

Regulating Same-Sex Marriage in Vietnam

Negotiations between Legalisation and Social Recognition

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Abstract Vietnam's ban on same-sex marriage, which was instituted in 2000, was finally removed in 2014. Since then, wedding ceremonies for same-sex couples are allowed, even though their conjugal union is deemed legally void. The article holds that this peculiar position may be attributed to the fact that recognition of marriage in Vietnam has both legal and social dimensions. In granting same-sex couples an informal venue for their relationship to be accepted, the 2014 Marriage and Family Law may offer a temporary solution to the contentious question of same-sex marriage. It follows that the strategy in the name of social recognition helps the state to gain more time for further deliberations.

Keywords Same-sex marriage. Social recognition. Legalisation. Marriage registration. Vietnam.

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1 Introduction

In the summer of 2012, the Minister of Justice of Vietnam declared that the government was examining the question of same-sex marriage and might authorise it in the upcoming Marriage and Family Law (Oosterhoff, Hoang, Quach 2014, 29). The official declaration was made in a period of social agitation owing to the sensational news coverage of some same-sex couples' wedding celebrations and banquets in southern Vietnam despite the legal prohibition (18). In response to the Minister's communication, different governmental figures, institutions, and agencies showed their support for the removal of the 2000 ban on same-sex marriage and for the possible promulgation of legal measures allowing homosexual couples to get married (Rydström, Nguyen, Hoang 2023, 228). To their disappointment, this period of social ferment, however, did not result in the legal recognition of same-sex marriage, even though the prohibition against it was lifted and replaced with a particular stance, according to which unions formed by two persons of the same sex are not considered legally valid.¹

Same-sex couples indeed find themselves in an unusual situation in which they can organise their wedding ceremonies without being fined; however, they cannot register their marriage at the local authority since the union is not considered valid from a legal point of view (Nguyen 2022). The state of affairs may seem obscure to modern observers from other cultural and national contexts, where, due to religious influences and/or well-established administrative practices, a wedding banquet is often antedated by a public announcement and/or authorisation from some competent authority.²

The peculiarity of the 2014 Marriage and Family Law in the regard was often mentioned in the media,³ and, in particular, the academia.⁴ However, these writings, especially academic works, usually presented the impossibility of homosexual couples to legalise their union and resultant complications concerning conjugal matters, for

¹ Article 8, Clause 2 of the Marriage and Family Law (2014).

² For example, in Italy, where there are three types of regulatory mechanisms concerning marriage, depending on whether it is intended to be canonical, civil, or concordat, the initial phases of the procedures prior to the celebration entail an examination of the would-be spouses' legitimacy for marriage-contracting purposes and a publication of marriage banns, both of which are carried out by respective competent authorities. See Articles 10-13 of the General Decree on Canonical Marriage (1990); Can. 1067 of the Code of Canon Law (1983); Article 93 of the Civil Code (1942); and Article 8 of the Law 25 March 1985 (1985).

³ The early 2010s witnessed an unprecedented wave of news articles that focused on the question of same-sex marriage. See, for example, La 2012; Labour Newspaper 2013; Ha 2017.

⁴ Among many scholarly works, see, in particular, Oosterhoff, Hoang, Quach 2014; Faludi 2016; Pham 2022; Nguyen, Nguyen 2022.

example, inheritance, property, parenthood, and so on, without attempting to carefully examine the *raison d'être* of the legislation under study. Although some recent research attempt has argued that a set of conservative social norms, informed by Confucianism, is one of the main obstacles to the prospects of legislation of same-sex marriage in Vietnam, it leaves unexamined the dynamics between social conventions and legal practices when it comes to marriage legitimisation (see, for example, Pham 2022; Nguyen, Doan 2022).

Given the modest scholarship on the topic under study, the present article aims to embark on an expository journey on the peculiarity of the legal status quo on same-sex marriage in the 2014 Marriage and Family Law. In doing so, it argues that the hanging legal status of same-sex marriage in Vietnam reflects a compromise between legalisation and social recognition, the latter of which appears to play a long-lasting crucial role in the general public's conception of what can validate a marriage.

This social recognition of marriage is argued by the article to have been dominant, particularly in dynastic times, when legal officialisation of marriage seemed absent or lacking in authority. The significance of socially prescribed wedding conventions then were made to coexist with the colonial introduction of regulations requiring marriage registration; however, the former still managed to remain influential. Since the establishment of the communist regime, even though registering a marriage is a *sine qua non* for its legal validity, long-lasting cultural practices in this regard are still relevant. In addition to the authoritative social dimension of marriage, the fact that marriage registration is independent from wedding celebrations leaves the interested couple a great deal of discretion to choose if they want to have their union transcribed in the civil records.

Accordingly, with the removal of the ban on same-sex marriage and the preceding governmental confirmation of non-intervention into same-sex wedding ceremonies, homosexual couples are granted the possibility of having their union recognised socially and culturally by an accepting informal community of families, relatives, neighbours, and other onlookers. Moreover, this negotiation between legal and social recognition may also present a way out for the government concerning the controversial question of same-sex marriage, giving them more time for observations and deliberations.

