

# **SEARCHING FOR AN APPROPRIATE MODEL FOR THE LEGALIZATION OF SAME SEX COUPLES' RELATIONSHIP FROM PUBLIC ATTITUDES IN VIETNAM - AN EMPIRICAL ASSESSMENT**

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**Abstract:** *In 2014, Vietnam removed the ban on same-sex marriage from the Law on Marriage and Family, which was a cornerstone for the process of legal recognition of same-sex partnerships. However, there has been no further movement to have more clear guidance for same-sex couples who want to affirm their committed relationship and have their marital rights protected under the law. This ambiguity has not been adapted to the reality that public attitudes have changed positively to further accept same-sex partnerships. In a moment of ongoing legal transitions, Vietnam should learn from the experiences of countries worldwide, with various degrees of official recognition gradually set up, including cohabitation, registered partnership, and full recognition as marriage. This evokes the necessity of identifying an appropriate legal model for the context of Vietnam at present. To achieve this objective, the proposed initiative should closely reflect the public attitudes to take the path of least resistance.*

*Nevertheless, little research to date has been dedicated to enriching these aspects. To offer an effective legal framework for the legal recognition of same-sex unions in Vietnam, this study uses a method of questionnaires to explore public attitudes on various legal aspects of the two models concerning same-sex relationship formalizations: registered partnership and cohabitation. Then, the study gives recommendations on the most feasible model from the lens of public attitudes for Vietnamese policymakers to get ready for the next steps on the legalization of same-sex marriage.*

**Keywords:** same-sex partnership, same-sex cohabitation, registered same-sex partnership, the Vietnamese Law on Marriage and Family

## **1. Introduction**

The legal status of same-sex unions has been one of the noticeable topics in social debates worldwide over the last few decades. The legalization process of same-sex marriage plays a vital role in enhancing the well-being of sexual minorities and upgrading marriage equality.<sup>4</sup> Until now, legalizing same-sex couples' relationships has been developed in a rising number of countries.<sup>5</sup> America and European Union are two areas that have played the first steps in officially recognizing legal marriage between two women or two men. For the last few decades, Europe has witnessed the progress of same-sex union formalization. Denmark was the first country in the world which adopt a legal framework for two men or two women to register their union under legal recognition in 1989.<sup>6</sup> In 2000, not many countries in Europe adopted same-sex relationship policies. In 20 years later, 29 countries across Europe have passed legislation for at least one form of official recognition of same-sex unions. Some countries adopted same-sex registered partnerships while

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<sup>4</sup> Denise Tse-Shang Tang, Diana Khor and Yi-Chien Chen, 'Legal recognition of same-sex partnerships: A comparative study of Hong Kong, Taiwan and Japan' (2020) 68 *The Sociological Review* 192

<sup>5</sup> Diederik Boertien and Daniele Vignoli, 'Legalizing same-sex marriage matters for the subjective well-being of individuals in same-sex unions' (2019) 56 *Demography* 2109

<sup>6</sup> Marie Digoix, *Same-sex families and legal recognition in Europe* (Springer Nature 2020) 2

others fully recognized same-sex marriage.<sup>7</sup> Now, these countries are in the progress of offering more and more rights and obligations for same-sex partners in a legally recognized relationship.<sup>8</sup>

The US's same-sex marriage legal recognition situation shows a similar path with European countries. Until 2006, only one state of the US allowed same-sex couples to get married under legal recognition (Massachusetts). Besides Massachusetts, six other states adopted legislation providing limited rights and obligations for partners in a same-sex union by 2006.<sup>9</sup> In 2015, marriage equality became a reality in the US with the decision of the Supreme Court, which granted same-sex couples in all states of the US the right to be fully recognized under the law.<sup>10</sup> Same-sex relationship recognitions have been expanded even in a more conservative region like Asia. Taiwan is the first country in Asia to provide the initial formalization of same-sex relationships. Although, there is a law that is laid outside the civil code, granting different rights and obligations of same-sex couples as different-sex ones.<sup>11</sup> In Hongkong, same-sex couples have limited legal rights and obligations regarding taxation, property, and immigration legislation.<sup>12</sup> Japan also had created "guidelines" that recognized same-sex partnership at the local government level without granting registered partnership for heterosexual unions on a national scale.<sup>13</sup>

This tendency of legally recognized same-sex relationships has emerged from country to country. Vietnam has been affected by these international movements regarding the rights of same-sex minorities and marriage equality. Vietnam has been pursuing the strategies of expanding international integration over the past three decades. In this integration process, international standards have been harmonized with internal norms and gradually transformed into the traditional culture and the national legal system.

With the rapid development of rights movements for same-sex people worldwide, the issue of the legalization of heterosexual unions in Vietnam has witnessed significant changes in recent years. To specify, marriage between same-sex people was one of the marriage bans previously<sup>14</sup> mentioned in Marriage and Family Law 2000, Article 10. At that time, the union of same-sex couples would be illegal, and they must pay administrative fines. However, in the present Marriage and Family Law adopted in 2014, the law no longer prohibits same-sex couples from marrying, but it still does not recognize same-sex marriage. The changes in the Marriage and Family Law show the more open approach concerning same-sex partnership in the Vietnamese legal system. In reality, the public attitudes no longer against the publicity of same-sex weddings. Nowadays, many same-sex weddings have been reported in mass media and social networks annually. Therefore, to meet the demands of international standards concerning marriage equality and adapt to societal developments, policymakers in Vietnam must step forward in granting legal recognition for same-sex couples' relationships.

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<sup>7</sup> Cevat G Aksoy and others, 'Do laws shape attitudes? Evidence from same-sex relationship recognition policies in Europe' (2020) 124 *European Economic Review* 103399

<sup>8</sup> Digoix, *Same-sex families and legal recognition in Europe 2*

<sup>9</sup> Gregory M Herek, 'Legal recognition of same-sex relationships in the United States: a social science perspective' (2006) 61 *American Psychologist* 607

<sup>10</sup> <https://www.vox.com/2015/6/26/18093652/same-sex-marriage>

<sup>11</sup> Cheng-Fang Yen and others, 'Preference about laws for the legal recognition of same-sex relationships in Taiwanese people before and after same-sex marriage referenda: a Facebook survey study' (2020) 17 *International journal of environmental research and public health* 2000

<sup>12</sup> Tang, Khor and Chen, 'Legal recognition of same-sex partnerships: A comparative study of Hong Kong, Taiwan and Japan'

<sup>13</sup> *Ibid*

<sup>14</sup> See Article 10, The 2000 Marriage and Family Law (The Marriage and Family Law of the Socialist Republic of Vietnam adopted by the National Assembly on June 9, 2000).

