

UNIVERSITY OF PÉCS



**The Development of Matrimonial Property Law in Vietnam
in the Mirror of the Foreign Impacts**

(Summary of dissertation)

by

Nguyen Thi My Linh

Supervisor: Prof. Dr. Herger Csabáné

**Submitted by the requirements for the degree of
Doctoral of Law**

Pécs, 2022

Table of content

1. Scope of the study	3
2. Objectives of the study and the research questions.....	6
3. Research findings and recommendations	10
4. List of publications relating to the research topic	17
5.Literature.....	19

1. Scope of the study

The term “matrimonial property” will refer to property owned or obtained by either or both married spouses before and during their marriage which is called matrimonial assets. The matrimonial property regime is a collection of legal regulations governing the property ownership of spouses, including provisions on the grounds for establishing property ownership, rights and obligations of the spouses to the common property, separate property, cases and principles of property division.

The different development of economic, cultural and social conditions as well as the diversity of married life in each country lead to differences in the organization of the legal matrimonial regime (statutory property regime). However, there are two basic types of “statutory property systems” as follow: the community of acquisitions and participation in acquisitions. The “community of acquisitions” is formed by the theory of the communal nature of the spouses’ relationship. This type of property exists in three forms as follow: 1/ The whole-property community system (the husband and wife have no separate property; the husband and wife's common property consists of the property that the husband and wife have before marriage and after the marriage); 2/ Communal system of movable and property acquisitions (the common property of husband and wife includes movable property that husband and wife have before marriage and properties after marriage); 3/ Community-acquired property (only properties created by husband and wife during the marriage are the common property of husband and wife). However, “the participation in acquisitions” is the notion that there is no obligation and no need to have a common property. This means that, under the estate, there is no unified governance and no community wealth. This type of property regime absolutely protects the separate ownership of the spouse's property, maintains the independence and separation of the spouse's property. This type was chosen with the desire to promote the independence of husband and wife in creating a property. This property regime has regulations on the contribution obligations of husband and wife on the basis of the principle of equality between husband and wife. However, the equality of contribution to maintaining the family is not equal in nature but depends on the ability of each spouse.¹

Regarding the provisions of Vietnamese law, the legal matrimonial regime is organized according to the type of community of acquisitions system. All property that the husband and wife have before marriage and the property that the husband and wife are given or inherited during the marriage is the separate property of the husband and wife. The husband and wife's common property block includes all properties created by the husband and wife during the marriage; income

¹ Ngo, Chế độ hôn sản pháp định: Một số bất cập và kiến nghị hoàn thiện, 25-30.

of spouses; yields and profits arising from the separate property of husband and wife during the marriage period; properties that are donated to each other, inherited jointly during the marriage. If spouses are subject to the statutory property regime, their marital property includes both common and separate property.

The property agreement regime (also known as “a prenuptial agreement”) is a set of rules systematically built by the spouses themselves based on the permission of the law to replace the statutory property regime.² This property regime is regulated as a very progressive new point in the 2014 Law on Marriage and Family.

The term “matrimonial property law” can be referred to as the legal provisions governing the property relationship between spouses, including 1/ The application of the statutory or agreed upon matrimonial property regime; 2/ General principles of marital property; 3/ Rights and obligations of spouses about transactions of marital property; 4/ Grounds for establishment, possession, management, use and disposition of the spouses' common and separate property; 5/ Merger of separate property into common property and division of common property during the marriage period; 6/ Settlement of legal consequences for the marital property when spouses terminate their marital relationship due to divorce, death of one party, or illegal annulment of marriage; 7/ Marital property relationship between husband and wife with a third party and with other family members. The 2014 Law on Marriage and Family and its implementing guidelines do not provide specific definitions of matrimonial property and matrimonial property law. However, based on the above provisions, the concept of matrimonial property and matrimonial property law can be summed up and inferred.

The term “property law of cohabitation” can be understood as the legal provisions governing property between cohabitation. Cohabitation is defined in Clause 7 of Article 3 as the couple living together and treating each other as husband and wife. Cohabitation, however, is not recognized in Vietnam; There are also no regulations on civil union or registration of cohabitation like other countries in the world. This is true in the case of Hungary that cohabitation can register their cohabitation as proof of cohabitation to resolve disputes arising during the process of cohabitation or after the termination of cohabitation. Although not recognizing the cohabitation relationship, the Law 2014 on Marriage and Family and Circular 01/2016 still provide the concept and grounds for settlement for cohabitation including the settlement of property relations between them. In addition, cohabitation established before January 3, 1987, in Vietnam is recognized as a registered marriage as an exception due to the influence of the economic and social difficulties of this

² Nguyen, Hong Hai, ‘Bàn thêm về chia tài sản chung của vợ chồng trong thời kỳ hôn nhân theo pháp luật hôn nhân và gia đình hiện hành (Discuss more about division of common property of husband and wife during marriage according to current marriage and family law)’, Hanoi univeristy’s Law school Journal 5 (2003): 29-35.

historical period. Therefore, the analysis of the matrimonial property law in this thesis also refers to the property law of cohabitation by relevancy.

