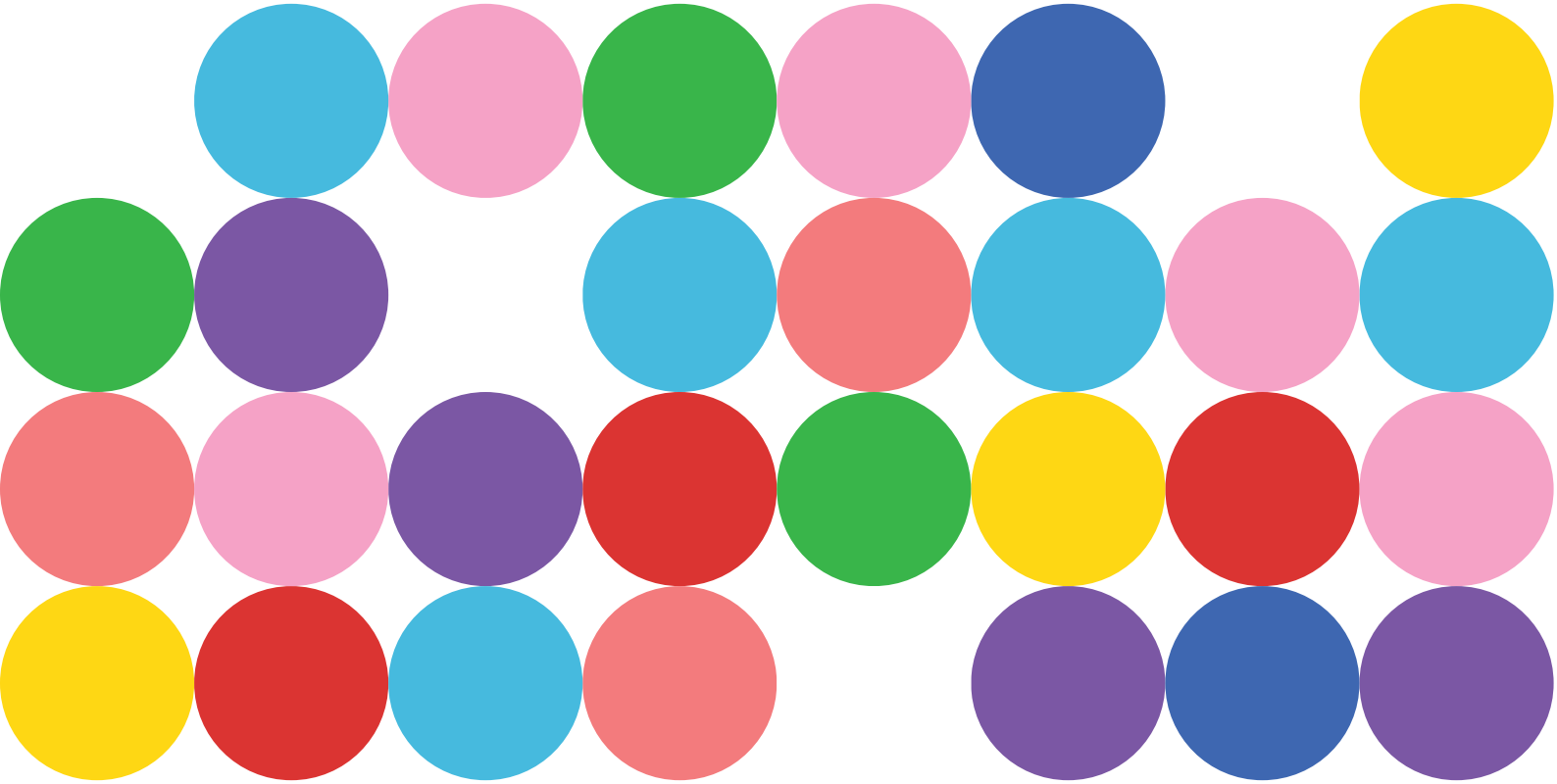
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# ECONOMIC IMPACTS OF SAME-SEX MARRIAGE IN VIETNAM

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## Policy Brief

In Vietnam, the number of LGBT people (i.e. gay-lesbian-bisexual-transgender people) in Vietnam can be estimated to account for between 9% and 11% of the total population. Along with the development of Vietnamese society, LGBT people are increasingly recognized as natural, equal and full members of society. The integration of LGBT people can be seen as an inevitable and natural part of the cultural and moral development of Vietnamese society.