From the experience of other countries, it is reasonable to follow steps by steps, combined with conducting comprehensive national surveys to assess public supports before adopting new same-sex relationship policies. Therefore, our research aims to provide policymakers empirical grounds for their consideration in this progress. The paper will focus on evaluating public attitudes in Vietnamese society to explore how favorable and to what degree Vietnamese people support the legal recognition of same-sex unions. Our approach is also based on specific legal rights and obligations of each partner in a same-sex relationship granted in leading countries, especially European ones, to propose an appropriate legal recognition model for Vietnam at present.

In section 2, we present the overview of the literature review concerning the legalization of same-sex unions in Vietnam. Section 3 considers the theoretical background and explains our approach to conducting surveys. Then, in section 4, the results will be analyzed to give suggestions for Vietnamese policymakers to have an appropriate solution for dealing with the issue of same-sex partnership legalization.

## 2. A literature review of same-sex couples' relationship legislation in Vietnam

In Vietnam, same-sex people can hold weddings and live together as husband and wife but cannot carry out marriage registration procedures<sup>15</sup>. With personal relations, there is no legal bond between same-sex couples; marriage registration is not granted. Therefore, the rights and obligations of husband and wife do not exist. Regarding property relations, because there is no husband-and-wife relationship, the property regime of husband and wife as prescribed in the Law on Marriage and Family does not apply. If a dispute arises, the property shall not be divided according to the marital principle of joint property. Stemming from the above context, the study of same-sex marriage rights will contribute to perfecting the law to ensure human rights, improve the social value of the Law in Vietnam and be in line with international trends.

Since the drafting period of the Law on Marriage and Family (2012-2014), it has been increasing in the research of LGBT in general and homosexual people in particular, especially in the legal field. In terms of theory, many scholarly works have raised the fundamental issues of homosexuals, natural rights, and laws on homosexual rights. First, research has provided comprehensive basic knowledge about homosexuals<sup>16</sup>. The iSEE Institute also carried out a theoretical study on homosexuals through "Homosexual, Bisexual and Transgender People in Vietnam: A Review of Research"<sup>17</sup>. Secondly, other studies have also focused on the theory of rights and the law on homosexual rights. In the study "Theory of rights of gay, bisexual, transgender and intersex people"<sup>18</sup>, Truong Hong Quang highlighted the nature of homosexual rights, explained why the law must recognize these rights, and clarified the position of these rights in the legal system. In addition, theoretically, the studies have also provided general information on international law and the laws of other countries around the world on LGBT people's rights,

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<sup>15</sup> Về mối quan hệ sống chung của người đồng tính trong dự thảo luật hôn nhân và gia đình (sửa đổi), <https://phapluatdansu.edu.vn/2014/03/03/12/56/ve-moi-quan-he-song-chung-cua-nguoi-dong-tinh-trong-du-thao-luat-hn-nhn-v-gia-dnh-sua-doi/>,

<sup>16</sup> iSEE, *Trả lời các câu hỏi của bạn về đồng tính và xu hướng tính dục* [iSEE, *Answers to your questions about homosexuality and sexual orientation*]

<sup>17</sup> iSEE, *Người đồng tính, song tính và chuyển giới ở Việt Nam: Tổng luận các nghiên cứu* (Nxb Khoa học xã hội 2013) [iSEE, *Homosexual, Bisexual and Transgender People in Vietnam: A Review of Research* (Social Science Publishers 2013)]

<sup>18</sup> Truong Hồng Quang, 'Cơ sở lý luận về quyền của người đồng tính song tính, chuyển giới và liên giới tính' (2019) *Tạp chí Luật học* [Quang TH, 'Theory of rights of homosexual, bisexual, transgender and intersex people' (2019) *Journal of Jurisprudence*]

such as "Same-sex marriage in the United States and its implications for Vietnam"<sup>19</sup>, "Same-sex marriage: World trends, social impacts, and experience for Vietnam"<sup>20</sup>, "Laws in some countries around the world on homosexual rights"<sup>21</sup>. However, in terms of legalizing same-sex marriage, little research is based on legal rights in the institution of marriage for same-sex couples. Mainly suggestion in comparative law studies without empirical results, for instance, the study "Same-sex marriage in the United States and its implications for Vietnam" has provided information on legalizing same-sex marriage in the US and raised the issue of the certificate of civil union relationship, with legal consequences such as the premarital agreement of the laws of the country.

In recent years, the iSEE Institute has been one of the leading organizations in research on the situation of homosexuals. There are some typical studies of iSEE Institute related to this issue, such as "Living in a heterosexual society - Research on 40 women who love women"<sup>22</sup>(2010), "Social attitudes towards homosexuals"<sup>23</sup>(2012), "Homosexual cohabitation: Practical experience and the pursuit of couple happiness"<sup>24</sup>(2013), "Research Report: Social Perspectives on Same-Sex Marriage - Qualitative Research in Hanoi and Ho Chi Minh City"<sup>25</sup>(2019), "Homosexual Cohabitation"<sup>26</sup>(2019), "Impact of Covid 19 on the life and need of LGBTI+ "<sup>27</sup>(2020), etc. Research focuses on understanding homosexual people in Vietnam regarding the number, sexual orientation, occupation, prejudice, stigma, and discrimination against homosexuals. The iSEE Institute has also conducted reports, surveys about community attitudes on many aspects related to homosexuals. Furthermore, about the legal status of homosexuals, several papers have summarized and generalized the legal status of LGBT people's rights in Vietnam today<sup>28</sup> in terms

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<sup>19</sup> Hồ Minh Thành, 'Hôn nhân đồng tính tại Hoa Kỳ và những gợi mở cho Việt Nam' (2019) Tạp chí Nghiên cứu Lập pháp 386 [Thanh HM, 'Same-sex marriage in the United States and its implications for Vietnam' (2019) The Journal of Legislative Studies 386]

<sup>20</sup> Lê Quang Bình, 'Hôn nhân cùng giới: Xu hướng thế giới, tác động xã hội và bài học kinh nghiệm cho Việt Nam' (Tọa đàm chuyên gia về lồng ghép vấn đề giới trong dự án luật Hôn nhân và gia đình (sửa đổi) của ủy ban các vấn đề xã hội của Quốc hội) [Bình LQ, 'Same-sex marriage: World trends, social impacts, and experience for Vietnam' (Seminar on mainstreaming gender issues in the draft law on marriage and family (revised) of the National Assembly's social affairs committee)]

