

Factors Affecting Legalization of Same-Sex Marriage in Vietnam

LLM. Tran Thi Quyen¹
Ha Noi Law University

Abstract: Freedom to pursue happiness is one of the basic human rights that has been recognized in many international and national legal documents, without discrimination between individuals based on any criteria, especially by gender. However, same-sex marriage has not been officially and widely accepted in many countries around the world, including Vietnam. Despite eliminating the prohibition and penalties regulations for marriage acts between the same gender people, the legal system of Vietnam has not yet recorded the marriage registration among them. As a result, various Vietnamese homosexual people cannot perform one of the basic human rights. To explain the issue, this study will analyze the influencing factors, including the factors that promote and hinder the official recognition of the employment relationship marriage between same-sex couples, thereby proposing suggestions for this issue in Vietnam at present.

Keywords: *same-sex marriage, officially accepted, influencing factors, basic human rights,...*

“All men are created equal. They are endowed by their Creator with certain inalienable rights, among which are the right to life, the right to liberty, and the right to the pursuit of happiness”². The statement is not only an affirmation for Americans but also an immortal truth, and no one can deny it in every country today. Resolution of the United Nations Human Rights Council (June 2011) affirmed: “Everyone has equal rights, regardless of sexual orientation”. Love and marriage are noble human values and basic human rights - the right to be free to love and to marry, to which everyone has the right to enjoy without distinction differences in gender, skin colour, age, profession, etc., and that does not exclude people in the LGBTQ+³ community.

However, the love and marriage of people in the LGBT community in general and of same-sex people in particular are not as valued as that of heterosexual people. This is especially common in Asian countries, where traditional cultural values and discriminatory attitudes towards the LGBT community persist as a social feature. In Asia today, Taiwan is the only country that recognized same-sex marriage (2019, May 24)⁴. However, even if same-sex marriage is protected by law, it is not for everyone. In Taiwan, same-sex marriage is only available to Taiwanese citizens or a citizen of a foreign country that recognizes the same-sex marriage who seeks to marry a Taiwanese citizen⁵. Even in a country that is considered a "paradise" for gay couples and the LGBTQ+ community like Thailand, same-sex marriage has not yet received legal protection. However, there is a good sign when this country is on the list of countries to be watched to move towards the protection of same-sex marriage in 2021 according to a survey by Human Rights Campaign (HRC). Although this bill, approved by the cabinet, avoids the term “marriage” but allows for the legal registration of same-sex partnerships. Accompanying amendments to the civil code couples would give the right to jointly own property, adopt children and pass on inheritances. Same-sex couples in Thailand will not be able to enjoy certain tax breaks⁶. Following, there are many positive signals from

¹ Lecturer at Ha Noi Law University, Email: tranquyenhlu@gmail.com

² American Declaration of Independence, 1776.

³ LGBTQ+ stands for lesbian, gay, bisexual, transgender, queer (or sometimes questioning), and others. The "plus" represents other sexual identities including pansexual and Two-Spirit.

⁴ Parliament of Taiwan legislation passed to legalize same-sex marriage which went into effect May 24, 2019.

⁵ Following “Marriage Equality Around the World”, Human Right Campin, Link:< <https://www.hrc.org/resources/marriage-equality-around-the-world> >, access 10 November ,2021.

⁶ Hannah Beech, “Thai Thailand moves to legalize same-sex Unions, a Rare Step in Asia”, submitted on The New York Times, July 9, 2020. Link:< <https://www.nytimes.com/2020/07/09/world/asia/thailand-same-sex-unions.html>>; access 15 November ,2021.

Asian countries such as Singapore, Malaysia, Brunei, Viet Nam, etc. where in the past, same-sex relations were considered a crime (eg Singapore, Malaysia) or administrative violations (Viet Nam), even the death penalty (Brunei), there have been many changes in the direction of eliminating those penalties, moving closer to recognizing the basic rights of gay people equally with other genders. These are good signs for the LGBTQ+ community in Asia, despite their limited state-protected legal rights.