However, this integration is not without obstacles. LGBT people, as gender and sexual minority, always face risks of discrimination in social interactions, education, and employment. In addition, their basic rights have not yet been recognized fully, namely same-sex marriage and other rights under the marriage institution such as guardianship, inheritance, legal representation, mutual adoption and custody, recognition of common children, surrogacy for humanitarian purposes, etc.

**The recognition of LGBT rights is an important ground not only for the social integration of this group but also for the cultural - economic - social development of Vietnam in general.**

### Impact of same-sex marriage in Vietnam

The impact of the recognition of same-sex marriage in Vietnam is **significant, diverse** and **inclusive.**

**The impact of the recognition of same-sex marriage is significant:** According to the report's estimates, legalizing same-sex marriage could bring Vietnam **from 1.65% to 4.36%** increase in GDP per year compared with the non- recognition case. The average GDP growth rate in the short and medium term would be **from 0.17% to 0.44% per year.** The increases in revenue for the wedding and home building related industries are **between 5.26% and 12.36%** compared to the non-recognition case; save Vietnam between USD 13 million and USD 71 million in costs arising from the damage caused by psychological disorders (depressive disorders and anxiety disorders) due to the minority status of LGBT people.

**The impact of the recognition of same-sex marriage is diverse:** The recognition of same-sex marriage in Vietnam brings diverse benefits, from individuals, businesses to industries and countries and through different mechanisms as follows:



- Being recognized by law, or at least approved by social institutions, helps to increase the rights of LGBT people in Vietnam;



- Participation in family institutions helps reduce minority stress;
- Participating in family institutions helps improve working incentive;
- Inclusive communities reduce minority stress;



- Increasing the decision to organize a wedding party or organize it on a larger scale;
- Eliminating or reduce mixed-orientation marriage;
- Helping alleviate demographic problems;
- Strengthening the marriage and family regime and reinforce gender equality.



- Improving human capital of LGBT people;
- Leading to the birth of an LGBT economy;
- Improving business outcomes;
- Improving national competition results and business environment.

**The impact of same-sex marriage is inclusive:** The benefits brought about by recognition of same-sex marriage are not only felt and enjoyed by LGBT people, but also by the rest of the society.

The combined effects of above outcomes entail an increase in labor productivity of not only LGBT people but also the whole society thanks to the spillover effect.

## Policy Recommendation

Based on the above conclusions on the impact of the recognition of same-sex marriage, the research team has the following policy recommendations regarding same-sex marriage and LGBT people:

- **Same sex marriage couples must have equal rights and obligations** as opposite-sex marriages couples.
- **Recognizing same-sex marriage as soon as possible.** Vietnam should be the second country in Asia and the first in Southeast Asia to legalize same-sex marriage. The postponement of the recognition of same-sex marriages may reduce the spillover effects because other countries in the region (Thailand, Cambodia) may recognize same-sex marriage or immigration and investment flows have moved to region(s) where same-sex marriage was recognized (Taiwan).
- **Implementing programs to change awareness at the national level** on the recognition of LGBT people as full, equal and natural members of society.
- **Passing anti-discrimination laws against LGBT people** in spaces such as educational institutions, businesses, religion, etc. and adding elements as "sexual orientation, gender identity" (or "sexual/gender identity") into anti-discrimination-related legislations to include LGBT people.
- **Completing legal regulations on the use of reproductive technologies and surrogacy** so that LGBT people can build families easily while ensuring the rights of related parties. Surrogacy with ovum or sperm donation should be allowed. These improvements can be seen as improvements to the institution of marriage and family in general, as participants in heterosexual marriages also benefit from these changes.
- **Introducing educational contents about LGBT people into official school curriculums.** This helps create a cultural basis for LGBT inclusion, reduce bullying and abuse in the school environment for LGBT students, students whose parents are same-sex couples.
- **Developing guidebooks to help businesses develop supportive policies/inclusive atmosphere** for LGBT people while complying with the anti-discrimination legislation.