<sup>21</sup> Trương Hồng Quang, 'Pháp luật một số quốc gia trên thế giới về quyền của người đồng tính' (2012) Tạp chí Nhà nước và Pháp luật [Quang TH, 'Laws in some countries around the world on homosexual rights' (2012) Journal of State and Law]

<sup>22</sup> iSEE, *Sống trong một xã hội dị tính - Nghiên cứu 40 người nữ yêu nữ* (Nxb Thế giới 2010) [iSEE, *Living in a heterosexual society - Research on 40 women who love women* (The Gioi Publishers 2010)]

<sup>23</sup> iSEE, Nguyễn Thị Thu Nam and Lê Quang Bình, *Thái độ của xã hội đối với người đồng tính*, 2012) [iSEE, Nam NTT and Bình LQ, *Social attitudes towards homosexuals*, 2012]

<sup>24</sup> iSEE and others, *Sống chung cùng giới: Trải nghiệm thực tế và Mưu cầu hạnh phúc lứa đôi* (Nxb Thế giới 2013) [iSEE, *Homosexual cohabitation: Practical experience and the pursuit of couple happiness* (The Gioi Publishers 2013)]

<sup>25</sup> iSEE, *Báo cáo nghiên cứu: Quan điểm xã hội về hôn nhân đồng giới-Nghiên cứu định tính tại thành phố Hà Nội và Thành phố Hồ Chí Minh*, 2019) [iSEE, *Research Report: Social Perspectives on Same-Sex Marriage - Qualitative Research in Hanoi and Ho Chi Minh City*, 2019]

<sup>26</sup> iSEE, *Sống chung cùng giới*, 2019) [iSEE, *Homosexual Cohabitation*, 2019]

<sup>27</sup> iSEE, *Tác động của Covid 19 tới cuộc sống và nhu cầu của người LGBTI+*, 2020) [iSEE, *Impact of Covid 19 on the life and need of LGBTI+*, 2020]

<sup>28</sup> , 'LGBT Rights in Vietnam' <<http://www.equaldex.com/region/vietnam>> accessed

of the rights to access to law<sup>29</sup>, legal aid<sup>30</sup>, the right to a marriage or civil union<sup>31</sup>, just to name a few.

There are many theoretical studies about homosexual rights, but the empirical research in Vietnam is still relatively modest. In recent times, mainly the quantitative analysis on homosexuals comes from the iSEE Institute. The iSEE Institute had a survey report on public opinion and attitudes about same-sex marriage in 2014<sup>32</sup>. We also research this issue, but our study has a different point. The other study was conducted was before the primary revision of the Law on Marriage and Family, which had not yet removed the ban on same-sex marriage. Meanwhile, our study was conducted seven years after the Law on Marriage and Family change. We have approached each group of rights specific to each legal aspect of the institution of marriage and family under Marriage and Family Law 2014, which the other quantitative researches have never done before.

### **3. Theoretical background**

#### **3.1. Different forms of legalization**

Normally, countries have offered formalization of same-sex relationships under their legislation. There are various forms when it comes to the process of adopting same-sex relationship legalization across countries, such as registered partnership, cohabitation, or civil marriage.<sup>33</sup>

##### *Registered partnership*

In Europe, most countries opened the door of same-sex legalization by introducing the form of registered partnership for homosexual couples.<sup>34</sup> Hooghe Marc and Cecil Meeusen also suggested that this type of formalization is reasonable for countries with a tolerant public opinion of same-sex partnerships.<sup>35</sup> This form is a tool for the authorities to regulate several rights and obligations between the partners and between the partners and other stakeholders, including the national authorities.

The registered partnership was used in many countries. The registered partnership has allowed same-sex couples to start and end their relationship with legal recognition under the national law system. This registration will lead to specific legal consequences for the couples. The regulations set for the registered partnership create legal requirements that must be met by two same-sex partners who want to register their relationship as a public authority which is often the authority to issue a marriage certificate. Also, the administrative procedures for ending the

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<sup>29</sup> Trương Hồng Quang, 'Về quyền tiếp cận pháp luật và được trợ giúp pháp lý của người đồng tính, song tính và chuyển giới' (2016) Tạp chí Nhân lực Khoa học xã hội [Quang TH, 'About homosexual, bisexual and transgender people's right to access to law and legal aid' (2016) Journal of Human Resources and Social Sciences]

<sup>30</sup> Thái Thị Tuyết Dung and Vũ Thị Quý, 'Bảo đảm quyền của người đồng tính, người chuyển giới trong tư pháp hình sự' (2013) Tạp chí Nghiên cứu lập pháp [Dung TTT and Quy VT, 'Securing the rights of homosexuals and transgender people in criminal justice' (2013) Journal of Legislative Studies]

<sup>31</sup> Trương Hồng Quang, 'Quyền kết hôn của người đồng tính' (2014) 4 Tạp chí Nghiên cứu lập pháp [Quang TH, 'Same-sex marriage right' (2014) 4 The Journal of Legislative Studies]

<sup>32</sup> IOS, iSEE and HSPI, *Kết quả trưng cầu ý kiến người dân về hôn nhân cùng giới*, (2013) [iSEE, iSEE and HSPI, *Results of the people's opinion on same-sex marriage*, 2013]

<sup>33</sup> C Waaldijk, 'More and more together: Legal family formats for same-sex and different-sex couples in European countries—Comparative analysis of data in the LawsAndFamilies Database' (2017) More and more together: Legal family formats for same-sex and different-sex couples in European countries—Comparative analysis of data in the LawsAndFamilies Database

<sup>34</sup> Digoix, *Same-sex families and legal recognition in Europe* 15

<sup>35</sup> Cecil Meeusen and Marc Hooghe, *Is same-sex marriage legislation related to attitudes toward homosexuality? Trends in tolerance of homosexuality in European countries between 2002 and 2010* (2013) 8

registered partnership are similar to the procedures of ending a civil marriage.<sup>36</sup> It is worth noting that a registered partnership would not be ended when the partners decide to stop living together. They need to perform legal procedures to end this legally recognized relationship.<sup>37</sup> Sometimes, it is not easy to distinguish between registered partnership and civil marriage because some countries may fully recognize the same legal rights and obligations in a registered partnership as in a legal marriage. The degree of legal recognition concerning specific rights and obligations of each partner in this form has been varying across countries.<sup>38</sup> There are some noticeable limitations on the legal consequences of registered partnership for same-sex couples in many countries, including paternity rights, second-parent, joint adoption, and medical assisted insemination.<sup>39</sup>

#### *Same sex cohabitation*

A cohabitation is a legalization form that has made it possible for two people living together to recognize their relationship when they meet specific criteria regulated by the law. States often offer this legal family format for both different-sex and same-sex couples. The requirements set by the national legislation for allowing legal cohabitation in most countries are simple. Couples do not need to implement certain procedures before their relationship is legally formalized, such as the sufficient length of the cohabitation or a shared living place, or the couple only needs to sign a contract regarding their cohabitation.<sup>40</sup> There are limited rights attached to partners in the cohabitation relationship, for instance, benefits from partners' insurance, compensation for wrongful death, domestic violence protection, resident permission for a foreign partner, etc.

