

The Same-Sex Marriage From The International Laws And Recommendations For Vietnamese Legal Regulations

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Abstract

Rights for homosexual persons are a concern of countries and communities around the world. This is based on equality and political, economic, civil rights, and especially the right to free marriage. This has attracted criticism, especially regarding legal recognition by being officially recognized in the laws. At present, there are various views worldwide. Many countries criminalize same-sex relationships while do not accept cohabitation between same-sex people in both social and juridical aspects. As for Vietnam, which is inherently a country steeped in Confucian thought, this issue has also attracted criticism, but the opposition is further higher than the consensus. For the purpose and through the article's studies, the author presents the current status of same-sex marriage from the perspective of international law and specific groups of countries. From here, the limitations existing in the regulations are recognized, and solutions and lessons learned are found to improve this legal institution in Vietnam.

Keywords— Same-sex marriage, human rights, officially recognized, civil union, etc.

Introduction

- **Concept of same-sex marriage**

In order to thoroughly understand the concept of same-sex marriage, the term of marriage should be defined first. The definition of marriage varies around the world. It is not only among cultures or religions but also throughout the history of any given culture and religion. In some cultures, marriage is recommended or considered to be compulsory before pursuing any sexual activity. When broadly defined, marriage is seen as a cultural universal. A marriage ceremony is called a wedding. In *The Future of Marriage in Western Civilization* (1936), the concept of marriage as a relationship between one or more men and one

or more women is recognized by law or custom. In Vietnam, according to Clause 5, Article 3 of the 2014 Law on Marriage and Family, getting married means a man and a woman's establishment of the husband and wife relation according to the provisions of this Law on marriage conditions and registration. Thus, from the above analysis, the author believes marriage is a legal event giving rise to a marital relationship. When getting married, the male and female parties shall fully comply with the marriage conditions prescribed by the applicable Law on Marriage and Family; at the same time, they shall register their marriage at a competent marriage registration agency. If so, the marriage is recognized as lawful and a

husband and wife relationship is recognized before the law.

Homosexuality is people whose gender differs from normal people. Many factors cause these differences, such as politics, cultures, traditions, religions, ethics, etc. However, in each historical moment, legal issues related to homosexuals have different regulations for each country. However, today, there is a worldwide consensus on the concept of homosexuality as follows:

Homosexuals (Lesbian, Gay) have feelings of emotional and physical attraction to people of the same sex.

Bisexuals are people who are emotionally and physically attracted to both sexes.

Heterosexual: A person emotionally and physically attracted to the opposite sex.

Transgender: A state when a person has biological sex that does not match their gender identity or gender expression (for example, having a male body and thinking of themselves as female, or appearing as female). Transgender refers to the way one identifies or represents as male or female, while homosexuality is concerned with whether one is in love with someone of the same or opposite sex.

From the above analysis, same-sex marriage is when people of the same biological sex (legal gender) marry each other. After marriage, they live together as husband and wife, be it two gay men or two lesbians. In short, same-sex marriage is a marriage between two people of the same biological or social sex.

- **Some characteristics of same-sex marriage**

Firstly, same-sex marriage is governed by customs, morality, religion, and public opinion. Homosexuality is by far not a strange issue in

the world. In fact, homosexuality has existed since ancient times around the world. Throughout history, there was a time when homosexuality was considered an incurable disease. However, with the development of modern science, homosexuality has been considered a normal, natural sexual orientation and a reality of human society. Since 1990, the World Health Organization (WHO) has officially confirmed that homosexuality is not a disease. However, at the end of December 2021, only 30 countries legally recognized same-sex marriage out of 206 countries and territories. Besides, for many people, there is a connection between marriage and religion because marriage has played an important role in many religions. This association can confuse the different functions of the state in civil marriage as opposed to religious marriage and cause controversy over the appropriate rules for civil institutions. For many religious beliefs, the solemnization of marriage is an important ritual performed by clerics. The State authorizes clerics to perform this function as long as the religious ceremonies do not conflict with this state's laws. Religious rules regarding marriage conditions vary greatly. The issue of not recognizing same-sex marriage also partly violates the freedom to marry in religion.