In general, the strategy to legalize same-sex marriage in Vietnam should be direct and carried out as soon as possible, extending all regulations applicable to heterosexual marriage to same-sex marriage without exceptions together with the passing of anti-discrimination policies and regulations.

## Law changing suggestions

### 1. Recognition of same-sex marriage

The purpose of the changes discussed in this section is to provide those wishing to enter same-sex marriage the same legal capacity in registering their marriage and enjoying the full range of rights and obligations as people heterosexual marriages through the amendment of the 2015 Marriage and Family Law.

**Option 01:**
**Local and compact changes**

**a. Amend the definition of "Marriage" in Clause 01, Article 03 of the Law on Marriage and Family to:**

Marriage is a relationship between two people who are married. Same-sex marriage is a marriage between two people of the same sex. A difference-sex marriage is a marriage between two people of the difference sex. The law does not differentiate between same-sex marriage and difference-sex marriage.

**b. Amend Clause 02, Article 8, Law on Marriage and Family on Marriage Conditions**

The state recognizes marriages of people of the same sex. People of the same sex getting married must comply with the conditions in Clause 01 of this article.

**c. Supplement to Article 5, Law on marriage and family on Protection of marriage and family regime:**

Participants in same-sex marriages have full rights and obligations as participants in difference-sex marriages in accordance with this Law, the Civil Code, the Law on Adoption and other related provisions of law. The State prohibits all acts of discrimination between people who marry of the same sex and those who marry of the opposite sex.

**Pros of the option**

Short, concise, no need to change many legal clauses.

**Cons of the option**

Phrases such as "husband and wife", "man and woman" still imply heterosexual marriage and thus create a wording inconsistency for the entire legal document and may cause obstacles for people in same-sex marriage to enjoy legitimate rights and obligations as prescribed by the law.

**Option 02:**
**Wording overhaul**

This option is about making the necessary changes to the entire legal document.

**a. Changes like option 01 above together with the changes as below:**

**b. Use the phrase "two participants in a marriage relationship" instead of the phrases "husband and wife" or "two persons" if the phrase "two participants in a marital relationship" has appeared earlier.** For example:

| Before | After |
|---|---|
| Husband and wife relationship | Relationship between two participants in a marital relationship |
| Husband and wife loving relationship | Loving relationship between two participants in a marriage relationship |
| Loving relationship between two participants in a marriage relationship | In the case of two participants in a marriage relationship doing joint business, both persons are directly involved in the business relationship... |
| In cases where property under common ownership of husband and wife is required by law to have ownership and use rights registered, the certificate of ownership or certificate of use right must include the names of both husband and wife, except in case the husband and wife have other agreements | In cases where property under common ownership of two participants in a marriage relationship is required by law to have ownership and use rights registered, the certificate of ownership or certificate of use right must include the names of both persons, except in case the they have other agreements |
| ... | ... |

The phrase "relationship between two participants in a marriage relationship" may be shorten to "the marriage relationship".