Since it is not only different from country to country in forms of legalization in terms of definition, procedures, criteria, rights, and obligations of each partner, the terminology of "cohabitation" can be considered as any relationship between two people who have not made their unions become a marriage or a registered partnership.<sup>41</sup> As mentioned above, while couples in a registered partnership need to follow certain regulations to end their relationship, it is simpler for cohabitation couples to perform this action when they only need to stop living together.<sup>42</sup>

#### *Same-sex marriage*

The terminology of marriage refers to a fully recognized form of same-sex couples' relationship. In countries where same-sex marriage is made available for heterosexual couples, such legal form provides the same or almost the same legal consequences as different-sex marriages. Some countries have exclusions for same-sex marriage, mostly focusing on parenting rights and obligations.<sup>43</sup>

In conclusion, countries that have already taken steps in legally recognizing same-sex relationships vary in recognition, such as cohabitation, registered partnership, and civil marriage. It is clear that rarely has a country reached the full legal recognition of same-sex relationships at

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<sup>36</sup> Waaldijk, 'More and more together: Legal family formats for same-sex and different-sex couples in European countries—Comparative analysis of data in the LawsAndFamilies Database' 39

<sup>37</sup> C Waaldijk and others, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document' (2016) Families And Societies Working Paper Series 20

<sup>38</sup> Ibid, p. 39

<sup>39</sup> Ibid, p.39

<sup>40</sup> Ibid, p.40.

<sup>41</sup> The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document, Kees Waaldijk, José María Lorenzo Villaverde, Natalie Nikolina, Giuseppe Zago 19

<sup>42</sup> Ibid, p.20.

<sup>43</sup> C Waaldijk, *Extending rights, responsibilities and status to same-sex families: trends across Europe* (Ministry of Foreign Affairs of Denmark (for Council of Europe) 2018) 10

the very first stages. Most countries have started at some non-marital forms of legalization. These countries often start at some legal forms of legalization that provide same-sex couples with a limited number of rights and obligations compared to traditional marriage between different-sex couples. There is no clear distinction between these forms (cohabitation and registered partnership) because the rights and obligations attached to partners in each form vary from country to country.

In Vietnam, along with the development of social life, the legal relationship of same-sex couples has been identified more clearly and poses more demands and needs. Regarding legalizing same-sex marriage, there have been many quite comprehensive studies conducted by individuals and research organizations specializing in psychology, marriage and family, child protection organizations, LGBT organizations, associations, and organizations working on human rights. Several scholars have also found the reasons for not recognizing the rights of same-sex couples to marry and register a civil partnership<sup>44 45</sup>. Other studies point out the limitations in the development and enforcement of the law on the rights of same-sex couples in Vietnam.

Based on results obtained from theoretical and practical research, several scholars have proposed solutions to protect the rights of same-sex couples. Researchers have considered recognizing the marital rights or registered partnership rights for same-sex couples. Some studies specifically assessed some issues arising in same-sex couples' legal relationships in Vietnam regarding personal and property relations to determine the need for legal approval recognition of the legal form of relationships for same-sex couples<sup>46</sup>. On the one hand, some studies recommend full marital rights for homosexuals<sup>47</sup>. On the other hand, much previous literature supports this relationship's legal recognition but offers a different solution as a stepping stone<sup>48 49 50</sup>. These researchers suggest that Vietnam should recognize the registered partnerships in the immediate future. Is it an appropriate solution for Vietnamese authorities?

As mentioned above, the different forms of same-sex unions legalization do not depend on the terminology used in each form. It is more important to identify specific rights and obligations granted for partners in the relationship attached in the appropriate form that must be tailor-made for each country. To our knowledge, there is no published paper with an empirical approach to deal with this consideration has been conducted after 2014. Due to the scarcity of empirical supports on the topic, this paper aims to provide empirical support for seeking a reasonable approach for this progress in Vietnam based on experience from leading countries that have

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<sup>44</sup> iSEE, *Báo cáo nghiên cứu: Quan điểm xã hội về hôn nhân đồng giới-Nghiên cứu định tính tại thành phố Hà Nội và Thành phố Hồ Chí Minh* [iSEE, *Research Report: Social Perspectives on Same-Sex Marriage - Qualitative Research in Hanoi and Ho Chi Minh City*, 2019]

<sup>45</sup> UNDP and USAID, *Being LGBT in Asia: Vietnam Country Report*, 2014)

<sup>46</sup> Trương Hồng Quang, *Người đồng tính, song tính, chuyển giới tại Việt Nam và vấn đề đổi mới hệ thống pháp luật* (Nxb Chính trị Quốc gia - Sự thật 2014)[Truong Hong Quang, *Homosexual, Bisexual, Transgender people in Vietnam and the problem of reforming the legal system* (Chính trị Quốc Gia - Sự thật Publishers 2014)]

<sup>47</sup> iSEE and others, *Sống chung cùng giới: Trải nghiệm thực tế và Mưu cầu hạnh phúc lứa đôi* [iSEE, *Homosexual cohabitation: Practical experience and the pursuit of couple happiness* (The Gioi Publishers 2013)]

<sup>48</sup> Cao Vũ Minh, 'Các hình thức công nhận hôn nhân đồng giới trên thế giới và sự lựa chọn cho Việt Nam' (2014) *Tạp chí Nhà nước và Pháp luật* [Minh CV, 'Forms of same-sex marriage recognition in the world and choices for Vietnam' (2014) *Journal of State and Law*]

<sup>49</sup> Cao Vũ Minh and Nguyễn Đức Nguyên Vy, 'Nên thừa nhận chế định kết hợp dân sự giữa hai người cùng giới tính' (2014) *Tạp chí Nghiên cứu lập pháp* [Cao Vu Minh and Vy NĐN, 'The institution of civil union between two people of the same sex should be recognized' (2014) *Journal of Legislative Studies*]

<sup>50</sup> Quang, 'Quyền kết hôn của người đồng tính' [Quang TH, 'Same-sex marriage right' (2014) 4 *The Journal of Legislative Studies*]

succeeded in dealing with this issue, combined with thoroughly considering the social and political context of Vietnam.