The scope of the study focuses on the development of regulations on marital property under Vietnamese law compared to Chinese, French, and Soviet laws. Marriage is the most common arising in legal relations arising in practice. The marital property relationship is considered fundamental between husband and wife because it involves individual ownership rights, and the fact shows that property disputes between husband and wife are quite common.³ Vietnam is a country with a long history from east to west, including the influence of China under the feudal dynasty, of France during the colonial period, and of socialism during the period of Vietnam's independence to the present day. Therefore, the development of Vietnamese law is influenced by many different countries, which contributes to enriching the tools of the Vietnamese legal system. Therefore, it is extremely reasonable to choose Vietnam to study marital property law in combination with the laws of relevant countries.

The property regime of husband and wife is defined in the law to determine the types of property in the relationship between spouses and family. The identification of property types in the relationship between spouses is also intended to determine the rights and obligations of the spouses concerning the assets of the couple. The division of property types between spouses is also aimed at determining the rights and obligations of the couple towards property relations. Since then, it is a legal basis for competent state powers to settle matrimonial property disputes between spouses and with other people.

The matrimonial property regime is an institution in the law on marriage and family that is regulated by the state based on the development of economic and social conditions. It expresses the class character, the nature of the political and social regime. Looking at the matrimonial property regime prescribed in the state's laws, one can recognize the level of development of the economic, social conditions and the will of the state.

The husband and wife's property regime are used as a legal basis to settle property disputes between husband and wife with each other or with other people to protect their main rights and the property value for the spouses or a third party involved in transactions related to the property of the spouses.⁴ The recognition that husband and wife have the right to have their property creates a legal basis for spouses to actively participate in civil and economic transactions. The recognition of the marital agreement aims to facilitate the spouses to implement a matrimonial regime suitable

³ Glendon, Mary Ann, 'Is There a Future for Separate Property. *Family Law Quarterly* 8 (1974):315-336. Glendon, Mary Ann, 'Matrimonial Property: A Comparative Study of Law and Social Change'. *Tulane Law Review* 49 (1974): 21-24.

⁴ Nguyen, Van Cu, *Chế độ tài sản của vợ chồng theo pháp luật Hôn nhân và gia đình* (The property regime of husband and wife according to the law on Marriage and family). Judicial Publishing House -Ho Chi Minh, 2008.

to their economic circumstances. Therefore, the married person has the right to enter into the marriage contract such provisions as it deems necessary to regulate property relations during the marriage period. The marriage contract is made through the intervention of a notary, so the parties will receive legal support to establish a complete agreement on a property regime. In a marriage contract, the parties to the marriage declare a matrimonial regime that will apply to them. Most countries in the world regulate two ways of establishing property relations, either by law or by agreement. In the absence of an agreement between the husband and wife, the settlement of their property relations shall comply with the law. Thus, if there is no agreement between spouses, their property regime will be governed by the law ensuring the right of individuals to self-determination over their property and preserving their assets to avoid property conflicts after separation.

2. Objectives of the study and the research questions

2.1 Objectives of the study

The general objective of this study was to investigate the development of matrimonial property law in Vietnam compared to Chinese, French⁵ and Soviet laws.⁶ The study was guided by the following specific objectives:

- (1) To examine the role of the matrimonial property toward the couple throughout marriage life in Vietnam.
- (2) To study the provisions related to the matrimonial property law based on comparison with the regulations of Chinese,⁷ French and Soviet countries.⁸
- (3) To find out the shortcomings and limitations and make suggestions for improving the matrimonial property law in Vietnam.

⁵ Vinh, Ha Nhu, 'Che Do Hon San Phap Dinh Trong Luat Viet Nam (The Legal Marriage Regime in Vietnamese Law)'. Publish in Saigon, Vietnam, 1967.

⁶ Molyneux, Maxine. 'Family Reform in Socialist States: The Hidden Agenda'. Source: Feminist Review. Winter, 1985.

⁷ Cheng, Yang, 'Family Law in China'. International Journal of Law, Policy and the Family 1, no. 2 (1987): 248–258. Feng, X, 'Review of the Development of Marriage Law in the People's Republic of China'. University of Detroit Mercy Law Review 79, no. 3 (2002): 331–398.

⁸ Anders, Aslund, Building Capitalism: The Transformation of the Former Soviet Bloc. Cambridge University Press, 2002.

