopters and guardians on grounds of sexual orientation and gender identity.

Despite the stigma against LGBT people in Asian society and the low proportion of recognition of LGBT people's rights in national laws, it is undeniable that these countries have changed in

recognizing and protecting the rights of LGBT people. In the context of Asian family traditions, customs, and religions, although these changes are slow, they are remarkable and represent a turning point in the fighting process to ensure the rights of LGBT people in Asia.

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