Such arguments are consolidated by an in-depth reading of primary and secondary sources, including legal codes, legislative documents, newspapers, speeches, reports, and academic writings. In doing so, the article employs discourse analysis as the main method, following Foucault's meaning of 'discourse', which goes beyond:

a mere intersection of things and words: an obscure web of things, and a manifest, visible, coloured chain of words. (Foucault 1972, 48)

The Foucauldian analysis of discourse, therefore, aims at manifesting the way in which regulatory mechanisms are manifested through the use of linguistic tools. Such an approach may enable a deeper understanding of the social, cultural, and political dynamics surrounding the question of same-sex marriage, particularly regulated in the 2014 Marriage and Family Law.

The present paper will start with a brief panorama of the collectivist character of marriage in Vietnam, tracing back to the dynastic period.⁵ The definitional discussions will provide the ground for an investigation into the main questions of the paper, analysing how registration of marriage has been regulated in Vietnam and what implications it has had on the question of same-sex marriage. The paper will then end with some concluding remarks.

2 The Collectivist Character of Marriage in Vietnam

The organisation of power in a deeply patriarchal society, like imperial Vietnam, often predicated family and village authority as the two principal regulatory mechanisms of human affairs (Nguyen 1994, 281). Considered as one of the most significant matters of a person's life, marriage would inherently fall within the authority of the family and village leaders, thereby manifesting itself as an important part of the community and going beyond an individual business.

2.1 Marriage as a Family Matter

Dynastic times in Vietnam witnessed the triumph of neo-Confucian teachings as the ideological pillar of the state. Among many family values, filial piety was often considered the most important (Gardner 2014, 31) and could be manifested through children's subordination to parental authority and their responsibility for the continuation of family lineage, particularly for ancestral worship (Gardner 2014, 29-31).

In this scenario, marriage would naturally fall into the hands of parents, or mostly of the male head of the household. Indeed, dominant cultural practices in traditional Vietnam attested that marriage

⁵ As it seems too strenuous a mission to document the dominant characters of marriage or a similar formation throughout the long history of Vietnam, the Later Le dynasty (1428-1789) is chosen to be the starting point for the current study. The reason is that Vietnamese culture is generally believed to have reached a particular level of maturity and stability during this period owing to a series of important reforms (Le 2014, 17). In this context, neo-Confucianism, which was adopted as the state's ideology, had reached its apex in many social, political, and legal aspects (Ly 2015, 72), and is still considered omnipresent in the current national identity whether explicit or not (Vu, Yamada 2024, 182).

was decided by the parents of the two families, whether or not the would-be spouses agreed. The practice could be seen through the common proverb *cha mẹ đặt đâu con ngồi đó*, literally meaning ‘father and mother set where children sit’ (Bui 2014, 12).

Furthermore, the subordination in the name of filial piety towards parents and ancestors was enshrined with the fundamental obligation of producing male offspring so that the family surname and traditions could be carried on (Legge 2021, 215). Indeed, one of the legitimate reasons for a husband to leave his wife was her impossibility to bear children (Vu 1975, 85). This cultural norm even entered the Le and Nguyen Codes in Articles 310 and 108 respectively, legally making procreation one of the essential purposes served by a male-female sexual union (Vu 1975, 85-6). Such anxiety over procreation made marriage a whole matter of the family’s interest and authority.

Marriage as a matter of the family seemed to have weakened in subsequent periods of Vietnam’s history. A series of legal reforms, carried out by the French colonial regime, had made individual consent a requisite for marriage, even though parental approval was still formally required.⁶ The institution of marriage then underwent further changes in the 1980s and 1990s as the country experienced radical reforms. The opening of the country to the international community in 1986 was followed by the country’s increasing use of nationalist discourses in order to counteract the ‘poisonous’ foreign culture. Marriage became the epitome of national well-being and stability, being classified as a unit of society (Tran 2011, 95). Marriage, imagined as a legal union between a man and a woman on the basis of individual love and free choice, was deemed the foundation of a happy nuclear family that would play a crucial role in the destiny of the whole country (92).

However, research has shown that parents or the family at large still enjoy a significant level of importance when it comes to an individual’s decision to get married, even though this parental involvement is more consultative than authoritarian.⁷ This continuity reflects the long-rooted Vietnamese tradition of respect to parental authority in the field of marriage.

⁶ See Vu 1974, 10; *Précis de la législation annamite* 1883, 101-2; Articles 69 and 76 of the Civil Code for the Use of Local Courts in Tonkin 1931, 15-16; Article 96 of the Civil Code of Annam 1944, 34.

⁷ According to Nguyen’s research (2021, 7), the percentage of people who got married because of their parents’ authority was still relatively noticeable (18.9%).

2.2 Marriage as a Village Matter

In addition to considering marriage as a family matter, traditional Vietnam, often organised into villages, also placed particular importance on the village-based character of marriage, not least in northern Vietnam (Mai 2013, 571). Such a particular feature might have taken root in the considerable autonomy of the village-level administration, as could be well-exemplified by the common saying *phép vua thua lệ làng*, meaning ‘the King’s laws are inferior to the village’s rules’. Moreover, Phan, in his seminal book *Vietnamese Customs*, published in 1915, highlighted the organisational system of local authority, which, in addition to the formally assigned apparatus, included several groups of informally appointed assistants and servants, often charged with executing their superiors’ orders and ensuring the implementation thereof (129-33). Therefore, the village-level administration might have been even more authoritative and penetrating into every individual’s life than royal laws, enacted by the distant King’s court.