In line with this trend, on the one hand, Vietnamese awareness of same-sex marriage have also had more positive changes. According to a survey by Vnexpress in August 2013, with the survey question: "*In your opinion, should Vietnam recognize same-sex marriage ?*", the results showed that 1,388/1,732 people (accounting for 80.14%) proposed to admit it⁷. Similarly, a nationwide social survey to find out the views and attitudes of Vietnamese society on same-sex marriage by the Institute for Studies of Society, Economy and Environment (iSEE) in collaboration with the Institute of Social Sciences The sociology and the Institute of Health Strategy and Policy on 5303 people showed that 33.7% of people supported legalizing same-sex marriage and 41.2% recognized the right to live together as husband and wife of people of the same sex⁸.

On the other hand, the LGBTQ+ community also want to be recognized and protected by the law for their marriage relationship as that of the opposite sex. According to a study by the Institute of Social, Economic and Environmental Studies (ISEE) conducted in 2013 on living with the same sex, up to 82.10% of people reveal their sexual orientation completely; 73.70% only revealed their sexual orientation partially according to the circumstances; and 58.10% who did not indicate that they would register their marriage if permitted by law. The rate of choosing not to get married, even when permitted by law, is very low (2.6% for the group with full sexual orientation; 5.3% for the group with sexual orientation partially and 14.8% for the completely undisclosed group)⁹. Those are good signs that from a social perspective, from both the community and same-sex people themselves, the concept of same-sex marriage has become very open and supported in Vietnam.

From a legal perspective, according to the provisions of the Law on Marriage and Family 2000, marriage between people of the same sex was one of the cases where marriage was prohibited (Clause 5, Article 10). The marriages between people of the same sex as prescribed by Vietnamese law was previously also considered a violation of the law and administratively sanctioned (Point 3, Clause 1, Article 8, Decree No. 87/2001/ND-CP stipulates a fine of between VND 100,000 and 500,000 for this act). However, in an effort to protect the right of same-sex people to find happiness, the Law on Marriage and Family 2014 has removed the prohibition on marriage between people of the same-sex and this behaviour also no longer sanctioned (according to the provisions of Decree 82/2020/ND-CP). But even after the prohibition was removed, Clause 2, Article 8 of the Law on Marriage and Family 2014 still stipulates: "*The State does not recognize marriage between people of the same sex*". Thus, same-sex couples in Vietnam can still live together and hold weddings according to traditional customs, but they will not be recognized as husband and wife. As a result, the legal rights and obligations between husband and wife (rights and obligations of husband and wife, children, alimony, marital property, inheritance, etc.) will not exist between them.

⁷ See: "Gay people believe marriage will be recognized", source: <http://giadinh.vnexpress.net/tin-tuc/gioi-tinh/nguoi-dong-tinh-tin-hon-nhan-supply-gioi-se-duoc-thuan-nhan-2864999.html>, dated 16/8/2013.

⁸ Citing ISEE, "Research Report: Social Perspectives on Same-Same Marriage – Qualitative Research in Hanoi and Ho Chi Minh City", Hanoi, 2019, P.4.

⁹ Nguyen Thi Thu Nam; Vu Thanh Long; Pham Thanh Tra; Institute for Economic, Social and Environmental Studies (ISEE), "*Living with the same sex: Real experience and pursuit of couple happiness*", World Publishing House, 2013, P.77.

Currently, there have been many studies on the issue of legalizing same-sex marriage. Starting from the needs of the LGBTQ+ community, from theories of human rights, democracy, justice, equality and the advancement of social awareness, many researchers have made arguments in favour of legalization of same-sex marriage in Vietnam. However, the legalization of same-sex marriage, whether in the form of husband and wife marriage or civil marriage, has not been achieved in Vietnam until now. The question is why legalizing same-sex marriage in Vietnam is still not possible? What factors influence this process? The article will point out the factors affecting the recognition of same-sex marriage and analyze its impact.