2.2 The research questions

This study focuses on finding answers to the following questions

- (1) What is the role of matrimonial property law in marriage and family law?
- (2) How has the regulation of matrimonial property law changed over the historical periods in Vietnam?
- (3) Is the regulation on marital property law complete and reasonable?
- (4) What are the differences in regulations on the matrimonial property between Vietnam and Chinese, French, Soviet countries? What can Vietnam learn from regulations in these countries for the relevant issue?
- (5) What characteristic of the wife's property status? And how gender equality is protected?
- (6) The extent to which creditor's protection in property transactions with spouses?
- (7) The extent to which the interest of the spouses is protected against the creditor

Researching on the role of marital property law will make it realise the importance of recognizing ownership between couples, thereby making recommendations to better protect property rights in marriage.

3. Methodology and research sources

The methodology adopted in this dissertation is based on analysing methodology adapted in the earlier studies regarding matrimonial property law in Vietnam. At the same time, a comparison between Vietnam and other foreign law,⁹ including China,¹⁰ France, Hungary and other European Member States can determine marital property's comprehensive theoretical framework.

This study also collects data, legal history resources, cases about the matrimonial property law in Vietnam since September 2018. These activities have been taking much time and certain obstacles because of changes in political institutions in Vietnam. This is true in the cases of access to Vietnamese-era documents that were invaded by China, France, and the United States encountered many difficulties because this was classified as a document group before 1975 –

⁹ Greene, Scott, 'Comparison of the Property Aspects of the Community Property and Common-Law Marital Property Systems and Their Relative Compatibility with the Current View of the Marriage Relationship and the Rights of Women'. *Creighton Law Review* 13 (1979): 71-73.

¹⁰ Gillespie, John, and Albert H. Y. Chen, eds, *Legal Reforms in China and Vietnam Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes*. Routledge -New York. Co-published by Australian National University and Asia Pacific Press, (2010): 66-70. <https://doi.org/10.4324/9780203852699>.

reunified country. After reunification, these materials are classified as limited readers and only accessed with authorized permission. Those methods focus on chapter 2 on the historical development of matrimonial property law.

The comparative method is used in most chapters of the thesis, including the comparison of the difference in regulations on matrimonial property law over historical periods in Vietnam in chapter 2. Regarding the comparison method, it can be referred to as a consideration or estimate of the similarities or dissimilarities between two things or people based on Oxford languages' definition. The comparative method is also used to analyse the difference in the financial regime between Vietnam and other countries, such as the analysis of the difference between the marital agreement between Vietnam and Hungary in chapter 3, settlement of property relations in case of divorce or death of husband and wife.

The method of case analysis through court judgments brings certain effectiveness in finding difficulties and limitations in practical application. The analysis of case precedents and judgments of the Vietnamese courts is sourced from www.congbobanan.toaan.gov.vn which is the official website of the Supreme People's Court. Regarding judgments before 1975 which are hard to collect, I received support to provide documents from Court officials in some provinces such as Cantho, Vinh Long and Ho Chi Minh City, the High Court of Ho Chi Minh. Chapters 3 and 4 are the ones that use this method which relates both laws in force and legal history. In particular, some data were collected at the Notaries, the Courts that are not publicity, so it is hard to get that information. This is true in the case of the data about marriage and family's disputes at the first instance settled by The Cantho City Court from 2017 to 2020 which is leaked by the administrative staff of this court and is not shown to the public.

Based on comparing domestic and foreign regulations on matrimonial property law, chapter 5 is the conclusion and finding of suitable solutions to perfect the matrimonial property law.

The dissertation has all 6 chapters including analysing issues from theory to practice about marital property in Vietnam compared to Chinese, French¹¹ and Soviet laws. It is reasonable that chapter 1 begins by studying the historical development of marital property from traditional society, feudal period, colonial empire, to the independent stage and socialist development in Vietnam. Chapter 1 not only focuses on analysing and studying Vietnamese law on marital property but also compares it with the laws of other countries related to Vietnam's history¹² at that time, including China, France,¹³ and the Soviet Union.

¹¹ Frémeaux, Nicolas, and Marion Leturcq, 'Prenuptial Agreements and Matrimonial Property Regimes in France, 1855-2010'. *Explorations in Economic History* 68 (2017): 132-42. <https://doi.org/10.1016/j.eeh.2017.10.004>.

¹² Mau, Vu Van, *Dân Luật Khái Luận [A Glimpse of the Civil Law]*. Publish in Saigon, Vietnam, 1961.

¹³ Lobingier, and Charles Summer, 'Napoleon and His Code'. *Harvard Law Review* 32 (1918): 117-130.

The dissertation focuses on analysing the current law on marital property in chapter 2, including basic principles and bases for the formation of various types of marital property. Couples can choose between two matrimonial property systems, the legal matrimonial property regime and the prenuptial agreement regime. In the process of cohabitation, it may lead to the change or termination of marital property relations, so that the study of the legal consequences for the marital property once the spouses' divorce or one party dies, or annulment of marriage is analysed in chapter 3.