Under this view, marriage was linked to the interest of the village(s) in which the individuals and families involved resided. Mai emphasised this collectivist character of marriage by pointing out, *inter alia*, the power of local authority in validating a marriage with socially prescribed cultural conventions. Indeed, as she concluded in her study:

concerning traditional marriage, if the family played an essential role in concluding it, the clan and village were authoritative in conceding it official legitimacy. (Mai 2013, 571)

The validation of marriage might have been carried out through a set of cultural practices, including the payment of *cheo*⁸ in the form of money or gifts to the village-level administrative authority by the groom’s family on the date of the wedding reception (Nguyen 2019). The local officials then participated in the wedding celebration as a formal recognition of the union concerned. If the *cheo* was not paid, the marriage would not be recognised by the village community. The practice, reaching its popularity from the Later Le dynasty to the early twentieth century, did not seem to have been enshrined as a *de jure* requirement in the Le and the Nguyen Codes (Vu 1975, 61). However, it might be considered an indispensable cultural convention with the power of legitimising the conjugal union between a man and a woman, both socially and administratively. Its popularity

⁸ *Cheo*, written as 招 in Chinese, indicates the fees paid to the commune for the registration of a marriage. Literally, it can be translated as ‘proclaim’ or ‘make known’. See Bonet 1899, 80.

could also be seen in the fact that it was mentioned in a number of folk songs and everyday expressions (see Vu 1975, 57; Nguyen 2019).

Nevertheless, the large discretion of local authority in the management of village matters had significantly declined due to a panoply of radical transformations in Vietnam since the arrival of French colonists, who implemented various administrative and legal reforms in order to harmonise the applicability of formal laws throughout their jurisdictions (Blazy 2012, 639-40). The power of local administration continued to weaken, all the more so with the advent of globalisation and its overreaching implications for individual and collective life at the end of the twentieth century (Mai 2013, 575). However, even though the long-rooted mental and physical closeness of village-level communities was diminished, they might not be completely eradicated and irrelevant in contemporary Vietnam (Mai 2013, 575).

In summary, the deeply patriarchal culture and the administrative organisation of power might contribute to the fact that marriage in traditional Vietnam was seen as a matter of the family and the village. In this context, authoritarian parental arrangement for the marriage and the village committee's recognition thereof granted after the concerned individuals' completion of some culturally dictated obligations, would be deemed sufficient for the legitimisation of their conjugal union. Throughout the times, although in decline, this collectivist character of marriage still remains important, highlighting also the significance of socially prescribed wedding rituals. Their continued validating authority in coexistence with the later introduced administrative procedure of marriage registration might have had important implications for the legal position of same-sex marriage in the 2014 Marriage and Family Law.

3 Registration of Marriage

3.1 Socially Prescribed Legitimation of Marriage

3.1.1 Dynastic Times

The practice of paying *cheo* as a requisite for the administrative and social recognition of marriage, although widespread throughout the northern part of present-day Vietnam (Nguyen 2019), remained largely a village-level rule since it was not made a legal requirement in the royal codes (Vu 1975, 85-6). An analysis of some dynastic legal codes and writings revealed that it might not be requested by law that a marriage be registered in order to be valid. Instead, a strict adherence to widely recognised customs would be sufficient for this purpose.

A royal decree, issued on 18 November 1469 during the Later Le dynasty, stated that, for the employment or promotion of a mandarin at the royal court, the Ministry of Personnel must ask the local authorities to check if the concerned individual had come of age and if his marriage had followed proper rituals.⁹ At that moment, those wedding rituals might not have been juridicised yet; however, another royal decree, issued on 23 December 1478, dictated the detailed process of a marriage ceremony and also some subsequent rituals, comprised of indispensable rituals, including (1) matchmaking; (2) the boy's family asking a representative to come to the girl's house in order to ask for her name, age, and date of birth; (3) the groom's family bringing the bride token to the bride's house and the organisation of wedding ceremonies; (4) the groom taking the bride home; (5) on the following day, the bride greeting her parents-in-law; and (6) on the third day, the whole family carrying out some rituals at a local temple. The decree went on to stress that the process needed to be strictly followed, avoiding previous irregular practices (Vietnam Academy of Social Sciences 1993, 486).

Moreover, the Le Code, issued between 1470-97 during the Later Le dynasty, was absent of a legal stipulation requiring a marriage to be registered at the local authority so that it would be valid. The same may be said of the Nguyen Code, which was issued in 1813 during the Nguyen dynasty. It would be deduced from these legal codes that traditions concerning marriage rituals were more important and often left to the dictates of the village guardians. Indeed, Article 314¹⁰ of the Le Code stated that:

if the groom's family did not bring enough bride token to the bride's [...], and the two got married in a negligent manner, then the boy shall be demoted of one level¹¹ and, on the basis of his financial conditions, asked to pay some money as an excuse to the bride's parents, while the girl shall be punished with fifty stick whippings. (Nguyen, Nguyen 2017, 128)

The legal rule revealed that what might be important was the adherence to the dominant cultural practices regulating marriage rituals,

9 This royal decree was issued with the purpose of highlighting the importance of adherence to proper rituals and traditions, especially on the part of officials (Vietnam Academy of Social Sciences 1993, 462).