A. Positive effects promote the legalization of same-sex marriage.

1. The change in perception of homosexuals.

In the past, many studies on homosexuality have often suggested that same-sex is a disease, a syndrome that can be spread and infected due to an unhealthy lifestyle and living environment. They believe that “*Gayness does not spare anyone*” and “*is contagious quite quickly*”. One of the reasons for this “epidemic” is: “*Gay people are always looking for a partner. Gay capital but they quickly bored and eager for a new generation is arising a "team" other homosexuals*”¹⁰. Since the 1990s, after the World Health Organization (WHO) removed homosexuality from the list of diseases and many studies showed that homosexuality is an inborn phenomenon, stemming from each person's sexual orientation and cannot choose or change (Bailey & Zucker, 1995; Simon-Levay, 1991; Wegesin, 1998), the community's perception of homosexuality has changed in the direction of being more open and receptive. In Vietnam, according to a study on the society's understanding of homosexuality in Hanoi, Ha Nam, Ho Chi Minh and An Giang of iSEE 2011¹¹, up to 57% of survey respondents think homosexuality is just a social trend; 77% said they would be disappointed if their child was gay and 58% would prevent their children from playing with gay people¹². Similarly, CCIHP studied on stigma and discrimination against gay, bisexual and transgender in schools with more than 500 respondents. The result is: 44% of people have experienced violence (about physical, mental, sexual and economic) and discrimination in schools; up to 81.64% of violent acts occur in the classroom; 46.88% on the schoolyard and 33.2% anywhere on the way home. As a result, 52% feel always stressed and anxious at school and up to 33.59% have suicidal thoughts¹³.

In recent years, with the development of information and the activities of social organizations as well as the change in the state's attitude towards policies on the LGBT community, the perception of same-sex people has changed significantly. The official and correct information about same-sex people is more and more easily accessible. Previously, when wanting to learn about this issue, it was difficult to find an official study in Vietnamese with supporting data. Most of information about LGBTQ+ community were news articles, emotional or cognitive of certain individuals. Currently, to find information about same-sex people, only with some popular search tools, people can easily seek accurate and scientific articles and information via websites of organizations working for the rights of the same-sex community and published researches.

Moreover, in recent years, the young generation has had a significant change in awareness from the development of education, science - technology and the influence of

¹⁰ See "diversity and identity of media messages on homosexuality in some print and online newspapers", Institute for Economic, Social and Environmental Research, World Publishing House.

¹¹ These are two large cities with strongly developed economies, convenient access to information and openness in accepting same-sex people compared to other regions in the country.

¹² ISEE, “Social attitudes towards homosexuality and same-sex marriage”, 2011, p.17.

¹³ Center for Initiatives and Population Health (CCIHP), research "Stigma and discrimination against homosexuals, bisexuals and transgender people in Vietnam", 2008.

Western culture. They have an "open-minded" view on homosexuals, thinking that homosexuals and heterosexuals are similar as human beings, and deserve human rights. More than 80% of young people answered that they feel normal with new family phenomena in their current life, including same-sex marriage¹⁴. According to a UNDP report, up to 76% of respondents believe that there should be laws to protect LGBT people (although only 36% support same-sex marriage)¹⁵. In 2018, ISEE study through in-depth interviews about LGBT in the public has shown that although there is still stigma or little information about the LGBT community in general or gay people in particular, compared to the surveys were conducted from the 2000s and around the 2010s, the awareness of people has improved significantly¹⁶. Community concern for high LGBT people. Besides, instead of stereotypes and stereotypes about the whole LGBT community like "gene deviation, excess, disease, ...", the survey has shown that many people are aware of it from the perspective of the behaviour of each individual, instead of the entire LGBT community¹⁷. Even though they are same-sex people, they are also individuals with different personalities and behaviours. They should only be judged by their behaviour, not by their sexual orientation. Furthermore, from a family perspective, instead of being stigmatized, discriminated against, and hated, there are many parents who open their hearts and accept their children as gay and voice their support and protection for their children against the abuse social stigma¹⁸

When there is a correct awareness of homosexuals, stigma and discrimination from the society will be reduced while the confidence of the same-sex community will be increased. Same-sex people will be recognized as equals, similar to heterosexuals and as an inevitable part of society. As a result, people will accept and recognize gay rights more openly, similar to heterosexual people. Thus, Vietnam can completely accelerate the legalization of same-sex marriage without facing barriers to awareness and getting consensus from the community.