The property relationship between cohabitation is also a problem arising in practice and requires appropriate legal mechanisms, so chapter 4 is an analysis to clarify this issue.

In my finding and recommendation chapter, I critically consider inadequacies in the law on marital property in Vietnam, thereby proposing regulations to improve them. I conclude with a brief overview of the research, its key findings and some conjecture about where future research on this topic might go.

Regarding general backgrounds on matrimonial property law, Chapter 1 presented the basic issues of the research scope, research objectives, research methods, literature review to help have the most general view of the issue. Chapter 2 of the dissertation will continue to clarify the history of the development of the matrimonial property law in Vietnam compared to countries with close historical relationships.

3. Research findings and recommendations

1. Findings

The findings of the study were summarized according to the statement of the problems stated in chapter 1.

What is the role of matrimonial property law in marriage and family law? It is hard to deny the great role of marital property law for husband and wife and for society. From the perspective of husband and wife, matrimonial property law contributes to the protection of ownership rights for the subjects in the marriage relationship. The law allows them to agree to establish an agreed-upon property regime or an agreed-upon property regime, which guarantees their freedom of will in establishing each person's ownership rights. The gradual improvement of the law on marital property not only ensures the ownership of husband and wife, but also helps to create solid legal foundations when settling disputes. Once the legal regulations are perfected, disputes, if any, will be resolved more quickly. With respect to the role of matrimonial property law towards society, it plays a huge role in ensuring the rights between husband and wife and third parties in transactions related to marital property. The nature of family relations is a part of civil society relationships, so more or less in married life, husband and wife will establish civil transactions with other people. One of the civil transactions that cannot be ignored is those related to marital property. Therefore, marriage and civil law set aside many main provisions for property relations between husband and wife and third parties. This is clearly seen in regulations such as that if a husband and wife establish a property regime according to an agreement, they must notify the third party in the transactions that the husband and wife establish or the provisions to protect the third party's faithful. The improvement of the marriage law contributes to a good settlement of the internal relations of that family, including the relationship between husband and wife and between husband and wife and other family members. This is true in the case guarantees the support obligations between husband and wife or child support. Spousal support obligations will arise in the event of a divorce and a person falls into a difficult situation and needs financial support from a previous husband or wife. The parent's support obligation for their child is that when they divorce if the child is underage, the parents who do not live together are responsible for providing money to ensure the child's all-around development.

How has the regulation of matrimonial property changed over the historical periods in Vietnam? I found that matrimonial property law has developed in a more reasonable direction, although there are still recommendations for amendments and supplements. The development of legal history in Vietnam can be divided into four main stages, including the formation of the state

to the feudal period in Vietnam under influence of China (178 BC–1858)¹⁴, the French (1858–1954) and the United States (1954–1975) colonial period, after independence time under socialism (1975-until now). It is no doubt that the development of Vietnam's legal system has been heavily influenced by invasions from China, France and the United States (1954–1975) and the Soviet Union (the 1940s).¹⁵ However, the law in force of marital property law in Vietnam is learning from the legislative experience of many private regulatory agencies in other countries, not only those mentioned above, which I have mentioned in chapters 2, 3, and 4 respectively of the study.

Is the regulation on marital property complete and reasonable? The 2014 law on marriage and family added a prenuptial agreement property regime in addition to the statutory property regime, which is considered a progressive point. The fact that the legislator dedicates a section from Article 28 -50 on the matrimonial property regime in the 2014 Law on Marriage and Family has shown the necessity and importance of this issue compared to the previous regulations. The property law also recognizes the equality between spouses in matters of ownership. As far as the marriage regime is concerned, equality is understood as equality in rights and obligations in all aspects of the family as well as in the exercise of citizenship rights and obligations as prescribed by law. This principle is specifically stated in Article 17 of the 2014 Law on Marriage and Family as following “Wife and husband are equal, have equal rights and obligations in all aspects of the family, in the exercise of rights, citizens’ obligations are stipulated in the Constitution, the Law on Marriage and Family and other relevant laws. The legislator orients the spouse towards comprehensive equality, recognizing the husband and wife's common contribution in both spiritual and material terms. It cannot be denied that the regulations on the marital property have improved considerably, but there are still many unreasonable points that need to be amended and supplemented.

What characteristic of the wife’s property status? And how gender equality is protected? Regarding the wife’s property status, there has been a considerable change in the wife’s property status from the beginning of the state to the recent time. To begin with, the wife seems to be equal with the husband in the possession’s rights in Van Lang state¹⁶, while the feudal time has witnessed great changes in the role of the wife. This society recognized them just as a part of the family and put them under the control of the husband - the head of the family. Hundreds of years later, the wife’s property status has gained some benefits owing to copying several regulations in the French Civil Code during French colonial time that the wife could possess their separate property and share the common property with their husband.¹⁷ However, gender equality has just been taken

¹⁴ Bazylar, Soviet Family Law, 125.