10 The legal stipulations in the original version are not numbered, yet added in the translation into modern Vietnamese.

11 During the Later Le dynasty, each official was assigned a number indicating his level with twenty-four being the highest. Ordinary citizens did not have any level; therefore, the punishment of demotion could be interpreted as a way to demean the wrongdoer's dignity. See Pham 2019, 33.

which could validate the union between a male and a female. On the other hand, the act of registering a marriage at the competent local authority was not mentioned at all, corroborating the observation that the law did not concern itself with the legal officialisation of marriage and left the matter to the dictates of customs.

Accordingly, Vu (1975, 49) argued that the Later Le dynasty's law-makers considered crucial the strict observation of long-lasting traditional wedding rituals, not least the giving of bride token and gifts, when it came to the legitimisation of conjugal unions. Owing to this preference for socially prescribed cultural conventions, the Le Code explicitly laid out the compulsory rituals to officialise a marriage, from the beginning to the post-wedding phase. In this context, there might not be any necessity for the law-makers to require an explicit piece of paper pertinent to the recognition of the marriage.

This character of Vietnamese dynastic legal thinking, however, was significantly modified in the Nguyen Code. Instead of leaving the matter to the dictates of non-legal traditions, the Nguyen law-makers made the registration of a marriage compulsory in order for it to be recognised as legally valid. Article 94 of the Nguyen Code required that, when all the requirements were satisfied, then:

a marriage contract will be written, and according to the common rituals, the betrothal and marriage ceremonies will be carried out. (Philastre 1967, 491)

This regulation appeared innovative since it introduced a new practice, which was the drafting of a marriage contract preceding its celebration. It might embody a radical rupture with the long-rooted tradition of socially prescribed officialisation of marriage. The rule, however, seemed to be mitigated by a confirmation of the importance of common customs, which could, for some unspecified reason, replace the exigence of a written marriage contract. Indeed, the same article stipulated that:

despite the fact that no marriage contract has been written, if the customs that go hand in hand with the marriage request have been recognised [practiced] in some way whatsoever, the case will still be considered valid. (Philastre 1967, 491)

Moreover, the concept of marriage contract shall not be understood in the modern sense of the phrase. Used in another instance in the Nguyen Code, it referred to a document produced by the would-be son-in-law, who:

as a proof, must clearly establish, through the matchmaker, a marriage contract, in which it is written that the son-in-law will take

care of the parents of his wife, in addition to the number of years, after which he can leave them. (Philastre 1967, 495)

This regulation was applicable to those sons-in-law who were, for some particular reason, to live at his wife's house after marriage for a certain number of years (500). Even though the specific content of a general marriage contract was not specified, what could emerge from the rule above was that the document might usually be validated through the presence of the matchmaker, not by an official, hereby being a mere internal agreement between the two families, yet serving as a proof for any future legal processes. Therefore, although an innovation was introduced to the point that there was a radical rupture with the long-rooted tradition of non-legal officialisation of marriage, it still remained largely an act officialised by socially prescribed cultural conventions.

It should also be noticed that the Nguyen Code has been noted as a loosely modified version of the Chinese Great Qing Code (Vu 1975, 144). As a matter of fact, King Gia Long (1762-1820), who initiated the drafting of the Nguyen Code, explicitly asked his officials to analyse, *inter alia*, the Chinese Code for its values and ideas (Philastre 1967, 10). Therefore, the introduction of marriage registration might be a Chinese importation without careful attention to the local long-lasting non-legal tradition in the regard.¹²

Therefore, the Nguyen Code might be idealistic and distant from the real experiences of Vietnamese people, in great part due to its appropriation of foreign values and to the long-rooted dominance of village rules in place of royal laws. As a result, during the Nguyen dynasty, at least before the arrival of French colonists in the middle of the nineteenth century, the significant transformations in terms of legal regulations concerning marriage might not have exerted a great impact on the majority of Vietnamese people's lives. It was owing to this unpopularity that traditionally dictated wedding ceremonies might still have occupied the role in legitimising the union between two individuals.

3.1.2 French Colonial Period

Traditional wedding rituals, although subject to considerable mutations due to the intervention of French colonists, might still have remained influential throughout this period. Indeed, from 1858 to 1945, French colonists introduced a few legal codes in Cochinchina, recognised as the French Empire's colony, and exerted considerable influences on

¹² Indeed, making a marriage contract was an essential step in the procedure required in the Great Qing Code. See Jones, Cheng, Jiang 1994, 123.

the promulgation of these corresponding laws in Annam and Tonkin, both classified as their protectorates.¹³ The legal impositions and influences managed to modify, to a significant extent, the judicial configurations of these territories in the field of family and marriage by, for example, stipulating administrative procedures for the officialisation and legalisation of a marriage. However, adherence to socially prescribed wedding rituals might still be authoritative in validating it.