Secondly, same-sex marriage often receives mixed views across countries and continents. Europe is at the forefront of support, the first country to legalize same-sex marriage was the Netherlands in 2001. The world's first same-sex marriage bill was signed into law by Queen Beatrix of the Netherlands on December 21, 2000, and officially took effect on April 1, 2001. The law allows same-sex couples to marry and grants adoption rights to same-sex couples in the Netherlands. As soon as the clock struck on April 1, 2001, 4 same-sex couples (3 male and 1 female) registered to get married at City Hall. Under the witness of Mr. Job Cohen,

the mayor of Amsterdam at that time. A crowd of about 150 people warmly congratulated the couples, including members of Congress and the Government. Most recently, the recognition of Chile is in March 2022, and Switzerland is from July 01, 2022. By contrast, 34 countries (by 2021) have a constitutional definition of marriage by sex, leading to a ban on same-sex marriage, most of which have been enacted in recent decades as prevention. Several other countries have codified Islamic law, which is often interpreted as banning same-sex marriage. In most of these countries, homosexual behavior is considered a crime. In 2021, more than 80 countries/territories consider homosexual acts a crime, some even imposing the death penalty for those who commit homosexual acts. The remaining 100 countries/territories have a neutral policy, neither making homosexuality illegal nor recognizing same-sex marriage. All of the above cases contain the same element of prejudice against gender anomalies and homosexual orientations .

Meanwhile, most favor same-sex marriage in every Western European country surveyed, and nearly all of these countries have legalized same-sex marriage. Public consensus varies widely in Central and Eastern Europe, where most countries surveyed oppose allowing gays and lesbians to marry legally. None of the Central and Eastern European countries interviewed allow same-sex marriage.

Thirdly, there are now many theories leading to homosexuality in particular and the results of same-sex marriage in general. There are many theories with many different explanations for the cause of homosexuality. Many ideas have stated that it is due to genetics, biochemistry, endocrinology, and structural factors, but no hypothesis has been tested. Finally, scientists have divided into two main causes of homosexuality are congenital, such as the

Genetics-Based Hypothesis; Hypothesis based on neuroendocrine and structural factors. Or due to external factors such as Hypothesis based on educational factors, Hypothesis based on individual cultural factors, Hypothesis based on certain cultural factors, Hypothesis based on social factors, etc.

Legal provisions on same-sex marriage

- **From the perspective of international laws**

On the international level, international laws have documents that are the foundation for building rights for homosexuals. In which the most prominent include:

In United Nations Charter: To promote human rights, one of the basic principles of the Charter is equality and non-discrimination for all individuals. The preamble to the Charter declared “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”. Similarly, Article 1 states, “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” . Indeed, for more than 20 years, the United Nations has been trying to recognize homosexuality as a "sexual orientation" so that all countries see them as equal. June 2011 was a historic moment when the United Nations Human Rights Council passed a Resolution affirming: Everyone has equal rights, regardless of sexual orientation. On March 7, 2012, United Nations Secretary-General Ban Ki-Moon made a historic speech calling on countries around the world to decriminalize homosexuality and end discrimination against homosexuals, bisexuals, and transgender people (a.k.a LGBT). These moves have once again confirmed that homosexuality is just a sexual orientation like many other genders (such as heterosexual,

bisexual, asexual, etc.) and contributed to eradicating serious conceptions about the homosexual community in countries worldwide.

In Universal Declaration of Human Rights 1948, the content of the Universal Declaration of Human Rights also includes non-discrimination and fairness as a fundamental component of international human rights law. Its first law claimed rights, as the immortal declaration, “All human beings are born free and equal in dignity and rights.” Furthermore, in Article 2 of the Declaration, it is forbidden for states to hold personal prejudices against other individuals based on the following criteria “...such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.” However, this interpretation does not provide a firm guarantee for the homosexual community when the limitations in Article 29 of the Declaration exist: In the exercise of his rights and freedoms, everyone shall be subject only to such restrictions as are determined by law solely to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Despite these interpretations, it is too early to assert homosexual rights enshrined in the Universal Declaration of Human Rights.