Becky, and Margaret, Family Law in Soviet Russia, 893–902.

¹⁵ Phan and Truong, Các Chế Độ Hôn Nhân và Gia Đình Việt Nam Xưa và Nay, 37-50.

¹⁶ The first state of Vietnam.

¹⁷ Vu, Chế Độ Tài Sản Trong Gia Đình Việt Nam (Different Type of Antenuptial Settlements - Culture Estate), 37.

into consideration deeply when Northern Vietnam gained independence in 1945 and develop under socialism. It can be said that the wife's property status and gender equality rights have been placed a crucial role among other marriage relations in modern times.¹⁸ The wife has equal rights as the husband in possession, management, disposal of their matrimonial property based on Civil Code, Laws on Marriage and Family and other relevant laws.

The extent to which creditor's protection in property transactions with spouses? The marriage law stipulates that if spouses establish a property regime according to an agreement, they are obliged to notify the relevant third party in transactions related to marital property. If the transactions between a spouse and a third party relating to common property, which is a bank account or a business operation in the name of one spouse, then such transaction will have legal value with the third party. If a civil transaction related to movable property or real estate has been registered at a competent authority, such transaction will still have a legal value between spouses and a bona fide third party. Persons whose interests have been infringed have the right to request spouses to compensate them for damage in accordance with Article 133 of the 2015 Civil Code. The recognition of the legal value between the transactions established by the spouses or one spouse and the third party in good faith to ensure the fairness and legitimate interests of the third party. Rights and obligations established by spouses with a third party continue to arise after their divorce. However, the third party will not be able to claim the spouses for damages related to the transaction of marital property if they have been fully informed by the spouses about the marital property established by the parties.

What are the differences in regulations on the matrimonial property between Vietnam and other countries? What can Vietnam learn from regulations in these countries for the relevant issue? I find that by noticing the differences, Vietnam can learn from some countries' regulations on the law on marital property. Those differences are analysed in chapters 2, 3, and 4, including differences in regulations, subjects of application of the law and the common law or civil law system. The regulations on marital property that Vietnam can learn from other countries will be clarified in the Conclusion section.

2. Conclusion

2.1. Strengthening propaganda to raise awareness of property rights for women to contribute to ensuring gender equality

¹⁸ Nguyen, Bình Luận Khoa Học Luật Hôn Nhân và Gia Đình Việt Nam, 97-101.

Basically, Vietnam has been better and better at recognizing the role of women in society and in the family. From the perspective of women's ownership rights in the family, the law recognizes the principle of equality, which means there is no discrimination in the ownership rights of husband and wife. However, based on the analysis through the chapters, it shows that the wife's ownership rights in the family are not equal in practice. For example, statistics show that the proportion of male-headed households in urban areas accounts for 61.9%, while women account for only 38.1%¹⁹, which is almost twice as low as that of men. The proportion of women whose names are on land use right certificates is also lower than that of men in the statistics conducted in 2004-2008. In 2011, Nidhiya Menon et al. showed²⁰ that land use rights held by men accounted for 68%, while just 16 % was for women in 2004. This study demonstrated that the husband is the one who usually represents common property ownership. The authors also found that only 15% of land use rights were held by both men and women in 2004 which was not so many changes in 2008 with 20%. The inequality has been existed in land use right certificated held by genders. Although the 2014 Law on Marriage and Family encourages the couple to have their title on certificates of common land use right by exchanging new certificates, the number of land use rights held by both spouses is still low. To raise such awareness for women, the government should offer much more propagating policies and laws on exchange new certificates having both couple title on common land use right is introduced to the public as an extremely significant social activity. Furthermore, as mass organizations established voluntarily, to uphold the law and protect the rights of members, Farmer's Union, Women's Union, and other member organizations of the Vietnam Fatherland Front cannot stand outside this activity. Propaganda activities on policies and laws on the application of certificates of exchange have attracted active participation and facilitated the promotion of the role of mass organizations in propaganda to raise awareness for their members about equality.

2.2 Prenuptial and antenuptial agreement property: the need for acknowledge

Prenuptial agreement is a form of matrimonial property established in family laws in many countries. The recognition of the matrimonial agreement property contributes to the equal rights of spouses because they are free to agree on the assets they created before entering the marriage. Recognizing the necessity of this property regime, the 2014 Law on Marriage and Family of Vietnam allows couples to choose between the statutory property regime and the agreed property

¹⁹ General Statistics Office, *Cấu Trúc Tuổi- Giới Tính và Tình Trạng*.