In Cochinchina, the French colonial regime, coerced by the urgent necessity to regulate basic civil matters by some immediate measures, issued a short handbook of civil legislation for the locals, which was mostly taken verbatim from some parts of the Napoleonic Civil Code, promulgated in 1804. The newly-introduced law was pronounced to have left as much as possible the family institution to the hands of the local magistrates, yet under French supervision and control, which was a strategy to enhance colonial assimilation (Peyron 1883, 94).

Indeed, among the few regulations regarding marriage, the innovative introduction relevant to the current article was the administrative procedure and the registry system. According to Article 13 of the civil legislation:

when a marriage is planned and the definitive date for the ceremony is fixed, each of the persons in charge of carrying out the marriage (the masters of the ceremony), from each side of the future spouses, must give notice to the official of civil status of the local authority where the groom resides. [...] also the matchmaker must inform the official of civil status of the local authority where the bride resides. (Peyron 1883, 96)

Moreover, the law also required that these declarations be immediately published on a bulletin board displayed at the door of the civil status office for a period of eight days (97). Then, on the day when the definitive ceremony took place or three days later, the husband or the master of the ceremony must make a new declaration, which would be signed by the interested parties and finally transcribed in the register by the competent official (97). A failure to make the pre- and post-ceremony declarations would generally result in a fine from five to fifteen francs (95).

As it could be seen from these regulations, while common rituals were left unregulated by law, marriage became an administrative matter with some legally required procedural obligations on the part of the representative(s) of the families. Such significant

13 During the French colonial period, Vietnam, as it now is known, was divided into three territories, including Cochinchina in the south, Annam in the centre, and Tonkin in the north.

transformations could also be observed in the civil codes, enacted in the other two territories of today's Vietnam, namely Annam and Tonkin, which, despite their status as French protectorates, were subject to considerable mutations, particularly in the legal sphere.

Indeed, similar to the civil legislation adopted in Cochinchina, the civil code in Tonkin and its sibling in Annam introduced the obligatory administrative procedure for the legal validity of marriage. Article 21 of the Tonkinese civil code affirmed that:

everyone obliged to make a declaration of birth, marriage, or death who, without any legitimate excuses, might have failed or forgotten to do so, shall be punished with a fine from twenty cents to three *piastres de commerce*.¹⁴

Article 31 of the same code then contended that:

when a marriage has been celebrated in accordance with the local customs, the declaration of that marriage shall be made within eight days to the official of civil status, who will register it in the special marriage registry system.¹⁵

A similar, yet more simplified legislation could be found in the Annamite civil code, of which Articles 68, 76, and 91, when read together, stipulated that only when the marriage, already celebrated with recognised rituals, was approved by the local authority and registered in the records after the ceremony, was the union considered valid.¹⁶ Moreover, it was also stated that if there were conflicts and complaints prior to the wedding, probably between the two families, the case would be considered for adjudication on the condition that the engagement, if ever carried out, had been done properly.¹⁷

All the three above-analysed civil codes, imposed or influenced by the French Empire, made an innovation to the local legal system by having introduced the administrative procedure for the officialisation and legalisation of marriage, which had been generally absent in the traditional legal practice. However, the role of socially prescribed customs in the field of marriage was still recognised as crucial and, in some cases, even valid as a proof for the union. These co-existing regulatory mechanisms, on the one side, served to regulate civil matters from a legal point of view, and, on the other side, maintain long-lasting traditions of non-legality in the regard.

¹⁴ See Civil Code for the Use of Local Courts in Tonkin (1931, 4).

¹⁵ See Civil Code for the Use of Local Courts in Tonkin (1931, 7).

¹⁶ See Civil Code of Annam (1944, 36-42).

¹⁷ See Civil Code of Annam (1944, 36).

3.2 Wedding Rituals Being Independent from Marriage Registration

As could be seen in the previous section, during the colonial period, there was, in most cases, a pre-ceremony procedure of check and approval. However, after independence from France, this practice was left out of the subsequent legislation of the communist regime, which only required the registration of marriage, thereby being an administrative act separated from the organisation of the ceremony. Under this view, marriage rituals are independent from marriage registration.

Indeed, the first Marriage and Family Law, promulgated in 1959,¹⁸ vaguely stipulated that:

marriage shall be recognised and registered by the responsible office of the local authority where the wife or husband resides. (Article 11)

This regulation required the legal recognition and registration of marriage at the competent office. However, it left further details unregulated, including the obligation on the part of the spouses and their families to ask for pre-wedding official approval and make a post-ceremony declaration at the local authority as well as the administrative penalty for their failure to do so. The substance of this article was still maintained in the 1986 Marriage and Family Law (Article 8).

It was not until the Resolution 01/NQ-HDTP, issued by the Committee of Justices of the Supreme People's Court in 1988, that the problem of non-registration of marriage-like unions between a man and a woman was raised. The document explained that:

in reality, there are a considerable number of non-registered marriages. Even though it is a violation of regulations on the marriage procedure, the marriage itself is not considered illegal. In this situation, if one person of the couple or both of them ask for a divorce, their marriage shall not be nullified, yet their request will be considered with the relevant article on divorce.¹⁹

It appeared to be the first time when the non-registration of marriage was noticed at official level by the communist regime. However, it emerged from the document that even if non-registration of marriage violated the law, it did not bring about any penalty. This non-punishment

¹⁸ The law was enacted by the newly-founded communist regime, first established in Soviet-backed northern Vietnam and then expanded to the entire territory in 1975 following the defeat of American troops.