In Yogyakarta Principles: To address issues of rights for homosexuals, on March 26, 2007, a group of human rights experts released the Yogyakarta Principles to apply the Human Rights Law to issues related to sexual orientation and gender identity. Yogyakarta Principles include 29 principles. Below are some of the basic principles of the 29 Yogyakarta Principles, which define the obligations of States to respect, protect and fulfill the human rights of all people, regardless of sexual orientation or gender identity.

Currently, the free world countries are campaigning to include the Yogyakarta Principles in their legislation. There are democratic freedoms of citizens, promulgating laws on unspecified rights such as freedom of association, freedom of assembly, right to protest, right to a referendum, right to protect personal data, directly to access information, etc.

In summary, from the perspective of international laws, instruments, and organizations, the equality among sexual orientations and protection of homosexual rights against discriminatory actions have now been recognized. It is noticeable that countries worldwide have concerns about protecting homosexual rights. In particular, the right to live and enjoy social security policies equally like other subjects in society and the right to marry are special rights, greatly affecting the quality of human rights of vulnerable groups in society.

- **Legal provisions of some countries in the world on same-sex marriage**

Same-sex marriage can be held simply or follow religious rituals. Many faith communities worldwide have allowed two people of the same sex to marry or celebrate same-sex marriages. The following authors will analyze the provisions of some countries in the world to clarify the problem, as follows:

- **The laws of some countries recognizing same-sex marriage**

Same-sex marriage in the French Republic

The French Republic (République française) is one of the largest countries in Western Europe and the third-largest in Europe, with several islands and territories scattered across many other continents. The Law of France does not recognize same-sex marriage but allows these

couples to live together in a domestic partnership, adopted in 1999. These couples are protected by law and enjoy the same rights and obligations as heterosexual married couples. They are allowed to raise the child of either person with a former partner of different sex but are not entitled to adoption and artificial insemination. On April 23, the National Assembly passed a bill legalizing same-sex marriage and adoption. After several struggles and changes in the legislative history, the new law allowing same-sex couples to carry out procedures for marriage and adoption was approved by the National Assembly of France on April 23 and issued on May 18, 2013. Since same-sex marriage is officially recognized in France, three forms of cohabitation are distinguished by law. This cohabitation is not only between a man and a woman but also includes homosexuals, namely gays and lesbians. "All" people are officially "married" to each other, which brings them many benefits in terms of taxes, social benefits, inheritance, adoption, retirement pension, etc. The Law of France distinguishes the three forms of cohabitation:

Le concubinage: cohabitation without marriage and contracts, referring to a social position called "compagne." This form is little protected by law and administratively considered as two separate individuals. Two persons of the same or different sex naturally live together.

Le PACS: cohabitation with a contract between two persons of the same or different sex. When they do not want to live together anymore, they declare to cancel the contract and are not bound by the obligation of loyalty. This form is protected by law in certain aspects. They have no widow's and widower's pension. One is not the heir of the other without a testament. There are no civil status changes and recognition. "Natural" children take their mother's or father's last name if the father recognizes them

as his children. They have no right to adopt. According to the French Civil Code, the PACS must be registered with a notary or a Court. The PACS also has age or direct relationship requirements as marriage conditions. The registration, change, and termination of the PACS are recorded in the civil status documents of both parties. The PACS contract will end when one of the two persons dies, gets married, or unilaterally wants to terminate, providing they send a letter to the registration place.

Le mariage: cohabitation with an official marriage certificate between a man and a woman, referring to a social position called "époux/épouse", or "conjoint", "mari/femme" (husband/wife).

This is an important milestone for ensuring society's acceptance as a whole, especially in the religious sphere. In May 2015, the United Protestant Church of France voted to allow its pastors to bless same-sex marriages. The bill has 94 favorable votes. The Union of Protestant Churches of Alsace and Lorraine voted to allow its pastors to bless same-sex marriages with 36 over 13 votes in November 2019. The measure also includes freedom of conscience provisions for pastors who oppose the blessings of same-sex relationships.

Same-sex marriage in the United States

The U.S. Family Law is characterized as state law, which means that each state has its own provisions on marriage and family instead of the U.S. law as national and uniform law for the entire state. In the United States, not all states recognize same-sex marriage. That is why a same-sex couple is recognized in one state but not in another. For example, a same-sex couple is admitted in New York, but when they move to California, they are not accepted by the law of this state. The discrepancy in the laws of each state of the United States has made it

difficult for same-sex couples, so they have to move to places where the law recognizes same-sex marriage for registration.