²⁰ Menon, Rodgers, and Nguyen, *Women's Land Rights and Children* 18-31.

regime. Compared with the Hungarian legislation²¹ on marriage, there are two property regimes that couples are allowed to choose when establishing a cohabitation relationship: the statutory property regime and the property regime as agreed (also known as a marriage contract).²² As for the marriage contract, couples can agree at any time during the marriage process and the validity of the marriage contract is calculated from the time they have established agreements. This means the couples could make both prenuptial and postnuptial agreements in Hungary, while they just allow having prenuptial ones in Vietnam. Unlike the law of Vietnam, Hungarian law does not limit the time of establishing a marriage contract before the time of marriage. The limitation of the time of establishing a marriage contract in Vietnamese law limits the will to establish ownership of the couple. This is the regulation that Vietnam law should learn from Hungarian law.

2.3. The need to register a registered partnership for cohabitation in order to secure the rights and obligations arising between them

Cohabitation including heterosexual and homosexual is not recognized in Vietnam, so the property relationship between them, if any, will be applied according to the 2015 Civil Code governing common property between them. To legalize a cohabitation relationship in Vietnam, perhaps the only way is to register the marriage, while some countries allow this relationship to be legalized in the form of civil union or registered partnership. Allowing the couple to be civil union or registered partnership will help them better secure their ownership rights once the cohabitation relationship is terminated and serve as an evidence basis for the Court to recognize this relationship. Vietnam should have a clear roadmap in amending relevant laws to protect the equal rights of cohabitation. For example, the Civil Code, the Labor Code, the Law on Gender Equality or the Law on Domestic Violence Prevention should have additional guidance on implementing content related to couples, or in future amendments should include content that protects the equal and legal rights of couples. Accordingly, in parallel with the process of advocating for the drafting of a draft to amend the Law on Marriage and Family, I found that the Law on Marriage and Family should specifically stipulate the rights of same-sex couples to jointly adopt and raise children, the right to joint property, the right to inherit property, and the right to carry out administrative proceedings on behalf of each other, and the right to request the court to terminate the cohabitation agreement. This is consistent with the views of the majority of people, the actual needs of the gay,

²¹ Herger Csabane, *A házasság és a család védelme a modern magyar magánjogban*, 3–15.

²² Szeibert-Erodes, *Marriage and Cohabitation in the New Hungarian Civil Code*, 173-191.

bisexual and transgender community, as well as the gradual approach to the principle of equality in Vietnamese law.

2.4. The need to recognize legal separation regime in Vietnamese law to ensure transparency in ownership of spouse during separation

Lawmakers all acknowledge the fact that separation is a social phenomenon that exists in many Vietnamese families. However, there are conflicting views on whether this phenomenon should be legalized. If separation is recorded in the Law on Marriage and Family, it will bring the following advantages such as *1/ The separation agreement will be respected and protected by law.* When the law already has regulations governing separation if the parties' separation agreement will be protected by law. The rights and interests of the parties will be guaranteed when there is an infringement from the other party due to a breach of the agreement. The separation agreement might not need to be announced by the Court but only needs to be authenticated and confirmed by the Commune People's Committee (Local Administrative Authority) and recorded in the civil status papers. When a dispute arises, the Commune People's Committee will be the place to conduct conciliation procedures. In the event of unsuccessful conciliation, the Court will intervene. Such a provision will partly help the parties to think carefully before deciding whether to separate or not (to limit the spread of separation due to the absence of intervention from the competent state agency). On the other hand, also limits the procedural complexity when having to resort to the Court (in case the parties really want to separate). *2/ An important ground for the Court to accept the divorce.*²³ At present, actual separation is not one of the grounds for the Court to decide whether to agree to a divorce or not. The court will consider the factors to prove that the purpose of marriage is not achieved and irretrievably broken down which are quite complicated to prove especially in the case of unilateral divorce. This is why divorce-related cases often have to be conciliated many times, consuming both parties' time and effort. Once the parties have reached an agreement on separation before and have decided to proceed to divorce, it will also be easier for the Court to prove that the marriage purpose has not been achieved and there is no need for repeated reconciliation thanks to the Court obtaining the information of the couple's civil status provided by the Commune People's Committee. *3/ Limit unilateral divorce.* Unilateral divorce often leads to disputes over property and children because the parties have not reached a consensus. If the parties have separated and have had agreements on common property and children,²⁴ the disputes will almost no longer exist. The parties can easily reach a consensus and then the matter of the

²³ Doan, Sự cần thiết luật hóa chế định ly thân accessed 10 October 2021.

²⁴ Nguyen, 'Hậu quả pháp lý của việc chia tài sản chung của vợ chồng trong thời kỳ hôn nhân, 22.

Court merely recognizing the consent of the parties to the divorce.²⁵ Considering all of these elements, it is necessary to recognise legal separation in the law on Marriage and Family, because it helps to ensure the legitimate rights and interests of the parties in the marriage relationship, lay a legal basis to solve existing problems in practice, and orient the formed marriage relationship to the positive side within the legal framework.