2. The role of social organizations and the media.

Along with the development of information technology and the right awareness of the LGBTQ+ community, Vietnam has many social organizations established with the purpose of working for the interests of the prominent LGBT community with outstanding activities such as the Research Institute for Society, Economy and Environment (iSEE), ICS center, Center for Initiatives in Health and Population (CCIHP),.... The organizations have had a great impact in bringing Vietnam closer to the legalization of same-sex marriage through propaganda, dissemination, education, and awareness raising activities same-sex people and protecting their rights.

According to the National Report on LGBT in Vietnam 2014, from May 2012 to June 2013, there were more than 40 programs with gay and transgender themes in Vietnam. The information has reached millions of readers of newspapers, including articles in major newspapers such as Youth, Vanguard, Women, Security and The World, VnExpress,... Television channels such as VTV3, VTV1, VTV4 and VTV6 have shown full documentaries about the lives of transgender people. ICS has organized talks on sexual diversity and LGBT rights at 30 universities, clubs and creative youth groups in Ho Chi Minh City and Hanoi, as well as the provinces of Can Tho, Nha Trang and Dak Lak. There have been

¹⁴ The article "Young people's perspective on the value of marriage and family" was published on August 18, 2021. Link:< <http://smot.bvhttdl.gov.vn/goc-nhin-cua-nguoi-tre-ve-gia-tri-hon-nhan-gia-dinh/>>; access 10 November ,2021

¹⁵ UNDP, USAID (2014). "Vietnam LGBT Country Report – Being LGBT in Asia", Bangkok, p.21.

¹⁶ It is reflected in the number of interactions with the ISEE/ICS "Open Letter": "Posted on Facebook on February 22, 2018, the iSEE/ICS Open Letter to Vietnam Television has received more than 2500 'likes' and 491 'shares' on iSEE's fanpage, more than 10000 'likes' and 389 'shares' on ICS's fanpage."

¹⁷ ISEE, "LGBT people in the public eye: Listening to opposing views to develop a communication strategy for LGBT rights", Ha Noi, 2018, p.23-28.

¹⁸ ISEE, "Parents accept and speak out in favor of LGBT children's rights: Influential factors", 2017, p.91.

much successful community-organized awareness and informational events, such as iSEE's "I Do" campaign to raise the importance of the legalization of the same-sex marriage in the public eye as the motivation for policy action. In addition, books about LGBT written by themselves have been published. LGBT activities have grown strongly not only with the efforts of the LGBT community itself, but also with support from family, friends, and non-LGBT "allied" friends. More and more heterosexuals are speaking against prejudice, discrimination and violence against homosexuals and demanding equality for LGBT people in the law.¹⁹

The results of studies and surveys and campaigns are made available to the media, the community, policy makers, and the government to advocate for legal and policy reforms to improve the lives of LGBT people, including the orientation towards legalizing same-sex marriage. When official information from reliable reports and studies is brought closer to the people, it will help draw people's attention to the issue of legalizing same-sex marriage and recognize get a lot of contributions, contributions and analytical opinions from the correct understanding of homosexuality and valuable data from actual surveys instead of sentimental, discriminatory opinions. Moreover, not only people's awareness of LGBT people has improved, but even same-sex people are also more confident, more open in accepting and openly living true to their gender. Since then, movements and campaigns in favour of legalizing same-sex marriage have also been well received and supported by both insiders and outsiders.