Another “roundabout” method is to accept some alternative forms of marriage, including Civil union and Domestic partnership. Although these two forms are not recognized as a marriage, two homosexuals have the right to live together and enjoy certain interests and obligations in the marriage law depending on the provisions of each locality. Laws in a state or region are also reversed under the influence of religion or political tendencies of local deputies and parliamentarians. As of July 10, 2013, only 13 states, namely California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington, and Washington D.C., and five Native American tribes recognize legal homosexual marriages. While some jurisdictions have legalized same-sex marriage through court decisions, legislative actions, and people’s voting, six states still prohibit same-sex marriage, which the legislative department issues, and 29 states still do not recognize same-sex marriage through the state’s constitution. USCIS will consider where same-sex couples can register for marriage. Therefore, when two partners of the same sex wish to get married, they can register a wedding in one of the states or locations recognizing same-sex marriage so that their marriage is recognized by federal law.

The problem is that even if a same-sex couple was legally married under state law, they would not be recognized by federal law. The Laws of New California recognize four different categories of same-sex marriage:

First, couples get married in California after the state’s Supreme Court publicizes the law on same-sex marriage but before the effect of

Chapter 8 ends. Their marriage is still considered to be legal because of the state.

Second, couples are living in New California but get married outside the state before the provisions of Chapter 8 are issued. They are also considered to be legally married in California.

Third, couples participate in homosexual associations in California or elsewhere where they are admitted.

Fourth, people who get married in states where marriage is legal but got married after the provisions of Chapter 8 was passed. In fact, they are regarded as household members in California. Of course, regardless of their differences, all these couples share one striking similarity: they are considered separate people according to federal law. It is even worse when same-sex couples move to states (where same-sex marriage is admitted) and realize that they do not even have the right to divorce.

The economic and financial burden for couples and families is also worth mentioning. Furthermore, data from the United States Census Bureau show that there is a significant income gap between same-sex couples without and with children in the category of sexual orientation. The denial of legal recognition to same-sex couples and their families has economic consequences for those families. For same-sex couples, denying marriage (and other measures for family protections) means restricting access to financial benefits under state law and often from private businesses. These may include health insurance and other family benefits in employment; better insurance access and rates outside the employment context (such as life, automobile, and homeowner insurance); and preferential treatment under state tax laws (such as exemption from property transfer tax and non-

taxation on family health provided by employers).

- **The laws of some countries do not recognize same-sex marriage**

In Iran, the law is based on conservative views of Islamic law. Therefore, apart from married couples, other sexual intercourses are illegal due to no legal basis for admitting the sexual acts. Iranian law does not allow same-sex sex. These acts are considered to violate sodomy law and are severely punished, possibly with the death penalty. According to a report by the UK human rights organization, 4,000 to 6,000 gays and lesbians are executed for crimes related to their sexual orientation. It is worth noting that the law does not have specific provisions for distinguishing between acts of sodomy and other acts of sexual abuse such as rape or persecution. Similar to Iran, other Muslim countries that consider homosexuality a serious crime probably resulting in the death sentence, include Mauritania, Pakistan, Saudi-Arabia, Sudan, United Arab Emirates, Yemen, parts of Nigeria and Somalia, and the Chechnya Republic in Russia. In August 1995 in Zimbabwe, during the Zimbabwe International Book Fair, the President took action to condemn homosexuality. Besides, according to a recent study by the United Nations High Commissioner for Human Rights, people worldwide have been violated and discriminated against for their sexual orientation and gender identity. Homosexuality is criminalized in 76 countries and sentenced to the death penalty in at least five countries.

In Asia, same-sex marriage is much more “conservative” than in Europe and America. In many countries, the main issue is not whether homosexual couples are legally married, but whether they have the right to live without fear of persecution. Some Muslim countries in Asia regard homosexuals as not only illegal but also

punishable. In Malaysia, homosexuals are beaten by law and serve up to 20 years in prison. In Indonesia, two-fifths of the people who use the Koran view homosexuals as criminals. Fortunately, this law only applies to Muslim citizens. Even in a developed country like Singapore, homosexuals, especially gays, are still considered illegal but rarely caught and punished. In some other countries, such as Japan and China, homosexuals are not considered illegal, but same-sex marriages are not accepted. The attitude of the authorities seems to show homosexuals that they are free to do whatever they want and should be grateful for it instead of claiming other legal rights.