3. Recommendation

Legislative or Vietnamese responsibility rests with the National Assembly and the enforcement of the law rests with the Government. Therefore, on that basis, the National Assembly and the Government continue to perfect the legal regulations on marital property. On the one hand, consider the shortcomings of the matrimonial property law for time changes. This amendment can start from the Law on Marriage and Family itself or sub-law documents such as Circulars or Decrees to guide more details to ensure easier application in practice. It is still necessary to coordinate with mass organizations, including the Women's Union, the People's Committee, the Youth Union to support women and children helping them to be more aware of their equal roles and rights in society.

Organizing training courses and disseminating the law on marital property. Although the current law recognizes the ownership of marital property as equal for both husband and wife, the reality shows that the number of women named on the land use right certificate is still much smaller than that of the spouses. with men. That proves that raising awareness and awareness of property rights protection for women is extremely necessary. Accordingly, if the land use right certificate belongs to the common property of husband and wife but is only in the name of one person, the other person is entitled to request a new re-issuance of the certificate so that both are jointly named.

²⁵ Krauskopf, Marital Property at Marriage Dissolution, 157-170.

4. List of publications relating to the research topic

1. Publications in English

“The development of matrimonial property law in Vietnam”

DÍKÉ 2/2 (2018): p 66–74, <https://doi.org/10.15170/DIKE.2018.02.02.05>]

“The impact of the French colonial law on the development of matrimonial property law in Vietnam”

DÍKÉ 3/1 (2019): p 65–82, <https://doi.org/10.15170/DIKE.2019.03.01.06>

“The matrimonial property law in Vietnam 1858-1975 in the mirror of the European legal development”

Beiträge zur Rechtsgeschichte Österreichs – Austrian Academy of Sciences, 2/2020- Volume 10, p. 309-316, doi:[10.1553/BRGOE2020-2s309](https://doi.org/10.1553/BRGOE2020-2s309)

“General principles of family law and their impact on the matrimonial property law in Vietnam”

JURA Law Journal – University of Pécs, 26, 4/2020, p.131-147,
https://jura.ajk.pte.hu/JURA_2020_4.pdf

“Impact of the Family Policy of the Soviet Bloc countries on the Codification of Vietnamese Family Law in 1959”

Legal – Historical Trend and Perspective V, Trnava’s University Conference 2020, p.115-122.

“Parental responsibility: managing and respecting of Children’s property rights in Vietnam”
The 3rd Doctoral School of Law Conference – University of Pecs 2022, p.96-110.

2. Publications in Vietnamese

“Measures to secure performance of civil obligations” – Coursebook.

Co-authors of publications: Le Thi Nguyet Chau, Tang Thanh Phuong, Nguyen Thi Ngoc Tuyen. Can Tho University Publishing House, Vietnam, 2018, 190 pages.

“Family Law” - Coursebook

Co-authors of publications: Phan Trung Hien, Bui Thi My Huong, Huynh Thi Truc Giang, Tran Khac Qui. Can Tho University Publishing House, Vietnam, 2019, 256 pages.

5. Literature

1. Anders, Aslund, *Building Capitalism: The Transformation of the Former Soviet Bloc*. Cambridge University Press, 2002.
2. Bazylar, Michael J, 'Soviet Family Law'. *University of Kansas Law Review* 39 (1990): 125-130.
3. Becky L. Glass, and Margaret K. Stolee. 'Family Law in Soviet Russia, 1917-1945'. *Journal of Marriage and Family* 49, no. 4 (1987): 893–902.
4. Cheng, Yang, 'Family Law in China'. *International Journal of Law, Policy and the Family* 1, no. 2 (1987): 248–258.
5. Dien, Nguyen Ngoc, *Bình Luận Khoa Học Luật Hôn Nhân và Gia Đình Việt Nam– Các Quan Hệ Tài Sản Giữa vợ Chồng (Scientific Commentary on Marriage and Family Law in Vietnam - Property Relations between Husband and Wife) Volume 2*. Ho Chi Minh, Vietnam, Young Publishing House, 2006.
6. Feng, X, 'Review of the Development of Marriage Law in the People's Republic of China'. *University of Detroit Mercy Law Review* 79, no. 3 (2002): 331–398.
7. Frémeaux, Nicolas, and Marion Leturcq, 'Prenuptial Agreements and Matrimonial Property Regimes in France, 1855-2010'. *Explorations in Economic History* 68 (2017): 132–142. <https://doi.org/10.1016/j.eeh.2017.10.004>.
8. General Statistics Office, 'Cấu Trúc Tuổi- Giới Tính và Tình Trạng Hôn Nhân Của Dân Số Việt Nam (Age Structure- Gender and Marital Status of the Population of Vietnam)'. Hanoi, Vietnam, Vietnamese Statistical Publishing House, 2011.
9. Gillespie, John, and Albert H. Y. Chen, eds, *Legal Reforms in China and Vietnam Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes*. Routledge - New York. Co-published by Australian National University and Asia Pacific Press, (2010): 66-70. <https://doi.org/10.4324/9780203852699>.
10. Glendon, Mary Ann, 'Is There a Future for Separate Property. *Family Law Quarterly* 8 (1974):315-336.
11. Glendon, Mary Ann, 'Matrimonial Property: A Comparative Study of Law and Social Change'. *Tulane Law Review* 49 (1974): 21-24.
12. Greene, Scott, 'Comparison of the Property Aspects of the Community Property and Common-Law Marital Property Systems and Their Relative Compatibility with the Current View of the Marriage Relationship and the Rights of Women'. *Creighton Law Review* 13 (1979): 71-73.
13. Hai, Doan Thi Ngoc, 'Sự Cần Thiết Luật Hóa Chế Định Ly Thân Trong Luật Hôn Nhân và Gia Đình (The Need to Legislate the Institution of Separation in the Law on Marriage