3. Innovation in society's thinking.

Vietnam is a country full of characteristics of Asian culture, which has greatly influenced the legalization of same-sex marriage. Since ancient times, the birth of children, the continuation of the lineage,... has been considered the main purpose of marriage. Asians believe that when entering the marriage stage, husband and wife must be responsible for their behaviour, must love, care, procreate and raise children together. This action not only means meaningful to the family in particular but also to the whole society in general. It shows each individual's responsibility to society, and at the same time, children are the foundation to maintain and strengthen the love between husband and wife, thereby maintaining their loyalty and responsibility for marriage. Meanwhile, the marriage relationship between same-sex people is difficult to get these results, so the relationship between them has always been considered unstable, not meeting the requirements and the minimum purpose of marriage. Thus, it is difficult to recognize in practice and even more difficult to protect that relationship by law.

According to the Confucian concept, the relationship between Yin and Yang, Heaven and Earth, and hence between man and woman is the most natural inner connection, the source of correct world order. Therefore, marriage or having a sexual relationship between people of the same sex is unnatural, incompatible with the word "*rite*" and therefore unacceptable²⁰. Confucianism, with its emphasis on etiquette and morality, also greatly influenced the shaping of thoughts about LGBTQ+ people and same-sex marriage in society. Since same-sex is considered a violation of traditional moral values, same-sex people afraid to come out and live true to their sexual orientation. Instead, they perform "*fake*" marriages to create a cover for themselves and not be judged on their sexual orientation moral side. Regarding folk beliefs, fertility beliefs in our country also attach importance to mating between men and women in order to reproduce and develop the race²¹. Many regions in Vietnam still respect this belief to this day, expressed through the worship of mascots representing the male or female genitals, or worship rituals that abstractly depict the human

¹⁹ UNDP, USAID (2014). "Vietnam LGBT Country Report – Being LGBT in Asia". Bangkok, p.17

²⁰ Nguyen Quoc Tan Trung, "Confucian view of same-sex marriage", published on 6/11/2021, link:< <https://www.luatkhoea.org/2021/06/cach-nhin-cua-khong-Giao-ve-hon-nhan-dong-gioi/>>; access 15 November, 2021.

²¹ Truong Hong Quang (2014), "Some aspects of views on homosexuality and homosexuality", Human Resource Journal of Social Sciences (Academy of Social Sciences), p.19

body sexual relations. So, although the fertility religion does not prohibit same-sex relationships, it considers same-sex relationships to be unnatural and goes against the beliefs of this religion.

However, culture is actually created by people and people can completely change according to the development of society. New models of the family and diversity of gender identities are gradually becoming evident in society²². Through the data analyzed above, it can be seen that people's awareness of same-sex marriage has grown significantly. Although some stigma and discrimination still exist, especially in the opinion of the elderly or in rural areas, homosexuals are no longer shunned, stigmatized, or even considered a crime. The development of the internet and social networks also plays an important role in spreading and importing Western cultural values. Familyism and heterosexual monopolies have been gradually replaced by individualism. Each individual gradually realizes his or her role, meaning, rights and obligations towards society. Instead of "*living in accordance with and pleasing to everyone*" or "*living for the family*", young people in Vietnam now have a more open mind and value individual freedoms, including the right to be free to love in accordance with their sexual orientation. Viewpoints and ways of looking at traditional moral values have also been much more open.

Cohabitation and love, even sex between people of the same sex, if it really comes from love and understanding, is no longer considered a way of life that is contrary to moral standards or valuable customs as well as the object of criticism of public opinion. According to ISEE's published research, over 50% (2,958) of the study participants said they were in a relationship with a lover or partner of the same sex. Just like heterosexual marriage, when considering and coming to a decision to live together, same-sex couples are mostly the result of two people's desire to create a family in which they can share spiritually, emotionally and create a family life (87.5%), demonstrate commitment to loyalty (81%), initiate stable and long-term plans (70%)²³. With this legitimate need of homosexuals, 26.2% of respondents said that society has become more open²⁴; 18.6% said they were supported or partially supported by their families and 31.2% of their parents' families ignored them, but neither supported nor opposed their children's same-sex cohabitation²⁵. These figures all show a change in the community's mindset towards same-sex people and same-sex marriage. Vietnamese people are no longer too dependent on traditional moral values or traditional religious views to shape their thinking about homosexuals, but instead are innovative, easy to accept, even support same-sex marriage.