### **3.2. The role of public attitudes on forming same-sex relationship recognition policy**

Various factors influence the progress of legalizing same-sex couples' relationships in each country. On the one hand, numerous specific domestic factors affect the process of same-sex recognition in western countries, including religiosity and the political will of the national authorities. On the other hand, international and transnational factors such as developing the rights movement for LGBT+ play an important role in the domestic legal transformation<sup>51</sup>.

According to Marc Hooghe and Cecil Meeusen, the legal recognition of same-sex unions has been initially adopted in societies that have a less conservative public opinion.<sup>52</sup> There is a bonding correlation between favorable public opinion and the improvement of legislation concerning the recognition of same-sex relationships in many countries, specifically European ones. In Europe, most countries conducted qualitative and comprehensive surveys to assess public attitudes before granting official legal recognition.<sup>53</sup> Previous research highlighted that countries with a favorable public opinion on same-sex marriage legalization have successfully implemented this policy.<sup>54</sup> Marc Hooghe and Cecil Meeusen conducted a systematic analysis to confirm a positive correlation between public attitudes toward homosexual unions and the legal recognition of same-sex partnerships.

Along with this progress of legal transformation in European countries, many empirical studies show that public support for legalizing same-sex unions has gradually been positive for the last few decades.<sup>55</sup> Kees Waaldijk argued that it's probably that non-legal factors such as public attitudes play a very important role in paving the way for extending the marital rights for homosexual people.<sup>56</sup> Thus, although there are many other important factors in constructing a comprehensive strategy for the official legalization of same-sex couples' relationships, it needs to assess public attitudes to have answers to the extent the policymakers should recognize same-sex unions under the national legal system.

### **3.3. Research approach from the context of Vietnam**

Therefore, we choose to identify the first steps for legalizing in Vietnam by focusing on important legal aspects based on rights and obligations provided for heterosexual marriage under the Vietnamese national legal system.

According to Article 3 and Article 8 of the Law on Marriage and Family 2014, the current law only recognizes one full form of marriage by a couple of the opposite sex. The law clearly defines the rights and obligations of husband and wife in marriage. The rights and obligations of husband and wife in marriage can be divided into two primary groups of rights: personal rights and obligations and property rights and obligations. In the Law on Marriage and Family 2014, the personal rights and obligations of husband and wife are stipulated in Articles 17, 18, 19, 20, 21, 22, 23; Property rights and obligations of husband and wife regarding the marital property are regulated in Articles 24, 28, 29, 30, 31, 37. In addition, the marriage and family law also stipulates

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<sup>51</sup> Meeusen and Hooghe, *Is same-sex marriage legislation related to attitudes toward homosexuality? Trends in tolerance of homosexuality in European countries between 2002 and 2010* 8

<sup>52</sup> Ibid 1

<sup>53</sup> Ibid 2

<sup>54</sup> Ibid 2

<sup>55</sup> Giulia M Dotti Sani and Mario Quaranta, 'Let Them Be, Not Adopt: General Attitudes Towards Gays and Lesbians and Specific Attitudes Towards Adoption by Same-Sex Couples in 22 European Countries' (2020) 150 *Social Indicators Research* 2

<sup>56</sup> Digoix, *Same-sex families and legal recognition in Europe* 18.



the rights and obligations of husband and wife towards their children under Articles 69, 71, and 72. Since the issue of whether the national legal system should fully adopt rights and obligations for same-sex couples in traditional marriage as different-sex ones is a significant sensitive issue in most countries.<sup>57</sup> Even in European countries with a very tolerant and open public opinion toward same-sex relationships, it was very challenging when considering the legal recognition of rights concerning parenting and adoption procedures for same-sex couples in a legally recognized relationship.<sup>58</sup> These issues have also been delayed in the legalizing progress in Asia countries, except for Taiwan. Therefore, to propose the first steps for the national policymaker, we do not consider all marital rights and obligations. We exclude the rights and obligations regarding joint adoption and legal parenthood in the questionnaires because these legal aspects are the last ones that could be granted for same-sex partners in most countries.

On the other hand, from experiences of leading countries in dealing with the issue as European ones, we based on the results of a high qualitative database from comprehensive surveys conducted in 21 European countries – the LawandFamilies Database to build the questionnaire.<sup>59</sup> The detailed questionnaires and the results of this EU-funded project were published at "*The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*". From the results of this very comprehensive database, we chose legal rights and responsibilities that reach the highest consensus of public opinion to attach to our survey. In other words, these rights and obligations are the least sensitive issues which might be more simple to be implemented into the legal system at the very first stages.

#### 4. Measures

The research conducted online surveys due to the covid-19 pandemic. Two hundred fifty-nine Vietnamese citizens served as the participants in this study randomly. The survey was divided into three parts of questionnaires: Questions for demographic information, Questions on attitudes about homosexuality and same-sex relationships, and questions on attitudes about legalizing same-sex relationships. The questions were built on previous studies with the proper revision when translating for Vietnamese people.

*Demographic Information.* Participants provided a range of demographic information. The current study used participant age, gender, sexual orientation, citizen city, marriage status, highest degree, job, religion.

*Attitudes about homosexuality and same-sex relationships.* Participants answered three questions regarding their opinions that homosexuality is a disease that needs to be treated, whether they should be treated with no differences than heterosexuals, and if the same-sex couple could reveal their relationship with society. The questions based on questionnaires in Tarik Abou-Chadi and Ryan Finnigan's study<sup>60</sup> (with the question "Gay men and lesbians should be free to live their own life as they wish") and Long Doan, Annalise Loehr, and Lisa R. Millera's research<sup>61</sup> (with the

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<sup>57</sup> Dotti Sani and Quaranta, 'Let Them Be, Not Adopt: General Attitudes Towards Gays and Lesbians and Specific Attitudes Towards Adoption by Same-Sex Couples in 22 European Countries' 2

<sup>58</sup> Meeusen and Hooghe, *Is same-sex marriage legislation related to attitudes toward homosexuality? Trends in tolerance of homosexuality in European countries between 2002 and 2010* 5

<sup>59</sup> Kees Waaldijk and others, 'The LawsAndFamilies database—Aspects of legal family formats for same-sex and different-sex couples' (2017) Database] Paris, France: INED Retrieved from [www.LawsAndFamilies.eu](http://www.LawsAndFamilies.eu)

<sup>60</sup> Tarik Abou-Chadi and Ryan Finnigan, 'Rights for same-sex couples and public attitudes toward gays and lesbians in Europe' (2019) 52 *Comparative Political Studies* 868

<sup>61</sup> Long Doan, Annalise Loehr and Lisa R Miller, 'Formal rights and informal privileges for same-sex couples: Evidence from a national survey experiment' (2014) 79 *American Sociological Review* 1172

question "To what extent do you agree or disagree that it is okay for same-sex couples to tell others that they are a couple?").