¹⁹ See Resolution 01/NQ-HDTP (1988).

was finally changed in the 2000 Marriage and Family Law and subsequent legislation. In maintaining the obligation of marriage registration at the competent local authority, Article 11 of the law made an explicit stance on non-registered marriages, specifying that:

a man and a woman who live in a husband-wife relationship without registering their marriage cannot be recognised by law as husband and wife. [...] if, after divorce, they wish to get back together, they need to register their marriage again.

Moreover, the article also dictated that it must be the competency of the government to register marriages in remote areas, where local customs regarding the matter might predominate over legality. Articles 12, 13, and 14 went on to provide more details on which public office was responsible for registering marriages and what would be the procedure as well as the organisation of the act. In particular, Article 13 required that the competent office, after having received all necessary documents in accordance with the law, shall check if both the man and the woman satisfied the requirements for marriage and proceed to register their marriage in the affirmative case.

A series of subsequent legal measures were put out in order to specify regulations concerning marriage registration, which was made more and more important for the legal validity of the marriage.²⁰ There were a few relevant points emerging from these documents. It was stipulated that those men and women who started to live together as husband and wife without registering their marriage from 3 January 1987 to 1st January 2001,²¹ would be obliged to register their union as marriage within two years, that was to say until 1st January 2003, if they satisfied the conditions for marriage specified by law. Moreover, they also needed to meet one of the following requirements, including (1) organisation of wedding ceremonies in the past; (2) cohabitation with familial approval from one or both sides; (3) cohabitation witnessed by individuals or organisations; or (4) cohabitation, mutual care and support as well as shared efforts to build up the family.

Within this two-year time lapse, if they did not register their marriage and wanted to get a divorce, their case would be judged by the relevant regulations in the 2000 law. However, from 1st January 2003, any unregistered marriage will not be recognised as a legally valid union, causing, for example, the request for divorce to be adjudicated in a different way from that of a legally recognised conjugal

20 See People's Committee of Hue Province 2022 for a summary of these legal measures.

21 These were the dates in which the 1986 and 2000 Marriage and Family Law went into force respectively.

relation, particularly in the field of property. This regulation remains valid until today, even after the 2014 revision of the same law. It might be seen from these regulations that the government started to concentrate on the registration of marriage as an obligatory step to the final legal recognition thereof. A failure to do so would cause the union to be null and void in the eyes of the law, especially when conflicts emerge. However, two important observations can be made.

First of all, the colonial requirement of pre-ceremony check and approval was erased from the modern legislation enacted by the current regime. Therefore, the act of officialising a marriage through registration at the competent local authority can be effectuated before or after the organisation of wedding ceremonies, leaving this obligation to the discretion and deliberation of the interested couple. It may follow that the organisation of wedding ceremonies does not require any prior official authorisation.

Second, wedding rituals remain a significant part in the informal and even official recognition of a marriage as the organisation thereof is acknowledged as one of the above-mentioned four conditions for the acknowledgment of unregistered conjugal unions. Therefore, the time-honoured social recognition of marriage, which is informally granted after the organisation of wedding ceremonies with the participation of an informal community, still appears important and relevant. Such a comment highlights the significance of the social dimension of marriage.²²

As Bui put it:

in the subconsciousness and culture of the [Vietnamese] people, it has always been at the moment of wedding ceremonies, not the marriage certificate, that relatives, friends, and other people recognised the couple as husband and wife. The marriage procedure and formalities in modern times might be different; however, there are still similarities. (2014, 238)

This means that, if a set of relevant socially prescribed wedding rituals have been followed, the two interested individuals are then considered husband and wife by other people, without the need to check whether or not the marriage has been registered in the civil records. This dimension might have had certain important implications for the case of same-sex marriage, which can be further explained by an analysis of some changes in 2014 Marriage and Family Law with references to the 2000 version.

²² An indicator for this reality may be the alarming prevalence of cohabitation by heterosexual couples who do not register their marriage, even though their wedding ceremonies have been held. Statistically, in 2008, the percentage of unregistered marriages was 28% (Ha 2008). The common presence of this phenomenon was confirmed again by Nguyen (2021, 7), who, however, did not specify the exact percentage.

4 Same-Sex Marriage in Vietnam

4.1 The 2000 Marriage and Family Law

The first public debate concerning same-sex marriage might have started in the late 1990s with some gay and lesbian couples attempting to organise wedding celebrations (Oosterhoff, Hoang, Quach 2014, 18). These cases, which were reported to have caused quite a stir among the general public, made their way into a meeting of the National Assembly in 1998 (Pastoetter 2004, 1348-9). While the specific content and result of the discussions remain unknown to the public, it might have had a great deal to do with the fact the 2000 Marriage and Family Law introduced a ban on marriage between persons of the same sex.