4. Development of human rights and global trends.

Human rights are one of the highest values that all countries uphold, and protect. Protecting human rights is a subject of growing interest and growth in recent years, especially in developing countries, where human rights are still an issue with many gaps. In the theory of modern human rights, the rights of gay, bisexual, transgender and intersex people, as well as the rights of other groups such as people living with HIV/AIDS, migrant workers, etc., have received more and more attention. In which, the homosexual, bisexual, transgender and intersex groups are related a lot to issues of gender, gender, gender expression, sexual orientation and gender identity. The rights of these subjects have become a controversial issue in many countries around the world in the process of law-making and enforcement. However,

²² Truong Hong Quang (2014), "Some aspects of views on homosexuality and homosexuality", Human Resource Journal of Social Sciences (Academy of Social Sciences), p.21

²³ Nguyen Thi Thu Nam; Vu Thanh Long; Pham Thanh Tra; Institute for Economic, Social and Environmental Research (ISEE), "*Living with the same sex: Real experience and pursuit of couple happiness*", World Publishing House, 2013, p.25

²⁴ Nguyen My, "Same-sex marriage: anxiously awaiting legalization", published June 23, 2019; Link:(< <https://baophapluat.vn/hon-nhan-dong-tinh-khac-khoi-cho-luat-hoa-post310203.html> >; access 15 November 2021

²⁵ Nguyen Thi Thu Nam; Vu Thanh Long; Pham Thanh Tra; Institute for Economic, Social and Environmental Research (ISEE), "*Living with the same sex: Real experience and pursuit of couple happiness*", World Publishing House, 2013, p.43.

reality shows that the trend of supporting the rights of these subjects in the world is also increasing, reflected in the increasing number of countries and territories that recognize and legalize same-sex marriage or same-sex couples. If in 2021, Nederland is the first country in the world legalized same-sex marriage, creating a new wave for protecting LGBTQ+ rights strategies; in 2021, twenty-eight countries, including the United States, have legalized same-sex marriage, and many other Western democracies without marriage equality recognize civil unions²⁶. Even in areas with traditional cultures that are relatively conservative towards same-sex marriage, such as Asia, Taiwan has legalized same-sex marriage; Thailand is the next country in the process of considering accepting civil marriage between same-sex people and other countries such as Vietnam and Japan are also on the watch list towards legalizing same-sex marriage. .

This tendency has had a great impact on policy and law makers in Vietnam. In order to achieve the goal of building a socialist rule of law state with an important content being the protection of human rights, the 2013 Constitution was born with a dedicated chapter on human rights. The provisions of the 2013 Constitution emphasize "*human rights, civil rights in politics, civil, economic, cultural and social are recognized, respected, protected and guaranteed according to the Constitution and the law law*" (Clause 1, Article 14) and "*Everyone is equal before the law. No one should be discriminated against in political, civil, economic, cultural or social life.*" (Article 16). These new provisions of the 2013 Constitution set forth many requirements for the improvement of the legal system on human rights in general and the rights of gay, bisexual, transgender and intersex people in particular. In addition, Vietnam is currently in the process of implementing or developing and completing a number of legal documents related to the rights of these subjects such as the 2015 Civil Code, the Penal Code, and the 2015 Civil Code (amended and supplemented in 2017), the Law on Marriage and Family in 2014, the Law on Gender Transformation, the Labor Code, etc... These are the progress made from the efforts of the LGBTQ+ community and the impact of same-sex marriage programs that aim to protect the rights of same-sex people globally. This trend is still continuing and will be an effective lever for Vietnam to move towards building a legal framework on marriage between same-sex people, ensuring the basic rights inherent to homosexuals.