**c. If husband and wife are mentioned as separate subjects, the phrase "one of two participants in a marriage relationship" shall be in place.** For example:

| Before | After |
|---|---|
| Separate property of husband and wife | Separate property of one of two persons participates in a marriage relationship |
| Wife, husband or both have the right to request the Court to settle the divorce. (Article 51) | One of the two persons participate in a marriage relationship or both have the right to request the Court to settle the divorce. (Article 51) |
| ... | ... |

**d. Change the phrase "man and woman" to "two people" or "two people wishing to get married".** For example:

| Before | After |
|---|---|
| Illegal marriage is when a man and woman have registered their marriage at a competent state agency but one or both parties violate the conditions for marriage as prescribed in Article 8 of this Law. | Illegal marriage is when two people have registered their marriage at a competent state agency but one or both parties violate the conditions for marriage as prescribed in Article 8 of this Law. |
| Claiming wealth in marriage is an excessive material requirement and considered as a condition for marriage in order to hinder the voluntary marriage of men and women. | Claiming wealth in marriage is an excessive material requirement and considered as a condition for marriage in order to hinder the voluntary marriage of two people wishing to get married. |
| ... | ... |

**e. Change the phrase "equal between husband and wife" to "equal between two persons".** Specifically:

| Before | After |
|---|---|
| Marriage must be voluntary, progressive, monogamous and equal between husband and wife. (Clause 01, Article 02) | Marriage must be voluntary, progressive, monogamous and equal between two persons. (Clause 01, Article 02) |
| The State has policies and measures to protect marriage and family, creating conditions for men and women to establish voluntary, progressive, monogamous, equal marriage... (Clause 01, Article 04) | The State has policies and measures to protect marriage and family, creating conditions for two persons to establish voluntary, progressive, monogamous, equal marriage... (Clause 01, Article 04) |
| ... | ... |

**f. Change the phrase "living together as husband and wife" to "living together as marriage".** For example:

| Before | After |
|---|---|
| Living together as husband and wife means that a man and a woman organize their life together and consider each other as husband and wife. (About 07, Article 03) | Living together as marriage means that a man and a woman organize their life together and consider each other as participants in a marriage relationship. (About 07, Article 03) |
| A married person who gets married or cohabits as husband and wife with another person, or is unmarried but marries or cohabits as husband and wife with a married person. (Point c, Clause 02, Article 05) | A married person who gets married or lives together as marriage with another person, or a person who is unmarried but marries or lives together as participants in a marriage relationship with a married person. (Point c, Clause 02, Article 05) |
| Article 14. Settlement of consequences of men and women living together as husband and wife without marriage registration | Article 14. Settlement of consequences of two persons living together as marriage without marriage registration |
| ... | ... |

**g. Implement similar changes to the relevant legal provisions of the Civil Code and the Law on Adoption.**

**Pros of the option**

Creates consistency in and between legal documents.

**Cons of the option**

Requires a lot of changes in the wording of the laws.

In addition to the above changes, it is necessary to issue corresponding forms for people of the same sex who wish to register for marriage.

**Form Changes**

In marriage registration certificates, change: Wife:… Husband:… into Wife/Husband:… Wife/Husband:… and let the registrants cross out the unused part. Both new and old forms can be used side-by-side depending on the needs of the registrants.

Or issue specific forms for each case and use depending on who comes to register:

- Wife:… Husband:…
- Wife:… Wife:…
- Husband:… Husband:…

Or just leave spaces without the words “wife” or “husband” and let the persons who come to register to fill in the name.

## Allowing sperm or ovum donation in surrogacy

The current Law on Marriage and Family in Vietnam only allows surrogacy through the union of the wife’s ovum and the husband’s sperm in a marriage. Clause 22, Article 3 of the Law on Marriage and Family explains surrogacy for humanitarian purposes as follows:

> *Humanitarian surrogacy is when a woman voluntarily, not for commercial purposes, gets pregnant for a couple whose wife is unable to conceive and give birth even if assisted reproductive technology has been applied, by taking the wife’s ovum and the husband’s sperm for in-vitro fertilization, and then implanting it in the uterus of the willing woman so that she becomes pregnant and gives birth:*

Surrogacy for commercial purposes is prohibited under Point g, Clause 2, Article 5 on Protection of the marriage and family regime:

> *g) Giving birth using assisted reproductive technology for commercial purposes, surrogacy for commercial purposes, fetal sex selection, asexual reproduction;*

Furthermore, Article 95 of the Law on Marriage and Family stipulates the conditions for surrogacy as follows:

1. *The surrogacy for humanitarian purposes must be done on a voluntary basis by the parties and in writing.*

2. *Husband and wife have the right to ask for a surrogate mother when fully meet the following conditions:*

   *a) There is a certification by a competent medical organization that the wife cannot become pregnant and give birth even when assisted reproductive techniques are applied;*

   *b) Husband and wife do not have common children;*

   *c) Have received medical, legal and psychological counseling.*

3. *The person asked for surrogacy must fully meet the following conditions:*

   *a) Being a relative in the same generation of the wife or husband;*

   *b) Has given birth to a child and is only allowed to act as a surrogate once;*

   *c) Being of appropriate age and certified by a competent medical organization on the ability of surrogacy;*

   *d) In case the surrogate woman has a husband, the husband’s written consent is required;*

   *đ) Received medical, legal and psychological counseling.*

4. *Surrogacy for humanitarian purposes must not be contrary to the law on childbirth by assisted reproductive technology.*

The limits placed on humanitarian surrogacy by current law place significant limits on having children and starting a family, not only for same-sex couples but also for heterosexual couples. Specifically:

The requirement that surrogacy must be a combination of the wife's ovum and the husband's sperm not only makes it impossible for same sex married men to use this method to have children, but also makes opposite-sex couples whose ovum or sperm cannot be used cannot have children by surrogacy.

The regulation that the person being asked for surrogacy is a close relative of one of the married people makes it impossible for people without female relatives to use surrogacy. This provision is likely to limit the ability of same-sex couples to have children, because LGBT people often experience rejection and discrimination from their families and eligible members in the family will refuse to surrogate due to discrimination.

A surrogate mother who has been certified by a competent health authority as eligible for pregnancy does not need to satisfy the condition of having been pregnant once. This provision unnecessarily limits the extent to which people can be asked for surrogacy.

The rule of not having common children also limits same-sex married couples from having as many children as they want and can afford.

Decree 10/2015/ND-CP regulates childbirth by in vitro fertilization and conditions for surrogacy for humanitarian purposes allowing single women to receive sperm donor and become pregnant. This rule could easily be extended to same-sex married women, but is still a limit to same-sex married men.

The above Decree also does not have any regulation allowing the donors to directly negotiate with the recipients. This creates an obstacle to the donor and encourages illegal donations. The donation cases that aren't recorded in the national database could cause unpredictable consequences for the population's genetic health.

- **Allow surrogacy with ovum or sperm donation.** This provision will be applied regardless of whether the person is married to same or opposite sex partner.
- **Allow men who are single or engaged in same-sex marriages to receive donated ovum or embryos and get surrogacy.** This is consistent with the principle of equality in Vietnamese law. If a single woman has the right to be a mother, then a single man must also have the right to be a father.
- **Loosening conditions for being a surrogate mother.** Specifically, removing the condition that the person must be a relative in the same generation as one of the two who asked for surrogacy and have already pregnant once.
- **Remove the condition of not having mutual children** so that people living together in a marriage, of the same or opposite sex, can have more than one child through surrogacy.
- **Allow the donors to negotiate with the sponsors** to reduce illegal donation.
- **Children born through a donation when they reach the age of majority have the right to request ovum or sperm donors' information** from relevant national databases to avoid consanguineous marriage.

Although loosening conditions on donation or surrogacy could raise concerns about human trafficking. However, reality shows that draconian regulations tend to make people look to unofficial sources and methods for surrogacy, causing unpredictable consequences for the reproductive health of the population when children born by donation can marry consanguineously by accident. Expanding the conditions on surrogacy not only has the effect of facilitating the integration of LGBT people, but also ensures reproductive health and genetic integrity for the population.

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