#### *Attitudes about legalizing same-sex relationships in general*

Participants were asked two questions. First, should the term "marriage" of the Marriage and Family Law 2014 only be understood as a relationship between a man and a woman? Second, should same-sex couples be recognized by law for all the rights and obligations of spouses in traditional marriages between a man and a woman?

*Attitudes about legalizing same-sex couples* The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples This innovative database provides a comprehensive overview of developments regarding more than 60 legal issues for (married, registered or cohabiting) same-sex and different-sex couples, over decades (1965-2016). It went online in open access early 2017, with information about 23 jurisdictions in 21 countries. The data in the LawsAndFamilies Database make it possible to track this development for many of the rights and responsibilities included in the questionnaire used to create this database. For tracking this development, some of the 69 questions in the questionnaire seemed less useful. Only 26 of the 69 questions have been used to assess the substantive legal recognition of same-sex couples. The 26 questions all tell us something about the degree to which countries recognize same-sex partners by making substantive rights and responsibilities available to them. Only 11 items were chosen to be included in the survey as being considered for their suitability with Vietnamese culture and public opinion. These items were combined to create a localized survey, including important legal aspects, such as the degree of legalization, family leave, inheritance, domestic violence, etc. Responses were given on a 5-point Likert-type scale ranging from 1 = never to 5 = almost always. Higher scores indicate more agreement with the given question.

The survey was piloted with small groups to guarantee that all items were comprehensible. Subsequently, all participants completed the survey online. Participants were required to complete a battery of self-report measures. The survey took approximately 10 minutes to complete and consisted of questionnaires on the participants' opinions regarding same-sex partnerships and same-sex marriage legalization and relevant demographic information.

## **5. Results**

### **5.1. Description of study subjects**

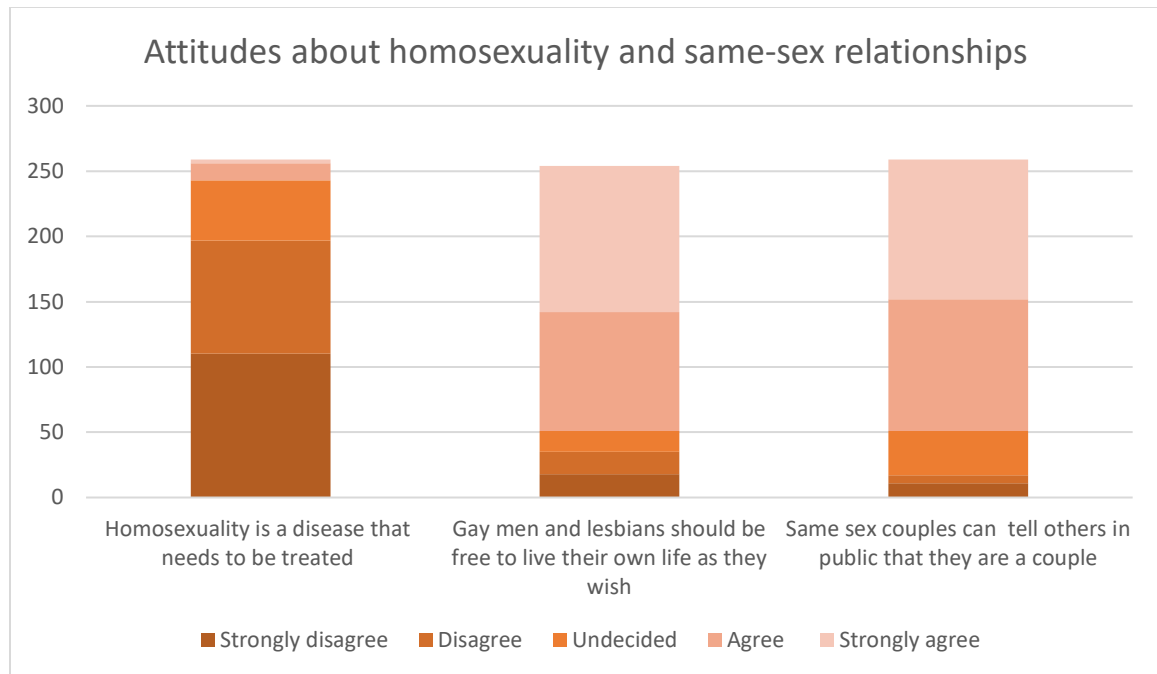
We conducted an online survey that was randomly sent regarding the sample characteristics. The results obtained 259 forms, of which women accounted for 62% and men 37%. The survey sample is diverse, representing different family and community generations. Survey participants ranged in age from 17 to 75 years old, in which 77.6% of young people aged 17-35 years old, 19.3% of the middle-aged group of 35-50 years old, and 3.1% of the elderly group of 50-75 years old. Other socio-demographic characteristics also show that most participants have never been married, with 147 of the 259 forms being single or unmarried. More than 50% of the survey participants live in urban areas—78% no religion, 17.8% Buddhist, and 2% Catholic.

In terms of education level, most respondents in the sample have a general education degree or higher. 54% have college and university degrees, and more than 20% have been above university level. State officials, civil servants, and public employees accounted for approximately 22% of the sample. Office workers accounted for 32%; students accounted for 24%; 2% are small businesses; 3.5% are self-employed. About 16.6% belong to other occupations. The analysis is based on the above-mentioned multidimensional characteristics to extract the research results, obtain the most profound findings related to the people's knowledge, attitudes, and views towards same-sex marriage in society.