Article 10 of the 2000 law listed couples of the same sex as one of the five categories prohibited for marriage. This blanket ban might be interpreted as a reaction to the unprecedented attempts to organise wedding ceremonies by some same-sex couples. It also seemed to be a response to the legislative lacuna in the regard, highlighted by the officials who had sought to interrupt these celebrations and had immediately acknowledged the lack of a legal base for an intervention (Pastoetter 2004, 1348-9). Moreover, the prohibition of same-sex marriage was put forward also in a period in which homosexuality, commonly scapegoated as an element of the foreign ‘poisonous’ culture, was officially classified as a social evil, together with prostitution and gambling (Pham 2022, 427). In this complicated context, same-sex marriage was outlawed, arguably marking the first time in modern Vietnam when a dimension of homosexuality entered the legislative corpus (Nguyen, Doan 2022, 349).

However, such a legal regulation was the so-called ‘framework law’ in Vietnamese jurisdiction, in which a legal rule was laid out in a general manner in order to reflect a legal spirit or principle, which would need specification in subsequent legislation for it to be enforceable (Nguyen 2005). Indeed, the ban on same-sex marriage in the 2000 law was quickly accompanied by the Governmental Decree No. 87/2001/ND-CP, which imposed an administrative fine from one hundred to five hundreds *dongs* (approximately from four to twenty *euros*) for same-sex couples who had had their wedding ceremonies organised (Article 8).

What might emerge from this legal measure was that the ban on same-sex marriage did not stop at the impossibility for same-sex couples to get their union registered at the competent local authority, but extended even to the independent organisation of wedding ceremonies, which, as explained earlier, might not require by law any prior official authorisation. This highlighted the government’s latent acknowledgement of the correlation between the organisation of

wedding rituals and the resultant social recognition of the interested parties as valid spouses by their informal community. Therefore, the prohibition and the penalty accompanying it might have served to take away from gay and lesbian couples any possible means to have their relationship recognised and validated, especially from a social perspective. It can then be deduced that the long-lasting social dimension of marriage still appears significant in modern times.

4.2 The 2014 Marriage and Family Law

The legal proscription of same-sex marriage in the 2000 Marriage and Family Law remained in force until the early 2010s, when its updated version removed the ban thereon, following an unprecedented emergence of public discussions and activist engagement, initiated in the late 2000s (Pham 2022, 423). The period also witnessed the first time when the topic of legalisation of same-sex marriage made its way into the political arena. The legal reform then leaves same-sex marriage in a seemingly ambiguous position since it is not recognised legally; however, the organisation of wedding ceremonies is not a subject for legal condemnations any more (Pham 2022, 423). This peculiarity, once again, can be seen through the lens of social significance of marriage rituals.

As was mentioned in Section 1 of the present article, in the face of bursting publicity surrounding some same-sex wedding ceremonies in Vietnam, the Minister in 2012 announced a plan to consider legalising same-sex marriage and based his reasoning on the exigence of protecting personal freedoms (Oosterhoff, Hoang, Quach 2014, 29). In September 2013, the government issued a decree invalidating the decree imposing administrative fines on same-sex couples who had organised their wedding ceremonies (Pham 2022, 423).

However, in a draft of the revised law, submitted in June 2013, one could find only some provisions to recognise cohabiting same-sex couples to some certain level.²³ The absence of same-sex marriage in the draft indicated that it would not be considered at all for the moment. As time went on, these provisions were unfortunately modified to exclude any specific recognition in the regard (Pham 2022, 423). In its final version, the law stopped at removing the ban on marriage between persons of the same sex, without considering any means of recognition and protection for them. The justification for the rejection was mainly attributed to the belief that, still being

23 In an official document presenting the draft of the revised Marriage and Family Law, prepared by the government and published on 20 October 2013, it was stated that even though the state did not recognise same-sex marriage, Article 16, Clause 2 of the revised law would include some specific regulations aiming to solve problems emerging from cohabitation by same-sex couples.

a traditional country, Vietnam was not ready to move towards authorising same-sex marriage, which would need to be further studied (Pham 2022, 435).

Even though the legal reform did not result in the possibility for same-sex couples to get married, it appeared to be a landmark in the Vietnamese legislative development, since the results coming from it included the removal of the ban on same-sex marriage and of the administrative fine on the organisation of same-sex wedding ceremonies. More noticeably, it seems to maintain the long-lasting Vietnamese tradition, according to which wedding rituals are considered significant for the social legitimisation of the union between two individuals. Therefore, the removal of penalties on wedding ceremonies grant these couples the possibility to hold wedding celebrations and have their union recognised by the informal community of families, friends, neighbours, and other observers.²⁴

In doing so, the government might try to avoid the question of legislation of same-sex marriage in order to gain more time for further deliberations because an immediate problem has been solved by permitting homosexual couples to organise their wedding ceremonies without being fined. In the above-mentioned draft of the law, where the proposed regulations concerning same-sex couples' cohabitation was still present, it was stated that:

same-sex marriage is a highly delicate topic. Therefore, it needs to be considered and analysed from many different angles, following an appropriate process.²⁵

The government went on to reason that, on the basis of the experiences of some countries, one of the first step of this process prior to the authorisation of same-sex marriage was that the state recognised the existence of conjugal unions between persons of the same

²⁴ The informal social recognition could also be seen in newspapers that reported on same-sex wedding ceremonies. For example, a news article, published on 1st September 2019 by Thanh Nien Newspaper, a major news channel in Vietnam, presented the happy post-wedding lives of five same-sex and transgender couples and took the moment in which wedding ceremonies were organised as the point to consider that they had become spouses. In an article narrating the love of a gay male couple, published by Dan Tri Newspaper and reposted by VietNamNet on 6 January 2022, the latter being an online newspaper affiliated to the Vietnamese Ministry of Information and Communications, it was reported that their dream was to organise a wedding ceremony in order to officially mark their cohabitation and union as spouses. The reception was reported to have been the fruit of their eleven years being together through hardships and happiness, representing a milestone in their relationship. Such importance given to wedding ceremonies as the start of (socially) recognised conjugal relations seems relatively common in journalistic writings about the topic under study, even though, in these instances, the legal invalidity of same-sex unions is generally ignored.