B. Factors hindering the legalization of same-sex marriage in Vietnam today

Besides the factors that positively affect the legalization of same-sex marriage, Vietnam still faces certain barriers in the process of achieving this goal.

1. The traditional conception of marriage and family.

The biggest barrier to legalizing same-sex marriage in Vietnam is the traditional cultural factor. Although it has changed in the direction of more openness, there still exist distinctions, especially the assumptions about marriage under the unique perspective of heterosexual marriage. This even exists in the thinking of the state when in the legal regulations, although it is not forbidden, defined marriage as between a man and a woman. Article 3 of the Law on Marriage and Family 2014 defines "*marriage is the relationship between husband and wife after marriage*"; "*Marriage is for man and woman establish conjugal relationship with each other under the provisions of this law on the conditions for marriage and registration of marriage*"; "*Living as husband and wife means that a man and a woman organize a common life and treat each other as husband and wife*". This provision of the Law on Marriage and Family has limited the right of people to marry and live together as husband and wife. Therefore, there are many same-sex people who do not dare to live with their own sexual orientation but seek to marry the opposite sex to avoid pressure from family

²⁶ CFR, "Marriage Equality: Global Comparisons", CFR staff, published by June 28, 2021; <<https://www.cfr.org/backgrounder/marriage-equality-global-comparisons#chapter-title-0-1>>; access 15 November ,2021

and society. According to research results of gay men, 19% of respondents plan to get married with someone of the opposite sex; 50% of same-sex men said that the reason for wanting to get married is because of family pressure. In other words, 40% said the reason was because of social pressure²⁷.

The family model which is a combination of one man and one woman with the main function of maintaining the breed is also a "typical tradition" today. The traditional cultural concept also makes many people doubtful when it comes to the issue of recognizing the equal rights, marriage and marriage of gay people to the maintenance of the race and the rearing of children. This concept even affects the thinking of same-sex people when up to 66% of them want to get married because they want to have children²⁸. Parenting issues of same-sex couples is an typical example. Some people suggested that same-sex couples should not be allowed to have and raise children because the child may not develop normally. It can be seen that the biggest challenge for same-sex parents is living in a society where gay people are less accepted, even stigmatized and condemned. Another difficulty is that these same-sex couples are often married to someone of the opposite sex and even have children. Therefore, they receive less support from their family as well as from their ex-spouse if they ask about divorce. This will cause a lot of pressure and conflict in the family²⁹. These notions are the barriers that make it difficult to legalize same-sex marriage in Vietnam. Although studies in other countries have demonstrated that legalizing same-sex marriage does not affect the birth rate or population size in that countries as well as the quality of family life and child rearing³⁰, but these concepts have existed for a long time and greatly influenced people's perception of same-sex marriage, making many people, including policymakers or legislators who are still hesitant to legalize same-sex marriage in our country.

2. Legal system

Although Vietnam no longer prohibits marriage between same-sex people, the law does not recognize this type of marriage. In addition, the legal system for same-sex people to live together is still open with many issues that have not been specified and detailed by the law. This issue leads to a significant restriction on the exercise of their rights by homosexuals. With the provisions of the Law on Marriage and Family 2014, there has not been any legal mechanism to resolve issues arising between people of the same sex. When the law neither recognizes nor prohibits same-sex marriage, it means that they are still allowed to live together, cannot register their marriage and are not recognized by the law. However, reality shows that when same-sex couples live together (a practice that is not illegal), they will still have problems in marriage such as between husband and wife, such as rights and obligations towards each other, joint property, children, inheritance, separation, alimony, civil status, etc. Nevertheless, due to not being able to register marriage and being regulated by law, the rights of same-sex people have not yet been established or protected by the law. For example, about personal identity: due to the lack of marriage registration, the husband and wife relationship does not exist, leading to non-existent rights and obligations towards the spouse or children; Regarding property: they do not have a husband and wife relationship, so the property they create in the process of living together cannot be considered as common property in the marriage and cannot be divided like property between husband and wife, but only divided according to the provisions of the Civil Code, which may not be equal to the contributions of the parties in a cohabitation relationship as husband and wife. Thus, from a legal perspective, if same-sex

²⁷ iSEE, Research "Social Attitudes towards Homosexuals", 2012.