## 5.2. Analysis of results

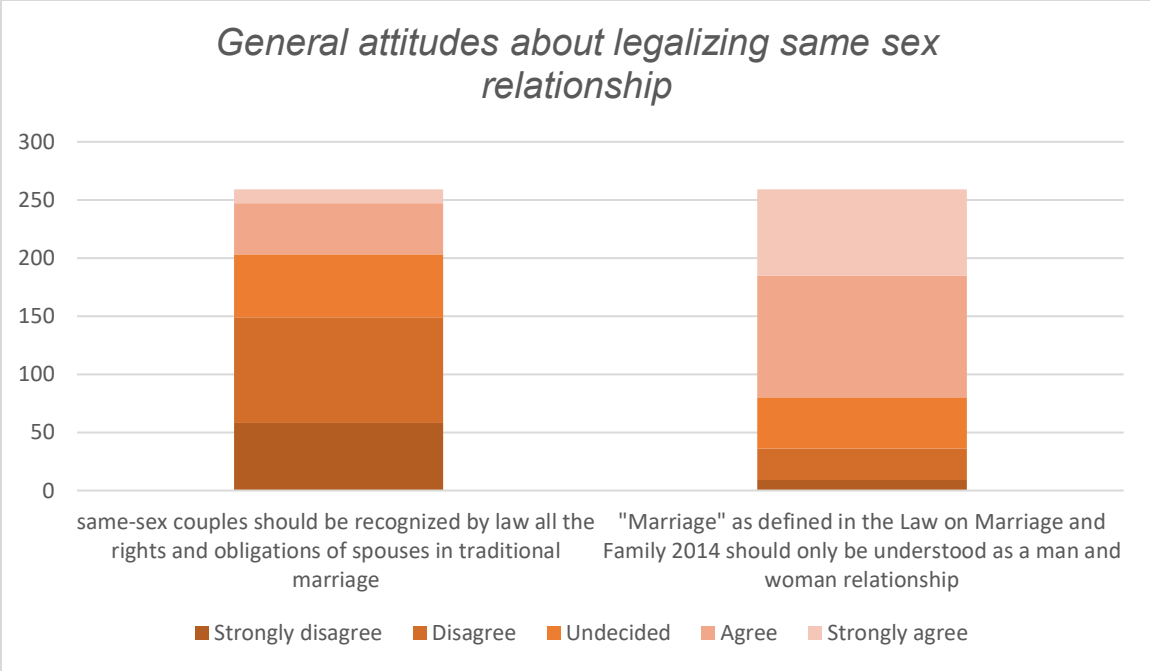
Based on a questionnaire-based survey, the research team obtained the following results:

*Firstly*, respondents' attitudes about homosexuals and same-sex relationships are found in Question 1, 2, and 3<sup>62</sup>. The results show that respondents have a positive attitude towards homosexuals. 76% oppose homosexuality as a disease, only a minority of 6% think that homosexuality is a disease. More than 80% believe that homosexual people can study, work, and participate in community activities like heterosexuals. 80% support that same-sex couples can openly tell everyone that they are a couple, only 6.5% oppose this view, about 13% agree that they feel undecided.



*Second*, regarding the general attitude of respondents about legalizing same-sex couples (based on the results of Question 4 and 5), 69% support that same-sex couples should be recognized by law all the rights and obligations of spouses in traditional marriage between heterosexual couples, but 14% objected. 57% disagree that "Marriage" as defined in the Law on Marriage and Family 2014 should only be understood as a man and woman relationship. Furthermore, the survey also revealed that a high level of education is associated with a high degree of support for legalizing same-sex couples.

<sup>62</sup> See the Questionnaires as the Annex



50% of people who have not graduated from primary school and those in lower secondary school believe that marriage defined in the Law on Marriage and Family 2014 must be understood as a relationship between a man and a woman. Meanwhile, only 20.3% of people at the university level and 22.7% above the university level advocate this issue. 16% of those who have not graduated from primary school and 20% of those in vocational secondary schools oppose that same-sex couples should be recognized by law for all the rights and obligations of spouses in traditional marriage between heterosexual couples. Only 13% of people at the university level oppose this. However, 20% of people studying at the university level oppose it.

There is a unique point in our survey: it seems that their legal support for same-sex marriage is relatively high while the 36-50 age group is less open to the youth group (However, there are only eight people in the 51-75 age group and 50 people in 36-50 group). 17.9% of people aged 17 to 35 advocate that marriage must be understood as a relationship between men and women, as defined in the Law on Marriage and Family 2014. Up to 36% of 17 to 35-year-olds and 25% of 51 to 75-year-olds support this. 12.4% of 17 to 35-year-olds objected that same-sex couples should be legally recognized for all the rights and obligations of spouses in traditional marriages between heterosexual couples. 20% of 35- to 51-year-olds oppose. However, 12.5% of 51- to 75-year-olds oppose (See Table 1).

**Table 1**

Age (years old)	The term "marriage" defined in the Law on Marriage and Family 2014 must be understood as a relationship between a man and a woman					Total
	Strongly disagree	Disagree	Undecided	Agree	Strongly agree	
17-35	27.4%	31.8%	22.9%	15.4%	2.5%	100%
36-50	6%	44%	14%	22%	14%	100%
51-75	0%	62.5%	12.5%	25%	0%	100%

The percentage of never-married people in favor of legalizing same-sex marriage is higher than those of ever-married. Perhaps because the unmarried mainly fall between the ages of 17 and 35 (young people), while those who have been married fall into the more conservative middle age

group. 33% living with spouses and 20% in a state of separation or divorce believe that marriage stipulated in the Law on Marriage and Family 2014 must be understood as a relationship between a man and a woman. Only 12.9% of people who have never been married advocate this issue. (See Table 2)

**Table 2**

Marital status	The term "marriage" defined in the Law on Marriage and Family 2014 must be understood as a relationship between a man and a woman					
	Strongly disagree	Disagree	Undecided	Agree	Strongly agree	Total
Married--spouse present	7,2%	37,1%	22,7%	26,8%	6,2%	100%
Married--spouse absent,	0,0%	0,0%	0,0%	100,0%	0,0%	100%
Divorced/Separated	0,0%	80,0%	0,0%	0,0%	20,0%	100%
Widowed	0,0%	0,0%	0,0%	0,0%	0,0%	0%
Never married	33,3%	32,0%	21,8%	10,9%	2,0%	100%
Not answer	25,0%	50,0%	0,0%	0,0%	25,0%	100%

19.6% of people living together and 40% of people in a state of separation or divorce objected that same-sex couples should be recognized by law for all the rights and obligations of spouses in traditional marriages between heterosexual couples. Only 8.9% of people who have never been married oppose it (See table 3).