From the above analysis, it can be seen that same-sex marriage is a concern of many countries worldwide. The recognition of same-sex marriage is not only a political, social, and moral issue, but it also represents equal rights between human beings, i.e., the equal treatment provided by law to the legitimate rights and interests of human beings, including homosexuals and heterosexuals.

- **Legal forms of same-sex marriage**

Analyzing the laws of the groups of countries with mixed opinions on same-sex marriage, we can see that the legal forms in this regard in countries over the world are commonly divided as follows:

Dating - Civil/ Criminal Law: Couples can both date and be partners. Such a relationship can be very important for couples who do not want to have further commitment. It is governed by law primarily to protect each partner against possible misconduct by the other partner. Criminal and civil laws prohibit sexual assault, lying, theft or conversion of property, extortion, and the like. This is admitted at a minimal level of regulation.

Cohabitation (Contract Law - Contract Law): Almost all couples start by dating; some couples then decide to cohabit. It signals a closer relationship and often requires more legal obligations in Western countries. In addition to the responsibility not to commit or commit a crime, the United States, Canada, and most Western European countries impose certain contractual obligations on partners as a matter of law or tacit contract. Not only will the state enforce the express promises made for cohabitation and specific obligation share, but it will also protect the partners' dependent interests and against the unjust enrichment of one partner by causing damage to the other. Therefore, cohabiting partners may have a duty to maintain the relationship and support each other; a partner develops their career while the other running the family may be financially responsible during a breakup.

Cohabitation Plus: Some countries like Canada and Netherlands do not only enforce the binding law and extended contract principles to protect cohabitation partners but also provide them some specific interests. I call them "unified" because they usually relate to principles that treat partners as commensurate and grant them financial and other interests reflecting their unity, at least for some issues. Community coexistence in the United States and France is achieved through domestic partnerships and civil solidarity pacts. In the United States' domestic plans, Partnership Pact only allows official registration and provides side interests to the employee's partners working for the public power. According to the new law of France, civil partners can recover taxes for people immigrating to France, and employers have to pay for employees' holiday plans.

(Registered Partnership) – Rights and Obligations are regulated: After or instead of cohabitation, several couples have decided to commit to a longer-term relationship. The

Netherlands and Scandinavian countries allow these couples to register their marriages. Registered partnerships are not only governed by modifications of law, contractual terms, and some interest conferred by the unitary state, but also have the full range of duties and rights under the state law. The only interests related to children such as adoption and parenting of these couples, are not allowed. (The Netherlands dropped this exception, and other countries are likely to do the same).

Marriage- Obligations and interests: Normally, couples commit to a long-term relationship by marriage. Depending on inherent limitations, the state will keep supporting and recognizing marriage with all the rights and obligations related to the registered partnerships and the rights of children mentioned above. It is also possible that the state will consider its management regime and then it will add more or remove some rights and obligations to fulfill the needs or trends of the 21st-century society.

It is noted that each regime will supplement and combine the rules of the previous administrations. To sum up, marriage includes the criminal limitations of dating, the contractual rules of cohabitation, the cohabitation plus and all interests and obligations of the relationship and the registered relationship- as well as the right of adoption and symbolic ties to Western traditions of marriage. This phenomenon is consistent with the "accumulation" principle.