- and Family)’. Accessed 20 October 2021. <https://tapchitoaan.vn/bai-viet/xay-dung-phat-luat/su-can-thiet-luat-hoa-che-dinh-ly-than-trong-luat-hon-nhan-va-gia-dinh>.
14. Herger Csabane, ‘A házasság és a család védelme a modern magyar magánjogban (Protection of Marriage and Family in Modern Hungarian Private Law)’. *Diké* 2, no. 2 (2018): 3–15.
 15. Hien, Vu Van, *Chế Độ Tài Sản Trong Gia Đình Việt Nam (Different Type of Antenuptial Settlements - Culture Estate)*. Volume 1. Saigon, Vietnam: Bộ Giáo dục Quốc Gia Publishing House, 1960.
 16. Krauskopf, Joan M. ‘Marital Property at Marriage Dissolution’. *Missouri Law Review* 43 (1978):157-170.
 17. Lobingier, and Charles Summer, ‘Napoleon and His Code’. *Harvard Law Review* 32 (1918): 117-130.
 18. Mau, Vu Van, *Dân Luật Khái Luận [A Glimpse of the Civil Law]*. Publish in Saigon, Vietnam, 1961.
 19. Menon, Nidhiya, Yana Van Der Meulen Rodgers, and Huong Nguyen, ‘Women’s Land Rights and Children’s Human Capital in Vietnam’. *World Development* 54 (2014): 18–31. <https://doi.org/10.1016/j.worlddev.2013.07.005>.
 20. Molyneux, Maxine. ‘Family Reform in Socialist States: The Hidden Agenda’. *Source: Feminist Review*. Winter, 1985.
 21. Nadezhda Tarusina, and Elena isaeva. ‘Russian Family Law Legislation: Revolution, Counter-Revolution’. *Brics Law Journal* IV, no. 4 (2017): 65–92. <https://doi.org/10.21684/2412-2343-2017-4-4-65-92>.
 22. Nguyen, Phuong Lan, ‘Hậu quả pháp lý của việc chia tài sản chung của vợ chồng trong thời kỳ hôn nhân (Legal consequences of division of common property of husband and wife during marriage)’, *Law school journal* 6(2002): 22.
 23. Nguyen, Van Cu, *Chế độ tài sản của vợ chồng theo pháp luật Hôn nhân và gia đình (The property regime of husband and wife according to the law on Marriage and family)*. Judicial Publishing House -Ho Chi Minh, 2008.
 24. Nguyen, Hong Hai, ‘Bàn thêm về chia tài sản chung của vợ chồng trong thời kỳ hôn nhân theo pháp luật hôn nhân và gia đình hiện hành (Discuss more about division of common property of husband and wife during marriage according to current marriage and family law)’, *Hanoi univeristy’s Law school Journal* 5 (2003): 29-35.
 25. Szeibert-Erdoes, Orsolya, ‘Marriage and Cohabitation in the New Hungarian Civil Code— Answering the New Challenges’. In *New Civil Codes in Hungary and Romania*, edited by Menyhárd A. and Veress E. Springer, Cham, (2017):173-191.
 26. Thanh, Phan Dang, and Hoa, Truong Thi, *Các Chế Độ Hôn Nhân và Gia Đình Việt Nam*

Xưa và Nay (The Old and New Vietnamese Marriage and Family Regimes). Ho Chi Minh, Vietnam, 2021.

27. Vietnamese General Statistic Office, 'Cấu Trúc Tuổi, Giới Tính và Tình Trạng Hôn Nhân Của Dân Số Việt Nam Năm 2009 (Age Structure, Sex and Marital Status of the Vietnamese Population in 2009)', Publish in Hà Nội: Vietnam, 2011.
28. Vinh, Ha Nhu, 'Che Do Hon San Phap Dinh Trong Luat Viet Nam (The Legal Marriage Regime in Vietnamese Law)'. Publish in Saigon, Vietnam, 1967.