**Table 3**

Marital status	Same-sex couples should be recognized by law for all the rights and obligations of spouses in traditional marriages between heterosexual couples					
	Strongly disagree	Disagree	Undecided	Agree	Strongly agree	Total
Married--spouse present	5,2%	14,4%	18,6%	53,6%	8,2%	100,0%
Married--spouse absent,	0,0%	0,0%	50,0%	50,0%	0,0%	100,0%
Divorced/Separated	20,0%	20,0%	20,0%	20,0%	20,0%	100,0%
Widowed	0,0%	0,0%	0,0%	0,0%	0,0%	0,0%
Never married	0,7%	8,2%	15,6%	33,3%	42,2%	100,0%
Not answer	25,0%	0,0%	12,5%	25,0%	37,5%	100,0%

*Thirdly*, about the respondents' attitudes on specific rights and obligations related to the legalization of relationships with same-sex couples:

Question group related to the right to marriage registration: There are two questions (Question 7 and 8) that asked the respondents about their opinion on the issues that should the laws allow "marriage registration" for same-sex couples or should the laws only allow them for "cohabitation registration" ("*đăng ký sống chung*" in Vietnamese). Surprisingly, the respondents have a higher objection regarding cohabitation registration than marriage registration. 31% oppose registration of cohabitation (6.6% strongly disagree, 24.3% disagree), while only 10% oppose same-sex marriage (3.9% strongly disagree, 6.2% disagree). There might be a reason for this result. In Vietnamese people's life, marriage is a sacred relationship witnessed by the forefathers - closely

linked to the spiritual and religious life of the Vietnamese people, not merely a recognition of law. Therefore, when it comes to cohabitation registration, public attitudes in Vietnam are quite conservative. Vietnamese people consider the activities of cohabitation as "sống thử" in Vietnamese. From the lens of a large number of Vietnamese people, according to Vietnamese traditional culture, the phenomenon of two people living together without marriage registration is morally wrong. It brings many negative consequences for the young generation and the whole society.<sup>63</sup>

Question group on rights and obligations related to family care and medical decisions (Question 9,10, and 14): 57.2% support that one of the partners is seriously ill, the other should be given unpaid care work under the law. 78.4% agreed that the other partner should have the medical decision-making power (albeit without a power of attorney) as the spouse of the accident partner. Among these three questions, question 14 has the highest level of agreement; 82.6% agree that one partner's parents have died, the other partner should be entitled to 3 days off with full salary as prescribed by the Labor Code to perform funerals. This result is because Vietnamese people think that "the sense of the dead is that of the final". For the dead, all resentment and hatred should be ignored and should be treated with love, that is, especially in organizing a solemn farewell and visit.

Question group related to inheritance and common property rights of partners in same-sex unions (Question 11, 12, and 13): 82.2% agreed that same-sex couples' partners should be legally recognized the rights related to the property of husband and wife, only 7.3% objected. Assuming one of the partners dies and leaves no will, 79.9% support that the remaining partner should be recognized as his or her spouse's inheritance, 12% feel fine, just only a few survey participants objected (8.1%). Assuming one partner dies or is in an accident due to another's fault and is compensated for the damage, 76.8% agree that the other partner should be compensated, 15.4% feel fine, and 7.7 % protest.

Question related to domestic violence: Assuming a partner is a victim of domestic violence, 88% agree that they need to be protected by legal provisions on domestic violence prevention, only 3.4% oppose this issue.

## **6. Suggestions**

According to the survey results, some noticeable points need to be considered carefully in the progress of passing same-sex relationship legislation in Vietnam.

Firstly, the higher education people have, the less conservative they are concerning the legalization of same-sex relationships. This result is inconsistent with the context of other countries which have already succeeded in formalizing same-sex unions. Previous research has shown that different educational background is an important variable that affects public attitudes towards homosexual relationships.<sup>64</sup> In general, Vietnamese people with high educational backgrounds have a favorable attitude towards the legalization of same-sex relationships, even with middle age and old people who are considered more conservative about this issue than others. Furthermore, people who have gotten married at least once in their life show a higher rate of opposing for allowing same-sex couples to fully recognize their relationship and have the same rights and obligations as different-sex couples in a traditional marriage than people who have never gotten married. Thus, it strengthens the arguments that it is impossible to adopt fully recognized forms

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<sup>63</sup> <https://thanhvien.vn/song-chung-truoc-khi-ket-hon-nen-hay-khong-post487312.html>

<sup>64</sup> Meeusen and Hooghe, *Is same-sex marriage legislation related to attitudes toward homosexuality? Trends in tolerance of homosexuality in European countries between 2002 and 2010*

for same-sex unions as same-sex marriage in Vietnam immediately. We need to take step by step on this issue.

Secondly, concerning specific rights and obligations, it is quite interesting that while a large number of respondents in European countries reach the consensus on the right on leaving to care for partners (80%), there are only 57.3% respondents in our survey support for this. Due to time limits, we have not conducted in-depth interviews to explore why Vietnamese people do not have a favorable attitude towards this right. Further research with in-depth interviews needs to be conducted to comprehensively assess the differences between Vietnamese public opinion and other countries' public opinion on certain rights and responsibilities that need to be granted for same-sex couples.

Thirdly, although many Vietnamese scholars have suggested that it is reasonable for the national legal system to grant registered partnership or registered cohabitation for same-sex couples as the first step of the legalization process, our results state otherwise. It is possible that Vietnamese people do not have positive attitudes concerning the form of "cohabitation" or "registered partnership" for same-sex couples rather than "marriage". In fact, in countries that recognized the registered partnership or cohabitation for same-sex unions, these forms were also provided for the different-sex ones. In Vietnam, registered partnership or formal cohabitation has not been allowed for different-sex couples under Vietnamese legislation. Therefore, we argue that it might not be necessary to introduce a specific terminology for a form of same-sex partnership legalization as "register partnership" or "formal cohabitation" as in other countries. It is more important in identifying proper rights and obligations, which can reach a consensus of public opinion the most to pave the way for the first steps of homosexual relationship legalization.

Fourthly, several rights and obligations are not stipulated under the Marriage and Family Law. For example, the rights to have three days off with full salary as prescribed by the Labor Code to perform funerals and the rights to be protected in case of domestic violence received the highest supports from public opinion (82.6% and 88%, respectively). We suggest that it might be more effective in the progression of same-sex union legalization if we implement these rights and obligations, achieving greater popular support. For instance, when Vietnamese people get along with the circumstance that a same-sex partner has a right to take three days off to perform the funerals of their "parents in law", it will have a significant impact on changing people's attitudes on the same-sex partnership, paving the way for extending more legal rights and obligations to them.

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