- **Vietnamese law on same-sex marriage**

With the introduction of Western culture in the process of industrialization and modernization of the country, people in the new era tend to be "more open-minded" and gradually break away from social norms. However, some cases of serious discrimination against same-sex couples

still occur because Confucian customs and views significantly affect Asian views. For example, Asians believe that grown-up boys and girls have to marry each other. Besides, male chauvinism still exists. In that period, legislators also had the same view, so Clause 5, Article 10 of the Law on Marriage and Family in 2000 stipulates the cases in which “marriage is prohibited,” including “same-sex marriage.” However, it is “unconstitutional” because Article 52 in the 1992 Constitution of Vietnam also stipulates that all citizens are equal in front of the law. This is also reaffirmed in the 2013 Constitution; once again, human rights stipulated in Chapter II of the Constitution have affirmed: “Human rights are natural, the State has to recognize, respect and commit to ensure and protect them by international conventions in which Vietnam has participated. In detail, Article 14 stipulates: In the Socialist Republic of Vietnam, human and civil rights in political, civil, economic, cultural, and social fields are recognized, respected, protected, and ensured following the Constitution and the law.

Normally, same-sex couples can still cohabit, but the law will not protect them in the event of a dispute. However, in May 2012, a same-sex couple’s wedding ceremony in Ha Tien was stopped by local authorities. This event attracted conflicting opinions of society and the press attention, creating a wave of public opinion demanding equality for same-sex marriage. Facing that pressure and the rise of human rights in the world, Vietnamese people are gradually becoming more open-minded on this issue. As a result, on September 24, 2013, the Government issued a decree to abolish the punishment for same-sex marriage. This decree will into effect on November 11, 2013. From November 12, 2013, the Government will not punish those who organize same-sex weddings. And this provision has been officially included in the Law on Marriage and Family 2014 in

Clause 2, Article 8: The State does not recognize same-sex marriage. According to the law, same-sex marriage will not be prohibited as in the law 2000, but the law also does not grant legal recognition to same-sex marriage. When a dispute occurs, it will be resolved based on the Civil Code Law, not on the Law on Marriage and Family provisions.

The actual data will surprise us. Indeed, 90% of Vietnamese people are aware of homosexuality and 62% of them know about the cohabitation of same-sex couples; 30% are acquainted with someone who is homosexual (relatives, friends, colleagues, neighbors, etc.) and 33.7% support the legalization of same-sex marriage. Regarding the recognition of the right for same-sex cohabitation, the number of supporters is 41.2%. Same-sex cohabitation should be legalized as a “civil union” or “marriage registration.” When asked about some specific rights mentioned in the Law on Marriage and Family which the law should protect same-sex couples, 56% said that same-sex couples should have the right to adopt and raise children together, 51% support the right of joint property ownership, 47% support the right of property inheritance. Most people believe that legalizing same-sex marriage does not affect their families (72.7%) or themselves (63.2%). By region, people in the North and the Central part are more supportive (78% and 74%, respectively) than people in the South (68%). The rate of young people aged 18-29 and those holding bachelor’s and college degrees or higher supporting same-sex marriage increases. The rate of people who are acquainted with homosexuals supporting the legalization of same-sex marriage is twice as high as that of others. This shows that the publicity of homosexuals has a positive effect on the support of society. In which 90% suppose that the legalization of same-sex marriage will have both positive and negative impacts on the

community; 20% think that the legalization of same-sex marriage will have a negative effect on their families, while 73% believe that the legalization of same-sex marriage will not affect their families or themselves.

In the context of five years after the Law on Marriage and Family, 2014 abolished the ban on same-sex marriage, organizations and social activists have been preparing for the campaign to amend the law in the next period, aimed to legalize same-sex marriage. The study on Social Perspectives on Same-sex Marriage was conducted by iSEE Institute from July to November 2019 to study aspects of views on legalization of same-sex marriage, thereby providing information to develop strategies for raising social awareness. Regarding the recognition of the right for same-sex cohabitation, 61% are sympathetic towards the LGBT community's people and think that same-sex marriage is a legitimate right. Still, they suppose that same-sex marriage should not be legalized in the current social context. This survey gave specific reasons as follows:

The concept of having children is the main purpose of marriage: because homosexuality is considered a violation of traditional moral values, homosexuals are afraid to appear and live up to their sexual orientation. Instead, they choose "fake" marriages not to be judged for their sexual orientation. Regarding folk beliefs, fertility beliefs in our country also attach much importance to having sex of men and women to reproduce and develop the lineage.

Due to cultural values and backgrounds of a family, such as a sacrifice as the moral of the individual in the family; Cultural values and experience of a family; Standardization of heterosexuality in the family model, etc.