²⁸ iSEE, Research "Social Attitudes towards Homosexuals", 2012.

²⁹ Pham Thu Hoa, Dong Thi Yen; "Prejudice, stigma and discrimination against homosexuals and transgender people in Vietnam", VNU Science Journal, Vol. 31, Issue 5 (2015) 70-79.

³⁰ M. V. Lee Badgett, "Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage? Evidence from Scandinavia and the Netherlands"; A discussion paper prepared for the Council on Contemporary Families and for the Institute for Gay and Lesbian Strategic Studies; July 2004.

marriage is recognized, it will have to amend and supplement all relevant provisions in the legal system, such as determining the husband and wife relationship, property relationship, etc. identifying parents and children. Along with that, civil status modification problems will arise, causing difficulties in enforcement and management. This is a barrier to the legalization of same-sex marriage in Vietnam today.

Conclusion

In summary, by analyzing the data provided by previous studies, this article identifies the factors affecting the legalization of same-sex marriage in Vietnam today. The change in society's perception of homosexuals in a more positive direction; social organizations working for the rights of homosexuals; the role of the media; innovation in social thinking; the development of human rights, and the global trend are factors that bring positive impacts and accelerate the legalization of same-sex marriage in our country today. However, this goal still faces specific barriers: the traditional conception of marriage and the legal system. Identifying factors affecting the legalization of same-sex marriage will contribute to helping Vietnam understand and propose solutions to move closer to the goal of legalizing same-sex marriage suitably with the country./.

References

1. Center for Initiatives and Population Health (CCIHP), research "Stigma and discrimination against homosexuals, bisexuals and transgender people in Vietnam", 2008.
2. CFR, "Marriage Equality: Global Comparisons", CFR staff, published by June 28, 2021.
3. ISEE, "LGBT people in the public eye: Listening to opposing views to develop a communication strategy for LGBT rights", Ha Noi, 2018.
4. ISEE, "Parents accept and speak out in favor of LGBT children's rights: Influential factors", 2017.
5. ISEE, "Research Report: Social Perspectives on Same-Same Marriage – Qualitative Research in Hanoi and Ho Chi Minh City", Hanoi, 2019.
6. ISEE, "Social attitudes towards homosexuality and same-sex marriage", 2011
7. Nguyen Thi Thu Nam; Vu Thanh Long; Pham Thanh Tra; Institute for Economic, Social and Environmental Studies (ISEE), "*Living with the same sex: Real experience and pursuit of couple happiness*", World Publishing House, 2013.
8. M. V. Lee Badgett, "*Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage? Evidence from Scandinavia and the Netherlands*"; A discussion paper prepared for the Council on Contemporary Families and for the Institute for Gay and Lesbian Strategic Studies; July 2004.
9. Nguyen Quoc Tan Trung, "Confucian view of same-sex marriage", published on 6/11/2021 on website: www.luatkhoatapchi.org.
10. Pham Thu Hoa, Dong Thi Yen; "*Prejudice, stigma and discrimination against homosexuals and transgender people in Vietnam*", VNU Science Journal, Vol. 31, Issue 5 (2015) .
11. Truong Hong Quang (2014), "Some aspects of views on homosexuality and homosexuality", Human Resource Journal of Social Sciences (Academy of Social Sciences)
12. UNDP, USAID (2014). "Vietnam LGBT Country Report – Being LGBT in Asia", Bangkok,