²⁵ See fn. 23.

sex. The position of the state in the 2014 Marriage and Family Law then seemed clearer in that, under the cultural lens of marriage and family, Vietnam was considered still conservative and adherent to the long-lasting model of heterosexual marriage.²⁶ Therefore, the state:

will not recognise marriage between persons of the same sex, yet, at the same time, without intervening by administrative means into their right to live in accordance with their sexual orientation.²⁷

Such a position seemed to have been brought about in Article 8, Clause 2 of the final law. Moreover, while it made hopeful that same-sex marriage could be a reality in the future, the need to carefully study it was considered the first step of this process. Therefore, it appeared that the state had sought to find a temporary solution to the thorny question of same-sex marriage by delaying the authorisation thereof and simultaneously allowing the interested parties to get their unions acknowledged socially with wedding rituals, which have undeniable values for the informal recognition of conjugal relations.

In the meantime, the state, as the analysis of the above-analysed discourses suggests, can observe further developments on this topic, especially from the part of the general public. Even though there has not been any significant progress since the adoption of the 2014 Marriage and Family Law, some governmental agencies have dealt with the question of same-sex marriage, reiterating the necessity of updating the law that would permit same-sex couples to get married legally.²⁸ Furthermore, there have been research endeavours from various interest groups that point out a growing rate of social support for the authorisation of same-sex marriage (Rydström, Nguyen, Hoang 2023, 235). For example, according to research by Gubbala and Miner (2023), Vietnam ranked second in Asia and first in Southeast Asia, with sixty-five percent of the surveyed population in favour of legal authorisation of same-sex marriage.

26 For more discussions about the still considerable pressure of established societal norms concerning traditional (heterosexual) family values placed on people of non-normative sexuality in contemporary Vietnam, see Rydström, Horton 2022.

27 See fn. 23.

28 For example, in June 2023, VTV4, a state-owned television network serving as the international broadcaster of Vietnam Television, published on some of their social media platforms a documentary featuring a happy Vietnamese gay couple of an ethnic minority group who had just organised their wedding ceremonies. The broadcast can be found on VTV4's YouTube channel under the title "When Children Come Out as LGBT - The First Gay Couple of the Rhade Minority" (*Khi con 'Come out' là LGBT - Cặp đôi đồng giới đầu tiên của người Ê Đê*) (<https://www.youtube.com/watch?v=cbH6EsY3B2Y>).

These dynamics could be what the state was looking for when the question was being debated. However, same-sex couples are still denied legal recognition and protection for their relationship, no matter how committed they are. In this legal lacuna, if any issue concerning their cohabitation emerges, the social recognition of their union, although still important, cannot be considered sufficient, neither for the enjoyment of conjugal rights and benefits, nor for their need of and responsibility for a legally stable, committed life together.

5 Conclusions

The 2014 Marriage and Family Law, in force since 1st January 2015, does not recognise marriage between persons of the same sex. However, the legal reform of this period resulted in the removal of the ban on the organisation of wedding ceremonies for gay and lesbian couples. The peculiar position of the law was argued in this article to have been influenced by Vietnam's long-lasting tradition of considering wedding celebrations with socially prescribed rituals as an important way to legitimise conjugal unions.

Indeed, during the dynastic and colonial times, with marriage being a family and village matter, wedding ceremonies often went hand in hand with a culturally dictated participation of the local authority as official approval. In modern times, registration of marriage has been made compulsory for its legal validity. However, commonly practiced rituals and customs in the regard still remain important. Moreover, it emerges from modern laws that a wedding ceremony can be celebrated without approval from the part of the competent local authority, where the heterosexual newlyweds can choose to register their marriage before or after the wedding reception. They can also decide not to have their union transcribed in the civil records, yet without being fined.

Under this view, the removal of the ban on same-sex marriage as well as the administrative fine for those who had carried out wedding ceremonies may give the interested couple a chance to have their conjugal union recognised by an informal community. The significance of social legitimisation allows them to live a shared life as other heterosexual married couples in the eyes of the general public. This contemporary way out to the question of same-sex marriage then can grant the state more time to carefully study the topic. In the meantime, it can also observe further developments in the regard, not least the changes in the public opinion. With that said, there has not been any project of recognising same-sex unions in a foreseeable future, despite some important favourable social and political changes. What can then act as a catalyst for the possible authorisation of same-sex marriage or any other forms of

legal recognition may be a continued push by tactical social advocacy, accompanied by some vocal political figures, the latter of which, however, still seem absent at the moment.

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