Awareness of the relationship between citizens and the law with the view of "every man for

himself"; Loss of confidence in the effectiveness of the law; Avoidance to face conflicts when they occur, etc.

The above real situation and causes show that marriage is an actual need of homosexuals in Vietnam today. Although the law does not recognize same-sex marriage, they still cohabit, leading to issues related to identities, properties, or children (eg. Giving birth to a stepchild or adopting a child together). However, there is no legal basis to adjust these issues. Most of the modified matters are determined on the basis of the Civil Code Law.

Real situation of the impact of the law's adjustment on same-sex marriage in some countries and lessons for Vietnam

- **Impact of the law's adjustment on same-sex marriage**

For population: Civil Union between same-sex couples was first recognized in Denmark in 1989. 12 years later, in 2001, same-sex marriage was first recognized in the world, especially in the Netherlands. According to official statistics, about 100,000 same-sex couples worldwide got marriage certificates by the end of 2009. The number of homosexuals and the rate of same-sex marriages only make up a small fraction of the total population and the number of heterosexual marriages. The law's recognition of same-sex cohabitation has not significantly impacted demographic characteristics across territories and countries. The decrease in the overall birth rate is a common trend in many continents and countries when social economics develops. However, the number of populations in all countries still continues to increase. Thus, the impact of the recognition of same-sex cohabitation does not cause demographic changes, such as concerns about the destruction of society if same-sex marriage is legalized. This situation only occurs

when all people in society are homosexuals and they choose to marry without having children.

For other institutions of marriage: One of the other concerns about the impact of same-sex marriage is that it will erode the value of marriage which has existed in society long ago. However, the reality is the opposite. In European countries that allowed same-sex marriage for the period 1989 to 1999, fewer people consider marriage to be an outdated form of cohabitation than in countries that have not yet passed such legislation. Demographic data on the trend of decreasing marriage rates in European countries also do not show any association with the law's recognition of same-sex marriage. When researchers used U.S. Census Bureau's data for the period 1990 to 2004 to compare the impact on the institution of marriage between states prohibiting and states allowing same-sex marriage or other forms of same-sex cohabitation, they found no link between recognition of same-sex marriage and cohabitation with negative effects on marriage. In contrast, states that allowed same-sex cohabitation were more significantly associated with an increase in the marriage rate, a decrease in abortion, and a decline in the number of children living with single mothers.

For individuals in society:

For same-sex people themselves: The recognition of same-sex marriage gives individuals a sense of security about all aspects of their mutual life, makes individuals feel that same-sex relationships are actual and responsible, and increases commitment and efforts to invest in the joint life. Therefore, these increase the quality of life and the quality of the relationship between two individuals in society. In addition, the surveys in the Nordic countries show that after the adoption of the law allowing cohabitation registration, the long-term attachment of individuals when registering

to live together is synonymous with the commitment to faithful behaviors and thus reduces the transmission of sexually transmitted diseases.

For those around: Parents of homosexuals will be psychologically relieved knowing that their children have the same opportunity in the marriage and family life as other people in society. Legal recognition of registering cohabitation or same-sex marriages will help reduce social pressure on parents and reduce tension in the relationship between parents and children. Besides, legal marriage also brings a feeling of recognition and attachment to the family and parents of the spouse. The close-knit relationship between family generations is a positive environment for the psychological development of all family members. The family's child socialization function in this context will be guaranteed. This helps to avoid the unfortunate consequences of a broken parent-child relationship such as the child running away from home or problems with the parents' mental health.

- **Lessons learned for same-sex marriages in Vietnam**

Firstly, the first step should be applied in the form of registered marriage, also known as a civil union, which will be feasible and most appropriate in the current period. Using this form of the civil partnership has also been tried and achieved with certain success in many countries before these countries gradually legalized same-sex marriages. In general, most countries recognize that same-sex marriages have a transitional provision in the Law from the recognition of the rights of homosexuals and the cohabitation of same-sex couples, then having to the requirement for recognition of same-sex marriages. For example, the Netherlands stipulated the registration of civil unions between homosexuals in 1998, but it was

not until 2001 that it officially recognized the legal marriage of homosexuals. In Asia, China and India didn't recognize same-sex marriages but legalized same-sex relationships in 1997 (China) and 2009 (India). The spiritual acceptance and recognition on the legal basis by legalizing same-sex marriages will improve human rights and change the general perception of the husband and wife relationship. Therefore, with the distinction of a civil union between same-sex couples, these people will enjoy some of the same rights as couples who registered a marriage. This is particularly meaningful to deal with the consequences arising from the de facto coexistence of homosexuals and to protect human rights, especially in developing countries, where the human rights issue still are with many limitations. Therefore, this issue should also be considered by supplementing the current Vietnamese legal regulations. Achieving greater simplicity and consistency between state family law systems would significantly benefit affected families. Human rights are among the highest values that all countries uphold and protect.

Secondly, issues of rights and obligations of same-sex couples should be established by civil union. A legal document adjusting the form of civil marriage is issued. It is a noticeable thing that when building this legal document, it is necessary to absorb the experience of advanced countries. Accordingly, this legal document needs to take into account issues such as personal identity: because marriage has not been registered, the husband-wife relationship does not exist, which leads to rights and obligations toward husband, wife, and children do not exist; Regarding property: there is no the husband-wife relationship, so the property created by them in the process of living together cannot be considered as common property during the marriage period and cannot be divided as the private property of a spouse, but

only divided according to the provisions of the Civil Code, may not equal the contribution of the parties in the cohabitation relationship as husband and wife. For this reason, from a legal perspective, when they no longer live together, how will the properties created during the time they lived together be divided? If two homosexuals adopt a child together, can they both be in the same name as the adoptive father or the child's adoptive mother? The problem is when one person dies without leaving a will, does the other person have the right to inherit property as the inheritance of husband and wife? Currently, there have been many studies on the legalization of same-sex marriage. Stemming from the needs of the natural development of society, from the theories of human rights, democracy, justice, equality, and social awareness, many researchers have made arguments in favor of human rights. Support the legalization of same-sex marriage in Vietnam. In addition, this issue strongly influences future generations, especially in the case of adoption. The difference between same-sex and heterosexual parenting can also be partially accounted for by the variations in parenting commitment created by parental rights.

Thirdly, regularly conduct educational surveys to assess people's attitudes and perceptions over the period. Most interviewees said that the current education and communication on gender and sexuality knowledge is not much and has not reached diverse groups in society. Accurate information about gender and sexuality is not widely available, allowing stereotypes and stereotypes about LGBT people to continue to develop. About two-thirds of the study participants had no understanding of gender and sexuality. More than half believed that homosexuality was a contagious form of 'disease' or 'trend.' Although the group was assessed to have more opportunities to be exposed to information from education and the

media than other age groups, the interview process with young people also revealed inaccurate information. Prejudice and misunderstandings about LGBT people are still widespread.

Regarding education, young people shared that there has not been a single subject or extracurricular activity that provides in-depth information on gender and sexuality in schools, from high school to university. On the other hand, activities to promote the presence of LGBT people and related knowledge are said to be confined to the urban youth segment without affecting middle-aged people, the elderly, and the elderly. live in the countryside.

In summary, in the context that traditional culture still faces many barriers, society's awareness is still incomplete, and there are still many stigmas, the issue of legalizing some rights for homosexuals needs to follow a legal route. As such, more countries and territories worldwide recognize same-sex marriage or other forms of marriage with registrations similar to marriage. This is a progressive trend that meets the needs and guarantees gay rights. Moreover, the recognition of same-sex marriage also positively affects the family and society, as various scientific studies worldwide have shown. The law is used as a moderate tool to gradually orient institutions according to the common values of the world, the introduction of regulations on "civil union" to solve the coexistence between people of the same sex and gender and the legal consequences arising from coexistence between them are reasonable and necessary. Acknowledging "civil union" not only creates an open legal corridor regulating the personal relations, property, and child-rearing of same-sex people, but it is also an important stepping stone in legalizing same-sex marriage. Through legislative developments, this is also a lesson for Vietnam in particular and countries that are "neutral" to same-sex

marriage in general. The fact that legislators consider amending the Law on Marriage and Family with the content of legalizing same-sex marriage is reasonable, in line with the world trend, and meets the aspirations of the gay community in Vietnam.

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